

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1320/2013

Date of Institution ... 10.09.2013

Date of Judgment ... 30.01.2017

Mr. Gohar Rehman, Constable No. 3558,
Police Station Shrengal, District Dir Upper.

... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
2. The Commandant Elite Force, Khyber Pakhtunkhwa Peshawar.
3. The Deputy Commandant Elite force, Khyber Pakhtunkhwa Pesahwar.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED 14.05.2013
WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE WAS
IMPOSED ON THE APPELLANT AND AGAINST NOT TAKING ACTION
ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE
STATUTORY PERIOD.

Mr. Noor Mohammad Khattak, Advocate.

.. For appellant.

Mr. Kabirullah Khattak, Assistant Advocate General

.. For respondents.

MR. MUHAMAMD AAMIR NAZIR

.. MEMBER (JUDICIAL)

MR. ASHFAQUE TAJ

.. MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: Gohar Rehman, Constable No. 3558,

hereinafter referred to as appellant, through the instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, has impugned order dated 14.05.2013 vide which appellant was awarded major penalty of dismissal from service. Against the impugned order appellant filed departmental appeal which was not decided within the statutory period.

2. Brief facts of the case giving rise to the instant appeal are that the appellant was inducted as Constable in the respondent-department and started performing his duties with

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great zeal and zest. That during his service the appellant was served with charge sheet alongwith statement of allegations to the effect that the appellant absented himself with his lawful duty with any leave or prior permission and he was also involved in smuggling of Chars. That subsequently the appellant was dismissed from service vide impugned order dated 14.05.2013. That feeling aggrieved, appellant filed a departmental appeal against the impugned order, however the same was not replied by the respondents within the statutory period, hence the instant appeal.

3. Learned counsel for the appellant argued before the court that no charge sheet was served upon the appellant and similarly no chance of personal hearing was given to the appellant before passing the impugned order. That no regular enquiry was conducted by the respondents-department which was mandatory requirement of the law. That since the impugned order is illegal and without any justification, hence the same be set aside.

4. In rebuttal, learned Assistant Advocate General argued before the court that all legal requirements were fulfilled by the respondents before passing the impugned order. That a proper enquiry was conducted and there-after final show cause notice was served upon the appellant. That since the appellant was involved in smuggling of narcotics and was also convicted by the competent court of law, hence the competent authority has rightly awarded major penalty of dismissal from service to the appellant. That the appeal being devoid of merits be dismissed.

5. We have heard arguments of learned counsel for the appellant and learned Assistant Advocate General for the respondents and have gone through the record available on file.

6. Perusal of the case file reveals that as per charge sheet and statement of allegations the appellant remained absented from duty without leave or prior permission from 07.02.2013 to 20.02.2013 and he also remained involved in smuggling of chars from Bara, Khyber Agency. In this respect proper enquiry was initiated and the enquiry officer after recording statements of

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the witnesses came to the conclusion that the appellant was involved in smuggling of narcotics and remained in Bara Khyber Agency during his absence period. The enquiry officer further brought on record case FIR No. 524 u/s 4-PO Police Station Oach, District Lower Dir dated 23.12.2011 vide which the appellant was convicted by Sub-Divisional Magistrate, Chakdarra to fine of Rs. 2000/- and default of payment of fine the appellant would have under to go simple imprisonment for 80 days. From the record it is evident that the appellant deals with narcotics and has also been convicted for the same, hence the competent authority has rightly awarded major penalty of dismissal from service. We see no force in the substance of the instant appeal, therefore we are inclined to dismissed the appeal in hand. Parties are left to bear their own costs. File be consigned to the record room.



(ASHFAQUE TAJ)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

ANNOUNCED
30.01.2017

20.09.2016

Appellant with counsel and Mr. Usman Ghani, Sr.GP for respondents present. Counsel for the appellant requested for adjournment. Adjournment granted. To come up for arguments on 30.01.2017.



Member

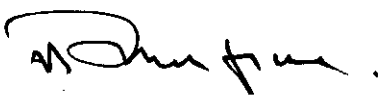


Member

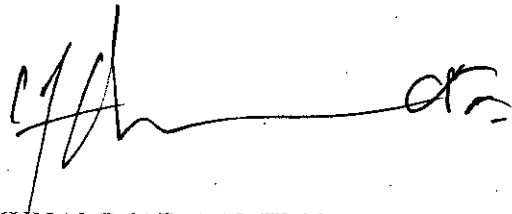
30.01.2017

Counsel for the appellant and Additional AG alongwith Mr. Javid Iqbal, Inspector for respondents present.

Vide our detailed judgment of today consists of three pages placed on file, we see no force in the substance of the instant appeal, therefore we are inclined to dismissed the appeal in hand. Parties are left, however, left to bear their own costs. File be consigned to the record room.



(ASHFAQUE TAJ)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

Announced
30.01.2017

21.1.2015

Counsel for the appellant and Mr. Muhammad Jan, GP with Javed Iqbal Inspector (Legal) for the respondents present. Rejoinder received, copy whereof is handed over to the learned GP. To come up for arguments on 03.6.2015.



MEMBER

03.06.2015

Counsel for the appellant and Addl: AG for the respondents present. Arguments could not be heard due to learned Member is on official tour to camp court Swat, therefore the case is adjourned to 29.10.2015 for arguments.



Member

29.10.2015

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP for respondents presents. Clerk to counsel for the appellant requested for adjournment. To come up for arguments on 3-5-16



Member



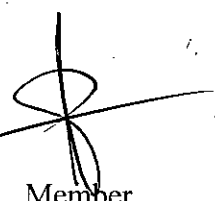
Member

03.05.2016

Agent to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Agent to counsel for the appellant requested for adjournment. Adjournment granted. To come up for arguments on 20.09.2016.



Member



Member

1320/13
14.5.2014.

