

15.06.2022

Nemo for appellant.

Despite directions, notices were not issued to appellant/counsel. Therefore, fresh notices be issued to appellant and his counsel for 15.08.2022 before S.B at Camp Court, Abbottabad.



(Rozina Rehman)  
Member (J)  
Camp Court, A/Abad

17.10.2022

Nemo for appellant.

Notices be issued to appellant and his counsel for the date fixed. Adjourned. To come up for preliminary hearing on 15.11.2022 before S.B at camp court Abbottabad.






(Fareeha Paul)  
Member (E)

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- \_\_\_\_\_ 387/2022 \_\_\_\_\_

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/03/2022	<p>The appeal of Mr. Niaz Ali resubmitted today by Mr. Sajid Iqbal 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> <p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put there on <del>16/03/2022</del> <u>20/04/2022</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>20.04.2022</p> <p>Nemo for appellant.</p> <p>Notice be issued to appellant/counsel for 15.06.2022 for preliminary hearing before S.B at Camp Court, Abbottabad.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J) Camp Court, A/Abad</p>

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**CHECK LIST**

Case Title: \_\_\_\_\_

S#	CONTENTS	Yes	No
1.	This Appeal has been presented by <u>Sajid Iqbal Adv.</u>		
2.	Whether counsel / appellant / respondent / deponent have signed the requisite document?	✓	
3.	Whether appeal is within time?		
4.	Whether appeal enactment under which the appeal is filed is mentioned?	✓	
5.	Whether enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal / annexure are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal in the subject, furnished?		✓
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/ clear?	✓	
13.	Whether copies of appeal is delivered to AG/ DAG?	✓	
14.	Whether Power of Attorney of the counsel engaged is attested and signed by Petitioner/ Appellant/ Respondents?	✓	
15.	Whether number of referred cases given are correct?		
16.	Whether appeal contains cutting / overwriting?		✓
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies are attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are completed?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether security and process fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rule 1974 rule 11, Notice along with copy of appeal and annexure has been sent to respondents? On _____		
26.	Whether copies of comments / replay/ rejoinder submitted? On _____		
27.	Whether copies of comments / replay/ rejoinder provided to opposite party? On _____		

It is certified that formalities /documentations as required in the above table, have been fulfilled.

Name:- Sajid Iqbal Adv.

Signature:- [Signature]


Dated:- 16/03/2022

The appeal of Mr. Niaz Ali Ex-Constable district police A.Abad received today i.e. on 28.02.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

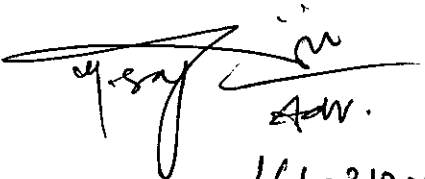
- 1- Check list is not attached with the appeal.
- 2- Annexures of the appeal may be attested.
- 3- Appeal has not been flagged/marked with annexures marks.
- 4- Memorandum of appeal may be got signed by the appellant.
- ✓ 5- Copy of dismissal order dated 08.04.2019 is not attached with the appeal which may be placed on it.
- ✓ 6- Copy of departmental appeal against the order dated 8.4.2019 is not attached with the appeal which may be placed on it.
- ✓ 7- Annexure-A of the appeal is illegible which may be replaced by legible/better one.
- 8- Six more copies/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 577 /S.T,

Dt. 28/02 /2022

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Sajid Iqbal Adv. A.Abad.

Resubmitted after removal of objections  
  
Adv.  
16/03/2022

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

Service Appeal No. \_\_\_\_\_/2022

Niaz Ali Khan son of Tarique Khan, Ex-Constable, Resident of Near G.H.S  
Boys High School, Sheikh-ul-Bandi Tehsil and District Abbottabad.

...APPELLANT

**VERSUS**

District Police Officer, Abbottabad & others.

...RESPONDENTS

**SERVICE APPEAL**

**INDEX**

S.#	Description	Page No.	Annexure
1.	Service appeal along with affidavit	1 to 8	
2.	Application for condonation of delay	9 to 10	
3.	Copy of judgment	11 to 19	"A"
4.	Copy of judgment	20 to 22	"B"
5.	Copy of order dated 08/04/2019	23	"C"
6.	Copy of departmental appeal	24-28	"D"
7.	Wakalatnama	30	

  
...APPELLANT

Through

Dated: \_\_\_\_\_/2022

  
(SAJID IQBAL)

Advocate High Court, Abbottabad

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

Service Appeal No. \_\_\_\_\_/2022

Niaz Ali Khan son of Tarique Khan, Ex-Constable, Resident of Near G.H.S  
Boys High School, Sheikh-ul-Bandi Tehsil and District Abbottabad.

...APPELLANT

**VERSUS**

1. District Police Officer, Abbottabad.
2. Regional Police Officer, (RPO), Hazara Region, Abbottabad.
3. Provincial Police Officer (IGP) Khyber Pakhtunkhwa.
4. Secretary to Home Department, Government of Khyber  
Pakhtunkhwa, Peshawar.

