

03.03.2021

Nemo for appellant.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Khawas Khan S.I for respondents present.

Preceding date was adjourned on a Reader's note, therefore, appellant/counsel be put on notice for ____/____/2021 for arguments before D.B at Camp Court, Swat.

(Mian Muhammad)
Member (E)
Camp Court, Swat

(Rozina Rehman)
Member (J)
Camp Court, Swat

07.10.2021

Appellant present through representative.

Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

Learned Members of the DBA are observing Sogh over the demise of Qazi Imdadullah Advocate and in this regard request for adjournment was made; allowed. To come up for arguments before the D.B on 09.12.2021 at Camp Court, Swat.

(Atiq-Ur-Rehman Wazir)
Member (E)
Camp Court, Swat

(Rozina Rehman)
Member (J)
Camp Court, Swat

05.10.2020

Appellant is present in person. Mr. Usman Ghani, District Attorney for the respondents is also present. Appellant is seeking adjournment on the ground that his counsel is not available today. Adjourned to 04.11.2020 on which to come up for arguments before D.B at Camp Court, Swat.

(Mian Muhammad)
Member (Executive)
Camp Court Swat

(Muhammad Jamal Khan)
Member (Judicial)
Camp Court Swat

04.11.2020

Nemo for appellant.

Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 06.01.2021 for arguments, before D.B at Camp Court Swat.

(Atiq ur Rehman Wazir)
Member (E)
Camp Court, Swat

(Rozina Rehman)
Member (J)
Camp Court, Swat

BEFORE SERVICE TRIBUNAL KHYBER
PUKHTUNKHWA AT PESHAWAR

Service Appeal no 992 2019

Constable Irfan Ali No.2722 Versus Provincial Police Officer and others

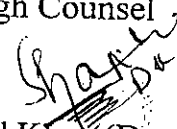
SERVICE APPEAL

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Appellant

Through Counsel


Shabir Ahmad Khan (Dawlat Khel)

Advocate High Court

Office address:

Hamza Law chamber, Near Azad Medicine

Company post office road Mingora Swat.

Cell: 0341-566-6363 /0333-949-9466

(1)

BEFORE SERVICE TRIBUNAL KHYBER
PUKHTUNKHWA AT PESHAWAR

Service Appeal no _____ 2019

Constable Irfan Ali No.2722 posted at Police station Saidu
Sharif Swat(Appellant)

Versus

1. Provincial Police Officer Khyber Pakhtunkhwa at CPO
Peshawar
2. Regional police Officer Malakand Range-III at Saidu
Sharif Swat.
3. District Police Officer Swat at Gul Kada Swat.
..... (Respondents)

SERVICE APPEAL U/S 4 OF THE KHYBER
PUNKHWA SERVICE TRIBUNAL ACT,1974
AGAINST THE IMPUGNED ORDER OF
RESPONDENT NO 2 DATED 13/11/2018, WHEREBY
THE RESPONDENT NO 2 AWARDED
PUNISHMENT OF STOPPAGE OF TWO
INCREMENTS WITH CUMALATIVE EFFECT ND
PERIOD OF ABSENCE SPENT OUT OF SERVICE
IS COUNTED AS SERVICE WITHOUT Pay.,
AGRIEVED FROM THE SAID ORDER THE
APPELLANT PREFERRED REVISION PETITION
BUT THE SAME WAS ALSO FILED BY THE
RESPONDENT NO 1

Respectfully sheweth:

Facts arising to the present appeal as under:

(2)

- 1) That the appellant was initially recruited as a constable into police and till now the appellant performing his duty with great zeal and enthusiasm.
- 2) That on 24/10/2016 Sub inspector Ali Bad shah arrested an Accused namely Tariq Hussain S/O amir Mashal R/O Mohallah Afsar Abad Saidu Sharif Swat and Lodged FIR vide No.1062 under section 9-c CNSA ,P.S Mingora. (Copy of FIR is Annexed as Annexure "A")
- 3) That during the proceedings the appellant was present with SI Ali Bad shah and he cited name of the appellant as eye witness/recovery witness on recovery memo. (copy of recovery memo is Annexed as Annexure "B")
- 4) That after fulfilling the legal formalities the SHO Mingora through DPP swat submitted a complete Challan to concern court for put in court and trial. The case was entrusted to additional session judge/ special judge /IZQ swat for disposal.
- 5) That after framing of charge the appellant was summoned by the court and the appellant recorded his statement as PW-1 on 15-12-2107, after recording the statement of the appellant as a PW-1 the learned ASJ II swat on 26-6-2018 acquitted the accused U/S 265 k Cr.PC.(statement of the appellant is annexed as annexure "C" and order of acquittal is annexed as annexure "D")
- 6) After the acquittal of accused the respondent No.3 issued a charge sheet to the appellant with the allegations which are as under :

"Whereas, a case was registered against an accused vide FIR No. 1062 dated 24-10-2016 U/s 9-c CNSA police station Mingora and he has produced by prosecution as Pw-1 .during cross examination, he

deliberately concealed the facts and negated the version of FIR. The trial court acquitted the accused from all the charges in the light of his contradictory statement which is a sheer violation of discipline and is punishable".(copy of charge sheet is annexed as annexure "E")

- 7) That an enquiry was initiated and entrusted to ADDI: SP Swat ,after conducting one way enquiry/ proceedings the enquiry officer submitted his findings report to respondent No.3.The respondent No.3 without any prior opportunity of hearing ordered of removal from service with immediate effect.(copy of order of removal is Annexed as annexure "F")
- 8) That aggrieved from the order of respondent No.3 the appellant preferred departmental appeal before the respondent No.2 which was accepted and the respondent No.2 set aside the impugned order of respondent No.3 dated 3-08-2018 ,but awarded the punishment of stoppage of two increments with cumulative effect .the period of absence and he spent out of service is counted as leave without pay.(copy of order of respondent No.2 is annexed as annexure "G")
- 9) That aggrieved from the order of respondent No.2 revision petition was filed by the appellant before the respondent No.1 but the same was filed by the respondent No.1. Hence the instant service appeal on the following grounds:(copy of order of Respondent No.1 is Annexed as annexure "H")

Grounds:-

- a) That the enquiry officer ran one way traffic and made dishonest and baseless improvements in his findings report which clearly shows the malafide intention and biasness of the enquiry officer as well as the other respondents.

