

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 936/2020

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Muhammad Sheraz S/O Muhammad Sabir, R/O Utmanzai
Charsadda, Ex-Constable No. 2355, FRP Range, Peshawar.

... (Appellant)

Versus

1. Superintendent of Police, FRP Peshawar Range, Peshawar.
2. Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

...(Respondents)

Mr. Arbab Saiful Kamal
Advocate

... For appellant

Mr. Muhammad Rasheed Khan
Deputy District Attorney

... For respondents

Date of Institution.....31.01.2020
Date of Hearing.....25.05.2022
Date of Decision..... 14.07.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (EXECUTIVE): The Service Appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against office order dated 10.01.2018 of Respondent No. 1, whereby appellant was removed from service and period of absence was treated as absence from duty against office order dated 04.07.2019 of Respondent No. 2, whereby representation of the appellant was rejected and against office order dated 07.01.2020 of Respondent No. 3, whereby revision petition of the appellant was rejected.



2. Brief facts of the case, as per memorandum of appeal, are that the appellant was enlisted in service as constable on 27.12.2010. On 03.08.2017, he was going to attend the funeral of his friend's maternal mother and got lift from one Taveer, owner of the vehicle, to reach Takhtbhai. The vehicle was intercepted by local police of Police Station Takhtbhai and FIR No. 1222 dated 03.08.2017 U/S 419/420/468/471/15AA was registered. A 30 bore pistol was also attributed to the owner of the vehicle Tanveer and vehicle was attributed to the appellant, despite the fact that the said 30 bore pistol was of the appellant as per license dated 11.11.2014. The appellant was served with charge sheet dated 21.08.2017, on the basis of which a final show cause notice was issued. Though he denied the allegations, but the appellant was removed from service vide order dated 10.01.2018. In the meanwhile, trial of criminal case was concluded and the appellant alongwith accused was acquitted from the charges leveled against them vide judgment dated 30.05.2019. The appellant submitted departmental appeal, which was rejected on 04.07.2019. His revision petition was also rejected on 07.01.2020; hence the service appeal.

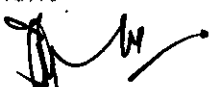
2. On receipt of appeal and its admission to full hearing, the respondents were asked to submit written reply/comments. They submitted their joint parawise comments and rebutted the claim of the appellant. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney for the respondents and perused the case file with connected documents minutely and thoroughly.

3. Learned counsel for the appellant submitted that the appellant was involved in a criminal case wherein baseless allegations were leveled against

him. He appraised the Tribunal that the police attributed 30 bore pistol to the driver of the vehicle despite the fact that license was shown to them which was in the name of the appellant whereas the vehicle was attributed to him. He was tried by the court of competent jurisdiction and ultimately vide judgment dated 30.05.2019, acquitted from the criminal charge. The respondents should have placed the appellant under suspension and waited for the outcome of criminal proceedings but instead he was removed from service without giving him any opportunity of cross examination. He requested that the appeal may be accepted as prayed for.

4. The learned Deputy District Attorney while rebutting the arguments of learned counsel for the appellant contended that criminal proceedings and departmental proceedings were different in nature and could run simultaneously. Proper departmental proceedings were initiated against the appellant, wherein allegations were proved against him and he was rightly removed from service. He requested for dismissal of the appeal with cost.

5. It appears from the record that the appellant was removed from service only on the ground of involvement in a criminal case vide FIR No. 1222 dated 03.8.2017 U/S 419/420/468/471/15-AA Police Station Takht Bhai, District Mardan. The appellant was tried by the court of competent jurisdiction and was acquitted from the criminal charge vide judgment dated 30.05.2019. In the meantime he was removed from service vide order dated 10.1.2018. It is true that departmental and criminal proceedings can run simultaneously but it is equally true that except involvement of the appellant in a criminal case, there was no other allegation or charge against him from which we could infer that the appellant was rightly awarded the punishment.



of removal from service. Mere involvement in a criminal case was not enough ground to pass any order of punishment against the appellant and that too in a case when the criminal proceedings had not yet concluded *and* before such conclusion, doing that was not appropriate. Instead of doing so the respondents might have put him under suspension till the outcome of his criminal case in the court of law. In the absence of convincing proof of allegations made against the appellant, order of removal from service is not sustainable.

6. In view of above, the penalty imposed upon the appellant is unwarranted and on acceptance of this appeal, the impugned orders are set aside. The appellant is reinstated in service, however, the intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. Consign.

7. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14th day of July, 2022.*



(KALIM ARSHAD KHAN)
Chairman



(FAREEHA PAUL)
Member (E)

Service Appeal No. 936/2020

Mr. Arbab Saiful Kamal, Advocate for the appellant present. Mr. Muhammad Rasheed Khan, Deputy District Attorney for respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 04 pages, we have arrived at the conclusion that the appeal in hand is allowed. The appellant is reinstated in service and the impugned orders are set aside. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14th day of July, 2022.*



(KALIM ARSHAD KHAN)
Chairman




(FAREEHA PAUL)
Member (E)

16/6/22

The concerned DB is not available.


The matter will be fixed to the concerned DB and the parties be informed accordingly to come up on 21/6/22



Superintendent

21st June, 2022

Counsel for the appellant present. Mr. Muhammad Rasheed,
DDA for the respondents present.

Because of the Departmental Selection Committee proceedings, we could not record the judgment. To come up on 20.07.2022 for order.


(Fareeha Paul)
Member(E)

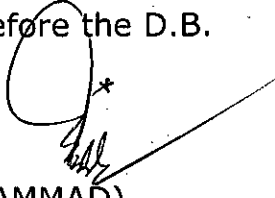

(Kalim Arshad Khan)
Chairman



26.10.2021

Mr. Arbab Saif-ul-Kamal, Advocate, for the appellant present. Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 25.02.2022 before the D.B.



(MIAN MUHAMMAD)
MEMBER (E)

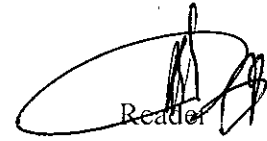


(SALAH-UD-DIN)
MEMBER (J)

25.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 25.05.2022 for the same as before.

R



Reader

25.05.2022

Counsel for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney General for respondents present.

Arguments heard. To come up for order on 16.06.2022 before D.B.



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

13.01.2021

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Ihsan Ullah, ASI, for the respondents, are also present.

Representative of the department submitted written reply on behalf of respondents which is placed on record. File come up for rejoinder and arguments on 21.04.2021 before D.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

21.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 13.08.2021 for the same as before.


Reader

13.08.2021

Appellant present through counsel.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Former made a request for adjournment. Request is accorded. To come up for arguments on 26.10.2021 before D.B.


(Rozina Rehman)
Member (J)


Chairman

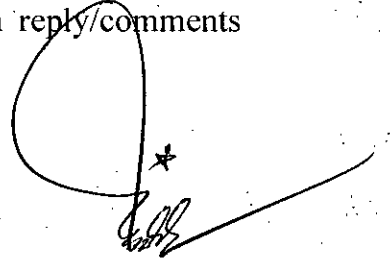
01.10.2020

Counsel for the appellant present.

Mr. Kabirullah, Khattak, Additional Advocate General for respondents present.

Written reply on behalf of the respondents not submitted. Learned AAG sought time to contact the respondents for submission of written reply/comments. Time is allowed.

Adjourned to 24.11.2020 for written reply/comments of respondents before S.B.

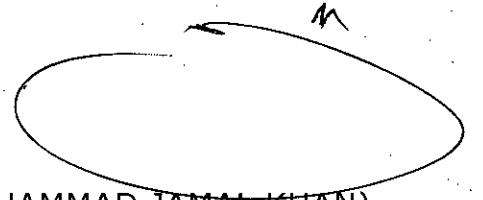


(Mian Muhammad)
Member (E)

24.11.2020

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Written reply on behalf of respondents not submitted. Learned Additional Advocate General requests for further time to contact the respondents and furnish written reply/comments on the next date of hearing. Adjourned to 13.01.2021 on which date file to come up for written reply/comments before S.B.



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

30.07.2020

Counsel for the appellant present.

Contends that the appellant was proceeded against departmentally and was awarded major punishment of removal from service on account of involvement in a criminal case recorded through FIR No. 1222 dated 03.08.2017. Before his departmental appeal against the impugned order could be decided on 04.07.2019, the appellant was acquitted from the charge by a court of competent jurisdiction on 30.05.2019. The departmental appellate authority did not consider the acquittal of appellant and went on to decide the appeal on the ground of delay. Similarly, the revisional authority, though mentioned about the acquittal, did not bother to discuss the same. Besides, the past conduct of the appellant was also made basis for the rejection of review petition. Learned counsel relied on PLD 2010-Supreme Court-695 and stated that in the circumstances of the case the delay, if any, occurring before the acquittal of appellant, was to be disregarded by the departmental authorities.

In view of the arguments of learned counsel and available record, instant appeal is admitted to regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 01.10.2020 before S.B.

Appellant Deposited
Security & Process Fee

30/7/20







Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 936 /2020


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/02/2020	<p>The appeal of Mr. Muhammad Sheraz resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p>decrease</p> <p> REGISTRAR</p>
2-	20.03.2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>20/03/2020</u></p> <p> CHAIRMAN</p>
	23.04.2020	<p>Appellant in person present and seeks adjournment as lawyers community is on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for preliminary hearing on 23.04.2020 before S.B.</p> <p> Member</p>
		<p>Due to public holiday on account of COVID-19, the case to come up for the same on 30.07.2020 before S.B.</p> <p> Reader</p>

The appeal of Mr. Muhammad Sheraz son of Muhammad Sabir r/o Utmanzai Charsadda Ex-Constable No. 2355 FRP Peshawar received today i.e. on 31.01.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Annexures-A, D, E, F and H of the appeal are illegible which may be replaced by legible/better one.

No. 285 /S.T,

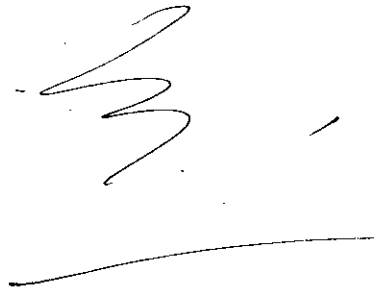
Dt. 03-02 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

Dr

Re-submitted after a plea



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 936/2020

Muhammad Sheraz

versus

SP & Others

I N D E X

S. No	Documents	Annex	P. No.
1.	Memo of Appeal		1-4
2.	FIR dated 03-08-2017	"A"	5
3.	License dated 11-11-2014	"B"	6-10
4.	Charge Sheet dated 21-08-2017	"C"	11-12
5.	Inquiry Report dated 15-09-2017	"D"	13- 13 / ₁
6.	Final Show Cause Notice, 18-09-2017	"E"	14
7.	Reply to Final Show Cause Notice	"F"	15
8.	Removal order dated 10-01-2018	"G"	16
9.	Trial Court Judgment dated 30-05-19	"H"	17-20
10.	Rejection order dated 04-07-2019	"I"	21
11.	Revision Petition	"J"	22
12.	Rejection order dated 07-01-2020	"K"	23

Appellant

Through



Saadullah Khan Marwat
Advocate.

21-A Nasir Mansion,
Shoba Bazaar, Peshawar.

Ph: 0300-5872676

0311-9266609

Dated.29-01-2020

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 936/2020

Muhammad Sheraz
S/O Muhammad Sabir,
R/o Utmanzai Charsadda,
Ex-Constable No. 2355,
FRP Range Peshawar. Appellant

Khyber Pakhtunkhwa
Service Tribunal

Registry No. 923

Dated 31-01-2020

Versus

1. Superintendent of Police,
FRP, Peshawar Range,
Peshawar.
2. Commandant FRP, KP,
Peshawar.
3. Provincial Police Officer,
KP, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OFFICE ORDER NO. 26-28 / PA DATED 10-
01-2018 OF R. NO. 01, WHEREBY APPELLANT WAS
REMOVED FROM SERVICE AND PERIOD OF ABSENCE
WAS TREATED AS ABSENCE FROM DUTY OR OFFICE
ORDER NO. 5552-53 / EC DATED 04-07-2019 OF R.
NO. 02 WHEREBY REPRESENTATION OF APPELLANT
WAS REJECTED OR OFFICE ORDER NO. 332-38 /20
DATED 07-01-2020 OF R. NO. 03 WHEREBY
REVISION PETITION OF APPELLANT WAS REJECTED:

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Filed to day
31/1/2020
Registrar

Re-submitted to day
and filed.
Registrar
12/2/2020

Respectfully Sheweth;

1. That appellant was enlisted in service as Constable on 27-12-2010 and served the department till the date of removal from service.
2. That on 03-08-2017, appellant was going to attend the funeral of his friend maternal mother and got lift from one Tanveer owner of the vehicle to reach Takhtbhai.
3. That on the said date, the said vehicle was intercepted by the local police of Police Station Takhtbhai and FIR No. 1222 dated 03-08-2017 U/S 419,420/468/431/15AA was registered. (Copy as annex "A")
4. That to make out a case against appellant as well as the owner of the vehicle namely Tanveer, 30 bore pistol was attributed to him and the vehicle was attributed to appellant, despite the fact that the said 30 bore pistol was at the name of appellant as per license dated 11-11-2014. (Copy as annex "B")
5. That on 21-08-2017, appellant was served with Charge Sheet which was not replied due to missing of the said one. (Copy as annex "C")
6. That inquiry into the matter was not conducted as per the mandate of law, yet SI Altaf Khan submitted his report on 15-09-2017 to the authority for onward action. (Copy as annex "D")
7. That on 18-09-2017, received on 21-09-2017, appellant was served with Final Show Cause Notice which was replied by denying the allegation. (Copies as annex "E" & "F")
8. That on 10-01-2018, appellant was removed from service by R. No. 01 and absence period was treated as absence from duty. (Copy as annex "G")
9. That in the meanwhile, trial into the criminal case was concluded by the Trial Court and appellant with co-accused was acquitted from the baseless charges vide judgment dated 30-05-2019. (Copy as annex "H")

10. That thereafter, appellant submitted departmental appeal before R. No. 02 for reinstatement in service which was rejected on 04-07-2019. (Copy as annex "I")
11. That appellant submitted Revision Petition before R. No. 03 which was rejected on 07-01-2020. (Copies as annex "J" & "K")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

1. That appellant was enlisted in service as Constable and served the department till the date of removal from service.
2. That to make out a case, the police attributed 30 bore pistol to the driver of the vehicle, despite the fact that license was shown to them at the name of appellant while the vehicle was attributed to him.
3. That enquiry into the matter was not conducted as per the mandate of law as no statement of any concerned was recorded in presence of appellant nor he was afforded opportunity of cross examination.
4. That the vehicle was not at the name of appellant.
5. That as and when absence period was treated absence from duty, then the service of appellant was regularized and there was no need to remove him from service.
6. That as and when appellant was acquitted from the baseless charges by the competent court of law on merit, then there was no need to remove him from service.
7. That the action of the respondents against appellant by keeping in view the aforesaid facts and circumstances of the case, is based on malafide.

