

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 570/2014

Date of Institution ... 11.04.2014

Date of Decision ... 11.10.2017

Saleem Ullah S/O Mamraiz Khan,
Constable no. 703, District Courts, Nowshera.

... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa Peshawar and 2 others.

... (Respondents)

MR. MUHAMMAD HAYAT,
Advocate

For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

...

For respondents.

MR. AHMAD HASSAN, ...
MR. MUHAMMAD HAMID MUGHAL ...

MEMBER(Executive)
MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that the appellant was appointed as constable in Police Department on 08.07.1998. That on the basis of allegations leveled against him disciplinary proceedings were initiated and upon conclusion minor penalty of stoppage of two years increment with cumulative effect was imposed vide impugned order dated 04.01.2010. Appellant preferred departmental appeal which was rejected on 02.09.2010, hence, the instant service appeal.

ARGUMENTS

3. The learned Counsel for the appellant argued that vide impugned order dated 04.01.2010 minor penalty of stoppage of two increments with cumulative effect was imposed on the appellant. The competent authority passed impugned order without taking into consideration facts of the case. Normally proper order for imposition of penalty is passed by the competent authority upon finalization of the disciplinary proceedings but in this case no such order is available in file. Remarks regarding imposition of minor penalty were recorded by the competent authority on the face of the reply to the show cause notice submitted by the appellant. Proper opportunity of defense and personal hearing was denied to the appellant. Enquiry was conducted in a slipshod manner and the appellant was not properly associated with the enquiry proceedings. Neither statements of the witnesses who deposed against the appellant were recorded nor was opportunity of cross examining the witnesses afforded to the appellant. Mr. Hidayat Shah Khan Khattak, Inspector member of the enquiry committee had not signed the enquiry report which makes its authenticity doubtful. It has also not been specified in the enquiry report to whom the information was being leaked by the appellant. That a service appeal no. 877/2011 was accepted vide this Tribunal judgment dated 02.01.2013 involving the similar issue. Reliance was placed on 2009 SCMR 1 and 2002 PLC (C.S) 268.

4. On the other hand the Addl: AG argued that all codal formalities were observed by the respondents before imposition of penalty. That his appeal was decided in his absence because he failed to appear in the orderly room on 25.08.2010. This act on the part of the appellant was willful and deliberate.

CONCLUSION.

5. A careful perusal of the entire record would reveal that no where it is mentioned in the charge sheet and statement of allegations to whom the appellant was leaking

information above the movement of DPO Nowshera. However, the appellant in reply to the show cause referred to his detailed reply submitted to the enquiry officer was not taken into consideration by the enquiry committee. He denied the charge of leakage of information about the movement of DPO, Nowshera. Though the enquiry committee in their report held the appellant guilty of the charges failed to substantiate it through solid documentary evidence. The enquiry report does not bear the signature of Mr. Hidayat Shah Khan Khattak, Member of the enquiry committee which is not only strange but also against the laid down procedure/rules and it makes the authenticity of the report doubtful. Similarly the competent authority failed to pass speaking order while disposing of his departmental appeal and as such Sec-24 A(2) of the General Clauses Act was violated. Needless to say that by initiating department proceedings against the appellant and passing impugned order against him the DPO, Nowshera assumed the role of a Judge in his own cause, as he happened to be a complainant in the case. In the circumstances, non-compliance with the mandatory provision of law and non-adherence to established rules and norms of justice not only caused miscarriage of justice but also rendered the impugned order void and nullity in the eyes of law. It is by now well established that no limitation runs against void orders.

6. In view of the foregoing, we are constrained to accept the present appeal by setting aside the impugned order dated 04.01.2010 and 02.09.2010. Parties are however, left to bear their own costs. File be consigned to the record room.

Muham

(MUHAMMAD HAMID MUGHAL)
MEMBER

Ahmad Hassan
(AHMAD HASSAN)
MEMBER

ANNOUNCED
11.10.2017

13.09.2017

Counsel for the appellant and Addl: AG for respondents present. Arguments heard. To come up for order on 03.10.2017 before D.B.

Member
(Executive)

Member
(Judicial)

03.10.2017

Appellant present. Mr. Muhammad Jan, Learned Deputy District Attorney for the respondents present. Learned Deputy District Attorney seeks adjournment to produce inquiry report vis-à-vis appellant. Adjourn. To come up for further proceeding on 11/10/2017 before D.B.

Member
(Executive)

Member
(Judicial)

Order

11.10.2017

Counsel for the appellant and Addl:AG for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file the instant appeal is accepted and impugned order dated 04.01.2010 and 02.09.2010 are set aside. Parties are left to bear their own costs. File be consigned to the record room.

Announced:
11.10.2017

(MUHAMMAD HAMID MUGHAL)
Member

(AHMAD HASSAN)
Member

از دفتر ایچ آر کورہ

نمبر 7571/5

تاریخ 2009-10-31

خانہ نگار انکوائری کمیٹی پورٹ

ضلع نوشہرہ

جناب عالی! نیشنل سیم اے 703 سنہ شاہین سکواڈ حال چوک مرہٹی کے خلاف الزام ہے۔ مذکورہ سیم اے 703 ضابہ ایچ آر کورہ کی نوٹیفکیشن کے تحت ایچ آر کورہ سے نکلنے کا اطلاع بذریعہ نوٹیفکیشن ڈیپارٹمنٹ پولیس واپس دلوں کو دیکھا گیا سرکارا۔ ام عیدہ زکاتہ ٹیسٹ پولیس آفیسر کا تعلق ہو کر اس کی راز کو قصہ رکھنے کے بجائے رشتہ دار کے جو خلاف ڈسپلین اور خلاف ریزر ہے۔ جو ذی الزام کا رشتہ میں مذکورہ کو شوکار نوٹس دیا گیا اور ایچ آر کورہ نے Preliminary Enquiry کی۔ اور سیم اے 703 کو فوری وارننگ گراڈا جا کہ جو ضابہ ایچ آر کورہ نے چارج شدہ ڈسپلین آف ایجنٹس نمبر 192/PA حوزہ 10/2009 جاری کیا ہے۔ خلاف میں کمانہ انکوائری کے ادر ضابہ ایچ آر کورہ و بدایت شدہ ٹیسٹ انپلا سیکل نوٹیفکیشن کے

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انگریزی کمیٹی کی رپورٹ کے افکامات صادر کیے۔

زندگیوں میں بارہ انگریزی کی جاکر حدیث انگریزی
ازام علیہ نے پیش ہو کر خارج شدت و سمرکاف
رہائش و قول کے چہرہ رنہا اور باہین دیکر
خوردیے گناہ اور بے قصور قصہ اور دیگر انسانی
تصدیق کی ہے۔

مورانہ انگریزی سندھ میں گواہی پیش ہو کر فیکے بیانات کے وجود کی ازام علیہ حاکم
کے ازام علیہ کی رہنما زبانی نے یوگیاہ پر رہنا جہت ممکن سے کا پورا پورا
قصد دیا ہے۔

1. رحمت اللہ ASI ان زبانی دایرس ٹیڈول ریم نوشرہ۔
2. احسان الحسن $\frac{1001}{HC}$ اپنی زبانی شاہین سدا کی نوشرہ۔
3. عمر سید کی رزمن آفیس پولیس رانہ نوشرہ۔
4. صیات خان $\frac{512}{HC}$ درگور " " "۔
5. ستارے ملک انیک R " " "۔
6. طفرتیبال حور HC " " "۔
7. خالزخان ASI ریڈر ہاہ ماب نوشرہ۔

گواہوں نے سرحدی نیت کے تعلق شدہ بیانات سے بیانات واقع
 اور ثابت ہوئی ہے، یہ سیم ایم 753 نے جواب دیا ہے۔
 نذرہ کا نقل حرکت کو ضمنی رکھنے کے بجائے عیاں کیا ہے۔
 اور راز افشاء کے خلاف ڈی سی پی نے ارز صاف رولڈ کا مہرہ
 نسل نون کا مرکب ہے۔ آجکل سے حساب اور
 زبانی گواہوں کے درمیان ایسے راز افشاء اور انتہائی
 خطرناک اور سنگین واردات کا پیشہ قدمہ ہو گئی ہے۔
 اس زمانہ بدگئی ہے۔ روایتی لوگوں کو اپنے ساتھ آورد
 کے طور پر تھے بدلتے ہوئے۔ پورے گزشتے پینچوں کا سامنا
 ہے۔ سیم ایم 753 پر عائد شدہ الزامات سرحد گواہوں کے بیانات
 تعلق شدہ اور ریکارڈ مشمول سے ثابت ہوئے ہیں۔ جو قصور وار
 و گنہگار ہو کر دیا جاتا ہے۔ مناب حکم صادر ہو گیا ہے۔

لکھنؤ
 31/10/2009
 سیم ایم 753
 ڈی سی پی
 لکھنؤ

بریت شہ کا قند انشا - سنگھ نذرہ
 31/10/2009

از دفتر ایچ آر کورہ

ضلع نوشہرہ

نمبر 7571/5

تاریخ 2009-10-31

خانہ بزرگ انکوائری کمیٹی پورٹ
x

جناب عالی! کنٹریبل سیم ایچ 703 سنہ شاہین سکواڈ حال چیک مرہٹی کے خلاف الزام ہے۔ مذکورہ سیم ایچ 703 ضابہ ایچ باب نوشہرہ کا ضابطی سکواڈ (شاہین سکواڈ) میں تینہا ہے۔ ضابہ ایچ ایچ نوشہرہ ننگہ اردو سے نکلنے کا اطلاع بذریعہ سویٹس فلڈ ریڈریس و لوں کی دیگر ایک سرکارا۔ ام عیدہ زکاتہ سٹیڈ پولیس آفسر کا تعلق ہوگا کہ راز کو قصہ رکھنے کے لئے رفتہ رفتہ جو خلاف دستاویزی اور خلاف راز ہے۔ جو ہی الزام کا رشتی میں مذکورہ کی شوکار نوٹس دیا گیا اور ایچ ڈی نوشہرہ نے Preliminary Enquiry کی۔ اور سیم ایچ 703 کو قہر وار گینگ گراڈانا جا کہ جو ضابہ ایچ ایچ نوشہرہ نے چارج 2 شدت رسپی آف ایگنشن نمبر 192/PA طرف 10/2009 جاری کی تھی۔ خلاف فرم کا نام نکلی ہے۔ کے اور ضابہ ایچ آر کورہ و بدایت شدہ اسٹاک انپیکٹ سیکل نوشہرہ کر

