

21st Sept 2022

Counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. Last chance is given to argue the case. To come up for arguments on 16.11.2022 before D.B at camp court Abbottabad.



(Fareeha Paul)
Member (Executive)



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

17.05 2022

appellant in person present. Mr. Muhammad Asif Masood, Deputy District Attorney alongwith Mr. Mahtab Khan, DSP for respondents present.

Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned but as a last chance. To come up for arguments on 20.07.2022 before D.B at camp court Abbottabad.



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

20th July, 2022

Appellant alongwith his counsel namely Mr. Abdül Saboor Khan, Advocate present, who submitted fresh Wakalatnama on behalf of the appellant. Mr. Noor Zaman Khattak, District Attorney for respondents present.



Learned counsel for the appellant sought adjournment on the ground that he has been recently engaged and has not gone through the record. Adjourned. To come up for arguments on 21.09.2022 before the D.B at Camp Court Abbottabad.



(Salah-ud-Din)
Member (J)



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

11.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Mr. Anwar Khan, Naib Court for respondents present.

Written reply/comment on behalf of respondents submitted which are placed on file. To come up for rejoinder if any, and arguments before the D.B on 27.04.2022.



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

27th April, 2022

None present on behalf of the appellant. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

The matter pertains to the District Kohistan, therefore, it be fixed before the D.B at Camp Court, Abbottabad on 17.05.2022. Notice be also issued to the appellant and his counsel for the date fixed.

*Noted for
the Date fixed
Counsel*



(Fareeha Paul)
Member (E)



Chairman

02.08.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised Need consideration. Subject to all just and legal objections, this appeal is accepted for full hearing. 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 through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 08.12.2021 before the D.B.

Appellant Deposited
Security Process Fee

02/08/21


Chairman

08.12.2021

Appellant alongwith his counsel present. Mr. Muhammad Adeel, Addl: AG alongwith Mr. Muthleb, DSP (Legal) for respondents present.

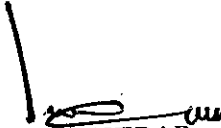

Written reply/comments on behalf of respondents not submitted. Requested for adjournment. To come up for written reply/comments on 11.01.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. - 5912 /2021

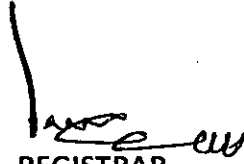
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1.	2	3
1-	08/06/2021	<p>The appeal of Mr. Gul Zada resubmitted today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be up there on <u>02/08/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Gul Zada Ex Constable no. 376 District Police Lower Kohistan received today i.e. on 31.05.2021 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be supported with by an affidavit duly attested by the Oath Commissioner.
- 2- Certificate be given to the effect that the appellatant has not filed any service appeal earlier in this forum in the subject matter.

No. 918 /S.T.

Dt. 31/05 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr.M. Asif Yousafzai Adv.Pesh.

Respected Sir

1- Removed

2- Removed

Asif
8/6/21

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 5912 /2021

Gul Zada

V/S

Police Department

INDEX

S.NO.	Documents	Annexure ¹	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of FIR	---A---	05
3.	Copy of Suspension order	---B---	06
3.	Copy of Charge Sheet alongwith statement of allegation	---C---	07-08
4.	Copy of Inquiry Report	---D---	09-10
5.	Copy of High Court Judgement	---E---	11-15
6.	Copy of Dismissal Order dated 01.01.2021	---F---	16
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8.	Copy of rejection order dt: 06.05.2021	---H---	20
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APPELLANT

Gul Zada

THROUGH:



(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME OF PAKISTAN



(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT,

(SYED NOMAN ALI BUKHARI)

ADVOCATE HIGH COURT

&

(SHAHKAR KHAN YOUSAFZAI)

ADVOCATE PESHAWAR.

Room No. Fr-8, 4th Floor,
Bilour Plaza, Peshawar Cantt
Contact No. 03339103240

(1)

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. _____/2021

Gul Zada, Ex-Constable No. 376,
District Police Lower Kohistan, Hazara Division, Khyber Pakhtunkhwa.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer (RPO), Hazara Region, Abbottabad.
3. The District Police Officer (DPO), Lower Kohistan.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 06.05.2021 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE IMPUGNED DISMISSAL ORDER DATED 01.01.2021 WAS REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL THE ORDER DATED 06.05.2021 AND 01.01.2021 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:**FACTS:**

