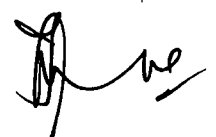


investigation in case of FIR No. 423 dated 03.09.2020 under section 302/34 PPC read with 15 A.A Police Station Toru, he got illegal gratification of Rs. 65/75 thousands and one mobile set worth Rupees twenty thousand from the complainant. He was issued a charge sheet under Khyber Pakhtunkhwa Police Rules 1975 and departmental inquiry was carried out by ASP, Takhtbhai. In the light of findings of inquiry officer, show cause notice was issued by Superintendent of Police Investigation Wing, Mardan to the appellant. He submitted reply to the show cause notice but DPO Mardan awarded major penalty of dismissal from service vide order dated 06.01.2021. The appellant preferred an appeal to the Deputy Inspector General of Police Region-1, Mardan on 12.01.2021 which was rejected vide order dated 29.01.2021. Both these orders have been impugned by the appellant before the Service Tribunal.

3. Respondents were put on notice who submitted written replies/ comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant contended that the allegations levelled by the complainant against him were false. He raised observation on the inquiry conducted by ASP Takhtbhai that proper procedure had not been followed and the accused had not been given opportunity of cross examination, which indicated that the appellant had not been given fair chance to defend himself. He invited the attention to the inquiry report which was annexed with the reply of the respondents in which the inquiry officer in his observation had stated, "the undersigned is reasonably of the belief that strong probability of having received the above mentioned cash in various installments exists". According to the learned counsel, the Inquiry Officer in his recommendations stated, "the hearing of the parties and



the oral statement of the complainant when coupled with other facts depicting state of mind, create a reasonable presumption regarding the receiving of above mentioned valuable things.....". The learned counsel argued that the case was based on presumption only and there was no solid evidence available to prove the appellant guilty.

5. The learned Assistant Advocate General contended that proper inquiry was carried out before awarding major punishment of dismissal from service. He, however, stated that no written statement was available on record and that the appellant was heard orally. He further stated that record was silent whether any opportunity of cross-examination was extended to the appellant.


6. From the arguments presented before us and the available record it is evident that the appellant while investigating in FIR No. 423 dated 03.09.2020 was charged by complainant in that FIR for taking illegal gratification of Rupees sixty-five to seventy thousand and one mobile set worth rupees twenty thousand. An inquiry was conducted in the matter and he was dismissed from service. Inquiry report annexed with the reply of the respondents presents a strange picture when the Inquiry Officer himself states in his observation that there is a "strong probability" that the accused (appellant) had taken cash in installments. We are of the opinion that the Inquiry Officer should have based his observations on facts supported by documentary evidence and not on "probability". Further in his recommendations the Inquiry Officer states that statements and other facts create a "reasonable presumption" regarding receiving of illegal gratification. Here again we feel that the inquiry officer should have based his inquiry on facts and not "presumptions". It was further noted that no written statement of the appellant (accused in the inquiry proceedings) was available with the inquiry report and the report was silent on any



opportunity extended to him for cross examination and the same fact was admitted by the learned Assistant Advocate General also.

7. In view of the above discussion the appeal in hand is allowed as prayed for and the appellant is reinstated in service w.e.f 06.01.2021 with all back benefits. The period for which he remained out of service is to be treated as leave of the kind due. Parties are left to bear their own costs. Consign

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of September, 2022.*


(ROZINA REHMAN)
Member (J)


(FAREEHA PAUL)
Member (E)

Service Appeal No. 2766/2021

Mr. Taimoor Ali Khan, Advocate for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 04 pages, we have arrived at a conclusion that the appellant while investigating in FIR No. 423 dated 03.09.2020 was charged by complainant in that FIR for taking illegal gratification of Rupees sixty-five to seventy thousand and one mobile set worth rupees twenty thousand. An inquiry was conducted in the matter and he was dismissed from service. Inquiry report annexed with the reply of the respondents presents a strange picture when the Inquiry Officer himself states in his observation that there is a "strong probability" that the accused (appellant) had taken cash in installments. We are of the opinion that the Inquiry Officer should have based his observations on facts supported by documentary evidence and not on "probability". Further in his recommendations the Inquiry Officer states that statements and other facts create a "reasonable presumption" regarding receiving of illegal gratification. Here again we feel that the inquiry officer should have based his inquiry on facts and not "presumptions". It was further noted that no written statement of the appellant (accused in the inquiry proceedings) was available with the inquiry report and the report was silent on any opportunity extended to him for cross examination and the same fact was admitted by the learned Assistant Advocate General also. In view of the above discussion the appeal in hand is allowed as prayed for and the appellant is reinstated in service w.e.f 06.01.2021 with all back benefits. The period for which he remained out of service is to be treated as leave of the kind due. Parties are left to bear their own costs. Consign

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of September, 2022.*


(ROZINA REHMAN)
Member (J)


(FAREEHA PAUL)
Member (E)

2002 P L C (S.C.) 503

[Punjab Service Tribunal]

Before Ch. Muhammad Sarwar, Member

MUHAMMAD SHARIF MEWATI, EX-JUNIOR CLERK, DEPUTY COMMISSIONER'S OFFICE, LAHORE

versus

DEPUTY COMMISSIONER, LAHORE and another

Appeal No. 334 of 2000, decided on 30th November, 2000.

(a) Punjab Civil Servants (Efficiency and Discipline) Rules, 1975---

---Rr. 4 & 5---Punjab Service Tribunals Act (IX of 1974), S.4---Dismissal from service---Civil servant was dismissed from service on charge of making bogus document in record by removing original document---Civil servant was exonerated in the first enquiry as charges against him were not proved, but in de novo inquiry held by complainant himself, civil servant was found guilty of the charges---De rivo inquiry was held against the civil servant ex parte without recording any evidence and civil servant was not heard in person---Validity---Duty of Inquiry Officer, in case of ex parte proceedings, ' was to record the statements of witnesses and place the documentary evidence on record and to base his findings on such oral or documentary evidence which he failed to do---Facts had to be proved and not presumed particularly for awarding major penalty of dismissal from service---Case against civil servant being of no evidence, he could not be dismissed from service on finding of Inquiry Officer who was interested and prejudiced being himself a complainant.

1992 PLC (C.S.) 341 ref.

(b) Punjab Civil Servants (Efficiency and Discipline) Rules, 1975---

---Rr. 5 & 7---Departmental proceedings---Police investigation and proceedings under Punjab Civil Servants (Efficiency and Discipline) Rules, 1975 were quite different and had no bearing on each other.

Ch. Imtiaz Mahmood for Appellant.

Muhammad Ashiq Bhatti, District Attorney for Respondents

Date of hearing: 1st November, 2000

JUDGMENT

Appeal under section 4 of Punjab Service Tribunals Act, 1974 against order dated 10-7-1998 vide which the appellant was awarded the major penalty of dismissal from service.

Briefly stated the facts leading to the appeal are that on 29-8-1996, Maj. Azmat Gulraiz son of Mirza Mahboob Alain resident of 33-Defence Lahore Cantt. presented certified copy of sale-deed

*For appellant
Zaid Khan.*

No. 11513 dated 16-9-1990, before Mr. Tariq Mahmood, Sub Registrar, Lahore for verification as to, its correctness or otherwise. The said copy was issued by Muhammad Sharif Mewati, I.C. on 22-8-1996, who was working as record keeper in the Registration Branch, Lahore Cantt. During the course of comparison with the record, it transpired that the said document was not only undervalued but signatures of Muhammad Khalid Zauq then Sub-Registrar dated 16-9-1990 were also forged, Proceedings under Punjab Civil Servants (E&D) Rules 1975 were taken and the appellant was charge sheeted as under:--

"that while he was posted as Record-keeper in Registration Branch, Cantt, he made a bogus document No.11513, Vol No.3539 dated 16-9-1990 in the record by removing original document."

The Inquiry Officer in his findings dated 22-4-1998 held that the charge was proved. On the recommendations of the Authorised Officer, Deputy Commissioner/Authority vide impugned order dated 10-7-1998 awarded the major penalty of dismissal from service. His departmental appeal/representation was rejected on 22-9-1999. Hence this appeal.

I have heard the learned Counsel for the appellant, Departmental Representative and District Attorney and have perused the record and written objections submitted by the respondents.

Learned counsel for the appellant argued that in the first inquiry conducted by Muhammad Rustom Bhatti, Magistrate First Class Lahore, charges against the appellant were not proved. The Authorised Officer in his first recommendations dated 12-4-1997 recommended for the exoneration of the appellant. The case F.I.R. No.443 of 1996 under sections 420, 468, 471, 409, P.P.C. and section 82 of Registration Act was got registered at Police Station Lahore Cantt. against the appellant but during investigation the appellant was found innocent and the Police recommended for the discharge to the appellant. De novo inquiry was ordered and Muhammad Khalid Zauq who was complainant in this case was appointed Inquiry Officer. Muhammad Khalid Zauq proceeded ex parte and without recording any evidence gave his findings that the charge was proved. The appellant was not heard in person by the Authorized Officer/Authority and 2nd show-cause notice alongwith findings of the inquiry was not served upon the appellant.

The perusal of the impugned order dated 10-7-1998 and objections to the Memorandum of Appeal submitted by the respondents reveals that the appellant was given 44 opportunities including written notice for participating in de novo inquiry. He was also summoned for personal hearing by the Authority but he did not turn up.

Reasonable opportunity was afforded to the appellant to participate in the de novo inquiry, but he failed to participate for the reasons best known to him. He should thus; condemn himself for not participating in the proceedings.

As for as the de novo inquiry is concerned the findings dated 22-4-1998 of Muhammad Khalid Zauq, Inquiry Officer reveals that neither any witness was examined nor any document was placed on record before giving the findings. The appellant was held guilty of forging the document No. 11513 Volume No.3539 dated 16-9-1990 and placing in the record by removing original documents. There was no evidence that the document was forged by the appellant. The handwriting of the appellant and the forged document was not got verified from any expert to prove that the forged document was written by the appellant.

The perusal of findings of the first inquiry conducted by Muhammad Rustom Bhatti, Magistrate First Class, Lahore reveals that the material witnesses formally Talib Hussain, Stamp Vendor and Haji Akbar Ali, Tanvir Ahmad Waseqa Navees deposed nothing against the appellant. According to

the affidavit of Major Azmat Gulraiz husband of Mst. Zohora Gulzar (Vendee) Major Azmat Gulraiz handed over all the documents and cost of stamp paper to Mr. Zahur Ahmad, Advocate who arranged for the preparation of sale-deed and its registration. In 1996 he visited the office of Patwari Halqa for the Mutation on the basis of sale-deed. Patwari halqa told him that the document was suspicious and it could not be accepted for mutation. Later on he got a fresh sale-deed registered and the mutation was sanctioned on the basis of second sale-deed.

The witnesses. thus deposed nothing against the appellant and Muhammad Rustam Bhatti in his inquiry findings dated 28-3-1997 remarked that the forged document was prepared in 1990 when the official was not posted in D.C. Office Lahore where the forgery occurred. The charge was not proved according to his findings. The de novo inquiry was ordered and Mr. Muhammad Khalid Zauq who registered the alleged forged deed was appointed as Inquiry Officer. He was complainant in this case and was thus interested person.

The appellate authority in the order dated 20-9-1999 has observed that the contention of the appellant that he had been found innocent by the Police case F.I.R. No.443 of 1996, under sections 420/468/678/409, P.P.C. and section 82 of Registration Act which was registered against the appellant on similar allegation is not tenable because Police investigation and proceedings under Punjab Civil Servants (E&D) Rules, 1975 are quite different and have no bearing on each other. De novo inquiry was conducted by Mr. Khalid Zauq who registered the alleged forged documents. He proceeded ex parte but did not record the statement of any witness nor placed on record any documents. His findings are not based on any evidence. Being interested and prejudice as complaint, he hold the appellant guilty of the charge. The Authorised Officer made the following endorsement:--

"Agree with the findings of Enquiry Officer. The accused official has been declared guilty. May impose major penalty. "

He thus failed to apply his independent mind. Neither the authority nor the appellate authority realized that it is a case of no evidence and the Inquiry Officer has not based his finding on any oral or written evidence. Facts are to be proved and not presumed particularly for awarding the major penalty. Zahoor Ahmad, Advocate expired before the inquiry proceedings. The complainant Major Azmat Gulraiz deposed nothing against the appellant. Talib Hussain, Stamp Vendor, Haji Akbar Ali, Tanvir Ahmad, Waseeqa Navees resiled from their evidence and deposed nothing against the appellant in the first inquiry conducted by Muhammad Rustam Bhatti. According to the report of Investigating Officer there was no proof against the appellant because the witnesses Ch. Talib Hussain, Stamp Vendor and Haji Akbar Ali did not depose against the appellant before the Police. No witnesses were examined during the de novo inquiry conducted by Mr. Khalid Zauq on the grounds that the appellant failed to attend the proceedings. Even in case of ex parte proceeding it was the duty of the Inquiry Officer to record the statement of the witnesses and place the documentary evidence on record and bases his findings on such oral or documentary evidence. Reliance is placed at 1992 PLC (C.S.) 341.