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2009

انکی یہی کٹی خوراک کے افکامات صادر کیے۔

زندہیں بارہ انکی یہی کی جا کر حدوز انکی یہی
الزام علیہم نے پیش ہو کر خانہ نشہ و سمرکات
رہائش و مول کے جسپر رہنا اور بیان دیگر
خوردے گناہ اور بے قصور قصدا دیگر انکا
تصدیق کا ہے۔

حدوز انکی یہی سدرم خیل گراول پیش ہو کر فکے بیانات بموجبی الزام علیہ حاکم
کے الزام علیہم کی رہنا زماغ نے ہو گراہ پر رہنا جتھے مکھن کے کا پورا پورا
حق دیا ہے۔

- 1. رحمن رائے ASI اپنی زبانی واپس نہرول درم نوشرہ۔
- 2. احسان الحسن $\frac{1000}{HC}$ اپنی زبانی شاہین آباد نوشرہ۔
- 3. عمر سید کے زبانی آفیس پولیس رانہ نوشرہ۔
- 4. صحت خان $\frac{512}{HC}$ دروڑ۔
- 5. تاج ملو انیک R " " "۔
- 6. ظفر اتبال $\frac{HC}{HC}$ " " "۔
- 7. خالظان ASI ریڈر بہاول نوشرہ۔

آوازوں ندرم نیت کے قلمند شدہ بیانات سے یہ بات واقع
 اور ثابت ہو رہی ہے، ایم ایف 753 نے خطاب کیا ہے۔
 نذرہ کی نقل حرکت کو ضمنی رکن کے بجائے عیاں کیا ہے۔
 اور راز افشاء کے خلاف ڈیپینڈنٹ اور خلاف رولڈ کاہرہ
 نسل کے کامز کا ہے۔ اجکل سے حساب اور
 زنتا کا خطرناک دور میں ایسے راز افشاء اور نا اہلیاں
 خطرناک اور سنگین واردات کا پیشی ضمیر کرتے ہیں۔
 اس زمانہ بدل گیا ہے۔ روایتی لوگوں کو اپنے ساتھ آوار
 کے طور پر تے بدلے ہو گئے۔ لہذا گزشتہ پیلنوں کا سامنا
 ہے۔ ایم ایف 753 پر عائد شدہ الزامات ندرم گواہی کے بیانات
 قلمند شدہ اور ریکارڈز مشمول سے ثابت ہو رہے ہیں۔ جو قہر دار
 و گنہگار ہو گیا جاتا ہے۔ مناد حکم صادر فرمائیں۔

لکھنؤ
 31/10/2009
 شہید ایوب الہری

بکریٹ شہادت شدہ انیسویں سنکل نذرہ
 31/10/2009

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از دفتر آرد اکوڑہ

نمبر 7571/5

تاریخ 31-10-70

حائذ ننگ انگریزی بیٹی پریک

ضلع نوشہرہ

جناب عالی! کنٹریبل سیم ایچ 703 ٹینٹ شاہین سوار صالح چوکا مرہٹی سے
 خلاف الام بیٹے، ندوہ سیم ایچ 703 خطاب کیا گیا ہے
 نوشہرہ کے ضلعی سوار (شاہین سوار) میں ٹینٹا نیسے۔
 خا۔۔۔ ۵۱۰۔۔۔ نوشہرہ ٹینٹ اور ذوق کے ٹولنے کی اطلاع بندوبست
 سوشل نون ڈیپوٹس و لائن و دیگر ایکسٹریکٹس نام پیرہہ پیمانہ
 سٹریٹس کنٹرول کتل ہو کر آئی کی رائز و فیسز رکھنے کے لئے
 افشاد کرنے جو خلاف ڈسپنشن اور خلاف ریز بیٹے۔ جوئی
 ایڈم کوشی میں ندوہ کو خوش نوٹس دیا گیا اور ۱۱۴۹ ۱۱۵۰
 ۱۱۵۱ ۱۱۵۲

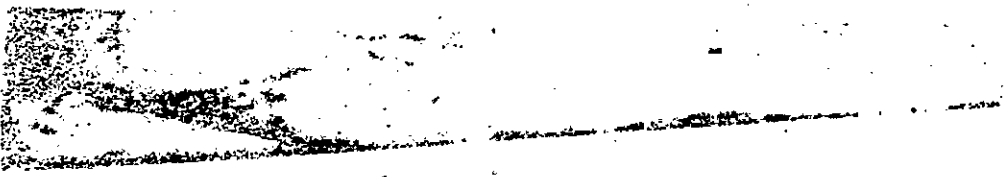
C.R.

D) 1186
02 71-009

Preliminary Enquiry کی۔ اور سیم ایچ 703 کو فوری طور پر گرانٹ

یا کہ جو خا۔۔۔ ۵۱۰۔۔۔ نوشہرہ کے چارڈ شیڈ رسٹری آف انکوائری

نمبر 192/PA ۱۹۲۱/۱۹۲۱ ۱۹۲۱/۱۹۲۱ ۱۹۲۱/۱۹۲۱



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گواہوں اور بیانات کے متعلق شدہ بیانات سے یہ بات واضح
 اور ثابت ہوئی ہے کہ سیم آر ایف نے خطا کیا ہے۔
 نشتر کا نقل حرکت کو تقسیم کرنے کے بجائے جیسا کہ یہ
 اور راز نشتر کے خلاف گواہوں اور بیانات سے ثابت ہے۔
 نقل نشتر کا مرکب ہوا ہے۔ آج کل سے یہ سیم آر ایف
 نشتر کا نقل ہے۔ سیم آر ایف نے راز نشتر کو اپنا
 نشتر بنا کر اسے اپنے پاس رکھا ہے۔ یہ سیم آر ایف
 اسے اپنا ہی نشتر بنا کر اپنے پاس رکھا ہے۔
 یہ سیم آر ایف نے اپنے پاس رکھا ہے۔
 یہ سیم آر ایف نے اپنے پاس رکھا ہے۔
 یہ سیم آر ایف نے اپنے پاس رکھا ہے۔

محمد علی
 19/10/1973

محمد علی
 19/10/1973

محکم الہکم نام ملوس

2009 S C M R 1

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J., Ijaz-ul-Hassan Khan, Muhammad Qaim Jan Khan
and Ch. Ejaz Yousaf, JJ

GOVERNMENT OF PUNJAB, through Secretary Education, Civil Secretariat, Lahore and
others---Petitioners

Versus

SAMEENA PARVEEN and others---Respondents

Criminal Petitions Nos.71-L and 72-L, Civil Petitions 215-L, 216-L, 217-L, 218-L, 224-L to
236-L of 2006, decided on 29th April, 2008.

(On appeal from the judgment, dated 29-1-2008 of the Lahore High Court, Lahore passed in
Cr.O.P. No.370/W and 561/W of 2007, Writ Petitions Nos.11525, 11263, 11516, 11662, 11663,
11766, 11881, 11835, 12136 and 12185 of 2007, 86, 123, 274, 345, 599, 643 and 11619 of 2008).

Civil service---

---Administration of justice---If a Tribunal or the Supreme Court decides a point of law relating to
the terms and conditions of a civil servant who litigated, and there were other civil servants, who
may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good
governance demand that the benefit of the said decision be extended to other civil servants also,
who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or
any other legal forum---All citizens are equal before law and entitled to equal protection of law as per
Art.25 of the Constitution.

Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others
1996 SCMR 1185 and Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and
others 2005 SCMR 499 fol.

Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary Education Department,
Government of Punjab and another 2000 PLC (C.S.) 867 ref.

Ms. Afshan Ghazanfar, A.A.-G., Punjab and Rana Abdul Qayyum, D.S. (Education) Punjab for
Petitioners.

S.M. Tayyab, Senior Advocate Supreme Court for Respondents (in Cr.Ps. Nos.71-L, 72-L and
C.P.224-L of 2008).

Nemo for other Respondents.

ORDER

ABDUL HAMEED DOGAR, C.J.---Through this order we intend to dispose of above captioned petitions filed against common judgment, dated 29-1-2008 passed by learned Judge in Chambers of Lahore High Court, Lahore whereby Cr.O.P. No.370/W and 561/W of 2007, Writ Petitions Nos.11525, 11263, 11516, 11662, 11663, 11766, 11881, 11835, 12136 and 12185 of 2007, 86, 123, 274, 345, 599, 643 and 11619 of 2008 filed by respondents were allowed and the impugned orders passed by petitioner/authority were set aside.

2. Briefly, stated facts giving rise to the filing of instant petitions are that respondents were appointed as PTC Teachers during the year 1995/1996 after completion of all legal requirements and they joined their respective place of posting. After sometime, their appointments were cancelled being bogus vide order No.277/E-1, dated 3-4-1998. This order was assailed before learned Lahore High Court, Lahore and same was declared to be without lawful authority in the case reported as Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary Education Department, Government of Punjab and another 2000 PLC (C.S.) 867. The relevant paragraph is reproduced as under:--

"Consequently the petitioners are declared to be in service and the action of the Headmasters/Incharge of the Schools stopping the petitioners from performance of their duties as PTC Teachers on the basis of the above said impugned order, is declared to be without lawful authority. It is, however, clarified that the department is at liberty to proceed against petitioners, if so desired, on individual basis under the relevant law and under the Punjab Civil Servant (Efficiency and Discipline) Rules, 1975."

In view of above judgment, the respondents were absolved of the charges of bogus appointments. But later on once again the services of respondents were terminated vide order, dated 3-8-2005, which order was challenged before learned Lahore High Court, Lahore through Writ Petition No.16864 of 2005. The said writ petition was allowed vide judgment, dated 11-12-2006 and the impugned order, was declared as illegal and without lawful authority. Similarly, one of the teachers namely Mst. Nascem Akhtar assailed the order, dated 3-8-2005 before Punjab Service Tribunal, Lahore through Appeal No.903 of 2006 which was also allowed vide judgment, dated 4-9-2006. The said judgment was maintained by this Court in Civil Petition No.1960-L of 2006 vide judgment, dated 2-11-2006. On 26-9-2007 once again the services of respondents were terminated. Feeling aggrieved they filed above mentioned petitions before the learned Lahore High Court, Lahore which were allowed vide impugned judgment as stated above.

3. It is mainly contended by learned A.A.-G. Punjab appearing on behalf of petitioners that the jurisdiction of the learned High Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 in matters involving determination of terms and conditions of civil servants. She further contended that the appointments of the respondents were bogus and fake as they were never selected by the competent authority, therefore the orders of dismissal passed by departmental authority were in accordance with law, which did not call for any interference by this Court.

4. On the other hand, Mr. S. M. Tayyub, learned Senior Advocate Supreme Court appearing on behalf of some of the respondents supported the impugned judgment and contended that appointments of respondents had taken place in accordance with rules and prescribed procedure. They submitted their applications in pursuance of advertisement of the posts of PTC Teachers. They passed the required test and were appointed by the competent authority. According to him, the respondents were in service for about 9-10 years and during this period no objection was raised, and subsequently on vague allegations they were dismissed from service. He further contended that cases of respondents were at

par with Mst. Naseem Akhtar which was decided by this Court in Civil Petition No. 1960-L of 2006 vide judgment, dated 2-11-2006.

