

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA PESHAWAR

Service Appeal No.....571.....2014

595  
18/4/2014

Muhammad Fayaz No-769 HC S/o Shaukat Ali R/o Behram Kaly  
Risalpur Tehsil and District Nowshera .....Appellant

VERSUS

1. District Police Officer Nowshera District Nowshera.
  2. Deputy Inspector General of Police, Mardan Region Mardan
  3. Provincial Police Officer Khyber Pakhtunkhwa Peshawar
- .....Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED  
02.04.2014 OF RESPONDENT NO.3 AND ORDER DATED 17-01-2014  
PASSED BY RESPONDENT NO-2 WHERE IN THE APPEAL OF THE  
APPELLANT WAS PARTIALLY ALLOWED.

Prayer in Appeal:

*It is, therefore, most humbly prayed that on acceptance of the instant service appeal, the impugned order dated 02.04.2014 passed by respondent No.3 and the order dated 17-01-2014 passed by respondent No-2 may graciously be set aside up-to the extent of stoppages of two increments and consequent payment of 40 days of pay to the appellant and the respondents may also be directed to allow the two stoppages, payment of 40 days pay and release the outstanding amount with out any further delay along with other benefits.*

*Any other remedy which deems fit by his Hon'ble Tribunal in the interest of justice, may also be granted in fever of appellant.*

18/4/14

571/2014  
M. Fayaz

03.11.2016

Counsel for the appellant (Mr. Arif Jan, Advocate) and Mr. Muhammad Fayaz, H.C alongwith Mr. Kabirullah Khan Khattak, Assistant Advocate General for respondents present. While going through the impugned order of the appellate authority dated 17.01.2016, it was observed that penalty of stoppage of two increments with cumulative effect has been awarded to the appellant which is against the rules. The learned counsel for the appellant submitted that he would press this appeal to the extent that illegality to this effect may be rectified. So without going further into merits of this appeal, we decide that the penalty awarded in the impugned order of stoppage of two increments with cumulative effect be modified so that the same be treated as stoppage of two increments for a period two years. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

03.11.2016

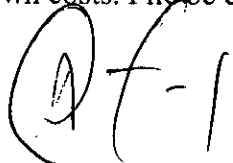
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571/2014  
M. Fayaz

03.11.2016

Counsel for the appellant (Mr. Arif Jan, Advocate) and Mr. Muhammad Fayaz, H.C alongwith Mr. Kabirullah Khan Khattak, Assistant Advocate General for respondents present. While going through the impugned order of the appellate authority dated 17.01.2016, it was observed that penalty of stoppage of two increments with cumulative effect has been awarded to the appellant which is against the rules. The learned counsel for the appellant submitted that he would press this appeal to the extent that illegality to this effect may be rectified. So without going further into merits of this appeal, we decide that the penalty awarded in the impugned order of stoppage of two increments with cumulative effect be modified so that the same be treated as stoppage of two increments for a period two years. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
03.11.2016



(ABDUL LATIF)  
MEMBER



(PIR BAKHSH SHAH)  
MEMBER

06.06.2016

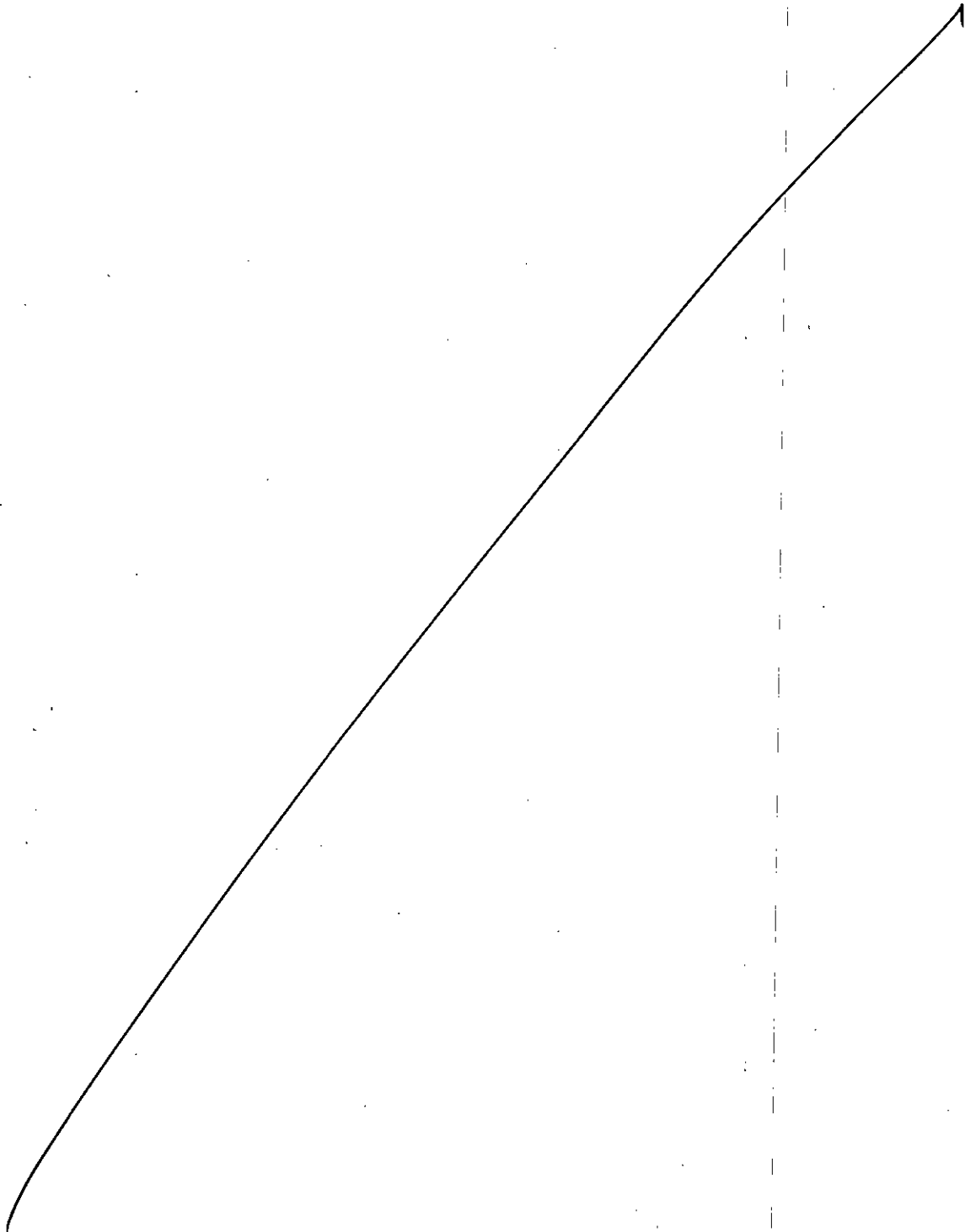
Appellant with counsel and Assistant AG for respondents present. Learned counsel for the appellant requested for adjournment. Adjourned for arguments to 3.11.16 before D.B.