In the light of above discussion, Inquiry Officer has absolutely no basis for the findings recorded by him in his report dated 22-4-1998. I, therefore, accept the appeal, set aside the impugned orders dated 10-7-1998 and 22-9-1919. The appellant is reinstated in service. The intervening period shall be treated as the leave of the kind due to the appellant. There will be no order as to the costs.

H.B.T./35/P.S.T.??????????

Appeal accepted.

1991 S C M R 244

Present: Muhammad Afzal Zullah, CJ. and Abdul Qadeer Chaudhry, J

ABDUL REHMAN--Appellant

versus

THE STATE--Respondent

Criminal Appeal No.53 of 1986, decided on 9th June, 1990.

(Against the judgment and order dated 30-9-1984 of the Lahore High Court, Lahore, in Criminal Appeal No.265 of 1981).

(a) Penal Code (XLV of 1860)---

---S.406--Appreciation of evidence--Leave to appeal was granted to consider the contention that seven persons who were originally co-accused in the case having been produced by prosecution to support its case were probably persuaded to support prosecution case in order to get themselves exonerated--Statement of co-accused could not be used against the accused as he had not implicated himself and shifted the burden on to the accused--Prosecution, held, had not been able to prove entrustment of goods to accused beyond all reasonable doubt and he, therefore, could not be convicted for misappropriation of goods--Accused was acquitted in circumstances.

(b) Penal Code (XLV of 1860)---

---S.406--Appreciation of evidence--Unless the entrustment is proved, the question of misappropriation does not arise.

(c) Penal Code (XLV of 1860)--

---S.406--Appreciation of evidence--An accused cannot be convicted on presumptions--Prosecution has to prove the guilt of an accused beyond all reasonable doubt.

M.Dilawar Mahmood, Senior Advocate Supreme Court and Mahmood A. Qureshi, Advocate-on-Record (absent) for Appellant.

Raja Abdul Ghafoor, Advocate supreme Court and Rao M.Yousuf, Advocate-on-Record for the State.

Date of hearing: 13th May, 1990.

JUDGMENT

ABDUL QADEER CHAUDHRY, J.---Leave to appeal was granted to the appellant to consider his contention that seven persons who were originally co-accused in the case having been produced by the prosecution in support of its case, they were probably persuaded to support the prosecution case in order to get themselves exonerated.

2. The facts, in brief, are that the appellant alongwith co-accused Abdul Aziz and seven others were

For appellant
Zaid Khan.

sent up for trial under sections 406 etc. read with section 5(2) of the Prevention of Corruption Act, 1947. During the trial, the seven co-accused were acquitted under section 249-A. Cr.P.C. and the trial continued against the appellant and Abdul Aziz who is since dead. According to the prosecution case, Abdul Aziz, Security Officer, of the Government Printing Press, Lahore, received in five instalments stereo-plates. The appellant was posted as Store Keeper of the Press at that time. The aforesaid Abdul Aziz delivered certain quantity of lead of stereo-plates to the appellant. The allegation of the prosecution was that there was shortage of 3,442 lbs. The trial Court while considering the case against the appellant observed in para. 8(2) as hereunder:-

"Abdul Aziz accused brought the stereo-plates from time to time and placed the same in the store under the supervision of Abdul Rehman accused and handed over the invoices to him. He allowed the stereo plates to be placed in the store and received the invoices without getting the stereo-plates weighed on each day, which in itself speaks of his bona fides. The first consignment was received on 10-3-1976 and the last consignment was received on 14-4-1976. He handed over the stereo-plates weighing 11,879 lbs. in all to Muhammad Jamil PW and obtained receipt for 11,954 lbs. from Muhammad Nazir PW. Stereo Foreman, on 22-4-1976. Although Abdul Aziz accused did not obtain his signatures on the disputed invoices as acknowledgment of receipt of the stereo-plates yet he cannot escape from the responsibility of the shortage. He had dominion over the property in question which remained in his physical possession for a considerable time. In the absence of any satisfactory explanation to the contrary, it will be presumed that the stereo-plates were misappropriated by him. He is, therefore, guilty of offence of criminal breach of trust."

The learned High Court while rejecting the appeal of the appellant has stated as follows:-

"I have considered the arguments advanced by the learned counsel for the parties with care. I find that from the oral as well as documentary evidence produced by the prosecution as detailed above, the offence of criminal misappropriation/criminal breach of trust of 3,448 lbs. of lead metal stands proved against the appellants. The prosecution witnesses have no enmity against the appellants. They have stood the test of cross-examination. I do not see any inherent infirmity in their statements. The plea taken by Abdul Rehman appellant that unmounted lead which was entrusted to him was got unmounted before reweighment, appears to be afterthought, inasmuch as, in his reports of shortage of Exs.PA. & P.B., he did not state so. Further, the weight statement report Ex.PM shows that the weight of different lot of stereo-plates had separately been mentioned. Thus, no room is left for doubt that mounted and unmounted plates were not weighed jointly and that wooden planks were not removed from lead before reweighment. It is worth notice that Ex.PM was prepared by DW.2. The defence evidence in support of an afterthought plea of Abdul Rehman cannot be believed. From the circumstances, it is very much clear that Abdul Aziz was equally responsible for the commission of crime, so much so, he did not care to obtain receipt of lead plates from Abdul Rehman appellant after its transportation from the Forms Press to Government Printing Press. The defence evidence produced by the appellants is not strong enough to rebut the prosecution case and its evidence. For all these reasons, I am convinced that the trial Court has rightly convicted the appellants."

3. The appellant was convicted on the statements of PWs 2 and 5. According to PW(5), he had submitted weighment report (Ex.PG) and a comparative statement (Ex.PG/1) after the weighment was made in the presence of Muhammad Bashir, Reader, and Abdul Aziz, accused. He admitted that weighment was not made in accordance with invoices. At that time lead was not available in the store but it was lying in the stereo section. The statement of this witness only indicates that there was some shortage of lead but nowhere this witness has stated that the appellant was responsible for shortage or that the goods had been entrusted to him. PW(2) Muhammad Siddique in his deposition has stated that after making weighment, the lead was delivered to the appellant Abdur

Rehman. He was confronted with his previous statement recorded by the police under section 161, Cr.P.C. wherein he has not stated that the goods were delivered to the appellant. He also admitted that it did not come to his knowledge that there was shortage. This witness has further admitted that the signatures of the appellant were not obtained at the time of delivery. This witness has admitted that he was Caretaker under the accused Abdul Aziz, Security Officer. He has tried to save Abdul Aziz and placed the burden on the appellant but in his earlier statement to the police, he had not implicated the present appellant.

4. Another circumstance against the appellant is that he had reported to the higher authorities about the shortage. But this itself would not prove that the appellant had misappropriated the lead. Certain circumstances were not considered by the Courts. According to PW(5) Abdul Rashid Javed, there was shortage of 3.072 lbs. (Ex.PG/1). The matter was referred to the Manager, Forms Press from where the stereo-plates were transferred to the Printing Press. He submitted his report (Ex.PS). According to this document, while weighing the material at the Government Press, they have ignored to deduct 25% rebate for wood used in the block made from the total weight of the material supplied through various invoices. It has been contended by the learned counsel that if the concession of 25% is given there was no shortage. This fact is supported by PW(1) Muhammad Jamil who had stated that the lead when weighed without wood was about 11,000 lbs. In fact, he had received 11,503 lbs. of lead vide Ex.PA/2. Ashiq Hussain DW.2 received the report (Ex.PH) given by the appellant and he was one of the accused in this case but was acquitted under section 249-A, Cr.P.C. This witness stated that the lead was weighed in his presence and there was no shortage. Even if we ignore the statement of this witness, there is no positive evidence against the appellant that the goods were entrusted to him. Unless the entrustment is proved, the question of misappropriation does not arise. The inferences drawn by the Courts below are unwarranted. The learned Special Judge in Para. 8(2) of his judgment observed that Abdul Aziz placed the goods in the store under the supervision of Abdur Rehman accused and handed over the invoices to him. There is no evidence that invoices were handed over to the appellant. This observation is perhaps made on the statement of PW(2) but as stated above, the statement of PW.2 cannot be used against the appellant for the reasons stated above. The entrustment has not been proved. The trial Court in the same para. further observed that although Abdul Aziz accused did not obtain his signature on the disputed invoices as acknowledgment of receipt of the stereo-plates yet he cannot escape from the responsibility of the shortage. This was only a presumption and an accused cannot be convicted on presumptions. The prosecution has to prove the guilt of an accused beyond all reasonable doubt. Abdul Aziz accused in his statement under section 342, Cr.P.C. has stated that he had delivered the goods to the appellant but the statement of the accused Abdul Aziz cannot be used against the appellant as he has not implicated himself and shifted the burden on to the appellant. PW(8) Muhammad Nazeer was also Caretaker at the relevant time. He has stated that the goods were brought by Abdul Aziz but he has not deposed that the goods were entrusted to the present appellant. He has also admitted that the lead was not weighed therefore PW(2) is contradicted by PW(8).

5. It was observed against Abdul Aziz that "the evidence of Siddiq Ahmad PW(10) coupled with the acknowledgments PF/A, PF/2A and PF/3A on the invoices and the reports Ex.DC of Abdul Aziz accused and his admission in his statement under section 342, Cr.P.C. with regard to receipt of the stereo-plates on the disputed invoices leaves no doubt that the stereo-plates in question were received by Abdul Aziz accused from Siddiq Ahmad PW. It was his duty to discharge the trust in accordance with law and deliver the material to Abdur Rehman accused under proper receipt. He intentionally omitted to obtain the receipts from Abdur Rehman while placing the stereo-plates in the store and handing over the disputed invoices to him. He thus failed to discharge the trust and wilfully offered to misappropriate the stereo-plates. In the circumstances, he is also guilty of the offence of criminal breach of trust". Thus, the learned Judge came to the conclusion that Abdul Aziz

had received the goods.

6. From the above observation, it is clear that no evidence of entrustment to Abdul Rehman has been established. The High Court has observed that "the plea taken by Abdul Rehman appellant that unmounted lead which was entrusted to him was got unmounted before reweighment appears to be an after thought inasmuch as that in his reports of shortage Exs.PA. and P.B. he did not state so is not based on any material on record". The appellant has not admitted that the lead was entrusted to him. As such no inference prejudicial to the case of the appellant could be drawn in the circumstances of the case.

7. In view of the above discussion, it is quite clear that the prosecution has not been able to prove the entrustment of goods to the appellant beyond all reasonable doubt. Therefore, the appellant could not be convicted for misappropriation of goods even if we ignore the report of the Manager, Forms Press, which shows that there was no shortage.

8. In the result, this appeal is allowed and the conviction and sentence of the appellant are set aside. If he is in custody, he shall be released forthwith if not required in any other case.

N.H.Q./A-793/S

Appeal allowed.

For appellant
Ziad Khan

2009 S C M R 329

[Supreme Court of Pakistan]

Present: Sabihuddin Ahmed and Sarmad Jalal Osmany, JJ

CHIEF ELECTION COMMISSIONER OF PAKISTAN and others----Petitioners

Versus

Miss NASREEN PERVEZ----Respondent

Civil Petition No.748 of 2008, decided on 4th December, 2008.

(On appeal against the judgment, dated 8-5-2008 passed by Federal Service Tribunal, Karachi in Appeal No.92(K)(C.S.) of 2006).

(a) Removal from Service (Special Powers) Ordinance (XVII of 2000)---

----Ss. 3 & 5(4)---Dismissal from service---Procedure---Before imposing such penalty, regular inquiry must be held to determine factual basis of allegations required to be proved in accordance with law---When allegations required explicit proof, then holding of inquiry could not be dispensed with---Principles.

(b) Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---Ss. 35(4) & 10---Service Tribunals Act (LXX of 1973), S.3---Civil Servants Act (LXXI of 1973), S.2(b)---Election Commission of Pakistan Rules, 1989 (S.R.O.128(I)/89, dated 5-2-1989), Rr.5, 10 & 12---Constitution of Pakistan (1973), Ars.199 & 221---Constitutional petition before High Court---Employee of Election Commission of Pakistan---Compulsory retirement from service---Charge of misconduct---Imposition of such penalty after finding petitioner's reply to show-cause notice as unsatisfactory without holding regular inquiry---Validity---Before imposing such penalty, regular inquiry must have been held to determine factual basis of such allegations, which were required to be proved in accordance with law---When allegations required explicit proof, then holding of inquiry could not be dispensed with---Election Commission was performing functions in connection with affairs of Federation--Chief Election Commissioner in exercise of powers under Art.221 of the Constitution and with approval of the President had framed rules relating to terms and conditions of employment in Commission notified as S.R.O.128(I)/89, dated 5-2-1989---Petitioner would be considered a civil servant as his terms and conditions of service were determinable by Federal Legislature under Art.221 of the Constitution and governed by statutory rules--Allegations levelled in show-cause notice did not constitute "misconduct" as defined in Removal from Service (Special Powers) Ordinance, 2000---Impugned order was set aside and petitioner was reinstated in service with all back-benefits.