Counsel for the appellant and AAG with Javed Iqbal, Inspector for the respondents present and requested for further time. To come up for written reply on 23.7.2014.


MEMBER


MEMBER

23.07.2014

Appellant in person and Mr. Muhammad Jan, GP with Javed Iqbal, Inspector for the respondents present and reply filed. To come up rejoinder on 10.9.2014.


MEMBER

10.09.2014

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. The learned Member is on leave. To come up for the same on 06.11.2014.


READER

06.11.2014

Junior to counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. Counsel for the appellant needs further time. To come up for rejoinder on 21.1.2015.


MEMBER

Appeal No. 1320/2013

Mr. Gobur Rahman

28.11.2013

Junior to counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 27.12.2014.

Member

27.12.2013

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the order dated 14.05.2013, the appellant filed departmental appeal on 14.05.2013; which has not been responded within the statutory period of 90 days, hence the present appeal on 10.09.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 27.02.2014.

The appellant deposited Rs. 180/- Bank receipt attached on file

Member

27.12.2013

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

Chairman

27.2.2014

Appellant in person and Mr. Muhammad Jan, GP with Javed Iqbal (Inspector) for the respondents present and needs time. To come up for written reply on 14.5.2014.


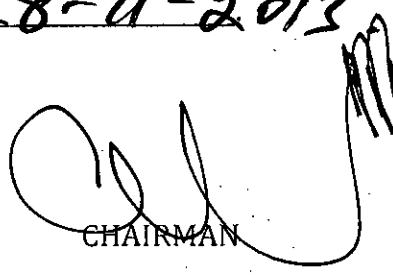
MEMBER

MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1320 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10/09/2013	<p>The appeal of Mr. Gohar Rehman presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	17-9-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>28-11-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1320 /2013

Gohar Rehman

VS

Police Deptt:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	1- 3.
2.	Statement of allegation	A	4.
3.	Reply	B	5- 6.
4.	Medical prescription	C	7.
5.	Show cause notice	D	8.
6.	Reply	E	9.
7.	Impugned order	F	10.
8.	Departmental appeal	G	11.
9.	Vakalat nama	12.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1320 /2013

S.W.F. Peshawar
1330
10-9-13

Mr. Gohar Rehman, Constable No.3558,
Police station shrenagal, District Dir upper.....**Appellant**

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
- 2- The Commandant Elite Force, Khyber Pakhtunkhwa Peshawar.
- 3- The Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar..... **Respondents**

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER DATED 14-5-2013 WHEREBY
MAJOR PENALTY OF DISMISSAL FROM SERVICE
WAS IMPOSED ON THE APPELLANT AND AGAINST
NOT TAKING ACTION ON THE DEPARTMENTAL
APPEAL OF THE APPELLANT WITHIN THE
STATUTORY PERIOD

PRAYER:

That on acceptance to this appeal the impugned order dated 14-5-2013 may very kindly be set aside and the appellant may re-instated with all beck benefits. Any other remedy which this august tribunal deems fit may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of respondent Department and has served the respondent Department as Constable quite considerable time quite efficiently and upto the entire satisfaction of his superiors.

- 2- That the appellant while working as Constable in the respondent Department a statement of allegation was served upon the appellant without charge sheet in which it was alleged that appellant absented himself from lawful duty without any leave or prier permission with effect from 7-2-2013 till 14-2-2013 and also involved in smuggling of chars from Bara Khyber Agency. Copies of the statement of allegations, reply and medical prescription are attached as annexure**A, B and C.**
- 3- that then after a show cause notice was issued to the appellant and the same was also replied by the appellant. That vide order dated 14-5-2013 the appellant was dismissed from service without conducting regular enquiry by the respondent Department. Copies of the show cause notice, reply and impugned order are attached as annexure**D, E & F.**
- 4- That feeling aggrieved appellant filed Departmental appeal the impugned order dated 14-5-2013 but the same was not replied by the respondent Department within the statutory period. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure**G.**

GROUND:

- A- That the impugned order dated 14-5-2013 is against the law, facts, norms of natural justice and materials on the record is not and liable to be set aside.
- B- That the appellant has not treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents are violated article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That no charge sheet has served on the appellant which is mandatory before passing/ issuing any advance order against civil servant.
- D- That no chance of personal hearing/ personal defense has been given to appellant while issuing the impugned order dated 14-5-2013.
- E- That no regular enquiry has been conducted by the respondent Department before issuing the impugned order dated 14-5-2013 which as per Supreme Court judgment is necessary while taking any punitive action against civil servant.

F- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT

GOHAR REHMAN

THROUGH: 
NOOR MOHAMMAD KHATTAK
ADVOCATE

A-4

SUMMARY OF ALLEGATIONS

1. Muhammad Iqbal, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, am of the opinion that Constable Gohar Rehman No. 3558, Platoon No. 89 has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette, 27th January 1976).


SUMMARY OF ALLEGATIONS

He remained absent from duty without any leave or prior permission w.e.f. from 07.02.2013 till this date and also he was involved in smuggling of chars from Barra Khyber agency as reported by DPO Dir Upper vide his letter No. 82-85/SB Dir Upper dated 08.02.2013.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Mr. Ali Rehmat Khan DSP/Elite Force Swat is appointed as Enquiry Officer.

3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.

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


(MUHAMMAD IQBAL)
Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar.

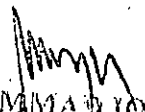
No. 2119-25/EF, dated Peshawar the 14/02/2013.

Copies to:

1. Deputy Superintendent of Police, Elite Force Swat.
2. Office Superintendent, Elite Force Khyber Pakhtunkhwa Peshawar.
3. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. SRC / FMC, Elite Force Khyber Pakhtunkhwa Peshawar.
6. Constable Gohar Rehman No. 3558 of Elite Force through reader DSP/Elite Force Swat.