It is, therefore, most humbly prayed that on acceptance of appeal, orders dated 10-01-2018, 04-07-2019 and 07-01-2020 of the respondents be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.



Appellant

Through



Saadullah Khan Marwat



Arbab Saiful Kamal

Amjad Nawaz
Advocates.

Dated 29-01-2020

(۱) کار نمبر ۲۲-17.101-17359695

ابتدائی اطلاع رپورٹ تفویہ 0310-9757653

محلہ

ابتدائی اطلاع نسبت قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۲ مجموعہ ضابطہ فوجداری

Handwritten Signature

محلہ	ضلع	تاریخ	وقت وقوع
محلہ ساہ	ضلع ساہ	17/22	03:00
تاریخ و وقت رپورٹ	نام و سکونت اطلاع دہندہ مستغیث	شخصی کارڈ نمبر / موبائل نمبر	
17/22 03:40	شعبہ الاحباب	Asi	
جائے وقوعہ فاصلہ تھانہ سے اور سمت	تعمیر کیفیت جرم (معد دفعہ) حال اگر کچھ لیا گیا ہو	جھوٹی روٹی / جھوٹی اسٹیٹ	
سوئے گارا گارا	AA 1/471/468/420/194 پاس پور ایجنسی ایجنسی	موتی راجہ	
نام و سکونت ملزم	شخصی کارڈ نمبر / موبائل نمبر	تاریخ و وقت رپورٹ	
نیشلی محمد شہیرا بلین بر 2355 پشاور FRP	17/22 03:40	03:00 وقت 17/22	
کارروائی جو تفتیش کے مقاصد کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	خاندان سے روائی کی تاریخ و وقت	03:00 وقت 17/22	
بہ سببی اسرار سے حقیقت مدعہ مکمل ہے		17/22 03:40	
		03:00 وقت 17/22	

عبدالصاحب سے نان Asi ہو سکتا ہے۔ ابتدائی اطلاع نیچے درج کرو۔ بوقت صبح ۱۰ بجے سب سے بات چیت ہوئی۔

35 بھر ۱8269 576 در عدد سینٹر چارٹرڈ 17 عہدہ کارڈنگ سرگرمی سے حاشیہ جوی میکانک سیکرٹری

چیک ہونے والے 35 میں نیکن کھیلنے والے خانگی کارڈنگ سیل سوان محمد سوان خان Asi کو ملے۔

کڑے بس کے چارٹرڈ 35 کو ریکارڈ کیا گیا ہے جس پر سرکاری پالیسی ایس سٹاڈل 200

115 سانس 12E121-3287666 سٹیٹ سفید پر جہلی اور سرکاری سٹریٹ لٹنگ

بڑوں کی پٹیوں سے چھٹ کر کے جس پر ٹوٹن لگا کر سٹاڈل 200 اور سینٹر کی کیفیت دیکھ کر سب سے نام نہان

نشتر اند کر کے کو اور تھوڑے جھکوں سے جہلی ساری اور دفعہ دی کے وقت سے جہلی

35 کو سرگرمی سے غوری 6063287-12E121 سٹیٹ سفید پر جہلی اور سرکاری سٹریٹ لٹنگ

نے اور جہلی سٹریٹ لٹنگ کی ہوئی ہے سٹریٹ لٹنگ کا کارڈنگ سٹریٹ لٹنگ کے مطابق

پر جہلی سٹریٹ لٹنگ کی ہوئی ہے سٹریٹ لٹنگ کا کارڈنگ سٹریٹ لٹنگ کے مطابق

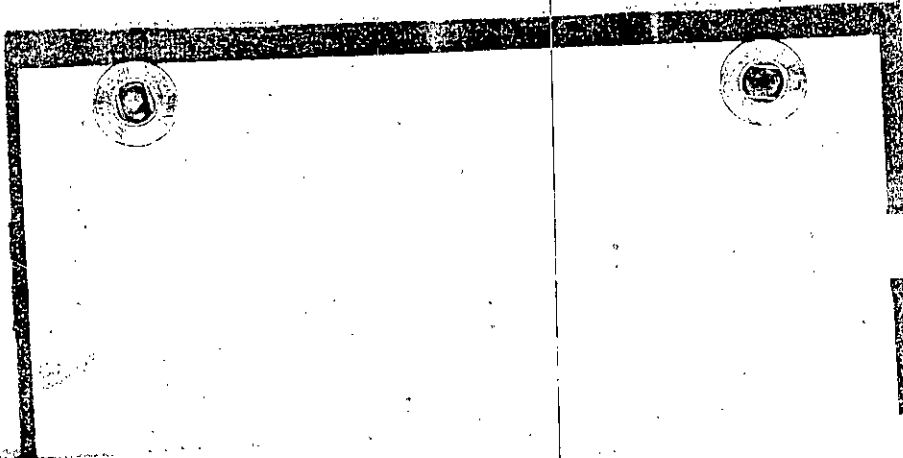
بڑوں سے متعلقہ یونینوں میں سے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے

دیئے نام نہان سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے

سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے

سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے سٹریٹ لٹنگ کے

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5

ARMS LICENCE

(a) In the case of breach loading shotgun kept for the purpose of protection only the Licence not being allowed to possess more than 25 cartridges for the whole year the fee for the initial grant of Licence shall be three rupees and the fee for each subsequent renewal shall be one rupee and ten paise; and

(b) In respect of Licences for muzzle loading guns and swords no fee for initial grant or renewal shall be charged; and

(ii) In the Districts of Cambellpur and Mianwall no fees shall be charged in respect of Licences granted for the purpose of village defence.

No. 1128 for certificate dated 11.11.14

Application vide DC Ch...

Order No. - NIL - dated 24.9.14

Name and parentage of the Licensee Muhammad

Shiraz son Muhammad

Sabis



2. A fee of one rupee shall be charged in respect of Licences granted for amendment of the form referred to in clause (ii) of the proviso to sub-section (3) of Rule 83.

3. The reduced fee for renewal with authority be available on application for renewal is made within one month after the date of expiry of the licence and if application is not made within that period the Licensing Authority may in his discretion levy fees at the rate for the initial grant of Licence.

4. A licence in this form may be granted or renewal for any period exceeding ten years at a time and the fee shall in all cases be calculated at the annual rates prescribed in paragraph 1 fraction of a year being taken as whole year.



Attas
[Signature]

7



Profession Constable No-2355

Address _____

Umanand

Police Station _____

Tehsil C. D.

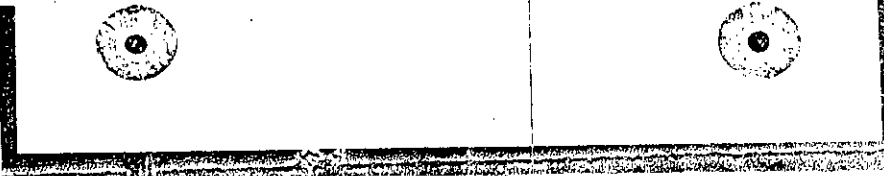
District _____

WEAPON/WEAPONS COVERED BY THIS LICENCE.

Passport Size
Photographs of Licensee
(must be attested on face side)

Shotgun	Nos./Made	Rifle	Nos./Made
Revolver		Sword	
Pistol <input checked="" type="checkbox"/>		Sword Stick	
Spear			

Note: The Issuing Authority should initial in the box against the weapon covered by the Licence.



Attest

W. No

6

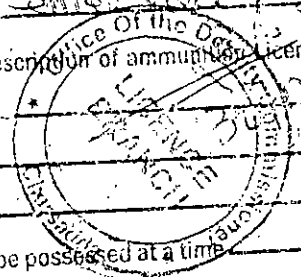
9 Date on which the Licence expires (unless previously to be in force under the proviso to (sub-rule (i) of Rule 42).

Description of Arms including caliber One 30 bore
Pen. No. 57018269 (S/H)
China made - enfor. Made Paga (13)

31-12-2014

7. Quality and description of ammunition Licensee/Retainer entitled to possess

10. Date on which the (Licence or the arms or both shall be produced inspection before the Licensing Authority under the proviso to sub-rule (i) of Rule 42).



SIX MONTHS

Maximum to be possessed at a time

N.B: *Please register Licence in a Post Office within _____ days from the date of not having taken which the Licence shall stand cancelled automatically.

Twenty Five Rds at a time

Maximum quantity to be purchased during the year

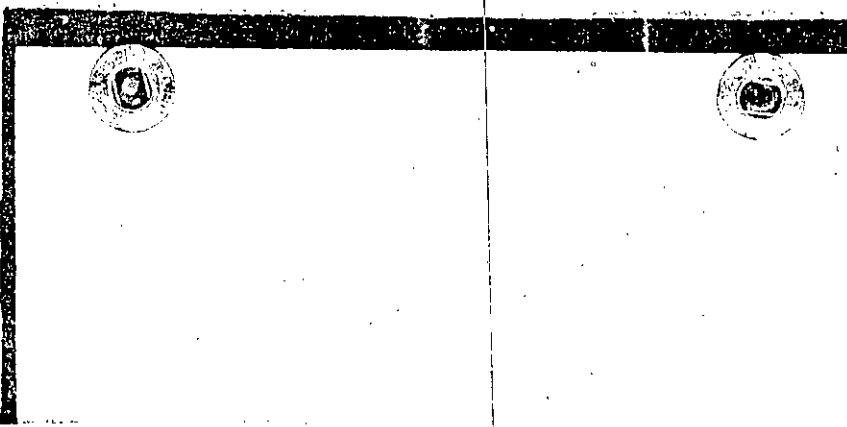
1000
B. M. B. Government Servant, Vice
Govt of N.W.F.P. Khasi District
Notification No. 403 (Arms) 12-11-14
dated 2.3.1974.
for Deputy Commissioner
Cherakkha

8. Area within which the Licence is valid

Khyber Pakhtoon Khwa.

Atulya

9



8

9

Signature _____

Commissioner _____

Deputy Commissioner _____

District Magistrate/Additional District Magistrate: _____

Assistant Commissioner _____

Sub-Divisional Magistrate _____

RENEWAL OF ARMS LICENCE

National Bank of Pakistan
Tehsil Bazar Br. Charsadda (0410)

Signature _____

Resident Magistrate / Tehsil Magistrate

Date: 28/10/15

Renewed upto 31.12.20

Deputy Commissioner

Seal of the Court

Renewed upto

National Bank of Pakistan
Tehsil Bazar Br. Charsadda (0410)

Reg No. 4496 Rs. Free

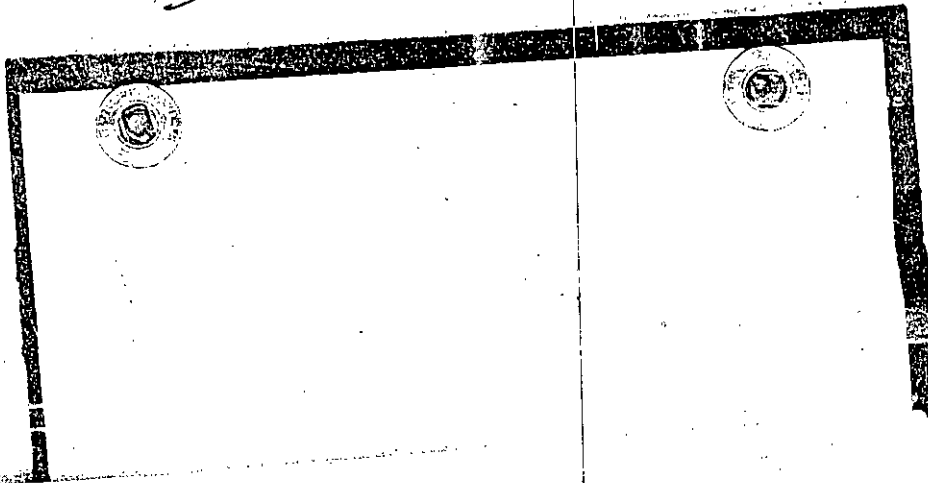
Revenue upto 31-12-2015

Date: 28/10/15

Manager
Deputy Commissioner

Attsts

10



10

13

Renewed upto 31.12.20

12

for Deputy Commissioner

Renewed upto 31.12.20

for Deputy Commissioner

Renewed upto 31.12.20

for Deputy Commissioner

FOR ARMS DEALERS
Entries of Cartridges / Ammunition

Sold On 30 Bore Pistol
Chins made No-57018267
with spare magazines 35 cal

30/12/14

Syed Mohammad Rafique Durrani
Arms & Ammunition Dealer
Tangi Road, Tehsil Bazar
District Charsadda KPK

Attest

C

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21-8-17

13

ORDER OF ENQUIRY AGAINST CONSTABLE SHERAZ NO.2355, CONTAINED UNDER SUB,RULE 4, OF RULE 5 OF NWFP (NOW KHYBER PAKHTUNKHWA)(E&D) RULES 1975.