MEMBER



MEMBER



12.01.2015

Clerk of counsel for the appellant and Mr. Ijaz Khan, S.I (Legal) on behalf of respondents with Addl: AG present. Written reply has not been received on behalf of the respondents, and representative of the respondents requested for further time. To come up for written reply on 30.04.2015.

  
Chairman


7 30.04.2015

Counsel for the appellant and Mr. Wisal Muhammad, Inspector (legal) alongwith Addl: A.G for respondents present. Para-wise reply on behalf of respondents submitted. The appeal is assigned to D.B for rejoinder and final hearing for 28.10.2015.

  
Chairman

28.10.2015

Junior to counsel for the appellant and Asst: AG for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I Khan. Therefore, the case is adjourned to 25-2-16 for arguments.

  
Member

25.02.2016

Junior to counsel for the appellant and Mr. Muhammad Jan, GP for respondents Arguments could not be heard due to shortage of time. Therefore, the case is adjourned to 6.6.16 for arguments.

  
Member

  
Member

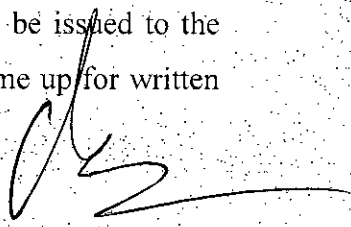
Appeal No. 571/2014  
Mr. Muhammad Faraz

4. 13.08.2014

Appellant alongwith his counsel present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 06.12.2013 vide which the appellant was awarded major punishment of dismissal from service. Against the impugned order the appellant filed departmental appeal which was partially allowed and appellant reinstated in service, however punishment of stoppage of two annual increments with cumulative effect and period he remained out of duty was treated as leave without pay, hence the instant appeal on 18.04.2014.


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

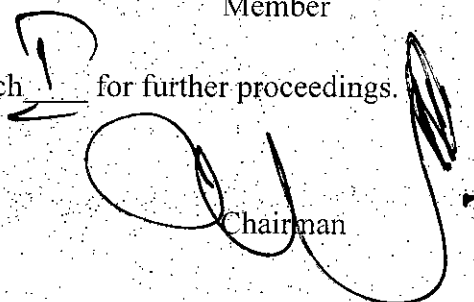
Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 17.11.2014.



Member

5. 13.08.2014

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



Chairman

17.11.2014

The Tribunal is incomplete. Therefore, cases adjourned to 12.01.2015.



Reader

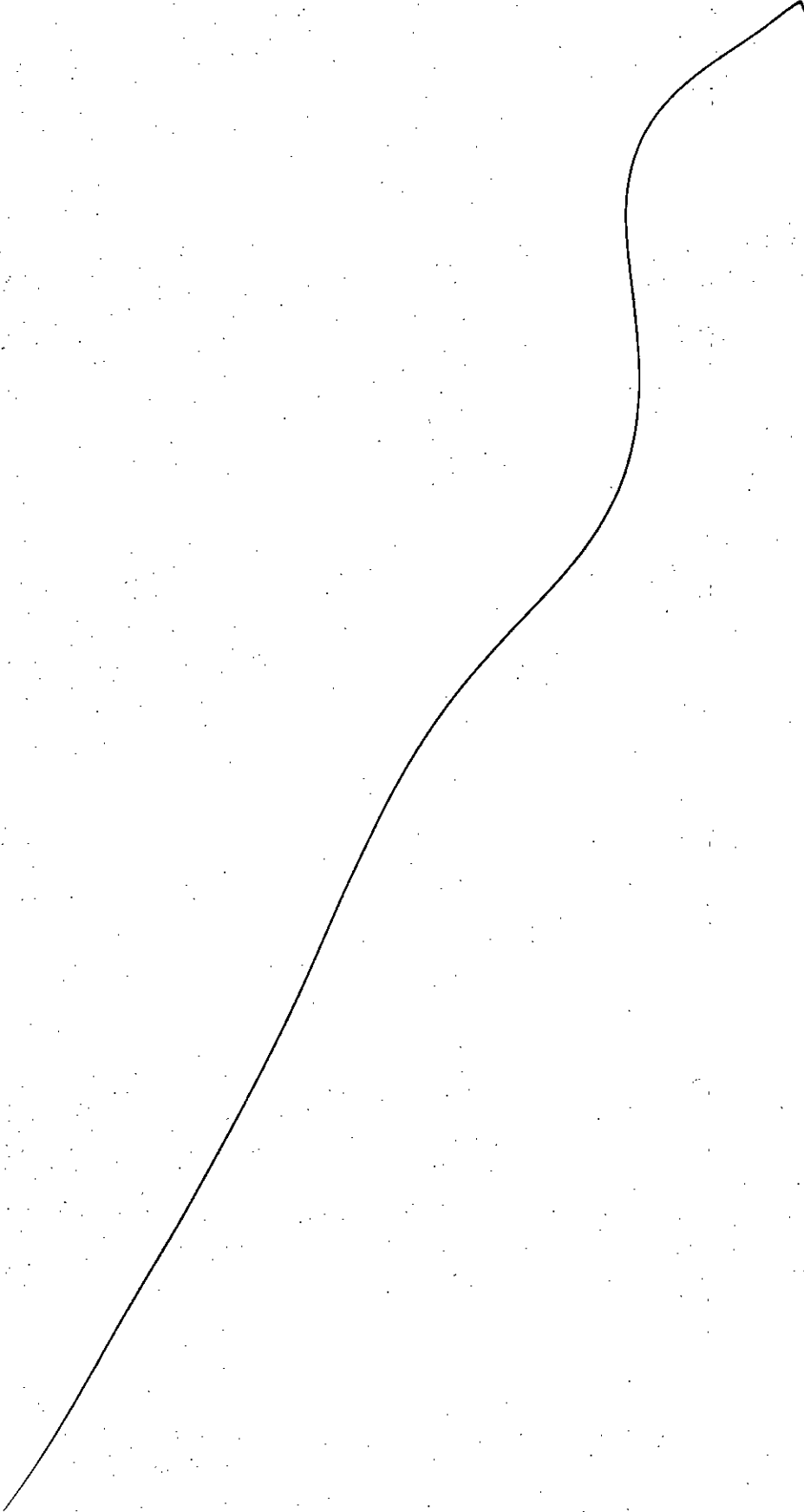
3.

