

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1098/2014

Date of institution ... 13.08.2014

Date of judgment ... 19.09.2016

Umer Zad Gul, Ex-Constable No. 699, District Police Hungu.

... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Kohat Region Kohat.
3. District Police Officer, Hungu.

... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED: 05.05.2014, WHEREBY THE APPELLANT HAS BEEN AWARDED THE MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE. AGAINST WHICH THE DEPARTMENTAL APPEAL DATED: 26.05.2014 HAS ALSO BEEN REJECTED VIDE ORDER DATED: 16.05.2014, COMMUNICATED TO THE APPELLANT ON 21.05.2014.

Mr. Sajid Amin, Advocate.

.. For appellant.

Mr. Muhammad Jan, Government Pleader

.. For respondents

MR. PIR BAKHSH SHAH

.. MEMBER (JUDICIAL)

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

JUDGMENT

PIR BAKHSH SHAH, MEMBER: Appellant appointed as Constable in 2007, was dismissed from service on the basis of his involvement in a case registered vide FIR No. 24 dated: 19.01.2014 u/s 381A/411 PPC, Police Station Doaba. His departmental appeal was also rejected on 17.07.2014, hence this appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974.

2. Arguments heard and record perused.

3. Learned counsel for the appellant took the plea that the appellant has been acquitted in the very criminal case on the basis of which he was dismissed from service.

He further submitted that the entire record would not show appellant's involvement in the criminal case. He pleaded that the dismissal order is in violation of the principles of justice and is arbitrary. He prayed that the appeal may be accepted and the appellant reinstated into service with all back benefits.

4. Learned Government Pleader argued that a stolen Vehicle was recovered from possession of driver Atif and the appellant was sitting in the front seat of the same Vehicle, therefore both of them were charged in the FIR. He also stated that after observing all codal formalities and in view of the past conducts of the appellant, he was dismissed from service. He also defended impugned order by stating that criminal proceedings are different from departmental proceedings and acquittal of the appellant in criminal case does not mean that he also deserved to be reinstated in service.

5. We have carefully gone through the record and heard pro and contra arguments. The record shows that the appellant is neither charged for stealing the Vehicle in question nor that he was involved the crime with the main co accused driver Atif. The appellant has been acquitted in a criminal charge so much so that the main accused Atif has been acquitted of the charge. We feel that the charge sheet issued to the appellant is either not bearing the facts which were at the back of the respondents mind or then the charge as contained in the charge sheet is not proved. It was not shown that the inquiry officer recommended appellant for imposition of any penalty. In this situation, the Tribunal is left with no option but to set-aside the impugned orders. The same are therefore set-aside, and the case is remanded to the respondents that if deemed appropriate it can initiate fresh departmental proceedings in which full opportunity of defense and personal hearing be provided to the appellant. Such proceedings be concluded within one month after receipt of this judgment and the issue of back benefits would be subject to the outcome of the *de-novo* proceedings. In case the department does not initiate *de-novo* proceedings, in that case the intervening period regarding back benefits of the appellant be treated as leave of the

kind due. The appellant is reinstated for the purpose of such proceedings. The appeal is decided in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.09.2016

(1)

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ANNOUNCED
19.09.2016



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
(MEMBER)

19.09.2016

Counsels for the appellant and Mr. Abdur Rehman, Inspector alongwith Mr. Muhammad Jan, GP for respondents present.

Vide our detailed judgment of today consists of three pages placed on file, the Tribunal is left with no option but to set-aside the impugned orders. The same are therefore set-aside, and the case is remanded to the respondents that if deemed appropriate it can initiate fresh departmental proceedings in which full opportunity of defense and personal hearing be provided to the appellant. Such proceedings be concluded within one month after receipt of this judgment and the issue of back benefits would be subject to the outcome of the de-novo proceedings. In case the department does not initiate de-novo proceedings, in that case the intervening period regarding back benefits of the appellant be treated as leave of the kind due. The appellant is reinstated for the purpose of such proceedings. The appeal is decided in the above term. Parties are, however, left to bear their own costs. File be consigned to the record.

Announced
19.09.2016



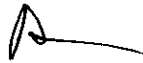
(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

02.06.2016

Appellant with counsel and Mr. Abdur Rehman, Inspector
alongwith Addl: AG for respondents present. Request for
adjournment was made on behalf of the respondents for the reason
that brief of the case was assigned to Senior Government Pleader
who is not available today due to illness of his son. It was further
stated that brief of the appeals are also lying under the locks and
keys of Sr.GP due to internal arrangement of the prosecution, the
Tribunal is constrained to adjourn the appeal. To come up for
arguments on 19.9.16 before D.B.



MEMBER



MEMBER

14.01.2016

Clerk to counsel for the appellant and Mr. Abdur Rehman, Inspector alongwith Mr. Muhammad Jan, GP for respondents present. Learned counsel for the appellant is not in attendance therefore, case is adjourned to 08-4-16 for arguments.


MEMBER


MEMBER

08.04.2016

Appellant with counsel and Mr. Ziaullah, GP for respondents present. While hearing arguments for sufficient time, learned counsel for the appellant submitted copy of acquittal of the appellant recorded by Addl: Session Judge Hangu in FIR No. 24 dated 19.01.2014 under Section-381-A/411PPC Police Station Tal. He submitted that the appellant had been convicted by the Trial Court under Section -411 PPC against which his appeal was accepted by way of the said judgment. Copy of this judgment is placed on file which needs a thorough perusal. This copy is handed over to the learned GP who resisted this appeal. It was also observed that in the instant case a legal opinion had been provided by DSP (Legal) which is not available on file, copy of the said legal opinion as well as copy of the judgment of the Trial Court and Magistrate order be produce on the next date. To come up for such record and further arguments if needed on 2.06.2016.


Member


Member


5
20.03.2015

Appellant in person and Mr. Noor Khan, ASI with Mr. Ziaullah, GP for the respondents present. Representative of the respondents requested for time to submit written reply/comments. To come up for written reply/comments on 07.05.2015 before S.B.


Member

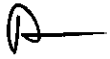
07.05.2015

Appellant in person and Mr. Hassan Khan, ASI alongwith Asstt: AG for the respondents present. Written reply/comments submitted. The appeal is assigned to D.B for rejoinder and final hearing on 12.08.2015 before D.B.


Member

12.08.2015

Counsel for the appellant and Mr. Abdul Nawaz, ASI alongwith Muhammad Jan, GP for the respondents present. Arguments could not be heard due to Learned Member (Judicial) is on leave. To come up for arguments on 14-01-2016.


Member

Appeal No. 1098/2014
Mr. Umair Zaid Gilani

3.

Reader Note:

21.11.2014

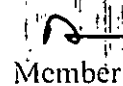
Clerk of counsel for the appellant. Since the Tribunal is incomplete, therefore, case is adjourned to 28.01.2015 for the same.


Reader

28.01.2015

Counsel for the appellant 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 05.05.2014, vide which the major penalty of dismissed from service has been imposed upon the appellant. Against the above referred impugned order appellant filed departmental appeal on 26.05.2014 which was rejected vide order dated 16.05.2014, communicated to the appellant on 21.05.2014, hence the instant appeal on 12.08.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 20.03.2015 before the learned Bench-III.


Member

4
Appellant deposited process fee
of Security

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1098/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02/09/2014	<p>The appeal of Mr. Umar Zad Gul resubmitted today by Mr. Ijaz Anwar Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	3-9-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>21-11-2014</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

The appeal of Mr. Umar Zad Gul Ex-Constable No.699 Distt. Police Hango received today i.e. on 13.08.2014 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- In the memo of appeal places have been left blank which may be filled in.
- 2- Annexures of the appeal may be attested.

No. 1211 /S.T,

Dt. 15/8 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ijaz Anwar Adv. Pesh.

Sir,

Re, Submitted after Complaint



6

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1098/2014

Umer Zad Gul, Ex-Constable No.699, District Police
Hungu. (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa,
Peshawar and others.


(Respondents)


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9	Vakalatnama.		

Through


Appellant


IJAZ ANWAR
Advocate Peshawar
&


SAJID AMIN
Advocate, Peshawar.

1

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1078/2014

1074
13/8/2014

Umer Zad Gul, Ex-Constable No.699, District Police
Hungu. **(Appellant)**

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa,
Peshawar.
2. Deputy Inspector General of Police, Kohat Region
Kohat.
3. District Police officer, Hungu.

(Respondents)

Appeal under Section 4 of the Khyber
Pakhtunkhwa Service Tribunal Act, 1974,
against the order dated: 05.05.2014, whereby
the appellant has been award the major
Punishment of dismissal from service. Against
which the departmental appeal dated:
26.05.2014 has also been rejected vide order
dated: 16.05.2014, Communicated to the
appellant on 21.05.2014.

Prayer in Appeal: -

On acceptance of this appeal impugned orders
dated 05.05.2014, and 16.05.2014, may please
be set-aside and the appellant may please be re-
instated in service with full back wages and
benefits of service.

Respectfully Submitted:

re-submitted to-409
and filed,

1. That the appellant was enlisted as Constable in the Police
department in year 7.7.2007 Ever since his enlistment the
appellant has performed his duties as assigned with Zeal and
devotion and there was no complaint whatsoever regarding his
performance.

2/9/14

2. That while serving in the said capacity the appellant was falsely implicated in a criminal case vide FIR No. 24 dated: 19.01.2014 u/s 381A/411 PPC, Police station Doaba. The appellant was also arrested and was kept behind the bar.
3. That due to his false implication the appellant was suspended from service vide order dated: 20.01.2014 and was served with charge sheet and statement of allegation dated 22.01.2014, containing certain false and baseless allegation as mentioned in FIR. *(Copies of the suspension order dated 20.01.2014, charge sheet and statement of allegation are attached as annexure A & B)*
4. That the appellant relied the charge sheet and refuted the allegation levied against him as false and baseless. *(Copies of replay of charge sheet is attaché as annexure C)*
5. That partial enquiry was conducted and enquiry officer while submitting his findings vide enquiry report dated 21.03.2014, recommended that the enquiry may be kept pending till the decision of the court. *(Copy of the Inquiry Report and statements are attached as Annexure D & E)*
6. That the appellant was served with show cause notice dated 25.04.2014, which he also replied and refuted the allegations as false and baseless. *(Copy of the show cause notice and reply to the show cause notice are attached as annexure F & G)*
7. That the competent authority without keeping in-view the recommendation of Inquiry Officer awarded the appellant the major punishment of dismissal from service vide order dated, 05.05.2014. *(Copy of the order dated:05.05.2014 is attached as annexure H)*
8. That the appellant also submitted his departmental appeal dated 25.05.2014, however the same has also been rejected vide order that 16.07.2014, copy of the rejection order was however communicated to the appellant on 21.07.2014. *(Copies of departmental appeal and rejection order are attached as annexure I & J)*

9. That the orders impugned are illegal, unlawful, against the law and fact, hence liable to set-aside inter alia on the following term.

GROUND OF APPEAL:

- A. That the appellant has not been treated with accordance to law. Hence his rights secured and granted under the law are badly violated.
- B. That no proper procedure has been followed before awarded the penalty to the appellant, the appellant has not been properly associated with the enquiry. The statement of witness will never taken in presence of the appellant, moreover the appellant has not given the opportunity of cross examination. Thus the whole proceeding is defective in the eye of law.
- C. That the appellant has not been allowed the opportunity of personal hearing. Thus he has been condemned unheard.
- D. That the enquiry officer had recommended that the enquiry be kept pending till the decision of the court, however the competent authority had completely ignored the recommendation of the enquiry officer and illegally proceeded with matter and awarded penalty to the appellant.
- E. That the statements of witness were never recorded in presence of the appellant. Nor the appellant was allowed to cross examine those who may have deposed against him.
- F. That the charges leveled against the appellant were never proved during enquiry, even the enquiry officer while concluding the enquiry himself stated that the appellant is not fully guilty of the charges. Thus thereafter awarding penalty to the appellant on the basis of unproven charges is illegal and could not be justified on any ground.