5. We have considered the arguments of both the parties and have gone through the record and proceedings of the case in minute particulars. The matter has already been decided by this Court in the case of Mst. Naseem Akhtar (supra), and it has been held that the appointment orders of the respondents as PTC Teachers were genuine. It was held by this Court in the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 that if a Tribunal or this Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation instead of compelling them to approach the Tribunal or any other legal forum. This view was reiterated by this Court in the case of Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 SCMR 499 and it was held that according to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 all citizens are equal before law and entitled to equal protection of law.

6. In this view of the matter, we are of the view that no ground for interference in the impugned judgment is made out. Accordingly, the petitions being devoid of force are dismissed and leave to appeal refused.

M.B.A./G-13/SC

Petitions dismissed

حکم اللہ نام حکومت (ب)

<http://www.pakistanlawsite.com/LawOnline/law/content21.asp?Case...>

Judgement

2002 P L C (C. S.) 268

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, Mian Muhammad Ajmal and Hamid Ali Mirza, JJ

GOVERNMENT OF N.-W.F.P. and others

versus

MALIK AMAN

Civil Appeals Nos. 108, 698,699,701 to 712, 849 to 861, 951 to 967, 971 to 975 and 1012 to 1017 of 2000, decided on 11th June, 2001.

(On appeal from the judgments of the N.-W.F.P. Service Tribunal, Peshawar dated 24-9-1998 passed in Appeal No.340/96, dated 26-1-2000 passed in Appeals Nos.348 and 349/98, dated 2-3-2000 passed in Appeals Nos.692 to 695 and 697 to 703 of 1998, dated 5-1-2000 passed in Appeal No.2740 of 1997, dated 7-2-2000 passed in Appeals Nos. 16, 20, 21, 42 to 51 of 1999, dated 18-1-2000 passed in Appeals Nos.261 to 265, 267 to 272, 274, 276 to 279 and 281 of 1999 and dated 8-3-2000 passed in Appeals Nos.420, 421, 425, 427, 433 and 434 of 1999).

(a) North-West Frontier Province Civil Servants Act (XVIII of 1973)---

--S. 2(1)(e)---Qanun-e-Shahadat (10 of 1984); Art.114---Constitution of Pakistan (1973), Art. 212(3)---Claim of civil servants to graded pay from date of initial appointment---Service Tribunal accepted appeals of civil servants holding them entitled to get graded pay from date of their appointments and arrears of pay from date of filing of departmental appeals---Validity---Civil servants were appointed on fixed pay basis as they did not possess basic qualifications at that time---Civil servants never raised any objection with regard to their fixed pay when they were employed or till the time they were awarded graded pay on acquiring requisite qualification--Having once accepted fixed pay for lack of requisite qualifications, civil servants were estopped by their conduct to claim graded pay from date of their initial appointments and they could not be allowed to contend set after a considerable long time---Supreme Court allowed the department's appeals.

Muhammad Riasat SET (Science) and others v. The Secretary of Education, Government of N.-W.F.P., Peshawar and 2 others 1997 SCMR 1626; Province of Sindh through the Secretary, Education Department, Karachi and 2 others v. Ghulam Rasul and 35 others 1976 SCMR 297 and N.-W.F.P. Government through Secretary Education, Peshawar and others v. Muhammad Qavi Khan 1996 SCMR 1011 ref.

(b) North-West Frontier Province Service Tribunals Act (I of 1974)---

----S. 4---Constitution of Pakistan (1973), Art. 212(3)---Limitation--Condonation of delay---Contention was that respondents' appeals filed before Service Tribunal were liable to be dismissed being hopelessly time-barred--Supreme Court condoned the delay, which was in some cases

more than ten years, in the interest of justice and in view of the similarity of point involved in other cases.

Imtiaz Ali, Addl. A.-G., N.-W.F.P. for Appellants (in C.As. Nos. 108, 698, 699 and 701 to 712, 849 to 861, 951 to 967 and 1012 to 1017 of 2000).

Jan Muhammad Khan, Advocate-on-Record for Appellants (in C.As. Nos. 971 to 975 of 2000).

Jan Muhammad, Advocate-on-Record for Respondents (in C.As. Nos. 701 to 711 of 2000).

Fatch Muhammad Khan, Advocate-on-Record for Respondents (in C.As. Nos. 108, 698 and 699 of 2000).

Khushdil Khan, Advocate Supreme Court for Respondents (in C.As. Nos. 849 to 861 of 2000).

Muhammad Asif, Advocate Supreme Court for Respondents (in C.As. Nos. 951 to 967 of 2000).

Imtiaz Ali, Addl. A.-G., N.-W.F.P. for Respondents (in C.As. Nos. 971 to 975 of 2000).

Muhammad Asif, Advocate Supreme Court for Respondents (in C.As. Nos. 1012 to 1017 of 2000).

Respondent in-person (in C.A. No. 712 of 2000).

Date of hearing: 11th June, 2001.

JUDGMENT

MIAN MUHAMAMD AJMAL, J.---By this common judgment we propose to dispose of Civil Appeals Nos. 108, 698, 699, 701 to 712, 849 to 861, 951 to 967, 971 to 975 and 1012 to 1017 of 2000 as they involve identical questions of law and facts.

Facts of C.A. No. 108 of 2000.

Malik Aman respondent was appointed as S.V. untrained Teacher on fixed pay by the Divisional Director of Education (Schools), Peshawar vide order dated 15-10-1980. He was allowed graded pay w.e.f. 1-8-1988 vide order dated 31-10-1988 after he passed C.T. examination. He also passed M.A. examination from University of Peshawar in 1992. He filed departmental appeal on 16-1-1996 for grant of running pay and other benefits claiming that he was entitled to graded pay from the date of his appointment. His departmental appeal was not responded within the statutory period, as such, he filed Appeal No. 340 of 1996 before the N.-W.F.P. Service Tribunal, Peshawar (hereinafter to be called the Tribunals), which was allowed vide impugned judgment dated 24-9-1998, the respondent was declared entitled to the graded pay w.e.f. 15-10-1980 i.e. the date of his appointment and he was also held entitled to the arrears from the date of his departmental appeal. Feeling aggrieved the appellants/department preferred C.P. 256-P/98, wherein leave was granted by this Court on 16-3-2000 as under:--

"Mr. Imtiaz Ali, learned Addl. A.G. N.-W.F.P., in support of this petition contended with reference to

the case of Muhammad Riasat S.E.T. (Science) and others v. The Secretary Education, Government of N.-W.F.P. Peshawar and 2 others (1997 SCMR 1626) that besides the service appeal being hopelessly time-barred, the learned Tribunal has erred to grant relief to the respondent ignoring the law laid down by this Court in the case of Muhammad Riasat (supra) (1997 SCMR 1626) that the civil servants were entitled to graded pay with effect from the date of obtaining basic qualification prescribed for the post he is holding and not from the date of appointment when he was not possessed of such prescribed qualification.

In the case of Muhammad Riasat (supra), this Court has held that the civil servants who had accepted the terms and conditions initially offered to them wherein they were entitled to a fixed pay of the scale without any increment and since he had attained the basic qualification from a specific date, he would be entitled to the graded pay with effect from the date he had acquired the basic qualification (in that case of B.Ed Examination) and not from the date of initial appointment on temporary basis.

Leave to appeal is granted to consider whether the learned Service Tribunal was not justified to follow the law laid down by this Court on the subject in the case of Muhammad Riasat (supra) (1997 SCMR 1626). "

Almost same is the position in connected Civil Appeals Nos.698, 699, 701 to 712, 849 to 864, 951 to 967 and 1012 to 1017 of 2000.

In Appeals Nos.971 to 975/2000, the appeals of the private appellants before the Tribunal were accepted as under:--

"On factual side, the appellants have got sufficient teaching experience at their credit. According to the authority of the Hon'ble Supreme Court of Pakistan 1976 SCMR page 297, no distinction can be made between a trained and untrained teacher with regard to the graded pay. Moreover, according to the Hon'ble Supreme Court of Pakistan, if an employee is made to work against a particular post, he is entitled to all the monetary benefits attached therewith. The question of graded pay has been thoroughly thrashed by this Tribunal and the judgments have been upheld by the Supreme Court, of Pakistan. The reply of the respondent-department has got no cogent objection except the trained and untrained. If a person has qualified the basic requirement for a post from a certain date, he is fully entitled for the award of graded pay from the date of qualification and in other cases; the person holding the post is entitled to the pay of the post and not fixed pay. A civil servant who is made to work against a particular post is fully entitled to all the benefits attached to that post. So with these observations, the appeals in hand as well as the connected 10 appeals are accepted as prayed for, with no arrears and no advance increments. No order as to costs. File be consigned to the record."

Feeling aggrieved, the appellants challenged the, above decision of the 3J Tribunal before this Court through Petitions for Leave to Appeals Nos.301-P to 305-P of 2000, wherein leave was granted as under:--

"This order will dispose of C.Ps. 301-P to 305-P/2000. All these civil petitions call in question the legality of the order of the learned Service Tribunal whereby on the one hand they had been held entitled to graded pay from the date of induction in service as prayed for in the petition and on the other they were not given arrears and advance increments from the said date.

Learned counsel for the petitioners stated that this is contradictory order itself, because what was

given on one hand has been taken on the other. He stressed that the petitioner should have been given all the benefits of graded pay from the date of joining the service. He referred to C.P. 170-P/2000 to C.P. 180-P/2000 and submitted that leave has been granted in the above cases on the same points. We also grant leave in these petitions to consider the above submission and also for the reasons given in the leave granting order of the other connected petitions."

Civil Appeals Nos.703 to 705 and 712 of 2000 are barred by time by 16 days and 92 days, respectively.

2. Learned Additional Advocate General contended that the appeals of the respondents were hopelessly time-barred from the date of their appointments as they approached the Tribunal after the lapse of long time, in some cases it is more than ten years, therefore, their appeals were liable to be dismissed on this score alone. He submitted that when they were employed in service they were untrained and did not possess the requisite qualifications for the posts, therefore, they were appointed on fixed pay as reflected in their letters of appointment. They on acceptance of the terms and conditions of their employment joined the service. They were granted graded pay after they acquired the requisite qualifications. They were estopped by their conduct to claim graded pay from the date of their initial appointment as they had accepted the terms and conditions of service when they were initially appointed. He urged that respondents were rightly given graded pay on acquiring the requisite qualifications for the post held by them. Reliance was placed on the case of Muhammad Riasat, SET (Science) and others v. The Secretary of Education, N.-W.F.P. Peshawar and 2 others (1997 SCMR 1626), wherein it has been laid down that the teachers were entitled to graded pay with effect from the date they attained basic qualification for the post and not from the date of initial appointment on temporary basis.

