

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.6223/2020

Date of Institution ... 22.06.2020
Date of Decision ... 17.05.2022

Muhammad Khan Ex Police ASI R/O Jerma Koha.

... (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

Syed Mudasir Pirzada,
Advocate

... For appellant.

Kabir Ullah Khattak,
Additional Advocate General

... For respondents.

Salah-Ud-Din
Rozina Rehman

... Member (J)
... Member (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

“By accepting of instant service appeal the impugned order of respondent No.3 may please be set aside and the present appellant may please be reinstated with all back benefits.”

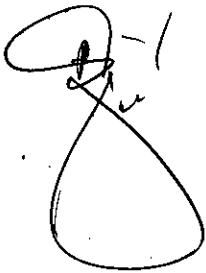
2. Brief facts of the case are that the appellant was serving as an ASI. During service, a criminal case vide FIR No.48 dated 16.01.2020 U/S 15/17-AA was registered at Police Station Muhammad Riaz Shaheed. He was served with charge sheet which

was replied, where-after, he was served with final show cause notice and ultimately, he was dismissed from service on 04.03.2020. He filed departmental appeal which was rejected, hence, the present service appeal.

3. We have heard Syed Mudasir Pirzada Advocate learned counsel for appellant and Kabir Ullah Khattak, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

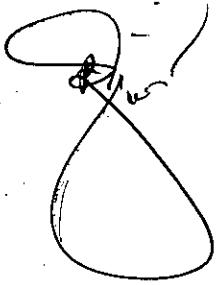
4. Syed Mudasir Pirzada Advocate learned counsel appearing on behalf of appellant, inter-alia, submitted that the impugned orders are illegal, unlawful, without authority, hence the same are liable to be set aside being based on surmises and conjunctures. It was submitted that the reply to the charge sheet submitted by the appellant was not taken into consideration and that proper procedure was not adopted. It was contended that no proper regular inquiry was conducted in order to scrutinize the conduct of the appellant with reference to the charges. The learned counsel further contended that the appellant was falsely implicated in case FIR No.48. Lastly, it was submitted that no proper opportunity of personal hearing was provided to the appellant and he was condemned unheard.

5. Conversely, learned AAG contended that appellant while posted in Field Office Special Branch, AGO Kohat was found involved in smuggling of arms and ammunition vide FIR No.48 dated 16.01.2020, therefore, he was proceeded against departmentally and the charge was found proved during regular inquiry as he failed to rebut the



departmental charges, therefore, he was dismissed from service under the Khyber Pakhtunkhwa Police Rules, 1975.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that appellant was dismissed from service vide impugned order dated 04.03.2020 of Senior Superintendent of Police Admn;, Special Branch, Khyber Pakhtunkhwa Peshawar due to involvement of the appellant in criminal case bearing FIR No.48 dated 16.01.2020 U/S 15/17-AA of PS Muhammad Riaz Shaheed District Kohat. The prosecution case as per FIR was that the local police was on Nakabandi when in the meanwhile, a motorcar bearing registration No.B 1711 Mardan was signaled to stop. Upon query, the driver disclosed his name as Muhammad Ali while the person seated on the front seat disclosed his name as Muhammad Khan ASI i.e. the present appellant. The motorcar was parked on roadside and bot the persons were deboarded from the motor car where-after proper chacking of the motorcar was started. In the meanwhile, the present appellant made his escape good from spot while taking the benefit of darkness. It is astonishing that two persons who were allegedly present in the motorcar and both were deboarded but one was arrested while the other was not arrested rather he escaped due to darkness. How the present appellant escaped from the clutches of a well equipped police party is a big question mark on the part of police party and the result is quite clear as both the accused i.e. Muhammad Ali and the present appellant Muhammad Khan were acquitted by the learned Judicial



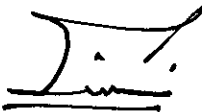
Magistrate-I, Kohat vide order dated 30.06.2021 in view of discrepancies in the evidence produced by the prosecution against the accused.

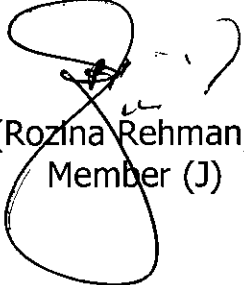
7. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Conviction of the appellant in the case of arms and ammunition was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

8. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

9. For what has been discussed above, instant service appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
17.05.2022


(Salah-ud-Din)
Member (J)


(Rozina Rehman)
Member (J)

ORDER
17.05.2022


This case was fixed for arguments for 09.6.2022 but in view of written request for early hearing, this case was fixed for arguments for today.

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present. Arguments heard. Record perused.

Vide our judgment of today of this Tribunal placed on file, instant service appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED:
17.05.2022



(Salah-Ud-Din)
Member (J)

(Rozina Rehman)
Member (J)

01.02.2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Muhammad Suleman, Legal Reader Special Br. for the respondents present.

Due to paucity of time arguments could not be heard. To come up for arguments on 14.03.2022 before the D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)



Chairman

14.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 09.06.2022 for the same as before.



Reader

06.12.2021

Counsel for the appellant present.

Learned counsel for the appellant submitted an application for correction of addresses of respondents No. 2 and 3. Application is allowed and office is directed to ^{do} the needful. Notices be also issued to the respondents for submission of written reply/comments. To come up for written reply/comments of respondents on 19.01.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

19.01.2022


Appellant in person present. Mr. Muhammad Adeel Butt, Addl. AG along with Mr. Sohail H.C for respondents present.

Reply/comments on behalf of official respondents are still awaited. Representative of respondents sought time for submission of reply/comments. Granted. To come up for reply/comments before the S.B on 27.01.2022


(Atiq-Ur-Rehman Wazir)
Member (E)

27.01.2022

Appellant in person present. Mr. Kabirullah Khattak, learned Addl. AG along with Mr. Sohail H.C for respondents present and submitted reply/comments, which are placed on file and copy of the same is handed over to the appellant. To come up for rejoinder if any, and arguments before the D.B on 26.05.2022.


(Atiq-Ur-Rehman Wazir)
Member (E)

Muhammad Khan 6223/2020

21.09.2021

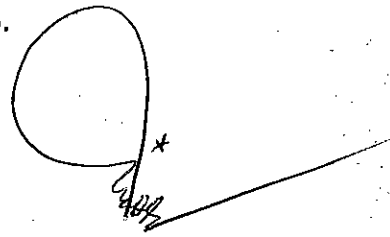
Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant assailed and impugned office order dated 04.03.2020 of the SSP (Admin) Special Branch awarding the appellant major penalty of "dismissal from service". The appellant preferred departmental appeal against the impugned order on 02.04.2020 which did not get a favourable response and rejected on 19.05.2020, hence, the instant service appeal in Service Tribunal on 22.06.2020. It was further contended that the appellant was nominated in FIR No. 48 dated 16.01.2020 under Section 15-AA/17/AA in Police Station Muhammad Riaz Shaheed (MRS) District Kohat. However, no proper and regular enquiry was conducted against the appellant as per requirements of law and rules. No witness against the appellant was examined and neither opportunity of cross examination provided to the appellant nor personal hearing afforded to the appellant at the time of deciding his departmental appeal. The appellant has therefore been condemned unheard and as such the impugned order as well as appellate order being void orders may be set aside and the appellant reinstated in service with all back benefits. .

Points raised need consideration. The appeal is provisionally admitted to regular hearing, subject to all just and legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time or extension of time is not sought, the office shall submit the file with a report of non-compliance. File to come up for arguments on 06.12.2021 before the D.B.

Appellant Deposited
Security & Process Fee


23/9


(Mian Muhammad)
Member(E)

09.12.2020

Junior counsel for appellant present.

He made a request for adjournment as senior counsel is busy before Hon'ble Peshawar High Court; granted. To come up for preliminary hearing on 11.03.2021 before S.B.

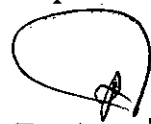

(Rozina Rehman)
Member (J)

11.03.2021

Junior to counsel for appellant present.

He made a request for adjournment as senior counsel is indisposed.

Adjourned to 17/06/2021 for preliminary hearing before S.B.


(Rozina Rehman)
Member (J)

17.06.2021

Junior to counsel for the appellant present and states that Senior counsel is not in attendance due to general strike of the bar.

Adjourned to 21.09.2021 for preliminary hearing before S.B.

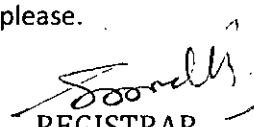

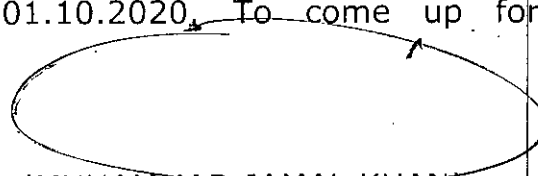


Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 6223 /2020

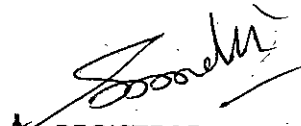
1S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/06/2020	<p>The appeal of Mr. Muhammad Khan resubmitted today by Syed Mudassir Pirzada Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>22/07/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p>
22.07.2020		<p>Appellant has not forth come at the moment 12:04 P.M. It was reported that he is on the way, too much time has passed since the dawn of the day. Request was made for adjournment on the ground that the learned counsel is suffering from fever/disease. Adjourned to 01.10.2020. To come up for preliminary hearing before S.B.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER</p>
01.10.2020		<p>Mr. Zartaj Anwar, Advocate on behalf of counsel for the appellant present.</p> <p>Requests for adjournment as learned counsel is not available today due to his indisposition. Adjourned to 09.12.2020 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Muhamad Khan Ex-Police ASI r/o Jerma Kohat received today i.e. on 22.06.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Annexures-A and B of the appeal are illegible which may be replaced by legible/better one.

No. 1275 /S.T,

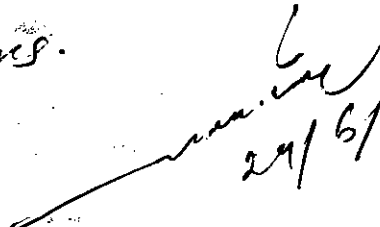
Dt. 22-06 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Mudassir Pirzada Adv.

Note
24/6/2020

Re-Submitted after removal
The objections.


24/6/2020

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal 6223 2020

Muhammad Khan Ex-Police ASI R/o Jerma Kohat.

(Appellant)

VERSUS

1. INSPECTOR GENERAL OF POLICE KPK PESHAWAR.
2. DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT.
3. DISTRICT POLICE OFFICER KOHAT. (Respondent)

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	Wakalat Nama		16

Appellant:

Through

Syed Mudasir Pirzada
Advocate P H C
0345-9645854

Date 12/6/20

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR.

Muhammiad Khan Ex-Police ASI R/o Jerma Kohat.