- G. That the superior courts have always held that mere filling of FIR would not ipso-facto made a person guilty of commission of the offence rather he would be presumed to be innocent unless convicted by court of competent Jurisdiction.
- H. That the appellant never committed any act or omission which could be term as misconduct. He has been falsely charged in criminal case, the case is under trial and the appellant has already been granted bail moreover, he is sanguine of his equitable.
- I. That the facts and grounds mentioned in the departmental appeal, replies to the charge sheet and show cause notice may also be read as integral part of the instant appeal.
- J. That the appellant has about 7 years spotless service career. The penalty impose upon him is too harsh and liable to set-aside.
- K. That the appellant is jobless since his illegal dismissal from service.
- L. That the appellant seeks permission to relay on additional grounds at time of hearing of the appeal.

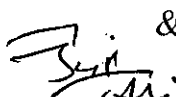
It is, therefore, humbly prayed that on acceptance of this appeal impugned orders dated 05.05.2014, and 16.05.2014, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.


Appellant

Through


IJAZ ANWAR

Advocate Peshawar

&

SAJID AMIN

Advocate, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____/2014

Umer Zad Gul, Ex-Constable No.699, District Police
Hungu. *(Appellant)*

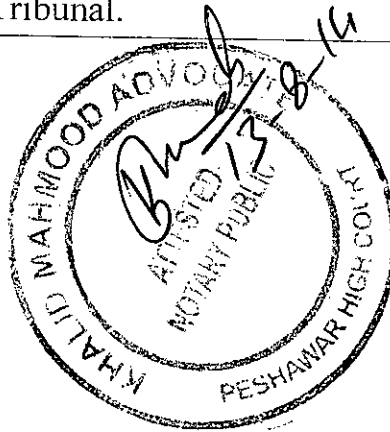
VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa,
Peshawar and others.

(Respondents)

AFFIDAVIT

I, *Umer Zad Gul, Ex-Constable No.699, District Police Hungu*, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.



(Signature)
Deponent

6

Approved: A

POLICE DEPARTMENT

DISTRICT HANGU

ORDER

Constable Umar Zad Gul No. 699 directly charged in case FIR No. 24 dated 19.01.2014 U/Ss 381A/411 PPC Police Station Doaba is hereby suspended & closed to Police Lines Hangu with immediate effect.

OB No. 58

Dated 20/1 /2014



**DISTRICT POLICE OFFICER,
HANGU**

OFFICE OF THE DISTRICT POLICE OFFICER, HANGU

No. 268 /EC, dated Hangu the 20/01/2014

Copy to the:-

- ✓ 1. PA for issuance of charge sheet.
- 2. OHC for necessary action.



9
-1-

ANNEX-B

CHARGE SHEET.

I, **MR. IFTIKHAR AHMAD, D.P.O, HANGU** as competent authority hereby charge you **Constable Umar Zad Gul No. 699** while posted at **Police Station Doaba** committed the following irregularities :-

- a) You are directly charged in case FIR No. 24 dated 19.01.2014 U/S 381 A/411 PPC Police Station Doaba. Therefore you were suspended and closed to Police Lines Hangu.
- b) Your above act shows that you are indisciplined, criminal act and also amounts to gross misconduct on your part.


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

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

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

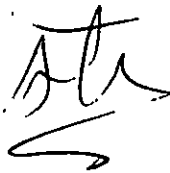
5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.


(IFTIKHAR AHMAD)
DISTRICT POLICE OFFICER,
HANGU

No. 271 /PA,

Dated 22/1/2014.



8

DISCIPLINARY ACTION.

I, **MR. IFTIKHAR AHMAD, D.P.O. HANGU** as competent authority, am of the opinion that **Constable Umar Zad Gul No. 699** has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning Under Police Disciplinary Rules, 1975 :-

STATEMENT OF ALLEGATIONS.

a). **You are directly charged in case FIR No. 24 dated 19.01.2014 U/S 381-A/411 PPC Police Station Doaba. Therefore you were suspended and closed to Police Lines Hangu.**

b). **Your above act shows that you are indisciplined, criminal act and also amounts to gross misconduct on your part.**

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

i. **Mr. Said Khan ASDPO Hangu.**

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

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


(IFTIKHAR AHMAD)
DISTRICT POLICE OFFICER,
HANGU

A copy of the above is forwarded to: -

1. **Mr. Said Khan ASDPO Hangu.** The Enquiry Officer for initiation proceedings against the accused under the provisions of Police Disciplinary Rules, 1975.

2. **Constable Umar Zad Gul No. 699.** The concerned officer with the directions to appear before the Enquiry Officer, on the date, time and place fixed by the Officer, for the purpose of the enquiry proceedings.



بیان اذان گنبد عظیم کربلا ۶۸۹ صفحہ ۱۰۱

صاحب عالی

حوالہ مشمولہ صریح میں مندرجہ ذیل ہے ^{۲۷/۱۸} _{۲۷/۱۹} ۱۹۱۶

مضمون فہرست میں کہ سائل کے خلاف مقدمہ عدالت ۲۴ ص ۱۹۱۶
ص ۱۱۱۱ فقہانہ درجہ درجہ کر کے سائل کے خلاف ہے بنیاد الزام
لشکر سائل کے ساتھ سونے کا الفاخری کی گئی ہے

ہزاروں قومیہ سائل کی وجہ سے عطا اللہ علیہ السلام کے پاس سائل جاری تھا۔ کہ
مقامی قریب قریب تالیف اپنے گاؤں کے روڈ کے کنارے گاڑی کا انتظار
کر رہا تھا۔ کہ اس نے شہداء میں سے سوزو کی دین میں سے بطرف سائل ان کے
صبر کو میں نے گھبراہٹ سے اشارہ کر کے جو ڈرائیور نے سوزو کی دین کو
کر کے میں نے ٹکڑے کا کیا۔ تو ڈرائیور نے بھاری کیا کہ میں سائل جاری
ہوں اور سائل سے۔ تو میں اسے ساتھ بھرتی ہو کر سوزو کی دین جاری
تھا کہ مجھے گاؤں فورہ میں پوسٹ پر اسلام الدین کے سوزو کی
ڈرائیور کو روکنے کا اشارہ کر کے ڈرائیور نے سوزو کی دین کو اسلام الدین
خان کے پاس لے گیا۔ کہ یہ گاڑی سوزو کی ہے۔ تو اسے وہاں ڈرائیور
سوزو کی کے خلاف مقدمہ درجہ درجہ کر کے جو ہے بنیاد اور عدالت
مقدم میں سائل کی تالیف ہے۔

علاجیہ - میں بھرتی ہو کر سوزو کی دین سوزو کی کے ساتھ ساتھ کر عدالت
معالجہ میں سائل جاری تھا۔ سوزو کی دین کے ساتھ ساتھ قسم
میں دین، تعلق نہیں ہے۔ اور نہ ہی کوئی جان بچاؤ ہے

سائل نے تاحال انہی ذرا فقیرانہ دفعہ بنیاد میں فوج اسلام کے ساتھ تھا
افسوس کہ لاہور میں کوئی قسم کی شہادت کا موقع نہیں رہا ہے میں نے
میں صریح شدت کو داخل دفتر فرمایا ہے

شکریہ

بیان اذان گنبد عظیم کربلا ۶۸۹ صفحہ ۱۰۱

جناب عالی

تذکرہ میں حکیم سائل جاننے عرض جو عرض

کے لئے پیش ہونا چاہتا ہے

دستخط حکیم پیش ہونے کی اجازت بخش جاوے

نمبر 5
2014

العارض

ایک ماہ بعد آگے 3 عشرہ ادریس 699 حال حوصلہ لکھنؤ میں حضور

طاہر علی

Alex

(11)

Amir Fed: D

POLICE DEPARTMENT

HANGU DISTRICT

NO 692 /H

Date: 15/4/2014

DEPARTEMENTAL ENQUIRY AGAINST CONSTABLE UMAR ZAD GUL NO. 699

This is a departmental enquiry initiated against Constable Umar Zad Gul No. 699 on the basis of allegation that he while posted at Police Station Bilyamina directly charged in case FIR No. 24 dated 19.01.2014 u/s 381-A/411 PPC Police Station ~~Bilyamina~~ ^{Doaba} and he was suspended & closed to Police Lines Hangu which shows indisciplined and criminal gross misconduct on his part vide Charge Sheet No.271/PA dated 31.01.2014

The undersigned has been appointed as Inquiry Officer to conduct a departmental enquiry against defaulter constable.

The undersigned summoned the SHO Islam-ud-Din of Police Station Doaba and he stated in his statements that on 19.01.2014 at about 18:00 hrs, he was on Nakabandi duty at PP Mamu Khawara, an information received about a theft Suzuki Van bearing Reg: No. 3539/LRF which will be passed towards Thall any time, on this information he was present at PP Mamu Khawara with police contingents. On the meanwhile, the said Suzuki Van came. Which was driven by one namely Mohammad Atif s/o Niaz Meen r/o Thall and Umar Zad Gul (Constable No. 699) s/o Ameen Gul r/o Turki Banda was also found present on enquiry in the front seat, the said driver disclosed that the said Suzuki Van is really theft one and further stated that the said vehicle is bought today from one namely Khan Jee r/o Peshawar of Rs. One Lacc Ninety thousand Rupees. On the spot he did not produce any registration documents so case was registered against both of the accused (annexed at F/A).

Driver Atif stated in his statement that he was came to Hangu Bazaar for shopping, after the shopping he was going back by a passenger Suzuki van, who was packing/dropping the passenger in via while Constable Umar Zad Gul No. 699 was also sit in the said vehicle, when the Suzuki Van reached PP Mamu Khawara, the police signaled to stopped the vehicle and the driver stopped the Suzuki Van. Furthermore, he did not knows that the said vehicle is of theft or not and a case was registered against him and he did not knows about the driver and other passengers. (attached at F/B).

Constable Umar Zad Gul No. 699 stated in his statement that on the day of occurrence, he was going to Attaullah Hakeem Thall due to his sickness for which he was waiting for vehicle at Mohammad Khawaja Talab. At the meantime a Suzuki van came from Hangu side and he sit in at towards Thall, when the Suzuki Van reached at PP Mamu Khawara, SHO Islam-ud-Din stopped the Suzuki van and said that the said Suzuki Van is of a stolen one & the SHO registered the case against him and the driver else he is falsely charged in case as such he is wrongly blame in the said case (attached at F/C).

CONCLUSION:

From the perusal of the available record of the defaulter Constable the undersigned has reached to the conclusion that the the case is already under trial in the court against Umar Zad Gul No 699

RECOMMENDATION:

Therefore, I the Enquiry Officer recommend that the enquiry may be keep pending till the decision of court or sent to DSP legal for legal opinion please.