18.06.2014

No one is present on behalf of the appellant. Notices be issued to the appellant/counsel for the appellant. To come up for preliminary hearing on 13.08.2014.



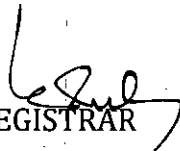

Member



Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 571 /2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/04/2014	<p>The appeal of Mr. Muhammad Fayaz resubmitted today by Mr. Muhammad Arif Jan 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	24-4-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>18-6-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

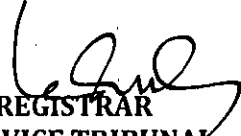


The appeal of Mr. Muhammad Fayaz No-769-HC received today i.e. on 18.04.2014 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of order dated 02.4.2014 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
- 2- Copy of letter dated 07.10.2013 mentioned in para-3 of the memo of appeal is not attached with the appeal which may be placed on it.

No. 629 /S.T,

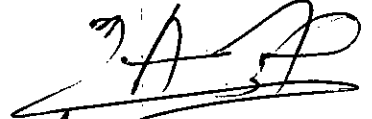
Dt. 18/4 /2014.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. M.Arif Jan Adv. Peshawar.

Respected Sir,

The submitted after removal of objection No-1 as the copy of order dt 2-4-2014 was not provided to the appellant and just verbally announced moreover the objection No 2 inadvertently date mentioned 07-10-2013 instead of 31-6-2013, which has been correct in the body of appeal, hence may kindly be placed before the Honble Bench

  
23/4/14  
(Advocate)

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA PESHAWAR

Service Appeal No.....571...../2014

Muhammad Fayaz.....Appellant

VERSUS

District Police Officer Nowshera & Others.....Respondents

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4.	Copy of complaint	A	8
5.	Copy of Statements of allegation , Charge Sheet and letter dt 31-06-2013	B,C&D	9-11
6.	Copy of dismissal order dated 06-12-2013	E	12
	Copy of Appeal	F	13-15
	Copy of Order dated 17-01-2014	G	16
	Copy of appeal	H	17-18
	Copy of application for attested Order	I	19
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Through

Appellant

Arshad Ali Nowshervi

Muhammad Arif Jan

Advocates Peshawar

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA PESHAWAR

Service Appeal No.....571.....2014

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Muhammad Fayaz No-769 HC S/o Shaukat Ali R/o Behram Kaly  
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1. District Police Officer Nowshera District Nowshera.
  2. Deputy Inspector General of Police, Mardan Region Mardan
  3. Provincial Police Officer Khyber Pakhtunkhwa Peshawar
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APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA  
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Prayer in Appeal:

*It is, therefore, most humbly prayed that on acceptance of the instant service appeal, the impugned order dated 02.04.2014 passed by respondent No.3 and the order dated 17-01-2014 passed by respondent No-2 may graciously be set aside up-to the extent of stoppages of two increments and consequent payment of 40 days of pay to the appellant and the respondents may also be directed to allow the two stoppages , payment of 40 days pay and release the outstanding amount with out any further delay along with other benefits.*

*Any other remedy which deems fit by his Hon'ble Tribunal in the interest of justice, may also be granted in fevor of appellant.*

18/4/14

**Respectfully Sheweth:**

1. That the appellant was initially appointed as Constable No.769 in , Police Department Khyber Pakhtunkhwa and was posted as In-charge Mobile Cobra-1 Police Station Risalpur, Nowshera.
2. That an inquiry was conducted against the appellant upon the complaint of one Muhammad Arif and proceeding was initiated against the appellant.(Copy of complaint is attached as ANNEX ,A)
3. That during the proceeding allegations was leveled against the appellant where he was charge sheeted and the matter was forwarded for taking disciplinary action against the appellant.(Copy of Statements of allegation ,Charge Sheet and letter dt ~~31-06~~ 2013 are attached as Annexes B, C, and D) respectively.
4. That the appellant was found guilty of the charges leveled against him and was dismissed from service by respondent No-1 (Copy of dismissal order dated 06-12 2013 is attached as Annex- E)
5. That the appellant being aggrieved from the order dated 6-12-2013 filed an appeal before respondent No-2.(Copy of Appeal is attached as Annex F).
6. That respondent No-2 has partially accepted the appeal of the appellant by re-instating him in service, but imposed/awarded penalty of stoppages of two increment with cumulative effect and period of, he remained out of duty is to be treated as leave without pay.(Copy of Order dated 17-01-2014 is attached as Annex- G)
7. That the appellant being aggrieved of the Order dated 17-01-2014 filed another appeal before respondent No-3, and the same was

turned down vide Order dated 02-04-2014. (Copy of appeal is attached as Annex-H).

8. That the appellant approached time and again to respondent No-3 for obtaining /issuing attested copy of impugned Order dated 02-04-2014 ,but was not provided .(Copy of application for attested Order is attached as Annex- I).
9. That the appellant is being aggrieved from the above stated orders approaches this Hon'ble Court on the following amongst grounds;

### **GROUND**

- A. That the Order dated 02-04-2014 passed by the respondent No 3 and the partial Order of respondent No-2 dated 17-01-2014 (here in after impugned) are illegal, un-lawful, without lawful authority, of no legal effect hence having no value in the eyes of law, thus be set aside and the appellant may kindly be allowed his two stoppages increments and consequent payment of 40 days pay.
- B. That the respondents are duty bound to abide and Honour the Law, not to violate the principles and dictums laid down by the Superior Courts depriving the appellant from his due right
- C. That the impugned orders are very harsh and do not commensurate with the facts and law and other circumstances of the case.
- D. That the impugned order passed by the respondents are against the law rules and regulations governing the subject matter as when the appellant was found innocent then the punishment of stoppages of increments is needs consideration of this Hon'ble Tribunal.

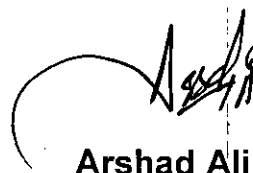
E. That it is well settle principal of law that every acquittal is considered to be a Hon'ble acquittal but the appellant was discriminated.