(Appellant)

VERSUS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5318

Dated 22/6/2020

1. INSPECTOR GENERAL POLICE KPK PESHAWAR
2. DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT
3. DISTRICT POLICE OFFICER KOHAT.

(Respondent)
③ Jt. S.P. Admin Special Branch Peshawar

APPEAL AGAINST THE IMPUGNED ORDER OF SSP, SPECIAL BRANCH PESHAWAR VIDE DATED 04-03-2020, NO:-1585-92/EB IN WHICH UPON THE FINDINGS OF ENQUIRY OFFICER DIRECTLY IMPOSED THE MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE WITH IMMEDIATE EFFECT. WITHOUT ANY LAWFUL JUSTIFICATION AND THE APPELLANT PREFERRED DEPARTMENTAL REPRESENTATION DATED 02-04-2020 AND BUT THE SAME WAS NOT ENTERTAIN AND REJECTED ON 19-05-2020.

Pray:

In view of above submission it is requested, by accepting of instant service appeal the impugned order of Respondent No-3 may please be set aside and the present appellant service may please be re-instate with all back benefits.

Respectfully Sheweth,

With great veneration the instant appeal is preferred by the appellant on the following grounds:-

Facts:

Briefly facts as per impugned order are that the appellant while serving in department posted in field office AGO Kohat and a criminal case bearing No 48 dated 16-01-2020 u/s 15AA/17/AA, PS MRS District Kohat smuggling an arms cache comprising Kalashnikov rifles, Pistol and Ammunition in motor car No .B-7111/Mardan however the appellant decamped from the scene (Copy of impugned order is annexed as annexure A)

That the appellant was served with the charge sheet which was replied by the appellant and after then the appellant was served with the final show cause notice but the same was not considered. (Copy of FCN and charge sheet & Reply is annexed as annexure B)

That the appellant submitted the reply to the charge sheet but the same was not consider hence the impugned order were issued.

vide order sheet dated 6/12/21

Filed by Registrar

Re-submit ON to... and filed.

That the appellant is very dedicated keen and apprehensive towards his assign duty having 25 years un blemished service record but this factor has not been appreciated while appellant was blessed with impugned order.

That the service of the appellant was suspended after registration of the case and on the next date without any evidence.

That the appellant feeling aggrieved from the impugned order and submit the representation on the following grounds:-

3:- That there is nothing is on the record which connect the appellant with the allegation nor proved and the appellant is blessed with impugned punishment which is not warranted by law.

4:-That an unjust has been done with the appellant by not giving ample opportunity of cross examination as well as not heard in person nor properly enquired the allegation. Just on the basis of secretly probing held guilty the appellant without following the prescribed rules relating to enquiry proceedings as per Police Rules 1975 (amended 2014).

5:-That nothing has been proved beyond any shadow of doubt that the appellant had committed any misconduct or tarnished the image of Police department.

6:-That there are numerous good entries in the service record of the appellant which could be verified but this fact has not been taken in consideration while awarding the major punishment which is against to the canon of justice.

7:-That the appellant was neither provided an opportunity to cross examine the witnesses nor to produce defense evidence and the enquiry proceedings accordingly defective. Furthermore the requirements of rules regarding enquiry have not been observed while awarding the impugned punishment.

8:- That no proper enquiry has been conducted nor any statement of any person available on record nor any source has been defined which encourage towards the impugned order moreover only on the basis of rumor the appellant has been blessed with the impugned order it also worth mentioning here that in the impugned order and no evidence is on record nor any call recording or other source of information against the appellant produce against the appellant which connect the appellant with the allegation.

9:-That the appellant was aggrieved from the impugned order prefer departmental representation before the respondent NO- 3 which was rejected on dated (Copy of departmental representation is annexed as annexure C)

8:-That the appellant dragged unnecessarily into litigation which is clearly mentioned in 2008 SCMR 725.

9:-That while awarding the impugned major punishment the enquiry report has not been given to the appellant which is very much necessary as per 1991 PLC CS 706 & PLC 1991 584.

Grounds:

3

- a. That during so called enquiry none from the general public was examined in support of the charges leveled against the appellant. No allegation mentioned above are practiced by the appellant nor proved against any cogent reason against the appellant.
- b. That the appellant was neither intimated nor informed by any source of medium regarding enquiry proceedings for any disciplinary action which shows bias on the part of quarter concern.
- c. That the punishment is harsh in nature and the appellant is vexed for undone single offence which is against the constitution of Islamic republic of Pakistan 1973.
- d. 8:-That under Article 10 of constitution of Pakistan the has a fundamental rights of fair impartial and transparent enquiry /trial but unfortunately the competent authority ignored such an important aspect and thus the entire enquiry proceeding have become null and void .
- e.
- f. 9:-That the honourable PCH vide its judgment dated 14-02-2018 has held that if an employee is charged for an offence the department instead of dismissal from service keep him suspend and after decision of the trial ,his departmental enquiry be disposed off in accordance with the principal of law and justice and the appellant produced the Judgment before the respondent No-3 but the impugned order is silent about the Judgment of the Honourable PHC .
- g. That the appellant is honest and dedicated one and leave no stone unturned to discharge his duties.
- h. That as per universal declaration of human rights 1948 prohibits the arbitral / discretion.
- i. That the respondent No-3 has acted whimsically and arbitrary, which is apparent from the impugned order.
- j. That the impugned order is not based on sound reasons and same is not sustainable in the eyes of law. The same is based on wrong assumption of facts.
- k. That the departmental enquiry was not conducted according to the rules.
- l. That the impugned order is outcome of surmises and conjecture.

Pray:

In the view of above circumstances it is humbly prayed that the impugned order of respondent No-3 dated 01-08-2019 Kohat may please be set aside for the end of justice and the appellant may please be graciously re-instated in service with all back benefits.

Through

Appellant

Syed Mudasir Pirzada
Advocate HC

Date 12/6/20

0345 0645854

Certificate:-

4

Certified that no such like appeal has earlier been filed in this Hon able Service tribunal as per instruction of my client.

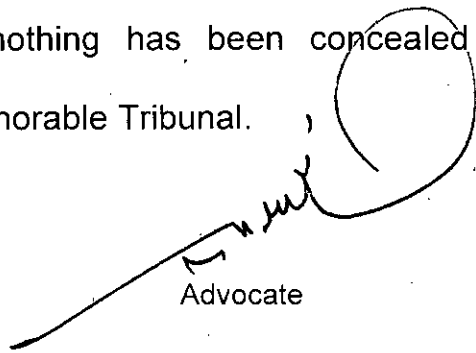
List of Books

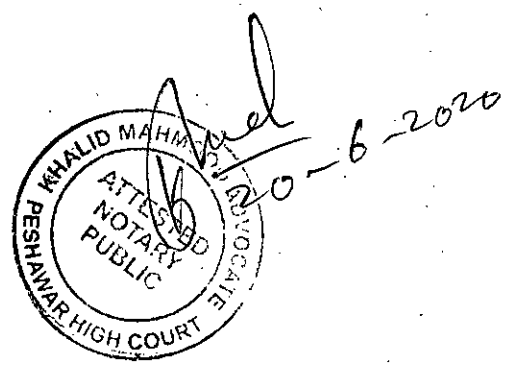
- 1:- Constitution of Pakistan 1973
- 2:- Police Rules
- 3:- Case Law according to need.

Service Appeal _____ 2020

AFFIDAVIT

I, Syed Mudasir Pirzada Advocate, as per instruction of my client do here by solemnly affirm and declare that all the contents of accompanying service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.


Advocate



BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR.

Muhammad Khan Ex-Police ASI R/o Jerma Kohat.

(Appellant)

VERSUS

1. INSPECTOR GENERAL OF POLICE KPK PESHAWAR.
2. DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT
3. DISTRICT POLICE OFFICER KOHAT. (Respondent)

ADDRESS OF THE PARTIES

APPELLANT :-

Muhammad Khan Ex-Police ASI R/o Jerma Kohat..

RESPONDENTS

1. INSPECTOR GENERAL OF POLICE KPK PESHAWAR.
2. DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT
3. DISTRICT POLICE OFFICER KOHAT.

Appellant

Through

Date 12/6/20


Syed Mudasir Pirzada
Advocate PHC
0345-9645854

ORDER

(77)

Impugned order

Annexure-A

P-7

This order is passed in departmental proceedings initiated against ASI Muhammad Khan (hereinafter referred as accused officer). The accused officer while posted in Field Office, CO Kohat got involved in criminal case bearing FIR No. 48 dated 16.01.2020 u/s 15AA/17/AA, PS Muhammad Riaz Shaheed (MRS) District Kohat while smuggling an arms cache comprising Kalashnikov rifles, Pistols and Ammunition in motor car No. B7111/Márdan however he decamped from the scene.

He was served with charge sheet and summary of allegations vide this office No. 425-26/EIB, dated 20.01.2020. DSP/Alien Special Branch Fazal Hanif was appointed as Enquiry Officer under Khyber Pakhtunkhwa Police Rules, 1975 (amended 2014) to scrutinize his conduct with reference to the charges leveled against him. The Enquiry Officer in his findings found him guilty of committing misconduct as his involvement in the criminal case of such a heinous offence of smuggling illegal arms ammunition proved beyond shadow of doubt which brought bad name to this establishment.

Before imposing major punishment of dismissal from service, he was issued Final Show Cause Notice and heard in person by the undersigned that why the aforesaid penalty should not be imposed upon him. His reply to the Final Show Cause Notice is not satisfactory as he involved himself in heinous offence of smuggling heavy arms cache comprising lethal weapons.

In view of the above, I Jawid Khan SSP/Admn Special Branch as a competent authority hereby award him major punishment of dismissal from service under ibid Rules with immediate effect.

(JAWID KHAN)

Senior Superintendent of Police Admn;
Special Branch, Khyber Pakhtunkhwa,
Peshawar.

No 1585-92 / EIB dated Peshawar the: 04 / 03 / 2020

Copies of the above is forwarded to the:-

1. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
2. Deputy Inspector General of Police, Special Branch Khyber Pakhtunkhwa Peshawar.
3. Regional Police Officer, Kohat.
4. District Police Officer, Kohat.
5. DSP/HQr; Special Branch Khyber Pakhtunkhwa Peshawar.
6. Account Officer, Special Branch Khyber Pakhtunkhwa Peshawar.
7. SRC. Special Branch Khyber Pakhtunkhwa Peshawar.

8)

LO-SIB

ATTESTED

Better copy - 7

Annex-A


ORDER

This Order is passed in departmental proceedings initiated against ASI Muhammad Khan (hereinafter referred as accused officer). The accused officer while posted in Field Office, GO Kohat got involved in criminal case bearing FIR No. 48 dated 16.01.2020 u/s 15AA/17 AA, PS Muhammad Riaz Shaheed (MRS) District Kohat while smuggling an arms cache comprising Kalashnikov rifles, Pistols and Ammunition in motor car No. B7111/Mardan however he decamped from the scene.