It has been made to appear before me that accused Constable Sheraz No.2355, is primes-faice guilty of the following charges to be dealt with under General Police proceedings contained u/r 5(4) of NWFP Rules (E&D) 1975:

This office intimated by office of the Superintendent of Police, Investigation, Mardan his office letter No.1629/GB/Inv: dated 15.08.2017 that Constable Sheraz No.2355 of FRP Peshawar range, is involved in case FIR No. 1222 dated 03.08.2017 u/s 419/420/468/471/15AA PPC Po. Station Takht Bhai.

The act of accused official falls within the ambit of misconduct within the meaning of rules 2 (iii) of 1975 and is liable to be proceeded with under the General police proceedings, contained in Police Rules 1975.

From the above charge, I am convinced that the said official has ceased to become efficient and it accused of gross misconduct therefore, I Superintendent of Police FRP/Peshawar Range, Peshawar being authorized officer within the meaning of 2(ii) of the said rules nominate Inquiry Officer. SI/Iltaf Hussain of FRP/PR to inquiry into the charge, levelled against him.

The inquiry officer after completing all inquiry proceedings, shall forward the verdict/Findings to the undersigned within due dated period of 10-days contained U/S 6 (5) of the rules.

Charge sheet and summary of allegations against the accused officer, are being issued separately, reply where of shall be submitted before the inquiry officer within the period of 07. days from date of receipt.

Superintendent of Police, FRP
Peshawar Range, Peshawar.

No. 336 /PA dated Peshawar Range the 21 / 08 / 2017.

Copy to:-
Inquiry Officer SI/Iltaf Hussain of FRP/PR

Attest

CHARGE SHEET U/R 6(1)(A) NWFP (NOW KHYBER PAKHTUNKHWA)
POLICE RULES 1975.

You Constable Sheraz No.2355, posted at FRP/Peshawar Range, Peshawar is hereby charged for committing the following Omission/Commissions.

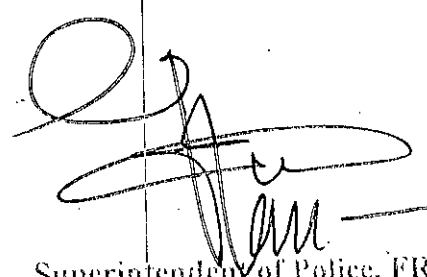
This office intimated by office of the Superintendent of Police, Investigation, Mardar his office letter No.1629/GB/Inv: dated 15.08.2017 that Constable Sheraz No.2355 of FRI Peshawar range, is involved in case FIR No. 1222 dated 03.08.2017 u/s 419/420/468/471/15AA PPC Police Station Takht Bhai.

You are hereby called upon to submit your written defence against the above charges before the inquiry officer.

Your reply should reach to the inquiry officer within (7) days from date of receipt of this charge Sheet, failing with Ex-part proceeding shall be initiated against you.

SUMMARY/STATEMENT OF ALLEGATION

This office intimated by office of the Superintendent of Police, Investigation, Mardar his office letter No.1629/GB/Inv: dated 15.08.2017 that Constable Sheraz No.2355 of FRI Peshawar range, is involved in case FIR No. 1222 dated 03.08.2017 u/s 419/420/468/471/15AA PPC Police Station Takht Bhai. Your reply should reach to the inquiry officer within (7) days from date of receipt of this charge Sheet, failing with Ex-part proceeding shall be initiated against you.



Superintendent of Police, FRP
Peshawar Range, Peshawar.

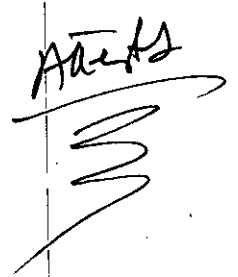
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25/08/17

Mobile: 0345-9069925
CNIC: 17101-1780969-5



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کریا - عالی

کوالڈیٹی کنٹرول انڈسٹریل انویسٹمنٹ اینڈ ٹریڈنگ کمیشن پاکستان

2355 / PR
1629/68/177
15/08/17

782/68/177
17/8/17

مردان دفتر SP
معلق درجہ اولیٰ درجہ اولیٰ

419/420/468/471/508
PPC

مردان دفتر SP
معلق درجہ اولیٰ درجہ اولیٰ

336/PA
21/08/17

مردان دفتر SP
معلق درجہ اولیٰ درجہ اولیٰ

337-39/PA
21/08/17

مردان دفتر SP
معلق درجہ اولیٰ درجہ اولیٰ

802/HC
24/08/17

مردان دفتر SP
معلق درجہ اولیٰ درجہ اولیٰ

3024 / PR

مردان دفتر SP
معلق درجہ اولیٰ درجہ اولیٰ

25/08
17

مردان دفتر SP
معلق درجہ اولیٰ درجہ اولیٰ

371-32/PA
08/09/17

مردان دفتر SP
معلق درجہ اولیٰ درجہ اولیٰ

مردان دفتر SP
معلق درجہ اولیٰ درجہ اولیٰ

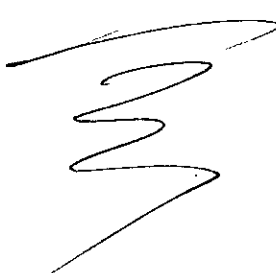
مردان دفتر SP
معلق درجہ اولیٰ درجہ اولیٰ

Handwritten signature/initials

Handwritten signature/initials

کنٹریل ڈورہ کھولہ عد 26 اور ڈی 13/09/09 کا حکم پورس ایف اے کو بند کرنے
 آئیڈیٹیڈ لیش پورس کنٹریل ڈورہ والپس جائے تعیناتی کے لئے لیا گیا جو کہ
 مکے غیر حاضری 180 جو منقوع ہے جو پورہ لے لیا ہے۔ کنٹریل ڈورہ کے لئے
 25/08/17 کو پورس ڈورہ چارج شیٹ واپس لے لی ہے۔ تین دن تک کوئی بیان
 لیش نہیں کی ہے۔ جو کہ حکم عدوی کے کنٹریل ڈورہ کے مطابق ریگارڈ فورٹ
 27/10/12 کا حکم ہے۔ سالانہ غیر حاضری مکے 98 جو ریگارڈ فورٹ کے لئے لیا اور کھولہ
 ڈورہ لیش 549/10108/16 کے TIME SCALE کے لئے لیا ہے۔ کنٹریل ڈورہ عدوی
 غیر حاضری کے لئے اور عدوی لیش کے لئے ڈورہ کی چارج شیٹ میں عدم بیانی
 اور سالانہ ریگارڈ ڈورہ لیش کے لئے لیش نظر مشاہداتی طور پر ہیں
 کھینچ کر لیا گیا ہے اور اس لئے ڈورہ لیش کے لئے ڈورہ سے مستقل فریب
 میں آگے پولیس آفسر کے لئے توقع نہیں ہے۔ اور پولیس فورس کے لئے نہ ملتا
 داغ کے لئے لیا گیا ہے۔ جو ڈورہ لیش فورس کے لئے ملتی ہے۔ علاوہ اس میں
 کھولہ کھولہ عد 764/21 اور ڈی 5/08/17 کے عدالت مردان میں زیر معاون
 ہے۔ انکو ایڈیشنل رپورٹ لکھی ہے۔

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 10112221
 DD-15/09/2017

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18-9-17

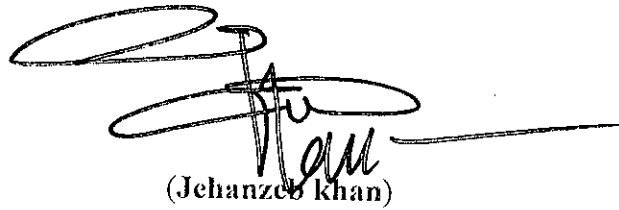
FINAL SHOW CAUSE NOTICE UNDER POLICE RULES 1975.

I, Superintendent of Police FRP Peshawar Range Peshawar, as competent authority do hereby serve you Constable Sheraz No.2355, of FRP/PR Peshawar.

1) I. That consequent upon the completion of enquiry conducted against you by SI/Iltaf Hussain of FRP/PR for which you were given full opportunity of hearing. On going through the finding/recommendations of the inquiry officer the material available on record and other connected papers I am satisfied that you have committed the following acts/omissions per police rules 1975.

While posted at FRP Peshawar Range, Peshawar you involved in Case FIR No.1222 dated 13.08.2017 u/s 419/420/468/471/15AA PPC at Police Station Takht Bhai and also remained absented from lawful duty w.e.from 25.08.2017 to 13.09.2017 for the total period of (18) days without taking any leave/permission from the Competent Authority. Your this act amount to gross miss-conduct and punishable.

- 2) Therefore, I Superintendent of Police FRP/PR Peshawar as competent authority has tentatively decided to impose upon you Major/Minor penalty including dismissal from service under the said Rules.
- 3) You are, therefore, required to Show Cause as to why penalty should not be imposed upon you.
- 4) If no reply to Final Show Cause Notice is received within the fifteen days of it delivered in the normal course of circumstance, it shall be presumed that you have no defense to put in and consequently ex-parte action shall be taken against you.

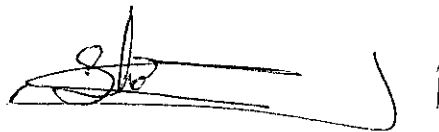


(Jehanzeb Khan)

Superintendent of Police, FRP
Peshawar Range, Peshawar.

No. 385/PA, dated Peshawar the 18 / 09 / 2017.

میں کوئی جواب نہیں دیا گیا ہے
میں نے اس کو مطلع کیا ہے



17101-1780969+S

21-09-2017



۱۵
بیت انزل سنیل کلاز 2355
بیت انزل سنیل کلاز

بیت انزل ۱

حکام فاضل شوکا ز فوش عمارت صا - 38198
کہ من مسائل صورت 3/8 کو صوت بار کا کا۔ سٹریٹ لٹا، سٹریٹ لٹا
گاڑیوں کو اشارے کر رہا تھا تاکہ کوئی گاڑی مل جائے جو کہ سونے کا رہا
اسی وقت اس صورت کا اسی۔ ایک من مسائل نے اشارہ کیا اور وہ اس نے
من مسائل اس سے پہلے کہ صوت کیجے روکنے لگا۔ گاڑی ڈرائیور نے کہا کہ
میں حق کھانی تھا بار کا ہوں۔ یہ یہ حق کھانی نہیں ہے تو اس صورت کا
کو پولیس اڈے کاروں نے اسے گا اشارہ کیا۔ گاڑی دیکھ کر یہ معلوم ہوا کہ
یہ صورت کا سیر دار کا گاڑی من مسائل صورت کا سے ہے اسے تو پولیس والوں
نے من مسائل کی تلاش کی اور من مسائل سے اسے من مسائل سے من مسائل سے
تک اس وقت صیب پاسی رائیس جو رہتا تھا۔ اس سے من مسائل اور پولیس
والوں کے درمیان تلخ کلامی ہوئی ہے نا پولیس والوں نے وہ صورت کا
صیب سے لگوا اور من مسائل سے اسے من مسائل سے لگوا لگوا لگوا لگوا
سے تھکن بیمار پولیس نے صیب خلاف خلاف FIA درج کی جو کہ صیب
خلاف خلاف FIA درج ہوئی ہے۔ لکن اس کے بعد صیب کے خلاف خلاف
انکو تری داخل دفتر کرنے کا حکم ہوا۔ لکن اس کے بعد من مسائل سے لگوا لگوا لگوا لگوا
بیت انزل سنیل کلاز 2355

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ORDER


This office Order relates to the disposal of formal departmental Inquiry against Constable Sheraz No.2355 of FRP Peshawar Range.

Brief facts of the case that Constable Sheraz No.2355 of FRP Peshawar Range, is involved/arrested in case vide FR No.1222 dated 03.08.2017 u/s 419/420/468/15AA at Police Station Takht Bhai Mardan also absented himself from lawful duty w.e.from 25.08.2017 to 13.09.2017 and 22.09.2017 till to date without any leave/permission from competent authority.

In this connection Constable Sheraz No.2355, was issued charge sheet along with Summery of Allegations and SI/Iltaf Hussain of FRP/PR was nominated as Inquiry Officer, vide this office order No.336/PA, dated 21.08.2017. The charge sheet served upon him but he did not bother to reply. After fulfillment the due codal formalities the inquiry officer submitted his finding wherein I.O mentioned that the defaulter constable is habitual absentee, jailbird and he was also involved in the smuggling of non-custom paid vehicle (Fielder) No.AW724/Islamabad, has been recovered from his possession in Police Station Hayat Abad while custom Inspector Saif ur Rehman chasing him. In this case he has also been awarded of major punishment of reduction in time scale vide this office order No.315-17 dated 10.08.2016. The Inquiry officer further recommended for major punishment.

After receiving the finding of inquiry officer the accused constable was issued/served with Final Show Cause notice vide this office No.385/PA dated 18.09.2017 to which he replied but his reply was found unsatisfactory. He was called for personal hearing in orderly room time again (index is enclosed herewith for ready reference) but did not bother to appear before the undersigned.

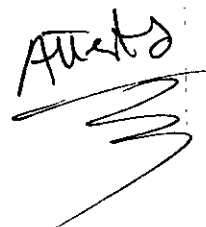
Therefore, I Jehanzeb Khan Superintendent of Police, FRP Peshawar Range, exercise of power vest in me under 5(5) of Khyber Pakhtunkhwa police rules 1975 (amendment in 2014) award him a Major Punishment of "Removal from Service" with immediate effect and his period of absence is hereby treated as absence from duty.