...RESPONDENTS

**SERVICE APPEAL UNDER ARTICLE 4 OF KPK  
SERVICE TRIBUNAL ACT, 1974, FOR  
DECLARATION TO THE EFFECT THAT THE  
PETITIONER WAS REINSTATED IN THE SERVICES  
OF POLICE DEPARTMENT VIDE ORDER BEARING  
NO. 1218/PA DATED 08/04/2019 BUT THE GAPE IN  
THE SERVICE WAS CONVERTED INTO  
FORFEITURE OF ONE YEAR APPROVED SERVICE  
AND REST OF PERIOD WAS CONVERTED INTO  
LEAVE WITHOUT PAY WHICH WAS AGAIN  
DEPARTMENTAL APPEAL BEFORE THE  
COMPETENT AUTHORITY I.E. RESPONDENT NO.**

2 AND THE FATE OF THAT APPEAL WAS NOT CONVEYED PROPERLY TO THE PETITIONER NEITHER HE WAS SERVED WITH THE DECISION OF THE COMPETENT AUTHORITY AND HE WAS VERBALLY INFORMED THAT THE APPEAL OF THE PETITIONER IS DISMISSED.

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**PRAYER:** ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE DISMISSAL OF SERVICE APPEAL WHICH WAS NOT PROPERLY CONVEYED TO THE PETITIONER AND VERBALLY INFORMED THAT THE SAID APPEAL IS DISMISSED BY RESPONDENT NO. 2 VIDE ORDER NO. 1218/P.A DATED 08/04/2019 FOR THE FORFEITURE OF ONE YEAR SERVICE AND LEAVE WITHOUT PAY MAY GRACIOUSLY BE SET ASIDE AND PETITIONER MAY GRACIOUSLY BE ALLOWED ONE YEAR APPROVED SERVICE AND BACK BENEFITS MAY ALSO BE ALLOWED. ANY OTHER RELIEF WHICH THIS HONOURABLE COURT DEEM APPROPRIATE MAY ALSO BE GRANTED TO THE APPELLANT.

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Respectfully Sheweth:-

Brief facts of the case are as under:-

1. That, the appellant was inducted in police department on 24/12/2003 and after qualifying successful police training he was deployed in police lines Abbottabad where he served with honesty and due diligence.
2. That on 30/11/2011 the appellant received information that one of his friend namely Baber Zaib who was serving in Pak Army and was taken into custody by the local police of P.S Cantt. Abbottabad. The appellant went to P.S Cantt. Abbottabad to inquire about his friend where the investigation Officer of P.S Cantt. took the appellant in his custody where the appellant came to the knowledge that he has been charged in case FIR No. 852/2011 of P.S Cantt. Abbottabad.
3. That the appellant was released on bail on 10/02/2012, and after his release the appellant visited the DPO Abbottabad for resuming his duty from where it transpired that the appellant has been terminated from the service on 13/11/2011.



4. That, appellant preferred the departmental appeal to your good self and thereafter filed service appeal No., 1196/2013 before the Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar.
5. That, the appellant was acquitted of all the charges mentioned in FIR No. 852/11 by the Honourable Additional Sessions Judge. Copy of the judgment is annexed as Annexure "A".
6. That, the service appeal of the appellant was accepted on 20/11/2017 and the respondent department was directed to hold DENOVO inquiry against the appellant within a period of 90 days failing which, the appellant shall be reinstated in the services. Copy of the judgment is annexed as Annexure "B".
7. That the appellant once again neither served with the charge-sheet nor with the final show cause notice on 02/05/2018.
8. That, the appellant already filed execution petition No. 71/11 before the Honourable Service Tribunal KPK Peshawar and was fixed on 19/12/2018 where the respondent department submitted the so-

called inquiry report alongwith the dismissal from service order of the appellant.

9. That, the appellant again submitted departmental appeal which was accepted by respected RPO Hazara Region vide order dated 08/0/2019. Copy of order dated 08/04/2019 is attached as Annexure "C".
10. That, the appellant prefers the instant appeal, inter-alia on the following grounds;-

**GROUND:-**

- a. That the order dated 08/04/2019 vide which the one year approved service of the petitioner was forfeited and the rest of period was converted into leave without pay is against the norms of justice, arbitrary, fanciful and not tangible in the eye of law, hence liable to be set aside.
- b. That the order dated 08/04/2019 is liable to be set aside to the extent of forfeiture of one year approved service and leave without pay for the reason that the petitioner was reinstated in the service of police department

being innocent therefore, the order dated 08/04/2019 is harsh.

- c. That against the order dated 08/04/2019 the petitioner filed the departmental appeal before respondent No. 2 and after lapse of long period, the petitioner was not conveyed the fate of departmental appeal and he was verbally informed that the appeal has been dismissed but nothing in writing was served upon the petitioner by the department.
- d. That service appeal is within the period of humiliation, because the appellant was not conveyed in writing about the fate of departmental appeal, therefore, he could not approach the tribunal due to unawareness of fate of his departmental appeal as well as due to restriction/ lockdown of Covid-19.
- e. That no other efficacious, speedy and adequate remedy is available to the appellant except the service appeal before this Honourable Tribunal.
- f. That the other points shall be urged at the time of arguments.

It is therefore, humbly prayed that on acceptance of the instant service appeal, the dismissal of service appeal which was not properly conveyed to the petitioner and verbally informed that the said appeal is dismissed by respondent No. 2 vide order no. 1218/P.A dated 08/04/2019 for the forfeiture of one year service and leave without pay may graciously be set aside and petitioner may graciously be allowed one year approved service and back benefits may also be allowed. Any other relief which this Honourable court deem appropriate may also be granted to the appellant.

Dated: \_\_\_\_\_/2021

Through

...APPELLANT

  
(SAJID IQBAL)

Advocate High Court, Abbottabad

**VERIFICATION:-**

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.