1. That the appellant was appointed as constable in the police force in the year 2017. The appellant has a good service record and has worked quite efficiently, and up to the entire satisfaction of his superiors.
2. That the appellant while posted as Driver at Police Post Keru attached to P.S. Pattan, Lower Kohistan was falsely charged and then arrested in a criminal case by Police Station, Taxila vide FIR dated 21.09.2020 under 9 (C) of the Control of Narcotics Substances Act, 1997. He was suspended on 30.09.2020 and closed to police line Pattan, Lower Kohistan. **(Copy of FIR and Suspension order are attached as Annexure-A & B)**
3. That the appellant has served charge sheet alongwith statement of allegations through Jail Superintendent which was properly replied by the appellant in which he denied the allegations and the same was sent to his department through Prison Department Official however the appellant did not keep the copy of reply to charge sheet which may be requisite from the department. **Copy of Charge Sheet alongwith statement of allegation is attached as Annexure-C .**
4. That one sided inquiry was conducted against the appellant as the appellant was behind the bar at the time of inquiry proceeding and was never associated with the inquiry proceedings which means that the appellant has never given fair chance of defense as neither statements were recorded in the presence of the appellant nor give him opportunity of cross examination but despite that the appellant was held responsible by the inquiry officer. **Copy of Inquiry Report is attached as Annexure-D**
5. That the appellant was convicted in the above mention FIR by the learned Additional Sessions Judge, Taxila on 30.11.2020. The appellant then filed an appeal before the Honourable Lahore High Court Rawalpindi Bench, Rawalpindi against the order of the Sessions Court, Taxila and the appeal was allowed by Honourable Lahore High Court Rawalpindi Bench, Rawalpindi and the impugned judgement of the Sessions Court was set asided and the appellant was acquitted of all charges against him vide order dated 03.03.2021. **Copy of High Court Judgement is attached as Annexure-E.**

6. That the appellant after acquittal from the criminal case went to his department to join his duty but he was informed that he has been dismissed from service from the date of absence i.e 09.09.2020 vide order dated 01.01.2021 and handed over his dismissal order. **Copy of Dismissal Order dated 01.01.2021 is attached as Annexure-F.**

7. That after acquittal from the criminal case on 03.03.2021 the appellant filed department appeal on 19.03.2021 which was rejected on 06.05.2021 for no good grounds. **Copy of departmental Appeal dated 19.03.2021 and rejection order are attached as Annexures - G & H.**

8. That now the appellant comes to this august Tribunal for the redressal of his grievances on the following grounds amongst others.

GROUND:

- A) That the orders dated 01.01.2021 and 06.05.2021 are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.

- B) That one sided inquiry was conducted against the appellant as the appellant was behind the bar at the time of inquiry proceeding and was never associated with the inquiry proceedings which means that the appellant has never given fair chance of defense as neither statements were recorded in the presence of the appellant nor give him opportunity of cross examination which is against the law and rules and inquiry proceedings and the impugned orders are liable to be set-aside on this score alone.

- C) That show cause notice was not served to the appellant which is against the norms of justice and fair play

- D) That the opportunity of personal hearing and personal defense was not provided to the appellant which is against the spirit of Article- 10-A of the Constitution.

- E) That the appellant was involved in criminal case and as per CSR-194-A the appellant should be suspended till the conclusion of criminal case pending against the appellant but respondent department dismissed the appellant from service without waiting to the conclusion

of criminal case pending against the appellant which is violation of CSR-194-A.

- F) That the appellant was falsely implicated in the criminal case on the basis of which he was dismissed from service however he was Honorably acquitted by the Honorable Lahore High Court Rawalpindi Bench, Rawalpindi therefore their remained no ground to penalize the appellant on the basis of criminal case.
- G) That the appellant was not willfully absent from his duty but he was arrested in falsely implicated criminal case and was behind the bar due to which he was compelled to remain absent from his duty therefore the appellant needs to be treated with a lenient view.
- H) That the appellant has been awarded a very harsh punishment though he has been acquitted by the honourable High Court and is passed in violation of law, therefore, the same is not sustainable in the eyes of law.
- I) That the appellant has been condemned unheard and has not been treated according to law and rules.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT,



Gul Zada

THROUGH:



(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME OF PAKISTAN



(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT,

(SYED NOMAN ALI BUKHARI)

ADVOCATE HIGH COURT

&

(SHAHKAR KHAN YOUSAFZAI)

ADVOCATE PESHAWAR.


ORDER:

B

6


Constable Gul Zada No.376 who was posted as Driver Pol Post Keru has absented himself from his official duty vide DD No.19 dated, 19-09-2020. He was arrested by Police Station Taxila and ca vide FIR No.836 dated, 21-09-2020 U/S 9-C of the Control of Narcot Substances Act 1997. He is hereby suspended and close to police li Pattan and charge sheet/statement of allegation will separately issue with immediate effect.