ATTESTED




(MUHAMMAD IQBAL)
Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar.

موقوفہ خیرات دینی سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

حضرت علی

مذہب کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

1- مذہب کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے
2- کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے
3- کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

2- کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

3- کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

4- کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

5- کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

6- کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

7- کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

8- کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

9- کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

10- کو سب سے زیادہ اور اس میں سے کچھ حصہ کو بھی دینا چاہیے اور اس میں سے کچھ حصہ کو بھی دینا چاہیے

ARRESTED
19

کا کہہ دے جان پر ہے ہر قسم کی ہمت کے لئے کہ فارغ کر دیا گیا اور سبھی کو اس کے
تک LRH کے درمیں زیر علاج ہے۔ تقریباً ہے۔ جنسیاتی کے لئے جس
نے صرف $20 \frac{2}{13}$ کو حاضر کیا ہے۔

جنہ عالی! میں جان دو جو کہ غیر حاضر نہیں ہوا بلکہ مندرجہ بالا حالات واقعات کی
میں سے غیر حاضر ہو گیا ہے۔ جو بندہ کے اہتمام میں نہ رہے۔

جنہ عالی! بندہ کو جس سہولت کے بارے میں سوچ بھی نہیں سکتا، اور جس الزام کو
کہہ سکتا ہے۔ بندہ اس طرح کی سہولت میں نہ ملوث تھا۔ نہ وہ
اور نہ ہے۔ اس کے مگر انکار ہے۔

جنہ عالی! میں فقط اچھا غیر حاضر نہیں بلکہ حالات میں حاضر ہو گیا
اور وہ درمیانی کا مرتبہ نہ ہوا ہے۔

جنہ عالی! میں نے اہل ضمانتی ہالہ زانی کی طور پر آرہی ہے کہ وہ کبھی کے لئے
جس سے میں تصدیق ہو سکتی ہے۔

اور وہ مناسب سمجھتا ہوں کہ وہ بھی اپنی سزا ہی میں کر سکتا
توکل علی اللہ، ان کے سوا کسی اور کے لئے ہلاکت ہلاکت علم نفسی ہوتی
ہوگی ہے۔ اور اللہ تعالیٰ سے قائم رہتا ہے۔ اور کوئی اور ہلاکت
نہیں ہے۔

التکمیل $27 \frac{2}{13}$
تعمیر $27 \frac{2}{13}$

گوپیراجن
3558

ATTESTED
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D - (8)

FINAL SHOW CAUSE NOTICE

I, Muhammad Quraish Khan, Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar as competent authority under Police Rules (amended vide NWFP gazette, 27th January 1976), do hereby serve you Constable Gohar Rehman No. 3558 of Plate No. 89 as follows;

You remained absent from duty without any leave or prior permission w.e.f. 07.02.2013 till this date, also you were involved in smuggling of opium from Barra Khyber agency as reported by DPO Dir Upper vide his letter No. 82-85/SB Dir Upper dated 08.02.2013.

i. That consequent upon the completion of enquiry conducted against you by DPO Elite Force Swat for which you were given full opportunity of hearing but you failed to satisfy the enquiry officer.

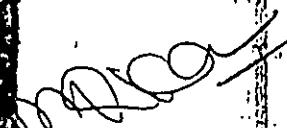
ii. On going through the finding and recommendation of the enquiry officer, the material available on record, I am satisfied that you have committed the omission/commission specified in Police Rules (amended vide NWFP gazette, 27th January 1976) and charges specified against you have been established beyond any doubt.

2. As a result therefore, I, Muhammad Quraish Khan, Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar as competent authority have tentatively decided to impose major penalty upon you including dismissal from service under Police Rules (amended vide NWFP gazette, 27th January, 1976) of the said ordinance.

3. You are therefore directed to show cause as to why the aforesaid penalty should not be imposed upon you.

4. If no reply to this show cause notice is received within seven days of its delivery, in the normal course of circumstances, it shall be presumed that you have no defense to put forward in that case an ex-parte action shall be taken against you.

5. A copy of the finding of the Enquiry Officer is enclosed.


(MUHAMMAD QURAISH KHAN) P.
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

No. 4026 /EF, dated Peshawar the

14/03/2013

Constable Gohar Rehman No. 3558 of Elite Force, through SP/ Elite Force Swat. A special messenger be deputed to serve this notice upon the accused Constable at his home address.

ATTESTED



E-9

To

Muhammad Quresh Khan
Commandant Elite Fore Khyber Pakhtunkhwa
Peshawar

Subject:- Final Show Cause Notice

Sir,


According to Show Cause notice No.4026 dated 14/03/2013, served upon Gohar Rehman Constable Elite Force Sheringal Dir Upper. The following reply being given to the Hono'ble Deputy Commandant Elite Force Khyber Pakhtunkhwa.

- (i) According to para No. Opportunity has been given to the petitioner, as this the principle that none should be condone in heard under the law through the petitioner has strong could satisfy the enquiry office because the petitioner is quite innocent.
- (ii) As the petitioner has committed no wrong and being a major penalty which being imposed upon the petitioner is not only un-justice but totally one in because no opportunity of hearing has been given to the undersigned being the principle that no one should be condated un heard and if you honour may kindly give the opportunity to the undersigned shall fully satisfy the honourable Deputy Commandant of Elite Force K.P.K.
- (iii) In the light of the above mentioned lines the petitioner has committed no wrong and under natural justice being a fundamental right provided to the petitioner under constitution, the petitioner is quite innocent and cannot be remove from service as the petitioner is the only source of income of his family and wanted to serve the nation with the entire satisfaction of the heart of the undersigned because the petitioner is innocent s the petitioner absence was not intentionally but kidnapped by Taliban and therefore life threat also has been to the petitioner.
- (iv) As in the light of the above lines the undersigned shall obey every order of his boss and therefore reply of the notice of your honour is being given, therefore it is humbly prayed that being only the source of income of his family the petitioner may kindly be restore on his job under natural justice and not to disturb the fundamental right of the petitioner.