- b) That no proper opportunity of being fairly hearing was given to the appellant by respondents and the appellant has been illegally dismissed by the respondent No.3 and the respondent No.3 awarded the said punishment which is against the law, service rules and norms of justice.
- c) That the allegations leveled against the appellant are baseless, frivolous, and not sustainable and untenable under the law and rules on the subject.
- d) That the universal canon of natural justice has been set aside and no ample opportunity of presenting the delinquent stance /version has been given to the appellant.
- e) That the impugned order is unreasonable ,arbitrary and is liable to be set aside.
- f) That the appellant was not treated accordance with law and rules on the subject and the impugned order has been passed away in flagrant violation of law and rules tainted with mala-fide intention and is therefore not sustainable and is liable to be set aside.
- g) That during the course of inquiry the appellant recorded his statement before the inquiry officer and presented his stance/defense but it was completely ignored by the respondents.
- h) That the appellant was not a sole witness in the above cited case but there was a lot of incriminating evidences/ witness but no opportunity of producing evidence has been given by the ASJ II swat so how a contradictory statement has been determined by the respondents.
- i) That the prosecution did not preferred appeal against the said order of ASJ II swat ,owing to this fact that the prosecution had a lot of incriminating evidence against the accused.

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- j) That there was no ill will of the appellant with the said accused and the statement has been properly recorded by the appellant and no negligence had there on the part of the appellant.
- k) That the other important points will be raised during the course of arguments with the kind permission of this honorable court.

Therefore, it is humbly prayed that
That by acceptance of the instant
Service appeal the impugned
Order of respondents may kindly
Be set aside to the extent of
Punishment awarded as mentioned
above.

Any other relief which may appropriate
In the circumstances may also be
Awarded to the appellant not specifically
Prayed for.



Appellant
Through counsel

Shabir
Shabir Ahmad Khan (Dawlat khel)
Advocate High Court

6

BEFORE SERVICE TRIBUNAL KHYBER
PUKHTUNKHWA AT PESHAWAR

Service Appeal no _____ 2019

Constable Irfan Ali

Versus

Provincial Police Officer and others

SERVICE APPEAL

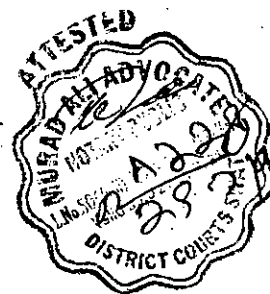
Affidavit

I Irfan Ali district Swat do hereby states on oath that all the contents of the instant appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this honorable tribunal.



Deponet

Irfan Ali



7

BEFORE SERVICE TRIBUNAL KHYBER
PUKHTUNKHWA AT PESHAWAR

Service Appeal no _____ 2019

Constable Irfan Ali

Versus

Provincial Police Officer and others

SERVICE APPEAL

Memo of Adresses

Addresses of the appellant:

Constable Irfan Ali No.2722R/O posted at Police station
Saidu Sharif Swat

Addresses of respondents:

1. Provincial Police Officer Khyber Pakhtunkhwa at CPO
Peshawar
2. Regional police Officer Malakand Range-III at saidu
Sharif Swat.
- 3) District Police Officer Swat at Gul Kada Swat

Appellanat Irfan Ali

Through Counsel (Shabir Ahmad Khan)

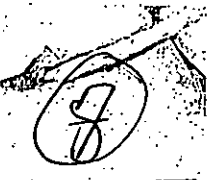
Shabir Ahmad Khan (Dawlat kheel)

Advocate High Court

نمبر ۱۵۰۲۳ (۱)

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر درجہ ۱۵۴ مجموعہ ضابطہ فوجداری



مطلع سبوتاہ سنگوردہ

تاریخ وقت رپورٹ	1062	30
تاریخ وقت	24/10/2016	17:25
نام و کونت اطلاع دہندہ مستفیث	(۱) نام علی بابا شہان آبادیت سی کونٹ چھانہ سنگوردہ	
تفصیر کیفیت جرم (مورد ذمہ) حال اگر کچھ لیا گیا ہو۔	15602-8820953-7	
جائے وقوعہ فاصلہ تھانہ سے اور دست اقبال بلارو چوڑا کھانان دوسری	9 C CNSA (1015) گرام جرس	
نام و کونت ملزم	15602-0982062-1	
روائی جو تفتیش کے متعلق کی گئی اگر اطلاع راج کرنے میں توقف ہوا تو وجہ بیان کرو	بہ رسیدگی کے واسطہ مقدمہ چلانا قائم کیا جانا ہے۔	
سے روائی کی تاریخ و وقت	بہ رسیدگی	

ابتدائی اطلاع نیچے درج کرو۔ آپ نے فریڈی ہیرا لہ لوکاب علی مارشا ای مدت
 و مشیات پیدائشی پولیس اور خود بخود۔ محبت اسد خان کے پاس سیلور و دوران پتہ بھاری آسٹری
 کارہ مار ہر جائے۔ اذخالی اور خالونی کاروالی کے خاصہ آکر لو ملزم کو کسی کے پاس یا کر فالو کر کے
 حاکمہ لاسٹی پی گئی۔ اور ساتھ ہی فریب میں مارشاٹ میں فیلا بلاٹک ہفتہ میں بند جس میں آمد
 بلو کرورد کر کے 1015 گرام نعلی۔ محمد جرس میں سے یا حج گرام جس میں بندہ مارشاٹ بہا
 لومض شریہ سائے اور بطا جس پوری 1010 گرام بندہ مارشاٹ بہا 2 سہرہ پھر گئی
 ملزم کو فریب فرم الا مارشاٹ خالطہ کے ساتھ گرو تار کے واسطہ کہہ رہا ہے کہ نہ من لالہ لومض
 خالی مقدمہ بند ہے۔ خفہ اللہ 2022 اس سال قتل ہے۔ لسنڈ ایورٹ گین شراف کو حالہ
 احاطے۔ فراسلہ بڑھتہ۔ چلانا قائم ہو رہا ہے۔ واسطہ ملزم سے ایوارڈ ایورٹ گین کو
 16 فروری 2016 کو

ASI PS Mingora
24.10.16

Attested to be True Copy
 Shabir Ahmad Khan (Dawat Khan)
 Advocate High Court
 & Federal Shariat Court

(13) Annex

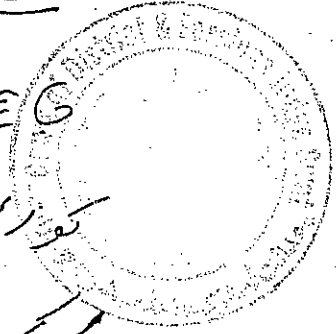
(10)