OB No. 65
Dated, 23/9/2020


District Police Officer,
Lower Kohistan

No. 609 /PA dated, 23/09/2020

Copy of above is forwarded to the Regional Police Officer Hazara Region, Abbottabad for favour of information please.


District Police Officer,
Lower Kohistan

CHARGE SHEET

7

I, MOHAMMAD SULEMAN, District Police Officer, Lower Kohistan, as competent authority, is hereby charge sheet you Constable Gul Zada No.376 while posted as Driver at Police Post Keru as explained in the attached statement of allegations.

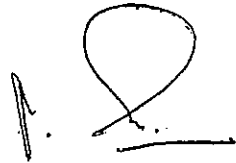
You appear to be guilty of misconduct under Police Disciplinary Rules -1975 (with amendment 2014), and have rendered yourselves liable to all or any of the penalties specified in the said Police Disciplinary Rules.

You are therefore, directed to submit your written defense within seven (7) days on the receipt of this Charge Sheet to the Enquiry Officer.


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

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


(MOHAMMAD SULEMAN)
District Police Officer,
Lower Kohistan

Received


10/12/20
Raenard
مظفر آباد 376 پولیس پوسٹ کوٹھان
حال اڈیالہ جیل

L.T. Attested
Deputy
Central

(8)

DISCIPLINARY ACTION.

I, MOHAMMAD SULEMAN, District Police Officer, Lower Kohistan, as competent authority of the opinion that you Constable Gul Zada No.376 posted as Driver at Police Post Keru have rendered yourself liable to be proceed against as you have committed the following act/omission within the meaning of Police Disciplinary Rules - 1975 (with amendment 2014).

STATEMENT OF ALLEGATION.

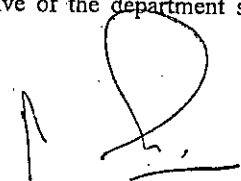
You Constable Gul Zada No.376 while posted as Driver at Police Post Keru has absented himself from his office duty without any leave/permission of competent authority vide DD No. 09 dated, 19-09-2020 to till now at Police Station Pattan.

You have been arrested at Police Station Taxila and recovered 2640 gm Charas from you and case vide FIR No.836 dated, 21-09-2020 U/S 9-C of the Control of Narcotics Substances Act 1997 has been registered against you at Police Station Taxila. Your this act damage the image of Police force in the eyes of public and also your this act shows tantamounts gross misconduct on part.

For the purpose of scrutinizing the conduct of the said respondent officials with reference to the above allegations, Enquiry Officer Mr. Ashiq Hussain DSP/Hqrs: is hereby deputed to conduct formal Departmental Enquiry against them.


The enquiry officer shall in accordance with the provision of ordinance, provide reasonable opportunity of hearing the defaulter furnish finding within Seven(07) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

The respondent and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(MOHAMMAD SULEMAN)
District Police Officer,
Lower Kohistan

No. 146-47/PA, dated L/ Kohistan the 23/09/2020
Copy of above is forwarded the:-

1. Enquiry Officer.
2. Respondent Officials through enquiry officer.


(MOHAMMAD SULEMAN)
District Police Officer,
Lower Kohistan

بجوالہ انکوائری ازاں کنشیل گل زاہد نمبر 376 متعینہ چوکی کیر و ضلع لوئر کوہستان

جناب عالی!

کنشیل گل زاہد نمبر 376 متعینہ ڈرائیور چوکی کیر و مورخہ 19-09-2020 کو چوکی سے غیر حاضر ہو کر انچارج چوکی کیر و محمد عثمان ASI نے بحولہ مد 19 روز نامچہ 19-09-2020 رپورٹ غیر حاضری درج کروائی مورخہ 21-09-2020 کو اطلاع ملی کہ کنشیل گل زاہد نمبر 376 ولد عبدالحی قوم کہاخیل سکنہ جیبال بجوالہ مقدمہ علت نمبر 836 مورخہ 21-09-2020 جرم 9C.CNSA تھانہ ٹیکسلا ضلع راولپنڈی میں گرفتار ہو چکا ہے جس سے 2640 گرام چرس، پولیس یونیفارم بیگ سے برآمد ہو کر مذکورہ گل زاہد کے خلاف مقدمہ درج رجسٹر ہو چکا ہے تھانہ ٹیکسلا سے FIR کی کاپی منگوائی جا کر مورخہ 23-09-2020 کو کنشیل گل زاہد نمبر 376 کو معطل کر کے چارج شیٹ، سری ایلیگیشن جاری ہو کر محکمہ انکوائری کے لئے ڈی ایس پی ہیڈ کوارٹر حاشق حسین کو انکوائری افیسر مقرر کیا جو مورخہ 05-12-2020 کو ریٹائرمنٹ ہونے کے بعد مورخہ 08-12-2020 کو بجوالہ آرڈر نمبر 30-1729 انکوائری سن فداخان ڈی۔ ایس۔ پی ہیڈ کوارٹر حوالہ ہوئی۔