**SUB DIVISIONAL POLICE OFFICER,
HANGU**

*S
D
15.11.14*

DSP/L

For nee; action / opinion

[Signature]
D.P.O. HANGU

27/4/2014

AKS

Amr: E بیان ازل اسم اللہ صلی اللہ علیہ وسلم

حوت 19/14 بوقت 18:00 مقام حویلی ماحو خورہ نام بندری
 ڈکھائی ہو جو خود تھا کہ سوزوکی کا 3539 کے متعلق خبر نے
 اطلاع دیا کہ سوزوکی تیز بہ سرف سرف ہے اور آج
 کسی بھی وقت نکل سکیں گے۔ تمام نام بندریوں
 کو بھی خبر دیا گیا۔ اور خود ماحو خورہ میں موجود تھا۔
 کہ سوزوکی بالکل اس وقت ڈرائیو میں سرف سرف
 ولا تیار ہیں کہ قلم چال دین نکل سکتے ہیں
 میں طرز ادکل ولا اس میں سرف سرف ماحو خورہ
 سوزوکی ڈرائیو سے سرف سرف چلوں گے اس کا طرز
 کہ سوزوکی کا 3539 واقعی سرف سرف ہے۔ اور میں خانگی
 نامی شخص جو کہ دربار کا لکھی ہے اس سے کوئی حد تک
 ایک لاکھ نوے تیار ہو رہا ہے۔ اور جو سرف سرف
 کی ریسٹریکشن نہیں ہے اس کی صورت میں یہ دو سال کے طور
 پر قدم در بندری جو کہ خوشی گینے کے قدم میں سالانہ دیا جا رہا ہے۔

Amr: E

4. (1) سرف سرف (یعنی سرف سرف) ہے؟
 (2) دو سال کے طور پر فارمیشن ملی ہے؟
 18/2/14

Amr: E

دو سال سوزوکی میں خود لکھن نکل جاتی ہے۔
 (3) قدم میں سالانہ نکل آتے ہیں؟
 (4) جی ہاں۔ سالانہ نکل دیا ہے۔

14
3) * کہ جس سے ملے گا وہ سب کچھ ہے ؟

یعنی ہاں -

4) * کہ ہم جو عارف اور سادہ دین سے ہم صلیب دین میں سے ہیں انہوں نے
کے لیے کیا ہے اس کے لیے اس کے لیے ہے کہ ان کے لیے ہے

ہم نے

یعنی انہوں نے انہوں نے انہوں نے

انہوں نے انہوں نے انہوں نے

S
the
SDPO/Hangmu

18/2/2014

AB

* دن بروز رقوم آجا کیاں بد لہیناں تے

ج . مینا کھانہ بلایا مین مین لہیناں کھا

* (2) کھانہ سے کوئی رخصت وغیرہ

ج . مینا ورگ 18¹² سے 30 لوم رخصت ملدن بد کھا . ورگ 17⁰² 14

کہ میرا جاری کھی . کھینا بد دوران رخصت مینا مینا سیرا . علاج
معالجہ کیلئے ہی ٹل جارم کھا . تم اسلام الوم S.H.O نے مدد

میں گرتا رہا .

* (3) کیا اس سے پہلے آجا کھا ٹل مین لہیناں ہوئی ہے

ج . جی ہاں

* (4) محمد عاطف ولد نیاز دین سے ہم سال دین ٹل کو کب سے جانے ہو ؟

ج . کوئی تعلق نہیں ہے . اور نہ کھا . نہ جانتا ہوں .

S
Lhe
S.D.O / Hangu.

29/2/2016

محمد عاطف

بیان آذان عارف و لایب ازین سلسله علم جمال دین تل

بیان ایما م سید کفر من سود اسلف منکو یا قضا لکھ جس نہ سید اسلف
 کے سید اسلف کفر و اسحق تل چار یا قضا اذ از منکو سید حاجت ویات دود
 سوزدی میں آ مر جیسر سوار ہوا سوزدی در آتور ز راست میں سوزدی
 انکار یا قضا اور سسوی غم و آرتن کھی بس سوزدی جو اجب مانوں فورہ
 جوئی پھیلا تو دیاں ہر کولس گاردی ڈوک کی در آتور کو ایک سلسلہ
 ہم سرت سسوا جو سسوی کھالیا جید کھی اور سوزدی آرتن منکو میں
 سیر جانا قضا میں تمام کے جا سیر ہمارے خدا اور معہ
 درج کیا ڈرا یور اور ڈر سوزدیوں کا کوئی پشہ چل مقام بود
 بیان آرتن سیر بیان ہے

1. ایما م سید کفر من سود اسلف منکو یا قضا لکھ جس نہ سید اسلف

2. سوزدی میں آ مر جیسر سوار ہوا سوزدی در آتور ز راست میں سوزدی

3. انکار یا قضا اور سسوی غم و آرتن کھی بس سوزدی جو اجب مانوں فورہ

4. جوئی پھیلا تو دیاں ہر کولس گاردی ڈوک کی در آتور کو ایک سلسلہ

5. ہم سرت سسوا جو سسوی کھالیا جید کھی اور سوزدی آرتن منکو میں

6. سیر جانا قضا میں تمام کے جا سیر ہمارے خدا اور معہ

Handwritten signature/initials

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Ume
5000/Hangin.

25/2/2014

(17)

Approved: F

FINAL SHOW CAUSE NOTICE.

WHEREAS, you Constable Umar Zad Gul No. 699 while posted at Police Station Doaba that you are directly charged in case FIR No. 24 dated 19.01.2014 U/S 381-A/411 PPC Police Station Doaba. Therefore you were suspended and closed to Police Lines Hangu. Your above act shows that you are indisciplined, criminal act and also amounts to gross misconduct on your part.

THEREFORE, you were served with Charge Sheet and Statement of Allegations vide No. 271/PA, dated 31.01.2014 under Police Disciplinary Rules, 1975 to which you submit your reply. Mr. Said Khan SDPO Hangu was appointed as Enquiry Officer to conduct departmental enquiry against you. After completion of enquiry, the enquiry officer submitted his findings on 15.04.2014 with the remarks that the enquiry may be keep pending till the decision of court or sent to DSP Legal for legal Opinion. The enquiry papers were marked to DSP Legal Hangu for opinion and report upon which he submitted his report and suggested that Final Show Cause Notice may be issued against the defaulter constable to dig out the real fact, if approved.

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

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

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

No. 1443 /PA,

Dt: 25/04/2014.


DISTRICT POLICE OFFICER,
HANGU



ضامی!

حوالہ نمبر 1443/PA عرصہ وقت سول
 25.4.2014
 کے ساتھ اپنا تحریر کا بیان آنکوائری آفسر کو پیش کر کے
 اور بددعا آنکوائری بھی سن کانس کو گنہگار قرار دیا ہے۔
 علحدہ ایزین ملزم محمد عارف نے اپنے بیان زیر تصدیق میں بھی
 سن کانس کے تعلق سواری ہونے کا بیان دیا ہے۔ جو کہ
 سن کانس کے بے گناہ مور کا واضح ثبوت ہے۔ (بیان ملزم
 عہدہ لف ہے) علحدہ ایزین استناد اللہ عدالت سے بھی بااثر ہے
 سو جادگاہ۔ متذکرہ معاملے میں سن کانس صرف اور صرف
 غلط بنیاد پر ملوث کیا گیا ہے۔ ثبوتاً کہتے سواری جانا کوئی حرم
 میں ہے۔ اور سن کانس کسی طرح بھی اس معاملے میں شامل
 سن کانس کے حوالہ دینے سے جہاں ملزم ذکورہ اہل کار ہوتے
 حوالہ دینے سے اس سے بھی تعلق میں بنتا ہے گناہ سول الطار

کیا جادگاہ
 اطلاع
 25/4

مہر ڈاکٹر 699 صحت معطل ہوا ہے سن کانس

مہر

(19) ANNEX: 17

ORDER

This order of mine will dispose of the departmental enquiry initiated against Constable Umar Zad Gul No. 699 on the basis of allegation that he while posted at Police Station Bilyamina were arrested red-handed in stolen van bearing No. 3539/LRF by SHO PS Doaba on 19.01.2014 at Mamo Khawara Nakabandi as a result of which a criminal case vide FIR No. 24 dated 19.01.2014 u/s 381-A/411 PPC PS Doaba was registered against him which showed that he being a member of disciplined force acted in indisciplined manner being involved in a criminal case of moral turpitude amounting to gross misconduct on his part.

Charge Sheet together-with statement of allegations under Police Disciplinary Rules 1975 was initiated against him vide No. 271/PA dated 31.01.2013, to which he failed to submit his reply. Mr. Said Khan SDPO Hangu was appointed as Enquiry Officer to conduct departmental enquiry against him. After completion of enquiry, the enquiry officer submitted his findings on 15.04.2014 and recommended for appropriate punishment provided by the rules.

Thereafter, Final Show Cause Notice was issued to him vide this office No. 1443/PA dated 25.04.2014, which was served and received by the defaulter Constable himself on 25.04.2014 but till today he has not submitted his reply within the stipulated period of 07 days.

Keeping in view of above and having gone through available record, the undersigned has come to the conclusion that the accused Constable has been arrested red handed in a stolen vehicle NO. 3539/LRF by SHO PS Doaba along-with the main culprit Muhammad Atif s/o Niaz Moeen r/o Thall regarding which no explanation could be brought on the record. Moreover accused Constable is involved in a criminal case of moral turpitude which reflect that he has acted in indisciplined manner falling within the ambit of gross misconduct as he did not bother to follow the prescribed rules/law pertaining to the official functions/obligations of Govt: servant. In these circumstances his retention in Police Department is burden on public exchequer and black spot on the forehead of Police department, therefore, I, Iftikhar Ahmad, District Police Officer, Hangu in exercise of the powers conferred upon me, award him major punishment of "**Dismissal from Service**" with immediate effect.

Order Announced.

OB No. 284

Dated 5/5/2014.


IFTIKHAR AHMAD
DISTRICT POLICE OFFICER,
HANGU



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OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No. 1589-94/PA, dated Hangu, the 06/05/2014.

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

2. Pay Officer, Reader, SRC & OHC for necessary action.
3. Ex-Constable Umar Zad Gul No. 699.

IFTIKHAR AHMAD
DISTRICT POLICE OFFICER,
HANGU

AG

(21)

Annex-I

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE
KOHAT REGION KOHAT.

SUBJECT: Appeal against the order of DPO Hangu vide OB No.284 dated 05-5-2014 whereby the appellant Ex-constable Umar Zad Gul No.699 was dismissed from service with immediate effect.

Respectfully Sheweth,

With veneration, the appellant submits the instant appeal on the following facts and grounds:-

Facts:

1. Allegation against the appellant was that while posted to P.S Bilyamina was arrested while traveling in a stolen vehicle bearing No.3539/LRF by SHO Doaba at Mamu Khawar Nakabandi leading to registration of case FIR # 24 dated 19-1-2014 U/S 381-A/411 PPC P.S Duaba against the appellant and co-accused Muhammad Atif.
2. The appellant was proceeding^{ed} against departmentally through Mr. Said Khan SDPO Hangu. The inquiry officer submitted his findings. Thereafter the impugned order was passed by DPO Hangu. (Photocopy of the order is enclosed).

Grounds:

- a. That the appellant was completely innocent in the matter. As per the contents of FIR # 24/2014 of PS Duaba it is evident that the seized vehicle was being driven by co-accused Muhammad Atif at the time of its seizure by SHO Duaba. (Copy of FIR is enclosed)

AS

luck would have it that the appellant became sick on 18-1-2014. In order to consult Hakeem Atta Ullah at Thall, the appellant was waiting on the roadside to board a vehicle destined for Thall. The seized vehicle driven by a person (later on known as Muhammad Atif) proceeding towards Thall, was signaled by the appellant to stop. The seized vehicle stopped *and* at the appellant boarded the same as passenger little knowing that the same was stolen property.

- c. The driver of the vehicle was not previously known to the appellant. The appellant and co-accused Muhammad Atif hailed from different localities. No interaction between the appellant and co-accused Muhammad Atif had ever taken prior to the occurrence. The appellant and co-accused Muhammad Atif were completely strangers to each others. Such was the stance of the appellant before the police from the beginning but nobody paid heed to the appellant's contention and was falsely involved in the case. (Photocopy of the statement of the appellant before the police recorded U/S 161 Cr.P.C is enclosed for perusal).
- d. That co-accused Muhammad Atif vide his statement before the police had disclosed that the appellant had boarded the seized vehicle as passenger. His statement fully supported the version of the appellant. (Copy of the statement of Muhammad Atif recorded b y Police is enclosed).
- e. That the Inquiry Officer had not declared the appellant as guilty. He was not certain about the guilt or innocence of the appellant. The Inquiry Officer was doubtful regarding the guilt of the appellant. The matter being doubtful in his opinion, the benefit of doubt was to be extended to the appellant. Yet the appellant was awarded the major punishment of dismissal from service.