He was served with charge sheet and summary of allegations vide this office No. 425-26/EB, dated 20.01.2020. DSP/Alien Special Branch Fazal Hanif was appointed as Enquiry Officer under Khyber Pakhtunkhwa Police Rules, 1975 (amended 2014) to scrutinize his conduct with reference to the charges leveled against him. The Enquiry Officer in his findings found him guilty of committing misconduct as his involvement in the criminal case of such a heinous offence of smuggling illegal arms ammunition proved beyond shadow of doubt which brought bad name to this establishment.

Before imposing major punishment of dismissal from service, he was issued Final Show Cause Notice and heard in person by the undersigned that why the aforesaid penalty should not be imposed upon him. His reply to the Final Show Cause Notice is not satisfactory as he involved himself in heinous offence of smuggling heavy arms cache comprising lethal weapons.

In view of the above, I Javaid Khan SSP Admn Special Branch as a competent authority hereby award him major punishment of dismissal from service under ibid Rules with immediate effect.


Senior Superintendent of Police Admn,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.

Annex
Fazal Hanif

No. 1585-92/EB dated Peshawar the: 04/03/2020

- 1) Copies of the above is forwarded to the:-
- 2) Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
- 3) Deputy Inspector General of Police, Special Branch Khyber Pakhtunkhwa Peshawar.
- 4) Regional Police Officer, Kohat.
- 5) District Police Officer, Kohat.
- 6) DSP/HQ: Special Branch Khyber Pakhtunkhwa Peshawar.
- 7) Account Officer, Special Branch Khyber Pakhtunkhwa Peshawar.
- 8) SRC, Special Branch Khyber Pakhtunkhwa Peshawar.

60-513

(B) Amexul
(B B)

FINAL SHOW CAUSE NOTICE

I, Javaid Khan SP/Admn: Special Branch KP, Peshawar being competent authority under Khyber Pakhtunkhwa, Police Rules 1975 (Amended 2014), issue this final show cause notice to you ASI Muhammad Khan on the following grounds:-

That, You while posted in field office, GO Kohat got involved in criminal case bearing FIR No.48 dated 16.01.2020 U/s 15AA/17/AA, PS Muhammad Riaz Shaheed (MRS) District Kohat while smuggling an arms cache comprising Kalashnikov rifles, Pistols and Ammunition, in motor car No.B37111/Mardan, however you decamped from the scene.

You were served with charge sheet and summary of allegation vide this office No.425-26/EB, dated 20-01-2020. Mr. Fazal Hanif Khan DSP/Alien Special Branch was appointed as Enquiry Officer who during the course of enquiry, found you guilty of committing misconduct.

After going through the findings of the Enquiry Officer, the material available on record and other connected papers, I am satisfied that you have committed misconduct within the meanings of ibid Rules. As a result thereof, I Javaid Khan SP/Admn Special Branch Khyber Pakhtunkhwa Peshawar as competent authority has tentatively decided to impose upon you Major penalty of Dismissal from service under ibid Rules.

You are therefore, directed through Final Show Cause **within 15 days** as to why the aforesaid penalty should not be imposed upon you.

In case your reply is not received within stipulated period, it shall be presumed that you have no defense to put and in that case an ex-parte action shall be taken against you.

Also state whether you desire to be heard in person.

Copy of the finding of the enquiry officer is enclosed.

Javaid Khan
(Javaid Khan)
Supdt: of Police/Admn:
Special Branch KP, Peshawar.

No. 991 /EB. Dated Peshawar, the 06-02-2020.

[Signature]
ATTESTED

FINAL SHOW CAUSE NOTICE

I Javaid Khan SP/Admn: Special Branch KP, Peshawar being competent authority under Khyber Pakhtunkhwa, Police Rules, 1975 (Amended 2014), issue this final show cause notice to you ASI Muhammad Khan on the following grounds:-

That, you while posted in field office, GO Kohat got involved in criminal case bearing FIR No.48 dated 16.01.2020 U/s 15AA/17AA, PS Muhammad Riaz Shaheed (MRS) District Kohat while smuggling an arms cache comprising Kalashnikov Rifles, Pistols and Ammunition, in motor car No.B7111/Mardan, however you decamped from the scene.

You were served with charge sheet and summary of allegation vide this office No.425-26/EB, dated 20-01-2020. Mr. Fazal Hanif Khan DSP/Alien Special Branch was appointed as Enquiry Officer who during the course of enquiry, found you guilty of committing misconduct.

After going through the findings of the Enquiry Officer, the material available on record and other connected papers, I am satisfied that you have committed misconduct within the meanings of ibid Rules. As a result thereof, I Javaid Khan SP/Admn Special Branch Khyber Pakhtunkhwa, Peshawar as competent authority has tentatively decided to impose upon you Major penalty of Dismissal from service under ibid Rules.

You are therefore, directed through Final Show Cause within 15 days as to why the aforesaid penalty should not be imposed upon you.

In case you reply is not received within stipulated period, it shall be presumed that you have no defense to put and in that case an ex-parte action shall be taken against you.

Also state whether you desire to be heard in person.

Copy of the finding of the enquiry officer is enclosed.

Sd/-
(Javaid Khan)
Supdt: of Police/Admn:
Special Branch KP, Peshawar.

No.991/EB, Dated Peshawar, the 06-02-2020

Attested

CHARGE SHEET.

14


9

I, Javaid Khan, SP/Admn: Special Branch, Khyber Pakhtunkhwa Peshawar as a competent authority under Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) hereby charge you ASI Muhammad Khan as follow:-

You while posted in AGO field office, Special Branch, Kohat got involved in Criminal case bearing FIR No.48 dated 16.01.2020 U/s 15AA/17/AA PS Muhammad Riaz Shaheed (MRS) Kohat while smuggling an arms cache comprising Kalashnikov rifles, Pistols and Ammunition, in motor car No.B7111/Mardan. However you decamped from the scene.

By the reason of the above, you appear to be guilty of misconduct under the Khyber Pakhtunkhwa Police Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the said rules.

1. You are, therefore, directed to submit your written defense within 7 days of the receipt of this Charge Sheet to the Enquiry Officer.
2. Your written defense, if any, should reach to the enquiry officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case, ex-parte action will be taken against you.
3. You are also at liberty, if you wish to be heard in person.
4. Statement of allegation is enclosed.


(Javaid Khan)
Superintendent of Police Admn:
Special Branch Khyber Pakhtunkhwa,
Peshawar.

ATTESTED

(13) (10)

SUMMARY OF ALLEGATIONS.

I. Javaid Khan, SP/Admn: Special Branch, Khyber Pakhtunkhwa Peshawar being competent authority, is of the opinion that ASI Muhammad Khan rendered himself liable to be proceeded against, as he has committed the following acts of omissions / commissions within the meaning of Khyber Pakhtunkhwa Police Rules 1975.

STATEMENT OF ALLEGATIONS.

He, while posted in AGO field office, Special Branch, Kohat get involved in Criminal case bearing FIR No.48 dated 16.01.2020 U/s 15AA/17/AA PS Muhammad Riaz Shaheed (MRS) Kohat while smuggling an arms cache comprising Kalashnikov rifles, Pistols and Ammunition, in motor car No.B7111/Mardan. However he decamped from the scene.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation. Mr. Fazal Hancef Khan DSP Alien is appointed as enquiry officer to conduct enquiry under Police Rules 1975.

3. The Enquiry Officer shall, in accordance with the provision of the said Rules, provide reasonable opportunity of hearing to the accused, record its findings and make within 15 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.


(Javaid Khan)

Superintendent of Police Admn:
Special Branch Khyber Pakhtunkhwa,
Peshawar.

No. 425-26 / 111 dated Peshawar the, 20 / 01 / 2020.

Copy of above is forwarded to the:-

1. Enquiry Office with the direction to initiate departmental proceedings against the accused under the Rules and submit his findings in shortest possible time.
2. Official concerned.


ATTESTED

(9) (12)

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE SPECIAL BRANCH
KHYBER PAKHUNKHWA PESHAWAR

SUBJECT: APPEAL AGAINST THE IMPUGNED ORDER OF SSP, SPECIAL BRANCH PESHAWAR VIDE DATED 04-03-2020, NO:-1585-92/EB IN WHICH UPON THE FINDINGS OF ENQUIRY OFFICER DIRECTLY IMPOSED THE MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE WITH IMMEDIATE EFFECT.

Respectfully Sheweth,

With great veneration the instant appeal is preferred by the appellant on the following grounds:-

Facts:

Briefly facts as per impugned order are that the appellant while serving in department posted in field office AGO Kohat got involved in criminal case bearing No 48 dated 16-01-2020 u/s 15AA/17/AA, PS MRS District Kohat smuggling an arms cache comprising Kalashnikov rifles, Pistol and Ammunition in motor car No .B-7111/Mardan however the appellant decamped from the scene (Copy of impugned order is annexed)

That the appellant was served with the charge sheet which was replied by the appellant and after then the appellant was served with the final show cause notice but the same was not considered. (Copy of FCN is annexed.)

That the appellant submitted the reply to the charge sheet but the same was not consider hence the impugned order were issued.

That the appellant is very dedicated, keen and apprehensive towards his assign duty having 25 years unblemished service record but this factor has not been appreciated while appellant was blessed with impugned order.

That the service of the appellant was suspended after registration of the case and on the next date without any evidence.

That the appellant feeling aggrieved from the impugned order and submit the representation on the following grounds:-

Grounds:-

1. That the allegations never practice by the appellant and there is nothing on record which connect the appellant with the allegation.

That the appellant always earned the good name for department and portray a excellent image towards the public.

That it is the settle principle of justice that no one should be condemn un heard his back but in the case of appellant no proper enquiry has been conducted to enquire the allegation.

ATTESTED

13

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That again an unjust has been done with the appellant by not giving ample opportunity of cross examination as well as not heard in person nor properly enquired the allegation and held guilty the appellant without following the prescribed rules relating to enquiry proceedings as per Police Rules 1975 (amended 2014).