مورخہ 09-12-2020 کو بجوالہ چٹھی انگریزی نمبری 04 مورخہ 09-12-2020 کو بوساطت سپرنٹنڈنٹ اڈیالہ جیل چارج شیٹ، سری ایلیگیشن بذریعہ سیشنل کنشیل بجوائی جا کر کنشیل گل زاہد نمبر 376 کو وصول کروا کر دستخط، انگوٹھا اور سینٹرل جیل راولپنڈی کا مہر ثبت کروا کر مورخہ 10-12-2020 کو بعد تعمیل ایک کاپی چارج شیٹ واپس لا کر حوالہ کی جس کا جواب 19 دن گزرنے کے باوجود موصول نہ ہوا۔

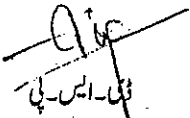
دوران انکوائری معلوم ہوا کہ کنشیل گل زاہد نمبر 376 ولد عبدالحی سکنہ جیبال کا مقدمہ ایڈیشنل سیشن جج صاحب ٹیکسلا زیر سماعت تھا۔ جس کا فیصلہ ہو کر مذکورہ گل زاہد نمبر 376 کو مقدمہ میں سزا ہو چکی ہے۔ جس کی تصدیق کے لئے تفتیشی افیسر مشتاق خان سب انسپکٹر تھانہ ٹیکسلا سے بزرگیہ موبائل فون رابطہ کیا جس نے بھی کہا کہ مذکورہ گل زاہد نمبر 376 کو مقدمہ بجرم 9C.CNSA میں سزا، جرمانہ ہو چکا ہے۔ عدالت کا حکم (فیصلہ) حاصل کرنے کے لئے کنشیل و قاص علی نمبر 4672 FRP متعینہ تھانہ پٹن کو عدالت ایڈیشنل سیشن جج صاحب ٹیکسلا بجوایا گیا جس نے کنشیل گل زاہد نمبر 376 ولد عبدالحی سکنہ جیبال کے خلاف عدالت کا فیصلہ لا کر پیش کیا جو شامل انکوائری کر کے مطالعہ کیا گیا جس میں کنشیل گل زاہد نمبر 376 سے 2640 گرام چرس، پولیس یونیفارم بیگ میں رکھی ہوئی برآمد ہو کر مقدمہ درج رجسٹر ہوا مقدمہ باقاعدہ سماعت ہو کر بعد عدالت ایڈیشنل سیشن جج صاحب ٹیکسلا نے ملزم گل زاہد نمبر 376 ولد عبدالحی سکنہ جیبال کو 5 1/2 سال قید اور 25 000 ہزار روپے جرمانہ کی سزائی فیصلہ عدالت لف انکوائری ہے

فائینڈنگ؛

کنشیل گل زاہد نمبر 376 متعینہ ڈرائیور چوکی کیر و مورخہ 19-09-2020 کو چوکی سے غیر حاضر ہوا جسکی رپورٹ غیر حاضری مد 19 روز نامچہ 19-09-2020 درج روز نامچہ ہو کر نقل رپٹ برائے کاروائی بجوائی گئی۔ مورخہ 21-09-2020 کو کنشیل گل زاہد نمبر 376 سے 2640 گرام چرس، بیگ جس میں پولیس یونیفارم بھی رکھی تھی برآمد ہو کر مقدمہ علت 836 مورخہ 21-09-2020 جرم 9C.CNSA تھانہ ٹیکسلا درج رجسٹر ہو کر مذکورہ گل زاہد نمبر 376 گرفتار ہوا تھانہ ٹیکسلا سے کاپی