ATTESTED

13/3/13

Yours obediently,


(Gohar Rehman)
Constable 3558
P.S. Sheringal
Platoon No.89

22/3/2013

Page 3 F-10

ORDER

This order will dispose the departmental enquiry against Constable Gohar Rehman No. 3558 of Elite Force who remained absent from lawful duty without any leave or prior permission w.e.from 07.02.2013 to 20.02.2013, during his absent period he was involved in smuggling of "Chars" from Barra Khyber agency as reported by DPO Dir Upper vide his letter No. 82-85/SB dated 08.02.2013.

Consequently an enquiry was conducted against him by SP/Elite Force Swat and the Enquiry Officer found him guilty of the charges leveled against him. During the enquiry it was transpired that the accused Constable was also fined Rs. 2000/- by the court in case FIR No. 524 dated 23.12.2011 u/s 4-PO PS Ouch. A Final Show Cause Notice was issued to him, but his reply was found unsatisfactory. He was also heard in person, but he failed to satisfy the undersigned.

I have come to the conclusion that his retention in Police department will bring a bad name to the organization as he is a habitual criminal as evident from his past conviction by the court of law.

I, Muhammad Iqbal, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar, as competent authority, impose major penalty upon the accused Constable Gohar Rehman No. 3558 and hereby dismiss him from service w.e.from 07.02.2013.



(MUHAMMADIQBAL)

Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.

No. 6841-48/EF, dated Peshawar the 14 /05/2013.

Copy of above is forwarded to the:-

1. Superintendent of Police, Elite Force Swat.
2. Office Superintendent, Elite Force Khyber Pakhtunkhwa Peshawar.
3. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. OASI / Incharge Kot, Elite Force Khyber Pakhtunkhwa Peshawar.
6. SRC / FMC, Elite Force Khyber Pakhtunkhwa Peshawar.

ATTESTED


D:\Dismissal\order\New\Dismissal Order\Dismissal Order for Absentee.docx

4050
2-5-13

درخواست ملر او مالی سرورس ملکہ پولیس
محبت کانٹریبل البرٹ فورس

قنات عالی گنہ اورس صبا زیل

1) یہ کہ مسائل مندرجہ ملکہ کوڑ چوادر، عقل اور انہاں صفا اور ملکہ

2) یہ کہ مسائل ملکہ پولیس میں محبت کانٹریبل البرٹ فورس

نمبر 29-07-2008 بھرتی ہوا ہوں جو کہ بمقامات ذیل
FRP سہوات، ڈسٹرکٹ لوٹر میں، ڈسٹرکٹ اپریٹر
پولیس لائن دیر باد، بشپ رفل ڈیڑی سم انجام دی ہے
جو کہ تا حال عاقل سرورس ڈسٹرکٹ پولیس سہوات تھا۔
(3) یہ کہ مسائل اپنا ڈیڑی ہر وقت سم انجام دے رہا تھا

اپنی ڈیڑی کی وجہ سے بقانہ اوج کے SHO

انور سید خان نے من مسائل کے خلاف مقدمہ
علت نمبر 425 لمبورہ 23-2008 جرم 490 تھا
اوج درج کر کے بعد میں مسائل نے مذکورہ مقدمہ
میں جرمانہ فیروار مقدمہ کو ختم کیا۔

(4) یہ کہ اس وقت کے SHO انور سید نے مسائل
کیساتو ذاتی عناد کی بناء پر مقدمہ متذکرہ با
بنوایا تھا۔

ATTESTED

5) یہ کہ مسائل بناتے عزیز خانہ از...

5812/11-11/6/2018
Regd.
Fog...

نوکری سے ہر فاسحت کیا ہے دوبارہ بحال کیا جائے
کہ یہ کہ سائیل آئیندہ زندگی میں اپنی ڈیوٹی انجام
سے سرانجام دینے۔

(7) یہ کہ سائیل کے خلاف لگائے گئے الزامات ختم اور
بے بنیاد ہیں، بد نیتی پر مبنی ہے لہذا استدعا ہے کہ
سائیل کو دوبارہ نوکری متذکرہ بالا پر بحال کیا جائے
سائیل کے اہل خاندان پر رحم فرمایا جائے۔
سائیل آئندہ دور زندگی میں اپنی ڈیوٹی
فوش اسلوب میں اور بروقت سرانجام دینے۔

سری

آپ کا تابع و فرمان

گوہر رحمن

کانسٹیبل ایڈٹ فورس

بیلڈ نمبر 3558

ولد فضل بردقان

سکنہ اویج شرقی

تحصیل اتڈی ڈیر ٹولڈ

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar.

_____ OF 2013

Gohar Rehman

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt

(RESPONDENT)
(DEFENDANT)

I/We Gohar Rehman

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2013

Gohar Rehman

CLIENT

Noor Mohammad Khattak

ACCEPTED

**NOOR MOHAMMAD KHATTAK
(ADVOCATE)**

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 1320/2013

Gohar Rehman.....(Appellant).

Versus

Inspector General of Police Khyber Pakhtunkhwa
Peshawar and two other.....(Respondents).

Subject:- REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth!

Preliminary Objections:-

- a) The appeal is not based on facts.
- b) The appeal is bad for non-joinder of necessary parties.
- c) The appeal is not maintainable in the present form.
- d) The appellant has not come to the Honorable Service Tribunal with clean hands.
- e) That the instant appeal is barred by law.