  
...APPELLANT

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

Service Appeal No. \_\_\_\_\_ /2022

Niaz Ali Khan son of Tarique Khan, Ex-Constable, Resident of Near G.H.S  
Boys High School, Sheikh-ul-Bandi Tehsil and District Abbottabad.

**...APPELLANT**

**VERSUS**

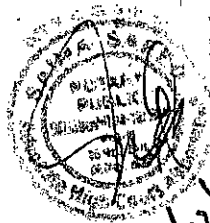
District Police Officer, Abbottabad & others.

**...RESPONDENTS**

**SERVICE APPEAL**

**AFFIDAVIT**

I, *Sajid Iqbal, Advocate High Court, Abbottabad*, do hereby solemnly  
affirm and declare that the contents of foregoing appeal are true and correct  
to the best of my knowledge as per information furnished by my client and  
belief and nothing has been concealed therein from this Honourable Court.



*Sajid Iqbal*  
**DEPONENT**

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

Service Appeal No. \_\_\_\_\_/2021

Niaz Ali Khan son of Tarique Khan, Ex-Constable, Resident of Near G.H.S  
Boys High School, Sheikh-ul-Bandi Tehsil and District Abbottabad.

...APPELLANT

**VERSUS**

District Police Officer, Abbottabad & others.

...RESPONDENTS

**APPEAL**

**APPLICATION FOR CONDONATION OF  
DELAY**

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Respectfully Sheweth; -

1. That the titled appeal is being filed before this Honourable Tribunal and this application is part and parcel of the main service appeal.
2. That the appellant could not approach the Honourable Tribunal due to unawareness of fate of the departmental appeal filed before respondent

No. 2 and as well as due to Covid-19 Pandemic and lockdown.

3. That the circumstances were beyond the control of the appellant as human being. Hence, delay is to be condoned.
4. That the valuable rights of the appellant are involved.

It is therefore, humbly prayed that on acceptance of instant application delay may graciously be condoned in the interest of justice.

Dated: \_\_\_\_\_/2022

Through

...APPELLANT

(SAJID IQBAL)

Advocate High Court, Abbottabad

**AFFIDAVIT**

I, *Sajid Iqbal, Advocate High Court, Abbottabad*, do hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge as per information furnished by my client and belief and nothing has been concealed therein from this Honourable Court.

...DEPONENT



Asif Ali



**IN THE COURT OF FARID KHAN ALIZAI,  
ADDITIONAL SESSIONS JUDGE-II, ABBOTTABAD**

Sessions Case No. 2/III-H of 2012

Date of institution .....16.06.2012

Date of decision .....25.03.2013

The State.....Versus.....1. Niaz Ali son of Tariq Cate Pathan  
R/o Sheikhulbandi,

2. Babar Zaib S/o Aurangzeb  
resident of near Kohati Masjid,  
Kehal.

3. Ishtiaq son of Mohammad  
Basheer Caste Awan resident of  
Behali Kassaki,

4. Fayaz Iqbal S/o Mohammad  
Iqbal Caste Awan r/o Khola Kehal,  
Abbottabad.

5. Asif Ali S/o Mohammad Banaras  
Caste Quresh resident of Banda  
Nabi, Abbottabad.

.....(Accused facing trial)

6. Malik Sajid son of Malik Riaz  
Khattak F/o Old Khawi Road Dheri  
Khattak Tehsil & District  
Newshehra.

.....(Absconding accused)

Charged under sections 17 (3)  
Harabah, 365/347/506/419/  
389/109/34 P.P.C vide Case  
FIR No. 852 dated 13.11.2011  
registered at Police Station Cantt,  
Abbottabad.

Attested to be true Copy

*[Signature]*  
District & Sessions Judge  
Abbottabad

11/4/13

**JUDGEMENT**

1. Accused facing trial alongwith absconding co-accused were charged by Mohammad Zarrar Ehtisham in his report to the effect that on 09.11.2011 at about 1200 PM (midnight) he along with his friends Daniyal and Mubaris came to Bazaar on Mehran Motorcar bearing NO. ATD-201 and purchased some articles from Tuck Shop, Shall Petrol Pump, General Bus Stand Abbottabad and when reached near Markazi Eidgah, Abbottabad, the vehicle started missing, thus they stopped the vehicle in order to check the cause of missing. Meanwhile two young boys came on a motorcycle and pretended themselves to be police officials and also shown police service cards having the names of Fayaz Iqbal and Niaz Ali. One of them was also having wireless set. They conducted



personal search of complainant and his companions and also conducted search of motorcar and told them that they have recovered charas from the motorcar. Meanwhile their third companion also arrived at the spot. They forcibly boarded complainant and his companions in the motorcar and took them to a triple storey house at Kagahan colony where they forcibly put off the clothes of complainant and his companions and obtained their naked photographs through mobile phone. They also snatched one PSP Game along with Rs. 900/- from complainant and a Mobile Phone Samsung D-900 and Nokia from Daniyal. They were calling each other with the names of Niaz Ali, Babar Zaib and Malik Sajid. Niaz Ali was having pistol and the whole offence was committed on gun point. After about 3 hours, they let the complainant and his companions free by giving threat that if the complainant or his companions will disclose the occurrence to anyone, the accused will show their naked pictures to their friends and relatives and also told that on payment of Rs. 50,000/- to the accused, they will remove their naked pictures. Complainant and his companions did not disclose this occurrence to the elders due to fear. On 13.11.2011, on the mobile phone number 0334-8986854 of friend of complainant namely Mubaris a call was received from Babar Zaib through mobile No. 0345-9550560 wherein he again demanded the amount, so the complainant and his companions disclosed the occurrence to their elders who brought them for the report. On the report of complainant, present FIR was registered.