Superintendent of Police, FRP
Peshawar Range, Peshawar.

No. 26-28/PA dated Peshawar Range the 10 / 01 / 2018.

Copy to:-

1. The Accountant FRP/PR Peshawar
2. The SRC/FRP/PR Peshawar
3. The OASI/FRP/PR Peshawar



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30-5-19
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تصديق
30-5-19

IN THE COURT OF MUHAMMAD HAROON,
Judicial Magistrate, Takht Bhai, Mardan.

Case No.41/2/2 of year 2018.



Date of institution.....15.2.2018.

Date of Decision.....30.5.2019.

The State through Abdul Wahab ASI (complainant)

VERSUS.

1. Constable Muhammad Sheeraz son of Muhammad Sabir resident of District Charsadda,
2. Tanveer son of Khasro Parveez resident of Dalazak Road Peshawar.

FIR NO.1222 DATED 03.8.2017, UNDER SECTION 419/420/468/471 PPC/15 AA, P.S TAKHT BHAI.

JUDGMENT:

Brief facts of the case are that a motorcar bearing registration No.AA3085-Pesahar was recovered from possession accused as the accused Sheeraz was driving the same vehicle and accused Tanveer was sitting in front seat and during search one pistol of 30 bore bearing No.57018269 alongwith spare charger and 17 live rounds was also recovered from possession of the accused. After verification of registration documents through incharge ACLC, Mardan, same was found to be fake. Hence instant FIR was lodged against the accused.

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30/5/19
ATTESTED

Session Court
Session Court Mardan
At Takht Bhai

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 Contd Complete Challan was put. Accused was on bail, were summoned, wherein the accused Sheraz appeared and provision under section 241-A Cr.P.C appeared and formal charge was also framed 20.5.2019, wherein he claimed trial, hence PWs were invited. The prosecution produced PWs Zubair as AS of P.S Mardan as PW-1, Aziz Urrahman Khan SI as PW-2, Abdul Wahab Khan ASI(Complainant) as PW-3 and Mumtaz Khan No.584 as PW-4 and prosecution evidence. But pertinent to mention that accused Tanveer appeared alongwith counsel in the middle of trial on 20.5.2019 and stated that he relies on already framed formal charge.

After closing of prosecution evidence, statement of accused recorded under section 342 Cr.P.C wherein they again refused from allegations and material available on file.

Arguments of learned counsel for accused and SPP heard and record perused.

30/5/18
 It is well settled principles of law that the prosecution/complainant is duty bound to prove allegations without any shadow of doubt. Through instant case allegation of recovery of vehicle and fake registration book alongwith pistol of 30 bore were leveled against the accused, but they fully denied from the said allegation even from recovery of motor car and pistol from their possession.

ATTESTED

Session Court Branch
 Session Court Mardan
 At Mardan
18/5/18

19

Case No. 307/15

Abdul Wahab Khan SI (Complainant) is the star witness to the recovery appeared as PWS and reiterated the contents of Mad/FIR and his cross examination he admitted that he has made no entry regarding his departure from P.S and Naqa Bandi for the spot/place of occurrence. As both the accused have denied from the recovery of motor car from their possession, which is presumed to be great loss to the accused otherwise. Similarly he has not applied for custody of the vehicle, which was his legal right to apply for recovery of the same. Moreover as the accused have denied from possession of the vehicle which made the accused on the spot doubtful as in connection of this no CNIC of the accused or other documents, which purports the existence of the accused on the spot, have been taken into possession by the complainant. Similarly accused Sheeraz is government servant and no proof regarding his absence or leave from place of posting has been brought on the spot, which clearly negate the prosecution version as enunciated in the Murasila/FIR. Apart from this PW Aziz Urrahman Khan SI, who is IO of the case, admitted that the accused have not confessed their guilt nor any pointation. discovery has been made through them. He further admitted that no private person/elder has been associated to the occurrence either on the spot or subsequently. The accused are not history

307/15

sheeter PWS also admitted that alleged recovered weapon was not seized on the spot and also did not disclose of information of alleged recoveries Moreso alleged recovered vehicle weapon and

ATTESTED

Session Judge
 Session Judge Branch
 at Taluk Bhandari

64/11/19

38/5/19

articles were not exhibited by prosecution. Contradiction, felonies and shortcomings are there in statements of PWs in respect of mode, manner and time of incident. All these facts and circumstances make the case of accused doubtful.

In light of the above detailed discussion, as the prosecution failed to prove its case beyond any shadow of doubts, therefore, accused facing trial are acquitted from the charges leveled against them. They are on bail their sureties absolved from their liabilities. Case property, if any, be disposed of as per law. File be consigned to record room after its necessary completion and compilation.

Announced
30.5.2019

(Muhammad Haroon)
Judicial Magistrate, Takht Bhai

CERTIFICATE:-

Certified that my this judgment consists upon four (04) pages placed on file, and each and every page signed by me after necessary correction made therein.

Judicial Magistrate, Takht Bhai,
Mardan.

ATTESTED

Session Judge Branch
Secty. Court Mardan
at Takht Bhai

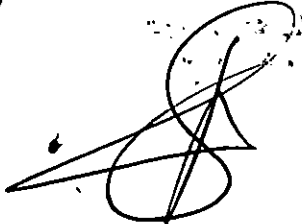
MUHAMMAD HAROON
JUDICIAL MAGISTRATE, TAKHT BHAI

MINISTRY OF HEALTH
Gen. Secy. to Govt.
Health Department
New Delhi

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مترک شہادہ 05

یہ راج
اداریہ آفس
لاہور

ORDER

I

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This order will dispose of the departmental appeal preferred by ex-constable Sheraz No. 2355 of FRP Peshawar Range, against the order of SP FRP Peshawar Range, Peshawar issued vide Order Endst; No. 26-28/PA, dated 10.01.2018, wherein he was awarded major punishment of removal from service. The applicant was proceeded against on the allegations that he while found involved/arrested in a criminal case vide FIR No. 1222, dated 03.08.2018 U/S 419/420/468/15AA, at Police Station Takht Bhai, District Mardan and also absented himself from duty with effect from 25.08.2017 to 13.09.2017 and 22.09.2017 till the date of removal from service i.e 10.01.2018 for a total period of **04 months and 06 days** without any leave/permission of the competent authority.

In this regard formal departmental proceedings were initiated against him. He was issued Charge Sheet alongwith Summary of Allegations vide office order No. 336/PA, dated 21.08.2017 and SI Iltaf Hussain of FRP Peshawar Range, was appointed as Enquiry Officer to conduct proper enquiry against him. After fulfillment the due codal formalities the Enquiry Officer submitted his findings, wherein he mentioned that the defaulter constable is a habitual absentee, jailbird and he was also involved in the smuggling of non-custom paid vehicle (Fielder) No. AW-724 Islamabad, which has been recovered from his possession in the area of Police Station Hayat Abad by the custom Inspector Saif Ur Rehman. In the instant case he has also been awarded major punishment of reduction in pay as time scale vide office order No. 315-17, dated 10.08.2016. The Enquiry Officer further recommended him for major punishment.

In the light of recommendation of Enquiry Officer he was issued Final Show Cause Notice vide office Endst; No. 358/PA, dated 18.09.2017 to which he replied, but his reply was found unsatisfactory. He was called time and again in orderly room to defend himself, but he did not bother to appear before the competent authority.



In the light of recommendation of enquiry officer and other material available on record he was removed from service vide Order Endst; No. 26-28/PA, dated 10.01.2018.

Feeling aggrieved against the impugned order of SP FRP Peshawar Range, Peshawar the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 03.07.2019.

During the course of personal hearing, the applicant failed to present any justification regarding to his innocence. The law helps the diligent and not indolent. The instant appeal is badly time barred in this stage. The one, who wish to enforce his claim, must do it at the earliest laches deprive the litigant from enforcing his right. Besides, he cannot become a good Police Officer, his retention in service would further embolden the accused officer and impinge upon the adversely on the over all discipline and conduct of the force. Thus there doesn't seem any infirmity in the order passed by the competent authority, therefore no ground exist to interfere in same.

Based on the findings narrated above, I, **Sajid Ali PSP** Commandant, FRP Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found no substance in the appeal, therefore, the same is rejected being badly time barred and meritless.

Order Announced.



Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar

No. 336-53/EC, dated Peshawar the 04/07/2019.

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

1. SP FRP Peshawar Range, Peshawar. His service record alongwith D-file sent herewith
2. Ex-constable Sheraz No. 2355 S/O Muhammad-Sabir Khan, Police Station Khan Mahi, Village Deri Utmanzai, District Charsadda.

J

22

To

Respected IGP (Khyber Pakhtunkhwa)

Subject: Rejoining services.

Respected IGP:

It is stated that I had been performing my duty well from 2010 to 2017,

While, unfortunately, at the end of 2017, I faced some domestic service issues due to which I was unable to have kept coming to my job after four-months of not coming to department, I was fired from the job.

Now, after two years my domestic issues have been resolved with blessing and now, I am willing to rejoin the job. I keep words that I will be adhered to my job afterward. It is humbly requested to accept of giving me my position back that I continue my life.

This would be your act of huge kindness.

Thank You

Constable



MUHAMMAD SHERAZ

Build No 2355

Peshawar FRP Range

Mobile No. 0303-8818128





K 23
OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 331 /20, dated Peshawar the 07/02/2020.

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-FC Sheraz No. 2355. The petitioner was removed from service by SP/FRP Peshawar Range, Peshawar vide order Endst: No. 26-28/PA, dated 10.01.2018 on the allegations that he was involved/arrested in case FIR No. 1222, dated 03.08.2017 u/s 419/420/468/15AA PPC Police Station Takht Bhai Mardan and also absented himself from duty w.e.f 25.08.2017 to 13.09.2017 & 22.09.2017 till date of removal from service i.e. 10.01.2018 for 04 months & 06 days. His appeal was rejected by Commandant, FRP, KP Peshawar vide order Endst: No. 5532-33/EC, dated 04.07.2019.

Meeting of Appellate Board was held on 08.08.2019 wherein petitioner was heard in person. During hearing petitioner contended that he has been acquitted by the Court of Judicial Magistrate, Takht Bhai.

Serious allegations of involvement in the smuggling of non-custom paid vehicles were leveled against the petitioner and the same were proved during enquiry. The petitioner could not produce cogent evidence of his innocence. All the proceedings of the enquiry are correct as per rules. In span of 07 years service, he has also attained 14 bad entries. His act of misconduct is very serious. Therefore, the Board decided that his petition is hereby rejected.

This order is issued with the approval by the Competent Authority.

(ZAIB ULLAH KHAN)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

No. S/ 33238 /20,

Copy of the above is forwarded to the:

1. Commandant, FRP, Khyber Pakhtunkhwa, Peshawar. One Service Roll alongwith D-file of the above named Ex-FC received vide your office Memo: No. 6341/SI Legal, dated 23.07.2019 is returned herewith for your office record.
2. Supdt: of Police, Peshawar Range, Peshawar.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

Attest

بعدالت چٹا سروس ٹریڈ یونٹل صوبہ سندھ پشاور

متجانب اہلانت

محمد شہزاد بنام محمد جونیس وغیرہ

دعویٰ اپیل

باعضویت کے ساتھ اپیل

مقررہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹم اسٹیک آڈٹس خان سروتنے ایڈووکیٹ، ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے باہمی نامہ و آفٹر ٹائلٹ و فیصلہ برتلاف میں جواب دہی اور اقبال دعویٰ اور بھرتی و ڈگری کرنے اجراء اور وصولی چیک و ڈیپو اور رضی دعویٰ اور درخواست ہر قسم کی تعلیمات اور اس پر دستخط کرنے کا اختیار ہوگا نیز بھرتی عدم پیروی یا ڈگری کیسٹم یا اپیل کی برآمدگی اور مستحق بننے اور کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بھرتی ضرورت مقدمہ منکر کے کل یا بھرتی کاروائی کے واسطے اور وکیل یا مشاور قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور اس پر مقدمہ کو بھی وہی جملہ مندرجہ بالا اختیارات حاصل ہوں گے اور اس کا سامنے پرواختہ منظور قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و فرسبہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام رورہ پر ہو یا عدسے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا رکالت نامہ دیکھ دیا کہ سند ہے۔

المرقوم 2020-01-28

القصد القصد القصد

اوریا پٹیہ المال
ایڈووکیٹ

سید محمد خان شہزاد
ایڈووکیٹ

محمد شہزاد

محمد شہزاد

محمد شہزاد
ایڈووکیٹ

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 936/2020.

Muhammad Sheraz S/O Muhammad Sabir, R/o Utmanzai Charsadda, Ex-constable No. 2355 FRP Peshawar RangeAppellant.

VERSUS

1. **Superintendent of Police,**
Peshawar Range, Peshawar.
2. **Commandant,**
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.
3. **Provincial Police Officer,**
Khyber Pakhtunkhwa, Peshawar.....Respondents.

Subject: Para wise reply by respondents

RESPECTFULLY SHEWETH.

PRELIMINARY OBJECTIONS

1. That the appeal is badly barred by law & limitation.
2. That the appeal is not maintainable in the present form.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant has no cause of action to file the instant appeal.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
7. That the appellant is trying to conceal the material facts from this Honorable Tribunal.

WRITTEN REPLY ON BEHALF OF RESPONDENTS.