FACTS:-

1. Incorrect, appellant did not serve to the satisfaction of senior and superior officers. Appellant not only deliberately absented him-self from duty but was also found involved in smuggling of narcotics and convicted in offence of moral turpitude.
2. Incorrect, charge sheet along with statement of allegations was issued to appellant. Copy of charge sheet is enclosed as Annexure-A. Furthermore,

appellant was convicted in criminal case FIR No. 524 dated 23.12.2011 under section 4 Prohibition Order Police Station ouch district Lower Dir. Copy of FIR and punishment slip is enclosed as Annexure-B & C) respectively.

3. Incorrect, proper regular enquiry was conducted through superintendent of Police Elite Force. Copy of finding report is enclosed as Annexure-D. Furthermore, final show cause notice was issued to appellant but he failed to rebut the charges.
4. Incorrect, the department appeal was rejected vide speaking order dated 06.08.2013. Copy of order is enclosed as Annexure-E.

GROUND:-

- A. Incorrect, proper speaking order was passed on the departmental proceedings initiated against appellant.
- B. Incorrect, appellant was treated in accordance with Law and Rules. Appellant being member of disciplinary force was found involved in smuggling of narcotics and he was also convicted for the offence involving moral turpitude. Furthermore, he deliberately absented himself from duty.
- C. Incorrect, proper charge sheet was issued to appellant. Copy is annexed with the reply.

- D. Incorrect, appellant was heard in person as evident from the impugned orders.
- E. Incorrect, regular enquiry was conducted. Enquiry officer collect sufficient evidence in support of the charges.
- F. That the respondents may also be allowed to raise additional points during argument.

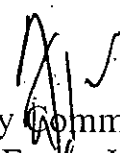
It is therefore prayed that the appeal may be dismissed with costs.



Inspector General of
Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)



Commandant,
Elite Force, Khyber
Pakhtunkhwa,
Peshawar.
(Respondent No. 2)



Deputy Commandant,
Elite Force, Khyber
Pakhtunkhwa,
Peshawar.
(Respondent No. 3)

27

CHARGE SHEET

I, Muhammad Iqbal, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, hereby charge you Constable Gohar Rehman No. 3558, Platoon No. 89 of Elite Force as follows;

You remained absent from duty without any leave or prior permission w.e. from 07.02.2013 till this date and also you were involved in smuggling of chars from Barra Khyber agency as reported by DPO Dir Upper vide his letter No. 82-85/SB Dir Upper dated 08.02.2013.

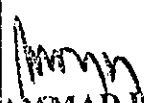
2. By reason of the above, you appear to be guilty of misconduct under the Police Rules (amended vide NWFP gazette, 27th January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.

3. You are therefore, directed to submit your defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.

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

5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.


(MUHAMMAD IQBAL)

Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar.

26

SUMMARY OF ALLEGATIONS

1, Muhammad Iqbal, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, am of the opinion that Constable Gohar Rehman No. 3558, Platoon No. 89 has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette, 27th January 1976).

SUMMARY OF ALLEGATIONS

He remained absent from duty without any leave or prior permission w.e.f. from 07.02.2013 till this date and also he was involved in smuggling of chars from Barra Khyber agency as reported by DPO Dir Upper vide his letter No. 82-85/SB Dir Upper dated 08.02.2013.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Mr. Ali Rehmat Khan DSP/Elite Force Swat is appointed as Enquiry Officer.

3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.

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

(MUHAMMAD IQBAL)
Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar.

No. 2119-25 /EF, dated Peshawar the 14 /02/2013.

Copies to:

1. Deputy Superintendent of Police, Elite Force Swat.
2. Office Superintendent, Elite Force Khyber Pakhtunkhwa Peshawar.
3. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. SRC / FMC, Elite Force Khyber Pakhtunkhwa Peshawar.
6. Constable Gohar Rehman No. 3558 of Elite Force through reader DSP/Elite Force Swat.

(MUHAMMAD IQBAL)
Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar.

ڈیپارٹمنٹ

فائل نمبر

میرٹھ کپل گورنمنٹ 3558 لاٹری نمبر 89 اولڈ

انڈین سٹیمرز کمپنی کی طرف سے جاری کردہ لاٹری کے سبب میرٹھ 25-2119-2019 کی تاریخ 14/12/19
کپل گورنمنٹ 3558 لاٹری نمبر 89 کے متعلق درخواستیں

انڈین سٹیمرز کمپنی کے ذریعے جاری کردہ لاٹری کے سبب میرٹھ 25-2119-2019 کی تاریخ 14/12/19
کپل گورنمنٹ 3558 لاٹری نمبر 89 کے متعلق درخواستیں

انڈین سٹیمرز کمپنی کے ذریعے جاری کردہ لاٹری کے سبب میرٹھ 25-2119-2019 کی تاریخ 14/12/19
کپل گورنمنٹ 3558 لاٹری نمبر 89 کے متعلق درخواستیں

(25)

SHO متعلقہ آفس کے لئے نوٹس لایا اور تہذیبی امور
کو اطلاع دیا گیا۔ تہذیبی امور میں یہاں ظلم ہو رہا ہے۔ تہذیبی امور
کے بارے میں جہلم بندہ ادنیٰ ہے۔ اس کے آگے جہلم بندہ
کو نہیں لایا گیا۔ اس کے بارے میں جہلم بندہ کو
تہذیبی امور کے بارے میں نوٹس لایا گیا۔

تہذیبی امور کے بارے میں نوٹس لایا گیا۔
تہذیبی امور کے بارے میں نوٹس لایا گیا۔
تہذیبی امور کے بارے میں نوٹس لایا گیا۔

[Signature]
SPECIAL PROSECUTOR

Ri
Issue F.S.C.N

Dy. Commr
12/3

Heard in person. His
statement in this regard
is not correct. He is
not a witness. He is
not a party to the case.