2. After registration of case, and completion of investigation, complete challan was submitted against the accused facing trial while challan under Section 512 Cr.P.C. was submitted against absconding co-accused Malik Sajid. Copies of relevant documents were handed over to the accused facing trial and charge was framed against them to which they pleaded not guilty and claimed trial. The prosecution in support of its case has produced as many as 9 PWs and following is the gist of their statements: -

Zakir Hussain SHO (PW-1) has submitted in-complete challan Ex PW-1/1 and complete challan Ex PW-1/2 against the

17/4/13

accused.

Constable Chanzab No. 38 (PW-2) is the marginal witness to pointation memo Ex PW-2/1 through which accused Niaz Ali and Babar Zaib led the police party to Kaghan Colony where they had taken the naked pictures of the victim. He is also marginal witness to pointation memo Ex PW-2/2 through which accused Niaz Ali and Babar Zaib in handcuffs pointed out different places at the spot. He is also marginal witness to recovery memo Ex PW-2/3 through which IO took into possession motorcycle No. STL-9640. Similarly, he is also marginal witness to recovery memo Ex PW-2/4 through which IO took into possession one light China made which was used by the accused during the occurrence.

Mohammad Javed HC (PW-3) is the marginal witness to recovery memo Ex PW-3/1 through which, IO recovered articles mentioned in the recovery memo from the possession of accused Niaz Ali at the time of his arrest. He is also marginal witness to recovery memo Ex PW-3/2 through which IO recovered and took into possession articles mentioned in the memo from accused Babar Zaib at the time of his arrest.

Mohammad Aslam ASI (PW-4) is the investigating officer of present case. During the investigation, he accompanied Zakir Hussain SHO along with other police party to Sarban Chowk, where the complainant made call to accused Babar Zaib that he brought money which was demanded by the accused. Accused replied that he would come to college ground of Government Degree College for boys No. 1, Abbottabad where the SHO deputed the police party in civil clothes while the police officials in uniform were deputed at a distance in dark. Meanwhile two persons arrived there who were arrested by the police upon the pointation of complainant. The said persons disclosed their names as Babar Zaib and Niaz Ali. PW-4 conducted personal search of accused Niaz Ali and recovered articles mention in recovery memo ex PW-3/1. He also conducted personal search of accused Babar Zaib and recovered articles mentioned in recovery memo Ex PW-3/2. PW-4 also issued decket Ex PW-4/2 for taking action against accused Niaz Ali who was a police official. He issued card of arrest of accused Babar Zaib which his Ex PW-4/3, card of

*[Handwritten signature]*

Attested to be True Copy  
Examiner  
District & Session Judge  
11/9/13

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arrest of accused Niaz Ali Ex PW-4/4, docket for addition of Sections 13 AO/411/171 PPC Ex PW-4/5, drafted application Ex PW-4/6, prepared site plan Ex PW-4/7 from where the accused have taken away the complainant and his companions, prepared site plan Ex PW-4/8 where the complainant and his companions were taken by the accused and their naked photographs were taken. PW-4 also prepared pointation memo on pointation of accused Niaz Ali and Babar Zaib which are Ex PW-2/1 and Ex PW-2/2, drafted application to high ups of police which is Ex PW-4/10, produced accused Niaz Ali, Babar Zaib and Fayaz Iqbal before the court vide application Ex PW-4/11, got the Motorola wireless set identified in the presence of marginal witnesses and prepared memo Ex PW-4/12, placed on file copy of duty roaster of Niaz Ali, Amir Khan and Mohammad Saiq, issued card of arrest Ex PW-4/13, of accused Ishtiaq Ahmed, issued docket for addition of Section 406/419 PPC Ex PW-4/14, recovered and took into possession motorcycle No. 9640-STL through recovery memo Ex PW-2/3, recovered and took into possession China light through memo ex PW-2/4, produced accused Ishtiaq before court vide application Ex PW-4/15, obtained warrant under Section 204 Cr.P.C. against accused Malik Sajid and Asif Ali vide application Ex PW-4/16, obtained proclamation notice against accused Malik Sajid vide application Ex-PW-4/17, issued card of arrest Ex PW-4/18 of accused Asif Ali, obtained police custody of accused Asif Ali vide application Ex PW-4/19 and on expiry of police custody of accused, produced him before court vide application Ex PW-4/20, recorded the statements of PWs under Section 161 Cr.P.C, produced copies of FIR No. 122/2011, 993/2010 and 1057/2011 on file. PW-4 also placed on file photo state copies of Cards recovered from the accused Babar Zaib and Fayaz Iqbal. He also placed on file photocopy of bogus leave certificate of accused Babar Zaib as well as photocopy of service Card of accused Niaz Ali. On completion of investigation, he handed over the case file to SHO for submission of challan against the accused.

Complainant Mohammad Zarar Ehtisham (PW-5) supported his report in his examination in chief. Site plan Ex PW-4/7 and Ex PW-4/8 were also prepared on his pointation.

Attached to file copy

Signature of Judge  
1/9/13

Zil-e-Mubaris (PW-6) also supported the report of complainant Mohammad Zarrar during his examination in chief.

Mohammad Rafiq MASI (PW-7) on receipt of application Ex PA, chalked out FIR Ex PA/1.