Muhammad Mubin-ul-Islam v. Federation of Pakistan PLD 2006 SC 603 rel.

Aamir Raza Naqvi, D.A.-G and A.S.K. Ghorri, Advocate-on-Record for Petitioners.

Respondent in person.

ORDER

SABIHUDDIN AHMED, J.---Briefly stated the facts of the matter are that the respondent was serving as Deputy Secretary in the office of Provincial Election Commission, Sindh Karachi. She was served with a show-cause notice, dated 11-2-2006 containing a number of charges relating to her misconduct committed during the course of her service. She replied to the show-cause notice but the same not being found satisfactory, the major penalty of compulsory retirement was imposed upon her. Her departmental representation against such penalty was dismissed whereupon the respondent approached the learned Federal Service Tribunal, Karachi in appeal which was allowed and she was reinstated in service. The Department has chosen to challenge the decision of the learned Tribunal via this petition.

2. At the very outset we have inquired from Mr. Aamir Raza Naqvi, learned D.A.-G. as to whether any regular enquiry was conducted in the matter since a major penalty was imposed upon the respondent. The learned D.A.-G. has frankly conceded that no such enquiry has been carried out in the respondent's case.

3. It is settled law that when a major penalty is to be imposed on a civil servant a regular enquiry is to be held to determine the factual basis of the allegations which are required to be proved in accordance with the law. Moreover, the Removal from Service (Special Powers) Ordinance, 2000 (whereunder the imposed action appears to have been taken) explicitly ordains a regular enquiry before taking action under section 3 which can in the relevant context only be dispensed with under section 5(4) in the event of sufficient documentary evidence being available against the civil servant or for reasons to be recorded in writing showing satisfaction of the competent authority as to absence of need for holding an enquiry. Evidently most of the allegations required explicit proof and no reasons for dispensing with the requirement of an enquiry appear to have been recorded.

4. However, it was contended on behalf of the petitioner that the respondent was not a civil servant and could not invoke the jurisdiction of the Federal Service Tribunal. In this context, it was urged that section 3 of the Service Tribunal Act only enables a civil servant within the meaning of such expression under the Civil Servants Act and section 2(b) of the Civil Servants Act only a person holding a civil post in connection of the affairs of the Federation or a member of an all Pakistan Service can be treated as a civil servant. Moreover, under Article 212 of the Constitution the Service Tribunal could only exercise jurisdiction in respect of a person in the service of Pakistan, which in terms of Article 260 has been defined "a service post or office in connection with the affairs of the Federation or Province". Reliance was placed on the autonomous status of the Election Commission under the Constitution and the pronouncement of a nine member Bench of this Court in the case of Muhammad Mubin-ul-Islam v. Federation of Pakistan reported PLD 2006 SC 603 wherein it was held that employees of autonomous corporations established by the Government were not civil servants and their employees could not approach the Service Tribunal for redress of grievances pertaining to the terms and conditions of employment.

5. We have carefully considered the aforesaid judgment but found that it does not help the petitioner in any manner. Indeed, their Lordships did hold that employees of certain statutory bodies and a number of corporate bodies owned or controlled by the Federal Government were not civil servants and could not be treated as such through a legal fiction introduced by section 2-A of the Service Tribunals Act. Nevertheless while recording their conclusions in para.108, their Lordships declared the aforesaid section 2-A only partially invalid drawing a clear distinction between those whose terms of service were governed by or under authority of the Federal Legislature and other (whose terms might be regulated by internal regulations of Corporations) holding that only those falling in

the latter category could not be amenable to the jurisdiction of Service Tribunals. Obviously the respondent whose terms and conditions were determinable by the Federal Legislature under Article 221 of the Constitution and was governed by statutory rules had to be considered a civil servant in terms of the aforesaid judgment. Moreover, what needs to be seen is whether the Election Commission was performing functions in connection with the affairs of the Federation. No doubt the Constitution itself confers a certain amount of autonomy to the Election Commission in view of the sensitive nature of its function so as to insulate it from the influence of the executive Government but there could be no doubt that it is only performing essential functions of the State and not any commercial or industrial activity having nothing to do with the affairs of the State.

6. Conduct of elections is one of the important functions of the State and the Parliament is exclusively responsible for election laws in relation thereto in terms of item 41 of the Federal Legislative List. Article 221 stipulates that until provided by law enacted by the Parliament the Chief Election Commissioner may with the approval of the President frame rules relating to terms and conditions of employment in the Election Commission. Such rules were framed and notified in terms of S.R.O.128(I)/89, dated 5-2-1989. Rule 5 provides inter alia that appointment of persons in connection with the affairs of the Federation to be appointed in the Election Commission by order of the Chief Election Commissioner and Rule 12 stipulates that in all matters not covered by these Rules such employees would be governed by the Government Servants (Efficiency and Discipline) Rules and the Conduct Rules applicable to employees of the Federal Government. Rule 10 requires that rule pertaining to comparable post in the Federal Government will regulate the terms and conditions of officers and servants of the Commission except that powers exercisable by the President in connection with rules applicable to civil servants will be exercisable by the Chief Election Commissioner. In the aforesaid circumstances, it is impossible to accept the contention that the respondent was not performing functions in connection with the affairs of the Federation.

7. We are conscious of certain judgments of this Court pertaining to employees of superior Courts i.e. Government of the Punjab through Secretary, Finance Department, Lahore v. Mubarak Ali Khan and 8 others PLD 1993 SC 375 and Registrar, Supreme Court of Pakistan, Islamabad v. Qazi Wali Muhammad 1997 SCMR 141 wherein it was held that Court employees were not civil servants and amenable to the jurisdiction of Service Tribunals. It is evident that their Lordships held so on the basis of Article 208 of the Constitution holding that the Parliament had no role in regulating the terms and conditions of service of such employees. The principle laid down in the above judgments cannot be applied to the instant case because of Article 221, like Article 240, expressly enables the Parliament to regulate the terms and conditions of employees of the Election Commission. The contention that the respondent was not a civil servant must, therefore, be repelled.

8. We have also noticed that some of the allegations contained in the show-case notice do not even prima facie constitute misconduct as defined in the Ordinance. Accordingly we would decline leave to appeal, dismiss this petition and direct that the respondent be reinstated forthwith with all back-benefits. Nevertheless the petitioner will be free to issue a fresh charge-sheet upon legally permissible grounds and pass appropriate orders only after holding an enquiry and upon proof of the allegations in accordance with law.

S.A.K./C-1/SC

Leave refused.

2008 S C M R 1369

[Supreme Court of Pakistan]

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

NASEEB KHAN----Petitioner

Versus

DIVISIONAL SUPERINTENDENT, PAKISTAN RAILWAYS, LAHORE and another---
Respondents

Civil Petition for Leave to Appeal No.466 of 2008, decided on 26th May, 2008.

(On appeal from the judgment. dated 23-1-2008 passed by Federal Service Tribunal in Appeal No.397(R) of 2007).

Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---S. 5---Misconduct---Dismissal from service---Non-holding of departmental Enquiry---Violation of principles of natural justice---Effect---Held, in case of imposing a major penalty, the principles of natural justice required that a regular enquiry was to be conducted in the matter and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

Pakistan International Airlines Corporation v. Ms. Shaista Naheed 2004 SCMR 316 and Inspector-General of Police, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 2007 ref.

Abdul Rehman Siddiqui, Advocate Supreme Court with Arshad Ali Chaudhry, Advocate-on-Record for Petitioner.

Qamar Zaman, Clerk, Litigation Branch for Respondents.

Date of hearing: 26th May, 2008.

JUDGMENT

IJAZ-UL-HASSAN KHAN, J.--- Through instant petition under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, Naseeb Khan, petitioner, seeks leave against judgment, dated 23-1-2008 of learned Federal Service Tribunal, Islamabad, whereby appeal of the petitioner, challenging his dismissal from service, has been dismissed, in limine, being barred by time.

2. Precisely stated facts of the case as gathered from the record are, that petitioner joined service of respondent-Department as Junior Commercial Assistant Booking (BS-5) on 26-3-1998 and served as such for 14 years. On 10-11-2001 due to demise of his wife, petitioner proceeded on leave. Petitioner was on leave when his father expired on 31-12-2001. According to the petitioner on

*for appellant
Ijaz Khan*

26-5-2002, he reported back but he was not allowed to resume duty and was issued a show-cause notice along with statement of allegations for remaining absent from duty without prior permission. The petitioner preferred representation/appeal which was rejected vide order, dated 13-5-2006. Feeling aggrieved, petitioner filed appeal before the Federal Service Tribunal, Islamabad which has been dismissed in limine, as stated above vide judgment impugned herein.

3. Mr. Abdur Rehman Siddiqui, learned Advocate, appearing for the petitioner argued that learned Tribunal has overlooked the settled law regarding limitation against a void order while dismissing petitioner's appeal as time-barred particularly when petitioner's departmental representation was not rejected on the question of limitation and that major penalty of dismissal from service has been imposed upon the petitioner without holding regular inquiry into the matter and without affording opportunity of defence to the petitioner.

4. We find substance in the submissions of learned counsel for the petitioner. It has been contemplated under section 5 of the Removal from Service (Special Powers) Ordinance, 2000 that in case of charge of misconduct as stipulated in section 3 of the Ordinance, a full fledge enquiry is to be conducted in order to give an opportunity to the civil servant to clarify his position. Section 5 of the Ordinance is reproduced below for facility sake:---

"Power to appoint an Inquiry Officer or Inquiry Committee.---(1) Subject to the provisions of subsection (2), the competent authority shall, before passing an order under section 3, appoint an Inquiry Officer or Inquiry Committee to scrutinize the conduct of a person in Government service or a person in corporation service who is alleged to have committed any of the acts or omissions specified in section 3. The Inquiry officer or as the case may be, the Inquiry Committee shall---

(a) communicate to the accused the charges and statement of allegations specified in the order of inquiry passed by the competent authority;

(b) require the accused within seven days from the day the charge is communicated to him to put in written defence;

(c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him;

(d) and hear the case from day to day and no adjournment shall be given except for special reasons to be recorded in writing and intimated to the competent authority.

(2) Where the Inquiry Officer or as the case may be, the Inquiry Committee is satisfied that the accused is hampering, or attempting to hamper, the progress of the inquiry he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as he or it, deems proper in the interest of justice.

(3) The Inquiry Officer or as the case may be the Inquiry Committee shall submit his or its findings and recommendations to the competent authority within twenty-five days of the initiation of inquiry.

(4) The competent authority may dispense with the inquiry under subsection (1) if it is in possession of sufficient documentary evidence against the accused, or for reasons to be recorded in writing, it is satisfied that there is no need of holding an inquiry.

11/4/2022

Appellant present in person. Mr. Atta-ur-Rehman, Inspector alongwith Mr. Kabirullah Khattak, AAG for the respondents present and submitted written reply. To come up for arguments on 14/7/2022 before DB.



CHAIRMAN

14.07.2022

Appellant alongwith his counsel Mr. Taimur Ali Khan, Advocate, present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant submitted rejoinder, copy of which handed over to learned Deputy District Attorney. Adjourned. To come up for arguments on 12.09.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

17.08.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to full hearing, subject to all just and legal objections including that of limitation to be determined during the course 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 10.12.2021 before the D.B.

Appellant Deposited
Security & Process Fee

17/8/21


Chairman

10.12.2021

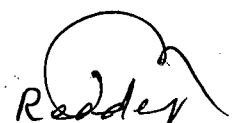
Appellant alongwith his counsel namely Mr. Taimur Ali Khan, Advocate, present and submitted fresh Wakalat Nama. The same is placed on file. Mr. Noor Zaman Khattak, District Attorney alongwith Mr. Kheyal Roz, Inspector (Legal) for the respondents present.

Written reply/comments on behalf of respondents not submitted. Representative of the department requested for further time for submission of written reply/comments. Request is acceded to. To come up for written reply/comments on 08.02.2022 before S.B.