FACTS:-

1. Para No. 01 pertain to the appellant record, needs no comments.
2. Incorrect and denied. The appellant alongwith his friend Mr. Tanveer S/O Khusro Pervaiz was found involved in the illegal business of the smuggling of non custom paid vehicle since long. On 03.08.2017 they were arrested by the local police from the spot with red handed and in this regard a criminal case was also registered against them.
3. Incorrect and denied. That a Motorcar vide registration No. AA.3085, which driven by the appellant, while his friend Mr. Tanveer was also seated with him at front seat was stopped by the local Police at Police NAKABANDI and on searching a 30 bore pistol, without license was recovered from the possession of his friend. Subsequently, on preliminary investigation the above registration number of the said Motorcar also found fake/bogus. Therefore, the appellant alongwith his co-accused was arrested with red handed from the spot and a criminal case vide FIR NO.1222 dated 03.08.2017 U/S 419/420/468/471/15AA in Police Station Takht Bhai was registered against them.

4. Incorrect and denied. That on searching of local police the 30 bore pistol without license was recovered from the possession of the co-accused of appellant Mr. Tanveer. However, the said Motorcar which affixed with fake number plate captured in custody by the Police from the possession of appellant. Thus the above criminal case has been registered against about the accused i.e appellant and his friend.
5. Incorrect and denied. Being involved in the above criminal case the appellant was placed under suspension and closed to Police Line and proper departmental enquiry has been conducted against him as he was served with Charge Sheet alongwith Summary of Allegations, but he failed to submit his reply Charge Sheet during the course of enquiry.
6. Incorrect and denied. Proper departmental enquiry has been conducted against the appellant as he was issued Charge Sheet with Summary of Allegations and Enquiry Officer was nominated to conduct proper enquiry against him. After fulfillment of all codal formalities, the Enquiry Officer submitted his findings, wherein the appellant was found guilty of the charges leveled against him and recommended for major punishment. (Copy of Charge Sheet and enquiry report attached herewith as annexure "A" & "B".)
7. Correct to the extent that upon the findings of Enquiry Officer, the appellant was served with Final Show Cause Notice, to which he replied, but his reply was found unsatisfactory.
8. Correct to the extent that after fulfillment of all codal formalities, the appellant was removed from service by the competent authority and his absence period total 18 days correctly treated as absence from duty as the appellant was remained absent from duty during that period.
9. Pertains to the appellant record, needs no comments.
10. Correct to the extent that departmental appeal submitted by the appellant was thoroughly examined and rejected on the grounds of time barred as the appellant was removed from service on 10.01.2018 and he submitted departmental appeal on 25.06.2019, which was badly time barred.
11. Correct to the extent that revision petition submitted by the appellant was thoroughly examined and rejected on the grounds of badly time barred.

GROUND:-

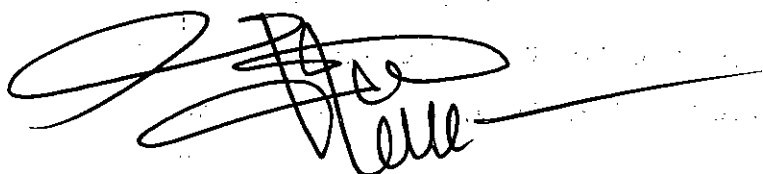
1. Para No. 01 pertain to the appellant record, needs no comments.
2. Incorrect and denied. During search of local police the 30 bore pistol without license was recovered from the possession of co-accused of the appellant, while the said Motorcar which affixed with fake number plate captured in custody by the Police from the possession of appellant.
3. Incorrect and denied. Proper departmental enquiry has already been conducted against the appellant and the allegations were fully established against him by the

Enquiry Officer. The appellant has failed to present any justification before the Enquiry Officer or before the competent authority regarding to his innocence.

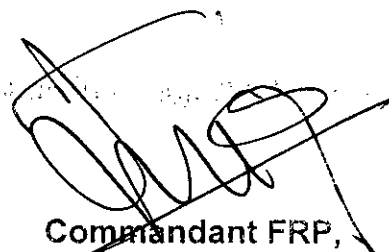
4. Incorrect and denied. That the said vehicle was driven by the appellant by affixing fake registration No.AA.3085 and on verification the same registration number was found issued to a government vehicle Hi-Ace (Pick up) Model 2011 in the owner of Police Department. It is pertinent to mention here that in the year 2016 a no custom paid vehicle (Fielder) No. AW724 was also recovered from his possession by the Custom Inspector vide Daily Diary report No. 56, dated 08.06.2016, Police station Hayatabad Peshawar to which he was awarded major punishment of time-scale by bringing him in the lowest stage of constable vide order Endst: No. 26-28/PA dated 10.01.2018. (Copy of DD report & Punishment order is attached herewith as annexure "C" & "D")
5. Incorrect and denied. After proper enquiry, the appellant was awarded major punishment of removal from service, and the absence period with effect from 21.08.2017 till to 13.09.2017 total period of 18 days, was treated as absence from duty which is not come into the ambit of punishment as per Police Rules 1975 amended in 2014.
6. Incorrect and denied. The departmental and court proceedings are two different entities and can run side by side. However, during departmental proceedings, the appellant was found guilty of the charges leveled against him; therefore, he was removed from service.
7. Incorrect and denied. The action taken by the respondents against the appellant is legally justified and accordance with law/rules.

PRAYERS:-


It is therefore, most humbly prayed that in the light of aforesaid facts/submission the service appeal may kindly be dismissed with costs please.



Superintendent of Police FRP,
Peshawar Range, Peshawar
(Respondent No. 01)



Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)



Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 03)

"A"

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CHARGE SHEET U/R 6(1)(A) NWFP (NOW KHYBER PAKHTUNKHWA)
POLICE RULES 1975.

You **Constable Sheraz No.2355**, posted at FRP/Peshawar Range, Peshawar is hereby charged for committing the following Omission/Commissions.

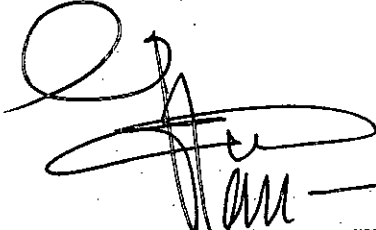
This office intimated by office of the Superintendent of Police, Investigation, Mardan his office letter No.1629/GB/Inv: dated 15.08.2017 that **Constable Sheraz No.2355** of FRP Peshawar range, is involved in case FIR No. 1222 dated 03.08.2017 u/s 419/420/468/471/15AA PPC Police Station Takht Bhai.

You are hereby called upon to submit your written defence against the above charged before the inquiry officer.


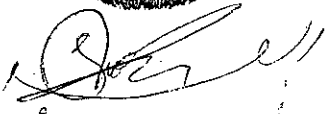
Your reply should reach to the inquiry officer within (7) days from date of receipt of this charge Sheet, failing with Ex-part proceeding shall be initiated against you.

SUMMARY/STATEMENT OF ALLEGATION

This office intimated by office of the Superintendent of Police, Investigation, Mardan his office letter No.1629/GB/Inv: dated 15.08.2017 that **Constable Sheraz No.2355** of FRP Peshawar range, is involved in case FIR No. 1222 dated 03.08.2017 u/s 419/420/468/471/15AA PPC Police Station Takht Bhai. Your reply should reach to the inquiry officer within (7) days from date of receipt of this charge Sheet, failing with Ex-part proceeding shall be initiated against you.


Superintendent of Police, FRP
Peshawar Range, Peshawar.

میں نے اس کے بارے میں جاننے کی کوشش کی ہے
مگر کوئی معلومات نہیں مل سکی ہے



25/08/17

Mobile: 0345-9069925
CNIC: 17101-1780969-5

کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز

۲۳۵۵ / PR
 ۱۶۲۹ / ۱۵۰۸ / ۱۱۷
 ۷۸۲ / ۱۷۱۸ / ۱۱۷
 ۴۱۹ / ۴۲۰ / ۴۶۸ / ۴۷۱ / ۱۵۸۸ / PPC
 ۲۳۲ / ۰۳ / ۱۰۸ / ۱۱۷
 ۳۳۶ / ۲۱ / ۱۰۸ / ۱۱۷
 ۳۳۷ - ۳۹ / ۲۱ / ۱۰۸ / ۱۱۷
 ۸۵۲ / ۲۴ / ۱۰۸ / ۱۱۷
 ۳۰۲۴ / PR
 ۲۵ / ۱۷ / ۰۸
 ۳۷۱ - ۶۲ / ۰۸ / ۱۰۹ / ۱۱۷
 ۱۴ / ۱۷ / ۰۸
 ۱۷ / ۰۹
 ۱۷ / ۰۹

میں ۲۳۵۵ / PR کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۱۶۲۹ / ۱۵۰۸ / ۱۱۷ کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۷۸۲ / ۱۷۱۸ / ۱۱۷ کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۴۱۹ / ۴۲۰ / ۴۶۸ / ۴۷۱ / ۱۵۸۸ / PPC کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۲۳۲ / ۰۳ / ۱۰۸ / ۱۱۷ کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۳۳۶ / ۲۱ / ۱۰۸ / ۱۱۷ کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۳۳۷ - ۳۹ / ۲۱ / ۱۰۸ / ۱۱۷ کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۸۵۲ / ۲۴ / ۱۰۸ / ۱۱۷ کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۳۰۲۴ / PR کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۲۵ / ۱۷ / ۰۸ کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۳۷۱ - ۶۲ / ۰۸ / ۱۰۹ / ۱۱۷ کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۱۴ / ۱۷ / ۰۸ کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۱۷ / ۰۹ کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔ کوالہ کاغذات انڈسٹریز پر خلاف لیٹل شیراز کے متعلق ۱۷ / ۰۹ کے متعلق جھٹی رپورٹیں مہیا کی گئی ہیں۔

مہیا

کنسل کے ذریعہ ہجوالہ عرفہ ریزٹنٹس 13/09/17 کا اہلکار ہوئے۔ وہ ذریعہ ضرر
 آئیڈیٹیفیکیشن ہوئے کنسل کے ذریعہ واپس جانے کے بعد ہی روانہ کیا گیا۔ جو
 کل غیر حاضری 188 جو منقوع ہے جو سمیرا نے مفدا ہے۔ کنسل کے ذریعہ صرف
 25/08/17 کو ہیست فوڈ چارج ٹیکٹ واپس لے لی ہے۔ یہاں تک حال کوئی بیان
 نہیں کی ہے۔ جو کہ علم عدوی کے کنسل کے ذریعہ مطابق ریگلاڈ فورم
 27/10/12 کا اہلکار ہوا ہے۔ سابقہ غیر حاضری کل 98 جو بلا انٹرویو کی ہے اور ہجوالہ
 آڈیٹنگ ٹیم 549/10/08/16 کے TIME SCALE کی سمیرا ہو چکی ہے۔ کنسل کے ذریعہ جاری
 غیر حاضری بائیں سے اور سر دیکھ کر لکھا ہے۔ ذریعہ کی چارج ٹیکٹ میں عدم بیانی
 اور سابقہ ریگلاڈ وڈ مشیاب کاغذات کے لکھ نظر مشاہداتی طور پر میں
 حقیقت انٹرنیشنل آفسر اس نتیجہ پر پہنچا کہ کنسل کے ذریعہ سے مستقل فریب
 میں آئے ہوئے آفسر بننے کی توقع نہیں ہے۔ اور پولیس فورس کے لئے
 داغ کے طور پر قائم ہے۔ جو کہ وہاں فورس کے متعلق ہے۔ علاوہ اس میں
 فرم ہالہ ہجوالہ ریسٹنٹس 764/21 صرف 5/08/17 کو عدالت مردان میں زیر سماعت
 ہے۔ انٹرنیشنل ایجوکیشن کے لئے ہے۔

Handwritten signature and date: 15/09/2017

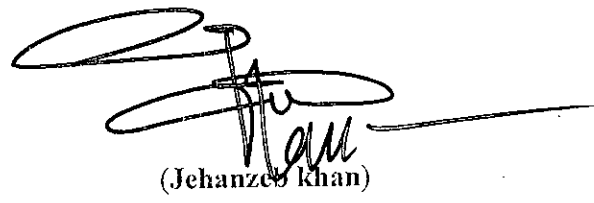
FINAL SHOW CAUSE NOTICE UNDER POLICE RULES 1975.

I, Superintendent of Police FRP Peshawar Range Peshawar, as competent authority do hereby serve you Constable Sheraz No.2355, of FRP/PR Peshawar.

- 1) I. That consequent upon the completion of enquiry conducted against you by SI/Iltaf Hussain of FRP/PR for which you were given full opportunity of hearing. On going through the finding/recommendations of the inquiry officer the material available on record and other connected papers I am satisfied that you have committed the following acts/omissions per police rules 1975.

While posted at FRP Peshawar Range, Peshawar you involved in Case FIR No.1222 dated 13.08.2017 u/s 419/420/468/471/15AA PPC at Police Station Takht Bhai and also remained absented from lawful duty w.e.from 25.08.2017 to 13.09.2017 for the total period of (18) days without taking any leave/permission from the Competent Authority. Your this act amount to gross miss-conduct and punishable.

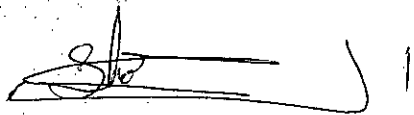
- 2) Therefore, I Superintendent of Police FRP/PR Peshawar as competent authority has tentatively decided to impose upon you Major/Minor penalty including dismissal from service under the said Rules.
- 3) You are, therefore, required to Show Cause as to why penalty should not be imposed upon you.
- 4) If no reply to Final Show Cause Notice is received within the fifteen days of it delivered in the normal course of circumstance, it shall be presumed that you have no defense to put in and consequently ex-parte action shall be taken against you.



(Jehanzeb Khan)
Superintendent of Police, FRP
Peshawar Range, Peshawar.

No. 385/PA, dated Peshawar the 18 / 09 / 2017.