F. That any other ground which has not been mentioned may also be permitted to rise at the time of hearing.

It is, therefore, most humbly prayed that on acceptance of the instant service appeal, the impugned order dated 02.04.2014 passed by respondent No.3 and the order dated 17-01-2014 passed by respondent No-2 may graciously be set aside up-to the extent of stoppages of two increments and consequent payment of 40 days of pay to the appellant and the respondents may also be directed to allow the two stoppages , payment of 40 days pay and release the outstanding amount with out any further delay along with other benefits.

Any other remedy which deems fit by his Hon'ble Tribunal in the interest of justice, may also be granted in fever of appellant.

Through



Appellant

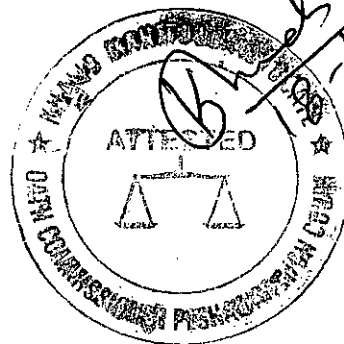
Arshad Ali Nowshervi

 &  
Muhammad Arif Jan

Advocates Peshawar

### AFFIDAVIT

I Muhammad Fayaz No-769 HC do hereby solomny affirm and declared on Oath that the above contents are true and best of my knowledge.



BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA PESHAWAR

Service Appeal No...../2014

Muhammad Fayaz.....Appellant

VERSUS

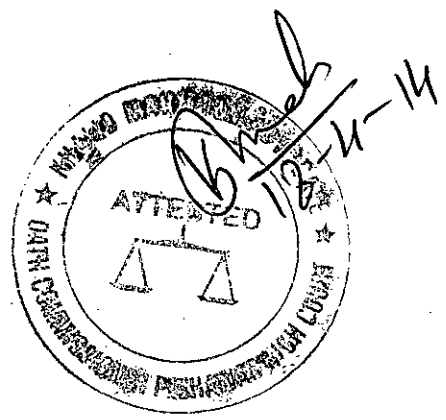
District Police Officer & Others.....Respondents

AFFIDAVIT

I Muhammad Fayaz No-769 HC s/o Shaukat Ali R/o Behram Kaly Risalpur Tehsil and District Nowshera do hereby solemnly affirm and declare on Oath that I approached to respondent No-3 for obtaining of attested copy of the impugned Order dated 02-04-2014 but was not provided although verbally instructed me that will be provided to you on the directions/summon of the competent court of jurisdiction.

Further stated that the above contents are true and best of my knowledge.

*M Fayaz*  
DEPONENT



BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA PESHAWAR

Service Appeal No...../2014

Muhammad Fayaz.....Appellant

**VERSUS**

District Police Officer & Others.....Respondents

**ADDRESSES OF PARTIES**

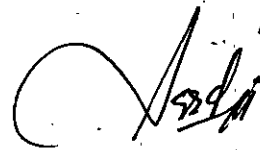
**APPELLANT**

Muhammad Fayaz No-769 HC S/o Shaukat Ali R/o Behram Kaly  
Risalpur Tehsil and District Nowshera.

**RESPONDENTS**

1. District Police Officer Nowshera
2. Deputy Inspector General of Police, Mardan Region Mardan
3. Provincial Police Officer Khyber Pakhtunkhwa Peshawar .

Through



Appellant

Arshad Ali Nowshervi

Muhammad Arif Jan

Advocates Peshawar



(8)

Annex A9

ASP Cantt  
Please take strict action

جناب DPO لوہڑہ صاحب  
349

گزارش ہے کہ سائل گورنمنٹ پرائمری سکول فقیر کے مردان میں

مجھت ایک معلم اپنے والدین سرانجام دے رہا ہے کچھ عرصے

قبل سائل کے رشتے دار کا ٹریکٹر بارہ بانڈہ جوک کے قریب

خراب ہو گیا سائل اپنے بھائی کے ہمراہ بوقت 9:00 بجے شب ٹریکٹر

ٹھیک کرنے جا رہے تھے کہ سڑک کے قریب مارشل سٹی میں

سیاض HC کوہرا I اور ڈرائیور محمد زید HC کوہرا I نے ہمیں

روکا۔ تلاشی ملی گھ سے میرا سرور کا کارڈ شناختی کارڈ موبائل اور

بھائی سے شناختی کارڈ لیا اور ہمیں کہا کہ آپ لوگوں نے ہم پر فائرنگ

کی ہے ہم پر کافی تشدد کیا پھر تھانہ رسالہ پورے جا کر ہم پر دوبارہ تشدد

کیا۔ اس دوران تھانہ صدر سے ہماری کلینر نس جی ملی گئی۔ صبح سڑک کے

والے آئے انہوں نے لوہڑہ گج کے بعد کہا کہ یہ گناہ ہیں اس لیے چھوڑ دیا جائے

مگر سیاض HC اور محمد زید نے ان کے جانے کے بعد کہا کہ ہم سے ایک عدد لیٹول

جمعہ کارٹوس کم ہوتی ہے اسکی قیمت دو اور جاڑ ہم سے 6000 روپے

وصول کر کے چھوڑ دیا گیا

آپ سے التماس ہے کہ ان کے خلاف کارروائی کرنے کا حکم صادر فرما کر

ایک معلم کو انصاف فراہم کریں

طلب انصاف محمد عارف EPS فقیر کے مردان

مطالعہ 0333-9861006

تعل

محمد عارف

[Signature]

Rd.  
locate the  
police  
officials,  
call them  
to office  
at earliest

3019

(9)

Annex 'B'

ENQUIRY AGAINST HC MUHAMMAD FAYAZ NO. 769

**ALLEGATIONS:**

HC Muhammad Fayaz No. 769, who while posted to Cobra-I PS Risalpur as reportedly stopped Muhammad Arif, searched and later on tortured and taken money Rs. 6,000/- from him as illegal gratification. Being part of the discipline force, his act amounts to a grave misconduct and liable him for Minor/Major punishment under the NWFP Police Rules, 1975.

In this regard, the Worthy DPO Nowshera charge sheeted the above mentioned official. The undersigned Police Officers were nominated to conduct enquiry in the matter.