AB

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- f. That the Inquiry Officer had not recommended the appellant for appropriate punishment, because the matter in his opinion was doubtful regarding guilt of the appellant. His recommendation was that the instant inquiry may be kept pending till the decision of the criminal case pending trial against the appellant in the court of law. (Photocopy of the findings of the Inquiry Officer is enclosed herewith).
- g. That mere allegation of commission of an offence and registrant of FIR against a person would not ipso facto make him guilty, rather he would be presumed to be innocent till convicted by a competent court of law.
- h. That the appellant under the relevant law is not accomplice in the commission of the offence U/S 411 PPC, because the stolen vehicle was recovered from the possession of the co-accused Muhammad Atif and not from the appellant.


Prayer:

In light ^{of} the above submissions, it is prayed that by accepting the instant appeal, the impugned order of DPO Hangu may either be set-aside and the appellant re-instated in service from the date of dismissal or instant inquiry kept pending till the decision of the criminal case against the appellant.

Yours obediently,

Dated: 26-5-2014.




Ex-Constable
Umar Zad Gul
No. 699,
Of District Police,
Hangu.

ORDER.

This order is passed on departmental appeal, moved by Ex-Constable Umer Zad Gul No. 699 of Hangu district Police against the dismissal order of DPO Hangu vide O.B No. 284, dated 05.05.2014. Ex-Constable (herein after called appellant) prayed to set-aside the impugned order and reinstatement in service.

Short facts of the case are that the defaulter official while posted at PS Bilyamina district Hangu was arrested red-handed in a stolen van bearing No. 3539 / LRP by SHO PS Doaba on 19.01.2014 at Mamo Khwara Nakabandi. Proper case vide FIR No. 24, dated 19.01.2014 U/S 381-A / 411 PPC was registered against him in PS Doaba. This act of the defaulter is against the service discipline and amounts gross misconduct on his part.

Proper departmental enquiry was initiated against him and Charge sheet alongwith statement of allegations was issued to him by the DPO Hangu. Mr. Said Khan SDPO Hangu was appointed as Enquiry Officer for the purpose of conducting departmental enquiry. After completion of enquiry, the E.O, in his findings recommended him for appropriate punishment provided by the rules. Resultantly, he was awarded major punishment of dismissal from service by DPO Hangu.

Aggrieved from the said punishment order, he preferred the instant appeal for reinstatement in service.

Record requisitioned and appellant was called in Orderly Room held in this office on 16.07.2014, heard in person. He did not submit any plausible explanation in his defence and could not satisfy the undersigned.

Going through available record and oral explanation of the defaulter official, the undersigned came to the conclusion that the order passed by DPO Hangu is accordance with law / rules and no need for interference. Hence, the appeal is hereby rejected.

ANNOUNCED.
16.07.2014

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

No. 6806-07 /EC, dated Kohat the 17/7 /2014.

Copy to the District Police Officer, Hangu for information w/r to his office Memo: No. 2594/LB, dated 07.07.2014. His service record is enclosed herewith.

Ex-Constable Umer Zad Gul No. 699 of Hangu.

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

Officer/Sr. 2.
Per m/j: En n/a
[Signature]
District Police Officer
Hangu.
21/7

[Signature]

[Signature]

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

Service Appeal No.1098-P of 2014.

Umar Zad Gul, Ex-Constable No.699

District Police Hangu

..... (Appellant)

VERSUS

The Provincial Police Officer,

Khyber Pakhtunkhwa Peshawar and others

..... Respondents

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S.No	Description of Documents	Annexure	Pages
1.	Affidavit		1
2.	Reply/Parawise Comments		2-3
3.	Copy of Charge Sheet	A	4-5
4	Copy of Enquiry Report	B	6-7
5.	Copy of Dismissal order OB No.284 dated 05.05.2014	C	8

[Handwritten Signature]

District Police Officer,
Hangu.

①

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

Service Appeal No.1098 of 2014

Umar Zad Gu, Ex-Constable No.699

District Police Hangu.

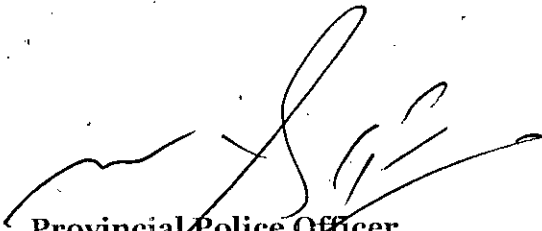
.....Appellant

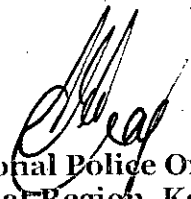
VERSUS

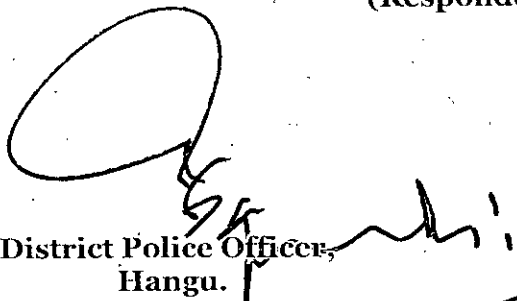
1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. The Regional Police Officer Kohat Region Kohat.
3. The District Police Officer, Hangu.Respondents.

AFFIDAVIT

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


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


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


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

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

Service Appeal No.1098 of 2014

Ex-Constable Umar Zad Gul No.699

District Police HanguApplicant

VERSUS

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

Respectfully, sheweth,

Reply/Parawise comments are submitted as under:-

Preliminary Objection.

1. The appellant has no cause of action.
2. That, the appeal is liable to be dismissed in liminie.
3. That, the appellant has been estopped his own conduct to file the appeal.
4. That, the appellant has concealed material facts from this Honourable Tribunal.
5. That, the instant appeal is barred by law.

Parawise Comments.


1. That the appellant was enlisted as constable w-e-from 25.07.2007 whereas the remaining Para is not correct as the record contains adverse entries.
2. Pertains to record. That the appellant was arrested red-handed with stolen vehicles in case FIR No.24 dated 19.01.2014 u/s 381A/411 PPC PS Doaba District Hangu.
3. That as the appellant has committed misconduct, therefore proper charge sheet and statement of allegations were issued and departmental enquiry initiated against the appellant. Copy of charge sheet Annexure (A).
4. Pertains to record. However the appellant joined the enquiry proceedings and all codal formalities were fulfilled.
5. That proper enquiry was conducted and recommended for appropriate action. Copy Annexure (B).
6. That proper Show cause notice was issued and he failed to submit reply within stipulated period.
7. That as the judicial and departmental proceedings are distinct from each other, therefore the appellant was awarded major punishment of dismissal from service vide order being OB No.284 dated 05.05.2014. Copy as annexure (C).
8. Correct to the extant of rejection of departmental appeal.
9. That all the proceedings were conducted in accordance with law/order. The appellant was found involved in offence of moral turpitude and impugned order of dismissal was rightly passed.


GROUNDS.

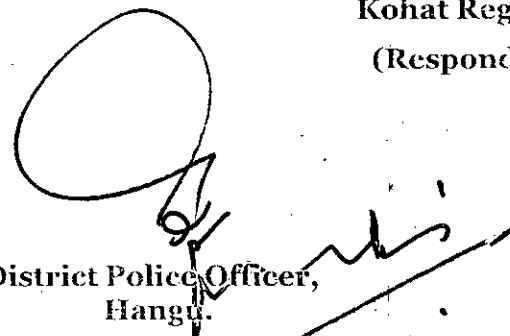
- A. Incorrect. All the codal formalities were observed.
- B. Incorrect. Proper departmental enquiry was conducted in accordance with law and rules fulfilling all the codal formalities.
- C. That the appellant failed to submit reply to final show cause notice which shown his lock of interest in the service. However opportunity of personal hearing was provided during hearing of appeal.
- D. The judicial and departmental proceedings are distinct in nature and may run parallel at the same time. Moreover the recommendation of Enquiry Officer is not binding upon competent authority.
- E. Incorrect. All the codal formalities were observed.
- F. Incorrect. The appellant was arrested red handed in offence of moral turpitude and allegations were established during enquiry proceedings.
- G. That there is no bar on departmental action beside criminal proceedings under the law.
- H. Incorrect. As stated above.
- I. No comments.
- J. That keeping in view the nature of allegations, the appellant disserved the impugned punishment.
- K. As stated at para J above.
- L. That the respondents also seek permission to produce additional evidence during arguments.

Prayer

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


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


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


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



Amere (A)

Enquiry
Final

CHARGE SHEET.

I, **MR. IFTIKHAR AHMAD, D.P.O, HANGU** as competent authority, hereby charge you Constable Umar Zad Gul No. 699 while posted at Police Station ^{Bilyamina} Doaba committed the following irregularities :-

- a) You are directly charged in case FIR No. 24 dated 19.01.2014 U/S 381-A/411 PPC Police Station Doaba. Therefore you were suspended and closed to Police Lines Hangu.
- b) Your above act shows that you are indisciplined, criminal act and also amounts to gross misconduct on your part.


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

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

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

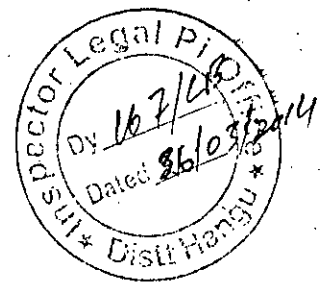
5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.


(IFTIKHAR AHMAD)
 DISTRICT POLICE OFFICER,
 HANGU

No. 271 /PA,

Dated 31/1 /2014.



DISCIPLINARY ACTION.

I, **MR. IFTIKHAR AHMAD, D.P.O, HANGU** as competent authority, am of the opinion that Constable Umar Zad Gul No. 699 has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning Under Police Disciplinary Rules, 1975 :-

STATEMENT OF ALLEGATIONS.

- a). You are directly charged in case FIR No. 24 dated 19.01.2014 U/S 381-A/411 PPC Police Station Doaba. Therefore you were suspended and closed to Police Lines Hangu.
- b) Your above act shows that you are indisciplined, criminal act and also amounts to gross misconduct on your part.

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

- i. Mr. Said Khan ASDPO Hangu.

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

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


(IFTIKHAR AHMAD)
DISTRICT POLICE OFFICER,
HANGU

A copy of the above is forwarded to :-

1. Mr. Said Khan ASDPO Hangu. The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Disciplinary Rules, 1975.
2. Constable Umar Zad Gul No. 699. The concerned officer with the directions to appear before the Enquiry Officer, on the date, time and place fixed by the Officer, for the purpose of the enquiry proceedings.

POLICE DEPARTMENT

NO. 692 / H

HANGU DISTRICT

Date: 15/4/2014

DEPARTEMENTAL ENQUIRY AGAINST CONSTABLE UMAR ZAD GUL NO. 699

This is a departmental enquiry initiated against Constable Umar Zad Gul No. 699 on the basis of allegation that he while posted at Police Station Bilyamina directly charged in case FIR No. 24 dated 19.01.2014 u/s 381-A/411 PPC Police Station ~~Bilyamina~~ ^{Doaba} and he was suspended & closed to Police Lines Hangu which shows indisciplined and criminal gross misconduct on his part vide Charge Sheet No.271/PA dated 31.01.2014

The undersigned has been appointed as Inquiry Officer to conduct a departmental enquiry against defaulter constable.