بیان عرفان علی نیل 2722 نماز منگورا
حال میوزیم گارڈ سوات

PW-1

15.12.17

برخلاف بیان کیا کہ بوقت وقوع میں اور نیل امانہ
 2165 ڈیوٹی پر موجود تھے کہ دوران پستہ ہزار
 نیات میں نیل کی اطلاع پر علی بادشاہ آئی کے ساتھ
 وقوع وقوع آئی کہ آئی علی اور نیل پور پستہ میں ملزم طارق
 کو الحیرہ ایجنسی سے باہر قابو میں کر کے ملزم کی تلاش
 کی اور ملزم کی تلاش کے قریب پڑا باسکٹ کی
 تلاش کی اور باسکٹ میں پلاسٹک کی نیل نیل
 میں بند پر سیاہی پر سیاہی آئی علی نے پر سیاہی
 کے جوڑے 15 گرام نکلیں، 15 پر سیاہی سے
 5 گرام پر سیاہی پر سیاہی پر سیاہی پر سیاہی
 پارسل کیا کر کے ایک پتہ پر سیاہی 1015 گرام
 بند پر سیاہی پر سیاہی پر سیاہی پر سیاہی پر سیاہی
 A-B لگائی = اس نسبت فرد مقبول مرستی
 کی جوڑے E & PW 11 صیف پر لکھو گواہ حاشیہ
 میرا دستخط درست طور پر ہے۔ اس کے
 علاوہ یہ قائم برآمدگی پر سیاہی پلاسٹک



11 (فارم) 11

(14)

(2)

(11)

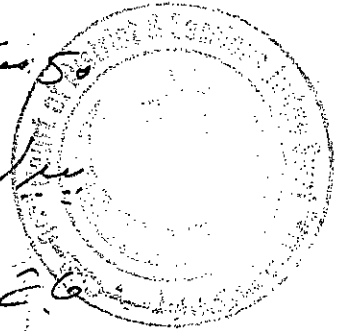
پہلے میں شاہزیں لاٹھو ۲ سپرو۔

PW-1
(4/27/7)

XX

مخائب ملزم ہزار پیر وکیل خود

الملاح علی سہراب خان چوک منٹورا ۲ میں ملے تھے۔
 اس وقت ہم پیرل گشت کر رہے تھے۔ الملاح چارجیکر
 ۵۵ گنتے یا چارجیکر ۵۵ گنتے پہ ملے تھے۔ جائے وقوعہ
 پیرل گشت تھے۔ جائے وقوعہ قریباً ۵ بجے پہنچے تھے۔
 جائے وقوعہ پہنچے ملزم کو گرفتار کیا۔ یہ درست ہے
 کہ سڈ کر ۲ بلڈ گٹ میں ۱۴/۱۵ گمرہ جائے دلائل
 موجود ہیں۔ ہم سب پولیس والے ملزم کو گرفتار
 کر لیا تھا۔ بقاؤ تمام لاہور کی تھانہ میں
 عمل میں لائے گئے۔ از خود کہے کہ موقع پہ ہی لاہور کی
 سڑک تھی۔ موقع سے باسکٹ قبضہ پولیس میں لی گئی
 تھی۔ پچھلے علم نہ چکر باسکٹ کے نسبت کوئی فرد
 مقبوضہ تیار کی گئی تھی کہ نہیں۔ اس وقت پلازہ
 سب سب سے پیراٹیوٹ لوٹ موجود تھی۔ از خود
 کہا کہ پیراٹیوٹ لوٹ گواہی دینے کیلئے تیار نہیں تھی۔



(1) (جاری) (1)

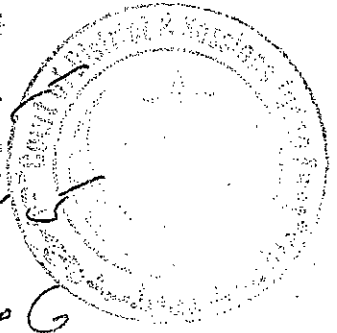
(19)

(3)

(15)

PH-1
(4627)

موتخ پر ہم نے 30/35 منٹ وقت گزارا تھا۔
 پھر درست ہے کہ ملازم کے جامہ تلاشی کے دوران
 کسی قسم کی کوئی چرس برآمد نہیں کی گئی۔
 انفرادی کیا کہ باسکٹ میں برآمدگی ہم نے کی ہے۔
 باسکٹ ایجنسی کے اندر پڑا تھا۔ علی علم نہ ہے
 کہ ایجنسی کسی کی ملکیت ہے۔ حق یہ ہے علم نہ ہے
 کہ کون کون سے ایجنسی میں کتنے ملازمین تھے۔ ایجنسی
 کے بارڈرنگ کی تلاشی کیلئے ہم نے کوئی سرچ وارنٹ
 حاصل نہیں کیا تھا۔ ہم جب جانے وقوعہ پہنچے تو
 قریباً 35 منٹ کے اندر فرد مرتب ہوا تھا۔ علی
 علم نہ ہے کہ مراحل کسی وقت مرتب ہوا تھا۔ مراحل
 میرے اوپر مرتب نہیں ہوئے تھے۔ علی علم نہ ہے کہ
 قائم برآمدگی کس روز کیا ہوا تھا یا کسی اور
 روز۔ انفرادی کہ اسٹیم بہت پرانا ہے۔ قائم
 برآمدگی کی نیپارے کا جمع وقت علی یاد نہیں ہے۔
 میں نے چرس کھل حالت میں سینہ دیکھا ہے
 میں چرس لا گیا ہے میں نہیں ہوں۔ چرس
 SH-5 عیب خود نشانہ لے گئے تھے۔ نشانہ کو چرس



11 (جاری) 11



لے جاتے ہوئے اس پلاسٹک کے تھیلے میں تھے۔
 انہوں نے کہا کہ پورا چرس اس کے پاس ہی ہے۔
 مجھے علم ہے کہ چرس کے ساتھ 540 کے پتھر لگائے گئے۔
 خانم برآمدگی میں ملزم لانام الحارث عزیز نے کہا ہے۔
 انہوں نے کہا کہ ملزم لانام الحارث حسین ہے، میں نے
 نشانہ رکھ کر بیان نشانہ میں دیا تھا۔ نشانہ میں
 محفوظ رکھ کر سنبھالنا کیرنٹر مجھے یاد ہے۔
 مجھے علم ہے کہ اس میں نے کتنے دستوں کیے تھے۔ پھر
 کیا کہ فرزند پر دستوں لگائے۔ فرزند پر دستوں میں
 نے نشانہ میں کیا تھا۔ یہ غلط ہے کہ چرس مال خانہ
 سے لے کر جھوٹی گوریٹ ملزم سے منسوب کی گئی ہے۔
 یہ غلط ہے کہ میں جھوٹی گوریٹوں سے رہا ہوں۔