2511

3558

50 2000

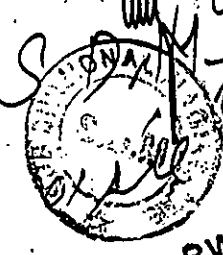
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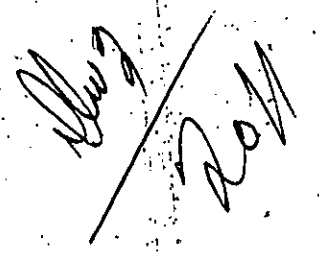
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بند هجدهم
32

فرد 24 23 12 011 4 40 4 20 2

ردیف	نام و کد ملی	تاریخ	مبلغ	توضیحات
1	علیزمان نوری پور	24 12 011	400	حکم عدالت سب و دستگیر
2	علیزمان نوری پور	24 12 011	400	حکم عدالت سب و دستگیر
3	علیزمان نوری پور	24 12 011	400	حکم عدالت سب و دستگیر


 RWVRK
 NSP/Legal Dir
 Timergara



4/3/13
 2013

(31)

مجلس

تاريخ من 5/6/12 سنة 2012

3558 2011

مجلس

مجلس

مجلس

المجلس

مجلس

MS P. ELK Force

4-3-2012

VRK
18/04/12

MS
05/04/12

4/27/013

MS P. ELK Force
4-3-2012

ORDER

This office order dispose off the departmental appeal preferred by Ex-Constable Gohar Rehman No.3558 of Elite Force against the dismissal order dated 14.05.2013, passed by the Dy: Commandant Elite Force, Khyber Pakhtunkhwa.

From perusal of record, it revealed that Ex-Constable Gohar Rehman No.3558 remained absent from duty without any leave or prior permission with effect from 07.02.2013 to 20.02.2013 and also he was involved in smuggling of charas from Bara Khyber Agency as reported by DPO/Dir Upper.

The Deputy Superintendent of Police Elite Force Swat was appointed as Enquiry Officer to conduct proper inquiry into the said allegations. According to enquiry report, Ex-Constable Gohar Rehman No.3558 alongwith his friend namely Haroon had gone to Bara Khyber Agency for the purpose of taking charas. At Bara, they were kept in confinement by one Muhammad Anwar for the previous outstanding amount. During the course of enquiry, it also came to light that the appellant alongwith his two friends was apprehended vide case FIR No.524 dated 23.12.2011 u/s 4-PO Police Station Oach District Lower Dir and were convicted and sentenced to pay fine of Rs.2000/- each. But no information was communicated to Elite Force of CPO about the conviction of Ex-Constable Gohar Rehman 3558 in that case, which also requires proper inquiry against the concerned police officials of Police Station Oach District Dir Lower.

In light of recommendation of Enquiry Officer, the appellant was issued final show cause notice and after hearing him in person, he was awarded the major punishment of dismissal from service.

After going through the available record, the guilt of accused Ex-Constable Gohar Rehman No.3558 of Elite Force has been proved without any shadow of doubt. Being a police official his duty was to apprehend criminals and not to indulge himself in criminal activities, which brings a bad name for the Police Department. Retention of such type official in the department adversely affects

25/11/13

2/11/13
6/11/13

Scan file

7/11/13

Furthermore, the District Police Officer Dir Lower is directed to conduct facts finding inquiry into the matter against the concerned officials of Police Station Oach, who failed to furnish information regarding arrest of appellant/Ex-Constable Gohar Rehman in case FIR No.524 dated 23.12.2011 u/s 4-PO Police Station Oach and thereafter his conviction in the said case, and pin point to official/officials responsible for it and those official/officials may be proceeded against departmentally for the said negligence.

-Sd-

Khalid Masood
Addl:IGP/Headquarters
For Provincial Police Office
Khyber Pakhtunkhwa,
Peshawar.

No. 19085-87 /E-II, dated Peshawar the 06/8 /2013.

Copy of above is forwarded for information and necessary action to:-

1. The Deputy Inspector General of Police, Malakand Region Swa
2. The District Police Officer, Dir Lower.
3. The Deputy Commandant Elite Force Khyber Pakhtunk Peshawar w/r to his letter No.9524/EF dated 01.07.2013. Service Roll, Departmental Enquiry file 66 pages of the above Constable is returned herewith.

1/2/ SR Roll and
Rep, Inquiry file
66 pages

(SAJID-UD-DIN)
AIG/Legal

For Provincial Police Of
Khyber Pakhtunkh
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1320/2013

GOHAR REHMAN

VS

POLICE DEPARTMENT

REJOINDER ON BAHALF OF APPELLANT IN
RESPONSE TO THE REPLY SUBMITTED BY THE
RESPONDENTS

R/SHEWEHT:

PRELIMINARY OBJECTIONS:

(1 TO 4):

All the preliminary objections raised by the respondents are incorrect and baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

- 1- Incorrect and not replied accordingly. That there is no documentary proof of misconduct in respect of appellant and as such the allegation raised against the appellant by the respondents is totally false and baseless and as such the impugned order dated 14.5.2013 is not maintainable in the eye of law.
- 2- Incorrect and not replied accordingly. That the appellant was served with a statement of allegations with out charge sheet in which it was alleged that appellant absented himself from lawful duty with out any leave or prior permission and also involved in smuggling of Charas from Bara Khyber Agency. That in response the appellant submitted his reply and denied all the allegations with proofs which were leveled against the appellant.
- 3- Incorrect and not replied accordingly. That the appellant was served with a show cause notice and the same was also replied by the appellant. That vide order dated 14-05-2013 the appellant was dismissed from service with out conducting regular enquiry by the respondent Department.
- 4- Incorrect and not replied accordingly. That appellant filed his Departmental appeal but no reply has been received so far. That after the lapse of statutory period the appellant approached to this august Tribunal for the redressal of his grievances.