8-2-2022

Due to retirement of the Honorable Chairman the case is adjourned to come up for the same as before on 11-4-2022


(Mian Muhammad)
Member (E)





Reddy

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 2766 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/02/2021	<p>The appeal of Mr. Ziad Khan presented today by Mr. Javed 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 12/2/2021</p>
2-	30.04.2021	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30/4/21</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Due to demise of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 17.08.2021 for the same as before.</p> <p style="text-align: right;"> Reader</p>

C کورٹ

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

Service Appeal No. 2766/2021

Ziad Khan Ex-Sub Inspector No. 536/MR r/o District Mardan

.....Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa and others

.....Respondents

INDEX

S. No.	Description of Documents	Annexure	Pages.
1.	Copy of Written Reply.	---	1-3
2.	Copy of Affidavit.	---	4
3.	Copy of FIR	"A"	5
4.	Copy of Charge Sheet, Enquiry & orders	B, C & D	6-14
5.	Copy of Authority Letter.	---	15

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

Service Appeal No. 2766/2021

Ziad Khan Ex-Sub Inspector No. 536/MR r/o District Mardan

.....Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa and others

.....Respondents

Para-wise comments by respondents:-

Respectfully Sheweth,

PRELIMINARY OBJECTIONS

1. That the appellant has not approached this Hon'ble Tribunal with clean hands.
2. That the appellant has concealed the actual facts from this Hon'ble Tribunal.
3. That the appellant has got no cause of action and locus standi to file the instant appeal.
4. That the appellant is estopped by his own conduct to file the instant Service Appeal.
5. That the appeal is unjustifiable, baseless, false, flawless and vexatious and the same is liable to be dismissed with special compensatory cost in favour of respondents.
6. That the appeal is bad for miss joinder and non joinder of necessary and proper parties.
7. That the appeal is barred by law and limitation.

REPLY ON FACTS

1. Correct to the extent that the appellant while posted as Officer Incharge Investigation Police Station Toru Mardan was proceeded against departmentally on the allegations of taking illegal gratification to the tune of Rs. 65000/70,000/- alongwith one mobile set worth 20,000/- from the complainant of case vide FIR No. 423 dated 03.09.2020 u/s 302/34 PPC /15AA Police Station Toru (**Copy of FIR is annexed as "A"**).
2. Correct that in light of above allegations the appellant was issued charge sheet alongwith statement of allegations and enquiry was entrusted to the then ASP/SDPO Takht Bhai.
3. Correct to the extent proper departmental enquiry proceedings were initiated and enquiry was entrusted to the then SDPO Takht Bhai. During the course of enquiry the enquiry officer fulfilled all legal and codal formalities by extending right of defense to the appellant to produce evidence/grounds in his defense, but he failed. However, the Enquiry Officer recommended the appellant for awarding major punishment. Moreover, Final Show Cause Notice was also issued to the appellant.

4. Correct to the extent that after receipt of Final Show Cause Notice, the appellant submitted reply, which was paid due consideration.
5. Correct to the extent that after fulfillment of all legal and codal formalities when the allegations leveled against the appellant stand proved beyond any shadow of doubt the appellant was awarded appropriate punishment which does commensurate with the gravity of misconduct of appellant. As the appellant had not only obtained illegal gratification in the form of money and cell phone but at the same time he conducted the entire investigation of the case in a highly unprofessional manner. The father of the deceased child, who had been killed in a cold blooded manner during robbery incident, had been running from post to pillar to get justice **(Copy of charge sheet with statement allegations and enquiry proceedings with enquiry report are attached as annexure "B, C, & D" respectively).**
6. Correct to the extent that the appellant preferred departmental appeal to the respondent No. 02, which was decided on merit because he was provided full-fledged opportunity of defending himself but he bitterly failed to produce any cogent reason in his defense. Therefore, the same was rejected and filed being devoid of any merit.
7. Incorrect. Order passed by the respondents No. 02 & 03 are maintainable under the law/rules and appeal of the appellant is liable to be dismissed on the following grounds amongst the others.

REPLY ON GROUNDS:

1. Incorrect. Orders passed by the respondents are correct and lawful based on facts, hence, liable to be maintained.
2. Incorrect. Stance taken by the appellant is ill based, because the appellant being Investigation Officer of case FIR No. 423 dated 03.09.2020 u/s 302/34 PPC, 15AA PS Toru took illegal gratification from Complainant and conducted the investigation in a highly unprofessional manner.
3. Incorrect. Stance taken by the appellant is totally devoid of merit rather he took illegal gratification in the form of money and cell phone but at the same time he conducted the entire investigation of the of the case in a highly unprofessional manner. The father of the deceased child, who had been killed in a cold blooded manner during robbery incident, had been running from post to pillar to get justice.
4. Incorrect. Plea taken by the appellant is not plausible because awarding commendation certificate does not exonerate any police officer from his future wrong deeds.
5. Incorrect hence, denied.
6. Incorrect. Plea taken by the appellant is baseless, because after issuance of charge sheet with statement of allegations, proper departmental enquiry proceedings were initiated and enquiry was entrusted to Muhammad Qais, the then SDPO Takht Bhai Mardan. During the course of enquiry the

enquiry officer fulfilled all legal and codal formalities by extending right of defense to the appellant to produce evidence/grounds in his defense, but he failed. However, the Enquiry Officer recommended the appellant for awarding major punishment. After the conclusion of enquiry proceedings the appellant was also issued Final Show Cause Notice to which his reply was received and the same was paid due consideration but found unsatisfactory. Besides, the appellant was summoned & heard in Orderly Room on 06.01.2021, but this time too he failed to justify his innocence, therefore he was awarded major punishment of dismissal from service, which does commensurate with the gravity of misconduct of appellant.

7. Incorrect. Para already explained in the preceding para, hence, no comments.
8. Incorrect. Para explained earlier needs no comments.
9. Incorrect. Plea taken by the appellant is not plausible rather devoid of any merit hence, liable to be set at naught.
10. Incorrect. Stance taken by the appellant is not plausible because every Police Officer/Official is under obligation to perform his duty regularly and with devotion. But appellant's performance was not satisfactory. Moreover, the perusal of service record of the appellant revealed that due to his lethargic attitude his entire service record is tainted with bad entries. Besides, the respondents also seek permission of this honorable tribunal to adduce additional grounds at the time of arguments.

PRAYER:-

Keeping in view the above stated facts and rules, it is most humbly prayed that the appeal of the appellant being baseless barred by law and limitation, may very kindly be dismissed with costs please.


**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar**
(Respondent No. 01)


**Regional Police Officer,
Mardan.**
(Respondent No. 02)


**District Police Officer,
Mardan.**
(Respondent No. 03)

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

Service Appeal No. 2766/2021

Ziad Khan Ex-Sub Inspector No. 536/MR r/o District Mardan

.....Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa and others

.....Respondents


COUNTER AFFIDAVIT.

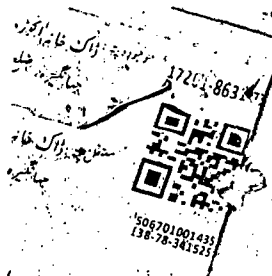
We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.


**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar**
(Respondent No. 01)


**Regional Police Officer,
Mardan.**
(Respondent No. 02)


**District Police Officer,
Mardan.**
(Respondent No. 03)

Identify by

11/4/22



15

بخدمت جناب ڈی آئی جی صاحب مردان ریجن

SP Inv Mardana
For comment

سرکار بنام ۱۔ کاشف ولد سرد شاہ
۲۔ واجد ولد قدیر ساکنان ضلع نوشہرہ

بمقدمہ علت 423 مورخہ 3.9.2020 جرم PPC 302-34/15AA تھانہ طورو۔ ضلع مردان

درخواست بمراد داری و حصول انصاف
بدین مراد کے تفتیشی افسر ضیاد خان Oii تھانہ طورو ضلع مردان سے رقم وصول شدہ واپس دلانے
اور ملزم کاشف علی سے وصول شدہ بھاری رقم کے متعلق غیر جانبدارانہ انکوائری کرنے
اور بذمہ رشوت جوہری اور محکمانہ فرانس منہی میں غفلت برتنا محکمانہ کارروائی کی جائے۔

D.I.G Office, Mardan.
Diary No. 2485/C-Cell
Dated: 1-12-2020

درخواست حسب ذیل عرض ہے۔

جناب عالی:

یہ کہ مقدمہ عنوان بالا مسائل مستغیث ہے۔

Insp Syed Jamil
CO HO

۱۔ یہ کہ وقوعہ ہذا میں مسائل کا حقیقی بیٹا حضرتان علی شاہ ہجر 16/17 سال جو کہ دینی مدرسہ کا طالب علم تھا
نہایت بے دردی سے تیز رفتار رشک چھیننے کی خاطر قتل کیا گیا ہے۔

For enquiry and report

۲۔ (مقدمہ ہذا کے متعلق آپ صاحبان کو برائے از سر نو تفتیش انکوائری اپیل اور درخواست دائر شدہ ہے)۔

۳۔ یہ کہ ضیاد خان Oii تھانہ طورو ضلع مردان نے بذریعہ چکوال رہائشی ملزم کاشف سے بھاری رقم
حاصل کی یہاں Oii نے تفتیش کے دوران ملزم کاشف علی کو کافی آسانی پیدا کر کے اور مکمل تعاون دیا گیا
ہے (رقم کی وصولی کا متاثرین جو تفتیش کی ناقص کارکردگی اور عدالت سے ضمانت ملزم کاشف علی کی
منظوری ہے)۔

SP Inv. Mardana
02:12:2020

۴۔ یہ کہ دوران تفتیش Oii نے من مستغیث سے مبلغ 65/70 ہزار روپے نقد اور ایک عدد موبائل فون
مالیتی 20 ہزار روپے وصول و حاصل کئے ہیں۔ جو کہ انصاف اور انسانییت کے تقاضوں کے منافی
ہے اور محکمہ پولیس کا بدنامی کا باعث ہے۔

استدعا ہے کہ منظوری درخواست ہذا من مستغیث کو انصاف دلانی جائے اور ملزم کاشف علی سے
وصول شدہ رقم کے متعلق انکوائری کرنے اور من مستغیث کو اپنا موبائل سیت مالیتی 20 ہزار روپے
اور نقد رقم مبلغ 65/70 ہزار روپے واپس دلانے اور بذمہ رشوت جوہری اور فرانس منہی غلط
استعمال کرنے برخلاف Oii ضیاد خان تھانہ طورو ضلع مردان محکمانہ کارروائی کرنے کا حکم صادر
فرمائی جائے۔

Handwritten signature and stamp.

نوٹ: FIR، مقدمہ تھانہ آکوڑہ خٹک، مراسلہ

اور حکم ضمانت ازان ملزم کاشف علی مجاریہ عدالت سیشن جج صاحب لف ہذا ہیں۔

تحریر: 28.11.2020

سائل مستغیث / آپ کے لئے دعا گو اختر علی شاہ ولد نذیر شاہ
سکنہ سوڑی پایاں آکوڑہ خٹک تحصیل و ضلع نوشہرہ

موبائل نمبر: 0333.9008396

نوشاد علی 0333.9127122

کاپی برائے اطلاعاتی

۱۔ وزیر اعظم اسلامی جمہوریہ پاکستان
۲۔ وزیر اعلیٰ صوبہ خیبر پختونخواہ پشاور
کمڈر لائنز





OFFICE OF THE
SUPERINTENDENT OF POLICE
INVESTIGATION MARDAN

Phone No. 0937-9230121

Fax No. 0937-9230321

No. 465 /PA/Inv/CS:

Dated 04 /Dec/2020.

DISCIPLINARY ACTION UNDER KPK POLICE RULE-1975.

I, Muhammad Avaz SP Investigation Mardan, as competent authority, am of the opinion that you SI Ziad Khan while posted as QII PS Toru rendered yourself to be proceeded against departmentally, as you committed the following misconduct/omissions within the meaning of Police Rules, 1975.

STATEMENT OF ALLEGATIONS:

Whereas you, SI Ziad Khan, while posted as OII PS Toru investigated case FIR No. 423 dated 03.09.2020 u/s 302/34 PPC, 15-AA PS Toru. As per complainant of the case, during investigation you took illegal gratification amounting 65/70 thousand cash and one mobile phone worth twenty thousand rupees from complainant, which shows your inefficiency, maliciousness and malafide intention in-discharge of your official duties.

For the purpose of scrutinizing the conduct of the said official with reference to the above allegations, Mr. Muhammad Qajs Khan ASP Takht Bhai is deputed as Enquiry Officer.

The Enquiry Officer shall conduct proceedings in accordance with the provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official and submit his findings within (07) days of the receipt of this order along with recommendations as to punish the defaulter official or otherwise.

(Muhammad Ayaz)
Superintendent of Police,
Investigation Mardan.

Copy of above is forwarded to the:-

1. Enquiry Officer for initiating proceedings against the alleged official SI Ziad Khan under Police Rule 1975.
2. SI Ziad Khan with the direction to appear before the enquiry office on date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

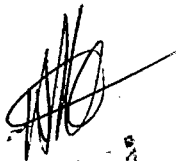
DSP Legal
Mardan

CHARGE SHEET UNDER KPK POLICE RULES 1975.

I, Muhammad Ayaz SP Investigation Mardan, as competent authority, hereby charge you SI Ziad Khan, while posted as OII PS Toru, as per attached statement of allegations.