3. On the other hand, learned counsel for the appellants in C.As. 971 to 975 and respondents in other appeals, contended that no doubt respective appellants and the respondents were untrained teachers till they acquired the requisite qualification, whereupon they were allowed graded pay from the date they qualified the training course, however, they served as teachers and discharged full duties like trained teachers, as such, they were entitled to running pay alongwith annual increments and other service benefits. Reliance was placed on Province of Sindh through the Secretary, Education Department, Karachi and 2 others v. Ghulam Rasul and 35 others (1976 SCMR 297) and N.-W.F.P. Government through Secretary Education, Peshawar and others v. Muhammad Qavi Khan (1996 SCMR 1011)

4. In the interest of justice and similarity of the point involved in all the cases, the delay in filing Civil Appeals Nos.703 to 705 and 712 of 2000 is condoned.

5. After hearing the learned counsel for the parties and going through the record of the case, we are inclined to follow the law laid down in Muhammad Riasat's case, supra as the learned Bench, after examining the divergent decisions rendered in C.P. 204-P, 205-P of 1991 and C.P 288-P of 1993 (1996 SCMR 1011) and relying on page 1005 placitum H given in Federation of Pakistan v. Shahzada Shahpur Jan and others (1986 SCMR 991), held as under:--

"that in the circumstances of these cases the petitioners in all these petitions had accepted the terms and conditions initially offered to them wherein they were held entitled to a fixed pay of the scale without any increment. Since they have attained the basic qualification from a specific date, they are entitled to the graded pay with effect from the date they had passed their B.Ed. Examination and not

from the date of initial appointment on temporary basis. The learned Service Tribunal was, therefore, correct to hold that the petitioners were not entitled to the graded pay with effect from the date of their appointment and that they could claim the graded pay with effect from passing their B.Ed. Examination. This finding of the learned Tribunal does not suffer from any infirmity of the kind warranting our interference under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973."

It is an admitted fact that the respondents at the time of their initial appointment did not possess the basic qualification for the post and they accepted the terms and conditions of their service whereby they were employed on fixed pay. They never raised any objection with regard to their fixed pay when they were employed or till the time they were awarded graded pay on acquiring the requisite qualification. Once the respondents had accepted the fixed pay for the lack of requisite qualification, they were estopped by their conduct to claim graded pay from the date of their initial appointment and they cannot be allowed to take a turn after a considerable long time to say that they were entitled to the graded pay from the date of their initial appointment though they were not qualified for the same.

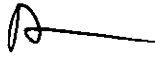
6. Consequently, we allow appeals filed by the department and dismiss that of the private appellants i.e. C.As. 971 to 975/2000. In C.A. 962/2000 C as the respondent has not acquired the requisite qualification so far, therefore, the impugned judgment to his extent is set aside and he is declared to be not entitled to the graded pay. No order as to costs.

S.A.K./G-86/S

Order accordingly.

20.10.2016

Appellant in person and Mr. Usman Ghani, Sr.GP for respondents present. Appellant requested for adjournment. Adjournment granted. To come up for arguments on 21.02.2017.



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER.

21.02.2017

Appellant in person and Mr. Muhammad Jan, GP for respondents present. Appellant requested for adjournment. Request accepted. To come up for arguments on 26.05.2017 before D.B.



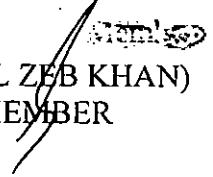
(AHMAD HASSAN)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

26.05.2017

Appellant, in person present. Mr. Muhammad Adeel Butt, Additional AG for respondents also present. Appellant requested for adjournment. Adjourned. To come up for arguments on 13.09.2017 before D.B.



(GUL ZEB KHAN)
MEMBER

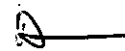


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

26.10.2015

Counsel for the appellant and Mr. Wisal Khan, Inspector (Legal) alongwith Addl: AG for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I Khan. Therefore, the case is adjourned to

29/3/16 for arguments.


Member

29.03.2016

Counsel for the appellant and Mr. Wisal Khan, Inspector (Legal) alongwith Asst. AG for respondents present. Arguments could not be heard due to non-availability of D. By therefore, the case is adjourned to 03.06.2016 for arguments.


Chairman

03.06.2016

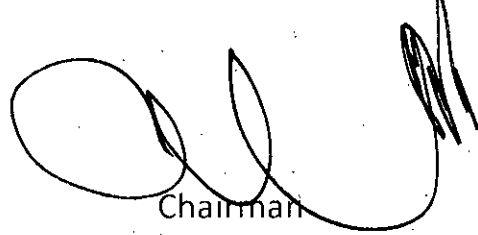
Counsel for the appellant and Assistant AG for respondents present. Learned counsel for the appellant requested for time to file rejoinder request accepted. To come up for rejoinder and arguments on 20.10.2016.


Member


Member

6- 12.09.2014

Appellant in person and Mr. Muhammad Nabi, Inspector (Legal) on behalf of respondents with Mr. Kabèerullah Khattak, Asstt. A.G present. Written reply and reply to application for condonation of delay has not been received. To come up for written reply/comments and reply to application for condonation of delay on 13.1.2015.


Chairman

7- 13.01.2015

None present for appellant. Mr. Ijaz Hussain, S.I (Legal) on behalf of respondents alongwith Addl: A.G present. Requested for adjournment. Last opportunity granted for written reply/comments as well as reply to application for condonation of delay. Adjourned to 15.04.2015.


Chairman

15.04.2015

Appellant in person and Mr. Wisal Muhammad, Inspector (legal) alongwith Addl: A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 26.10.2015.


Chairman

Appeal No. 570/2014
Mr. Saleem Ullah

17.06.2014

No one is present on behalf of the appellant. Notices be issued to the appellant/counsel for the appellant. To come up for preliminary hearing on 18.06.2014.



Member

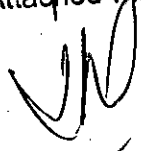
Noted for PH for 18-6-14

17-6-14

18.06.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the original order dated 02.01.2010, he filed departmental appeal, which has been rejected on 02.09.2010, hence the present appeal on 11.04.2014. He further contended that the impugned order dated 02.09.2010, has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules 1986. Counsel for the appellant has also filed an application for condonation of delay. 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, Notices be issued to the respondents. To come up for written reply/comments on main appeal as well as reply/arguments on application for condonation of delay on 12.09.2014.

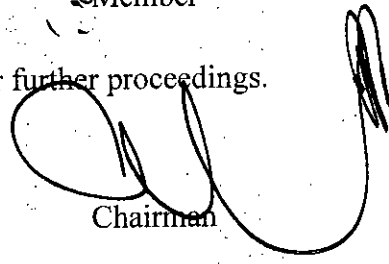
Appellant Deposited
Security & Process Fee
Rs. 180/- Bank
Receipt is Attached with File.



Member

18.06.2014

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

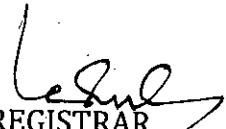



Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 570 /2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/04/2014	<p>The appeal of Mr. Saleem Ullah resubmitted today by Mr. Muhammad Hayat Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	24-4-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>17-6-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Saleem Ullah son of Mamraiz Khan constable No 703 Distt Courts Nowshera received today i.e. on 11.04.2014 is incomplete on the following scores which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Appeal may be got signed by the appellatant.
- 2- Affidavit may be got attested by Oath Commissioner.
- 3- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 4- Copy of impugned order dated 04.04.2010 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
- 5- Annexures of the appeal may be attested.

No. 596 /S.T,

Dt. 11/04 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Hayat Adv.Pesh.

*All the objections were removed
in objection no 4 the dated of order is 4-1-10
which was place on file as Annexus (A) Pg 11*

Counsel for Petitioner

M. Hayat 23-4-14

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 570 /2014

Saleem Ullah(Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

And others.....(Respondents)


I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-5
2.	Affidavit		6
3.	Addresses of the parties		7
4.	Application for condonation of delay		8-9
5.	Affidavit		10
6.	Copy of order dated 04/01/2010	A	11
7.	Copies of appeal and order dated 02/09/2010	B & C	12-14
8.	Wakalat Nama		15


Appellant

Through

Dated: 10/04/2014


Muhammad Hayat
Advocate High Court,
Peshawar.
Cell No. 0300-5989437

/

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 570 /2014

Al. W. P. No. 554
11-4-14

Saleem Ullah S/o Mamraiz Khan

Constable No. 703, District Courts, Nowshera.....(Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Peshawar Division.
3. District Police Officer, Nowshera.....(Respondents)

SERVICE APPEAL U/S 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974, AGAINST THE ORDER DATED
04/01/2010, PASSED BY RESPONDENT NO.
3, WHEREBY APPELLANT WAS AWARDED
PENALTY OF STOPPAGE OF TWO YEARS
INCREMENT WITH CUMULATIVE EFFECT, *3 one Thousands*

Fine **WHEREBY REPRESENTATION OF THE**
APPELLANT WAS REJECTED BY
RESPONDENT NO. 2, VIDE ORDER DATED
02/09/2010 WITHOUT ASSIGNING ANY
LEGAL REASON.

Prayer in appear:

To set aside the impugned orders dated 04/01/2010 and 02/09/2010 passed by respondents No. 1 and 2 respectively and the appellant be restored to his original

position with all service benefits from the date of stoppage of increment.

Respectfully Sheweth:

1. That the appellant was appointed as Constable on 08/07/1998 vide Belt No. 703 in the Police Department at Nowshera and was serving to the best of his abilities and to the entire satisfaction of his superiors.
2. That the baseless allegations were leveled against the appellant and was charged sheeted on the ground in leakage of information regarding the movement of respondent No. 3 vide Daily Diary Report No. 29 dated 24/10/2009.
3. That the appellant was proceeded against departmentally on such charges and respondent No. 3 imposed on a penalty of stoppage of 2 years increment with cumulative effect vide order dated 04/01/2010. (Copy of order dated 04/01/2010 is annexure "A").
4. That feeling aggrieved from the same, the appellant preferred departmental representation before respondent No. 2 which also met with the same fate vide orders dated 02/09/2010. (Copies of appeal and order dated 02/09/2010 is annexure "B" & "C" respectively).
5. That the appeal of the appellant was decided in his absence without hearing of appellant.