GROUNDS:

(A TO G):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect and baseless hence denied. That the respondent Department has dismissed the appellant from his service without any clear justification and the respondents have not followed the prevailing rules i.e. not conducting regular inquiry against the appellant while issuing the impugned order dated 14.5.2013 which as per Supreme Court Judgments is necessary in punitive actions against the civil servant.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.

APPELLANT



GOHAR REHMAN



**THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE**

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 301 /ST Dated 6 / 2 / 2017


To

The Deputy Commandant Elite Force,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 30.01.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

2005 P L C (C.S.) 1187

[Punjab Service Tribunal]

Before Justice (Retd.) Riaz Kayani, Chairman

ABDULLAH GONDAL

Versus

DEPUTY DIRECTOR FOOD, RAWALPINDI and another

Appeal No.49 of 2002, decided on 13th May, 2002.

Punjab Removal from Service (Special Powers) Ordinance (IV of 2000)---

---Ss. 3, 5, 6 & 10---Constitution of Pakistan (1973), Arts. 13 & 25---Compulsory retirement---
 Appeal---Discrimination and applicability of rule of "Double Jeopardy"---Major penalty of compulsory
 retirement was imposed on appellant after charge-sheeting him and holding inquiry against him on
 allegations of misconduct, corruption, malpractice, negligence: misappropriation of amount, carelessness,
 etc.---Out of six charges, five charges related to previous omissions for which appellant had been
 punished and it had become a closed and past transaction which could not be raked up to impose present
 major penalty of compulsory retirement---Regarding one charge, only a preliminary inquiry was
 conducted and no show-cause notice or personal hearing was provided---Co-accused of appellant was
 also proceeded against under the same charge and exactly same evidence against him was available, but
 in his case only minor penalty of censure was imposed on him, whereas major penalty of compulsory
 retirement was imposed upon appellant---Penalty imposed on appellant could be overturned on ground
 of discrimination---Penalty of compulsory retirement was converted into censure as was done in the case
 of co-accused---Appellant, who was already tried and was awarded punishment on five charges which
 related to previous omissions and his said omissions had already been adjudicated upon administratively,
 fresh action taken against him by compulsory retiring him on said charges, could not be upheld as rule of
 "Double Jeopardy" was applicable in the case of appellant according to which no one was to be vexed
 twice for one and same offence---Appeal of appellant was partially accepted and order of Authority
 regarding five charges which had already been adjudicated upon, was set aside, but on one charge
 compulsory retirement was converted into censure.

Agha Mumtaz Ali v. Deputy Director Directorate of Intelligence and Investigation Regional Officer
 Punjab and 2 others 1998 PLC (C.S.) 648 ref.

Asif Nazir Awan for Appellant. Nemo (District Attorney on leave)

Tahir Asif, Assistant for Respondent No.2.

Sahaukat Ali Sian, Storage Officer, on behalf of Respondent No.1.

Date of hearing: 3rd May, 2002.

JUDGMENT

Abdullah Gondal former Senior Clerk in the office of Deputy Director, Food Rawalpindi Division, Rawalpindi, was served with charge-sheet accompanied by statement of allegations spelling out the following charges:--

CHARGE No.1

He was found guilty of misconduct and punished by reducing him in grade to junior clerk for a period of three years vide orders Endst. No RWP-EA (Gondal-SC) 89/5190, dated 14-12-1989 and was kept under watch during the said period also with particular reference to financial matters on the following grounds:--

- (i) He purchased bonds of Rs.10,000 out of Government cash.
- (ii) He misappropriated Rs.15,932 and utilized the same instead of payment to the official concerned.
- (iii) He arranged payment of earnest money of Rs.31,000 to the highest bidder without obtaining order of the competent Authority.
- (iv) He lent Government money to other officials at his own accord.
- (v) He did not maintain the cash book properly.

CHARGE No.2

He was censured vide order No.4103 dated 21-12-1992 on account of negligence/Irresponsibility of inordinate delay in performance of official duty.

CHARGE No.3.

He was awarded minor penalty of withholding of annual increments for three years vide order No.4999 dated 1-12-1993 on account of delaying submission of T.A. bill of Mr. Irshad Khan, FGI to District Accounts Office as a result of which the T.A. bill had become time-barred.

CHARGE No.4.

He was awarded minor penalty of "censure" vide order No.4998, dated 1-12-1993 on account of misconduct/negligence.

CHARGE No.5.

A complaint dated 12-4-2001 from Messrs Tariq Flour Mills, Attock on account of corruption/malpractice against him has also received and charges levelled against him by the complainant have been proved during the preliminary inquiry conducted by Mr. Ahmed Nawaz, Assistant Food Controller.

CHARGE No.6

His ACR for the year 1985 is not satisfactory. Detail is as under:--

A. Pen Picture: His disposal of work is not accurate, the Treasury Challan pertaining to the Centre were not sent in time. He submitted when the Centre Incharge made hue and cry. He carry this when he is loaded. It is noticed that he is in the habit of preparing the pay bills/arrears bills of the staff without obtaining the sanction of Drawing and Disbursing Officer, which leads to misappropriation, whenever he is advised on the point he gives negative attention. Moreover, he cannot work swiftly being a left handwriter. No responsible duty may be entrusted to him. He is also shirk worker.

Remarks of finalization authority

I agree. He is careless worker.

2. Appellant gave his reply to each of the charge, which did not find favour with the Inquiry Officer who vide his report dated 14-5-2001 held the charges to be proved. Deputy Director Food, Rawalpindi Division, Rawalpindi while acting as authority on the recommendations of the Inquiry Officer proceeded to compulsorily retire the appellant under the provision of Punjab Removal from Service (Special Powers) Ordinance, 2000 (hereinafter called the Ordinance) on 10-9-2001. Appeal filed by the appellant on 4-10-2001 did not receive the attention of the Appellate Authority for 60 days, hence recourse to the Punjab Service Tribunal, through the instant appeal was made on 4-1-2002.