- 5. That nothing has been proved beyond any shadow of doubt that the appellant has committed any mentioned allegation due to which the appellant has been dismissed .
- 6. That without issuing the show cause notice the appellant has been dismissed from service which is against to the rules and only on the basis of FIR the appellant,s services dismissed.
- 7. That the nothing has been recovered from the personal possession of the appellant nor decamped form the scene on the basis that the presence of the appellant on the place of occurrence is dubious nor proved through any cogent reason as well as on this material fact the appellant claims the bail form the honourable Court of law as a right and the same was confirmed being innocent but this fact was also not consider by the SSP/Special Branch .
- 8. That as it is a golden principal that the departmental proceedings and criminal proceedings are two different things which have no binding on each other but the so called enquiry officer was required to wait for the decision of the court regarding the innocence of the appellant but this fact was also not considered till to date.
- 9. That while awarding the impugned order none from the general public was examined in support of the charges leveled against the appellant. No allegation mentioned above are practiced by the appellant nor proved against any cogent reason against the appellant.
- 10. That the appellant has also disclosed this fact to SSP/Special Branch before receiving the impugned order that due to refusal of illegal orders of the concern SHO hence deliberately involved the appellant in the criminal case.
- 11. That as per enquiry rules ibid if any enquiry has been conducted the enquiry findings report must be provided to the appellant but in case of appellant the same was not provided to the appellant nor provided any opportunity of fare defense as well as to cross examine official witness.
- 12. That the appellant produce all the relevant witness regarding the innocence of the appellant but this fact was also ignored and appellant has also produced his record regarding the non presence on place of occurance but this fact :

ATTESTED

14

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- 13. That the appellant is honest and dedicated one and leave no stone unturned to discharge his duties.
- 14. That the biasness of the SSP/Special Branch is clearly proved from the departmental proceedings that prior to issuance of impugned order the authority has already decided the major punishment without keeping in mind that the charges were slanderous false.
- 15. That no opportunity of personal hearing has been awarded to the appellant nor any intimation regarding the departmental enquiry has been communicated to the appellant.

10 That as per universal declaration of human rights 1948 prohibits the arbitral discretion.

11:- That the SSP/Special Branch Peshawar has acted whimsically and arbitrarily which is apparent from the impugned order.

12:-That the impugned order is not based on sound reasons and same is not sustainable in the eyes of law. The same is based on wrong assumption of facts.

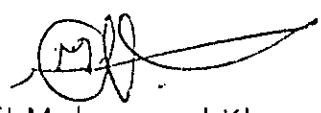
13:-That the impugned order is outcome of surmises and conjecture.

ay:

In the view of above circumstances it is humbly prayed that the impugned order may please be set aside for the end of justice and the appellant may please be graciously re-instated in service with all back benefits.

Date: 2 / 4 / 2020

(Appellant)



Ex-ASI Muhammad Khan

ATTESTED

(15) (7)

ORDER

This order is passed to dispose of departmental appeal preferred by Ex-ASI Muhammad Khan (under Khyber Pakhtunkhwa, Police Rules, 1975 (Amended 2014) against his dismissal from service. Facts forming the background of the departmental appeal are as follow:-

Ex-ASI Muhammad Khan (hereinafter only refer to appellant) while posted in field office, G.O. Special Branch Kofat got involved in criminal case bearing FIR No. 48 dated 16.01.2020 u/s 15AA/17AA/PS Muhammad Riaz Shaheed (MRS) District Kohat while smuggling an Arms cache comprising Kalashnikov rifles, Pistols and Ammunition, in motor car No. B7111/Mardan, however, appellant decamped from the scene.

Proper departmental proceedings were initiated against the appellant under KP Police Rules 1975 (amended 2014) by issuing charge sheet and statement of allegations wherein enquiry officer Mr. Fazal Hanif Khan DSP/Alien Special Branch was nominated to probe into the matter.

The enquiry officer accomplished enquiry and held the appellant guilty of committing misconduct within the meaning of ibid Rules by smuggling Arms and Ammunition hence dismissed from service by the competent authority.

This appeal was perused in detail alongwith record of enquiry proceedings by the undersigned but found unsatisfactory having no substance. During enquiry, the appellant submitted in black & white to Enquiry Officer that he did not pursue to cross examine the prosecution witnesses including SHO, OI and Police party present at the check post who deposed against him and this simply made him suspicious meaning by that he conceded to the charges and this shows that the appellant is habitual smuggler of Arms & Ammunition since long. His act ultimately brought bad name to police department in general and this organization in particular. Further, he was given an opportunity of hearing in person in Orderly room but the appellant did not convince the undersigned with some plausible grounds/ reasons of his innocence. Therefore the appeal of appellant is rejected and filed in the light of his involvement in serious criminal act of smuggling lethal arms which also comes under the orbit of moral turpitude.



(AKHTAR HAYAT KHAN) ^{PSP}
Deputy Inspector General of Police,
Special Branch Khyber Pakhtunkhwa,
Peshawar.

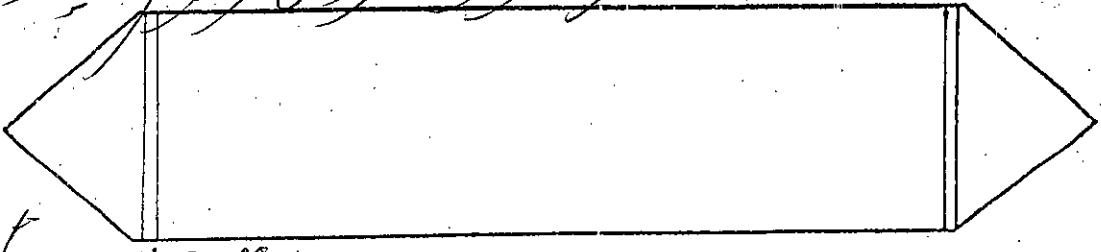
No. 4117-2-11 /EB, dated Peshawar the, 19/05/2020.
Copy forwarded for information to the:

1. SSP/Admin Special Branch.
2. Officer Concerned.
3. EA/SB.
4. Lines Officer.
5. Accounts officer.


ATTESTED

بعدالت

ہینئر وٹھو خواہ سرورین سر سید علی شاہ



Appellant

2022ء بمطابق

بنام 9699 معینہ

محمد خان

SA No. / 20

موزخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی وکل کاروائی متعلقہ آن مقام ~~سید محمد شاہ~~ کیلئے ~~سید محمد شاہ~~ مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر حالت ہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک دروپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سندر ہے۔

Attested & Accepted

Appellant

المرقوم _____ ماہ _____ 2022ء

العبد _____ واہ العبد _____

بمقام ~~سید محمد شاہ~~ کے لئے منظور ہے۔

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 6223/2020.

Muhammad Khan Ex- ASI Special Branch

..... (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa and others

.....(Respondents)

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(1)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 6223/2020.

Muhammad Khan Ex- ASI Special Branch

..... (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa and others

.....(Respondents)

REPLY BY RESPONDENTS.

PRELIMINARY OBJECTIONS:-

- a) That the appellant has no cause of action.
- b) That the appeal is badly barred by law & limitation.
- c) That the appellant has been estopped by his own conduct to file the appeal.
- d) That the appeal is not maintainable in its present form.
- e) That the appellant has not come to the Hon'ble Tribunal with clean hands.
- f) That the appeal is bad for misjoinder and non joinder of necessary parties.

FACTS:-

1. Incorrect, appellant while posted in Field Office, Special Branch, AGO Kohat was found involved in smuggling of Arms and Ammunition vide FIR No. 48 dated 16.01.2020 Under Sections 15 and 7AA of the Khyber Pakhtunkhwa Arms Act, 2013 (amended 2015), Police Station Muhammad Riaz Shaheed (MRS) Kohat. He being a Police Officer and posted in sensitive agency of Special Branch was found involved in anti-social and criminal activities of Arms smuggling. Therefore, he was proceeded against departmentally and the charge was found proved during regular enquiry. He failed to rebut and defend the departmental charges therefore he was dismissed from service under the Police Rules 1975. Copy of FIR is enclosed as Annexure "A".
2. Incorrect, appellant has admitted receipt of charge sheet and Final Show Cause Notice. The replies submitted by appellant in response to the charge sheet and final show cause notice were found not satisfactory therefore penalty of dismissal from service commensurate with gravity of the charges was imposed on him. Furthermore, long service at the credit of appellant is no defence of charges of commission of grave misconduct.
3. Incorrect, there was no force and substance in the departmental appeal of appellant. Therefore he failed to advance any plausible, solid and cogent explanation during personal hearing, therefore the departmental appeal was rejected vide proper speaking order of competent authority.

- (2)
4. Incorrect, appellant was provided chance of cross examination but he willfully avoided cross-examining the witnesses including Police officers i.e. FIR scribe and investigation officers of the criminal case. During inquiry the charges were established against the appellant. Copy of Enquiry Report is enclosed as Annexure "B".
 5. Incorrect, appellant being police officer and posted in Special Branch was found involved in smuggling of Arms and Ammunition. He misused his powers and authority and tarnish the image of Police.
 6. Incorrect, the good entries recorded in service record of appellant prove the bona-fide of respondents. He was rewarded for good performance and awarded penalty for commission of gross-misconduct.
 7. Incorrect, this para of the appeal is mere repetition of Para 4 of the Facts which has properly been answered.
 8. Incorrect, regular enquiry was conducted. Appellant has admitted issuance of charge sheet and final show cause notice. He deliberately avoided availing opportunity of cross-examining the witnesses.
 9. Incorrect this para is repetition of Para 2 of the appeal while has properly been answered.
 10. (Wrongly Numbered) Incorrect appellant was proceeded against departmentally on the charges of commission of gross-misconduct of involvement in smuggling of Arms and Ammunitions.
 11. (Wrongly Numbered) Incorrect, Final Show Cause Notice along with enquiry report was served on appellant as evident from last line of his Final Show Cause Notice. Therefore, the appeal is not tenable on the given grounds.


GROUND:-


- a) Incorrect, examination of private persons in support of departmental charge is not the mandate of law and Rules. Again superior courts have held in numerous reported Judgments that Police Officers are as competent witnesses as Police Officers. Valid and solid evidence with regard to involvement of appellant in smuggling is available on file.
- b) Incorrect, appellant has admitted receipt of charge sheet and final show cause notice and his replies are placed on file. Witnesses were examined in his presence.
- c) Incorrect, appellant has admitted the charge by stating that the punishment is harsh. Furthermore, the punishment is commensurate with gravity of charge. Appellant being Police officer was found involved in Arms smuggling.


- d) Incorrect, legal and lawful action was taken the against appellant and he was treated in accordance with law and rules.
- e) This para is only numbered in the appeal with no narration or ground.
- f) Incorrect, departmental and criminal charge are distinct in nature and separate criteria of evidence is required proving each charge.
- g) Incorrect, appellant was found involved in anti-social and government activities.
- h) Incorrect, proper Speaking Orders were passed and appellant was treated in accordance with law/Rules.
- i) Incorrect, this para is repetition of para "h" therefore no comments.
- j) Incorrect, the order is just legal and was passed in accordance with law and rules.
- k) Incorrect, regular enquiry was conducted copy already enclosed as Annexure B.
- l) Incorrect, the order is based on solid evidence and facts.

PRAYER:-

It is therefore prayed that on acceptance of reply to the appeal, the same may kindly be dismissed with costs please.