1. By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.
2. You are, therefore, required to submit your written defense within 07 days of the receipt of this Charge Sheet to the Enquiry Officer.
3. Your written defense, if any, should reach the Enquiry Officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, ex-parte action shall follow against you.
4. You can come and appear before the undersigned to be heard in person.

(Muhammad Ayaz)
Superintendent of Police,
Investigation Mardan.


DSP Legal,
Mardan

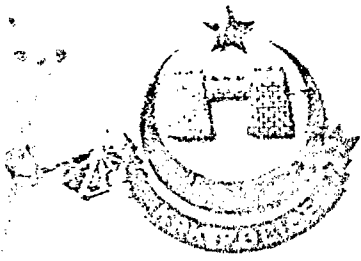
MEMORANDUM
FOR THE RECORD

[Handwritten signature]

NOV 15

[Handwritten initials]

1950



OFFICE OF THE
SUPERINTENDENT OF POLICE
INVESTIGATION MARDAN
Phone No. 0937-9230121
Fax No. 0937-9230321

No. 1195/PA/Inv:

Dated 28/Dec/2020.

FINAL SHOW CAUSE NOTICE

Whereas, you **SI Ziad Khan**, while posted as OII PS Toru investigated case FIR No. 423 dated 03.09.2020 u/s 302/34 PPC, 15-AA PS Toru. As per complainant of the case, during investigation you took illegal gratification amounting 65/70 thousand cash and one mobile phone worth twenty thousand rupees from complainant, which shows your inefficiency, maliciousness and malafide intention in-discharge of your official duties.

In this connection, during the course of departmental enquiry conducted by SDPO/Takht Bhai vide his office letter No.1541/St dated 22.12.2020, in pursuance of this office Disciplinary Action No.465/PA/Inv/CS dated 04.12.2020, recommended you for Major Punishment. The undersigned agreed with the Enquiry Officer.

Therefore, it is proposed to impose Major penalty including dismissal as envisaged under Rules 4 (b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence, I Muhammad Ayaz, SP Investigation, Mardan, in exercise of the powers vested in me under Rules 5 (3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you to Show Cause Finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach to this office within 07 days of receipt of this notice, failing which it will be presumed that you have no explanation to offer.

You are liberty to appear for personal hearing before the undersigned.

Superintendent of Police,
Investigation Mardan.



OFFICE OF THE
SUB-DIVISIONAL POLICE OFFICER,
TAKHT BHAI CIRCLE

Tel. & Fax: 0937552211, E-Mail: dsp.tbi@gmail.com

No. 1541 /ST, Dated: 22 /12/2020.

To,

THE SUPERINTENDENT OF POLICE,
INVESTIGATIONS, MARDAN.

Subject: DISCIPLINARY ACTION AGAINST SI ZIAD OII PS TORU

Memo:

Kindly refer to your office Diary No. 465/PA/Inv/CS: dated 04.12.2020.

ALLEGATIONS:

SI Ziad Khan, while posted as OII PS Toru investigated case FIR No. 423, dated 03.09.2020 u/s 302/34 PPC/15-AA PS Toru. As per complainant of the case, during investigation he took illegal gratification amounting 65/70 thousand cash and one mobile phone worth twenty thousand rupees from complainant, which shows his inefficiency, maliciousness and malafide intention in-discharge of his official duties. The competent authority designated undersigned as enquiry officer.

PROCEEDINGS:

The undersigned went through the enquiry file and available record and facts. Having gone through available documents, the undersigned called both the parties and heard them in person.

Hearing of complainant:

Complainant stood to his written statement/complaint. He categorically stated that OII Ziad Khan had periodically taken cash from him for different purposes, the total of which amounts to rupees 65 thousands approximately (Annex "A").

The complainant also alleged that he has given a new mobile to the OII on demand. Receipt of the mobile vendor has been annexed (Annex "B"). The complainant further stated that despite giving cash amount to OII, the desired results could not be obtained as the OII failed to connect the co-accused named Kashif due to which he managed to obtain bail after arrest.

Hearing of OII Ziad:

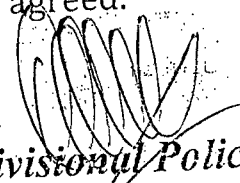
He denied the allegation leveled against him. The delinquent OII stated that the complainant gave some cash to a private informer to work for them privately for ascertaining motive of the accused. (Annex "C").

OBSERVATIONS:

Having gone through the case file especially the crime scene map and the bail order of the accused, the undersigned is reasonably of the belief that strong probability of having received the above mentioned cash in various installment exists. Besides it, the purchase slip/receipt of the mobile vendor also strengthens the above probability as the complainant was aggrieved and he had no personal grudge against the OII.

RECOMMENDATIONS:

The hearing of the parties and the oral statement of the complainant when coupled with other facts depicting state of mind, create a reasonable presumption regarding the receiving of above mentioned valuable things on part of OII and subsequently due to the failure of the OII for the time being, to dispel the above mentioned supposition against him makes him liable to guilty of unacceptable conduct and unprofessionalism for which major punishment could be awarded to the delinquent OII, if agreed.


Sub-Divisional Police Officer,
Takht Bhai

The officer was heard in OR
on 6.1.2021.

He was given opportunity to clarify
his position but in vain.

Keeping in view the findings of the
record, SI Ziad

EO is awarded major punishment of
dismissal from service.


6.1.2021



**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

Tel. No. 0937-9230109 & Fax No. 0937-9230111
Email: dpomdn@gmail.com

Si 536
MR

No. 44-47 /PA

Dated 07/01/2021

ORDER ON ENQUIRY OF SI ZIAD KHAN MR/536,

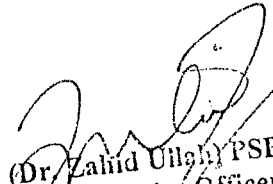
This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted as OII PS Toru, (Now under suspension Inv: Bureau Mardan), proceeded against departmentally through ASP Muhammad Qais Khan SDPO/Takht-Bhai by SP/Inv: Mardan vide his office Statement of Disciplinary Action/Charge Sheet No.465//PA/Inv/CS dated 04-12-2020, on account of taking illegal gratification of Rs. 65/70 thousand with one Mobile Phone of Rs. 20 thousand from complainant in a case vide FIR No.423 dated 03-09-2020 u/s 302/34 PPC, 15AA PS Toru, who (E.O) after fulfilling necessary process, submitted his Finding Report to SP/Inv: Mardan vide his office letter No.1541/ST dated 22-12-2020, recommending the alleged official for Major Punishment.

In this connection, he was served with a Final Show Cause Notice by SP/Inv: Mardan under K.P.K Police Rules-1975, issued vide his office No.495/PA/Inv: dated 28-12-2020, to which, his reply was received to SP/Inv: Mardan, who with enquiry papers sent the same to this office for awarding Major Punishment to the defaulter officer.

Final Order

SI Ziad Khan was heard in OR on 06-01-2021 & was given opportunity to clarify his position, but in vain, therefore, awarded him major punishment of dismissal from service with immediate effect, in exercise of the power vested in me under Police Rules-1975.

OB No. 71
Dated 16/01/2021


(Dr. Zahid Ullah) PSP
District Police Officer
Mardan

Copy forwarded for information & n/action to:-

- 1) The Regional Police Officer Mardan, please.
- 2) The SP/Inv: Mardan w/r to his office letter No.01/PA/Inv: dated 01-01-2021.
- 3) The P.C & E.C (Police Office) Mardan
- 4) The OSI (Police Office) Mardan with 4 Sheets.


DSP
Mard

ORDER

(2)

SI
264
536

This order will dispose-off the departmental appeal preferred by Ex-Sub Inspector Ziad Muhammad No. 536/MR of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded major punishment of dismissal from service vide OB: No. 31 dated 06.01.2021. The appellant was proceeded against departmentally on the allegations that he while posted as Officer Incharge Investigation Police Station Toru District Mardan was found involved in getting illegal gratification of Rs. 65,000/70,000 with one Mobile Phone worth Rs. 20,000.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Deputy Superintendent of Police, (SDPO) Takht Bhai, Mardan was nominated as Enquiry Officer. The Enquiry Officer, after fulfilling codal formalities submitted his findings to District Police Officer, Mardan, wherein he recommended the delinquent Officer for major punishment.

He was issued Final Show Cause Notice to which his reply was received and found unsatisfactory. He was also provided opportunity of self defense by summoning him in the Orderly Room by the District Police Officer, Mardan on 06.01.2021, but he failed to advance any cogent reasons in his defense. Hence, he was awarded major punishment of dismissal from service vide OB: No. 31 dated 06.01.2021.

Feeling aggrieved from the order of District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 27.01.2021.

From the perusal of the enquiry file and service record of the appellant, it has been found that not only did the appellant obtain illegal gratification in the form of money and a cell phone but at the same time he conducted the entire investigation in highly unprofessional manner. The father of the deceased child, who had been killed in a cold blooded manner during robbery incident, had been running from post to pillar to get justice. It is worth to add here that during the course of departmental enquiry, the allegations against the appellant have been proved beyond any shadow of doubt. Moreover, the appellant could not offer any cogent justification in his defense to warrant any interference in the order passed by the competent authority.

Keeping in view the above, I, Sher Akbar, PSP S.St Regional Police Officer, Mardan, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being devoid of merit.

Order Announced.

[Signature]
Regional Police Officer,
Mardan.

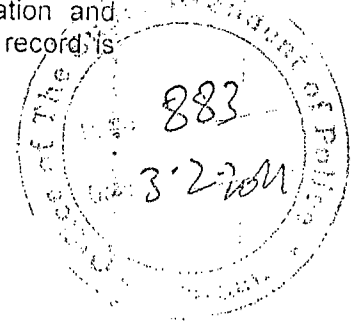
No. 559 /ES, Dated Mardan the 29-01- /2021.

Copy forwarded to District Police Officer, Mardan for information and necessary w/r to his office Memo: No. 30/LB dated 25.01.2021. His service record is returned herewith.

(*****)

DSP Legal / EC / OS
for action

[Signature]
DPO Mardan
01/2/21



**DSP Legal
Mardan**

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

Service Appeal No. 2766/2021

Ziad Khan Ex-Sub Inspector No. 536/MR r/o District Mardan

.....Appellant


VERSUS


Inspector General of Police, Khyber Pakhtunkhwa and others


.....Respondents

AUTHORITY LETTER.

Mr. Abdul Baseer Inspector Legal Branch, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar**
(Respondent No. 01)


**Regional Police Officer,
Mardan.**
(Respondent No. 02)


**District Police Officer,
Mardan.**
(Respondent No. 03)

BEFORE THE HONOURABLE CHAIRMAN SERVICE
TRIBUNAL COURT KPK PESHAWAR.

Service appeal NO. _____/

Ziad Khan Ex.Sub Inspector District Police, Mardan.
....APPELLANT.

VERSUS.

Inspector General of Police KPK Peshawar.etc.
...Respondents.

I N D E X.

S.NO.	Description of document.	Annexure.	Page Number.	
			From	To
1.	Memo of Appeal.	-	1	4
2.	Affidavit.	-	-	5
3.	Charge Sheet.	A	6	7
4.	Final Show-Cause-Notice.	B	-	8
5.	Reply to Show-Cause-Notice.	C	9	11
6.	Dismissal order by DIO, Mardan dated 6.1.2021	D	-	12
7.	Appeal to DIG, Mardan Dated 29.01.2021	E	13	15
8.	Rejection order of DIG Mardan.dated:29.01.2021	F	16	16
9.	Commendation Certificate.	G	-	17

Appellant

(ZIAD KHAN)

Ex.Sub Inspector Distt:
Mardan.

Through:

Advocate (QBAD)
District Courts,
Mardan
BC-10-4438
Distt: Kachheri Mardan

①

BEFORE THE CHAIRMAN HONOURABLE COURT SERVICE TRIBUNAL
KPK PESHAWAR,

Khyber Pakhtunkhwa
Service Tribunal

Service appeal NC. 2766 /2021

Diary No. 2720

Dated 12/7/2021

Ziad Khan Ex.Sub Inspector Police District, Mardan.

...Appellant.

Versus.

1. Inspector General of Police, KPK Peshawar.
2. Deputy Inspector General of Police Mardan Region-I, Mardan.
3. District Police Officer District, Mardan.

... Respondents).

Service appeal u/s 4 of Service tribunal Act 1974 ,Final
appellant order dated passed by Respondant 2 against the
order of Respondent NO. 3 dated 06.01.2021 vide which the
appellant was dismissed from Service, which is legally
against the fact and is to be declared null and void.

Prayer.

Filed to-day

On acceptance of this appeal order dated 06.01.2021

Registrar
12/2/2021

and order dated 29/01/2021 may kindly be set aside and the

appellant be reinstated in Service with all back benefits, Any and
other relief deem fit by honourable Court be graciously granted.