10

FIR منگوائی جا کر کانسٹیبل گل زاہد نمبر 376 کو معطل کر کے چارج شیٹ، سری انسپکشن جاری کر کے محکمہ انکوائری شروع کی گئی۔ چارج شیٹ، سری انسپکشن، چھٹی انگریزی سنٹرل اڈیالہ جیل راولپنڈی بذریعہ سپیشل کانسٹیبل برائے جواب کانسٹیبل گل زاہد کے حوالہ کر کے باقاعدہ دستخط، انگوٹھا وصولی لیا جا کر کاپی پر جیل کی مہر ثبت کر دئی گئی 19 دن گزرنے کے باوجود مذکورہ گل زاہد نے چارج شیٹ کا کوئی جواب بزریوہ ڈاک یا کسی اور ذرائع سے نہ بھجوا یا بعد الت جناب ایڈیشنل سیشن جج صاحب نیکسلا مقدمہ کی سماعت ہو کر ملزم کانسٹیبل گل زاہد نمبر 376 کو جرم ثابت ہونے پر عدالت نے 5 1/2 سال قید اور 25 000 ہزار روپے جرمانہ کی سزا دی عدالت کا فیصلہ بزریوہ سپیشل کانسٹیبل حاصل کر کے شامل انکوائری کیا گیا کانسٹیبل گل زاہد نمبر 376 جو کہ ضلع لوئر کوہستان میں بطور کانسٹیبل حاضر سروس ملازم ہے جسکی سروس 3 سال 4 ماہ ہو چکی ہے پولیس ملازم کا اس طرح نار کاٹکس (چرس) لے جانا محکمہ پولیس کے لئے بد نما داغ ہے اور لوگوں کے نظروں میں پولیس کے وقار پر برا اثر پڑتا ہے۔ عدالت سے بھی ملزم گل زاہد نمبر 376 ولد عبدالحی سکند جیال پر جرم ثابت ہو کر سزا جرمانہ ہو چکا ہے ایسے حالات میں اس طرح کے ملازم کو محکمہ پولیس میں رہنا امیندہ کے لئے بھی پولیس کے وقار پر برا اثر پڑ سکتا ہے۔ انکوائری سے گل زاہد نمبر 376 ولد عبدالحی سکند جیال پر چرس لے جانا ثابت ہو چکا ہے جسکو (Major Punishment) بڑی سزا کی سفارش کی جاتی ہے جملہ کاغذات انکوائری ارسال ہے۔ انکوائری رپورٹ عرض ہے۔



ہیڈ کوارٹر چن لوئر کوہستان
29-12-2020

For Private Use
IN THE LAHORE HIGH COURT RAWALPINDI
BENCH, RAWALPINDI.

Crl. Appeal No. 6711/2020

Gulzara son of Abdul Hayee Caste Kaha Khel, R/o
Jafar P.O Ranwala, Tehsil Patan, District Kohstan,
presently confined in Adyala Jail, Rawalpindi.

Appellant

VERSUS

The State

Respondent

APPEAL UNDER SECTION 48 OF CNSA ACT, 1997
READ WITH SECTION 410 CR.P.C AGAINST THE
JUDGMENT DATED 30-11-2020 PASSED BY
LEARNED ADDITIONAL SESSIONS JUDGE, TAXILA,
WHEREBY THE APPELLANT IS SENTENCED FOR 05
YEARS 06 MONTHS R.I WITH FINE OF RS. 25,000/-
AND IN DEFAULT OF PAYMENT OF FINE FURTHER
UNDERGO 05 MONTHS AND 15 DAYS SIMPLE
IMPRISONMENT IN CASE FIR NO. 836, DATED 21-
09-2020, OFFENCE UNDER SECTION 9-C CNSA
1997, REGISTERED AT POLICE STATION TAXILA,
DISTRICT RAWALPINDI, BENEFIT OF 382-B CR.P.C
IS ALSO EXTENDED TO THE APPELLANT.

Respectfully sheweth: -

1. Precise facts of the prosecution case as alleged in the FIR are that allegedly on 20-09-2020 PW 4 Bilal Ahmad ASI alongwith Saqib Ishfaq, Rukhsar Ahmad and Waqas Ali constables were present at HMC Road in connection with patrolling duty on private vehicle. At about 11:15 p.m spy informer informed that a drug paddler is present at Dhamrai Pulli with huge quantity of charas. If raid is conducted, then he can be arrested. On this

(12)

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
(JUDICIAL DEPARTMENT)

Crl. Appeal No. 679 of 2020

Gul Zada

.....Appellant

versus

The State

..... Respondents

JUDGMENT

Date of hearing:	03.03.2021.
Appellant by:	Mr. Shan Zeb Khan, Advocate.
State by:	Mr. Sajjad Hussain Bhatti, Deputy Prosecutor General with Shafqat SI.

Muhammad Tariq Abbasi, J:- By way of the appeal in hand, the appellant namely Gul Zada (*hereinafter referred to as the appellant*), has challenged his conviction and sentence, awarded through judgment dated 30.11.2020, passed by the learned Additional Sessions Judge, Taxila, District Rawalpindi.