سنا کر درست تسلیم کیا۔

(مہدی زینب خان)
 A-57-11-54A

15-12-17

(14)

Amma
D

IN THE COURT OF Rahat Ullah,
ADDITIONAL SESSIONS JUDGE-II/IZO SWAT

Case No. 57/CNSA
Date of Institution: 5-11-2016
Date of decision: 26-6-2018

State through Ali Badshah SI PS Mingora, Swat

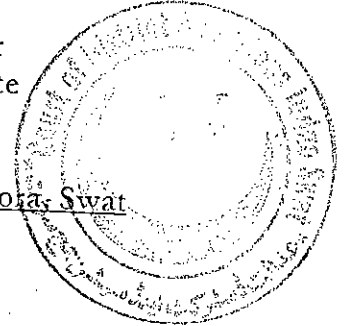
V E R S U S

Tariq Hussain S/o Amir Mashal R/o Afsar Abad, Mingora Swat.

State Counsel APP Mr. Mukhatiyar
Counsel for Accused Habib Khan Advocate

Case FIR # 1062 dated 24-10-2016 u/s 9(C) CNSA P.S Mingora Swat

OR 19
26-6-2018



1. Accused Tariq Hussain is facing trial in this court under section 9 (C) Control of Narcotics Substances Act, 1997 (CNSA) for possessing 1015 gm charas.

2. The story as described in the FIR is reproduced verbatim as hereunder:

مستغیث مندرجہ خانہ نمبر 2 نے برخلاف ملزم طارق حسین سکنہ افسر آباد سیدو شریف میں مخبر نے اطلاع دی کہ ملزم چرس کی خرید و فروخت کاروبار کر رہا ہے۔ تصدیق اور قانونی کارروائی کے خاطر ملزم کو ایجنسی کے باہر قابو کر کے چامہ تلاشی عمل میں لائی گئی اور ساتھ ہی قریب میں باسکٹ میں نیلا پلاسٹک تھیلہ میں بند چرس برآمد ہو کر جو وزن کرنے پر 1210 گرام نکلی۔ منجملہ چرس میں سے پانچ گرام چرس علیحدہ بند بہ پارسل نمبر 01 جبکہ بقایا چرس 1010 سر بمبر پارسل نمبر 2 کر کے، ملزم کو مرتکب جرم قرار پاکر گرفتار کر کے، مراسلہ بغرض قائمی مقدمہ بدست کانسٹیبل ظفر اللہ نمبر 222 تھانہ مینگورہ ار سال کیا گیا۔ جس کی اساس پر ملزم کے خلاف مقدمہ ہذا دائر کیا گیا۔

3. After completion of investigation, complete chalian was submitted against accused. Formal charge was framed against accused

9

15

under section 9(C)CNSA to which he pleaded not guilty and claimed trial. After that prosecution was directed to produce evidence in support of the charge leveled against the accused. Prosecution produced Irfan Ullah constable and his statement was recorded as PW-1. In light of the recorded statement counsel for accused submitted an application under section 265 K Cr.PC on 26-10-2018, notice of which was given to prosecution. Upon which arguments heard and record perused.

4 Learned counsel for the accused argued that false case has been planted by the complainant against the accused/petitioner; that the accused/petitioner is innocent and falsely charged in the present case. He next argued that it is a baseless and concocted case that the local police had fabricated the story just to show their efficiency to their high ups. He concluded his arguments by submitting that the story of prosecution was doubtful and accused/ petitioner deserved acquittal.

5 Learned APP for State submitted that recovery of 1015 grams charas had been effected from personal possession of accused. He maintained that FSL report is positive. He concluded his arguments by submitting that evidence should be concluded and after that fate of the prosecution case be decided.

6 Arguments heard and record perused.

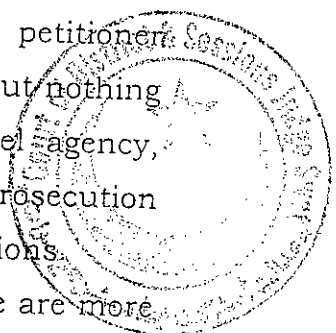
7 On perusal of the available record and hearing the valuable arguments of the learned counsel for the accused petitioner and APP for the State, the instant court reached to the following points to be determined for the disposal of the present application under section 265 K Cr.PC, which are mentioned as below;

- Whether any specification has been made that what type of agency was there i.e was it a travel agency or shopping mall etc.
- Was this agency the ownership of the present accused.
- Was the alleged basket lying inside the agency.
- Were there any other employees in the said agency.
- Was any personal recovery made from the accused.

10

16

- Were there material contradictions in the statement of a witness to the recovery memo ExPW1/1.
- 8. The main allegations leveled against the present accused are that he was involved in narcotics business and on spy information, the alleged place of occurrence was raided by the complainant along with other police officials, the accused was arrested, his body search was made but nothing was recovered and from nearby, an alleged basket was recovered, wherein, inside the basket, the alleged contraband was recovered and the ownership of which was attributed to the present accused petitioner but according to the available evidence nothing was found to the fact that this alleged agency was the ownership of present accused petitioner and more so, the available record was keenly perused but nothing was found to the effect that whether was it a travel agency, shopping mall or other business related spot. So, the prosecution badly failed to at least clarify the above mentioned questions.
- 9. Normally it so happens that in any type of agency, there are more than one employee but no evidence has been collected, to the effect that who were other employees in the said agency and the most interesting aspect of the present case is that the alleged basket was lying outside the agency, so if suppose the whole evidence is allowed to be recorded then the question is that how the prosecution would prove the fact that who was the owner of the alleged basket.
- 10. So far, the statement of PW-1, who is the marginal witness of recovery memo ExPW1/1, is concerned wherein during chief examination he stated that the recovery memo was prepared at the spot but during cross examination it was stated that the same was prepared inside the PS, so in light of this admission what is left to the prosecution to prove against the accused petitioner. Therefore, this court is of the firm view that if the prosecution is allowed to produce the whole remaining evidence then again there is no chance of conviction of accused therefore, while continuing with the present case it would be amount to wastage of the precious time of the court.