Respected Sheweth:-

The appellant submit as under:-

1. That the appellant while posted as officer investigation
incharge in Police Station Toru, District, Mardan, was
departmentally proceeded against on the allegations t

N/

...2...

during investigation of Case FIR NO. 423 dated 03.09.2020

u/s 302/34 PFC r.with 15A.A. Police Station Toru the

appellant got illegal gratification of Rs. 65/70 thousands

and one mobile set worth Rs. 20 thousand from the complainant.

2. That the appellant was charge-sheeted with under KFK Police Rules 1975 vide "Annexure "A".
3. That the departmental enquiry was carried out by ASF, Muhammad Qais Khan SD^{PC}/Takht Bhai and after his finding the final Show-Cause- -Notice was given by Superintendent of Police Investigation Wing, Mardan vide Annexure "B".
4. That in r/o Said final Show-cause-notice the reply was submitted by the appellant vide copy Annexure "C".
5. That subsequently, District Police Officer, Mardan awarded the major punishment of dismissal vide the order as Annexure "D".
6. That the appellant then preferred an appeal to the Deputy Inspector General of Police Mardan Region-I, Mardan but the same was rejected vide Annexure "E&F".
7. That both orders passed by respondent NC.3 dated 06.01.2021 and respondent NC. 2 dated 29.01.2021 are not maintainable under the law inter-alia with following grounds and other grounds advanced with the permission of the learned Court at the time of Court proceeding.

Grounds.

1. That both the orders dated 06.01.2021 & 29.01.2021 passed by respondent NO.2 and 3 respectively are arbitrary void and unlawfull in the eyes of law.
2. That the allegation levelled by the complainant are false, frivolous and contains no truth.
3. That the case in question was a dead case and it was the effort of the appellant that it was made successful. The accused were arrested and at their pointation weapon of offence was recovered and the FSL report was received positive.
4. That in recognition of hard effort by the appellant the Deputy Inspector General of Police Mardan Region-I, Mardan awarded Rs. 2,000/- with commendation Certificate vide attached copy as Annexure "G".
5. That actually the complainant of the case wanted to rope some innocent persons in the case but the appellant did not succumb to his wishes as such the false story of corruption was plented against the appellant.
6. That the whole departmental enquiry has been conducted in stereo-type manner and no evidence has been brought during the enquiry to establish the charges.
7. That the enquiry officer has recorded the statement of complainant unilaterraly in absence of the appellant

and no opportunity has been given to the appellant to cross-examine and ascertain the truth from them even otherwise their version are contradictory and their statement, are not worth reliable.

8. That the statements recorded by the enquiry officer are not on Oath and therefore it cannot be considered under the law.
9. That it is enough strange that the charge-sheet and final Show-cause-Notice were issued by Supdt: investigation Wing but the punishment was awarded by District Police Officer which is against the nature of Dispensation of justice.
10. That the punishment awarded to the appellant is harsh and Severe .The appellant has 25 years service in his credit without any complain but all these service to department has been brushed aside without any reasonable grounds.

It is therefore, earnestly prayed that on acceptance of this appeal orders dated 06.09.2021 and 29.01.2021 may kindly be set aside and appellant be reinstated with all back benefit in greater interest of justice. Besides this, any other relief deems fit be graciously granted.

Dated: 09.02.2021

Yours Obediently

(ZIAD KHAN)

Ex. Sub Inspector Police,
District, Mardan.

Through Counsel
Javed Iqbal adarab
District Mard



6

OFFICE OF THE
SUPERINTENDENT OF POLICE
INVESTIGATION MARDAN

Phone No. 0937-9230121

Fax No. 0937-9230321

No. 425 /PA/Inv/CS:

Dated 09 /Dec/2020.

DISCIPLINARY ACTION UNDER KPK POLICE RULE-1975.

I, **Muhammad Ayaz SP Investigation Mardan**, as competent authority, am of the opinion that you SI Ziad Khan while posted as OII PS Toru rendered yourself to be proceeded against departmentally, as you committed the following misconduct/omissions within the meaning of Police Rules, 1975.

STATEMENT OF ALLEGATIONS:

Whereas you, **SI Ziad Khan**, while posted as OII PS Toru investigated case FIR No. 423 dated 03.09.2020 u/s 302/34 PPC, 15-AA PS Toru. As per complainant of the case, during investigation you took illegal gratification amounting 65/70 thousand cash and one mobile phone worth twenty thousand rupees from complainant, which shows your inefficiency, maliciousness and malfide intention in-discharge of your official duties.

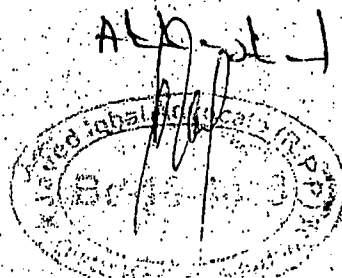
For the purpose of scrutinizing the conduct of the said official with reference to the above allegations, **Mr. Muhammad Oais Khan ASP Takht Bhai** is deputed as Enquiry Officer.

The Enquiry Officer shall conduct proceedings in accordance with the provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official and submit his findings within (07) days of the receipt of this order along with recommendations as to punish the defaulter official or otherwise.

(Muhammad Ayaz)
Superintendent of Police,
Investigation Mardan.

Copy of above is forwarded to the:-

1. Enquiry Officer for initiating proceedings against the alleged official SI Ziad Khan under Police Rule 1975.
2. SI Ziad Khan with the direction to appear before the enquiry office on date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.



CHARGE SHEET UNDER KPK POLICE RULES 1975.

I, **Muhammad Ayaz SP Investigation Mardan**, as competent authority, hereby charge you **SI Ziad Khan**, while posted as OII PS Toru, as per attached statement of allegations.

1. By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.
2. You are, therefore, required to submit your written defense within 07 days of the receipt of this Charge Sheet to the Enquiry Officer.
3. Your written defense, if any, should reach the Enquiry Officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, ex-parte action shall follow against you.
4. You can come and appear before the undersigned to be heard in person.

(Muhammad Ayaz)
**Superintendent of Police,
Investigation Mardan.**



8

OF THE
SUPERINTENDENT OF POLICE
INVESTIGATION MARDAN
Phone No. 0937-9230121
Fax No. 0937-9230321

No. 4/95/PA/Inv

Dated 28 /Dec/ 2020.

FINAL SHOW CAUSE NOTICE

Whereas, you **SI Ziad Khan**, while posted as OII PS Toru investigated case FIR No. 423 dated 03.09.2020 u/s 302/34 PPC, 15-AA PS Toru. As per complainant of the case, during investigation you took illegal gratification amounting 65/70 thousand cash and one mobile phone worth twenty thousand rupees from complainant, which shows your inefficiency, maliciousness and malafide intention in-discharge of your official duties.

In this connection, during the course of departmental enquiry conducted by SEPO/Takht Bhai vide his office letter No.1541/St dated 22.12.2020, in pursuance of this office Disciplinary Action No.465/PA/inv/CS dated 04.12.2020, recommended you for Major Punishment. The undersigned agreed with the Enquiry Officer.

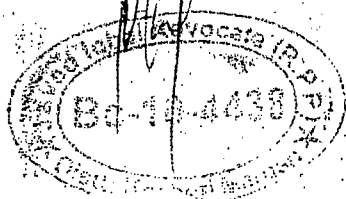
Therefore, it is proposed to impose Major penalty including dismissal as envisaged under Rules 4 (b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence, I Muhammad Ayaz, SP Investigation, Mardan, in exercise of the powers vested in me under Rules 5 (3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you to Show Cause Finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach to this office within 07 days of receipt of this notice, failing which it will be presumed that you have no explanation to offer.

You are liberty to appear for personal hearing before the undersigned.

Superintendent of Police,
Investigation Mardan.

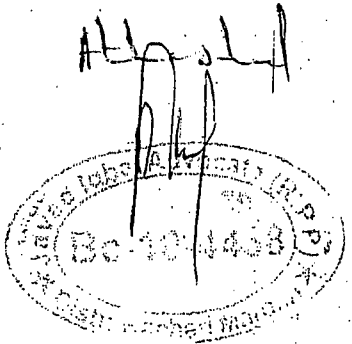


(9)

Respected Sir,

In reply to final Show-Cause-Notice that while posted as OII Police Station Toru during the investigation case FIR NO. 423 dated 03.09.2020 u/s 302/34 PC r.with 15 AA Police Station Toru, I took illegal gratification amounting Rs. 65/70 thousand Cash amount and one mobile phone worth Rs. Twenty thousand from complainant, it is submitted as under:-

1. That the allegations contain in the final Show-Cause Notice carries, no truth, baseless, frivolous, false and without any evidence.
2. That no one in the FIR was charged by the complainant and was dead case.
3. That due to my hard efforts and fair investigation the case was made successful and the two accused namely Kashif and Wajid were arrested. The bail of accused Wajid who has played a main role has been rejected by the Session Court. (Copy of the learned Court is attached).
4. That in recognition of my efforts the honourable Deputy Inspector General of Police Mardan Region-I, Mardan has granted a cash award with commendation Certificate. (Copy attached).



5. That the allegations has been advanced just to pressurize me to make investigation at the dictation of complainant party and give favour in roping of some complainant rivals.
6. That the whole departmental enquiry has been conducted in contrary of law.
7. That the enquiry has been carried out in my absence and no opportunity has provided me to cross-examine the witnesses and rebut the allegation.
8. That the statements recorded during the enquiry are without any Oath and are not considered admissible under the law.
9. That the ~~complainant~~ ^{Complainant/Police Informer Hasnain} is itself ashamed of his allegation and provided an affidavit wherein he denied the allegations against me.
(Copy of affidavit attached).
10. Last but not least I have 25 years Service and has not faced any such like of corruption allegation and has performed all my duties to the satisfaction of my superier throughout of my all career.

In view of the above it is humbly prayed that I may kindly be exonerated from the false

...3...

of justice, I shall be pray for your success
long life and prosperity in greater interest
of justice.

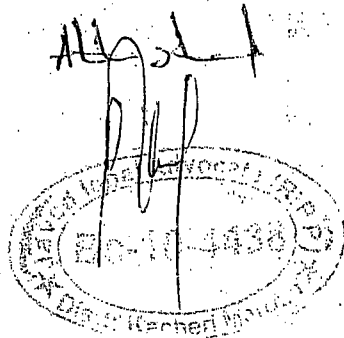
Dated: 31.12.2020

Yours Obediently



(ZIAD KHAN)

Sub Inspector
Police Station Teru,
Mardan.





OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpomdn@gmail.com



No. 44-47 /PA

Dated 07/01/2021

ORDER ON ENQUIRY OF SI ZIAD KHAN MR/536.

This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted as OII PS Toru. (Now under suspension Inv: Bureau Mardan), proceeded against departmentally through ASP Muhammad Qais Khan SDPO/Takht-Bhai by SP/Inv: Mardan vide his office Statement of Disciplinary Action/Charge Sheet No.465//PA/Inv/CS dated 04-12-2020, on account of taking illegal gratification of Rs. 65/70 thousand with one Mobile Phone of Rs. 20 thousand from complainant in a case vide FIR No.423 dated 03-09-2020 w/s 302/34 PPC, 15AA PS Toru, who (E.O) after fulfilling necessary process, submitted his Finding Report to SP/Inv: Mardan vide his office letter No:1541/ST dated 22-12-2020, recommending the alleged official for Major Punishment.

In this connection, he was served with a Final Show Cause Notice by SP/Inv: Mardan under K.P.K Police Rules-1975, issued vide his office No.495/PA/Inv: dated 28-12-2020, to which, his reply was received to SP/Inv: Mardan, who with enquiry papers sent the same to this office for awarding Major Punishment to the defaulter officer.

Final Order

SI Ziad Khan was heard in OR on 06-01-2021 & was given opportunity to clarify his position, but in vain, therefore, awarded him major punishment of dismissal from service with immediate effect, in exercise of the power vested in me under Police Rules-1975.

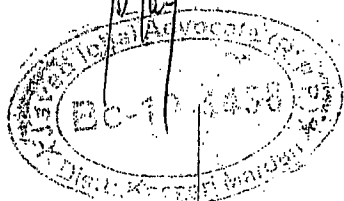
OB No. 31

Dated 06/01/2021

(Dr. Zahid Ullah) PSP
District Police Officer
Mardan

Copy forwarded for information & n/action to:-

- 1) The Regional Police Officer Mardan, please.
- 2) The SP/Inv: Mardan w/r to his office letter No.01/PA/Inv: dated 01-01-2021.
- 3) The P.O & E.C.(Police Office) Mardan.
- 4) The OSI (Police Office) Mardan with () Sheets.



To

The Honourable
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

Subject: APPLICATION FOR REINSTATEMENT IN
SERVICE AGAINST THE ORDER OF DISTT:
POLICE OFFICER MARDAN DATED 06.01.2021
VIDE WHICH THE APPELLANT WAS DISMISSED
FROM SERVICE.