1. Nazir Khan DSP HQrs Nowshera.
2. Inspector Fazal Subhan RI Lines NSR


In this regard an enquiry was initiated statements of the default official and his other colleagues were recorded. Statement of Javed Khan SI/ASHO was also recorded.


From the available record and statements it was found that he has tried to involve an innocent person (serving in Education Department) in a fake case of Dacoity. Although the complainant was present there to repair his Tractor, it was the duty of the Police to help the complainant but instead of help they fired against the innocent complainant and tried to register a case against him.

It is also a fact that they did not recover any weapon from the possession of the complainant Ajmal.

**FINDING:**


From the enquiry it was reveal that HC Fayaz No. 769 tried to involve an innocent person in a fake case. But when he did not succeed in his goal then he took Rupees Six thousand as illegal gratification and earned a bad name for Police. The Enquiry Committee recommends him for appropriate punishment.

  
(Insp: FAZAL SUBHAN)  
RI Line

  
(NAZIR KHAN)  
Dy: Supdt: of Police,  
HQrs: NSR

No. 4361 /St, dated 04/12/2013.

Encls (9):

Attested  



(10)


Annex 'C'

**CHARGE SHEET**

I, **WAQAR AHMED, PSP**, District Police Officer, Nowshera, as competent authority, hereby charge **HC Fayaz No. 769** as per Statement of Allegations enclosed.

1. By reasons of the above, you appear to be guilty of misconduct under the N.W.F.P. Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in the N.W.F.P. Police Rules, 1975.
2. You are, therefore, required to submit your written defense within **07 days** of the receipt of this Charge Sheet to the Enquiry Officers, as the case may be.
3. Your written defense, if any should reach the Enquiry Committee 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.
4. Intimate whether you desire to be heard in persons.

  
**District Police Officer,**  
**Nowshera.**

Attested  


Zeb and HC Mohammad Fazil had stopped a car No. LAC/353 and driven the car Khalil Mehmood Bhatti was present. Both the officials of Cot

**DISCIPLINARY ACTION**

I, **WAQAR AHMED, PSP**, District Police Officer, Nowshera as competent authority of the opinion that **HC Muhammad Fayaz No. 769** has rendered himself liable to be proceeded against as he committed the following acts/omissions within the NWFP, Police Rules, 1975.

**STATEMENT OF ALLEGATIONS**

Whereas **HC Muhammad Fayaz No. 769** while posted to Cobra-I PS Risalpur has reportedly stopped Muhammad Arif, searched and later on tortured and taken money Rs.6,000/-from him as illegal gratification. Being part of the discipline force, his act amounts to a grave misconduct and liable him for Minor/Major punishment under the NWFP, Police Rules, 1975.

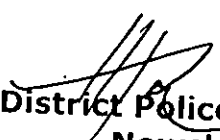
For the purpose to scrutinize the conduct of the said accused with reference to the above allegations, Enquiry Committee of the following officers is constituted:-


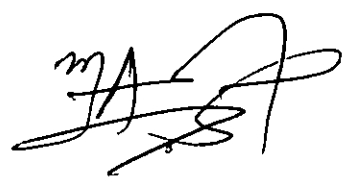
1. **Mr. Nazir Khan DSP Hqrs: Nowshera.**
2. **Inspector Fazal Subhan RI Lines, NSR.**

The Enquiry Committee shall in accordance with the provisions of the NWFP, Police Rules, 1975 provide reasonable opportunity of hearing to the defaulter official, record its findings and make immediate recommendations as to punish or other appropriate action against the defaulter official.

**HC Muhammad Fayaz No. 769** is directed to appear before the Enquiry Committee on the date, time and place fixed by the Enquiry Committee.

No. 172 /PA,  
Dated 21/12 /2013.

  
District Police Officer,  
Nowshera.

(12)

Annex 'E'

**ORDER**

Head Constable Muhammad Fayaz No. 769 while posted as In-charge Cobra-I Police Station Risalpur has stopped one Muhammad Arif. He was searched, tortured and taken money Rs. 6000/- from him as illegal gratification. In this connection, ASP Cantt initiated preliminary enquiry on the written application of Muhammad Arif. During preliminary enquiry, the allegations leveled in the application were proved against him. On account of which he was issued Charge Sheet and Statement of Allegations vide this office No. 172/PA, dated 31.10.2013. Mr. Nazir Khan DSP Hqrs: Nowshera was appointed to conduct proper departmental enquiry against the delinquent official. After fulfillment of legal formalities, finding report was submitted to the undersigned where the defaulter official was suggested for appropriate punishment.

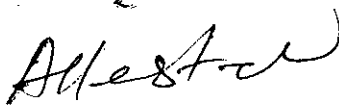
Therefore, in exercise of the powers vested to me under the Police Rules, 1975, Head Constable Muhammad Fayaz No. 769 is hereby awarded Major punishment of dismissal from service with immediate effect.

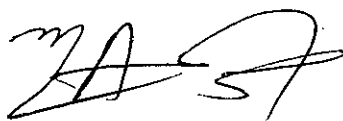
OB No. 202B  
Dated 6.12/2013.

  
**District Police Officer,  
Nowshera.** H

No. 9027-30/PA, dated Nowshera, the 6.12/2013.  
Copy for information and necessary action to  
the:-

1. Pay Officer.
2. E.C.
3. OHC.
4. FMC.





(13)

Annex 'F'

In respect of :-

**DEPUTY INSPECTOR GENERAL OF POLICE, MARDAN REGION**  
**MARDAN**

**Subject :- Appeal against the order of District Police Officer (DPO)**  
**Nowshera vide order No : 9027-30/PA dated:- Nowshera 06/12/2013**

Prayer in relief :-

**ON ACCEPTANCE OF APPEAL IN HAND, BY SETTING ASIDE IMPUGNED ORDER, APPELLANT**  
**MAY KINDLY BE RE-INSTATED WITH ALL BACK BENEFITS ETC**

**FACTUAL BACKGROUND OF APPEAL**

- 1) That, the appellant had been serving as Maharir Chowki Town Nowshera Kalan vide No 769 when he was charge sheeted by the District Police Officer (DPO) Nowshera.
- 2) That, in pursuance of said charge sheet departmental enquiry was conducted wherein he was charged with following acts :-
  - a) While posted as In-charge Cobra-1 Police Station Risalpur stopped on Muhammad Arif
  - b) Said Muhammad Arif was tortured searched and was deprived of Rs. 6000/- as illegal gratification.
- 3) That, after all procedural and departmental requirements, the applicant was finally dismissed from service by awarding major punishment of dismissal by the deponent in exercise of powers vested in him under Police Rules, 1975. (Copy of order dated:- No 9027-30/PA, 6/12/2013 annexed for the facility of reference as "A")
- 4) That the appellant seeks benevolent indulgence of your good office to set aside impugned order inter-alia on following grounds :-