The undersigned summoned the SHO Islam-ud-Din of Police Station Doaba and he stated in his statements that on 19.01.2014 at about 18:00 hrs, he was on Nakabandi duty at PP Mamu Khawara, an information received about a theft Suzuki Van bearing Reg: No. 3539/LRF which will be passed towards Thall any time, on this information he was present at PP Mamu Khawara with police contingents. On the meanwhile, the said Suzuki Van came. Which was driven by one namely Mohammad Atif s/o Niaz Meen r/o Thall and Umar Zad Gul (Constable No. 699) s/o Ameen Gul r/o Turki Banda was also found present on enquiry in the front seat, the said driver disclosed that the said Suzuki Van is really theft one and further stated that the said vehicle is bought today from one namely Khan Jee r/o Peshawar of Rs. One Lacc Ninety thousand Rupees. On the spot he did not produce any registration documents so case was registered against both of the accused (annexed at F/A).

Driver Atif stated in his statement that he was came to Hangu Bazaar for shopping, after the shopping he was going back by a passenger Suzuki van, who was packing/dropping the passenger in via while Constable Umar Zad Gul No. 699 was also sit in the said vehicle, when the Suzuki Van reached PP Mamu Khawara, the police signaled to stopped the vehicle and the driver stopped the Suzuki Van. Furthermore, he did not knows that the said vehicle is of theft or not and a case was registered against him and he did not knows about the driver and other passengers. (attached at F/B).

Constable Umar Zad Gul No. 699 stated in his statement that on the day of occurrence, he was going to Attaullah Hakeem Thall due to his sickness for which he was waiting for vehicle at Mohammad Khawaja Talab. At the meantime a Suzuki van came from Hangu side and he sit in at towards Thall, when the Suzuki Van reached at PP Mamu Khawara, SHO Islam-ud-Din stopped the Suzuki van and said that the said Suzuki Van is of a stolen one & the SHO registered the case against him and the driver else he is falsely charged in case as such he is wrongly blame in the said case (attached at F/C).

CONCLUSION:

From the perusal of the available record of the defaulter Constable the undersigned has reached to the conclusion that the the case is already under trial in the court against Umar Zad Gul No.699.

⑦
COMMENDATION:

Therefore, I the Enquiry Officer recommend that the enquiry may be keep pending till the decision of court or sent to DSP legal for legal opinion please.

S
SUB DIVISIONAL POLICE OFFICER,
HANGU

DSP/L

By nec: action / opinion.


O.P.O. HANGU.

27/4/2014

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Amere (C)

ORDER

This order of mine will dispose of the departmental enquiry initiated against Constable Umar Zad Gul No. 699 on the basis of allegation that he while posted at Police Station Bilyamina were arrested red-handed in stolen van bearing No. 3539/LRF by SHO PS Doaba on 19.01.2014 at Mamo Khawara Nakabandi as a result of which a criminal case vide FIR No. 24 dated 19.01.2014 u/s 381-A/411 PPC PS Doaba was registered against him which showed that he being a member of disciplined force acted in indisciplined manner being involved in a criminal case of moral turpitude amounting to gross misconduct on his part.

Charge Sheet together-with statement of allegations under Police Disciplinary Rules 1975 was initiated against him vide No. 271/PA dated 31.01.2013, to which he failed to submit his reply. Mr. Said Khan SDPO Hangu was appointed as Enquiry Officer to conduct departmental enquiry against him. After completion of enquiry, the enquiry officer submitted his findings on 15.04.2014 and recommended for appropriate punishment provided by the rules.

Thereafter, Final Show Cause Notice was issued to him vide this office No. 1443/PA dated 25.04.2014, which was served and received by the defaulter Constable himself on 25.04.2014 but till today he has not submitted his reply within the stipulated period of 07 days.

Keeping in view of above and having gone through available record, the undersigned has come to the conclusion that the accused Constable has been arrested red-handed in a stolen vehicle NO. 3539/LRF by SHO PS Doaba along-with the main culprit Muhammad Atif s/o Niaz Moeen r/o Thall regarding which no explanation could be brought on the record. Moreover accused Constable is involved in a criminal case of moral turpitude which reflect that he has acted in indisciplined manner falling within the ambit of gross misconduct as he did not bother to follow the prescribed rules/law pertaining to the official functions/obligations of Govt: servant. In these circumstances his retention in Police Department is burden on public exchequer and black spot on the forehead of Police department, therefore, I, Iftikhar Ahmad, District Police Officer, Hangu in exercise of the powers conferred upon me, *award him major punishment of "Dismissal from Service" with immediate effect.*

Order Announced.

OB No. 284

Dated 5/5/2014.


IFTIKHAR AHMAD
DISTRICT POLICE OFFICER,
HANGU

NWFP. Routine #

No. _____ From _____

Date _____ To _____

Encl: _____

~~APP.~~
~~CONF.~~

SUBJECT: _____

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Comt. s APP 2887

19.1.2014.

15.4.2014

1.0.5.5714 ✓

Dismissed

D.A = 26.5.2014

Reg: 16.7.2014

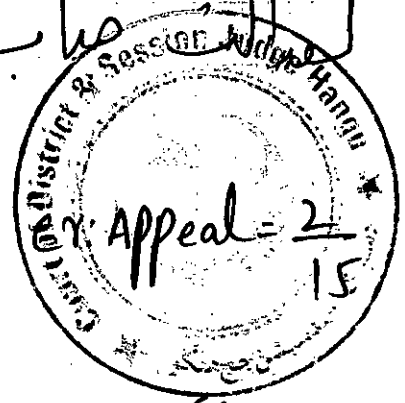
1. Report: dt: 25.4.2014

FSC 25.4.2014

Crit. Trial - 26.6.2015

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عمرزادہ نام سہرا

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411 PPC

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26-6-2015

Appellant/accused in person present
vide my detailed separate consolidated judgment of today, placed on file of connected appeal bearing

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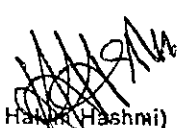
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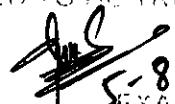
Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3

No. 2/2015 titled "Umar Rashid Qal
 versus state" The instant
 appeal is accepted, conviction
 and sentences recorded by
 learned Trial Court are set
 aside and the appellant
 is acquitted of the charges
 levelled against him.

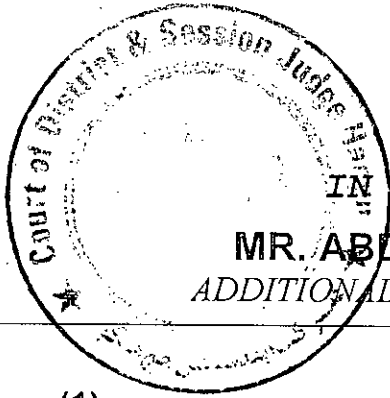
The case property be
 kept intact till the expiry
 of period of limitation.
 File be consigned to
 the R/R after its completion.

ATTESTED
 26/6/2015


 (Abdul Hakim Hashmi)
 Additional Sessions Judge
 Hangu

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 Date of presentation of application 1-7-15
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1
IN THE COURT OF
MR. ABDUL HAKIM HASHMI
ADDITIONAL SESSIONS JUDGE-HANGU

(1)

Cr. Appeal No..... 02/SC
Date of institution:.....21-04-2015
Date of Decision:26-06-2015.

State..Vs..Umar Zad Gul s/o Amin Gul
R/O: Tarki Banda, Alwara Mela.....(Convict)

FIR No.....2 4
Dated:.....19-01-2014
Charge u/ss.....381-A / 411 PPC
Police Station.....Thall.

(2)

Cr. Appeal No..... 03/SC
Date of institution:.....27-04-2015
Date of Decision:26-06-2015.

State...Vs.....Muhammad Atif s/o Niaz Deen
R/O: Mohallah Khayal Deen Thall...(Convict)

FIR No.....204
Dated:.....19-01-2014
Charge u/ss.....381-A / 411 PPC
Police Station.....Thall.

JUDGMENT
26-06-2015

1. By way of this single Judgment, I am intend to
dispose of the two Cr. Appeals bearing No.02 & 03 of 2015,

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preferred by the accused/convicts Umar Zad Gul s/o Amin Gul & Atif s/o Niaz Deen against the judgment & order dated 14-04-2015, passed by the court of learned Judicial Magistrate-II, Hangu, in case FIR No. 274 dated 19-01-2014 registered at PS Thall for offences u/s 381-A & 411 PPC, detail whereof has been given in the heading of appeal whereby, the appellants were convicted and sentenced u/s 411 PPC for 02 years R.I. with fine of Rs.30000/- each and default whereof, they shall further to undergo one month S.I while for offence u/s 380-A PPC, they were acquitted. Benefit of section 382-B Cr.PC was also extended in favor of accused/convicts.

2. Facts in brief of the case as disclosed in the FIR are that on 19-01-2014, the SHO Islam-U-Deen Khan received spy information that a stolen Suzuki (Carry Van) bearing registration No. LEF-3539 would be carried from Kohat to Thall by the culprits, so, he delivered this information to all the check posts/nakabandi, falls within the criminal jurisdiction of PS Thall while he alongwith other police nafri held barricade at Mamoo Khwar check post for arrest of the culprits and recovery of the stolen vehicle in question from their possession. In the meantime, during

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such nakabandi, the vehicle in question emerged on the spot and thus intercepted for checking purposes, wherein the SHO complainant found one Muhammad Atif s/o Niaz Deen on driving seat of the vehicle while another person namely Umar Zad Gul s/o Ameen Gul in its front portion. On cursory interrogation of the accused/convict Muhammad Atif by the local police, he disclosed that the Suzuki carry van is the stolen property and has purchased the same in consideration of Rs.1,90,000/-from one Khan-Jee and thus, both of them were apprehended for the offence in question and vehicle without registration documents was also taken into possession vide recovery memo by the local police. Murasila Ex.PB was drafted on the spot by the SHO complainant and on the strength whereof, the case FIR Ex.PA was registered against the accused/convicts referred above.

3. Investigation in the case was initiated by the local police and during the course whereof, both the apprehended accused were formally interrogated and examined by the IO and after their due interrogation etc, challan was ultimately submitted against them to face trial.

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4. Trial was commenced against them and both the accused/convicts were put to the test of trial. Formal charge was framed against the accused, to which, they pleaded not guilty and claimed trial. Prosecution witnesses were produced whom recorded their statement before the court and after closing of prosecution evidence, accused/convicts were examined u/s 342 Cr.PC, arguments were heard and ultimately, accused/appellants were convicted and sentenced u/s 411 PPC for two years R.I with fine of Rs.30000/- each while for offence u/s 381-A PPC, they were acquitted, so, feeling aggrieved of the said conviction order, the convicts/ appellants preferred the instant criminal appeal.

5. Arguments of the learned counsels for the convicts/appellants and Dy.PP for the state have been already heard and record perused.

6. On perusal of the available material on record, it reveals that in the present case, convicts/appellants are charged u/s 381-A & 411 PPC for committing theft of a Suzuki Carry Van bearing registration No.L.E.F-3539 (stolen property) which was claimed by the local police to have taken from personal possession of the

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convicts/appellants at the venue of occurrence vide recovery memo Ex.PC and thus, convicts/appellants were apprehended in the case for the commission of offence and case FIR Ex.PA was lodged.

7. The prosecution mainly relies on recovery of Suzuki Carry Van in question from personal possession of the convicts/appellants Muhammad Atif and Umar Zad Gul, their arrest on the spot in presence of marginal witnesses and promptly lodged FIR against them.