Handwritten signature and text in Urdu: "البدیشنل سیشن جج" (Additional Sessions Judge) and "محکمہ عدلیہ لاہور" (Law Department, Lahore).

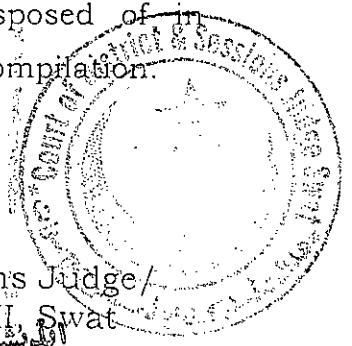
11

(17)

- 8 The above are the points which would definitely be raised at the end of the trial and the main scheme of section 265K Cr.PC is to look into the available record and if in case there is no chance of the conviction of the accused, he may be acquitted of the charge leveled against him despite the fact that the trial may not have concluded.
- 9 Keeping in view the above discussion I would, therefore, invoke my jurisdiction u/s 265-K of Cr.PC and would order acquittal of accused in this case. He is on bail, his bail bonds stands cancelled and his sureties are discharged from the liability of bail bonds. Case property shall remain intact till the expiry of period fixed for appeal/revision, where after it be disposed of in accordance with law. File be consigned to RR after completion.

Announced
26-6-2018

Rahat Ullah
Additional Sessions Judge/
Izafi Zilla Qazi-II, Swat



ابن سید نبین حج 1
ضلع قانس دوم سوات

10807

No. 10807

Date of Prosecution 13.06.18

Date on file 13

No of Words 10-p

Urgent
Name of Abdul Wahid

Signature
Copying Fee 100/-

Date of Delivery 13.06.2018

ATTESTED TO BE TRUE COPY

7
District & Sessions Judge/
Zilla Qazi, Swat
13.6.18

ANNEX
E

(18)

DISCIPLINARY ACTION

I, Syed Ashfaq Anwar, PSP District Police Officer, Swat as competent authority, is of the opinion that he Constable Irfan Ali No. 2722 while posted to Police Station Mingora has rendered himself liable to be proceeded against departmentally as he has committed the following acts/omissions as defined in Rule 2 (iii) of Police Rules 1975 with amendments 2014 vide Notification No.3859/Legal, dated 27-08-2014 of the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar, as per Provincial Assembly of Khyber Pakhtunkhwa Notification No. PA/Khyber Pakhtunkhwa/ Bills/ 2011/44905 dated 16/09/2011 and C.P.O, K.P.K Peshawar Memo: No. 3037-62/Legal, dated 19/11/2011.

STATEMENT OF ALLEGATIONS

It has been reported that he while posted to Police Station Mingora committed the following act / acts, which is / are gross misconduct on his part as defined in Rules 2 (iii) of Police Rules 1975.

Whereas, a case was registered against an accused vide FIR No. 1062 dated 24-10-2016 u/s 9C-CNSA Police Station Mingora and he has produced by prosecution as PW-1. During cross examination, he deliberately concealed the facts and negated the version of FIR. The trial court acquitted the accused from all charges in light of his contradictory statement which is a sheer violation of discipline and is punishable.

2. For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, Addl: SP Swat is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused officer, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the enquiry officer.

District Police Officer
Swat

No. 76 /PA, Dated Gulkada the, 11th OF 2018.

Copies of above to:-

1. Addl: SP, Swat for initiating proceeding against the accused Officer/ Official namely Constable Irfan Ali No. 2722 under Police Rules, 1975.

2. Constable Irfan Ali No. 2722

With the direction to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer for the purpose of enquiry proceeding.

Attested to be True Copy

Shabir Ahmad Khan (Dawlat Khel)
Advocate High Court
& Federal Shariat Court

49

CHARGE SHEET

1. Syed Ashfaq Anwar, PSP District Police Officer, Swat being competent authority, hereby charge you, Constable Irfan Ali No. 2722 while posted to Police Station Mingora as follows;

You committed the following act/acts, which is gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules 1975 with amendments 2014 vide Notification No.3859/Legal, dated 27-08-2014 of the General of Police, Khyber Pakhtunkhwa, Peshawar:

Whereas, a case was registered against an accused vide FIR No. 1062 dated 24-10-2016 u/s 9C-CNSA Police Station Mingora and you were produced by prosecution as PW-1. During cross examination, you deliberately concealed the facts and negated the version of FIR. The trial court acquitted the accused from all charges in light of your contradictory statement which is a sheer violation of discipline and is punishable. Thus you are issued this charge sheet and statement of allegations.

2. By reasons of the above, you appear to be guilty of misconduct and rendered yourself liable to all or any of penalties specified in Rule-4 of the Disciplinary Rules 1975.

3. You are, therefore, required to submit your written reply within seven (07) days of the receipt of this Charge Sheet to the Enquiry officer.

4. Your written reply, 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.

5. Intimate as to whether you desire to be heard in person or not.

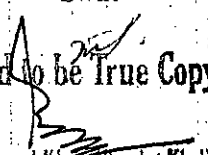
6. A statement of allegations is enclosed.

No. 76 /PA,

Dated: 11-07/2018.


~~_____~~
District Police Officer
Swat

Attested to be True Copy


Shabir Ahmad Khan (Dawlat Khel)
Advocate High Court
& Federal Shariat Court

Amir

(96)

F

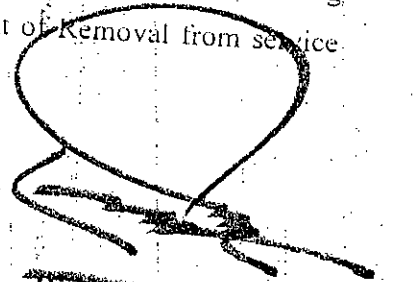
ORDER

This order will dispose of Departmental Enquiry against Constable Irfan Ali No. 2722 of this District Police. He while posted to Police Station Mingora blatantly violated discipline in case FIR No. 1062 dated 24-10-2016 u/s 9C-CNSA Police Station Mingora. In the same case he was produced by Prosecution as PW-1. During cross examination he deliberately concealed the facts and negated the version of FIR. The Trial Court acquitted the accused from all charges in light of his contradictory statement.