**GROUND**

- a) That, the impugned order fails to mention relevant police rules under which he was axed as law is as clear as blue sky on the point that executive authorities vested with discretionary powers can't base their powers on general provisions of law, but, to base their powers on specific law. In this regard, it is noteworthy

1  
Attested  
[Signature]

that with the passage of each day the scope of discretionary powers of Executive authorities is shrinking as mentioned by the Supreme Court in its endless chain of suo motto cases

- b) That, the applicant was appointed way back in the year 2002, after complying with all relevant rules and procedure applicable for the purposes and during his entire period he didn't give any chance to his superiors to raise their eyebrows regarding his conduct, but, was occasionally given pat on the back for his meritorious services at the time when entire police force is under the brunt of avalanche of suicidal attacks and common man is avoiding to join police force.
- c) That the applicant belongs to a respectable, law abiding and peace loving family of the area which is known its social welfare oriented services to the community.
- d) That, as per case law crystalized by the endless chain of superior courts case on the point under discussion, relevant statutory and constitutional safeguards established for departmental enquiry as neither complainant i.e. Muhammad Arif was examined by the enquiry committee before the applicant nor was he allowed to cross examine said complainant hence, a clear cut violation of Article 10-A of Constitution of Pakistan, 1973 which is reproduced (Supreme Court has held that safeguard of Article 10-A are fully applicable to the proceedings before departmental enquiry) ad-verbatim as under :-

*10 A) Right to fair trial: For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process*

- e) That, the entire allegations of illegal gratification as explained above are mala fide and without any legal or moral base hence, entire proceedings liable to set aside. To elaborate, the impugned order, mentions torture etc, but, interestingly, no medical report in affirmation of said allegations have either been produced before the enquiry committee nor any doctor was produced thereby making the entire story as cock and bull story with no legs to stand.
- f) That Pakistan is an Islamic State as per Articles 2, 2A and 3 of Constitution of Pakistan, 1973 wherein officials of State and Government are expected to provide

*Ali Asghar*  
*ZA*

(15)

justice and relief to the deserving cases. The said Articles of Constitution are reproduced ad-verbatim as under :-

*2Islam shall be the State religion of Pakistan. 2A. The principles and provisions set out in the objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly. 3. The State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work.*

- g) That, the impugned order is against law and facts and classic example of miscarriage of justice and fairness and based on male fide with ulterior motives.
- h) That, the appellant has been punctual and in the performance of his duty is as regular as clock
- i) That, the appellant ensures to abide by all relevant rules, regulations and applicable for the said purposes.

**IT IS THEREFORE, RESPECTFULLY SUBMITTED  
ON ACCEPTACNE OF APPEAL IN HAND, BY SETTING  
ASIDE IMPUGNED ORDER, APPELLANT MAY  
KINLDY BE RE-INSTATED WITH ALL BACK  
BENEFITS ETC**

*M. Fayyaz*  
APPELLANT 10-12-013

MUHAMMAD FAYYAZ S/O SHAUKAT ALI

NO. HC 769 DISTRICT NOWSHERA

CNIC- 17201-2252463-3

CONTACT NO 0341-5466550

Signature \_\_\_\_\_

*Attested* 3  
*M. Fayyaz*



(16)

Annex 'G'


ORDER.

This order will dispose-off the appeal preferred by Ex- Head Constable Muhammad Fayaz No. 769 of Nowshera District Police against the order passed by District Police Officer, Nowshera wherein he was dismissed from Service vide OB: No. 2028 dated 06.12.2013.

Brief facts of the case are that he while posted as Incharge Cobra-I Police Station Risalpur has stopped one Muhammad Arif. He was searched, tortured and taken money Rs. 6000/- from him as illegal gratification. In this connection, ASP Cantt initiated preliminary enquiry on the written application of Muhammad Arif. During preliminary enquiry, the allegations leveled in the application were proved against him. on account of which he was issued charge sheet and statement of allegation vide District Police Officer, Nowshera letter No. 172/PA dated 31.10.2013. Mr. Nazir Khan DSP Hqrs: Nowshera was appointed to conduct proper departmental enquiry against the delinquent official. After fulfillment of legal formalities, finding report was submitted to the DPO Nowshera where the defaulter official was suggested for appropriate punishment.

I have perused the record and also heard the appellant in Orderly Room held in this office on 15.01.2014. Applicant Muhammad Arif also attend my office & given a written statement stated therein that the matter patched up between him & Ex-Head Constable Muhammad Fayaz No. 769 by mutual compromise /forgive him, therefore he is re-instated in service with immediate effect, awarded minor punishment of stoppage of two increments with cumulative effect & period he remained out of duty is treated as leave without pay.

ORDER ANNOUNCED.

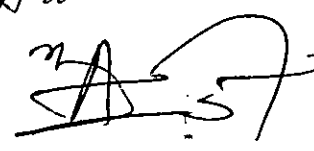
  
(MUHAMMAD SAEED)PSP  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan.

No. 344 /ES, Dated Mardan the 17 / 11 /2014.

Copy to District Police Officer, Nowshera for information and necessary action w/r to his office Memo: No. 9192/PA dated 18.12.2013. He may be informed accordingly.

His Service record is returned herewith.