8. So far evidence of the prosecution witnesses is concerned, to this effect, Pw-2 Ibne Raza ASI is cited as marginal witness, Pw-3 Islam-U-Deen Khan SHO has shown himself as seizing officer while Pw-4 Nazir Badshah IHC as IO of the instant case. They have fully supported the case of prosecution while recording their examination in chief but when they were cross examined, they also made material contradictions, gist whereof is as follows:-

9. According to Pw-2 Ibne Raza ASI (marginal witness to the recovery memo Ex.PC), they remained on the spot for only 05 minutes after the alleged recovery of Suzuki carry van and thereafter, the police party returned to the police station while on the other hand, Pw-3 Islam-U-Deen Khan

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SI (seizing officer) has introduced a different story by stating therein that he after the occurrence, took into possession the vehicle in question, allegedly prepared the recovery memo, issued card of arrest of the convicts, drafted murasila and sent it to the PS for registration of case against the accused, so, a question arises that when they had allegedly remained on the spot for about 05 minutes, then how it is possible that the SHO complainant had compiled the whole proceedings in just 05 minutes, which factum makes the interception of vehicle on the spot by the local police, its recovery from possession of the accused and presence of the convicts in the said vehicle highly doubtful because, in just 05 minutes, no one can compile the whole recovery proceedings, as such, it is clear enough on record that the recovery of vehicle from possession of the accused has not taken place in the manner as alleged by the prosecution witnesses.

10. Similarly, Pw-2 Ibne Raza ASI admits while recording his cross examination by stating therein that his statement u/s 161 Cr.PC was recorded by the Pw-3 Islam-U-Deen Khan SHO complainant while this fact is negated by the said SHO and admits in his testimony that

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statements of the marginal witnesses were recorded by the Investigation Officer Pw-4 and stance of Pw-2 is further denied by the IO, whom admits that he had examined the Pw-2 marginal witness Ibne Raza ASI, as such, the testimony of prosecution witnesses on material points is in conflict and inconsistent with each other which factum makes the recovery of vehicle from personal possession of the convicts highly doubtful and clearly suggests that the recovery proceedings have not taken place in the manner as alleged by the SHO complainant, as such, the recovery of vehicle in question from their personal possession is not at all proved.

11. Likewise, Pw-4 Nazir Badshah ASI states in his deposition that he after receipt of copy of FIR, visited the spot where police officials were present while this fact is negated by the marginal witness Pw-2 whom admits that he alongwith the SHO complainant returned to the police station after the alleged recovery proceedings which factum makes the proceedings allegedly initiated by the IO highly doubtful because, according to Pw-2, the police party had returned to the PS after just 05 minutes while according to the IO, the police party was present on the spot when he

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visited the spot in question, as such, it is clear enough from their testimony that accused were not arrested on the spot and no such recovery of vehicle/stolen property was effected from their personal possession.

12. Likewise, the marginal witness Ibrah Razza (Pw-2) has further negated the stance of the prosecution by stating in his court deposition that he has neither stated in his 161 Cr.PC statement that the vehicle in question was recovered from personal possession of the accused and nor he has mentioned names of the accused therein which factum further makes the narration of SHO complainant highly doubtful and clearly suggests that accused were not arrested on the spot and no such recovery of vehicle was effected from their personal possession, as if it is presumed that the occurrence had occurred so, then definitely, names of accused would have been mentioned by the marginal witness Syed Ibrah Razza (Pw-2) in his 161 Cr.PC statement.

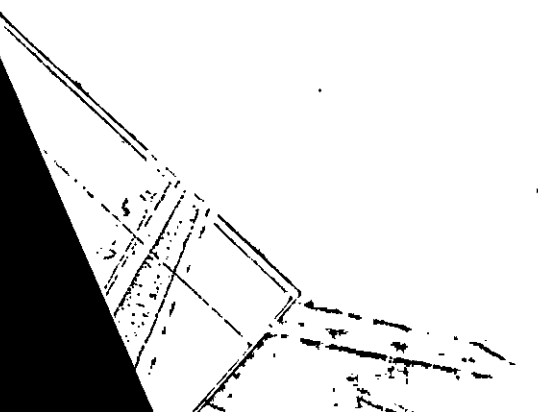
13. Stance of non-recovery of vehicle from possession of the accused has further testified by the IO (Pw-4) whom admits in his court deposition that the marginal witnesses have not stated before the IO that the recovery of the

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visited the spot in question, as such, it is clear enough from their testimony that accused were not arrested on the spot and no such recovery of vehicle/stolen property was effected from their personal possession.

12. Likewise, the marginal witness Ibne Raza (Pw-2) has further negated the stance of the prosecution by stating in his court deposition that he has neither stated in his 161 Cr.PC statement that the vehicle in question was recovered from personal possession of the accused and nor he has mentioned names of the accused therein which factum further makes the narration of SHO complainant highly doubtful and clearly suggests that accused were not arrested on the spot and no such recovery of vehicle was effected from their personal possession, as if it is presumed that the occurrence had occurred so, then definitely, names of accused would have been mentioned by the marginal witness Syed Ibne Raza (Pw-2) in his 161 Cr.PC statement.

13. Stance of non-recovery of vehicle from possession of the accused has further testified by the IO (Pw-4) whom admits in his court deposition that the marginal witnesses have not stated before the IO that the recovery of the

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vehicle in question was effected from possession of the accused. This witness has further clarified that owner of the vehicle has neither charged the accused for the offence of theft in FIR nor he was willing to record his statement u/s 161 Cr.PC to charge them in the case. The case property i.e vehicle has neither been produced before the court and has nor been exhibited during trial, as such, recovery of vehicle from possession of the accused and their arrest on the spot is not at all proved.

14. So far involvement of the accused Umar Zad Gul in the present case is concerned, no role has been attributed to him regarding his involvement in the commission of offence rather he has only been shown sitting in front portion of the vehicle, and to this effect, Pw-2 Syed Ibne Raza ASI admits that the said convict i.e Umar Zad Gul was allegedly given lift by Muhammad Atif (co-accused) and was allegedly boarded in the said vehicle as a passenger, hence, suffice it to say that no role regarding ownership of the vehicle has been attributed to him by the local police, nor he has been cited as co-owner of the vehicle, nor his presence in the vehicle and nor presence of the other co-accused Muhammad Atif has been proved and

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nor they have confessed their guilt regarding for the offence in question.

15. Though, the SHO complainant Islam-u-Deen Khan has averred in his initial report ie murasila Ex.PB that the Suzuki Carry Van is a stolen property and was purchased on the same day from one Khan Jee in Kohat in consideration of Rs.1,90,000/- but despite the fact, the prosecution has neither made the said Khan Jee as co-accused, nor produced him before the court as a witness, nor to this effect collected any evidence & nor examined u/s 161 Cr.PC, meaning thereby that a manipulated story has been introduced by the SHO complainant regarding the alleged recovery of vehicle from possession of the accused and their arrest on the spot.

16. So, keeping in view, the above mentioned facts and circumstances of the case, both the appeals filed by the appellants/convicts Muhammad Atif and Umar Zad Gul stand accepted and the conviction and sentences recorded by the learned trial court u/s 411 PPC are hereby set aside and both the convicts/appellants are hereby acquitted of the instant prosecution charges leveled against them.

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17. The case property shall remain intact till the lapse of time limitation provided for an appeal/revision and thereafter, be dealt in accordance with law.

18. File be consigned to Record Room after its completion and compilation while the requisitioned record be sent back to the quarter concerned.

ANNOUNCED
26-06-2015

(Abdul Hakim Hashmi)
Addl: Sessions Judge
Hangu.

CERTIFICATE

Certified that this judgment consists of Eleven (11) pages, and each page has been signed by me.

Dated: 26-06-2015

(Abdul Hakim Hashmi)
Addl: District Judge,
Hangu

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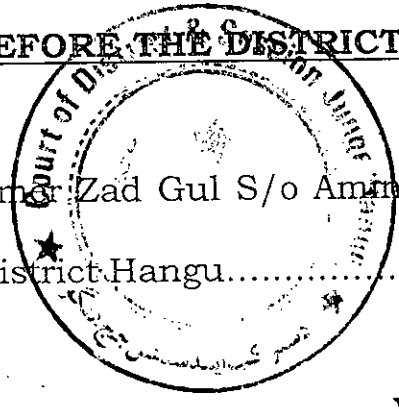
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Date of presentation of application 1-7-15
Date on which copy completed 5-8-15
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BEFORE THE DISTRICT AND SESSION JUDGE, HANGU

Umer Zad Gul S/o Amin Gul R/O Tarki Banda, Alwara Mela,
District Hangu.....(Accused/ Appellant)



VERSUS

The State.....(Respondents)

CASE F.I.R NO. 24 DATED 19/01/2014 CHARGE
U/S 411, 381-A PPC, POLICE STATION DOABA,
HANGU.

APPEAL AGAINST THE ORDER AND JUDGMENT
DATED 14/04/2015 OF LEARNED JUDICIAL
MAGISTRATE-II, HANGU WHEREBY LEARNED
TRIAL COURT CONVICTED AND SENTENCE THE
APPELLANT U/S 411 OF PPC TO TWO YEARS
R.I WITH FINE OF RS.30,000/= IN DEFAULT OF
PAYMENT ONE MONTH S.I, BENEFIT OF
SECTION 382 (B) Cr.PC IS EXTENDED TO THE
APPELLANT

PRAYER IN APPEAL:

On acceptance of this appeal the order and judgment dated 14/04/2015 of the learned Judicial Magistrate-II, Hangu may kindly be set aside and the appellant may please be acquitted from the charges mentioned above.

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JAMAL-UD-DIN
District & Sessions Judge,
Hangu.
21/4/15

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Respectfully Sheweth:

1. That the appellant being charged in the above cited case, was tried and convicted and sentenced by the learned Judicial Magistrate-II, Hangu, to the sentence mentioned above vide his order and judgment dated 14/04/2015. (Copy of order and judgment dated 14/04/2015 is attached as annexure "A").

Now the appellant approached this Hon'ble Court against the impugned order/ judgment on the following grounds, inter- alia.

GROUND:

(JAMAL-UD-DIN)
District & Sessions Judge,
Hangu.

21/4/15

- A. That the order/ judgment of the learned Trial Court is against the law, facts and material on record, hence liable to be set aside.
- B. That the persecution has miserably failed to prove the case beyond any shadow of doubt. The learned Trial Court while not extending the benefit of doubt to the accused/appellant has acted against the law and cannons of justice.

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C. That the PW- 4 Nazeer Badshaha Investigating officer has admitted in his cross examination that the appellant was a passenger to whom lift was given by co-accused who was a driver of the Suzuki van.

D. That there is no circumstantial evidence against the appellant.

E. That the learned Trial Court while deciding the ~~case~~ case has misread and mis-appreciated the evidence on record, hence reached on erroneous decision.

F. That the learned Trial Court has shown its indifferences to the well celebrated cannons of criminal justice.

G. That there are material contradictions in the statements of the PW's but the learned Trial Court has not taken into consideration this aspect of the case at all.

H. That there are numerous loop holes in the prosecution's story, which create serious doubts regarding the prosecution story.

(JAMAL-UD-DYN)
District & Sessions Judge.

21/4/15

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I. That any other ground will be taken at the time of arguments with the kind permission of this Hon'ble Court.

It is, therefore, most humbly prayed that on acceptance of this appeal the order and judgment dated 14/04/2015 of the learned Judicial Magistrate-II, Hangu may kindly be set aside and the appellant may please be acquitted from the charges mentioned above.

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[Signature]
Sessions Judge,
Hangu
21/4/15

Accused/Appellant

Through

[Signature]
Advocate

Muhammad Anjam Khan
Advocate, Hangu

Dated: 21/04/2015

NOTE: As per instruction of my client/ appellants no such appeal has earlier been filed before this Hon'ble Court.

[Signature]
Advocate

ADVOCATE

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[Supreme Court of Pakistan]

For Appellant

Present: Anwar Zaheer Jamali and Amir Hani Muslim, JJ

DIRECTOR-GENERAL, INTELLIGENCE BUREAU, ISLAMABAD---Appellant

Versus

MUHAMMAD JAVED and others---Respondents

Civil Appeal No. 180-K of 2010, decided on 21st July, 2011.