He was issued charge sheet and statement of allegations vide this office No. 76/PA, dated 11-07-2018 and Addl. SP Swat was appointed as Enquiry Officer to conduct proper departmental enquiry against the delinquent Constable. The Enquiry Officer after carrying out proper enquiry submitted his findings. The Enquiry report revealed that the defaulter Constable has recorded contradictory statement which led to acquittal of the accused. The Constable under enquiry was called in Orderly Room and heard in person but he failed to produce any cogent reason to rebut the allegations leveled against him.

The delinquent official has recorded contradictory statement which benefited the accused and led to his acquittal. By doing so he has failed to fulfill his responsibility as Police officer and acted against the dictates of Police discipline which warrants punishment. Hence, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules - 1975, I. Syed Ashfaq Anwar, PSP, District Police Officer, Swat being competent authority, am constrained to award him major punishment of Removal from service with immediate effect.

Order announced.


District Police Officer
Swat


O.B. No. 127

Dated: 38.18

Copies to:-

1. Addl. SP Swat
 2. Establishment Clerk
- For necessary action, please.

Attested to be True Copy


Shabir Ahmad Khan (Dawlat Khel)
Advocate High Court
& Federal Shariat Court

District Police Officer
Swat

Annex
G

(21)



OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND

AT SAIDU SHARIF SWAT.

Ph: 0946-9240381-83 & Fax No. 0946-9240390

Email: digmalakand@yahoo.com

ORDER:

This order will dispose off appeal of Ex-Constable Irfan Ali No. 2722 of Swat District for reinstatement in service.

Brief facts of the case are that Ex-Constable Irfan Ali No. 2722 while posted to Police Station Mingora blatantly violated discipline in case FIR No. 1062 dated 24/10/2016 u/s 9C-CNSA Police Station Mingora. In the same case he was produced by Prosecution as PW-1. During cross examination he deliberately concealed the facts and negated the version of FIR. The Trial Court acquitted the accused from all charges in light of his contradictory statement. Consequently he was issued Charge Sheet coupled with statement of allegations and Addl. SP Swat was appointed as Enquiry Officer. The Enquiry Officer after carrying out proper departmental enquiry submitted his finding report holding the defaulter Constable guilty for recording contradictory statement which based for acquittal of the accused. The Constable under enquiry was called in Orderly Room by DPO Swat and heard him in person but he failed to produce any cogent reason to rebut the allegations leveled against him. Therefore being found guilty of charges the District Police Officer, Swat removed him from service under Rules 2 (iii) of Police Disciplinary Rules- 1975 vide his office OB No. 127 dated 03/08/2018.

He was called in Orderly Room on 07/11/2018 and heard him in person. The appellant explained his poor family background. Therefore, taking a lenient view the order passed by District Police Officer, Swat is set aside and he is hereby reinstated in service. However, he is awarded the punishment of stoppage of two increments with cumulative effect. The period of absence and he spent out of service is counted as leave without pay.

Order announced.

(Signature)
MUHAMMAD SAIED) PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat
Naq
7/11

No. 10030 /E,
Dated 13-11-2018.

Copy to District Police Officer, Swat for information and necessary action with reference to his office Memo: No. 15779/E, dated 30/08/2018. His Service Roll and Fauji Missal are returned herewith for record in your office.

Service Roll & Missal

Attested to be True Copy
(Signature)
Shahir Ahmad Khan (Dawlat Khel)
Advocate High Court
& Federal Shariat Court

حضرت صاحب انسپکٹ جنرل آف پولیس صدر مکتوب ۱۱ اکتوبر ۱۹۷۱ء

Annex 14


ب عالی! گزشتہ سیشن کی جاتی ہے کہ مسائل نمبر پولیس میں

تفصیل ایسی ڈیوٹی نہایت نوسن اسلوی اور ایلانڈاری سے سرانجام
 دے دیا ہے مسائل کو جناب ڈی پی او مبلغ سوات نے بحوالہ ایڈیشن نمبر
 127 مورخہ 03-08-2018 کو سر دس سے ریو کیا جن میں مسائل کے جناب
 آر پی او صاحب ملاکنڈ کو ارسال کیا جس میں جناب آر پی او صاحب
 نے مسائل کو نوکری پر بحوالہ جمع انگریزی نمبر E 1002018 مورخہ 2018
 کو دوبارہ حال کیا اور اس کے ساتھ ساتھ مسائل سے دو انگریز
 with cumulative effect سٹاف کیا جس میں مسائل کے سٹو ان پرنسٹ
 چونکہ مسائل تفصیل ڈیوٹی کرنا ہے اور زیادہ تر سیکورٹی کے ڈیوٹی سرانجام
 دے دیا ہے اس لیے مسائل کے سٹو ان پرنسٹ کی سہولت ہے۔ مسائل ایڈیشن
 گھر سے تعلق رکھتا ہے اور گھر کے ساری ذمہ داری من مسائل پر ہے۔
 لہذا بد روئے درخواست سائل اندی کرتا ہے کہ مسائل
 کے دو انگریز حال یا عارضی طور پر بند کرے گا حکم صادر فرمائیں۔
 تو مسائل تاجیک رجسٹر گورنمنٹ

العارفین آپ کا نام فرمان

تفصیل
 2722
 متفقہ ڈسٹرکٹ کورٹ سیکورٹی سہولت
 مورخہ 27-03-2019

Attested to be True Copy

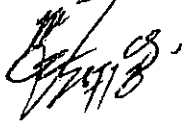

 Shabir Ahmad Khan (Dawlat Khel)
 Advocate High Court
 & Federal Shariat Court

S/o,

Forwarded please



I.C Security District Court DIST: Swat

To
 To




Annex "I"

93

1849/E
11-6-19

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

No. SI/1996/19, dated Peshawar the 30/05/2019.

To: The Regional Police Officer,
Malakand at Saidu Sharif, Swat.

2722
06/19

4789
11/6/19

Subject: APPLICATION

Memo:

Please refer to your office Memo No. 5515-16/E, dated 09.05.2019.

The Competent Authority has examined and filed the application submitted by Constable Irfan Ali No. 2722 of Swat District against the punishment of stoppage of two increment with cumulative effect awarded vide RPO/Malakand order Endst: No. 10020/E, dated 13.11.2018, being badly time barred.

The applicant may please be informed accordingly.

(Signature)
11/05/19/15
(SYED ANIS-UL-HASSANI)
Registrar,
For Inspector General of Police,
BU Khyber Pakhtunkhwa,
Peshawar.

170-6473/E
dt. 11-06-19

EC
171 Inspector Malakand

(Signature)

District Officer
11/6/19

EE/DPD Swat
For information &
informed the Comr
accordingly please

Attested to be True Copy

(Signature)
Shahir Ahmad Khan (Dawat Khel)
Advocate High Court
& Federal Shariat Court

FMC
Per received please.