میں نے اس پر عمل کرنا چاہتا ہوں اور اس پر عمل کرنا چاہتا ہوں
میں نے اس پر عمل کرنا چاہتا ہوں اور اس پر عمل کرنا چاہتا ہوں



17101-1780969+S
21-09-2017

سائنس ازمائشیں 2355
کتابیں اور اساتذہ

جینا 1

محکمہ فائنل شیڈول کے نوٹس جاری ہیں۔ 31/8/2355
 کہ من مسائل صورت 8/3 کو صوت جاری تھا۔ شیڈول کتابت کو اس وقت
 گاڑوں کو اشارے کر رہا تھا تاکہ کوئی گاڑی مل جائے جو کم سوں کا رہے
 اسی وقت ایک سوٹر فارمی میں سے مسائل کے اشارے کیا اور وہ اس وقت
 من مسائل اس وقت بھیگتے ہوئے تھے اور وہ گاڑی ڈرائیور سے کیا کہ
 میں حق کھانی تھی جا رہی ہوں۔ یہ یہ خود کھانی تھی کہ وہ اس سوٹر فار
 کو پوس ایف اے کے اشارے کیا۔ گاڑی اس وقت یہ معلوم ہوئی کہ
 یہ سوٹر کار سیدھا گاڑی میں سے مسائل صورت فارمی سے اتر کر پوس ایف اے
 کے من مسائل کی تلاش میں دوڑا گیا۔ اس وقت اس سے باہر
 تھی اس وقت میں یہی رائس سوچ رہا تھا کہ میں یہ من مسائل اور پوس
 ایف اے کے درمیان تلخ کلامی ہوئی ہے۔ یہ پوس ایف اے کو اس وقت فار
 میں بھی لگوری اور میرا سوال اس کا جواب دے گا۔ لگوری کے
 سے تھا۔ یہاں پوس ایف اے کے خلاف غلطی فیو ڈیوٹی جو کہ میں
 خلاف غلطی فیو ڈیوٹی ہے۔ لہذا آپ یہاں سے لگوری کے خلاف
 انکو شری داخل دفتر کرنے کا حکم ہے اور اس سے من مسائل سے لگوری کے
 میں سے لگوری ہے جو کہ حقیقت میں ہے۔



P
10-1-18

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ORDER

This office Order relates to the disposal of formal departmental Inquiry against Constable Sheraz No.2355 of FRP Peshawar Range.

Brief facts of the case that Constable Sheraz No.2355 of FRP Peshawar Range, is involved/arrested in case vide FR No.1222 dated 03.08.2017 u/s 419/420/468/15AA at Police Station Takht Bhai Mardan also absented himself from lawful duty w.e.from 25.08.2017 to 13.09.2017 and 22.09.2017 till to date without any leave/permission from competent authority.

In this connection Constable Sheraz No.2355, was issued charge sheet along with Summery of Allegations and SI/Iltaf Hussain of FRP/PR was nominated as Inquiry Officer, vide this office order No.336/PA, dated 21.08.2017. The charge sheet served upon him but he did not bother to reply. After fulfillment the due codal formalities the inquiry officer submitted his finding wherein I.O mentioned that the defaulter constable is habitual absentee, jailbird and he was also involved in the smuggling of non-custom paid vehicle (Fielder) No.AW724/Islamabad, has been recovered from his possession in Police Station Hayat Abad while custom Inspector Saif ur Rehman chasing him. In this case he has also been awarded of major punishment of reduction in time scale vide this office order No.315-17 dated 10.08.2016. The Inquiry officer further recommended for major punishment.

After receiving the finding of inquiry officer the accused constable was issued/served with Final Show Cause notice vide this office No.385/PA dated 18.09.2017 to which he replied but his reply was found unsatisfactory. He was called for personal hearing in orderly room time again (index is enclosed herewith for ready reference) but did not bother to appear before the undersigned.

Therefore, I Jehanzeb Khan Superintendent of Police, FRP Peshawar Range, exercise of power vest in me under 5(5) of Khyber Pakhtunkhwa police rules 1975 (amendment in 2014) award him a Major Punishment of "Removal from Service" with immediate effect and his period of absence is hereby treated as absence from duty.



Superintendent of Police, FRP
Peshawar Range, Peshawar.

1

No. 26-28/PA dated Peshawar Range the 10 / 01 / 2018.

Copy to:-

1. The Accountant FRP/PR Peshawar
2. The SRC/FRP/PR Peshawar
3. The OASI/FRP/PR Peshawar

(50
08/11/17
11)

بیان اذان سفیران کسٹم انسٹیٹیوٹ انٹرنیشنل

22 17 15

9

بدریافت بیان بیوی کا طرز 08 $\frac{6}{016}$ کو عین مع نوری کے انڈسٹریل
 روٹ صیانت آباد پٹرولنگ ٹسٹ پر تھا۔ ہم جانب چھوڑ کر لبرف لبرور
 موٹر کار ٹیویٹا فیملی ڈیڑھری AW 724 آر ایس ٹا کے کار نمبر
 دیگر ڈرائیور نے دیکھا کہ چھانے زخمی ہونے پر پٹرولنگ ٹسٹ کے بیان صیانت آباد
 داخل ہوا۔ بعد میں افسران ہالا پولیس سے رابطہ ہو کر صیانت
 حیدر شاف کو گاڑی مندرجہ کے حوالے کا حکم صادر کیا جو کہ میں
 نے ٹانے شاف سے گاڑی مندرجہ وصول کر کے لیا۔ بعد میں مستحق
 شیراز ولد محمد صاحب نے ٹانے ڈیڑھری تبیانے چار روپے کے گاڑی
 کے ملنے کا بیان کر کے جس کے کماحقہ بائیں کسٹم بیڈ سسٹم
 نے اسکا حکم صیانت میں سکین 17 کسٹم انٹرنیشنل ٹیویٹا کے
 لیا۔ بعد از ویڈیو ٹیڈس گاڑی مندرجہ ٹانے کسٹم بیڈ سسٹم
 کہ گیا۔ یہی بیان صیانت میں چھانے کاغذات نوٹو کامینز ہمراہ 8 کر
 حوالہ انٹوائٹری افسر پولیس کے لئے۔ بیان حقیقت پر مشتمل ہے۔

13/7/2016
 Sajid Rehman
 Customs Inspector
 Special Intelligence &
 Pakistan
 0333-9144408

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 936/2020

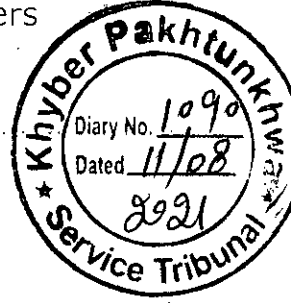
Muhammad Sheraz

versus

SP FRP & Others

Put up to the court with relevant appeal.

REJOINDER



Respectfully Sheweth,

PRELIMINARY OBJECTION

11/8/21

Reader

All the 07 Preliminary Objections are illegal and incorrect. No reason in support of the same is ever given as to why the appeal is barred by law and limitation, the same is not maintainable, bad for mis and non-joinder of parties, has no cause of action, has not come to the hon'ble court with clean hands, estopped by his own conduct and has concealed material facts.

ON FACTS

1. Needs no comments.
2. Not correct. Appellant has no knowledge about Tanveer Ahmad as to whether he was involved in Non-Custom Paid vehicles or otherwise. Appellant has no concern with the matter.
3. Not correct. The para of the appeal is correct. The vehicle was intercepted by the local police and FIR was registered but appellant has no concern with the vehicle.
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5. Not correct. Appellant was never involved in criminal case and enquiry was not conducted as per the mandate of law.
6. Not correct. Para of the appeal is correct regarding submission of enquiry report to the authority.

7. Admitted correct to the extent of Final Show Cause Notice by the respondent. Law has not specified any standard of satisfaction.
8. Admitted correct to the extent of removal from service but enquiry was not conducted as per the mandate of law. He was in jail and not absent.
9. Admitted correct by the respondents regarding acquittal from the baseless charges vide judgment dated 30-05-2019.
10. Admitted correct by the respondents regarding submission of appeal and its rejection. The same was not time bared as after release from the jail appellant did so.
11. As above: Regarding Revision Petition and its rejection.

G R O U N D S:

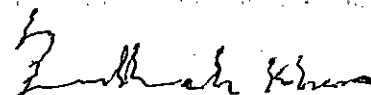
All the grounds of the appeal are legal and correct while that of the reply are illegal and incorrect. The same are re-affirmed once again.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.



Appellant

Through



Saadullah Khan Marwat

Advocate,

Dated: 08-08-2021

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 936/2020

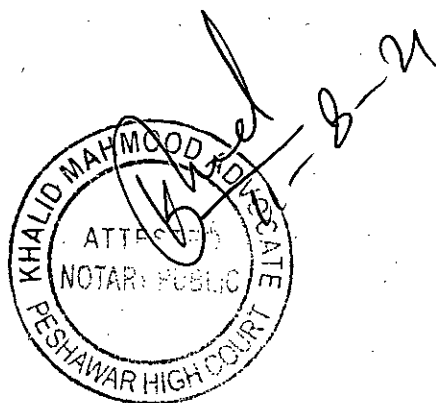
Muhammad Sheraz

versus

SP FRP & Others

AFFIDAVIT

I, Muhammad Sheraz, appellant do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.



DEPONENT

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 936/2020.

Muhammad Sheraz

versus

SP FRP & Others

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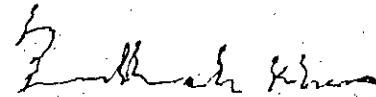
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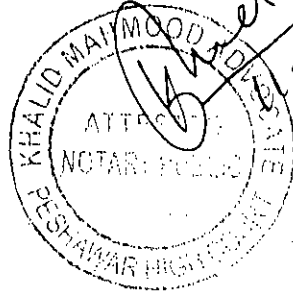
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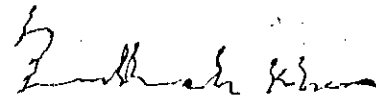
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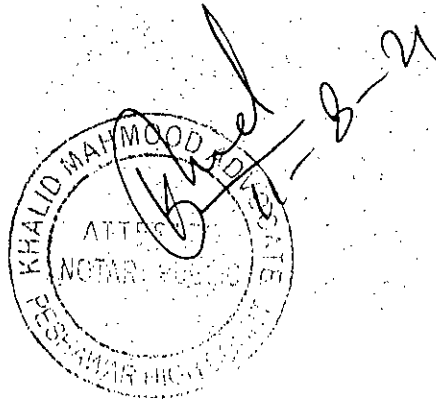
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BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 936/2020.

Muhammad Sheraz

versus

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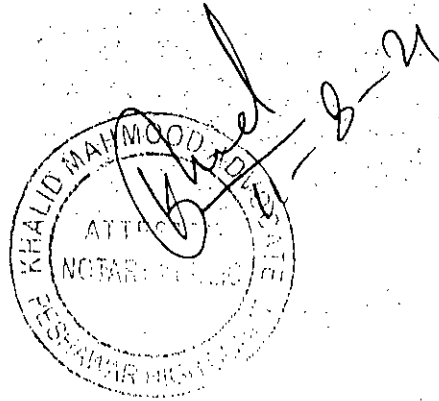
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A handwritten signature in cursive script, likely belonging to the deponent.

DEPONENT

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 936/2020

Muhammad Sheraz

versus

SP FRP & Others

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Appellant

Through



Saadullah Khan Marwat

Advocate,

Dated: 08-08-2021

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 936/2020

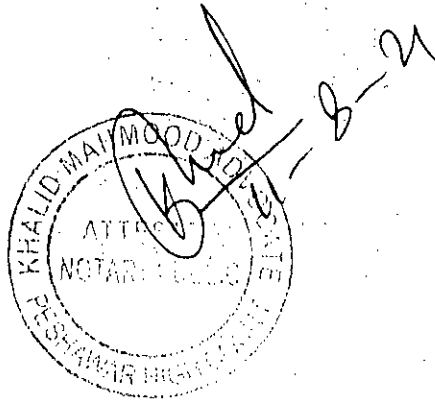
Muhammad Sheraz

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DEPONENT

2020 PLC (CS) 1521

2020 S C M R 1708

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, C.J., Ijaz ul Ahsan and Qazi Muhammad Amin
Ahmed, JJ

Dr. SOHAIL HASSAN KHAN and others---Petitioners

Versus

DIRECTOR GENERAL (RESEARCH), LIVESTOCK AND DAIRY
DEVELOPMENT DEPARTMENT, PUNJAB, LAHORE and others---
Respondents

Civil Petitions Nos. 4185, 4209 and 4504 of 2019, decided on 20th August, 2020.

(Against the judgment dated 28.10.2019 of the Punjab Service Tribunal passed in
Appeal No. 2872/2014)

(a) Constitution of Pakistan---

---Art. 13(a)---Civil service---Concurrent departmental proceedings and criminal proceedings---Acquittal in criminal proceedings---Double jeopardy, principle of---Application---Civil servant could not escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge arising out of the same impugned transaction; these two were entirely different jurisdictions with different standards of proof as well as procedures---Criminal prosecution required strict proof through a narrowly jacketed procedure and; thus, State's failure on the criminal plane did not provide shield of double jeopardy to a delinquent officer.

(b) Punjab Employees Efficiency, Discipline and Accountability Act (XII of 2006)---

---S. 4---Officials of Poultry Research Institute (the petitioners)---Procurement of birds through an aid package granted by foreign donor organization---Allegation of operating fake departmental accounts for fraudulent transactions; procuring goods of questionable quality to make illicit profit; and receiving commission in procurement---Petitioners who were officials of Poultry Research Institute were found guilty by the inquiry officer and awarded punishments including compulsory retirement and removal from service---Said penalties were maintained by the Service Tribunal---Held, that multiple transactions involving the grant package through privately held bank accounts inescapably established petitioners' culpability, as official channels were available in the form of departmental accounts to effect payments to the vendors---Similarly without approval or authority purchase from outlets through private arrangements could not be viewed as an innocent omission, that too, by officers with considerable standing/experience---Petitioners' stress on the principle of proportionately in the award of punishment was entirely beside the mark---Petition for leave to appeal was dismissed and leave was declined.