- 3
6. That the order passed by respondent No. 2 have seriously grieved the appellant, and thus appellant assails the same before this Hon'ble Tribunal, inter alia, on the following grounds:

GROUND:

- A. That the impugned orders dated 04/01/2010 and 02/09/2010 are against the law, facts and record of the case, hence untenable.
- B. That the competent authority passed a mechanical order and the departmental authority also passed a similar order without application of mind. Had both these authorities looked into the facts of the case deeply, they would not have passed such impugned orders.
- C. That there is no cogent and confidence inspiring evidence brought on surface about the involvement of appellant in charges leveled against him, therefore, such a punishment is not sustainable in the eyes of law and is liable to be set aside.
- D. That it is the legal right of any employee to defend himself in a case, he is charged with any act of misconduct and such an act of misconduct and impartial/ full-fledged inquiry with the active participation of the employees, neither a full-fledged inquiry was conducted by respondents nor appellant was allowed to participate in said inquiry. Such a procedure adopted by the respondents is against K.P.K Government Servant

Rules, therefore, such an impugned order are liable to be set aside.

- E. That the impugned orders are based on malafide and personal grudges, so, are liable to be set aside.
- F. That the appellant was not provided any opportunity of being heard and he was condemned unheard, therefore, both competent authorities as well as Appellate Authority violated the principles of natural justice. So, imposition of punishment on appellant without providing him chance of hearing is illegal and is liable to be set aside.
- G. That the appellant was not provided any opportunity to cross examine and defend, thus both authorities have violated the fundamental rights of the appellant.
- H. That appellant has not been treated in accordance with law. *More over service Appeal No 877/2011 has been allowed by this Honourable Tribunal on 2-1-13.*
- I. That the appellant has been made victim of highhandedness of the respondents having no fault on his part.
- J. That because of act of respondents, the appellant was highly discriminated.

5

K. That any other ground may be adduce at the time of arguments, with kind permission of this Hon'ble Tribunal.

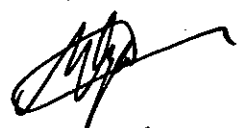
For aforesaid reasons, it is, therefore, most humbly prayed that on acceptance of this service appeal, the impugned orders dated 04/02/2010 and 02/09/2010 may graciously be set aside and the appellant be restored to his original position with all service benefits from the date of stoppage.

Any other remedy which deems fit by this Hon'ble Tribunal may also be granted in favour of appellant.


Appellant

Through

Dated: 10/04/2014


Muhammad Hayat
Advocate High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2014

Saleem Ullah(Appellant)

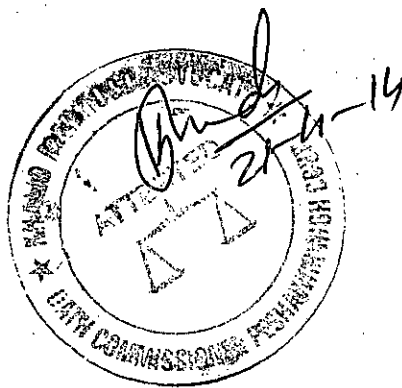
VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

And others.....(Respondents)

AFFIDAVIT

I, Saleem Ullah S/o Mamraiz Khan Constable No. 703, District Courts, Nowshera, do hereby solemnly affirm and declare that all the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



DEPONENT

7

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2014

Saleem Ullah(Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

And others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

Saleem Ullah S/o Mamraiz Khan

Constable No. 703, District Courts, Nowshera


RESPONDENTS:

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


Appellant

Through

Dated: 10/04/2014


Muhammad Hayat
Advocate High Court,
Peshawar.

8

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

C.M. No. _____/2014

In

Service Appeal No. _____/2014

Saleem Ullah(Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

And others.....(Respondents)

APPLICATION FOR CONDONATION OF
DELAY IF ANY.

Respectfully Sheweth:


1. That the above captioned appeal has been filed before this Hon'ble Tribunal, the contents of this application may be read as an integral part of the main appeal.
2. That the decision of cases on merits always to be encouraged instead of non-suiting the litigants for technical reasons including on limitation.

3. That the appellant was unaware of the fact that his appeal was dismissed by respondent No. 2 as the order was passed in his absence.
4. That the limitation if any is not condoned by this Hon'ble Tribunal, the applicant will suffer an irreparable loss.

It is, there fore, respectfully prayed before this Hon'ble Tribunal that the application may kindly be accepted and delay if any may kindly be condoned in the interest of justice.


Applicant/Appellant

Through


Muhammad Hayat
Advocate High Court,
Peshawar.

Dated: 10/04/2014

10

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.**

C.M. No. _____/2014

In

Service Appeal No. _____/2014

Saleem Ullah(Appellant)

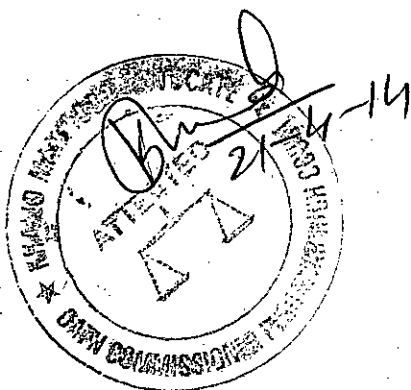
VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

And others.....(Respondents)

AFFIDAVIT

I, Saleem Ullah S/o Mamraiz Khan Constable No. 703,
District Courts, Nowshera, do hereby solemnly affirm and
declare that all the contents of the accompanying **Application**
are true and correct to the best of my knowledge and belief
and nothing has been concealed from this Hon'ble Tribunal.



[Handwritten Signature]
DEPONENT

جواب عالی
خواجہ شہزاد لکھنؤ 1927ء میرا جواب مندرجہ ذیل عرض ہے
11.11.09

1) میں نے اس سے پہلے تفصیل کے ساتھ دیا ہے جو کہ فائل کے ساتھ موجود ہے۔ لیکن آج اس پر لکھا
ہم دروازہ غور نہیں کیا۔ حالانکہ میں نے تفصیل دہرای ہے۔ اور وہ یہ کہ کسٹبل محل شاہ نے میرا موبائل فون غنیر ملا یا تھا
میرا موبائل فون HAND FREE تھا۔ الٹو سٹیک آن ہوا تھا تاہم کوئی بات نہیں ہوئی تھی۔ اور مجھے پتہ نہیں کہ وہ
کس کس کے پاس ہے۔ لیکن کوئی غور نہیں کیا۔
2) میں نے انکو آفسر طلب کو بین و فراحت پیش کیا لیکن کوئی غور نہیں کیا۔
3) میں اس سلسلہ میں بالکل بیگناہ ہوں۔

4) میرا صاف پتہ اس میں رکھا گیا ہے۔
5) میں اس الزام (کہ میں نے 500 روپے نوٹس کی آمدورفت کی اطلاع نہیں دی) کو
بالکل نہیں مانتا۔

6) میں نے مدد رفت کے دوران کوئی ایسی کام یا بات نہیں کی ہے جس کی وجہ سے افسران بالا
کو پریشانی لاحق ہو سکتی ہو۔

لہذا میرا خدشہ شہزاد لکھنؤ/انکوارٹی فائل نمبروں - تاکہ میرا
سے بچے چلتا۔ متاثر ہو رہا ہے۔
نوٹ - مزید زبانی و فراحت میں
روبرو پیشی میں کر دیا گیا۔

کسٹبل سلم اللہ نمبر 703
چوکی مرہٹی

Stoppage of increment for
2 years with accumulative
effect @ Rs 1000/- fine.

O.R.
DPO-N&R

02/02/2010

11
4-1-10

T-4 (29)

Attested by course
[Signature]

ORDER

This order will dispose off departmental appeal of constable **Salcemullah No.703** of District Nowshera who was awarded the minor punishment of stoppage of two annual increments with cumulative effect vide OB No.11 dated 4/1/2010 by DPO Nowshera.

The charge levelled against him was that he while posted in Squad of DPO Nowshera, he was noticed leakage of information regarding movement of DPO Nowshera. Proper departmental proceedings were initiated against him and during enquiry he was found guilty of the charge. On completion of enquiry, the DPO Nowshera issued him FSCN to which he replied. The same was found unsatisfactory, hence he was awarded the above punishments.

The relevant record has been perused. He was called in OR on 25/8/2010 but failed to appear. The charge levelled against him stand proved. The order passed by DPO Nowshera is upheld and the appeal is rejected/filed.

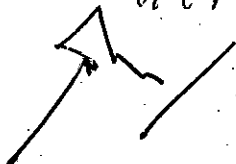

CAPITAL CITY POLICE OFFICER,
PESHAWAR.

No. 1256 /PA dated Peshawar the 02-9- 10

Copy to DPO Nowshera for information and n/a. The official concerned may pl be informed accordingly.


Encl: FMC+S.Roll.

E.C-FMC-CHC
For n-action



DPO-NSR
02-09-2010

Attested by counsel



|| DY No: 166/PA
dt: 16-9-2010

o/c

To,

The Capital City Police Officer
Peshawar.

Subject:- APPEAL.

Sir,

Most respectfully I beg to submit that

1. I have been awarded a punishment of :-
 - i. Fine of Rs.1000/-
 - ii. Stoppage of 2 years increment with accumulative effect.

by the worthy DPO NSR vide order book 11 dated 4.1.2010.
2. The allegations were that I was invol in information/leakage of information/movement of DPO. this connection I have submitted a detailed and well-convincing reply but it was not paid due consideration have also submitted reply in response to the show cau notice, but with favourable consideration.
3. In fact, on that day(23.10.09), Cons Gul Shah given me call from his mobile phone at 7.AM. due to HAND FREE mobile, his number was stored in my set. It is also facts that in calling calls are stored suck like mobile phones. No talks were made with ~~us~~ h His nubmer was available till the removal of sim from mobile, which was taken into possession and removed f the mobile, by the officers.
4. I am totally innocent in the matter.
5. I have celan and clear record.
6. I have rebutted the allegations but I was awarded double punishment for un-established a -ion.
7. I have about 12 years service and t is no such complaint or otherwise against me in my w long service. .

Attested by Counsel



8. I have given/submitted real replies, totally based on facts and that nothing was concealed

9. I have been put to severe financial loss by awarding the said punishment.

Under these circumstances, I approach your goodness to kindly consider my Appeal and accept it, by set-aside the order of punishment awarded to me by the DPO Nowshera vide his office order book No. 11 dated 4.1.2010, so that my service future may not be destroyed.

Thanking you in anticipation.

Yours Obediently,

Sami
(SAMI MULLAH) FC NO. 703

PP Marhata (PS Akora)
Distt; Nowshera.

Attested by counsel
[Signature]

9

CHARGE SHEET

1. NISAR AHMED KHAN, District Police Officer, Nowshera, as competent authority, hereby charge you Constable Saleemullah No. 703 of Shaheen squad as per Statement of Allegations enclosed.