(On appeal from judgment of Federal Service Tribunal, Karachi dated 30-3-2010 passed in Appeal No. 56(K) (CS) of 2008).

Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---S. 5---Penal Code (XLV of 1860), Ss. 302 & 310---Criminal Procedure Code (V of 1898), S. 345---Constitution of Pakistan, Art.212(3)---Reinstatement in service---Civil servant was acquitted from murder charge, on the basis of compromise effected upon payment of Diyat---Civil servant was dismissed from service as he remained absent from duty during the period in detention but Service Tribunal allowed the appeal and reinstated him in service---Plea raised by authorities was that payment of Diyat was equated with conviction in crime---Validity---Period of absence of civil servant was treated by competent authority as extraordinary leave, therefore, ground of his illegal absence was no more available for awarding any punishment to him---Offence was lawfully compromised and disposed of whereby civil servant was acquitted---Such acquittal of civil servant could not be taken as his disqualification, coming in the way of his reinstatement in service---Supreme Court declined to interfere in the judgment passed by Service Tribunal---Appeal was dismissed.

Ashiq Raza, Deputy Attorney-General and Abdul Saeed Khan Ghori, Advocate-on-Record for Appellant.

Abdul Latif Ansari, Advocate Supreme Court and Mazhar Ali B. Chohan, Advocate-on-Record for Respondent No.1.

Respondents Nos. 2 and 3, Pro forma Respondents.

Date of hearing: 21st July, 2011.

JUDGMENT

ANWAR ZAHEER JAMALI, J.---By leave of the court, this civil appeal, at the instance of Director General, Intelligence Bureau, Islamabad, is directed against the judgment dated 30-3-2010, in Appeal No.56(K)(CS) of 2008, passed by Federal Service Tribunal, Karachi (in short the Tribunal), whereby the said appeal, preferred by respondent Muhammad Javed against his dismissal from service under the Removal from Service (Special Powers) Ordinance 2000, vide order dated 12-3-2008, after, no response of his departmental appeal dated 27-3-2008, was allowed, consequently order dated 12-3-2008 was set aside and his reinstatement in service was ordered, treating the intervening period of his absence as leave of the kind due.

2. Mr. Ashiq Raza, learned Deputy Attorney-General for the appellant, after brief narration of relevant facts, contended that respondent was involved in a murder case arising out of F.I.R. No.76 of 2004, Police Station Gharibabad Cantt. Hyderabad, which was subsequently compromised upon payment of diyat amount to the opposite party, therefore, it shall be equated as his conviction in the said crime, but the Tribunal ignoring this material aspect of the case, has ordered his reinstatement in service. He, however, did not dispute that the period of his absence from duty with effect from 3-9-2004 to 6-3-2005, which basically formed basis of such departmental action, was treated by the competent authority as extraordinary leave.

3. In reply, Mr. Abdul Latif Ansari, learned Advocate Supreme Court for the respondent contended that the Tribunal, in its impugned judgment, has aptly discussed the fact of compromise in the criminal case between the respondent and the opposite party, and rightly held that such compromise and consequent acquittal of the respondent in the said criminal case cannot be labeled as his conviction so as to entail consequences of his disqualification from service.

4. We have carefully considered the submissions made before us by the parties' counsel and also perused the material placed on record, which reveals that the period of absence of the respondent was treated by the competent authority as extraordinary leave, therefore, the ground of his illegal absence was no more available for awarding any punishment to him. Moreover, admittedly the offence arising out of F.I.R. No. 74 of 2006, Police Station Gharibabad, Cantt. Hyderabad was lawfully compromised and disposed of, whereby the respondent was acquitted. This being the position, a rightly urged by Mr. Abdul Latif Ansari, learned Advocate Supreme Court for the respondent, such acquittal of respondent cannot be taken as his disqualification, coming in the way of his reinstatement in service.

5. In view of the above, the impugned judgment of the Tribunal calls for no interference. This appeal is, therefore, dismissed.

M.H./D-11/SC

Appeal dismissed.

ATTACHED:-

Departmental Enquiry Against Accused Constable Umar Zad Gul S/O Ameer Gul R/O Turki Banda Involved In Case Fir No.24 Dated 19.01.2014 U/S 321-A/411 PPC PS Doaba.

It is submitted that accused Constable Naveed-ur-Rehman has been charged in the above subject mentioned case in which Ex-Constable Umar Zad Gul No.699 alongwith driver Mohammad Atif s/o Niaz r/o Thall were arrested and handed in a stolen Van bearing No. 2/LRF by SHO PS Doaba on 19.01.2014 at Mamoo Khawara Doaba.

In these circumstances a prima facie theft case of moral nature is based on strong evidence stands against accused constable Umarzad Gul No. 699. So far as judicial proceeding and departmental proceeding in such cases are concerned both are distinct in nature and opinion of one is not binding on the other forum. In departmental proceeding the commission of gross misconduct is to be judged against the govt servant while in judicial proceeding commission of offence is to be established so as to charge the accused with the commission of offence. This opinion can be seen in the order of Additional Police Officer Kohat Memo: No.3594/EC, dated 21.05.2013. (Copy attached).

In view of the above discussion enquiry officer may be asked to give a clear cut opinion as to whether defaulter constable has violated the disciplinary rules being the member of disciplined force and has been found guilty of misconduct or not. If reply is received in positive then final show cause notice may be issued against the above named constable for further proceeding in the case please.

Worthy DPO Hangu.

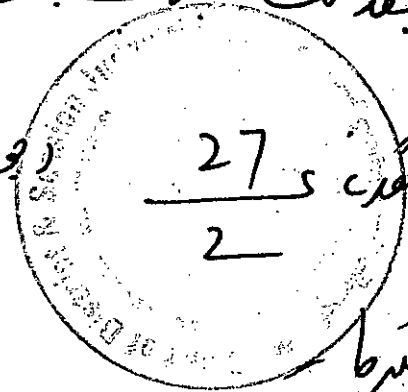
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DSP/Legal, Hangu

23/4/2014

بعدالت جناب جوڈیشنل مجسٹریٹ II صاحب صدر

14 $\frac{4}{15}$ 25 $\frac{2}{14}$ روع



بام عاطف و غیر

علت 24 روع 19 $\frac{1}{14}$ ص 411-381A کان دوآر

$\frac{166}{15}$

Order-29

14/04/2015

Unattested copies were handed over to both the accused.

عزیز الدین

عاطف

APP for state and accused are on bail present.

2- Arguments heard and record perused.

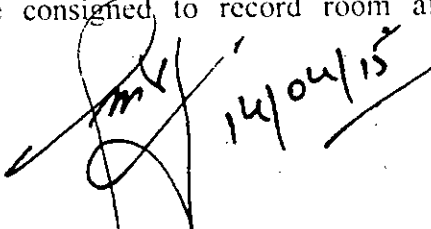

3- Vide my detailed judgment of today, placed on file, I see no reason of any doubt in the instant case, however, there is no cavil in holding that no case U/S 381-A PPC is made out against both the accused, hence, both the accused are acquitted from the charge U/S 381-A PPC, however, the subject vehicle was recovered from the personal possession

GS&PD.KP-530/12-9 Pads-PHC Bannu Bench-13.10.2011/PHC Jobs/NWFP (Criminal)

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No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
d. Order-29	14/04/2015	<p>of both the accused which remained un-shattered throughout the evidence of prosecution. Therefore, both the accused are held responsible U/S 411 PPC and I hereby convict both the accused U/S 411 PPC. Since, there is nothing available on record to show previous conviction or involvement of both the accused in any other criminal case, thus, both the accused are awarded sentence of two years RI with fine of Rs. 30,000/- each. In case of default in payment of fine both the accused shall undergo simple imprisonment of further one month. Benefit of section 382-B Cr.P.C is extended to both the accused. Since, both the accused are on bail hence both are taken into custody and sent to jail to suffer their sentence. Case property if any, be disposed of as per law after the expiry of period of appeal/revision.</p> <p>4- File be consigned to record room after completion.</p> <p><u>Announced</u> 14-04-2015</p> <p> 14/04/15</p> <p>(Muhammad Umer Al-Farooq Khan) Judicial Magistrate-II, Hangu.</p>
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1
IN THE COURT OF MUHAMMAD UMER AL-FAROOQ KHAN JM-II, HANGU

14
Criminal Case No. 27/2 of 2014

Date of Put in Court. 25/02/2014

Date of Decision 14/04/2015

STATE Through Islam-ud-Din Khan SHO PS Doaba, Tehsil Thall, District Hangu.-----*Complainant.*

VERSUS

1- *Atif S/O Niaz Din R/O Mohallah Khial Din Thall.*

2- *Umer Zad Gul S/O Amin Gul R/O Tarki Banda Alwara Mela District Hangu.*-----*Accused.*

F.I.R No. 24

Dated 19/01/2014

Charged U/S 411/381-A PPC

P.S Doaba.

JUDGMENT

Brief summary of the case in hands is such that on the eventful day SHO PS Doaba received a spy information that a stolen vehicle, make, Suzuki Carry Van bearing No. LEF 3539 will be transported from Kohat to Thall through unknown accused. The information was believed to be true and in pursuant whereof a check post was established at 'Mamo Khwara' police post. During the

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 checking the Suzuki Carry Van bearing No. LEF 3539 arrived which was signaled to stop. After the Van stopped one Muhammad Atif son of Niaz Din resident of Mohallah Khial Din Thall was sitting on the driving seat whereas, one Umer Zad Gul son of Amin Gul resident of Tarki Banda Alwara Mela was sitting next to the driver who were interrogated and driver Muhammad Atif disclosed that vehicle is a stolen property and he has purchased the same from one Khan Jee resident of Peshawar at Kohat in lieu of sale consideration of Rs. 190,000/-. Whereas both the accused did not have the registration book of subject vehicle Suzuki Carry Van bearing registration No. LEF 3539 Model 2013. Said vehicle was taken into custody through recovery memo and both the accused Muhammad Atif and Umerzad Gul were arrested. Murasila was drafted and sent to police station for registration of FIR. On the basis of 'murasila' case FIR No. 24 dated 19/01/2014 U/S 411/381-A PPC was registered against the accused in PS Doaba.

2- After completion of investigation the prosecution submitted complete challan against the accused. Accused were summoned. Accused appeared in court. Relevant documents were provided to them U/S 241- A Cr.PC. Charge against the accused was framed to which they did not plead guilty and claimed trail.

3- The prosecution in support of its case examined four witnesses and abandoned one witness PW ASHO Hakim Khan being unnecessary.

4- The gist of the prosecution evidence is as under.

(PW-1) Muhammad Tahir HC has stated in his statement that during the days of occurrence he was posted as AMHC in PS Doaba. On receiving the murasila he incorporated the contents of murasila into the shape of FIR which is Ex. PA. He further stated that he has seen the FIR, which is correct and correctly bears his signature. During cross-examination he admitted that no FIR number

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16 regarding theft of the vehicle is mentioned in the FIR. He has also stated that the SHO handed over him the vehicle in PS which was taken into safe custody and parked in PS.