2. A case FIR No. 836, dated 21.09.2020, under Section 9(c) of the Control of Narcotic Substances Act, 1997 (*hereinafter referred to as the Act*), at Police Station Taxila, District Rawalpindi, was registered against the appellant, with the precise charge of possessing 2640 grams of 'charas'. He was challaned to the court and formal charge against him was framed on 10.11.2020, which was denied and trial was called. Hence the prosecution witnesses namely Muhammad Hanif Constable, Shafqat Menmood SI, Jamshaid Ali ASI, Bilal Ahmad ASI and Waqas Ali Head Constable, were summoned and recorded, respectively as PW-1, PW-2, PW-3, PW-4 and PW-5. After completion of the prosecution

ATTESTED

evidence and closure of the case, the appellant was examined under Section 342 Cr.PC, during which, he while pleading his innocence, had denied the allegations leveled against him. The appellant had neither opted to lead any evidence in his defence nor to make statement under Section 340(2) Cr.PC. Finally, the impugned judgment was passed, whereby he was convicted under Section 9(c) of the Act and sentenced to rigorous imprisonment for 5½ years. alongwith fine of Rs.25,000/-, in default whereof to further undergo simple Imprisonment for 05 months, with benefit of Section 382-B Cr.PC.

3. In this case, sheer contradiction, in the date and time of the recovery, alleged by the prosecution in the complaint (Ex.PE) and statements of Bilal Ahmad ASI/complainant (PW-4) and another recovery witness namely Waqas Ali Head Constable (PW-5), have been noticed. According to the above named complainant (PW-4) as well as the complaint (Ex.PE), the date and time of the alleged recovery was 20.09.2020, at about 11.25 PM. Whereas the PW-5 namely Waqas Ali Head Constable, had described the date as 21.09.2020. Furthermore, during cross-examination of above named PW-5, through confrontation, it had come on the record, that whole of the documents and proceedings at the spot, were carried on by him, despite the fact that as per the prosecution story, such proceedings were conducted by Bilal Ahmad ASI (PW-4).

4. Besides the above stated facts, circumstances and grounds, It has also been observed that in the rough site plan (Ex.PA), some overwriting, regarding quantity of narcotic has been made. Similarly, it can easily be observed through naked eye that in the complaint (Ex.PE), time of alleged recovery i.e. "11.25" is mentioned with another ink by

ATTESTED
[Signature]

[Signature]

some other hand. Same situation is found about the date, given at bottom of the complaint. On comparison, the said date and time, are found to be, by the same hand, who has made a writing on right side of the complaint (Ex.PE), regarding registration of the FIR (Ex.PB).

5. The above mentioned glaring contradictions/defects, in the prosecution evidence, have made the alleged prosecution story and the charge, against the appellant, highly doubtful. In such like situation, an accused is always held entitled to acquittal, not as a matter of grace or concession, but as of right. If any case law, in this regard is needed, reference may be made to the dictum laid down by the august Supreme Court of Pakistan, in the case titled "TARIQ PERVAIZ Vs. THE STATE" reported as 1995 SCMR 1345 and a subsequent judgment in the case titled "AYUB MASIH Vs. THE STATE" reported as PLD 2002 Supreme Court 1048. In the case of "AYUB MASIH (Supra)", while quoting a saying of the Holy Prophet (PBUH) 'mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent' and making reference to the maxim, 'It is better that ten guilty persons be acquitted rather than one innocent person be convicted', the august Supreme Court of Pakistan has held as under:-

"...It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so the accused is entitled to the benefit of doubt as of right. It is also firmly settled that if there is an element of doubt as to the guilt of the accused the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not imaginary or artificial. The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with law. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". In simple words it means that utmost care should be taken by the Court in convicting an accused. It was held in The State v. Mushtaq Ahmad (PLD 1973 SC 418) that this rule is antithesis of haphazard approach or reaching a fitful decision in a case. It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic Law and is enforced rigorously in view of the saying of the Holy Prophet (p.h.u.h) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent."

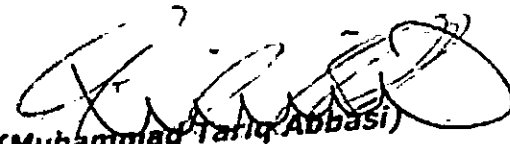
ATTACHED

A.

Case No. 670/2020

6. Resultantly, the appeal in hand is allowed, impugned judgment is set aside and the appellant is acquitted of the charge, while extending him the benefit of doubt. He is behind the bars, therefore it is directed that he be released forthwith, if not required to be detained in any other case. The disposal of the case property shall be as directed by the learned trial court, in the impugned judgment.