Constable Zahcer Safdar No. 635 (PW-08) stated that during the tenure of his duty, his purse was misplaced somewhere in which Rs. 1000/- and his NIC along with Service Card were present. After two weeks, some body put his person near Magazine Guard, however, his NIC and Rs. 1000/- were missing from the purse. Later on he came to know that his NIC was recovered from accused Niaz Ali who was also posted along with PW-8 at the Magazine Guard of Police Lines, Abbottabad. He charged accused Niaz Ali for stealing Rs. 1000/- because his NIC was recovered from the possession of accused Niaz Ali.

Sabir Ayub (PW-09) stated that his NIC was lost and thereafter he got is new NIC photocopy of which is Ex PW-9/1.

3. After closing the prosecution evidence, the accused have been examined u/s 342 Cr. PC wherein they denied the allegations of the prosecution case, however, neither wished to produce defence evidence nor opted to give their statement on oath.

4. Learned SPP assisted by private counsel for the complainant have argued that the complainant is the direct victim of the offence committed by the accused facing trial who himself lodged the report to the local police; that the parties were not having previous enmity with each other, therefore, there is no question of false implication; that the accused were caught red handed by the local police when they came to receive money which they had demanded from the complainant for not showing their naked photographs; that during the investigation, the articles snatched from the complainant and PWs were also recovered from possession of the accused; that a 30 bore pistol was also recovered from possession of accused Niaz Ali; that the complainant himself appeared before the court and fully supported the contents of his FIR; that version of complainant was further supported by PW Mubaris and the defense failed to create any serious dent in the prosecution story. It was finally submitted that the prosecution

11/11/13

has fully established its case against the accused facing trial, therefore, they be convicted and sentenced to maximum punishment.

5. On the other hand, learned defense counsel while seeking acquittal of the accused facing trial, has argued that the accused facing trial were falsely charged in the instant case; that the mode and manner of occurrence narrated by the complainant and PW Zil-e-Mubaris is highly unbelievable; that the prosecution did not produce the motorcar which was allegedly used by the accused facing trial for taking the complainant and his companions from Sarban Chowk to the bungalow in Kaghan Colony; that no medico-legal report is available on file to support the version of complainant regarding his beating by the accused; that the pistol recovered from the accused is licensed in the name of his father which was taken from his house; that the motorcycle shown to have used by the accused at the relevant time was ownership of one Noman who was never produced before the court; that the prosecution story is full of contradictions which are sufficient for acquittal of the accused. He finally submitted that the accused facing trial be acquitted of the charges leveled against him.

*[Handwritten signature]*

6. Perusal of record reveals that the complainant alleged in the FIR that at the time of occurrence, they were coming from Shell pump towards their home when near Sarban Chowk, they stopped their vehicle due to some technical fault. In cross examination, the complainant stated that the motorcar which was in their possession was Mehran bearing registration No. D-2011/Abbottabad. He further admitted that the said vehicle is available at Abbottabad. It is surprising to note that the said motorcar was never produced to the local police during the investigation nor was exhibited during the trial. So this is a basic flaw in the prosecution story. It is also important to mention here that the complainant alleged to have purchased some articles from Shell pump before the present occurrence but no such article was produced to the IO during the investigation to show the truthfulness of the prosecution story.

7. The complainant stated before the court that he along with

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Attached to by True Copy  
Examiner  
Blairing & Sessions Judge  
Abbottabad  
11/7/13

JM-ITD

his friends Danial and Mubaris had stopped their motorcar near Markazi Eidgah where the accused facing trial came and after conducting their search, took them to Kaghan Colony on the said motorcar. During the cross examination, the complainant admitted that at the most six persons could be accommodated in the Mehran Motorcar and that 9 persons could not. The complainant failed to explain as to how the six accused along with complainant and his two friends were accommodated at the relevant time in the Mehran Motorcar. So this is another aspect which creates serious dent in the prosecution story.

8. The complainant and PW Zil-e-Mubaris both stated before the court that they were given beating by the accused with the help of belts. The complainant and PW Mubaris as well as Danial were neither examined by any doctor nor their medico-legal reports are available on file. Even there is no injury sheet available on record prepared by the local police showing that the complainant and his companions were having any bruise or scratch on their bodies at the relevant time.

9. The complainant also mentioned in his statement that the accused facing trial obtained their naked photographs in order to blackmail them but the said photographs were neither produced nor exhibited before the court. The IO in his cross examination stated that he had never got prepared any print of the said photographs. So this allegation of the prosecution also remained unproved.

10. The complainant and PW Zil-e-Mubaris stated that they did not make any hue and cry on their way from Eidgah Chowk to the Bungalow in Kaghan Colony in spite of the fact that there were hotels and police posts available on the road side. Both the PWs stated that no body was residing in the bungalow in which they were taken by the accused facing trial and that the outer gate of the bungalow was open at the relevant time. The IO, however, in his cross examination stated that the bungalow was a residential house where several male and female resided and were present at the relevant time when the kidnapces were taken there. He again said that the house was abandoned. The IO neither bothered to inquire as to who was owner of the said bungalow nor he recorded

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IM-1, 11/11/13

statement of the said owner, or any neighbour thereof.

11. The IO, during the investigation took a motorcycle into his possession which was shown as ownership of one Noman. It was alleged that accused Niaz Ali called one Noman who produced the said motorcycle in the police station. The motorcycle was alleged to have been used by accused party at the time of occurrence. The owner of motorcycle namely Noman, however, was abandoned during the trial. The presumption would be that had the said PW been produced, he would have deposed against the prosecution.