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


 Deputy Inspector General of Police,
 Special Branch, Khyber Pakhtunkhwa, Peshawar.
 (Respondent No. 2)


 Senior Superintendent of Police, Admin
 Special Branch Khyber Pakhtunkhwa, Peshawar.
 (Respondent No. 3)

4

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 6223/2020.

Muhammad Khan Ex- ASI Special Branch

..... (Appellant)

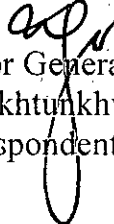
VERSUS


Inspector General of Police Khyber Pakhtunkhwa and others

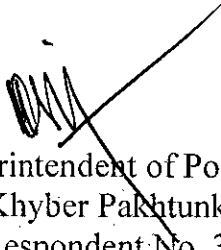
.....(Respondents)

AUTHORITY LETTER

Muhammad Asif DSP Legal, Special Branch, Khyber Pakhtunkhwa Peshawar is hereby authorized to appear on behalf of the Respondents before the Hon'ble Service Tribunal Peshawar. He is authorized to submit all required documents and replies etc pertaining to the appeal through the Government Pleader.


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


Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 2)


Senior Superintendent of Police, Admin
Special Branch Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 3)

5

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 6223/2020.

Muhammad Khan Ex- ASI Special Branch

..... (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa and others

.....(Respondents)

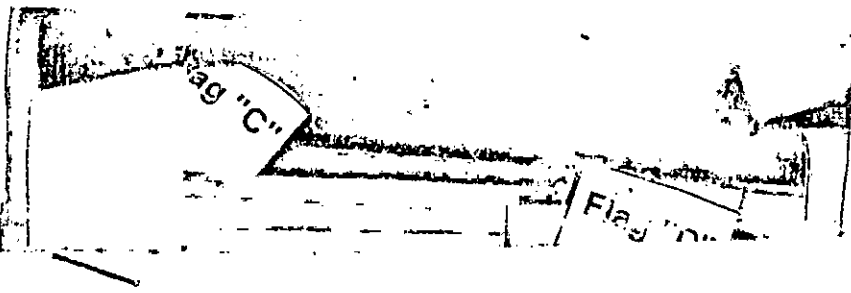
AFFIDAVIT

I, Muhammad Asif DSP Legal Special Branch, Khyber Pakhtunkhwa Peshawar do here by solemnly affirm on oath that the contents of enclosed application on behalf of respondents. Nothing has been concealed from this Hon'ble Tribunal.

Deponent



Muhammad Asif
DSP/Legal
17301-3746129-3



11 A16

تاریخ: 17-10-1975

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شروع ہوئی تو نو 10 بجو شاہ جہاں آباد

طی کھوٹا

MRS

تاریخ: 16 اکتوبر 1975 بجے 19:05 بجے

48

تاریخ وقت رپورٹ	16 اکتوبر 20:20 بجے	جاگرتگی بتی 16 اکتوبر 21:00 بجے
نام ہوٹل/مکان/پتہ	اسلام اربین SHO	14303-5237894-1
تفصیلی پتہ (سوائف) محل وقوع کی صورت	1788	03348251101
جائے وقوعہ (سوائف) صورت	گھانگھوٹے کے محل وقوعہ	گھانگھوٹے کے محل وقوعہ
پتہ	14301-705119	0333991112111
پتہ	گھانگھوٹے کے محل وقوعہ	گھانگھوٹے کے محل وقوعہ
تعداد سے رپورٹ کی تاریخ	16 اکتوبر 1975	16 اکتوبر 1975

ابتدائی اطلاع نیچے درج کردہ اسٹریٹ آف تمیری سرائے بجانب اسلام اربین SHO پتہ
 کنپل جرمہ خاص 235 عدول بہر سہ ریل ہے۔ گھر قحاشہ اشب میں ہے ابراہیم
 14C، ڈیول سنار 251، ملاقی 321، پتہ خاص 235، گھانگھوٹے 820، ریگہر لولیل پتہ
 پتہ گھانگھوٹے والا ناکہ بہری بہر موجود تھے کہ اس دوران ایک موٹر کار نمبر
 برنگ سفید 14A آکر گھٹا کر کے دریاخت بہر ڈرائیور سیٹ پر بیٹھے ہوئے
 شخص نے اپنا نام پتہ پتہ اور گھانگھوٹے کے محل وقوعہ گھانگھوٹے کے محل وقوعہ
 پتہ پتہ پتہ پتہ Asi خان نے پتہ پتہ پتہ پتہ موجود پتہ پتہ پتہ پتہ
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 دو کسان کو نیچے انارے جا کر گاڑی کی کیننگ شروع کر کے اس دوران
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⑪ مزید 15 عدد لاپتول 30 لور بلائزات مع نیکیس 25 عدد سپر
 جارجه مزید دوٹرکارے زسٹ سیٹ کے نیچے سے 6 عدد ڈبے کارتوں
 30 لور فی ڈبہ $\frac{500}{500}$ کل 3000 کارتوں ڈرائیور کی سیٹ کے
 نیچے سے 3 ڈبے کارتوں جن میں دو ڈبے 9MM $\frac{500}{500}$ کل
 1000 کارتوں 200 کارتوں 44 لور 200 کارتوں 303 لور
 دیگر بیزہ جٹ برائے اسلحہ تلف لور بر آسہ ٹرے قعج پر کسی
 قسم کی لائسنس پنٹیشن میں کی جملہ اسلحہ ایجوکیشن بس
 دوٹرکارہ لوری $\frac{7111}{B}$ لیبیہ زسٹیشن کا فزات کے بطور
 یہ نیوٹ برہ نے فرد تہ جسے لور میں ٹرے ہر وہ ملزماں کو
 ٹریک کے جوائنٹ بالائے یا کر ملزم جسے علی حسب ضابطہ گرفتار
 قبیلہ محمد خان Asi کی گرفتاری درپیش ہے براسلہ ہرست
 ٹیل وقاص 235 ارسال فضا ہے لبر اندراج نقد تیش
 حوالہ KBi ٹاف ہرے رنٹو انگریزی اسلام الدین SHO
 فنانس MRS $\frac{1}{20}$ 16 کاروانی فضا آمد براسلہ صرف صرف درج
 بلا ہر رپرچہ مجرم بالاجاک ہو کر نقل پرچہ براسلہ
 لغرض تیش حوالہ KBi ٹاف کیا جاتا ہے پر گرفتار ہے

شکا
2-4
6x

Si MRS
16/01/2020

19

از دفتر ڈی ایس پی، ایلمین

سپیشل برانچ، ہیڈ کوارٹر پشاور

"محکمہ انکوائری فائنڈنگ رپورٹ"

جناب عالی!

بحوالہ مشمولہ چارج شیٹ / سری آف ایلیگیشن نمبر 425-26/EB مورخہ 20-01-2020 جاریہ جناب ایس پی صاحب، ایڈمن سپیشل برانچ ہیڈ کوارٹر، پشاور پولیس رولز 1975 نیو ترمیم شدہ سال 2014 کے باب 6 (لف شدہ Flag-A) کی روشنی میں من انکوائری آفیسر نے انکوائری کارروائی عمل میں لا کر معروض خدمت ہوں کہ بحوالہ مشمولہ نقل FIR کاپی نمبر 48 مورخہ 16-01-2020 بجرائم 15AA/17AA تھانہ MRS ضلع کوہاٹ میں بھاری مقدار میں اسلحہ ایمونیشن موٹر کار کے ذریعے سمگل کرنے کے جرم میں بالا مقدمہ برخلاف ملزمان محمد علی ولد جہان گل سکند زرخن خیل درہ آدم خیل، محمد خان ASI محکمہ پولیس درج رجسٹر ہو کر باقاعدہ ملزمان گردانے گئے۔ FIR (Flag-B) کی تفصیل کچھ یوں ہے کہ مورخہ 16-01-2020 کو زون دہائی وے چیک پوسٹ، اسلام الدین خان SHO بمعدہ نفری بوقت شام ویلہ سے ناکہ بندی پر موجود تھے کہ اس دوران ایک موٹر کار نمبر B/7111 مردان برنگ سفید XLI بطرف درہ آدم خیل سے آ کر روک کر دریافت کرنے پر ڈرائیونگ سیٹ پر بیٹھے شخص نے اپنا نام محمد علی ولد جہان گل سکند زرخن خیل درہ آدم خیل بتلایا جبکہ ڈرائیور کے ساتھ دوسری فرنٹ سیٹ پر محمد خان ASI محکمہ پولیس کو موجود پا کر موٹر کار مذکورہ بالا کو بغرض تلاشی سڑک کے کنارے پر کھڑا کر کے دونوں سوار افراد کو نیچے اتار کر گاڑی کی تلاشی لی۔ بوقت وقوع تقریباً شام 19:05 بجے محمد خان ASI رات کے اندھیرے اور گاڑیوں کے رش کا فائدہ اٹھا کر موقع سے رنو چکر ہو گیا جبکہ ڈرائیور محمد علی کو بر موقع قابو میں کر کے موٹر کار کی پڑتال کرنے پر موٹر کار کی ڈگی سے ایک بوری برآمد کی جا کر مزید پڑتال کرنے پر پانچ عدد کلاشنکوف مختلف نمبرات اور ایک عدد کلاشنکوف بلا نمبر بمعدہ فکس میگزین برآمد کیں۔ اسی طرح مزید تلاشی لینے پر گاڑی کی پچھلی نشست کے پیچھے ایک پلاسٹک لفافہ سے 25 عدد پستول 30 بور مختلف نمبرات اور کچھ پستول بلا نمبرات مع فکس چارجز وغیرہ برآمد کئے۔ اسی طرح متذکرہ موٹر کار کی فرنٹ سیٹ کے نیچے سے 6 عدد ڈبے کارتوس 30 بورنی ڈبہ 500/500 کل کارتوس 3000 عدد کے علاوہ 3 ڈبے مزید کارتوس بھی برآمد کئے جن میں سے دو عدد ڈبے 500/500، 9MM فی ڈبہ یعنی کل 1000 کارتوس 200 9MM عدد کارتوس 44 بور، 200 کارتوس 303 بور جبکہ دیگر پرزہ جات برائے اسلحہ مختلف بور برآمد کر کے موقع پر برآمد شدہ اسلحہ کی نسبت ملزم / ملزمان کسی قسم کا لائسنس اور پرمٹ پیش نہ کر سکے۔ اسی طرح موٹر کار نمبری بالا بغیر رجسٹریشن اور کاغذات کے بطور وجہ ثبوت قبضہ پولیس میں لے کر ہر دو ملزمان بالا کے خلاف مقدمہ مندرجہ عنوان بالا باقاعدہ طور پر تھانہ MRS ضلع کوہاٹ میں درج رجسٹر ہو کر مقدمہ ہذا بغرض تفتیش حوالہ KBI سٹاف کیا گیا۔ مذکورہ مقدمہ میں موقع پر ملزم محمد علی گرفتار جبکہ ملزم محمد خان ASI محکمہ پولیس نامزد شدہ کی گرفتاری درپیش تھی۔ واضح رہے کہ ملزم محمد خان ASI کو SHO اسلام الدین خان اور دیگر نفری پولیس اس وجہ سے نام اور شکل و صورت سے اچھی طرح سے جانتے تھے کیونکہ مذکورہ بالا الزام علیہ پولیس آفیسر ضلع کوہاٹ کا بھرتی شدہ ہے اور 7/8 ماہ قبل آن لائن ضلع پولیس کوہاٹ سے سپیشل برانچ برائے درہ آدم خیل بیٹ تبدیل ہوا تھا اور اس وجہ سے اس کا نام FIR میں باقی نیم ذکر شدہ اور معلوم شدہ تحریر