(c) Civil service---

---Public servant, duty of---Financial impropriety---Public trust, breach of---
 Consequences---Public authority was a most sacred trust and a very high onus was
 cast upon a State functionary to uphold the highest degree of rectitude in financial
 matters---Financial corruption or misappropriation of public money were wrongs of
 most repugnant depravity---Once a public servant was found to have the capacity to
 betray the public trust, it would be most unwise as well as inexpedient to retain him
 on the job.

Mrs. Shireen Imran, Advocate Supreme Court for Petitioners (in C.Ps. Nos.4185
 and 4209/2019)

Abdul Rahim Bhatti, Advocate Supreme Court for Petitioners (in C.P. No.
 4504/2019)

Nemo for Respondents.

Date of hearing: 20th August, 2020.

ORDER

QAZI MUHAMMAD AMIN AHMED, J.---In a long drawn struggle, marred
 by consecutive failures, the petitioners are resigned in the last ditch to save their
 jobs; they were at the helm in various capacities in the Poultry Research Institute at
 Rawalpindi. The episode started in the wake of massive earthquake that
 devastated/jolted Azad Jammu and Kashmir with adjoining parts of Khyber
 Pakhtunkhwa in the year 2005. With an unprecedented intensity, the seismic
 vibrations followed by aftershocks resulted into colossal loss of life and property.
 Rescue and rehabilitation efforts with the assistance of foreign donors started soon
 after the disaster. The Food and Agricultural Organization, a specialized agency of
 the United Nations Organization, joined the efforts by detaching substantial
 assistance through the good offices of the Asian Development Bank to provide
 poultry package for, "immediate support to poor and vulnerable households in
 inaccessible areas devastated by the 2005 earthquake". The Poultry Research
 Institute Rawalpindi was tasked to reach out the victims with aid package. Dr.
 Shamas-ul-Hassan, Dr. Sohail Hassan Khan and Muhammad Javed Nayyar were
 posted as Director, Assistant Director and Office Superintendent, respectively; they
 were required to procure 100,000 birds, standard/specification whereof, with mode
 of transportation, were settled by the donor through letter dated 13th of June, 2007.
 It appears that 51228 birds were purchased from designated government outlets
 while for the provision of the remainder, the petitioners ventured on their own; it is
 in this backdrop that a private supplier, namely, Abdul Saboor lodged complaint
 with the Director General Livestock Lahore alleging surreptitious unilateral
 modifications in the supply contract regarding 25000 birds; he blamed them for
 reduction in the settled price as well as withholding of income tax besides charging
 commission on each bird. The complaint was probed into and the department vide
 order dated 5.8.2011 decided to proceed against them on the following charges:

- i. They engaged in private business of supplying poultry birds in earth quake hit
 areas in their official capacities, abusing their position.

- ii. They opened and operated fake departmental account/s for these fraudulent transactions.
- iii. They made an estimated profit of Rs.4.306 million by procuring poultry birds of questionable quality from private poultry farms at rock-bottom rates and supplying the same to various agencies including FAO at hefty rates, pocketing the differential.
- iv. They received a sum of Rs.0.295 Million as commission from a farmer Mr. Abdul Saboor resident of Mohallah Shah Jamal, Gakhar Mandi.

Mr. Farhan Aziz Khawaja, a grade 20 officer of PAS, was appointed as inquiry officer. After a regular inquiry followed by personal hearing, the Chief Minister vide order dated 14.06.2012 compulsorily retired Dr. Shamas-ul-Hassan with a direction to recover Rs.4.601 million along with Rs.4.306 million and Rs.0.295 million, received by him through the impugned transactions. Dr. Sohail Hassan Khan petitioner was awarded major penalty of removal from service; Muhammad Javed Nayyar petitioner was also dismissed from the service; they petitioned before the Chief Minister for a review; an elaborate exercise already undertaken and a considered decision notwithstanding, the Chief Minister, nonetheless, passed the following order:

"After due examination of the facts of the case, contents of the review petition and averments made by the review petitioners before the Hearing Officer, it is observed that the accused officers have very vehemently contended that neither they were given a fair opportunity of hearing nor fair trial was given to themselves. They also contended that the responsibility was not apportioned according to their job description/official role. Therefore, the order of penalty dated 14.06.2012 is set aside and a de novo proceeding is ordered against the accused officers namely Dr. Shamas-ul-Hassan, Ex-Director, PRI, Rawalpindi, Dr. Sohail Hassan Khan, Ex-Assistant Director, PRI and Mr. Javed Nayyar, Office Superintendent, PRI, Rawalpindi. The A.D. may put up a panel of suitable officers for appointment of an Inquiry Officer to conduct de novo proceedings in the case."

Dr. Muhammad Shabbir Shahid, Director (HQR) Directorate General (Ext) L&DD Punjab conducted de novo inquiry. With nothing additional, the second inquiry officer came up with amazing conclusions, best described as self destructive; he benignly recommended forfeiture increments, albeit after holding them guilty of misconduct under the Punjab Employees Efficiency Discipline and Accountability Act, 2006, a best possible package under the circumstances. The competent authority/Secretary L&DD Department Lahore remitted the matter for reconsideration of proposed penalty whereupon the inquiry officer came up with a slightly higher wage; this time, he recommended compulsory retirement for Dr. Shamas-ul-Hassan petitioner while suggested forfeiture of five increments for Dr. Sohail Hassan Khan with additional reduction to lower post for Muhammad Javed Nayyar, petitioner. The Secretary, however, restored penalties suggested by the first inquiry officer except for conversion of dismissal of Muhammad Javed Nayyar, petitioner, into removal from service. Appeal before the Chief Secretary failed on

13.08.2014 followed by failure before the Punjab Service Tribunal on 28.07.2015. The petitioners approached this Court and the matter was once again remanded on 4.3.2019 to the Service Tribunal for decision afresh. The Service Tribunal maintained its findings vide judgment dated 28.10.2019, vires whereof are being jointly assailed by the learned counsel; it is contended, in unison, that after petitioners' exoneration from the proceedings of Anti Corruption Department, their position stood vindicated and there was no occasion for the authorities to departmentally proceed against them; that the penalties inflicted upon the petitioners are disproportionately harsh as in the absence of positive proof, forfeiture of increments as recommended by the second inquiry officer was a more conscionable treatment in circumstance; that in any case, enhancement of penalty required reasons in support thereof, according to the learned counsel, hopelessly lacking in the impugned order; that mere opening of accounts without any proof of wrongful gain would not warrant to seal a long career otherwise unblemished, concluded the learned counsel after relying on a number of cases structured in different factual backgrounds.

2. Heard. Record perused.

3. It is by now well settled that a civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. We would otherwise not comment upon the outcome of proceedings before the Anti Corruption Department as the matter is not before us nor the petitioners have picked up the courage to place details thereof before the authorities. Multiple transactions with grant package through privately held bank accounts inescapably established petitioners' culpability as official channels were available in the form of departmental accounts to effect payments to the vendors. Similarly without approval or authority purchase from outlets through private arrangements cannot be viewed as an innocent omission, that too, by officers with considerable standing/experience. Petitioners' emphatic stress on the principle of proportionality is entirely beside the mark. Public authority is a most sacred trust and a very high onus is cast upon a State functionary to uphold the highest degree of rectitude in financial matters; financial corruption or misappropriation of public money are wrongs of most repugnant depravity; once a public servant is found to have the capacity to betray the public trust, it would be most unwise as well as inexpedient to retain him on the job. Integrity of an individual cannot be quantified and, thus, in the circumstances of the present case, the principle of proportionality has no application. Similarly argument that enhancement of penalty in the de novo inquiry required additional material and show cause does not hold much water. The entire material was collected by the first inquiry officer and was well within the notice of the petitioners; they were confronted with the available material during personal hearings and it was after compliance with all the procedural formalities that they were recommended penalties, they sought review whereof, apparently for no valid reasons. As pointed

out above, observations recorded by the second officer are not only self destructive, these had no material basis as well; it appears a treacherous attempt to provide the petitioners a safe exit, rightly blocked by the Secretary, therefore, restoration of original penalties in an ongoing process cannot be viewed as enhancement as it entailed no additional consequences other than proposed in the first place. Petitions fail. Leave declined.

MWA/S-34/SC Petition dismissed.

2007 S C M R 562

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar and Mian Shakirullah Jan, JJ

SUPERINTENDENT OF POLICE, D.I. KHAN and others---Petitioners

versus

IHSANULLAH---Respondent

Civil Petition No.384-P of 2005, decided on 14th November, 2006.

(On appeal from the judgment, dated 10-5-2005 of the N.-W.F.P. Service Tribunal, Peshawar in Appeal No.180 of 2004).

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

---S. 4---Dismissal from service on account of his arrest in a criminal case---Acquittal from criminal charges---Time-barred appeal---Civil servant was dismissed from service, after he was arrested in criminal case---Civil servant during his arrest, filed departmental representation but did not avail remedy of appeal before Service Tribunal---Civil servant, after he was acquitted from criminal charge, filed appeal before Service Tribunal, which was accepted and he was reinstated in service---Validity---Appeal before Service Tribunal was filed belatedly from date of his dismissal and after five months from the date of his acquittal from criminal charges---Civil servant had lost his right and could not agitate for reinstatement---Acquittal of civil servant from criminal charges would have absolutely no bearing on merits of case as disciplinary proceedings were to be initiated according to service rules independently---Judgment passed by Service Tribunal, reinstating civil servant in service, after acquittal from the criminal charge was not sustainable in law---Supreme Court set aside the judgment passed by Service Tribunal and order of dismissal of civil servant from service was maintained---Appeal was allowed. [pp. 563] A & B

Executive Engineer and others v. Zahid Sharif 2005 SCMR 824 and Sami Ullab v. Inspector-General of Police and others 2006 SCMR 554 ref.

Khusdil Khan, Additional Advocate-General N.-W.F.P. and Altaf, S.-I. (Legal) for Petitioners.

Abdul Aziz Kundi, Advocate Supreme Court for Respondent.

ORDER

ABDUL HAMEED DOGAR, J.--- This petition is directed

against judgment, dated, 5-2005 passed by learned N.-W.F.P. Service Tribunal, camp at D.I. Khan whereby Appeal No.180 of 2004 filed by respondent was allowed and he was reinstated into service without back-benefits.

2. Brief facts leading to the filing of instant petition are that respondent was dismissed from service on the allegation that on 12-7-2001 he was found in possession of 225 grams of Charas. Case was registered against him in which he was arrested and sent up to face the trial. According to learned counsel for the respondent he made representation to the competent authority but did avail the remedy of filing appeal before the learned Tribunal challenging his dismissal. According to him after his acquittal from the criminal case which took place on 9-10-2003 he filed instant appeal before Tribunal on 18-3-2004 mainly on the ground that he was acquitted from criminal charges as such be reinstated in service. The appeal before the Tribunal was filed belatedly from date of his dismissal and after five months from the date of his acquittal from the criminal charges. This being so, respondent has lost his right and cannot agitate for reinstatement. By now it is the settled principle of law that acquittal of civil servant from criminal charges would have absolutely no bearing on the merits of the case as the disciplinary proceedings are to be initiated according to service rules independently. Reliance can be made to the cases of Executive Engineer and others v. Zahid Sharif 2005 SCMR 824 wherein it has been held that acquittal of civil servant from Court would not impose any bar for initiation of disciplinary proceedings as his acquittal would have no bearing on disciplinary proceedings at all. In case of Sami Ullah v. Inspector-General of Police and others 2006 SCMR 554 it has been held that acquittal of petitioner from criminal case would have absolutely no bearing on the merits of the case and in the case of N.E.D. University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453 it has been held that departmental representation of civil servant was barred by limitation and on the basis of such representation Service Tribunal could not reinstate him in service.

3. In view of what has been discussed hereinabove and the case-law referred (supra) the impugned judgment reinstating the respondent in service after acquittal from the criminal charge is not sustainable in law hence the same is set aside. The petition is converted into appeal and allowed. The order of dismissal from service of respondent is maintained.

M.H./S-81/SC

Appeal allowed.

Deputy District Attorney
Khyber Pakhtunkhwa
Service Tribunal Peshawar

Acquittal from
Criminal charges... no
bearing on
merits of case.
Criminal
Departmental &
proceedings
were to be
initiated
independently.

DDGIC

amount by due date would result in the forfeiture of the earnest money. By mutual agreement the date of payment and the execution of the sale-deed was extended to 31-8-1983, after the plaintiff had paid another sum of Rs.15,000 to the vendor. The vendor however, on 8-9-1983, by registered deed sold the suit property to appellant No.3, impelling the plaintiff to file a suit for specific performance of the agreement dated 6-1-1983. The vendor and the subsequent vendee by their separate written statements resisted the suit, the vendor pleading breach of contract by the plaintiff, alleging that whereas the vendor was ready and willing to perform his part of the contract the plaintiff was unwilling to execute her part of the bargain. After settling issues and recording evidence the suit of the plaintiff was decreed, the trial Court holding that the plaintiff was both ready and willing to pay the suit standing amount and execute the sale-deed on the due date. This finding was upheld by the appellate and the High Court. It may be noted that after filing the suit the plaintiff had deposited the balance sale consideration with the trial Court.