12. The complainant mentioned in the FIR that after the occurrence, he did not narrate the story to any one due to fear but on the day of lodging of record i.e. on 13.11.2011, his friend Mubaris received a phone call on his cell phone number 0334-8996854 from another mobile phone NO. 0345-9550560. It is also very strange that neither any proof of the ownership of said mobile numbers is available on record nor the investigating officer received the data of said mobile numbers to ascertain as to whether any call was made by the accused party to PW Mubaris at the relevant time or not.

13. So far as recovery of pistol is concerned, it was admitted by the IO during his cross examination that 30 bore pistol shown to have been recovered from possession of accused Niaz Ali was licensed in the name of his father. So the recovery of pistol also does not advance the prosecution version.

14. In the light of what has been discussed above, it is held that there are so many flaws and contradictions in prosecution story which create serious doubts in prudent mind regarding the truthfulness of prosecution version. It is settled principle of law that for bringing home conviction, in a criminal trial, the prosecution is under bounden duty to prove its case beyond shadow of doubt. In the instant case, the prosecution has failed to discharge its legal burden, hence, while extending benefit of doubt to the accused facing trial, they are acquitted of the charges leveled against them.

15. Accused Niaz Ali and Babar Zaib are in custody, therefore they be set free forthwith if not required to be detained in any other case. Accused Ishtiaq, Fayaz Iqbal and Asif are on bail, they

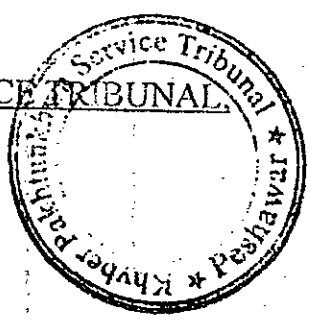
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Attested to be True Copy  
Examiner  
Magistrate & Sessions Judge  
11/9/13

ATD 12

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
CAMP COURT ABBOTTABAD



Service Appeal No. 1196/2013

Date of Institution... 02.08.2013

Date of decision... 22.11.2017

Niaz Ali Khan S/o Tarique Khan Ex-constable,  
R/O near G.H.S Boys High School, Shakul Bandi Tehsil and District  
Abbottabad. ... (Appellant)

Versus

1. District Police Officer, Abbottabad and 3others.  
.... (Respondents)

MR. ABDUL AZIZ KHAN TANOLI,  
Advocate ... For appellant.

MR. KABIR ULLAH KHATTAK  
Additional Advocate General ... For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. AHMAD HASSAN, ... CHAIRMAN  
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: Arguments of the learned counsel  
for the parties heard and record perused.

FACTS

2. The appellant was discharged from service on 15.11.2011 w.e.f 13.11.2011  
against which he filed departmental appeal on 12.04.2013 which was rejected on  
01.07.2013 thereafter the appellant filed the present service appeal on 30.07.2013. The

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*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Camp Court, Abbottabad



charge against the accused is involvement in a Harabah case regarding which FIR was chalked out on 13.11.2011.

ARGUMENTS

3. The learned counsel for the appellant argued that the FIR was chalked out on 13.11.2011 and the appellant was removed on 15.11.2011 in exercise of the power under Police Rules 12.21 of 1934. Learned counsel for the appellant further argued that no enquiry has been conducted by the department. That no show cause notice was issued to the appellant. That the appellant could not be discharged under the above mentioned rules. Regarding late submission of departmental appeal the learned counsel for the appellant argued that the appellant was arrested on the very first day of the chalking of FIR and he remained in custody till 25.03.2013 when the court acquitted him of the charge. That he filed departmental appeal within 30 days of his release from jail and his departmental appeal is within time.

4. On the other hand, the learned Addl. Advocate General argued that the departmental appeal is time barred which fact has been mentioned by the appellate authority in order of rejection dated 01.07.2013 therefore, the present service appeal is also time barred. He further argued that under 12.21 Police Rules, 1934 there was no need of holding of any enquiry or issuing any notice as the said rules do not provided for any such requirement.

CONCLUSION.

5. Admittedly the appellant was incarcerated right from the first day of chalking of FIR. He as admittedly released from jail on 25.03.2013 at the time of acquittal and then

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Service Tribunal  
Court, Bangalore

he filed departmental appeal. There is no evidence that the appellant was communicated the impugned order in jail. The departmental appeal is therefore within time and for that matter the present service appeal is also within time.

6. Coming to Rule 12.21 of the Police Rules the said rules deals with inefficiency. The constable can be discharged if he is proved to be inefficient or unlikely to be proved an inefficient police officer. He cannot be discharged for misconduct. The impugned order relates not to inefficiency but to a misconduct of the appellant for his involvement in a criminal case. It is also an established position of administrative law that even a probationer if terminated/discharged on the ground of misconduct then notice is must to the civil servant because misconduct carries a stigma for whole life which the department cannot decide without notice to the aggrieved civil servant. In this regard judgments reported as PLD 1985 SC 134, 1993 SCMR 603, 1410 and PLD 1994 SC 222 are relevant.

7. As a sequel to the above discussion, the impugned order cannot be sustained in the eyes of law. The appeal is accepted and the department is directed to hold denovo proceedings in accordance with the law within a period of 90 days from the date of receipt of this judgment, failing which the appellant shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.