(\*\*\*\*\*)

21/19 5/11 8  
Attested  


In respect of :-

**PROVINCIAL POLICE OFFICER KPK  
PESHAWAR**

**SUBJECT:- APPLICATION FOR RELIEF TO SACKED EMPLOYEES**  
The applicant respectfully submits as under :-

- 1) That, the applicant had been serving as Constable under your kind control vide No 769 and was fortunately dismissed from service as per order of the District Police Officer (DPO) Nowshera No Ob : 2028 dated: 06/12/2013.
- 2) That, the nutshell of charge against applicant revolved around demanding illegal gratification from complainant during his posting as incharge Cobra-1 Police Station Risalpur.
- 3) That, subsequently the matter was patched up by the complainant wherein he categorically exonerated applicant from all charges as a result thereof your good office had been benevolent enough to re-instate applicant with immediate effect subject to minor punishment of stoppage of two increments with cumulative effect and period during which he remained out of his service to be counted as leave without pay.
- 4) That the applicant seeks your benevolent indulgence to give sympathetic consideration to following few submissions :-
  - a) That, the applicant prior to said unfortunate incident which was later on patched has served his parent Department diligently leaving no stone unturned to give his maximum output without giving any chance to superiors to raise their eyebrows regarding his conduct.
  - b) That, as can be glean from record the said complaint was baseless and without any foundation hence, once he is absolved he is entitled to be re-instated with all back benefits as per wisdom spelt out by endless chains of superior courts Judgment relating to subject to re-instatement of government employee who has been absolved of all charges leveled against him. In other words, he is entitled to pay of 40 days of pay.
  - c) That, the applicant belongs to a respectable family of the area with responsibility to take care of my comprising huge number and being their sole bread earner it is not possible for them to keep their body and soul together in this age of sky rocketing and gravity defying age of inflation.
  - d) That, if penalty imposed is not taken 2<sup>nd</sup> view by your office, it has potential of casting unwanted shadow on his career future and promotion.
  - e) That Pakistan is an Islamic State as per Articles 2,2A and 3 of Constitution of Pakistan,1973 wherein officials of State and Government are expected to provide justice and relief to the

*Attest*

*22/12/13*

deserving cases. The said Articles of Constitution are reproduced ad-verbatim as under :-

*Islam shall be the State religion of Pakistan. 2A. The principles and provisions set out in the objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly. 3. The State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work.*

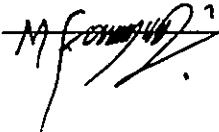
1) That right of equal and fair treatment in accordance with law given by Article 4 of Constitution of Pakistan, 1973 and reproduced ad-verbatim also supports applicant point of view :-

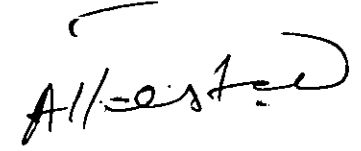
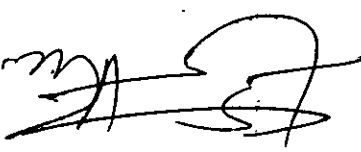
4. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. (2) In particular :-  
(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law; (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not require him to do.

That, I ensure to abide by all relevant rules, regulations and applicable for the said purposes.

**IT IS THEREFORE, RESPECTFULLY SUBMITTED IN THE CONTEXT OF APPLICATION IN HAND ORDER FOR STOPPAGE OF TWO INCREMENTS AND CONSEQUENT PAYMENT OF 40 DAYS OF PAY MAY KINDLY BE ISSUED.**

THANKING YOU IN ANTICIPATION  
MUHAMMAD FAYAZ

SIGNATURE :- 

کریٹ صاف - PPO صاف - چکر چکوکھا

مملکوں پر درخواست برائے حصول نقل آرڈر فی دہرہ 02-04-2014

جی۔ اے۔ عالی!

گزارش کی طرز کے درخواست گزار کا مقدم حذا

میں حکم متعلقہ آفیسر نے فیصلہ جاری فرمایا ہے 02-04-2014

2۔ اس سائل کو مذکورہ بالا فیصلے کی مدد سے کالی نقل

کی اجازت ہے۔

لینڈ آف ضابطہ سے اس کے سائل کو

مدد سے نقل ایسا فیصلہ فرما دیا 02-04-2014

کے احکامات جاری فرمایا جائے۔

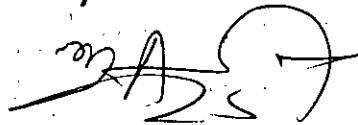
سائل کی طرف سے

محمد میاں 769 HC

ڈسٹرکٹ نوشہرہ

المرقوم 04-04-2014

ت۔ اے۔ عالی



# بعدالت صاحب کمر من سرسوں کمر کھوہ

کوٹ فیس	
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مورخہ: 20 مئی 2016ء منجانب اسد علی

مقدمہ: محمد رضا بنام: DPO ٹو سٹریٹ

دعویٰ:

جرم:

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام سرسوں کمر کھوہ کے مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمد ہوگی اور منسوخی دائر کرنے کی اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مذکور کے عمل 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 برداختہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم 17 ماہ اپریل 2016ء

بد گواہ شاہ دہ آہ بد

کے لئے منظور ہے۔  
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بمقام:

MA

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

Service Appeal No. 571/2014

Mohammad Fayaz No. 769 s/o Shaukat Ali,  
R/O Behram Kali, Risalpur, Tehsil & District, Nowshera.

.....Appellant

**V E R S U S**

1. District Police Officer, Nowshera.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

**PARAWISE REPLY ON BEHALF OF RESPONDENTS No. 1,2&3**

**Respectfully Sheweth: -**

**PRELIMINARY OBJECTIONS**

1. That the appellant has got no cause of action.
2. That the appeal is badly time-barred.
3. That the appeal is bad in law.
4. That the appellant is estopped from moving the instant appeal due to his own conduct.
5. That the appeal is not maintainable in its present form.
6. That the appellant has not come to the Honourable Tribunal with clean hands.

**On Facts**

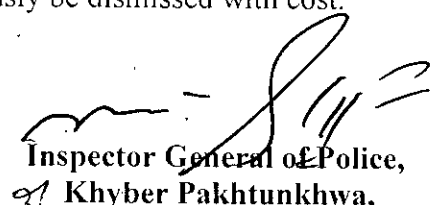
1. Para pertains to record. Needs no comments.
2. Para correct. Because the appellant was involved in taking illegal gratification which was later on proved against him through cogent evidence.
3. Para correct. Because as a result of preliminary enquiry, the allegation regarding illegal gratification from one Mohammad Arif has been proved to the hilt which resulted in initiation of proper departmental enquiry.
4. Para correct. As during enquiry all legal and codal formalities were fulfilled which proved/found the appellant guilty of misconduct where after the punishment order was passed.
5. Para pertains to record. Needs no comments.
6. Para pertains to record. Needs no comments.
7. Para pertains to record. Needs no comments.
8. Para is for the appellant to prove the plea/stance taken by him.
9. Para not related.