ضمانت قبل از گرفتاری (BBA) کروائی جس کی فوٹوکاپی ضمانت نامہ (Flag-C) پر ہمراہ لف ہے اور مزید معلومات کے مطابق جس میں آنکھ
تاریخ پیشی امروز مورخہ 28-01-2020 مقرر ہے۔

انکوائری ہذا کے سلسلے میں بغرض قلمبندی بیانات اور دستیاب دستاویزی شہادتوں کو جانچنے کی خاطر بحوالہ مشمولہ چٹھی نمبر 454/EB
مورخہ 21-01-2020 اور چٹھی انگریزی نمبر 511/EB مورخہ 24-01-2020 ذیل پولیس افسران بغرض قلمبندی بیانات پیش برائے
ہیڈ کوارٹر پشاور طلب کئے گئے جن کے بیانات بطریق ذیل تفصیل لئے جا کر لف انکوائری رپورٹ ہذا میں۔

- ۱۔ اسلام الدین خان SI/SHO تھانہ MRS کوہاٹ (Flag-D)
- ۲۔ ارشد محمود، SI ابتدائی انویسٹی گیشن آفیسر تھانہ MRS کوہاٹ (Flag-E)
- ۳۔ بہادر نواز خان، SI، AGO، سپیشل برائے ضلع کوہاٹ (Flag-F)
- ۴۔ محمد ابراہیم، HC، انچارج چیک پوسٹ ہائی وے (Flag-G)
- ۵۔ فیصل منان، FC/251 متعین ہائی وے چیک پوسٹ (Flag-H)
- ۶۔ محمد خان، ASI، آن لون متعین سپیشل برائے آفس ضلع کوہاٹ حال کلوزڈ ٹو سپیشل برائے ہیڈ کوارٹر پشاور (Flag-I)

فائنلنگ:

بالا گواہان کے تحریری بیانات قلمبند کرنے کے بعد من انکوائری آفیسر اس نتیجے پر بغیر کسی شک و شبہ کے پہنچا کہ بوقت وقوعہ FIR میں نامزد
شدہ ملزم محمد خان ASI محکمہ پولیس وقوعہ کے روز متذکرہ موٹر کار نمبری B/7111 مردان میں ملزم محمد علی ولد جہان گل سکند زرغن خیل درہ آدم خیل
کے ساتھ فرنٹ سیٹ پر بیٹھا ہوا تھا اور پولیس پارٹی کے روکنے پر رات کی تاریکی اور رش کا فائدہ اٹھاتے ہوئے موقع سے فرار ہو چکے ہونے میں کامیاب
ہو گیا۔ ہمراہی ملزم محمد علی نے بدوران تفتیش بیان زبردفعہ CrPC 161 ریکارڈ کرواتے وقت اس بات کا اعتراف کیا ہے کہ وہ (ملزم محمد علی) اور
فرار شدہ ملزم محمد خان ASI محکمہ پولیس جو کہ دونوں درہ آدم خیل سے تعلق رکھتے ہیں اور آپس میں رشتہ دار بھی ہیں کرائے پر موٹر کار نمبری بالا میں درہ
آدم خیل سے لکیروت میں موجود اسلحہ دکانداروں گل زمان اور غلام سعید کو مذکورہ اسلحہ ایسومیشن کی بھاری کھیپ پہنچا رہے تھے۔ ملزم محمد علی کے بیان
زبردفعہ CrPC 161 کی فوٹوکاپی (Flag-J) پر ہمراہ لف ہے۔ اسی طرح اسلام الدین خان، SHO کے ساتھ موقع پر موجود محکمہ پولیس کے
اہلکاران محمد ابراہیم، HC، انچارج چیک پوسٹ ہائی وے، فیصل منان FC/251 متعین چیک پوسٹ ہائی وے نے ملزم محمد خان ASI محکمہ پولیس
کی مذکورہ موٹر کار میں گرفتار شدہ ملزم محمد علی کے ساتھ موجودگی کی تائید کرتے ہوئے تمام برآمد شدہ اسلحہ بھاری کھیپ میں فرد مقبوضگی، ہمراہ لف شدہ
(Flag-K) پر باقاعدہ طور پر بطور گواہان ہمراہ SHO دستخط ثبت کئے ہیں جو کہ ایک ٹھوس شہادت ہے۔ اسی طرح ارشد محمود، ابتدائی تفتیشی آفیسر
مذکورہ مقدمہ نے بھی ملزم محمد خان ASI کی موجودگی/ملوث ہونے کی تائید کی ہے۔ حقائق کو مزید جانچنے اور پرکھنے کی خاطر سپیشل برائے یونٹ کے
آفیسر انچارج بہادر نواز خان، SI، سپیشل برائے ضلع کوہاٹ کا بیان بھی قلمبند کیا جس کے مطابق AGO کوہاٹ نے تھانہ MRS خود جا کر گرفتار
شدہ ملزم محمد علی کے ساتھ تھانے میں وقوعہ کی نسبت گفت و شنید کی جس کے کہنے کے مطابق ملزم گرفتار شدہ اور محمد خان ASI گزشتہ کئی عرصہ سے اسلحہ
سمگلنگ کا کاروبار کر رہے تھے اور وقوعہ کے روز اسلحہ ایسومیشن کی کھیپ درہ آدم خیل سے لوڈ کر کے بعد از نماز مغرب بطرف لکیروت اسلحہ لے جانے
کے لئے روانہ ہوئے تھے کہ بمقام ہائی وے چیک پوسٹ مقامی پولیس نے روک کر اسلحہ ایسومیشن سمیت گرفتار کر لیا۔ وہ اپنے تحریری بیان میں مزید

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گویاں ہے کہ ملزم انتہائی کھلے ماحول میں بغیر کسی دباؤ اور تشدد کے روانی کے ساتھ اپنا بیان دے رہا تھا۔ AGO کے بیان کے مطابق درجہ ملزمان نامزد شدہ FIR اسلحہ کی سگنگ کے کاروبار میں ملوث ہونے اور کرائے کی رقم میں برابر حصہ داری کی بنیاد پر قصور وار گردانے گئے ہیں۔ چونکہ الزام علیہ پولیس آفیسر محمد خان ASI آن لون ضلع کوہاٹ سے سپیشل برانچ یونٹ ضلع کوہاٹ ہیٹ آفیسر درہ آدم خیل ایریا میں ڈیوٹی سرانجام دے رہا تھا، AGO سپیشل برانچ کی تصدیق اس بات کی غمازی کرتی ہے کہ الزام علیہ پولیس آفیسر مذکورہ مقدمے میں باقاعدہ طور پر چارج شیٹ اور سری آف ایلیکیشن میں درج شدہ الزامات کے تحت مکمل طور پر ملوث پایا جاتا ہے۔ اسی طرح مذکورہ مقدمہ کے اگلے روز سب ڈویژنل پولیس آفیسر بشیر داد خان نے SHO اسلام الدین خان، انویسٹی گیشن آفیسر ارشد محمود کے ہمراہ جملہ اسلحہ ایمنیشن کھپ کی موجودگی میں میڈیا نمائندگان کو باقاعدہ پریس بریفنگ بھی دی جو کہ ہمراہ فوٹو گراف کاپی (Flag-L) سے صاف واضح ہے۔


قابل ذکر امر یہ ہے کہ الزام علیہ پولیس آفیسر محمد خان ASI جو کہ محکمہ پولیس ضلع کوہاٹ سے تعلق رکھتا ہے اور موجودہ موقع آن لون سپیشل برانچ یونٹ ضلع کوہاٹ درہ آدم خیل میں ڈیوٹی کے فرائض سرانجام دے رہا تھا وقوعہ میں نامزد ہونے کے بعد ہونا تو یہ چاہیے تھا کہ ایک پولیس آفیسر ہونے کے ناطے وہ پولیس سٹیشن میں مقامی پولیس کے سامنے حاضر ہوتا اور اپنی صفائی پیش کرتا اور اپنے اوپر عائد کردہ الزامات کا قانونی طور پر سامنا کرتا۔ اس نے ایک پیشہ ور اور پرائیویٹ ملزم کی طرح پولیس آفیسر ہوتے ہوئے بھی اپنے آپ کو مقامی پولیس کے آگے سرینڈر کرنے کی بجائے ایک پرائیویٹ ملزم کی طرح روایتی طریقہ اختیار کرتے ہوئے عدالت جناب ڈسٹرکٹ اینڈ سیشن جج، کوہاٹ سے ضمانت قبل از گرفتاری حاصل کر لی جس میں آئندہ تاریخ پیشی مورخہ 28-01-2020 مقرر ہے۔

بالا سیر بحث کو مد نظر رکھتے ہوئے من انوائزی آفیسر اس نتیجے پر پہنچا ہے کہ چارج شیٹ اور سری آف ایلیکیشن میں درج شدہ الزامات برخلاف الزام علیہ پولیس آفیسر محمد خان ASI مکمل طور پر ثابت ہوتے ہیں اور وہ خیر پختونخوا پولیس رولز 1975 نیو ترمیم شدہ سال 2014 کے باب دوم فقرہ تین کے تحت Misconduct کا مرتکب ہوا ہے (فوٹو کاپی پولیس رولز Flag-M ہمراہ لف ہے) جو کہ ایک پولیس آفیسر ہونے کے ناطے محکمہ پولیس کے ماتھے پر ایک بدنامی کی حیثیت رکھتا ہے جس کی وجہ سے محکمہ پولیس کی کافی بدنامی ہوئی ہے۔

انوائزی رپورٹ مرتب ہو کر بمرد ملاحظہ مناسب حکم گزارش خدمت ہے۔

نوٹ: کاغذات منسلک (44) ہمراہ لف ہیں۔

Forty four


ڈی ایس پی، امین

سپیشل برانچ، ہیڈ کوارٹر پشاور۔

مورخہ: 28-01-2020



IN THE COURT OF NAYYAR IQBAL, JUDICIAL
MAGISTRATE-I, KOHAT

The State (Complainant)

Verses

1. Muhammad Ali s/o Jahan Gul r/o Zarghun Khel Dara Adam Khel
2. Muhammad Khan s/o Khan Muhammad r/o Zarghun Khel Dara Adam Khel

..... (Accused)

Case No: 286/3 of 2020

Date of submission of challan: 27/06/2020

Date of Decision of the case: 30/06/2021

JUDGMENT

In the case in hand FIR No. 48 dated 16.01.2020 of PS MRS, the accused namely Muhamamad Ali and Muhammad Khan faced trial for offence U/S 15/17 AA-KP.