Announced  
22-11-17

Sd/- Niaz Mohammad Khan Darma  
Camp Court, Abbottabad.

Sd/- Ahmad Hassan, Member

No. of Presentation of Appeal/Revision 23-11-17

1200

8-00

2-00

15-00

23-11-17

23-11-17

Certified to be true copy

*[Signature]*  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal  
Camp Court, Abbottabad

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ANNEXURE C

ORDER

This order is hereby passed to dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules 1975 submitted by Constable Niaz Ali No: 601 of Abbottabad against the order of punishment i.e. *Dismissal from service* awarded to him by the District Police Officer, Abbottabad vide his OB No: 137, dated 02.05.2018.

Facts leading to punishment awarded to him are that he while posted at Police Lines Abbottabad was arrested on the pointation of complainant of case FIR No. 852 dated 13.11.2011 u/s 17(3) Haraba /347/506/389 PPC Police Station Cantt: Abbottabad. Therefore, he was discharge form service under P.R 12-21 vide OB No. 388 dated 15.11.2011 by the then District Police Officer, Abbottabad in accordance with rules. Applicant field a departmental appeal before the then Regional Police Officer, Hazara Region Abbottabad which was rejected. Consequently he Preferred Service Appeal No. 1192/2013 before the Honorable Service Tribunal which was accepted on 22.11.2017 with the direction that " Department is directed to hold Denovo Proceeding in accordance with law within a period of 90 days form the date of receipt of this judgment". In compliance of judgment dated 22-11-2017 Khyber Pakhtunkhwa Service Tribunal in service Appeal No. 1192/2013 denovo enquiry was initiated against the applicant, he was issued fresh charge sheet along with the summary of allegation and proper departmental enquiry was conducted by SP Investigation Abbottabad. The Enquiry officer, after completion of enquiry submitted his finding report wherein the applicant was found guilty and recommended for major punishment. In light of the recommendation of enquiry he was dismissed from service vide Order No. 1539 dated 05.02.2018 by the competent authority accordingly.

After receiving his appeal, comments of DPO Abbottabad were obtained which were examined/ perused. He was called in O.R on 04.04.2019, heard him in person. The undersigned went through the case file and reference para No: 14 page No: 8 of the Court proceeding in which the Judge observed that owing to weak prosecution version benefit of doubt is to be given to the accused. Court also observed that Denovo enquiry be conducted within 90 days and that had not been conducted within stipulated time frame. Hence by taking lenient view he is to be reinstated in service and punishment be converted into forfeiture of one year approved service. The period during which he remained out of service is treated as leave without pay.

  
REGIONAL POLICE OFFICER

Hazara Region Abbottabad

No. 1218 /PA, dated Abbottabad the 8/4/2019. ✓  
Copy of above is forwarded to the District Police Officer, Abbottabad w/r to his office letter No: 823/Legal, dated 21-02-2019 for information and necessary action. Service Roll & Fauji Missal containing enquiry file are returned for your office record.

  
REGIONAL POLICE OFFICER

Hazara Region Abbottabad

Worthy Inspector General of Police, Khyber Pakhtunkhwa.

SUBJECT:-

Appeal against order passed by Regional Police Officer Hazara Division NO1218/PA dated 08/04 2019 wide which the appellant was restored in services of Police Department but back benefits were not Paid.

PRAYER:-

**ON ACCEPTANCE OF THIS INSTANT**

Appeal the order for payment of back benefits from the year 2011 to 2019 may graciously be passed in favour of appellant.

*Respectfully Sir,*

1. That, the petitioner was inducted in police department on 24/12/2003 and after qualifying successful police training he was deployed in police lines Abbottabad where he served with honesty and due diligence.
2. That on 30/11/2011 the petitioner received information that one of his friend namely Baber Zeib who was serving in Pak Army and was taken into custody by the local police of PS Cantt. Abbottabad.

The petitioner went to PS Cantt. Abbottabad to inquire about his friend, where the investigation Officer of PS Cantt. took the petitioner in his custody where the petitioner came to the knowledge that he has been charged in case FIR NO.852/2011 of PS Cantt. Abbottabad.

3. That the petitioner was released on bail on 10/02/2012, and after his release the petitioner visited the DPO Abbottabad for resuming his duty from where it transpired that the petitioner has been terminated from the service on 13/11/2011.

4. That; petitioner preferred the departmental appeal to your good-self and thereafter filed service appeal NO.1196/2013 before the honourable Service Tribunal Khyber Pakhtunkhwa Peshawar.

5. That; the petitioner was acquitted of all the charges mentioned in FIR No. 852/11 by the honourable Additional Sessions Judge

*(copy of the judgment is annexed herewith)*

6. That; the service appeal of the petitioner was accepted on 20/11/2017 and the respondent department was directed to hold DENOVO inquiry

against the petitioner within a period of 90 days failing which, the appellant shall be reinstated in the service. (copy of the judgment annexed herewith)

7. That; the petitioner once again neither served with the charge-sheet nor with the final show cause notice on 02/05/2018.
8. That; the petitioner has already filed execution petition No.71/11 before the Honourable services Tribunal KPK Peshawar and was fixed on 19/12/2018 where the respondent department submitted the so-called inquiry report alongwith the dismissal from service order of the petitioner and after getting copy of that the petitioner came to the knowledge of his dismissal from service.
9. That; the appellant again submitted departmental appeal which was accepted by respected RPO Hazara region vide order dated 08/04/2019 copy attached.
10. That; the petitioner prefers the instant appeal inter-alia on the following grounds.