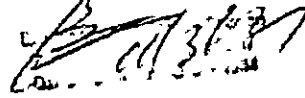

(Mirza Viqas Rauf)
Judge


(Muhammad Tariq Abbasi)
Judge

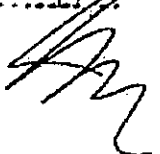
AD/1



Certified to be True Copy



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10/12/24


ORDER:-

F 16

This order would dispose off departmental enquiry against Constable Gu Zada No.376 who was posted as Driver Police Post Keru and has absented himself from his official duties without any leave/permission of competent authority vide DD No.1 dated, 19-09-2020 and was arrested along with 2640 gm Charas recovered from him an case vide FIR No.836 dated, 21-09-2020 u/s 9C CNSA Police Station Taxila has been registered against him.

He was charge sheeted vide this office Memo: No.146-47/PA dated, 23-09-2020 and enquiry was entrusted to DSP/Hqrs:. On 29-12-2020 Enquiry Officer submit his finding report in which the Enquiry officer stated that the above mentioned defaulter official was convicted 05 years and 06 months and fine Rs.25000/- from Court above cited case which shows that the defaulter official was guilty and the Enquiry Officer recommended him for Major Punishment. (Court Order is enclosed).

Keeping in view the decision of court and the recommendation of Enquiry Officer, I. Muhammad Suleman, District Police Officer, Lower Kohistan a competent authority under Khyber Pakhtunkhwa, Police Rules,1975 (with amendment 2014) has awarded him Major punishment i.e. Dismissed from service from the dated of absence 19-09-2020 with immediate effect.

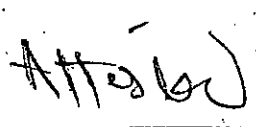
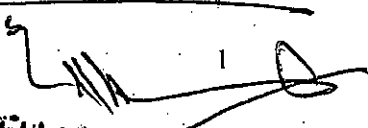
Order Announced.
OB No. 01
Dated, 01/01/2020


District Police Officer,
Lower Kohistan

No. 01 /OASI, dated, LKH the, 01/01/2020.

Copy of the above is forwarded to District Police Officer, Upper Kohistan for favour of information please.


District Police Officer,
Lower Kohistan



District Police Officer,
Lower Kohistan

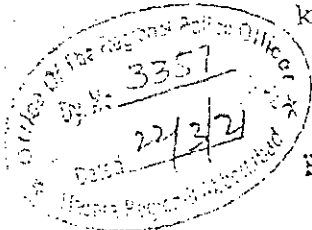
BEFORE THE DEPUTY INSPECTOR GENERAL
OF POLICE HAZARA RANGE ABBOTTABAD

67 (17)

APPEAL AGAINST THE ORDER OF DISTRICT POLICE
OFFICER LOWER KOHISTAN BEARING ORDER BOOK
NO.01 DATED 01/01/2021 VIDE WHICH THE
APPELLANT WAS DISMISSED FROM SERVICE

PRAYER

On acceptance of appeal the order of dismissal
may kindly be set aside and the appellant may
kindly be reinstated in service.



Respected Sir!

The brief facts leading to the instant appeal are
arrayed as follows

NO-5651 / FA
dt-22-3-21

*DPO 4 Kohistan
for previous comments
alongwith concise report pl.*

1. That the appellant was posted in Police
department in District Kohistan and during
the days of occurrence the appellant was
posted as driver in police Post Karo attached
to P.S Pattan.

*OPSI
for a la and furnish*

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2. That the appellant was served with charge sheet stating therein, that the appellant was found in possession of Churs and a case was registered against the petitioner.

3. That, a false, fake and factious case was fabricated against the petitioner. That, the petitioner was called by his friend whose maternal uncle and the petitioner's friend both got the petitioner arrested in a fake and factious case.

4. That, the appellant submitted an appeal before the High Court Rawalpindi Bench and on acceptance of his appeal he was acquitted by the said Honourable Court.

5. That, the judgment and order passed by the

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date, the time or other details relating to the case. In view of the above glaring facts and circumstances the appellant was acquitted by the High Court.

6. That, there is no such previous involving of the petitioner except the one in which the appellant has earned an acquittal from the high court.

It is therefore most humbly prayed and requested that on acceptance of appeal the impugned order of dismissal may kindly be set aside and the appellant may kindly be reinstated in service.

Dated 19/03/2021

=====

Gul Zada S/O Abdul Hayyi R/O Jeejal Kohistan Pattan
Ex-Constable No.376 (District Lower).....**Appellant**

[Handwritten Signature]
18/03/2021



OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

0992-9310021-22

0992-9310023

r.rpohazara@gmail.com

0345-9560687

NO: 9301 /PA DATED 06/05/2021

ORDER

This order will dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 submitted by Ex. Constable Gul Zada No. 376 of District Lower Kohistan against the order of punishment i.e. **Dismissal from service** awarded by DPO Lower Kohistan vide OB No.01 dated 01.01.2021.