(Signature)
11/6/19

24

**BEFORE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA
AT PESHAWAR**

WAKALT NAMA

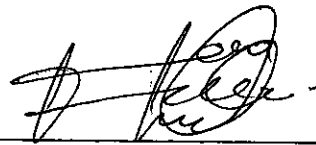
Title:

Constable Irfan Ali versus IGP and others

I/we do hereby appoint **SHABIR AHMAD KHAN (Dawlat khel)**
Advocate High Court in the above cited case/ suit/ appeal/ revision/
petition to do all or any of the following acts, deeds and things:

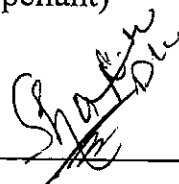
- 1) To appear, act and plead for me/us in the above cited case/ suit/
appeal/ revision/ petition in this court/tribunal and which the
same may tried or heard, and any other proceedings arising out
of or connected therewith.
- 2) To sign and verify and file , case/ suit/ appeal/ revision/ petition
, affidavits etc. as may be deemed necessary or advisable by
them for the conduct , prosecution or defense of the said case at
all its stages.
- 3) To receive payment of, and issue receipt for, all money that
may be or become due and payable to me/us during the course
of proceeding.
- 4) To do any act necessary or ancillary to the above acts , deed and
things.
- 5) To appoint any other counsel to do any/all of the acts, deeds
and things.
- 6) I/We shall appear in the court/tribunal on every date of hearing
for assistance and if due to my/our non- appearance, any
adverse judgment/ order/decree is passed, he will not be held
responsible.

IN WITNESS whereof I/We have signed this Waklat Nama
hereunder , the contents of which have been read/ explained to me/us
and fully understood by me/us this.



Const: Irfan Ali (Appellant)

Attested and Accepted by:



SHABIR AHMAD KHAN (Dawlat khel)

Advocate High Court

Dated:29-07-2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 992/2019

Constable Irfan Ali No.2722 posted at Police Station Saidu Sharif Swat

..... Appellant

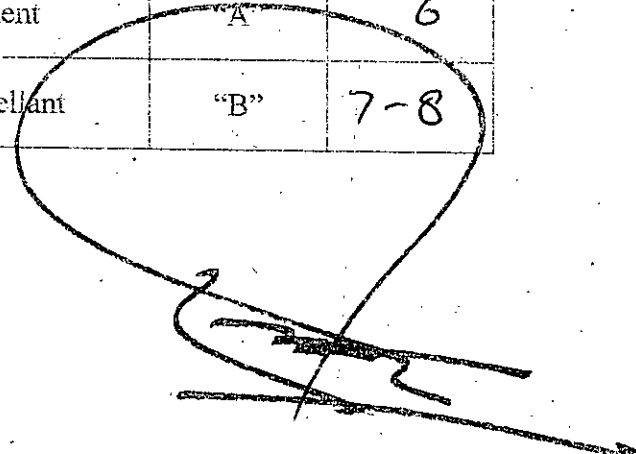
VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. Regional Police Officer Malakand at Saidu Sharif, District Swat
3. District Police Officer Swat.

....Respondents

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1	Para-wise Comments	-	1-3
2	Affidavit	-	4
3	Authority Letter	-	5
4	Copy of list of punishment	"A"	6
5	Copy of statement of appellant	"B"	7-8


District Police Officer, Swat
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 992/2019

Constable Irfan Ali No.2722 posted at Police Station Saidu Sharif Swat

..... Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. Regional Police Officer Malakand at Saidu Sharif, District Swat
3. District Police Officer Swat.

....Respondents

PARAWISE REPLY BY RESPONDENTS

Respectfully Shewith,

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by Law & limitation.
2. That the appellant has got no Cause of action and locus standi to file the present appeal.
3. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
4. That the appellant has not come to the Tribunal with clean hands.
5. That the instant appeal is not maintainable in its present form.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.
7. That the respondent No.02 has taken lenient view by modification of the major punishment into minor punishment, hence the appeal is tenable in its present form.

FACTS:

- 1) Correct to the extent the appellant was recruited as Constable in Police Department, however he was awarded 14 minor punishments for willful absence from official duty. List of punishment enclosed as annexure "A".
- 2) Pertains to record, hence needs no comments.
- 3) Pertains to record, hence needs no comments.
- 4) Pertains to record, hence needs no comments.
- 5) Incorrect. The accused was acquitted by the Court in light of contradictory statement recorded by the appellant in the criminal Court.
- 6) Pertains to record, hence needs no comments.

- 2
- 7) Incorrect. Proper departmental enquiry was conducted against the appellant. He was issued Charge Sheet coupled with statement of allegations and Addl: SP Swat was deputed as Enquiry Officer. He was provided all the opportunities of self defence and personal hearing during the course of enquiry.
 - 8) Pertains to record, hence needs no comments.
 - 9) Correct to the extent that Revision Petition of the appellant was filed by Respondent No.01 being badly time barred. The appellant has wrongly challenged the legal and valid orders of the respondents before the honorable Tribunal through unsound reasons/grounds.

GROUNDS:

- a) Incorrect. There is no malafide intention on the part of Enquiry Officer. All the codal formalities have been observed during the course of enquiry under the law/rules.
- b) Incorrect. All the opportunities of personal hearing and self defence have been provided to the appellant during the course of enquiry and he was dismissed from service after completing all codal formalities under the law/rules.
- c) Incorrect. The allegations leveled against the appellant have been proved during proper departmental enquiry conducted by the Addl: SP Swat, wherein he was personally heard and opportunity of self defence has also provided to the appellant during enquiry.
- d) Incorrect. As stated above, the appellant has dismissed from service after completing all codal formalities. Opportunities of self defence and personal hearing have been provided to the appellant during the course of enquiry.
- e) Incorrect. Orders of the respondents are reasonable, legal and in accordance with law/rules.
- f) Incorrect. The appellant was treated in accordance with law/rules and all the codal formalities have been fulfilled during the course of enquiry as per law. No violations of law/rules have been made by the respondents in their orders.
- g) Incorrect. The appellant has wilfully recorded contradictory statement in the criminal Court during Trial. Furthermore he has admitted the charges of contradictory statement in his statement recorded by the Enquiry Officer. Copy enclosed as annexure "B".