3. At the hearing of the civil revision by the High Court and the petition for leave to appeal in this Court an argument was advanced for the appellants that since the parties had agreed to the substitution of the plaintiff by her son Fayaz-ul-Haq as vendee the sale contract was novated and thus, incapable of specific performance in view of section 62 of the Contract Act. Though the argument before this Court was refuted on behalf of the plaintiff, mainly on the ground that the plea of novation of contract was never raised before the trial Court, leave was granted to consider *inter alia*:-

- (i) Whether there was novation of contract, by virtue of letters exchanged between the parties subsequent to the execution of the original contract?
- (ii) Whether the original contract stood altered and was no more capable of specific performance? and
- (iii) What is the legal impact of subsequent sale by vendors in favour of petitioner No.3, after novation of contract in favour of respondent's son Fayaz-ul-Haq?"

4. Mr. Hamid Khan, Advocate Supreme Court entered appearance for the appellants, Mr. Najamul Hassan Kazmi, Advocate Supreme Court appeared for the plaintiff respondent Mst. Sughra Haq, and Mr. Gul Zarin Kiyani, Advocate Supreme Court for the plaintiff's son Fayaz-ul-Haq.

5. The learned counsel for the appellants confined his submissions

to the question formulated in the leave granting order and in that context referred to, besides other documents, the letters dated 23-8-1983 by the plaintiff to the vendor and the latter's response of 25-8-1983. The proposal made by the plaintiff to execute the sale-deed in favour of the plaintiff's son, Fayaz-ul-Haq instead of the plaintiff was accepted by the vendor. The learned counsel thus, contended that this substitution of the vendee agreed to by the parties amounted to novation of contract. Reading out the provision of section 62 of the Contract Act, it was argued that the original contract was no longer capable of being specifically performed on account of its novation. When confronted, the learned counsel conceded that the plea of novation of contract was neither taken up in the written statements by either of the defendants and consequently no issue was framed thereon. He however, contended that being a pure question of law the appellants were entitled to urge the same before the High Court and this Court, when from the facts on record novation of contract is determinable. In support of his submissions the learned counsel placed reliance on *Haji Abdullah Khan and others v. Nisar Muhammad Khan and others* PLD 1965 SC 690, *Almas Ahmad Faiz v. Secretary, Government of the Punjab Housing and Physical Planning Development, Lahore* and another 2006 SCMR 783, *Gulzar Khan v. Mst. Shahzad Bibi* and another PLD 1974 SC 204, *Amir Abdullah Khan and others v. Col. Muhammad Attaullah Khan* PLD 1990 SC 972, *Mrs. Mussarat Shaukat Ali v. Mrs. Safia Khatoon and others* 1994 SCMR 2189, *Tarinikamal v. Perfulla Kumar* AIR 1979 SC 1165, *Zulqarnain and 2 others v. Surbuland Khan* and another 2004 SCMR 1084, *Nooruddin and others v. Mst. Amiran Bibi and others* PLD 1996 SC 825, *Banque Indosuez v. Banking Tribunal for Sindh and Balochistan and others* 1994 CLC 2272 and *National Bank of Pakistan v. Shogan Int. (Pvt.) Ltd. and others* 2005 CLC 1207.

6. The learned counsel for the plaintiff respondent seriously disputed the assertion on behalf of the appellant that there was novation of contract. It was contended that the replacement of the plaintiff's son in her place as vendee in the sale-deed to be executed was only variation of a term of contract and not novation as the other terms remains unchanged. In this context reliance was placed on *Zulqarnain and 2 others v. Surbuland Khan* and another 2004 SCMR 1084, also cited on behalf of the appellants. Referring to the application made by the vendor dated 28-8-1983 to the Sub-Registrar, Lahore Cantt. alleging unwillingness of the plaintiff to execute the sale-deed, learned counsel pointed out that the vendor had mentioned the plaintiff and not her son as the vendee. The main stay of the argument of the learned counsel for the respondent however, was the appellant's failure to take the plea of novation of contract before the trial as well as Appellate Court. Referring to rules 1 and 5 of Order XIII of C.P.C., it was contended that

a defendant is precluded from pressing a defence not specifically pleaded in the written statement. Mr. Gul Zarin Kiyani, Advocate Supreme Court endorsing the above arguments added that there was no novation of contract as the plaintiff's son never became privy to the arrangement of his replacement as a vendee.

7. Since the learned counsel for the appellants confined his argument to the question of novation of contract we would attend only to the questions formulated in the leave granting order. Admittedly the plea was not taken up in the written statement by the appellants and consequently no issue was framed thereon. Obviously neither any evidence was recorded on the question nor any finding given by the trial Court or the Appellate Court. The defence was taken up for the first time at the hearing of civil revision before the High Court and then before this Court at the time of hearing of the petition for leave to appeal. The first question formulated in the leave granting order calls for factual determination of whether the exchange of letters between the parties subsequent to the execution of the original sale-deed amounted to novation of contract. True that by letter, dated 23-8-1983, which finds mentioned in the plaint, the plaintiff had proposed to the vendor that her son be recorded as vendee in the registered sale-deed. This proposal was accepted by the vendor by letter, dated 25-8-1983. It was in view of this agreement between the parties on change in the original sale-deed that it is being urged on behalf of the appellants that its novation had taken place. There are however, three other documents which show that both the parties had subsequent to the exchange of the said letters treated the plaintiff and not her son as vendee. Two of these are applications dated 28-8-1983 and 31-8-1983 addressed by the vendor to the Sub-Registrar, Lahore Cantt. recording his willingness to execute the register sale-deed in favour of the plaintiff. A similar application dated 31-8-1983 was made by the plaintiff to the Sub-Registrar, Lahore Cantt. showing her preparedness to conclude the sale and complaining that the vendor is backing out. In all the three documents the plaintiff and not her son was mentioned as a vendee. Additionally there is nothing on the record to show that Fayaz-ul-Haq had become privy to the arrangement of his being substituted as vendee. The substitution in the original agreement of Fayaz-ul-Haq as vendee could not have been brought about without his being party to the new arrangement. Thus, the terms of the agreement dated 6-1-1983 even as regards the vendee remained unaltered. We, therefore, hold that no novation of contract had taken place. In view of this finding the other two question formulated in the leave granting order do not require determination.

8. Furthermore we also agree with the contention raised on behalf of the respondent that since the appellants had not explicitly or by

necessary implication pleaded novation of contract in the written statement such defence is deemed to have been abandoned in view of rule 2 of Order XIII, C.P.C. B

9. For the foregoing reasons we find no merit in this appeal and the same is dismissed with no order as to costs.

M.H./F-29/SC

Appeal dismissed.

2007 S C M R 569

[Supreme Court of Pakistan]

Present: Javed Iqbal and Ch. Ijaz Ahmed, JJ

OVERSEAS PAKISTANIS FOUNDATION and others---Appellants

versus

Sqn. Ldr. (Retd.) Syed MUKHTAR ALI SHAH
and another---Respondents

Civil Appeal No.2027 of 2004, decided on 4th December, 2006.

(On appeal from the judgment, dated 28-6-2004 passed by the Peshawar High Court, Peshawar, in R.F.A. No.7 of 1996).

(a) Constitution of Pakistan (1973)---

---Arts. 4 & 5 (2)---Protection of law---Act of public functionaries---Principle---Nobody can be penalized by act of public functionaries in view of Art.4 read with Art.5(2) of the Constitution---Nobody is allowed to take benefit of his own misdeeds. [p. 572] A

Raja Muhammad Fazal Khan's case PLD 1975 SC 331; Wali Muhammad's case PLD 1974 SC 106; Tufail Muhammad's case PLD 1965 SC 269 and Abdul Kashid's case 1969 SCMR 141 rel.

(b) Approbate and reprobate---

---Nobody is allowed to approbate and reprobate. [p. 573] B

Ghulam Rasool's case PLD 1971 SC 376 rel.

(c) Civil Procedure Code (V of 1908)---

---O. 1, R. 10 & O. XLI, R. 33---Damages---Misjoinder of necessary parties---Appellate jurisdiction of High Court---Scope---Plaintiff filed suit for damages on the ground that while on official duty, he met an accident in which he became handicapped due to which he lost his

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 936/2020

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Muhammad Sheraz S/O Muhammad Sabir, R/O Utmanzai
Charsadda, Ex-Constable No. 2355, FRP Range, Peshawar.

... (Appellant)

Versus

1. Superintendent of Police, FRP Peshawar Range, Peshawar.
2. Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

...(Respondents)

Mr. Arbab Saiful Kamal
Advocate

... For appellant

Mr. Muhammad Rasheed Khan
Deputy District Attorney

... For respondents

Date of Institution.....31.01.2020
Date of Hearing.....25.05.2022
Date of Decision..... 14.07.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (EXECUTIVE): The Service Appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against office order dated 10.01.2018 of Respondent No. 1, whereby appellant was removed from service and period of absence was treated as absence from duty against office order dated 04.07.2019 of Respondent No. 2, whereby representation of the appellant was rejected and against office order dated 07.01.2020 of Respondent No. 3, whereby revision petition of the appellant was rejected.

2. Brief facts of the case, as per memorandum of appeal, are that the appellant was enlisted in service as constable on 27.12.2010. On 03.08.2017, he was going to attend the funeral of his friend's maternal mother and got lift from one Taveer, owner of the vehicle, to reach Takhtbhai. The vehicle was intercepted by local police of Police Station Takhtbhai and FIR No. 1222 dated 03.08.2017 U/S 419/420/468/471/15AA was registered. A 30 bore pistol was also attributed to the owner of the vehicle Tanveer and vehicle was attributed to the appellant, despite the fact that the said 30 bore pistol was of the appellant as per license dated 11.11.2014. The appellant was served with charge sheet dated 21.08.2017, on the basis of which a final show cause notice was issued. Though he denied the allegations, but the appellant was removed from service vide order dated 10.01.2018. In the meanwhile, trial of criminal case was concluded and the appellant alongwith accused was acquitted from the charges leveled against them vide judgment dated 30.05.2019. The appellant submitted departmental appeal, which was rejected on 04.07.2019. His revision petition was also rejected on 07.01.2020; hence the service appeal.

2. On receipt of appeal and its admission to full hearing, the respondents were asked to submit written reply/comments. They submitted their joint parawise comments and rebutted the claim of the appellant. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney for the respondents and perused the case file with connected documents minutely and thoroughly.

3. Learned counsel for the appellant submitted that the appellant was involved in a criminal case wherein baseless allegations were leveled against

him. He appraised the Tribunal that the police attributed 30 bore pistol to the driver of the vehicle despite the fact that license was shown to the ^{man} which was in the name of the appellant whereas the vehicle was attributed to him. He was tried by the court of competent jurisdiction and ultimately vide judgment dated 30.05.2019, acquitted from the criminal charge. The respondents should have placed the appellant under suspension and waited for the outcome of criminal proceedings but instead he was removed from service without giving him any opportunity of cross examination. He requested that the appeal may be accepted as prayed for.

4. The learned Deputy District Attorney while rebutting the arguments of learned counsel for the appellant contended that criminal proceedings and departmental proceedings were different in nature and could run simultaneously. Proper departmental proceedings were initiated against the appellant, wherein allegations were proved against him and he was rightly removed from service. He requested for dismissal of the appeal with cost.

5. It appears from the record that the appellant was removed from service only on the ground of involvement in a criminal case vide FIR No. 1222 dated 03.8.2017 U/S 419/420/468/471/15-AA Police Station Takht Bhai, District Mardan. The appellant was tried by the court of competent jurisdiction and was acquitted from the criminal charge vide judgment dated 30.05.2019. In the meantime he was removed from service vide order dated 10.1.2018. It is true that departmental and criminal proceedings can run simultaneously but it is equally true that except involvement of the appellant in a criminal case, there was no other allegation or charge against him from which we could infer that the appellant was rightly awarded the punishment

of removal from service. Mere involvement in a criminal case was not enough ground to pass any order of punishment against the appellant and that too in a case when the criminal proceedings had not yet concluded. ~~Before such criminal case was not appropriate~~ Instead of doing so the respondents might have put him under suspension till the outcome of his criminal case in the court of law. In the absence of convincing proof of allegations made against the appellant, order of removal from service is not sustainable.

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6. In view of above, the penalty imposed upon the appellant is unwarranted and on acceptance of this appeal, the impugned orders are set aside. The appellant is reinstated in service, however, the intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. Consign.

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7. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14th day of July, 2022.

(KALIM ARSHAD KHAN)
Chairman

⊖ and before such conclusion, doing that was not appropriate

(FAREEHA PAUL)
Member (E)

Service Appeal No. 936/2020

Mr. Arbab Saif Ul Kamal, Advocate for the appellant present. Mr. Muhammad Rasheed Khan, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgement of today containing 04 pages, we have arrived at the conclusion that the appellant was removed from service only on the ground of involvement in a criminal case vide FIR No. 1222 dated 03.8.2017 U/S 419/420/468/471/15-AA Police Station Takht Bhai, District Mardan. The appellant was tried by the court of competent jurisdiction and was acquitted from the criminal charge vide judgment dated 30.05.2019. In the meantime he was removed from service vide order dated 10.01.2018. It is true that departmental and criminal proceedings can run simultaneously but it is equally true that except involvement of the appellant in a criminal case, there was no other allegation or charge against him from which we could infer that the appellant was rightly awarded the punishment of removal from service. Mere involvement in a criminal case was not enough ground to pass any order of punishment against the appellant and that too in a case when the criminal proceedings had not yet concluded. Instead of doing so the respondents might have put him under suspension till the outcome of his criminal case in the court of law. In the absence of convincing proof of allegations made against the appellant, order of removal from service is not sustainable. The penalty imposed upon the appellant is unwarranted and on acceptance of this appeal, the impugned orders are set aside. The appellant is reinstated in service, however, the intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14th day of July, 2022.*

(KALIM ARSHAD KHAN)
Chairman

(FAREEHA PAUL)
Member (E)