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30.04.15

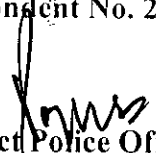
**On grounds**

- A. Para incorrect. The order passed by respondent No.2 dated 17-01-2014, followed by rejection order vide dated 02-04-2014, is legal, lawful and in accordance with the canons of natural justice, hence, sustainable in the eyes of law.
- B. Para correct. That the replying respondents have neither violated the principals and dictum laid down by the superior courts nor have deprived the appellant from his due right, rather, a lenient view was taken by respondents for converting his major punishment into a minor one.
- C. Para incorrect. That the punishment order is an appropriate one which does commensurate with the gravity of misconduct of the appellant.
- D. Para incorrect. The order passed by respondents is inconsonance with the law/rules and regulations because the appellant was not found innocent in entire proceedings rather at appellate stage he patched up the matter with the Complainant namely Mohammad Arif from whom he had taken Rs. 6000/- as illegal gratification on the basis of which lenient view was taken by respondent No.2.
- E. Para to the extent of principal of law is correct. Needs no comments while rest of the para is incorrect, hence, denied, because the allegations leveled against the appellant had been proved through cogent and confidence inspiring evidence. However, at appellate stage the Complainant appeared before the appellate authority and recorded his statement wherein he forgave the appellant which means that the case has been decided on the basis of compromise.
- F. That the respondents also seek permission to this Honourable Tribunal to raise additional grounds at the time of arguments.

It is, therefore, most humbly prayed that keeping in view the above submissions, appeal of the appellant may very graciously be dismissed with cost.

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.  
Respondent No. 3

  
Deputy Inspector General of Police,  
Mardan Region-1, Mardan.  
Respondent No. 2

  
District Police Officer,  
Nowshera.  
Respondent No. 1

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

Service Appeal No. 571/2014

Mohammad Fayaz No. 769 s/o Shaukat Ali,  
R/O Behram Kali, Risalpur, Tehsil & District, Nowshera.

.....Appellant

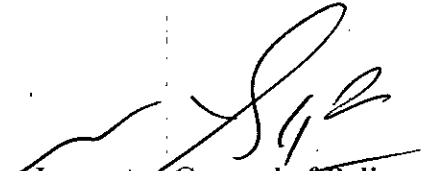
**V E R S U S**

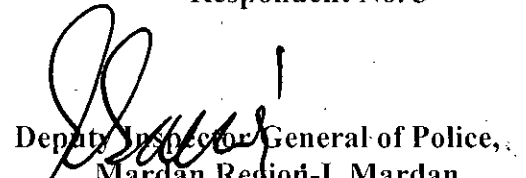
1. District Police Officer, Nowshera.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.


.....Respondents

**AFFIDAVIT**

We the respondents No. 1,2 & 3 do hereby solemnly affirm and declare on Oath that the contents of parawise comments to the appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the Honourable tribunal.

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.  
Respondent No. 3

  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan  
Respondent No. 2

  
District Police Officer,  
Nowshera.  
Respondent No. 1



**BEFORE THE HON'BLE SERVICE TRIUNAL, KHYBER PAKHTUNKHWA,  
PESHAWAR.**

Service Appeal No-571/2014

Muhammad Fayaz

V/S

District Police Officer Nowshera & others

**REJOINDER ON BEHALF OF APPELLANT TO THE COMMENTS FILED BY THE  
RESPONDENTS**

**ON PRELIMINARY OBJECTIONS:**

All the Objections have been raised by the respondents in their comments are totally incorrect and against the fact and circumstances of the case.

Misconceived and Misleading objections have been raised for the sake of more objections only. The objections are nothing but callus attempt to side the main issue, where the Respondents have violated their own laws, rules and regulations by passing the impugned orders of stoppages of two increments and consequently holding the payment of 40 days of the appellant without any reason and justification.

The concealment, failure and unsatisfactory reply by the Respondents are nothing but just to side the main issue and to deprive the appellant from his legal and lawful rights. The unfair discriminatory and malafide conduct of the Respondents is even established from the present comments as there is no any cogent reason or documents has been provided/annexed to prove the guilt of the appellant.

Grounds are more bold, un-substantiated and baseless. Denials of the legal grounds has been raised in the comments would not absolve the respondents from their lawful duties and liabilities.

**ON FACTS:**

1. Para No-1 admitted hence needs no reply.
2. Para No.2 of the reply are incorrect, in fact the appellant has got no illegal gratification nor any evidence/ documents attached by the Respondents to prove the guilt of the appellant.
3. Para No.3 of the reply is also incorrect, the answering respondents concealed more in pipe lines and brings little on the surface to connect and establish a charge of illegal gratification against the appellant moreover no any proper inquiry has been conducted in proper against the appellant.
4. Para No.4, of the reply is incorrect, as the appellant is innocent and the inquiry officer is badly failed to level the allegations against the appellant moreover the harsh punishment of dismissal is also required consideration of this Hon'ble court.
5. Para No.5 of the reply is correct hence needs no reply.
6. Para No. 6 of the reply is absolutely incorrect, once the appellant the appellant has been declared innocent and was re instead then the additional punishment of two increments with cumulative effect is against the law facts and circumstances of the case.
7. Para No-7 of the reply is in correct, the answering are bound down by the law to brought on record the facts and not to concealed or remain silent on the issues/ facts.
8. Para No-8 is in- correct, the unsatisfactory reply has been given.

**GROUNDING;**

Grounds A to F of the appeal are true and correct, while the reply of the Respondents in their comments is baseless, incorrect and unsubstantiated. The Respondents have violated their own laws, rules and regulations which govern the subject matter and knowingly ignored the facts and circumstances of the instant case.

The Respondent also did not fulfilled the required criteria mentioned in the police rules for taking disciplinary action against the appellant moreover no any documents/ record has been attached/ produced by the respondents to connect the appellant with the commission of offence, for the above failure, ignorance, illegal and unlawful orders and violation of laid down rules invited the consideration of this Hon'ble Court

**It is therefore most humbly prayed that on acceptance of the re-joinder, the comments filed by the respondents may kindly be rejected and the appeal of the appellant may kindly be allowed as prayed for.**

Appellant

Through

  
Muhammad Arif Jan

Advocate Peshawar

**BEFORE THE HON'BLE SERVICE TRIUNAL, KHYBER PAKHTUNKHWA,  
PESHAWAR.**

Service Appeal No-571/2014

Muhammad Fayaz

V/S

District Police Officer Nowshera & others

**AFFIDAVIT**

I, Muhammad Arif Jan Advocate High Court Peshawar, do hereby solemnly affirm and declare, that the contents of the **re-joinder** are true and correct as per the information provided to me by my client and nothing has been concealed from this Hon'ble Court.



ADVOCATE