(PW-2) Ibn-e-Raza ASI has stated in his statement that during the days of occurrence he was posted as ASI in PS Doaba and is marginal witness to the recovery memo Ex. PC vide which on 19/01/2014 SHO PS Doaba recovered one white colour Suzuki Model 2013 bearing registration No. 3539/LEF Engine No. 873711 and chassis No. PK-990212, without CNG, safety Jacket, from the possession of accused. The recovery memo was prepared on the spot and he signed the same on the spot. His statement U/S 161 CrPC was also recorded by SHO. Further stated that he has seen the recovery memo which is correct and correctly bears his signature and the signature of other marginal witness namely Hakeem Khan ASHO. During cross-examination he reiterated that during the days of occurrence he was posted in PS Doaba and at the time of occurrence he was on gusht with police party. They started from PS for gusht on 5:30 PM. He has also stated that he does not know that during gusht how many police officials were present with SHO Islam-ud-Din. He has further stated that they reached the spot at 05:45 PM and remained on Nakabandi for 15 minutes when the occurrence took place and the time of occurrence no other vehicle was available on the spot. He has also stated that they remained on the spot for only 05 minutes after the occurrence and after drafting of the murasila they returned to the PS along with SHO Islam-ud-Din Khan. He has further stated that the murasila, recovery memo and card of arrest of the accused are in handwriting of the SHO/IO. He has stated that neither any driving license nor any documents pertaining to the vehicle were recovered from the possession of accused. He has also stated that his statement U/S 161 CrPC was recorded on the spot by SHO Islam-ud-Din Khan. He has

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 further stated that in his statement recorded U/S 161 CrPC it is not mentioned that the vehicle was recovered from the possession of accused. He has stated that in his statement recorded U/S 161 CrPC the names of accused were not mentioned.

(PW-3) Islam-ud-Din Khan SHO has stated in his statement that during the days of occurrence he was posted as SHO in PS Doaba. On 19/01/2014 at about 18:00 hours he received secret information that unknown accused will take Carry Van No. LEF 3539 from Kohat to Thall which is stolen property. Upon this information he along with other police officials laid a picket near police post Mamo Khwara. In the meanwhile Suzuki Carry Van bearing registration No. LEF 3539 came across, which was signaled to stop. He has stated that two persons were sitting in the Carry Van. On the driving seat the person disclosed his name as Muhammad Atif S/O Niazbin and on front seat the person disclosed his name as Umerzad Gul S/O Amin Gul. He has stated that he inquired about the documents of the Suzuki from driver Muhammad Atif who disclosed that the Carry Van is a stolen property and has purchased the same from one Khan Jee of Peshawar in Kohat on payment of sale consideration of Rs. 1,90,000/-. He has also stated that the Suzuki bearing No. LEF 3539 Model 2013 without registration copy was took into possession through recovery memo already Ex. PC in presence of marginal witnesses. He has further stated that he signed the recovery memo and took the signatures of marginal witnesses on it. He has also stated that he prepared card of arrest of both the accused which is Ex. PW-3/1. He has further stated that thereafter he drafted murasila Ex. PB and sent the same to PS for registration of case FIR against the accused. On the basis of murasila, FIR Ex.PA was registered against the accused. He has also stated that after the registration of FIR the investigation of the case was handed over to IBH staff of police station Doaba. He has further stated that after completion of investigation he being SHO of the PS

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Doaba submitted complete challan against the accused. He has also stated that he has seen all the relevant documents, which are correct and correctly bear his signatures. During cross-examination he has stated that accused Umerzad Gul is a resident of Tehsil Hangu while accused Atif is a resident of Tehsil Thall. He has stated that he initially interrogated both the accused separately and they both disclosed that both the accused personally know each other. He has stated that this fact of acquaintance between the both accused has not been mentioned by him in the murasila as well as other relevant record. He has also stated that it may be possible that accused Umerzad Gul who was seated in front seat of the Suzuki Van was neither owner nor conductor or last possessor of the vehicle. He has further stated that during his interrogation accused Umerzad Gul did not disclose any information regarding the purchase of subject vehicle from any one. He has also stated that he cannot say that whether accused Umerzad Gul was sitting in the vehicle as passenger or not. He has further stated that during gusht of Illaqa he received secret information. He has also stated that he has not recorded the statement and name of informer who disclosed the information to him. He has further stated that in the statement of marginal witnesses of the recovery memo recorded U/S 161 CrPC they have not stated before the IO that the Suzuki was recovered from the possession of accused Atif. Self stated that he clearly mentioned this fact in the murasila that accused Atif was sitting on driving seat and from his possession and the possession of other accused the Suzuki was recovered. He has also stated that while submission of complete challan he has gone through the whole file. He has further stated that accused Atif in his statement recorded U/S 161 CrPC has not stated before the IO that the Suzuki was stolen one. Self stated that the accused disclosed this fact to the IO that he purchased the same from one Khan Jee at Kohat on payment of sale consideration

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 at 1,90,000/-. He has also stated that he has mentioned in the summary of the case that the accused are habitual and are not disclosing anything regarding their involvement in the present case. He has further stated that the accused have not confessed their guilt before the competent Court of law. He has also stated that no driving license or any other title document on the name of accused has been recovered from the possession of accused.

(PW-4) Nazeer Badshah HC PS City has stated in his statement that during the days of occurrence he was posted as IHC in PS Doaba. On receiving the copy of FIR along with other documents he rushed to the spot, where the police officials were present. He recorded the statements of marginal witnesses U/S 161 CrPC. He has stated that he produced the accused before the Illaqa Judicial Magistrate for obtaining their physical remand which was accepted and three days physical custody of accused was granted to him. He has also stated that he interrogated the accused in the present case. He has further stated that he contacted the ETO Lahore through his high-ups vide letter Ex. PW-4/1. He has also stated that he submitted an application to the Incharge car lifting cell district Hangu for verification who after verification submitted his report that the vehicle has been stolen within the jurisdiction of police station Gulshan Ravi Lahore and in this respect an FIR No. 37 dated 16/01/2014 U/S 381-A PPC was registered. His application is Ex. PW-4/2. He has further stated that he interrogated the accused in the present case and recorded their statements U/S 161 CrPC. He has also stated that he obtained the copy of FIR of PS Gulshan Ravi through fax which is available on file. He has further stated that he obtained the copy of registration of the vehicle through fax which is also available on file. He has also stated that he contacted the owner of the vehicle namely Aleem Sharif Bhatti in respect of the vehicle. He has further stated that one Abdul Aziz SI Model Town Division

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Lahore on 14/02/2016 applied to the court of Learned Additional Session Judge Hangu for shifting/transfer of Carry Van from district Hangu to District Lahore and vide order dated 14/02/2014 of Learned Additional Sessions Judge Hangu the Carry Van was handed over to the said SI for shifting the same from district Hangu to district Lahore. He has also stated that his high-ups directed him that after receiving the copy of FIR of PS Gulshan Ravi Lahore the section of law i.e. 381-A may be deleted from the FIR which he had deleted and in this respect he issued '*Parwana*' which is Ex. PW-4/3. Later on upon the direction of learned APP Hangu he again inserted said section of law in the FIR and in this respect he also issued '*Parwana Izudgi*' which is Ex. PW-4/4. He has further stated that he produced the accused before the Illaqa Judicial Magistrate for sending them to judicial lockup on judicial remand which was accepted and the accused were remanded to judicial lockup on judicial remand. During the cross-examination he has stated that the marginal witnesses have not stated before him that the vehicle was recovered from the possession of accused Atif. He has also stated that the marginal witnesses have not stated before him that both the accused were present in the vehicle during taking into possession of the same. He has further stated that the marginal witnesses have not stated before him that the accused purchased the vehicle from one Khan Jee. Self stated that this fact is available in the murasila and FIR as well as in the statement of accused Atif. He has also stated that an FIR regarding theft of the vehicle was registered in PS Gulshan Ravi Lahore. The copy of which is available on file. In that FIR the report was lodged by the owner of Suzuki. In that report he charged unknown accused for the commission of offence. He has further stated that the owner of Suzuki namely Aleem Sharif Bhatti came to PS Doaba for taking information about the Suzuki. The owner of vehicle was not willing to record his statement U/S 161 CrPC before him. He was only

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 interested in the Suzuki. He has also stated that the case property is not present before him. Self stated that the same was handed over to the local police of police station Gulshan Ravi Lahore through order of competent court. He has further stated that during interrogation accused Atif disclosed to him that accused Umerzad Gul was standing on the way who took lift from him as a passenger. He has also stated that he has not collected any material in respect of involvement of present accused in such like cases.

5- After completion of trial statements of accused were recorded U/S 342 Cr.PC. Wherein they denied the allegations leveled against them and pleaded innocence. They did not wish to be examined on Oath or produce defense evidence.

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

7- Learned APP for the state has contended that throughout the evidence the factum of presence of both the accused in the subject vehicle remains consistent which unequivocally suggest that both the accused are responsible of theft and receiving the stolen property. Therefore, both the accused are liable to punishment under sections 381-A and 411 PPC.

8- Contrary, learned counsel for the accused have contended that the prosecution has failed to prove the case beyond the shadow of any doubt. Since the statement of PW-2 i.e. Ibne Raza would suggest that he reached to the spot at 05:45 PM and remained there for 15 minutes and left the spot after 5 minutes of the occurrence whereas SHO Islam-ud-Din in his statement as PW-3 has stated that he had received the secret information at about 18:00 hours i.e. 06:00 clock PM which clearly reflect that the whole of the story has been concocted. Furthermore, the original owner of the subject vehicle did not charge accused of

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22 theft to the extent that he did not even record his statement U/S 161 Cr.P.C before the I.O who had registered FIR No. 37 dated 16/01/2014 U/S 381-A PPC at police station Gulshan Ravi Lahore. Therefore, the accused cannot be held responsible U/S 381-A PPC for the obvious reason that same would tantamount to double jeopardy within the contemplation of Section 403 Cr.P.C, whereas, the prosecution has hopelessly failed to prove the case. Therefore, accused may be acquitted from the frivolous charge leveled against them.

9- With the able assistance of the counsel and APP for the state it transpired that there is no denial to the fact that vehicle bearing No. LEF 3539 was recovered from the possession of accused Atif S/O Niaz Din who was driving vehicle whereas, accused Umerzad Gul S/o Kamin Gul was seated next to the accused Atif on the front seat as per murasila Ex. PB and vehicle was recovered from their possession vide recovery memo Ex. PC. Whereas, the accused were arrested vide card of arrest Ex. PW-3/1 on the spot. There is another aspect of the case as well that one of the co-accused i.e. Umerzad Gul S/O Amin Gul was also a police constable in the same district and if the version of the prosecution was untrue the said police constable would have been made to escape from the face of record. Therefore, I see no reason of any doubt in the instant case, however, there is no cavil in holding that no case U/S 381-A PPC is made out against both the accused, hence, both the accused are acquitted from the charge U/S 381-A PPC, however, the subject vehicle was recovered from the personal possession of both the accused which remained un-shattered throughout the evidence of prosecution. Therefore, both the accused are held responsible U/S 411 PPC and I hereby convict both the accused U/S 411 PPC. Since, there is nothing available on record to show previous conviction or involvement of both the accused in any other criminal case, thus, both the accused are awarded sentence of two years RI with

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fine of Rs. 30,000/- each. In case of default in payment of fine both the accused shall undergo simple imprisonment of further one month. Benefit of section 382-B Cr.P.C is extended to both the accused. Since, both the accused are on bail hence both are taken into custody and sent to jail to suffer their sentence. Case property if any, be disposed of as per law after the expiry of period of appeal/revision.

10- File be consigned to RRG after completion and compilation.

Announced:
14/04/2015

(Muhammad Umer Al-Farooq Khan),
Judicial Magistrate-II,
Hangu.

Certificate

Certified that this judgment of mine consists of two (10) pages. Each page has been read over, corrected and signed by me wherever it was necessary.

(Muhammad Umer Al-Farooq Khan),
Judicial Magistrate-II,
Hangu.

CERTIFIED TO BE TRUE COPY

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KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1640 /ST

Dated 4 / 10 / 2016

To


The D.P.O,
Hangu.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 19.09.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1557 /ST

Dated 21 / 9 / 2016

To

The Secretary Agriculture Live Stock & Cooperative Department,
Peshawar.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated
02.09.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.