- h) Correct to the extent that the appellant and seizing officer were the witnesses of the case. Usually before entering into the witness box, all the witnesses used to refresh their memories from the record and then record their statements but appellant has testified wrong answer to the question put up by defence counsel which benefited the accused and gross misconduct on his part.
- i) Appellant being material witness, has destroyed the prosecution case due to his contradictory and favorable statement toward the accused, therefore lodging of appeal would have no legal value and futile exercise.
- j) Incorrect. As stated above, the appellant has wilfully recorded contradictory statement and benefited the accused.
- k) That the respondents may be allowed to add more grounds at the time of arguments.

PRAYER:

Keeping in views the above facts and circumstances, it is humbly prayed that the appeal of appellant being devoid of legal force may kindly be dismissed with costs.

Anwar Khan

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.01)

[Signature]
Regional Police Officer,
Malakand & Bajir, Swat
Regional Police Officer
Malakand Region
(Respondent No.02)

[Signature]
District Police Officer Swat
(Respondent No.03)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

④

Service Appeal No. 992/2019

Constable Irfan Ali No.2722 posted at Police Station Saidu Sharif Swat

..... Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. Regional Police Officer Malakand at Saidu Sharif, District Swat
3. District Police Officer Swat.

....Respondents

AFFIDAVIT

We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from the honorable Tribunal.

Amal Khan

**Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
(Respondents No.1)**

*Regional Police Officer,
Malakand at Saidu Sharif Swat*
**Regional Police Officer
Malakand Region
(Respondents No.2)**

[Signature]
**District Police Officer, Swat
(Respondents No.3)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 992/2019

Constable Irfan Ali No.2722 posted at Police Station Saidu Sharif Swat

..... Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. Regional Police Officer Malakand at Saidu Sharif, District Swat
3. District Police Officer Swat.

....Respondents

AUTHORITY LETTER

We, the above respondents do hereby authorize Mr. Mir Faraz Khan DSP/Legal Swat & Mr. Khawas Khan SI Legal to appear before the Tribunal on our behalf and submit-reply etc in connection with titled Service Appeal.

Amal kr

Provincial Police officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)

*Regional Police Officer,
Malakand Region*
Regional Police Officer
Malakand Region
(Respondent No. 2)

District Police Officer Swat
District Police Officer Swat
(Respondent No. 3)

**and Entries/Minor Punishment detail of Constable Irfan Ali Swat
Police**

Sr.No	Misconduct	Nature of punishment
01	Absented from duty w.e.f 20/04/2010 to 24/04/2010.	Without pay
02	01/07/2010 to 13/07/2010	Without pay
03	16/07/2010 to 23/07/2010	Without pay
04	29/09/2012 to 02/10/2010	Without pay
05	05/05/2011 to 04/05/2011	Without pay
06	27/12/2016 to 08/01/2017	Without pay
07	17/12/2016 to 24/12/2016	Without pay
08	26/05/2017 to 27/05/2017	Without pay
09	17/07/2017 to 19/07/2017	Without pay
10	29/04/2017 to 04/08/2017	Without pay
11	22/10/2017 to 24/10/2017	Without pay
12	26/10/2017 to 19/11/2017	Without pay
13	20/03/2018 to 22/03/2018	Without pay
14	17/12/2018 to 01/01/2019	Without pay


Establishment Clerk

بیان اوزان بخار علی 2722 سفید بوسلی میں ہے۔

بیان کیا کہ میں 2010 سے 16 کو بجک بوسلی میں بجت ایل لوتی ہوا کا ہے۔

سال 2016 میں میں قطان منگورہ میں لطیبات تھا۔ فرم 24/10/16 کو علی باچارہ قطان منگورہ کے ساتھ ڈیوٹی پر تھا۔ میں طارق حسن نامی شخص کے قبضے سے جس پر ہندسہ 7849 جیم CNVA-C و قطان منگورہ ضلع لا

تقدیر نمبر 1062 فرم 24/10/16 جیم CNVA-C و قطان منگورہ ضلع لا فرم میں درخواست کی۔ اسے مقدمہ میں مرآت ثابت آڈیو سوات میں کتب طلبہ اور حیاں پر قبضے کی سوا لٹ کے ذریعے سے اپنے قبضے کے مناسبت سے اجماع جوابات دئے۔ موقع میں

قبل ازیں کہیں کی مقدمہ میں گواہی نہیں کی تھی۔ پہلی مقدمہ تھی۔ آئیڈیٹ اور میاں میں کوئی عدلیہ کے لئے نہیں دیکھ دالہ نہیں بلکہ باخبر کا رہنے کے تیار کی گئے۔ آئندہ قضا پر ہونا۔ اور ایسا سترہ سے ہی میرے ساتھ

کوہ ڈکیشن نہیں کیا تھا۔ تم سچا رہت باطل کھرتا ہے۔ اسکا اثر ہے کہ میں صرف انکو اپنی خاطر کرتا تھا کہ

پہارو ما با کا۔

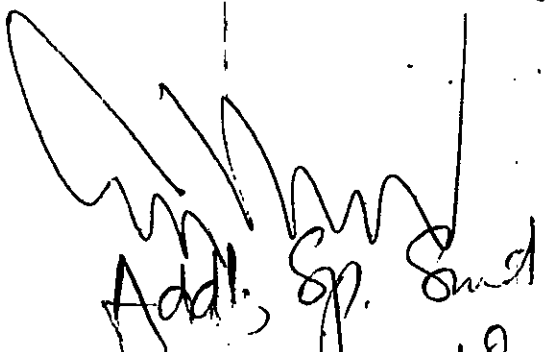
بخار علی 2722

فہرست
کراس بحائب EO

1۔ آئیے تقاضا منگورہ میں کتنا طرح سے ڈیولپ کیا ہے؟
 2۔ تقریباً ایک سال ڈیولپ کیا ہے۔
 3۔ جب آئے تجارت کے لئے مہلات خارجہ ہے تو کب سے

(سٹیٹس) یو جی ٹی کیا ہیں؟

4۔ میں بحائب کو میں ڈیولپ تقاضا مہلات سے پہلے قدم کے جامع
 5۔ میں نے صبر کیا تھا۔ کولا سٹیٹس اور جوڈس میں تھا۔
 6۔ میں نے کیا۔ کو طے باطرا کو نے خود برخط کے متعلق
 7۔ منگورہ کے کا طرح سے کیا تھا؟
 8۔ جی نہیں۔ اس کے کچھ نہیں کیا تھا۔


 Addl. Sp. Secy.
 13.07.18