2. By reasons of the above, you appear to be guilty of misconduct under section 3 of the NWFP Removal from Service (Special Powers) Ordinance, 2000 and have rendered yourself liable to all or any of the penalties specified in section 3 of the Ordinance *ibid*.

3. You are, therefore, required to submit your written defense within (07) days of the receipt of this Charge Sheet to the Enquiry Committee, as the case may be.

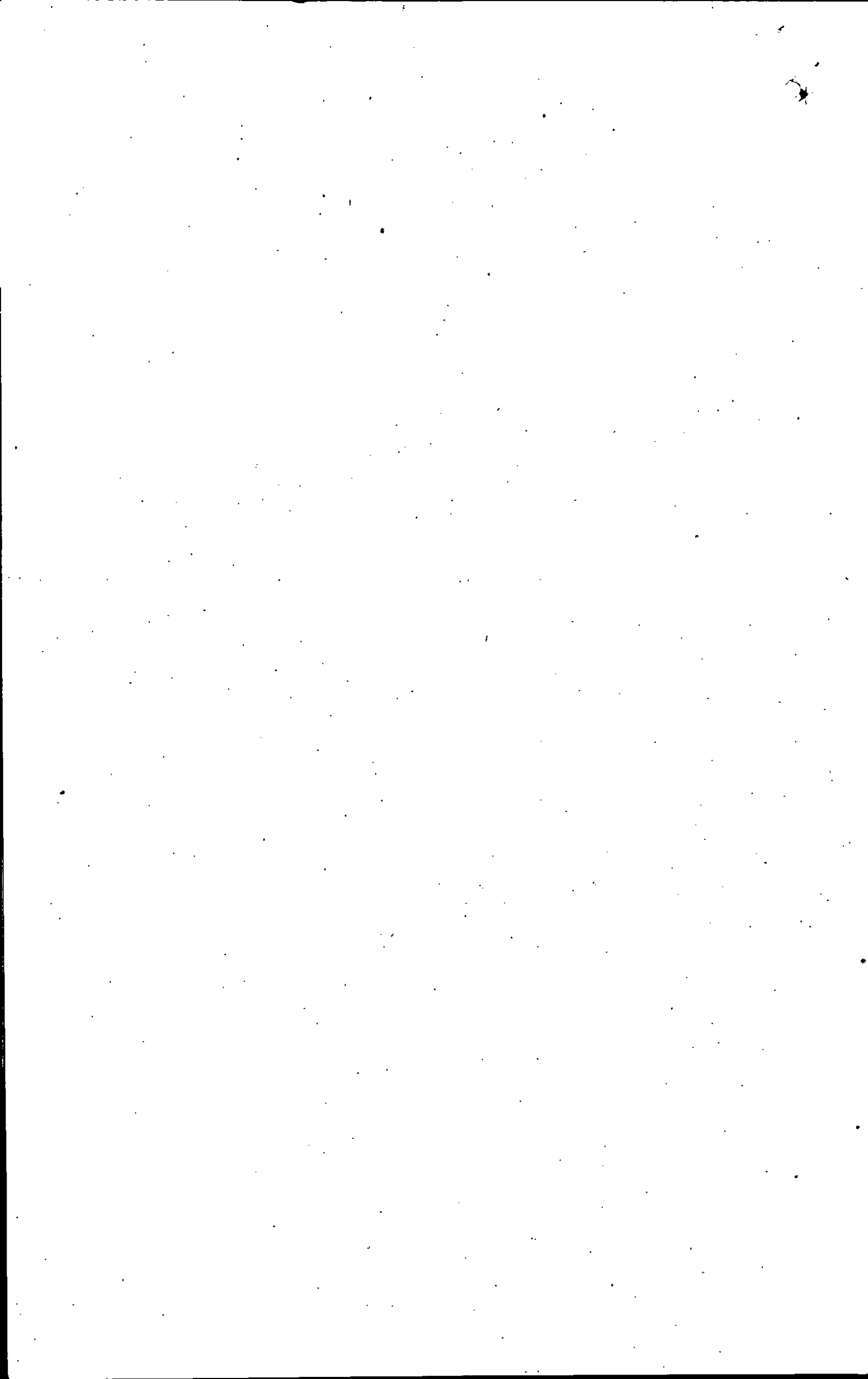
4. Your written defense, if any should reach the Enquiry Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case *ex-parte* action shall follow against you.

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

District Police Officer,
Nowshera. -/1

Attested by Sargel





DISCIPLINARY ACTION

28

I, NISAR AHMED KHAN, District Police Officer, Nowshera as competent authority of the opinion that Constable Saleem Ullah No. 703 has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning of section 3 of the NWFP, Removal from Service (Special Powers) Ordinance, 2000.

STATEMENT OF ALLEGATIONS

Whereas you constable Saleem Ullah No. 703 while posted at Shaheen squad Nowshera were found indulging in leakage of information regarding movement of the undersigned. In this regard, preliminary enquiry was conducted by DSP Hqrs: Nowshera. In his report, he found you involved/indulging in such indiscipline activities which amount to grave misconduct on your part, warrants you liable for major punishment under the NWFP, Removal from service, (Special Powers) Ordinance, 2000.

For the purpose to scrutinize the conduct of the said accused with reference to the above allegations, Enquiry Committee of the following Officers is constituted u/s 3 of the Ordinance.

1. Syed Liaqat Shah DSP Akora Khattak.
2. Mr. Hidayat Shah Khattak Inspector Legal, NSR.

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

Constable Saleem Ullah No. 703 is directed to appear before the Enquiry Committee on the date, time and place fixed by the Enquiry Committee.

Note:- Finding report must be submitted within 07 days positively.

No. 172/PA

dt. 26.10.07

District Police Officer,
Nowshera. 19

Attested by counsel



FINAL SHOW CAUSE NOTICE


I. NISAR AHMED KHAN, District Police Officer, Nowshera, as competent authority, under the NWFP Removal from Service (Special Powers) Ordinance-2000, do hereby serve you Constable Saleemullah No. 703 while posted at Shaheen Squad, Nowshera

1. That consequent upon the completion of enquiry conducted against you by Enquiry Committee consisting of Syed Liaqat Shah DSP Akora and Mr Hidayat Shah Inspector Legal, Nowshera for which you were given opportunity for appearing.
2. On going through the finding and recommendation of the Inquiry Committee, I am satisfied that you have committed the following acts/omissions as specified in section 3 of the said ordinance.
 - a. The Inquiry committee submitted finding wherein you were found guilty of misconduct. The charges have been proved against you without any iota.
 - b. As a result thereof, I, as competent authority have tentatively decided to impose upon you the penalty of punishment under section 3 of the *said* Ordinance.
3. You are, therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you.
4. If, no reply to this notice is received within 07 days, it will be presumed that you have no defence to put and in that case ex-parte action shall be taken against you.

Copy of the finding of the Enquiry Committee is enclosed.

District Police Officer,
Nowshera.

No. _____/PA.
Dt: _____/2009.

Attested by Counsel


از دفتر ۵۲۵۱۵ الیوٹو

نمبر ۲۵۶۵/۵

تاریخ ۲۰۰۹-۱۰-۳۱

خانہ ذنگ انکیٹری کی رپورٹ

خط عالی / کانٹریبل نورمان ۵۶۵ متنبہ شاہین سداڑ حال چوکی جٹوہ کے خلاف الزام ہے کہ مذکورہ شاہین سداڑی نپشرہ میں تنہائی کے دوران ۵۲۵۱۵ نپشرہ کی نقل حرکت کا اطلاع بندہ دیو پائل فون ریکارڈس دوران کو ایک راز فاش کیا اور ایک ایم اے ڈی ڈی پریس آفیسر کی پوزیشن و کنٹیننس کا اطلاع دیا خلاف ڈیپلینس اور خلاف روز نیس نامہ کتاب ہے۔

۲۳/۱۰/۲۰۰۹ کی ایک کپی جس کی کاپی نمبر ۰۳۳۳-۹۰۰۳۴۲۶-۹۱۹

۱۷۹ - ضلعی ایف ڈی - جاہ جامعہ رابطہ کے ضلع - ۵۲۵ کی پوزیشن کنپری میاں کے ہے۔ - بوزی الزامات کے تحت حکو شو کارزوشن دیا گیا اور

۵۲۵/۱۴۵ نپشرہ Preliminary Enquiry کے حکو قعودار اور گینز گریڈیا - جو ضلع - ۵۲۵ نپشرہ کے جائزہ شدت دہری آف اینکشن نمبر ۱۹۱/۲۰۰۹ مورخہ ۲۶/۱۰/۲۰۰۹ کے خلاف

شکمانہ انکیٹری کے ارشد ۵۲۵ کی سیدایت شاہ ذنگ انکیٹری کے

Attested by counsel

(Signature)

اور ان نام علیہ کے خلاف راز آج ثابت ہوتے ہیں کہ خبا
 ۲۰۱۵ء کی نقل قدرت کرنے کے امداع ذمہ داری تو سبیل
 دیگر لوگوں کو دیکر راز افشاء کر کے خلاف و سپین
 اور خلاف روز کامر تک ہر ایسے۔ اس تمام کا راز اور فساد
 کا خطر نورسہاں مذکورہ ہے۔ جو کہ ۲۰۱۵ء کی ذمہ داری
 سکی اور میں تاج کافوس ہے کہ آجکل سے خراب حالات کے
 پیش نظر خبا ۲۰۱۵ء کی نقل قدرت کو فسد کرتا۔
 مگر اس کے ساتھ وہ ناکام رہا۔ اگر اس قسم کا راز کسی
 شریک فساد کے ساتھ ہو جائے تو ایک سنگین واردات
 کا پیشین حکم ہر کتابیہ۔ مگر کو آگ لگا لگو کے چرانے سے
 حکم حفاظت کے لئے وہ راز افشاء کر کے اس خلاف و سپین
 حرکت کامر تک ہر ایسے۔ حکم انگریزی کے گینگ اور قہور دار
 لگو رہا ہے۔ نواب حکم صادر و پیشین۔

لکھنؤ
 سرپرست شہید آباد گذرہ
 31-10-2009

وزارت مذمت و تہذیب
 31-10-2009

۲۰۱۵ء کی ذمہ داری
 Attested by Counsel
 [Signature]

703
الحمد لله

XXX نائب انگریزی کمیٹی

میں دن ڈیوٹی نون ہے۔ حکامہ 9736958-0321

ہے۔ روز $\frac{23}{2009}$ کا۔ ہاؤس کے قاضی شاپین کو اور
یہ جو ریکورڈ کرتا ہے۔ شیٹ 7.00 سے بیکر کے ساتھ