Brief facts leading to the punishment are that the appellant while posted as driver at Police Post Keru absented himself from official duty without any leave/permission vide DD No.19 dated 19.09.2020 and was arrested along with 2640 gm Charas in case FIR No.836 dated 21.09.2020 u/s 9C CNSA Police Station Taxila.

The appellant was issued charge sheet alongwith summary of allegations while DSP Hqrs was deputed to conduct formal departmental enquiry. The EO held the appellant responsible of misconduct and recommended for major punishment. In addition to this, the appellant was convicted by the Court of ASJ Taxila with 5 ½ years of rigorous imprisonment with fine of Rs. 25000/- vide order dated 30-11-2020. Consequently, DPO Lower Kohistan awarded him major punishment of dismissal from service. Hence, the appellant submitted this present appeal.

After receiving his appeal, comments of DPO Lower Kohistan were sought and examined/perused. The undersigned called the appellant in OR and heard him in person. The appellant contended that he was entrapped by his friends in the case but during personal hearing he was asked time and again what he had to say in his defense but he could only utter a few unrelated incidents which do not really provide any credible evidence. Hence, his appeal is devoid of merits and liable to be dismissed. Therefore, in exercise of the powers conferred upon the undersigned under Rule 11-4 (a) of Khyber Pakhtunkhwa Police Rules, 1975 the instant appeal is hereby **filed** with immediate effect.

Mirvais Niaz (PSP)

REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

No. 9302 /PA, dated Abbottabad the 06/05 /2021.

CC.

1. DPO Lower Kohistan for information and necessary action with reference to his office Memo No 149/OASI dated 05-04-2021. Service Roll of the appellant is returned herewith for record.

S.No. 172343

Name of Advocate عبد الصبور خان

DBA NO. 317M TBA NO.

BC No. 11-2350



R.s.200/-

وکالت نامہ
BIBI SALMA
Finance Secretary
District Bar Association
Abbottabad

ATD. کاپی رسید کی طرف سے عدالت

Service Appeal at 5912
عنوان: داد
منجانب: Appellant
نوعیت مقدمہ: 21

باعث تحریر آنکہ
مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے بیرونی وجوہ کی بدلی پیشی یا تفتیشی مقدمہ بمقام A.P کے لیے

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا ہوں گا اور بروقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی جگہ یا پکھری کے اوقات سے پہلے یا چھپے یا بروز تعطیل بیرونی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ پکھری کے علاوہ کسی اور جگہ سماعت ہونے پر یا بروز تعطیل یا پکھری کے اوقات کے آگے چھپے نہیں ہونے پر مظہر کو کوئی نقصان نہیں لگے گا اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا ممانعت کے واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر ساختہ صاحب موصوف مثل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ اور درخواست اجراء کے ڈگری و نظر ثانی اپیل مگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کرنے اور ہر قسم کارروائی وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر عائنی و رائی نامہ و فیصلہ بر حلف کرنے قابل دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے پیر و نجات از پکھری صدر اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا کسٹرز درخواست حکم امتناعی یا ترقی یا گرفتاری قبل از گرفتاری واجرائے ڈگری بھی صاحب موصوف کو بشرط ادا جی علیحدہ مختار بیرونی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکور یا اس کے کسی جزو کی 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 جانہ 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 بیرونی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

مورخہ: 2022/07/20
دن ماہ سال

لہذا وکالت نامہ لکھ دیا ہے کہ سند ہے۔

نوٹ: وکالت نامہ کی فوٹو کاپی قابل عمل نہ ہوگی
Appellant

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD
PESHAWAR. D.B

No.

Appeal No. S912 of 20 21

Genl Zada Appellant/Petitioner

The P.P.O KPK Peshawar Respondent

Respondent No. 5

Notice to: Regd —

The Regional Police Chief (RPO)
Hazara Region Abbottabad.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 8/12/2021 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this 31st

Day of Aug 20 21


Registrar

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR. *DB*

No.

Appeal No. *5912* of 20 *21*

Gul Zada Appellant/Petitioner

Regd The P.P.O KPK Peshawar ^{Versus} Respondent

Respondent No. *3*

Notice to: — the Distt. Police Officer (DPO)
 Lower Kohistan

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on *8/12/2021* at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this *31/15*

Day of *Aug* 20 *21*

(for Reply)

[Signature]
 Registrar,

Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR. DB

No.

Appeal No. 5912 of 2021

Gul Zada Appellant/Petitioner

The P.P.O KPK Peshawar Respondent

Respondent No. 1

Notice to: —

The Provincial Police Officer
KPK Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 8/12/2021 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 31st

Day of Aug 20 21

(for Reply)



[Signature]
Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.