The prosecution case is that the local police were on nakabandi and at the place of occurrence one motorcar bearing registration No. B1711/Mardan white color Xli was signaled to stop. Upon query the driver disclosed his name as Muhammad Ali s/o Jahan Gul r/o Zarghun Khel Dara Adam Khel while the person seated with him on front seat disclosed his name as Muhammad Khan ASI Police Department. The driver was directed to park the motorcar on road side and both the person named above were deboarded from the motorcar and the local

Nayyar Iqbal

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police started checking the motorcar. In the meanwhile, Muhammad ASI took the benefit of dark and rush of traffic, escaped from the spot whereas, the driver Muhammad Ali was overpowered and started the search of motorcar. The local police found in the trunk under the carpet one sack consisting of 05 Kalashnikov bearing numbers 1. 4078200 2. SA96949 3. DJ1422 4. J6140373 and fifth one was without number alongwith fixed chargers and upon further search the local police found under the back seat of the motorcar 25 pistols 30 bores bearing numbers 1. 31015775 2. 3005544 3. 31007711 4. 31032772 5. 31004466 6. 31016556 7. 31055464 8. 1027617 9. 31013551 10. 31016776 and the remaining 15 pistols were without numbers alongwith fixed and spare chargers, six boxes live rounds of 30 bore each contain 500 rounds making total of 3000 live rounds of 30 bore from beneath the front seat and under the seat of driver the local police recovered three boxes out of which two boxes consist of 500/500 of 9MM making total of 1000 live rounds of 9MM and 200 live rounds of 44 bore, 200 live rounds of 303 bore and other parts of weapons of different bores and the driver failed to produce any license or permit at the spot. Thus, both the persons were charged for commission of offence.

After completion of investigation prosecution submitted complete challan against the accused. Thereafter, both the accused were summoned. Both the accused facing trial appeared before the court and proceedings u/s 241-A Cr.PC were complied with against the accused facing trial. Similarly, formal charge against the accused was framed on 08.10.2020 in response to

Muzaffar Khan
Judicial Magistrate
Kohat
22/09/21

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which both the accused facing trial denied to admit their guilt and opted for trial. Hence trial was commenced and all the PWs were summoned through process of the court.

Prosecution produced as many as 09 PWs. A gist of prosecution evidence is as under:-

Prosecution produced Muhammad Ibrahim IHC as PW-01. He deposed that he is the witness of recovery memo along with constable Faisal Manan which is Ex-PW1/1 wherein, the SHO/seizing officer took into possession the case property consisting of five Kalashnikov, 25 pistols of 30 bore, 3000 live rounds of 30 bore, 1000 live rounds of 9MM, 200 live rounds of 44 bore, 200 live rounds of 303 bore and different parts and tools of weapons. In this regard the seizing office prepared recovery memo and took his signature on the same.

PW-02 is the statement of Khan Wada ASI. He deposed that the SHO handed over to him the case property including 05 Kalashnikov, 40 pistols of 30 bore in which on 15 pistols number was engraved and on remaining pistols were without number, 3000 live rounds of 30 bore, 1000 live rounds of 9MM, 200 live rounds of 44 bore, 200 live rounds of 303 bore and a motorcar bearing No. B-7111 Mardan for keeping the same into safe custody. He kept the case property including weapons and ammunitions in PS Malkhana and parked the vehicle in the premises of police station.

30/06/2021
Nasir Iqbal
Judge, District Court - I
Kohat

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Prosecution produced Naqeeb Ullah SI (R) as PW-03. He deposed that on receipt of Murasila brought by constable Waqas he correctly incorporated its contents into the shape of FIR which is Ex-PA.

PW-04 is the statement of Muhammad Waqas constable 235 as PW-02. He deposed that he was entrusted to bring the Murasila to the PS as per direction of the SHO Islam Ud Din Khan and the same was handed over to Naqeeb Ullah SI.

Prosecution produced Islam Ud Din Khan SI as PW-05. He deposed that on 16.01.2020 he along with Ibrahim IHC, Faisal Manan 251, Tariq 324, Waqas 235, Kamran Ali with other police officials were present on the barricade. At about 19:05 hour a motorcar bearing registration No. B1711/Mardan Xli white in color was signaled to stop for the purpose of checking. The driver disclosed his name as Muhammad Ali s/o Jahan Gul while the person sitting on the front seat disclosed his name as Muhammad Khan ASI Police Department. He further deposed that both the persons were deboarded for the purpose of checking and in the meanwhile, Muhammad Khan ASI escaped from the spot due to darkness. Thereafter, the personal search from the driver was conducted. The search of motorcar was also conducted. On the search of trunk of the motorcar one sack was found consists of 05 Kalashnikov bearing numbers 1. 4078200 2. SA96949 3. DJ1422 4. J6140373 and fifth one was without number along with fixed chargers and upon further search the local police found under the back seat of the motorcar 25 pistols 30 bores bearing

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numbers 1. 31015775 2. 3005544 3. 31007711 4. 31032772 5. 31004466 6. 31016556 7. 31055464 8. 1027617 9. 31013551 10. 31016776 and the remaining 15 pistols were without numbers alongwith fixed and spare chargers, six boxes live rounds of 30 bore each contain 500 rounds making total of 3000 live rounds of 30 bore from beneath the front seat and under the seat of driver the local police recovered three boxes out of which two boxes consist of 500/500 of 9MM making total of 1000 live rounds of 9MM and 200 live rounds of 44 bore, 200 live rounds of 303 bore and other parts of weapons of different bores and the driver failed to produce any license or permit at the spot. The seizing officer took into possession all the arms and ammunitions vide recovery memo which is Ex-PW1/1 which was prepared on the spot in the presence of marginal witnesses. He also issued the card of arrest of accused which is Ex-PW5/1. He scribed the Murasila which is Ex-PW5/2. The I/O prepared site plan on his instance.

Riaz Hussain SI CIA recorded his statement as PW-06. He deposed that on 22.02.2020 he issued the card of arrest and on the next day he produced the accused for granting custody but the custody was refused and the accused was sent to judicial lockup. He handed over the supplementary challan to the SHO for onward submission.

Muhammad Iqbal recorded his statement as PW-07. He deposed that when took the charge of OII the case was handed over to him for investigation. The accused Muhammad Khan has brought an application for the purpose of reinvestigating the case

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Iqbal
Judicial
Kohat

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and the said accused produced two marginal witnesses and an affidavit regarding the proof of innocence in support of the false charges leveled against the accused which was thoroughly examined by him and later on the investigation was handed over to Riaz Hussain.

Prosecution produced Muhammad Zaman armourer as PW-08. He deposed that on 17.01.2020 he examined the case property and according to recovery memo all the weapons and ammunitions of different bore were in workable conditions.

Muhammad Arshid Mehmood SI recorded was examined as PW-09. He deposed that on 16.01.2020 he rushed to the spot and prepared the site plan at the instance of seizing officer which is Ex-PW9/1. Thereafter, he also recorded the statements of PWs u/s 161 Cr.PC. He also moved application for custody of accused which is Ex-PW9/2 and thereafter, moved an application u/s 164 Cr.PC which is Ex-PW9/3.

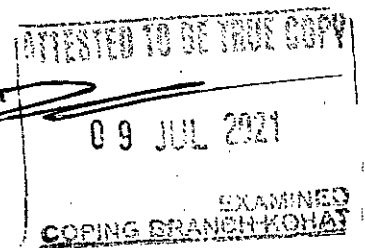
The prosecution sufficed on its above mentioned evidence and closed it.

Statements of the accused U/S 342 Cr.P.C were recorded. They negated the allegations leveled against them, however, they neither opted to produce any evidence nor to give their own statement on oath in their defense.

Arguments advanced by learned APP on one side and by learned counsel for the accused on the other side heard and record perused.

30/06/21
Naib Qadri Iqbal
Judicial Magistrate - I
Kohat

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Perusal of record coupled with arguments advanced on both ends revealed that the accused facing trial have been charged in the instant case/FIR by the complainant for trafficking of arms of different bores including the prohibited bore in a motorcar bearing registration No. B-1711/Mardan of white in color and when the accused facing trial were signaled to stop by the complainant upon search of the motorcar the arms and ammunitions of different bores including the prohibited bore were recovered from the boot of the above said vehicle. The accused namely Muhammad Ali was arrested at the spot while the accused namely Muhammad Khan was escaped from the spot while taking the benefit of the dark. Perusal of the record further transpires that the arms and ammunitions recovered were not sealed at the spot nor the factum of sealing of the recovered arms and ammunitions is mentioned in the Murasila or FIR. Again, the PW-05 which is the statement of Islam Ud Din Khan SHO who is the seizing officer as well as complainant of the instant case during his cross examination categorically admitted the fact that the arms and ammunitions recovered in the instant case were not sealed at the spot. Moreover, another strange aspect of the instant case is that allegedly as per contents of the FIR, the occurrence took place at 19:05 Hours on 16.01.2020 which is a dark time however, no source of light has been mentioned in the FIR or Murasila.

Another astonishing aspect of the instant case is that allegedly the occurrence took place at highway checkpost but the seizing officer did not bother to atleast associate any independent

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Judicial
Kohat
30/06/2021

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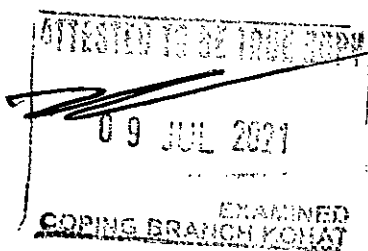
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witness regarding the alleged recovery. Perusal of the record further transpires that no FSL report of the arms and ammunitions recovered in the instant case is available on record from which it can be ascertained that whether the arms and ammunitions recovered in the instant case were in working condition or not? Apart from this even no application of the I/O is available on record which could suggest that whether the arms and ammunitions were sent to FSL for examination or not? Even the armourer whose statement is recorded as PW-08, during his cross examination categorically admitted the fact that he had not disclosed the fact that whether the case property is in working condition or not?

After discussing the above mentioned glaring doubts and contradictions in the statements of the prosecution witness one thing is crystal clearly floats at the surface of record that the prosecution has badly failed to prove its case against the accused facing trial in chain and in line with the prosecution story narrated in the FIR. Moreso, the case of the prosecution is heavily pregnant with dents and lacunas rather the loopholes in the investigation that cannot be easily ignored.