اس کے ساتھ ڈیوٹی پر رہتا ہے۔ ہاؤس

نوٹریٹ کی تک پہنچتا ہے۔ ہاؤس کے ساتھ شاپین کو اور ڈیوٹی

ڈیوٹی نون ڈیوٹی پورٹن رہتا ہے۔ نون $\frac{23}{2009}$ کا ہاؤس

کانٹینٹنٹ ہاؤس کے ساتھ ڈیوٹی نون رہتا ہے

کے ساتھ ڈیوٹی پورٹن رہتا ہے۔ ہاؤس کے ساتھ

ہاؤس کے ساتھ ڈیوٹی پورٹن رہتا ہے۔ ہاؤس کے ساتھ

کے ساتھ ڈیوٹی پورٹن رہتا ہے۔ ہاؤس کے ساتھ

کے ساتھ ڈیوٹی پورٹن رہتا ہے۔ ہاؤس کے ساتھ

کے ساتھ ڈیوٹی پورٹن رہتا ہے۔ ہاؤس کے ساتھ

کے ساتھ ڈیوٹی پورٹن رہتا ہے۔ ہاؤس کے ساتھ

الحمد لله

2003 حال میں ہاؤس کے ساتھ ڈیوٹی

29/10/2009

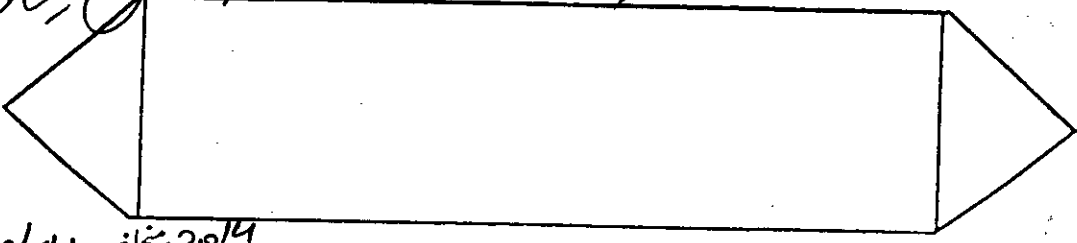
Attested

Signature

29/10/2009

Attested by counsel

بعدالت صبر، محتوٹخواہ سروس ٹریڈیوٹیل بناو



2014ء منجانب ایسٹ

سیٹ ۱ لٹہ بنام آئی جی جی وی پی کے پی کے
پشاور و علیہ

سروس ایپیل

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام سیٹ ۱ لٹہ کیلئے محمد صیامہ ریسٹروٹیل
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالت ہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا ایپیل کی برآمدگی اور منسوخ
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائے التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 10 ماہ اگست 2014ء

بمقام سیٹ ۱ لٹہ کے لئے منظور ہے۔

Attested & Accepted

سیٹ ۱ لٹہ منجانب

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

Service Appeal No. 570/2014

Saleemullah s/o Mamraiz Khan,
Constable No. 703, District Courts, Nowshera.

.....Appellant

V E R S U S

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

.....Respondents

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

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS

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

On Facts

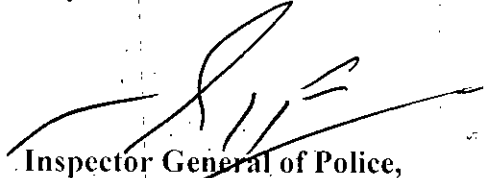
1. Para to the extent of appointment of the appellant pertains to record, needs no comments while rest of the para is incorrect hence, denied.
2. Incorrect. The appellant was rightly charge sheeted for leakage of information which is a misconduct and against norms of disciplined force.
3. Incorrect. The appellant was proceeded against departmentally and after fulfillment of all codal formalities the punishment order was passed which does commensurate with the gravity of misconduct of the appellant.
4. Correct. The departmental appeal of the appellant was rejected by respondent No.2 i.e DIG Peshawar, Division (CCPO) because after perusal of entire record by the appellate authority, no lacuna/loophole or procedural/ legal flaw was found by the said authority.
5. Correct. Appeal of the appellant was decided in his absence because he was called in Orderly Room on 25-08-2010 but the appellant willfully and deliberately failed to appear before the appellate authority, hence, the appeal was decided in his absence.
6. Para not related. Needs no comments.

On grounds

- A. Incorrect. The orders impugned by the appellant dated 04-01-2010 and 02-09-2010 are in consonance with law, facts and material available on record, hence, tenable in the eyes of law.
- B. Incorrect. The appellant was proceeded against departmentally on the charges of leakage of information where upon proper departmental enquiry was initiated and an enquiry committee was constituted for probing into the conduct of defaulter official. After fulfillment of all codal formalities, the appellant was awarded punishment of stoppage of 02 annual increments, hence, the allegations leveled by the appellant are false and baseless rather without legal footing to stand on.
- C. Incorrect. During the course of enquiry PWs were summoned whose statements were recorded and the appellant was provided full fledged right of cross examination and after bringing on record confidence inspiring evidence the appellant was awarded appropriate punishment which is sustainable in the eyes of law.
- D. Correct to the extent of active participation of the employees while rest of the para is incorrect hence, denied. Because full fledged enquiry was conducted and after adopting all legal formalities the punishment order was passed which is in accordance with the norms of natural justice.
- E. Incorrect. The punishment order is in accordance with law, facts and material available on record.
- F. Incorrect. The appellant was issued a charge sheet and summary of allegations and enquiry committee was constituted where after a full fledged enquiry was initiated during the course of which statements of PWs were recorded and the appellant was provided opportunity of cross examination and he was also heard in person, therefore, allegations of appellant regarding Audi Alteram Partem and violation of principle of natural justice are false and baseless rather being devoid of its legal footing, are liable to be set at naught.
- G. Para already explained needs no comments.
- H. Incorrect. The appellant has been treated in accordance with law and principles of natural justice and every case has its own facts and circumstances, therefore, plea taken by the appellant is not justifiable.
- I. Incorrect. The allegation leveled by the appellant is false and baseless, because the respondents have no grudge against the appellant.
- J. Para already explained needs no comments.

K. That the respondents also seek permission of this Honourable Tribunal to adduce additional grounds at the time of arguments.

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




Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

Respondent No. 1



Deputy Inspector General of Police,
Peshawar Division (CCPO).
Respondent No. 2



District Police Officer,
Nowshera.
Respondent No. 3

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

Service Appeal No. 570/2014.

Saleemullah s/o Mamraiz Khan,
Constable No. 703, District Courts, Nowshera.

.....Applicant

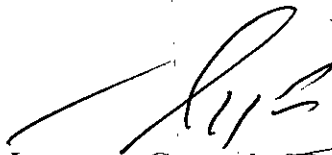
V E R S U S

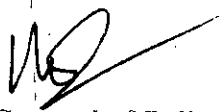
1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Peshawar Division.
3. District Police Officer, Nowshera.

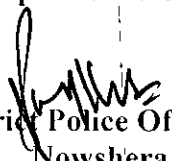
.....Respondents

AFFIDAVIT

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


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


**Deputy Inspector General of Police,
Peshawar Division (CCPO).
Respondent No. 2**


**District Police Officer,
Nowshera.
Respondent No. 3**

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

Service Appeal No. 570/2014

Saleemullah s/o Mamraiz Khan,
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.....Applicant

V E R S U S

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

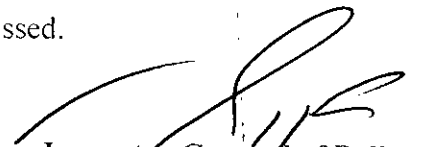
.....Respondents

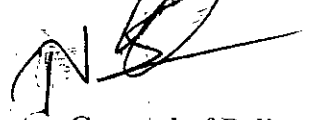
**REPLY TO THE APPLICATION FOR CONDONATION OF
DELAY**


Respectfully Sheweth: -

1. Para not related. Needs no comments.
2. Para incorrect. As per judgments of Superior Court of Pakistan, limitation can not be treated simply a technicality as it has over whelming effects on the merits of the case.
3. Incorrect. The appellant was called in Orderly Room by respondent No.2 but he intentionally and deliberately failed to appear before the appellate authority which resulted in rejection order.
4. As per law each and every day is to be explained and mere submission of application for condonation is not enough hence, application is liable to be dismissed.

It is therefore, requested that, keeping in view the above submissions application in hand may very graciously be dismissed.


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


**Deputy Inspector General of Police,
Peshawar Division (CCPO).
Respondent No. 2**


**District Police Officer,
Nowshera.
Respondent No. 3**

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.



SERVICE APPEAL NO.877/2011

Date of institution ... 25.05.2011

Date of Judgment ... 02.01.2013.

Mr.Noor Subhan S/O Haji Subhan
Constable No. 865, Police Line, Nowshera.....(Appellant)

VERSUS

1. Inspector General of Police, K.P.K, Peshawar.
2. Deputy Inspector General of Police, Peshawar Division.
3. District Police Officer, Nowshera.....(Respondents)

SERVICE APPEAL U/S 4 OF NWFP SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 13.01.2010, PASSED BY
RESPONDENT NO. 3, WHEREBY APPELLANT WAS AWARDED
MAJOR PENALTY OF REDUCTION IN PAY TO THE MINIMUM OF
TIME SCALE FOR INDEFINITE PERIOD, WHEREBY
REPRESENTATION OF THE APPELLANT WAS REJECTED BY
RESPONDENTS NO. 2 VIDE ORDER DATED 02.09.2010 WITHOUT
ASSIGNING ANY LEGAL REASON.

Mr. Amanullah Marwat,
Advocate.

For appellant

Mr. Arshad Alam,
Government Pleader.

For respondents

Mr.Qalandar Ali Khan
Mr. Noor Ali Khan

Chairman
Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:-

The judgment in this

appeal will also dispose of Appeal No. 878/2011 by Fazal Karim. appellant, as identical questions are involved in both the appeals, requiring simultaneous disposal.

2. The appellant in this appeal, Noor Subhan, and the said appellant in the connected appeal are Constables in the Police Department, and while performing duty in the Shaheen Squad with DPO Nowshera (Respondent No.3), were charged for leaking movement of the DPO. They both were therefore served with charge sheets and statements of allegations and inquiry was conducted against them through the inquiry committee comprising Syed Liaqat Shah, DSP

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CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Akora Khattak and Mr. Hidayat Shah, Inspector Legal, Nowshera; and the inquiry committee, after inquiry proceedings, found both the appellants guilty of the charges and recommended action against them. The competent authority i.e. DPO, Nowshera served final show cause notices on the appellants and after receipt and examination of their replies thereto, passed the impugned order dated 13.01.2010, whereby both the appellants were reduced in pay to the minimum of the scale of the pay. The appellants preferred departmental appeals, which, too, were rejected by the appellate authority i.e. D.I.G of Police, Peshawar Division/CCPO, Peshawar (Respondent No.2) vide his orders dated 2.9.2010 & 1.9.2010 respectively. Hence these appeals alongwith applications for condonation of delay.