**Grounds:**

- a. That; the judgment of honourable Service Tribunal KPK Peshawar has not been implement in true letter & spirit.
- b. That; the so called inquiry proceeding were not carried out with the stipulated time period and the same were conducted in a period of six and half months (200 days). While the respondent department was bound to conclude the said inquiry with in 90 days as per judgment.
- c. That; as per the dictum of superior courts that nobody can be retired for the same offence and this happened to the petitioner as inspired from the inquiry proceedings.
- d. That; once the evidence regarding the FIR No. 852/11 of PS Cantt. Abbottabad has already been thrashed-out by a competent court law and the prosecution has failed to prove charges against the petitioner; how the inquiry officer can rely the same evidence in the instant inquiry against the petitioner .
- e. That; the petitioner was neither served charge-sheet, show-cause notice nor he was given an opportunity of personal hearing, hence ; ex-parte decision has been announced by inquiry officer.
- f. That; delay on filing the instant appeal is not on the part of petitioner rather it was on the part of respondent department as the petitioner was ignorant of the said dismissal.

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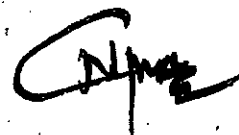
g. That; other points will be agitated if the petitioner will be given a chance of personal hearing.

It is therefore humbly requested that on acceptance of this instant Appeal the order for payment of back benefits from the year 2011 to 2019 may graciously be passed in favour of appellant..

Dated: 26 / 4 / 2019

Abbottabad

.....PETITIONER



Constable Niaz, No. 601  
Resident of Mohallah Seri,  
Sheikh-ul-Bandi  
Abbottabad



کرامت ضباب I.6 محکمہ پولیس لیٹاؤر۔

درخواست نظر ثانی و مطلع کیے جانے  
سائل بابت فیصلہ برٹیا ریٹنٹل ایپل  
داخل شدہ

حیات والا شان :-

سائل بذریعہ درخواست آپ حباب سے ملتے ہیں کہ  
سائل محکمہ پولیس کا ملازم ہے اور آج کل ایٹ آباد میں  
بطور *constant* تعینات ہے۔ سائل کو RPO ایٹ آباد نے  
بروٹے آرڈر نمبر PA / 1218 مورخ 4/8/2019 کو سروس  
میں بحال کیا تھا۔ اور سائل کے غیر حاضری مدت کو  
leave without pay میں تبدیل کیا تھا۔

حیات والا سائل نے اس فیصلے کے خلاف 26/4/2019 کو  
آپ حباب کے پاس ایپل کی تھی جو آج تک ایپل  
مذکورہ کی بابت سائل کو نہیں بتایا گیا کہ ایپل  
پر کیا فیصلہ صادر ہوا ہے۔ یا ابھی تک فیصلہ ہی نہیں  
ہوا۔ اس بارے میں سائل کو کوئی حکم وصول نہ  
ہوا ہے۔ قبل انہیں بھی متعدد درخواست دی ہیں  
لیکن جواب نہ دیا گیا ہے۔

لینا آپ حباب سے اتنا ہے کہ میری ایپل  
کے فیصلہ سے متعلق مجھے اگاہ کیا جائے۔ نقل ایپل

المترجم: 28/12/2021

لف ہے -

کنیٹیل نیاز علی ولد طارق خان لکنہ  
شیخ البانڈی نزد کو ریٹنٹل ایٹ آباد

S.No. 153733

Name of Advocate: ساجد اقبال

DBA NO. 239 TBA NO.

BC No. 13-1021



R.s. 200/=

وکالت نامہ  
Rs 200

مدالت سروس ٹریسینل سٹیٹو  
نیاز علی  
نیاز علی  
DPO وغیرہ ایسٹ آباد  
نوعیت مقدمہ سروس ایسٹ  
باعث تحریر آنکہ

مقدمہ مندرجہ بالا اٹوٹوان میں اپنی طرف سے واسطے پیروی و جوابدہی برائے پیشی یا تفسیر مقدمہ بمقام ایسٹ آباد کے لیے

ساجد اقبال ایڈووکیٹ یا ٹی کورٹ

کونسل شری لٹریچر ایڈووکیٹ مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا اور بروقت پکارے جانے مقدمہ منسلک صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر ہیڈ خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے نااہل و کسی جگہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروقت تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ پکھری کے علاوہ کسی اور جگہ سماعت ہونے پر یا بروقت تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا ٹانڈے کے واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر اختیار صاحب موصوف مشعل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ اور درخواست اجراء سے ڈگری و نظر ثانی اپیل گمرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر ثالثی و راضی نامہ و فیصلہ بر حلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے پیر و نجات از پکھری صدر اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا کٹرفہ درخواست حکم امتناعی یا قرضی یا گرفتاری قبل از گرفتاری و اجراء سے ڈگری بھی صاحب موصوف کو پیشہ وادائیگی علیحدہ مختار پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکور یا اس کے کسی جزوی کارروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے وکیل کو بھی ہر امر میں وہی اور ایسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہر جائداد التوا پڑے گا وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

ایڈوکیٹ نامہ لکھ دیا ہے کہ سندر ہے۔  
مورخہ: / / سال  
منظون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔ دن / ماہ / سال

نوٹ: وکالت نامہ مندرجہ بالا کو کوئی قابل قبول نہ ہوگی

Accepted  
M. Say  
Sar

نیاز علی وکیل طارق خان  
Signature