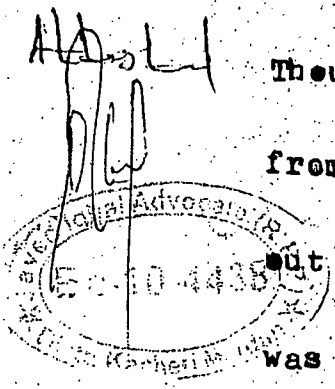
Respected Sir,

FACTS.

That the appellant while posted as O.I.I, in Police Station Teru was departmentally proceed against on the allegation that during investigation case FIR NO-423 dated 03.09.2020 u/s 302/34 PPC r.with 15 A.A. Police Station Teru, took illegal gratification of Rs. 65/70 Thousand and one mobile Phone worth Rs. Twenty Thousand from complainant. The departmental enquiry was carried out by SSP. Takht Bhai and after his finding the appellant was dismissed from his Service by worthy District Police Officer, Mardan vide OB NO. 31 dated 06.01.2021. Hence, aggrieved this appeal for re-instatement in Service.

GROUND FOR APPEAL.

1. That the order of learned District Police Officer Mardan is against the law and facts on record.



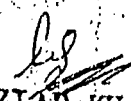
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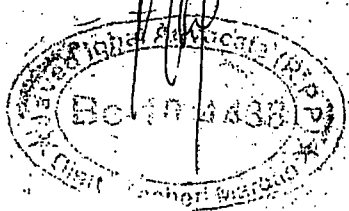
- 2. That the allegations advanced by the complainant are false baseless and contains no truth.
- 3. That the case in question was a dead case and no one was charged in the FIR.
- 4. That by sheer hard work the appellant made the case successful and traced out the two accused Kashif and Wajid. The accused were arrested and at their pointation weapon of offence was recover, the F.S.L. report also received in positive.
- 5. That during the investigation the complainant party wanted to rope his some rivals in the case but the appellant did not succumbe to the wishes of complainant as such he made false allegations of bribe against the appellant.
- 6. That the whole departmental enquiry has been conducted in contrary of law.
- 7. That the enquiry officer has taken all the evidence in absence of appellant which is against the dispensation of natural justice.
- 8. That the enquiry officer has also not recorded the independant evidence to prove the charges and has only relied the statement of complainant.

9. That one Hashain who was the informer of the complaint has provided an affidavit about the bribe amount and mobile Phone which he had received as a reward from complainant and this fact is a clear proof of innocence of the appellant. (Copy of affidavit is enclosed).
10. That the appellant has got 25 years Service in his credit and performed his duties to the entire satisfaction to his superior and has faced such like false allegation for the first time, in service.
11. That even in recognition of good work in the said case your excellency himself awarded Rs. 2,000/00 Cash and commendation Certificate.
12. That last but not least the appellant has five minor children and other family member who shall suffer for ever and there lives shall be ruined because the appellant has no other source of income.

In view of the above it is humbly requested that the appellant may kindly be re-instated in service in greater interest of justice. I shall pray for your long life & Prosperity.
Dated: 12.01.2021.

Yours Obediently


(ZIAD KHAN)
Ex. Sub Inspector NO. 536
District, Mardan.



16

ORDER.

This order will dispose-off the departmental appeal preferred by Ex-Sub Inspector Ziad Muhammad No. 536/MR of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded major punishment of dismissal from service vide OB: No. 31 dated 06.01.2021. The appellant was proceeded against departmentally on the allegations that he while posted as Officer Incharge Investigation Police Station Toru District Mardan was found involved in getting illegal gratification of Rs. 65,000/70,000 with one Mobile Phone worth Rs. 20,000.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Deputy Superintendent of Police, (SDPO) Takht Bhai, Mardan was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities submitted his findings to District Police Officer, Mardan, wherein he recommended the delinquent Officer for major punishment.

He was issued Final Show Cause Notice to which his reply was received and found unsatisfactory. He was also provided opportunity of self defense by summoning him in the Orderly Room by the District Police Officer, Mardan on 06.01.2021, but he failed to advance any cogent reasons in his defense. Hence, he was awarded major punishment of dismissal from service vide OB: No. 31 dated 06.01.2021.

Feeling aggrieved from the order of District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 27.01.2021.

From the perusal of the enquiry file and service record of the appellant, it has been found that not only did the appellant obtain illegal gratification in the form of money and a cell phone but at the same time he conducted the entire investigation in highly unprofessional manner. The father of the deceased child, who had been killed in a cold blooded manner during robbery incident, had been running from post to pillar to get justice. It is worth to add here that during the course of departmental enquiry, the allegations against the appellant have been proved beyond any shadow of doubt. Moreover, the appellant could not offer any cogent justification in his defense to warrant any interference in the order passed by the competent authority.

Keeping in view the above, I, Sher Akbar, PSP S.St Regional Police Officer, Mardan, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being devoid of merit.

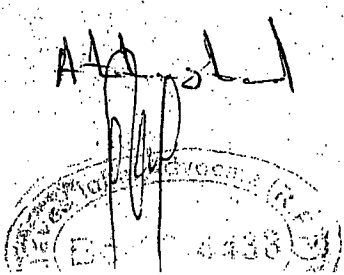
Order Announced.


Regional Police Officer,
Mardan.

No. 559 /ES, Dated Mardan the 29 - 01 - /2021.

Copy forwarded to District Police Officer, Mardan for information and necessary w/r to his office Memo: No. 30/LB dated 25.01.2021. His service record is returned herewith.

(*****)



KHYBER PAKHTUNKHWA



Commendation Certificate

Class II
Granted by

Mr. SHER AKBAR (PSP S, St)
DEPUTY INSPECTOR GENERAL OF POLICE
MARDAN REGION MARDAN.

TO SI ZIAD KHAN, OLI PS TORU

Son of _____
District MARDAN

In Recognition of

GOOD PERFORMANCE VIDE CASE FIR NO: 42E DATED

03.09.2020 U/S 302/34 PPC PS TORU.

CASH REWARD Rs. 2,000/-

O.B. NO. _____

DATED _____



(Signature)
Deputy Inspector General of Police
Mardan Region Mardan.

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BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 2766/2021

Ziad Khan

VS

Police Deptt.

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Incorrect. The allegations of illegal gratification of Rs.65/70 thousand and one mobile set of worth of Rs.20 thousand has been leveled against the appellant without conducting proper and regular inquiry to dig out the reality about the allegations and the appellant was punished on presumption basis which is not permissible under the law and rules. Moreover affidavit was also given by Mst. Hasnain khan that neither complainant party gave money to the IO (appellant) nor the appellant demand any money from them. **(Copy of affidavit is attached as Annexure-A)**
2. Incorrect. On the basis of baseless allegations charge sheet was issued to the appellant which was replied by him in which he denied the entire allegations. **(Copy of reply to charge sheet is attached as Annexure-B)**
3. Incorrect. No proper and regular inquiry was conducted against the appellant as neither statements were recorded in the presence of the appellant nor gave him opportunity of cross examination and on the basis of that irregular inquiry show cause notice was issued to the appellant.
4. The appellant submitted reply to the show cause notice in which he again denied the allegation leveled against him.
5. Incorrect. The appellant was punished on the basis of of some baseless allegation without conducting proper and regular inquiry by the inquiry to dig pout the reality about the matter and the inquiry officer gave observation that the crime scene map and bail order of the accused the undersigned is reasonably of the belief that strong

probability of having received the above mentioned cash in various installments, but the bail was granted by the learned Additional District and Session Judge on the reasons of the occurrence is unseen and delay of 27 days; while the bail of the co accused was rejected by the Honorable Peshawar High Court, which shows that the appellant did his investigation in fair manner and was punished for no fault on his part. **(Copies of orders are attached as Annexure-C&D)**

6. Correct to the extent that the appellant has filed departmental appeal which was rejected without giving any solid reason.
7. Incorrect. The impugned orders are against the law, facts and material on record therefore not tenable and liable to be set aside by accepting the appeal of the appellant on the following grounds amongst others.

GROUND:

1. Incorrect. The impugned orders are not in accordance with law, facts, norms of justice and material on record, therefore not tenable and liable to set aside.
2. Incorrect. While para B of the appeal is correct.
3. Not replied according to para C of the appeal. Moreover para C of the appeal is correct. Furthermore due to the effort of the appellant the untraced case is dig out by the appellant and in this respect high ups also granted a cash award along commendation certificate in that FIR. **(Copy of commendation certificate is attached as Annexure-E)**
4. Incorrect. The due to the effort of the appellant the untraced case was dig out on which his high ups granted a cash award along commendation certificate in that untraced case which shows the efforts and fair investigation of the appellant.
5. Incorrect. While para 5 of the appeal is correct.
6. Incorrect. While para 6 of the appeal is correct.
7. Incorrect. As already explained in preceding Para.
8. Not replied according to Para 8 of the appeal. Moreover Para 8 of the appeal is correct.
9. Not replied according to Para 9 of the appeal. Moreover Para 9 of the appeal is correct.

10. Incorrect. While Para 10 of the appeal is correct.

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


Through:


APPELLANT

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.


DEPONENT

To:

Ziad Khan
SI/O.I.I P.S Toru.

Subject:

**SEARCH WARRANT FOR RECOVERY OF TEZRAFTAR
RIKSHAW MENTIONED IN THE APPLICATION AND
ARREST OF ACCUSED CHARGED U/S 302 PPC.**

Whereas, credible information has been laid before me, that as per spy information Wajid Khan s/o Qadeer Khan r/o Jamra Zando is having Tezraftar Rikshaw in his residential house, being ownership of deceased namely Said Hazran. It is further contended by IO that there is possibility of tracing real culprits/accused after recovery of said Rikshaw.

So this is to authorized and require you, to enter the house of above-named accused/person, and search his house and also use if necessary, reasonable force for the said purpose.

Search in accordance with law be regulated for recovery of Tezraftar rikshaw if found in said premises and bring it forthwith before concerned Court. and return this warrant with an endorsement of proceeding of search as the case may be.

Certifying, that you have done immediately upon its execution. The search shall be conducted having regard to all norms and principles of decency & "Chaddar & Chaar Dewaree", while associating one lady Constable at the time of search.

SI/O.I.I concerned is directed to conduct search himself and make strict compliance of section 103 Cr.P.C and submit his report before the concerned Court on 27.09.2020. This warrant is effective for 24 hours only.

Given under my hand and seal of the court this 26th day of September, 2020.

(BADAR RIAZ)
Civil Judge-V/JMJC/MOD MARDAN.

(5)

8

بیان اصغر علی شاہ ولد نذیر شاہ سوم اقصان ہمہ $\frac{42}{43}$ سال ساکن ایسویڈن ایماین (ڈوہافٹن)
مدلع کو تسمیرہ بہر صلتہ بہرہ دفعہ 164 ص 0

بیان کیا کہ میں سیرام صبی سید حفیران کا من اور شیر زونار اکثر پیمانہ
کی ایویٹ ہم حلف مدعو نام معلوم کسی تم اب مجھے یوں نہیں اور سیم ہوا کہ
سیرام سید حفیران کو صبیان ہوا احد خان ولد قدیر خان، کاشف خان ولد
سرور شاہ کتان زونار نہ من کا من اور شیر زونار صحت لگا ہے میں
انے کے سید حفیران کا من کا تم حلف یہ دو مدعو خان ہوا احد خان ولد قدیر خان اور
کاشف خان ولد سرور شاہ کتان زونار دعوہار ہوں

Certified 1/5/164 CPC

شہادت شمع
M. Amin
30-9-20

اصغر علی شاہ عدل مدلع

CNIC No. 17201-8631735-5
Mobile phone # 0333-9008396

اصغر علی شاہ

Annex

برکات سٹیٹ
باعتہ ادارہ
فواد موبائل زون
انعام یافتہ

fonetelengor ZONG Mobilink WAPID

سہولت: موبائل کارڈز، گھنٹہ گنوں کے لئے اور گمشدہ کارڈز
fawadmobile.ak@gmail.com 0334-9598244
0303-8877778 0302-8877778

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(SAID B. KHAN)
Additional Sessions Judge-V, Mardan

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رہنما سے مل کر کارڈز میں سے
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2
رہنما سے مل کر کارڈز میں سے
20/10/2019

12: ... دروغ مکتوم کا دائرہ شہرہ در خواستہ ...
 ... در خواستہ سے ...
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ابدالت جناح

مقدمہ نمبر 423 صفحہ 3-20 جرح 302
 34-411-411
 17(4) خطا طبعہ
 درالبیہ اخصتہ علی شہادہ و نہ تزییہ شہادہ من البیرونی با بیان الجوزہ
 سناج نامعلوم

درخواست گریزا حادان کمرہ سرج و وارنٹ

صفا علیا

مقدمہ بعنوان نا ادرین مدعی مقدمہ نے سپر انس مقتول سید حفیظ الرحمن کی شہادت اور حیدر علی شہزاد حادان کے خانہ کی وارنٹ ملزم احمد حادان نامعلوم کمرہ مقدمہ حیدر علی مقتول کے شہزاد حادان کے بارے میں بیان لوہی اور ادرین لوہی کو معلوم کرنے کے جو بعد از اطلاع موصول ہوئی کہ شہزاد حادان اذان مقتول سید حفیظ الرحمن، واحد حادان و نہ قدر حادان منسب جامدہ زنگی کے گھر میں کھڑے ہیں مقدمہ حیدر علی شہزاد حادان کے شہزادوں اور ادرین حادان کے گھر میں کمرہ اور شہزادوں کے اصل حقائق جاننا اور تفتیش کو درست سمجھتے ہیں کہ نا معلوم درمی 5، مذکورہ 5 واحد حادان کے گھر کی تلاش اور

رشتہ کی تہ امتداد کے لیے سرج و وارنٹ گھنٹہ درمی 5

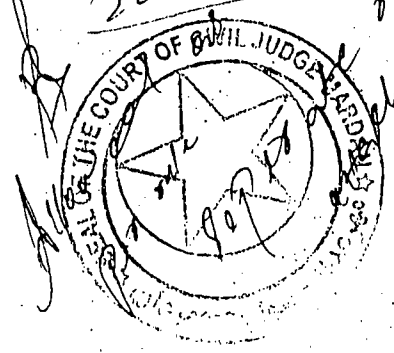
استدعا صلیبہ کفرین تلافی معان اذرا واحد حادان سرج و وارنٹ

حادی کمرہ کا حکم عہدہ فرمائی جانے کے لیے
 26-09-2020
 1011 P.S. Toru



Forwarded

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 26-09-2020



14

IN THE COURT OF SAID BADSHAH
ADDL. SESSIONS JUDGE-V, MARDAN.