3. The appeals have been lodged on the grounds that the impugned orders are against law, facts and record of the case and without application of mind by both the competent authority and appellate authority; that the impugned order of the competent authority is in clear violation of FR-29 as no period has been specified for which the penalty of reduction in pay to the minimum of the scale of the pay shall remain operative; that the impugned orders are based on malafide and are outcome of personal grudges; that neither proper opportunity of defence has been afforded to the appellants nor they were provided opportunity of hearing in accordance with the requirements of law/rules; that there has been a discrimination in treatment meted out to the appellants; and that the appellants have not been treated in accordance with law.

4. The appeals were resisted by the respondents on several grounds, including that of limitation and maintainability. On factual side, the respondents defended the impugned action against the appellants by the competent authority as well as rejection of the departmental appeals by the appellate authority on the ground that legal procedure was followed and the orders were passed on consideration of facts, findings of the departmental/inquiry report and application of legal mind. They further contended that the inquiry committee examined the witnesses and afforded opportunity of cross-examination to the appellants, and on the basis of evidence, the inquiry committee found the appellants guilty of gross misconduct and recommended the imposition of the major penalty, which was commensurate with the gravity of the guilt of appellants. The respondents claimed that members of the Police Department had no fundamental right under

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

article 8 of the Constitution of Pakistan, 1973. They further claimed that the appellants have been treated in accordance with law.

5. The appellants also filed rejoinders; whereafter arguments of the learned counsel for the appellants and learned Govt. Pleader heard, and record perused.

6. The perusal of record would show that it has no-where been specified either in the charge sheets and statements of allegations or in the final show cause notices as to whom the appellants were allegedly leaking movement of the DPO Nowshera; but in the report of Reader to DPO recorded in the daily diary of Police Lines Nowshera vide S.No. 29 dated 24.10.2009, the appellants alongwith two others namely Salimullah and Zar Ali of Shaheen Squad were, allegedly found leaking/ disclosing movement of the DPO to members of the Traffic Police namely Gul Shah No. 119, Amjad Ali No.586, Nusrat Ali No.441, Irshad No. 919 and Ziaullah No. 791. However, neither the said other two constables, namely, Salimullah and Zar Ali, have been proceeded against departmentally nor the above mentioned members of Traffic Police examined in support of the allegation that the appellants leaked/disclosed to them movements of the DPO; especially when the appellants categorically denied to have leaked/disclosed movements of the DPO to them and claimed that they had contacted the said persons only to discuss their personal matters. In the same manner, none of the witnesses examined by the inquiry committee stated that the appellants either contacted the said persons or made alleged disclosure/leakage in their presence. On the other hand, the inquiry report/findings of the inquiry committee would show that the inquiry committee arrived at the conclusion of holding the appellants guilty of the charges on the basis of statements of the witnesses and record consisting of reports in the daily diary, without making any reference to those statements or reports wherein proof or evidence of involvement of the appellants in the alleged activity was available. The inquiry report/findings of the inquiry committee, which intriguingly does not bear signature of the other member namely Hidayat Shah Khattak. Inspector Legal Nowshera, is, thus, bereft of substance, so as to provide a sound basis for the impugned order, which is also in clear violation of mandatory provision of law i.e. FR-29, as no period has been specified for which the reduction shall be effective. Like-wise, the appellate authority i.e. CCPO, Peshawar also did not advance any reason for rejecting/ filing of departmental appeals of the appellants, and thus failed to

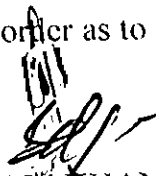
ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

perform his duty enjoined on him under section 24-A(2) of the General Clauses Act, 1897. Needless to say that by initiating departmental proceedings against the appellants and taking impugned action against them, the DPO Nowshera assumed the role of a judge in his own cause, as he happened to be a complainant in the case. (In the circumstances, non-compliance with the mandatory provisions of law and non-adherence to established rules and norms of justice not only caused miscarriage of justice but also rendered the impugned orders void and nullity in the eyes of law. It is by now well established that no limitation runs against void orders, therefore, the applications for condonation of delay, which have not been contested as no replies thereto have been filed by the respondents, are liable to be accepted and delay condoned in favour of the appellants.)

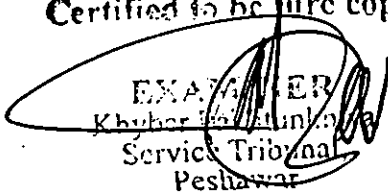
7. Consequently, on the acceptance of both the appeals, the impugned orders dated 13.01.2010, 2.09.2010 and 01.09.2010 are set aside and the appellants are restored to their position prior to the impugned orders, with consequential benefits. It may, however, be observed that the departments are always at liberty to conduct denovo proceedings against its employees but only if they get hold of sufficient material meeting the requirements of law for departmental proceedings against a civil servant in accordance with relevant law and rules. In view of facts of the case, there shall be no order as to costs.

ANNOUNCED
02.01.2013


(NOOR ALI KHAN)
MEMBER


(QALANDAR ALI KHAN)
CHAIRMAN

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 25-3-2014
 Number of Words 1600
 Copying Fee 10
 Urgent 2
 Total 12
 Name of Applicant [Signature]
 Date of Completion of Copy 25-3-2014
 Date of Delivery of Copy 25-3-2014

BEFORE THE SERVICES TRIBUNAL, K.P.K, PESHAWAR



In Re: Service Appeal No. 877 /2011

224
25/5/11

Noor Subhan S/o Haji Subhan
Constable No.865, Police Line, Nowshera.....Appellant

V E R S U S

1. Inspector General Police,
K.P.K, Peshawar
2. Deputy Inspector General of Police,
Peshawar Division
3. District Police Officer, Nowshera.....Respondents

Service Appeal u/s 4 of NWFP
Service Tribunal Act, 1974 against
the order dated 13.01.2010, passed
by respondent No.3, whereby
appellant was awarded major
penalty of reduction in pay to the
minimum of time scale for
indefinite period, whereby
representation of the appellant
was rejected by respondent No.2
vide order dated 02.09.2010
without assigning any legal reason.

Filed to Registrar

25/5/11

Filed to Registrar and filed.

Registrar,

30/5/11

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Prayer in Appeal:

To set aside the impugned orders dated 02.09.2010 and 13.01.2010 passed by respondents No.1 and 2 respectively and the appellant be restored to his original position with all service benefits from the date of reduction.

Respectfully Sheweth:

1. That the appellant was appointed as Constable on 20.08.1999 vide Belt No.865 in the Police Department at Nowshera and was serving to the best of his abilities and to the entire satisfaction of his superiors.
2. That the baseless allegations were levelled against the appellant and was charge sheeted *on the ground* in leakage of information regarding the movement of respondent no.3 vide Daily Diary Report No.29 dated 24.10.2009.
3. That the appellant was proceeded against departmentally on such charges and respondent No.1 imposed on a major punishment of reduction to the minimum of time scale *order* vide *dated* 12.01.2010. (Copy of order dated 12.01.2010 is Annexure "A").
4. That feeling aggrieved from the same, the appellant preferred departmental representation before respondent No.2 which also met with the same fate vide order dated 02.09.2010. (Copy of order dated of DIG is Annexure "B").

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[Signature]
Khyber Pakhtunkhwa
Services Tribunal,
Peshawar

5. That the order passed by respondent No.2 have seriously grieved the appellant, and thus appellant assails the same before this Honourable Tribunal, inter alia, on the following grounds:

GROUNDS:

- A. That the impugned orders dated 13.01.2010 and 02.09.2010 are against law, facts and record of the case, hence untenable.
- B. That the competent authority passed a mechanical order and the departmental authority also passed a similar order without application of mind. Had both these authorities looked into the facts of the case deeply, they would not been passed such impugned orders.
- C. That the no cogent and confidence inspiring evidence was brought on surface about the involvement of appellant in charges levelled against him, but he was awarded major penalty of reduction in pay to the maximum of time scale without specified any period. So, such punishment is violation of fundamental Rules No.29 which is under

"F.R 29 If a Government servant is, on account of misconduct or inefficiency, reduced to a lower grade or post, or to a lower stage in his time-scale, the authority ordering such reduction shall state the period of which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so, to what extent"

ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Therefore, such a punishment is not sustainable in the eyes of law and is liable to be set aside.

- D. That it is the legal right of an employee to defend him in a case, he is charged with any act of misconduct and such a act of misconduct is required to be proved through independent and impartial/ full-fledged inquiry with the active participation of the employees, neither full-fledged inquiry was conducted by respondents nor appellant was allowed to participate in said inquiry. Such a procedure adopted by the respondents are against K.P.K Govt. Servant Rules, therefore, such an impugned orders are liable to be set aside.
- E. That the impugned orders are based on malafide and personal grudges, so, are liable to be set aside.
- F. That the appellant was not provided any opportunity of being heard and he was condemned unheard, therefore, both competent authorities as well as Appellate Authority violated the principles of natural justice. So, imposition of punishment on appellant without providing him chance of hearing is illegal and is liable to be set aside.
- G. That the appellant was not provided any opportunity to cross examine and defence, thus both authorities have violated the fundamental rights of the appellant.
- H. That appellant has not been treated in accordance with law.
- I. That the appellant has been made victim of highhandedness of the respondents having no fault on his part.

ATTESTED
 Khayber Pakhtunkhwa
 Service Tribunal
 Peshawar

- J. That because of act of respondents, the appellant was highly discriminated.
- K. That appellant due to rules proprietary, fair-play and natural justice is require to be restored the appellant on his original position.
- L. That any other ground may be adduced at the time of arguments, with kind permission of this Honourable Court.

For the aforesaid reasons, it is, therefore, most humbly prayed that on acceptance of this service appeal, the impugned orders dated 13.01.2010 and 02.09.2010 may graciously be set aside and the appellant be restored to his original position with all service benefits from the date of reduction.

Any other remedy which deems fit by this Honourable Tribunal may also be granted in favour of appellant.

Certified to be true copy
 EXAMINED
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Through

Appellant
 Amanullah Marwat
 Mumraiz Khan Marwat
 Qari Fateh-ur-Rehman

Date: 25/05/2011

Date of Presentation of Application 25-3-2014
 Number of Words 2000
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KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2276 /ST

Dated 20 /10/ 2017

To


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

Subject: -

JUDGMENT IN APPEAL NO. 570/2014, MR. SALEEM ULLAH.

I am directed to forward herewith a certified copy of Judgement dated 11.10.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.