3. Learned counsel for the appellant contended that Charges Nos. 1,2,3,4 & 6 related to previous omissions for which the appellant was punished and had become a closed and past transaction which could not be raked up to impose the present major penalty. As regards, Charge No.5, it was contended that only a preliminary inquiry was conducted and no show-cause notice or personal hearing was provided as envisaged under the Ordinance. Another limb of the argument was that co-accused Muhammad Amin, junior clerk was also proceeded under this charge and exactly the same evidence against the said Muhammad Amin was available before the Authority, however, in his case minor penalty of censure was imposed on 16-11-2001 by the Authority but discrimination was made in the case of the appellant by imposing major penalty of compulsory retirement which offends Article 25 of the Constitution of Islamic Republic of Pakistan. Departmental Representative on the other hand stated that the Department proceeded on the basis of a notification requiring good governance/cleaning of the Government machinery.

4. I have heard the arguments of the respective counsel and Departmental Representative and have also perused the record carefully.

5. Undoubtedly, without any cavil the appellant was tried on Charges Nos.1,2,3 and 4 previously and awarded punishments. Charge No.6 relates to adverse entry for his ACR for the year 1985. These omissions relate to previous transactions/charges for which the appellant A was adequately punished and can be rightly termed as closed and past transactions and cannot by any stretch of imagination be raked up once again to imposed major penalty of compulsory retirement, as it amounts to violation of law.

6. Article 13 of the Constitution of Islamic Republic of Pakistan, 1973 relating to fundamental rights provides protection against double punishment and self-incrimination, which provisions reads, as under:--

No person:--

(a) shall be prosecuted or punished for the same offence more than once;

7. The said rule also finds mention in section 403 of the Code of Criminal Procedure, according to which no one is to be vexed twice for one and the same offence. This section is based on the time-tested maxim of "autrefois acquit" and "autrefois convict". In simple words the rule enunciated by this maxim is defined as a rule of "Double Jeopardy". It is a cardinal principle of law that rule of double jeopardy has application in every branch of laws whether it be criminal law, civil law or quasi-criminal proceedings. In criminal law section 403 of the Code of Criminal Procedure is applicable, which protects the accused from punishment once he has been acquitted or convicted. In the civil proceedings, similar bar is contained under section 11 of the Civil Procedure Code commonly known as res judicata, whereas Article 13(a) of the Constitution of Islamic Republic of Pakistan ensures, that rule of double jeopardy be not resorted in every 'kind of proceedings including departmental proceedings envisaged under E&D Rules or the present Ordinance, as an act of omission previously punished cannot be taken up afresh imposing any penalty, matter becomes closed and buried once for all. Even otherwise reference to rule 3 of the Ordinance makes it abundantly clear that the Authority can initiate proceedings for inefficiency, misconduct or corruption or having sought appointment or promotion on extraneous grounds in violation of law, not inquired, tried or applied previously.

8. Misconduct used in this rule relates to the misconduct, on, which fresh proceedings have to commence and does not envisage misconduct, which has been tried and punished by way of penalty whether major or minor. When the Departmental Representative was asked to clarify how the Department can proceed on these charges which are not envisaged under rule 3 of the Ordinance he stated that action was taken under notification which authorized the Authority to proceed against the incumbent on the ground of good governance/cleaning of the Government machinery. I am afraid the Notification cannot override the provision of the rule, legislated in the Ordinance. The Notification can undoubtedly go side by side with the rule if the misconduct falls within the ambit of the definition provided under rule 2(b) cannot be in derogation of rule 3 of the Ordinance, for an act and omission which already stand punished. In this regard reference is invited to the case of Agha Mumtaz Ali v. Deputy Director Directorate of Intelligence and Investigation Regional Office Punjab and 2 others reported in (1998 PLC (C.S.) 648) where it was held that previous laxities of civil servant already administratively dealt with could not form basis of future penalties as previous omission could not justify future penalties, particularly when omission had already been adjudicated upon administratively. Action taken afresh by compulsory retiring the appellant on the Charges Nos.1,2,3,4 and 6, therefore, cannot be up-held.

9. As regards Charge No.5, without going into details whether any show-cause notice was served upon the appellant or opportunity of hearing was provided to him, except holding a preliminary inquiry. Suffice it to say that the simple ground which has convinced me is that the penalty imposed can be overturned, on ground of discrimination. Learned' counsel has supplied me the order of the Authority dated 16-11-2001, in the case of Muhammad Amin, junior clerk who was also proceeded along with the appellant in the preliminary inquiry with the same charges. Muhammad Amin was let off with the minor penalty of censure whereas the appellant has been compulsorily retired, as Charge No.5 forms one of the charges appearing in the statement of allegations. This surely offends Article 25 of the Constitution of Islamic Republic of Pakistan, which is captioned as "equality of citizens" and provides that all citizens are equal before law and are entitled to equal protection of law Muhammad Amin, junior clerk having been punished with censure, with similar and identical allegations, the same penalty has to be imposed upon the appellant as well.

10. The appellant is absolved of Charges Nos.1,2,3,4 and 6 for reasons given in the preceding paragraphs of this judgment and his penalty of Charge No.5 is converted from compulsory retirement to censure, as was the case of Muhammad Amin, junior clerk. On the same analogy one isolated adverse entry earned

in the year 1985 cannot be made ground of imposition of major penalty, specially when appellant was promoted as senior clerk in July, 1987. With these observations, appeal is partially accepted and order of the Authority dated 10-9-2001 regarding Charges Nos.1,2,3, 4 and 6 are set aside but as far as Charge No.5 it is converted from compulsory retirement to censure.

H.B.T./49/PST

Order accordingly.