Kashif ---VS--- The State
Bail Petition No.172/BA of 31.10.2020

Order No.08
18.11.2020

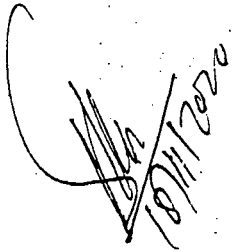
Accused/petitioner through counsel present.
Complainant alongwith his counsel present. APP for the
State present.

Accused/petitioner, namely Kashif son of Sarwar
Shah, resident of Risalpur, District Nowshera, through this
post-arrest bail seeks his release on bail in case FIR No. 423
dated 03.09.2020 registered under section 302/34-PPC now
section 15-AA of PS Toru, Mardan.

Allegation against the accused/petitioner is that he
alongwith co-accused committed the Qatl-e-Azmad of
deceased namely Said Ghufraan son of Akhtar Ali Shah and
thus the accused/petitioner was charged in the case in hand.

Arguments heard and record perused.

Tentative assessment of the available record transpires
that occurrence is unseen and no one is charge in the FIR but
later on the complainant charged the present accused
alongwith co-accused U/S 164 Cr.P.C, but no source of
satisfaction is disclosed in the statement, with the delay of 27
days. That recovery has been effected from co-accused in the
shape of Qingqi pistol but no recovery has been effected
from the accused/petitioner. That even in investigation the
role of firing is given to co-accused and present
accused/petitioner has shown as companion of co-accused so
if it is presumed that the accused/petitioner was companion
of co-accused in the crime then he has the role of common
intention which would be determined by the trial court after


18/11/2020

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Contd; Order—08.
18.11.2020

recording of evidence. That the name of present accused/petitioner is disclosed by the co-accused and the statement of accused could not use against co-accused. All these facts make the case of accused/petitioner one of further inquiry.

From the above dismissed, the instant bail petition is accepted and accused/petitioner is directed to furnish bail bonds in the sum of Rs:200,000/- with two sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/JMOD. The above finding is tentative in nature and shall not affect the nature of the case.

Requisitioned record be returned while file of this court be consigned to record room after completion.

Announced
18.11.2020

(SAID RASHAH)
Additional Sessions Judge V. Mardan



The
PESHAWAR HIGH COURT
Peshawar

Ph: No. 091-9210149-58

D 16

No. 33593 (1)/2265/2021/Cr.M

Dated. 24-February-2021

From

Deputy Registrar (J),
Peshawar High Court,
Peshawar.

To

The SHO, Police Station Toru Mardan.

Subject:

Criminal Miscellaneous Bail Cr.M(BA) 315/2021 Title: Wajid Khan VS Akhtar Ali Shah
(FIR No.423 Dated 03-Sep-20 U/S 302/34 PPC r/w 15-AA PS. Toru)

I am directed to forward herewith copy of Judgment dated 22/2/2021, passed by this Honble Court in captioned case along with relevant record, for compliance.

[Signature]
1-3-21
Deputy Registrar (J)

Endst No. 33593 (1)/2265/2021/Cr.M
THE DSJ MARDAN

Dated. 24-February-2021

[Signature]
Deputy Registrar (J)

Encl: Copy of Order / Judgment
Police and Judicial File

(2)

17

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Cr. Misc (BA) No. _____/2021

Wajid Khan S/O Qadeer Khan

R/O Zandu Banda District Nowshehra-----P etitioner

Versus

1. Akhter Ali Shah S/O Nazeer Shah
R/O Esori Payan Akora Khattak District Nowshehra

2. The State-----R espondents

Case FIR No. 423 dated: 03-09-2020
Registered U/Ss: 302/34 PPC r/w 15 AA
Police Station: Toru, Mardan

**PETITION U/S. 497 Cr.P.C. FOR RELEASE OF THE
PETITIONER ON BAIL TILL THE DECISION OF THE CASE**

Respectfully Sheweth:

A) **T**hat, the petitioner has been shown as co-accused in case registered vide FIR No. 423 dated 03-09-2020 U/S. 302/34 PPC r/w 15 AA at PS Toru, Mardan through supplementary statement recorded on 30-09-2020.

FIR with better copy is annexed-"A"
Statement U/S. 164 Cr.P.C is annexed-"B"

B) **T**hat, the petitioner surrendered before the law and after his committal to jail, applied for his release on bail to the learned trial Court which was declined by the learned ASJ Mardan vide order dated -12-2020.

Copy of bail application is annexed-"C"
Copy of impugned order is annexed-"D"

Now the petitioner, being aggrieved of the impugned order, begs pray to seek the same relief in this august Court, inter-alia, on the following grounds.

GROUND S:

- I. **B**ecause, the petitioner is quite innocent and has falsely been implicated in the case and that too without any evidence.
- II. **B**ecause, there is absolutely no evidence ocular or circumstantial connecting the petitioner with the perpetration of the alleged crime.

Judgment Sheet**IN THE PESHAWAR HIGH COURT, PESHAWAR**
JUDICIAL DEPARTMENT

Cr.Misc./ B.A No. 315-P/2021

Wajid Khan... Versus... The State

ORDER

Date of hearing.....22.2.2021.....

Petitioner(s) by Mr. Shabbir Hussain Gigyani, advocate

State by: Mr. Arshad Ahmad, AAG.

Complainant by:- Malik Anwar Ul Haq, Advocate.

ROOH-UL-AMIN KHAN, J:- Petitioner, Wajid Khan son of Qadeer Khan seeks his release on bail in case FIR No. 423 dated 3.9.2020 under section 17(4) Haraba (Offence against Property)/411/34 PPC and 15 KP Arms Act, 2013 registered at Police Station Toru, Mardan.

2. Brief facts according to the report of complainant are that, on 2.9.2020 his son (deceased) left the house for earning livelihood through quin qui (Tez Raftar) and did not return home, to this effect he had lodged report. On 03.09.2020, he received information about presence of a dead body at Service Road Motorway near the fields of Younas Khan. He rushed there and found his son namely Syed Khizran

For the State

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being murdered through fire arm while the auto rickshaw was also missing. He charged unknown accused however, on 30.9.2020, he recorded statement under section 164 CrPC wherein he nominated the accused-petitioner alongwith co-accused Kashif for committing murder of his son.

3. Initially the FIR was lodged under section 302 PPC but after the arrest of the accused-petitioner and recovery of Rickshaw on his pointation, the section was altered to section 17(4) Haraba (Offence against Property)/411/34 PPC.

4. Arguments of learned counsel for the parties heard and record perused, which reveals that no doubt the accused-petitioner has not been charged in the FIR, but lateron, the complainant recorded his statement under section 164 CrPC wherein the accused-petitioner alongwith co-accused was nominated for commission of the offence. The recovery of Tez Raftar quinqu, .30 bore pistol bearing No. A8723 on pointation of accused from his home coupled with positive FSL report regarding .30 bore empty to have been fired from the same crime pistol; pointation of the place of occurrence, recovery of blood stained earth/stones from the spot are sufficient evidence to prima-facie connect the petitioner with the commission of offence.

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Likewise, the postmortem report of deceased showing entry wound on the skull the cause of his death further supplement the prosecution case qua involvement of the accused-petitioner with the commission of an offence punishment of which falls within the prohibitory clause of section 497 Cr.PC.

5. For what has been discussed above, the instant bail application stands dismissed.

Announced on;
22nd of February, 2021
"Jashad"

Rooh Ul Amin Khan
SENIOR PUISNE JUDGE

(SB) Mr. Justice Rooh Ul Amin Khan

KHYBER PAKHTUNKHWA



Commendation Certificate

Class II
Granted by

Mr. SHER AKBAR (PSP S, St)

**DEPUTY INSPECTOR GENERAL OF POLICE
MARDAN REGION MARDAN.**

TO SI ZIAD KHAN, OLI PS TORU

Son of _____

District MARDAN

In Recognition of

GOOD PERFORMANCE VIDE CASE FIR NO: 42B DATED

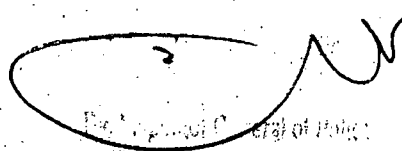
03.09.2020 U/S 302/34 PPC PS TORU.

CASH REWARD Rs. 2,000/-

O.B. NO. _____

DATED _____




Deputy Inspector General of Police
Mardan Region Mardan.

مقررہ نمبر 423 مورخہ 9/3/2001ء 302/324 فی اظہارِ عقیدت

(22)



ڈی جی ایف آئی کے سربراہان نے شہداء کی اولاد کو تحائف پیش کیے



مزدوران، ڈی آئی ایف آئی کے سربراہان نے شہداء کی اولاد کو تحائف پیش کیے۔

ڈی جی ایف آئی کے سربراہان نے شہداء کی اولاد کو تحائف پیش کیے

بعدالت جواب چھپرہ سروسز کے دفتر

11126

مورخہ _____ 20ء _____ منجانب: _____
مقدمہ بعنوان _____ نام _____
مقدمہ نمبر _____ رجوعہ _____
نوعیت مقدمہ _____
مقدمہ علت نمبر _____ مورخہ _____
جرم _____ تھانہ _____

50
روپے

باعث تحریر آنکہ



مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام _____ کیلئے _____ کو وکیل مقرر
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل مقررہ کو راضی نامہ کرنے و تقرر
ی ثالث و فیصلہ برحلف دینے عرضی دعویٰ، جواب دعویٰ، اقبال دعویٰ، جواب الجواب، عذر داری، درخواست زبردفعہ (2) 12
ض د، درخواست برآمد برآمدگی و سرسبزی مقدمہ، درخواست برآمد منسوخ کاروائی و ڈگری کی طرف دائر کرنے جواب، جواب
الجواب وغیرہ درخواست کاروائی اجراء دائر کرنے و وصولی چیک رقم اور درخواست از ہر قسم کی تصدیق زراس پر دستخط وغیرہ
کرنے کا اختیار ہوگا۔ اپیل، اپیل دراپیل، نگرانی، نظر ثانی، رٹ و عذر داری وغیرہ دائر کرنے کا بھی اختیار ہوگا۔ اور بصورت
ضرورت مذکورہ کے عمل یا جزوی کاروائی کے واسطے وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب
مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداشتہ منظور قبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر
جانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کا بھی اختیار ہوگا۔ اگر کوئی
تاریخ پیشی پر وکیل موصوف مقام دورہ پر ہو یا حد سے باہر ہو یا بیمار ہو یا کوئی ضروری کام ہو۔ تو وکیل صاحب پابند نہ ہونگے کہ
پیروی مقدمہ مذکورہ کریں لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم: 12-02-21

مقام _____ کے لئے منظور ہے۔

نوٹ: اس وکالت نامہ کو کوئی ناقابل قبول ہوگی۔

Advocate I.D: BC 10 4438

Bar Council

Mardan

Bar Association

KMC

Contact #:

0331 9224274

Attested
&
Accepted



قیمت
50 روپے

108640



ایڈوکیٹ: محمود علی خان

بار کونسل / ایسوسی ایشن نمبر:

رابطہ نمبر:

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

منجانب: <u>ضیاد خان</u>	دعویٰ: <u>ایڈیشن نمبر 2766/2022</u>
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے محمود علی خان ریٹرو سولسٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم:

مقام _____ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