In view of the above mentioned discrepancies in its evidence, the prosecution is held to have failed in proving of the allegations against the accused beyond reasonable doubt, therefore, while extending benefit of doubts to the present accused, they are hereby acquitted of the charges leveled against them in the instant case/FIR. Since, the accused facing trial are

30/09/2021
Magister Iqbal
Judicial Magistrate



on bail therefore, their sureties are also absolved from the liabilities of bail bonds. Case property in the shape of motorcar bearing registration No. B1711/Mardan which has already been released on superdari vide 19.02.2020 by my learned predecessor in office be returned to its lawful owner whereas, case property in shape of weapons and ammunitions shall be kept intact till the period of appeal /revision and thereafter be confiscated in favour of state.

File be consigned to record room after necessary completion and compilation.

ANNOUNCED
30.06.2021

(Nayyar Iqbal)
Judicial Magistrate-I, Kohat

CERTIFICATE

It is certified that this judgment consists of 09 pages, each page has been duly read over, corrected and signed by me.

(Nayyar Iqbal)
Judicial Magistrate-I, Kohat
Nayyar Iqbal
Judicial Magistrate - I
Kohat

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8-9 JUL 2021
EXAMINED
CORING BRANCH KOHAT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

PROFORMA FOR EARLY HEARING

FORM 'B'

Inst#

Early Hearing 517 -p/2022

In case No. 6223 -p/2020

Muhammad Khan vs IGP

Presented by Mudassir Pirzada on behalf of appellant. Entered in the relevant register.

Put up alongwith main case

REGISTRAR

Last date fixed	<u>14-03-2022</u>
Reason(S) for last adjournment, if any by the Branch Incharge.	<u>Tribunal Defunct.</u>
Date(s) fixed in the similar matter by the Branch Incharge	<u>—</u>
Available dates Readers/Assistant Registrar branch	<u>17-05-2022</u>

(only Respondent)

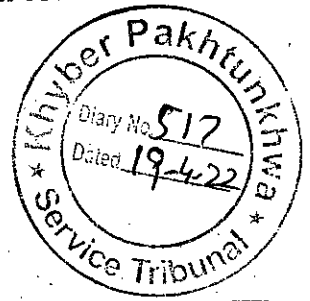
Assistant Registrar

REGISTRAR

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19/4/22

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

PROFORMA FOR EARLY HEARING

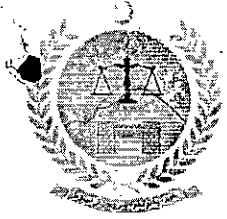


FORM 'A'

To be filled by the Counsel/Applicant

Case Number	6223/20		
Case Title	Muhammad Khan vs LCP		
Date of Institution	—		
Bench	SB		DB <input checked="" type="checkbox"/>
Case Status	Fresh		Pending <input checked="" type="checkbox"/>
Stage	Notice		Reply <input type="checkbox"/> Argument <input checked="" type="checkbox"/>
Urgency to clearly stated.	The appellant is facing severe poverty to due to out of service		
Nature of the relief sought.	Dismissal		
Next date of hearing	9-6-2022		
Alleged Target Date			
Counsel for	Petitioner <input checked="" type="checkbox"/>	Respondent <input type="checkbox"/>	In person <input type="checkbox"/>

Signature of counsel/party



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No: 1326 /ST Dated: 8/6 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To,

Senior Superintendent of Police Admn;
Special Branch, Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 6223/2020 OF Mr. MUHAMMAD KHAN EX-ASI VS SENIOR SUPERINTENDENT OF POLICE ADMN; SPECIAL BRANCH, KHYBER PAKHTUNKHWA, PESHAWAR.

I am directed to forward herewith a certified copy of Judgement dated 17.05.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As Above.


(WASEEMAKHTAR)

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

محرر

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ آئندہ ۱۰۰ نمبر مختار نظام انتظامی

تاریخ وقوع جرم ۰۳/۱۱/۱۰ ۰۹:۰۰ بجے
819

اوقات بروز ۰۴/۱۱/۱۰ ۱۰-۱۱-۲۷ بجے ۲۱۴۰۰

محل وقوع وارڈ ۱۵ سیر پور ضلع راجستھان

نیت جرم (موردہ) حال اگر کچھ لیا گیا ہو ۳۳۷ FC ۳۳۷ FC ۳۴/۱۵۶-۱۵

موقعہ فاصلہ تھانہ سے اور سمیت پولیس اسٹیشن

سکونت ملزم

بی تو تفتیش کے متعلق کی گئی اگر اطلاع درج میں توقف ہوا ہو تو وجہ بیان کرو۔

انہ سے روانگی کی تاریخ و وقت

ابتدائی اطلاع پتہ درج کرو جانے والی اس وقت تک

آرڈر کیلئے جا۔ نتیجہ حاصل کر کے عدالت آفس میں مہمانوں کے

حکم سے جمع ہونا۔ مقدمہ درج و سٹرک کا حکم جاری کیا۔

ORDER: Petitioner, Kalparaj, his detainee son Saifullah,

09-11-10 and Awaraz Khan Adv. appearing on behalf of them

are present to conclude rest of the proceedings u/s 22-A (b) rule

when Saifullah detainee is returned from examination of his

Person by Medical Officer, the report is submitted by the M.S. D.H.O Hospital

Hangu. A look over would reveal that there are reasons that Saifullah

has been Tortured, who has sustained minor injuries on his person. Thus

review of the statement of Kalparaj, his son Saifullah a cognizable case

has been made out against the SHO, Hangu by the name of Islam-

ud-Din, and his associate police officials the SHO, P.S. Hangu, Islam-ud-Din, in exercise of his power, has committed excess of his police authority in relation to his functions and duties. In the event of the statement with particular reference to the statement of his colleague police official Nawaz Khan, ASI, M.S. P. Hangu, since Saifullah and his father Kalparaj are no concern to be accused in MR NO 613 dt 28-10-10 registered under Section 365 Pe at Hangu who are innocent and charged of arrest and then subsequent torture of Saifullah, it is recommended that under the provision of Section 22-A (b) on the basis of the statements (P.T.O)

ابتدائی اطلاعی رپورٹ

نومبر ۲۲ء ۲۰۰۸

کوئٹہ (فائنل) ابتدائی اطلاع نسبت مجرم قابل دست اندازی پولیس ریورٹ شروع نمبر دفعہ ۵۲ مجموعہ ضابطہ فروری
تھانہ ضلع

نمبر 363 تاریخ وقت وقوع 3/6/08 وقت 12-30

1	تاریخ و وقت رپورٹ	6/17 وقت وقوع جا لگنے پر 6/29 وقت 16-30
2	نام و سکونت اطلاع دہندہ و متغیث	اسسٹنٹ انسپکٹر عدلیہ گل خان سید چار گری کوٹہ
3	مختصر کیفیت مجرم (معدوم) حال اگر کچھ یاد گیا ہو	PC 379 14
4	جائے وقوع فاصلہ تھانہ سے اور سمت	بشکل نذر واقعہ پر KDA مقام پر پولیس تھانہ شمال ازبک
5	نام و سکونت ملزم	عائیل نور محمد 135 جولہ KDA
6	کارروائی پوچش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو۔	عدالت کے حکم پر مقدمہ چل رہا ہے
7	تھانہ سے روانگی کی تاریخ و وقت	پہل ڈاک

ابتدائی اطلاع نیچے درج کرو متغیث مذکورہ خان 2 نے ذرا کم دلیل
رشتہ زبردست 29-8-08 عیادت کرنے FIR پر خلاف عائیل نور محمد 135 جولہ KDA کو عدالت
ضابطہ شین چم عدالت و عدالت کے نذر استغاثہ سے اور ڈسٹ بنام
ریٹیل شین چم عدالت کو عدالت کے عدالت کے FIR درج کرنے کا حکم صادر فرمایا
بے عدالت کے حکم پر مقدمہ رقم بالادرجہ ایسٹریکٹ میں عدالت میں

رشتہ زبردست 29-8-08 عیادت کرنے FIR پر خلاف عائیل نور محمد 135 جولہ KDA کو عدالت
ضابطہ شین چم عدالت و عدالت کے نذر استغاثہ سے اور ڈسٹ بنام
ریٹیل شین چم عدالت کو عدالت کے عدالت کے FIR درج کرنے کا حکم صادر فرمایا
بے عدالت کے حکم پر مقدمہ رقم بالادرجہ ایسٹریکٹ میں عدالت میں

رشتہ زبردست 29-8-08 عیادت کرنے FIR پر خلاف عائیل نور محمد 135 جولہ KDA کو عدالت
ضابطہ شین چم عدالت و عدالت کے نذر استغاثہ سے اور ڈسٹ بنام
ریٹیل شین چم عدالت کو عدالت کے عدالت کے FIR درج کرنے کا حکم صادر فرمایا
بے عدالت کے حکم پر مقدمہ رقم بالادرجہ ایسٹریکٹ میں عدالت میں

Phone No: 9260112.

Fax No: 9260114.

From: - The Regional Police Officer,
Kohat Region, Kohat.

To: - The Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. 5344- /EC, Dated Kohat the 20 / 06 /2019.

Subject: - O R D E R .

MEMO:

Kindly refer to your office order Endst: No. 492/Transfer /
posting / E-II, dated 13.06.2019:

It is submitted that Inspector Muhammad Ali No. 39/M of
Operation Staff Kohat has been transferred / posted to Malakand Region vide
your good office order Endst: No. 492/E-II, dated 13.06.2019 without provision
of suitable substitute while this Region is facing acute shortage of Inspectors.

Moreover, services of SI Islam-ud-Din, who was transferred /
posted out of the Region on complaint basis due to his ill-reputation, are not
required to this Region.

It is, therefore, requested one suitable Inspector may kindly
be posted to Kohat Region or cancel the transfer order under reference please.


Regional Police Officer,
Kohat Region



OFFICE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

ORDER.

Transfer order of SI Islam-ud-Din from Kohat Region to Elite Force Khyber Pakhtunkhwa issued vide this office Order Endst: No. 2150-52/E-III, dated 05.11.2018 is hereby cancelled.

Now, SI Islam-ud-Din of Kohat Region is hereby transferred and posted to Malakand Region on complaint basis with immediate effect.

Sd/-
SHER AKBAR
PSP, S.St

Deputy Inspector General of Police HQrs:
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

No. 2442-45 /E-III. Dated Peshawar, the 26 / // /2018.

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

1. Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
2. Commandant Elite Force Khyber Pakhtunkhwa Peshawar.
- ✓ 3. Regional Police Officer Kohat Region, Kohat w/r to his office letter No. 12168/EC, dated 15.11.2018. PPs.
4. Regional Police Officer, Malakand Region Swat.

(SADIQ BALOCH)PSP
AIG/Establishment
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.