

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 946/2015

Date of Institution ... 19.05.2015

Date of Decision ... 22.09.2022

Amir Ali, Ex-Constable No. 391, Mardan District Police.

... (Appellant)

**VERSUS**

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

-----  
SYED NOMAN ALI BUKHARI,  
Advocate

---

For appellant.

SYED NASEER-UD-DIN SHAH,  
Assistant Advocate General

---

For respondents.

SALAH-UD-DIN  
MIAN MUHAMMAD

---

MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant joined Police Force as recruit on 22.12.2014. Departmental action was taken against the appellant on the allegations that he alongwith his brother namely Fawad Ali and father namely Darwaish as well as other persons namely Saeed and Imran Ali S/O Niamatullah were charged in case FIR No. 542 dated 21.09.2014 under sections 506/387/427/148/149 PPC Police Station Hoti District Mardan but the



appellant concealed this fact at the time of his appointment as constable and also managed to procure a favourable report from the concerned police station. On conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service, which was challenged by the appellant through filing of departmental appeal but the same was also declined, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the inquiry proceedings were conducted in violation of mandatory provisions of Police Rules, 1975 and neither any final show-cause notice was issued to the appellant nor copy of the inquiry report provided to him; that the appellant was though charged in a false criminal case, however he was acquitted by competent court of law; that soon after registration of FIR, compromise was effected between the parties and the appellant was granted pre-arrest bail, however the appellant being not a law knowing person, was under the impression that he had been acquitted; that after recruitment of the appellant, valuable rights were created in his favour and he could not have been dismissed from service merely on the charge of his involvement in the criminal case; that the impugned orders are not in accordance with law, therefore, the same may be set-aside and the appellant may be


reinstated in service with all back benefits. Reliance was placed on 1986 PLC (C.S) 420 and 2010 PLC (C.S) 924.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant stood charged in a criminal case and in view of Circular Order No. 8/2007 issued by Provincial Police Officer Khyber Pakhtunkhwa Peshawar on 16.06.2007, the appellant was debarred from his enlistment as Constable, however he submitted false affidavit regarding his non-involvement in any criminal case and thus secured his recruitment; that the appellant in connivance with the then Madad Muharrar Police Station Hoti had procured a false verification report and the concerned Madad Muharrar has also been awarded the penalty of forfeiture of two years approved service; that the appellant was treated in accordance with law and the allegations against him stood proved in a regular inquiry, therefore, he has rightly been dismissed from service.

5. Arguments have already been heard and record perused.

6. A perusal of the record would show that departmental action was taken against the appellant on the allegations that he alongwith his brother namely Fawad Ali and father namely Darwaish as well as others were charged by complainant Fida Muhammad in case FIR No 542 dated 21.09.2014 under sections 506/387/427/148/149 PPC Police Station Hoti District Mardan but the appellant concealed this fact at the time of his appointment as constable and also managed to

procure a favourable report from the concerned police station. Available on the record is copy of verification form for initial appointment in respect of the appellant. Madad Muharrar of the concerned police station had endorsed report on the aforementioned verification form by mentioning that on scrutiny of record maintained in the police station, the appellant was not found convicted in any criminal case. Nothing false was mentioned in the said report of Madad Muharrar for the reason that the appellant was only charged in a criminal case and was not at all convicted in any criminal case. It is not understandable as to how the said report of Madad Muharrar was made a ground for initiating disciplinary action against the appellant.

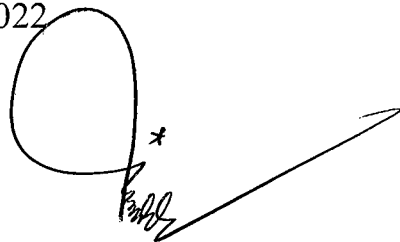
 7. The appellant was though charged in a criminal case, however the matter was privately settled through compromise and the appellant was granted pre-arrest bail vide order dated 18.10.2014 i.e prior to his recruitment on 22.12.2014. In view of compromise between the parties and grant of pre-arrest bail, the appellant being not a law knowing person was under the impression that he has been acquitted in the criminal case. The appellant has admittedly been acquitted in the mentioned criminal case and there exists no legal reason to debar him from serving in the police department. Moreover, the appellant was not provided any opportunity of personal hearing before passing of the impugned order of his dismissal from service. Similarly, the appellant was neither issued any final show-cause notice nor he was provided copy of the inquiry report. August Supreme Court of Pakistan in its judgment reported as PLD 1981 SC-176, has graciously held that rules

devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of final show cause notice and non-provision of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him.

8. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service, however in view of peculiar facts and circumstances of the case, he shall not be entitled to any financial back benefits. The seniority of the appellant shall, however be considered alongwith his batch-mates from the date of his appointment in accordance with relevant rules. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

22.09.2022

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a long horizontal stroke extending to the right. There is a small asterisk-like mark above the signature.

(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a small flourish.

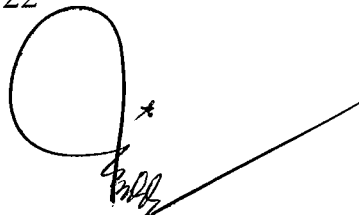
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

ORDER  
22.09.2022

Learned counsel for the appellant present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service, however in view of peculiar facts and circumstances of the case, he shall not be entitled to any financial back benefits. The seniority of the appellant shall, however be considered alongwith his batch-mates from the date of his appointment in accordance with relevant rules. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
22.09.2022



(Mian Muhammad)  
Member (Executive)



(Salah-Ud-Din)  
Member (Judicial)

20.09.2022

Syed Noman Ali Bukhari, Advocate for the appellant present. Mr. Atta-Ur-Rehman, Inspector alongwith Mr. Naseer-Ud-Din Shah, Assistant Advocate General for the respondents present.

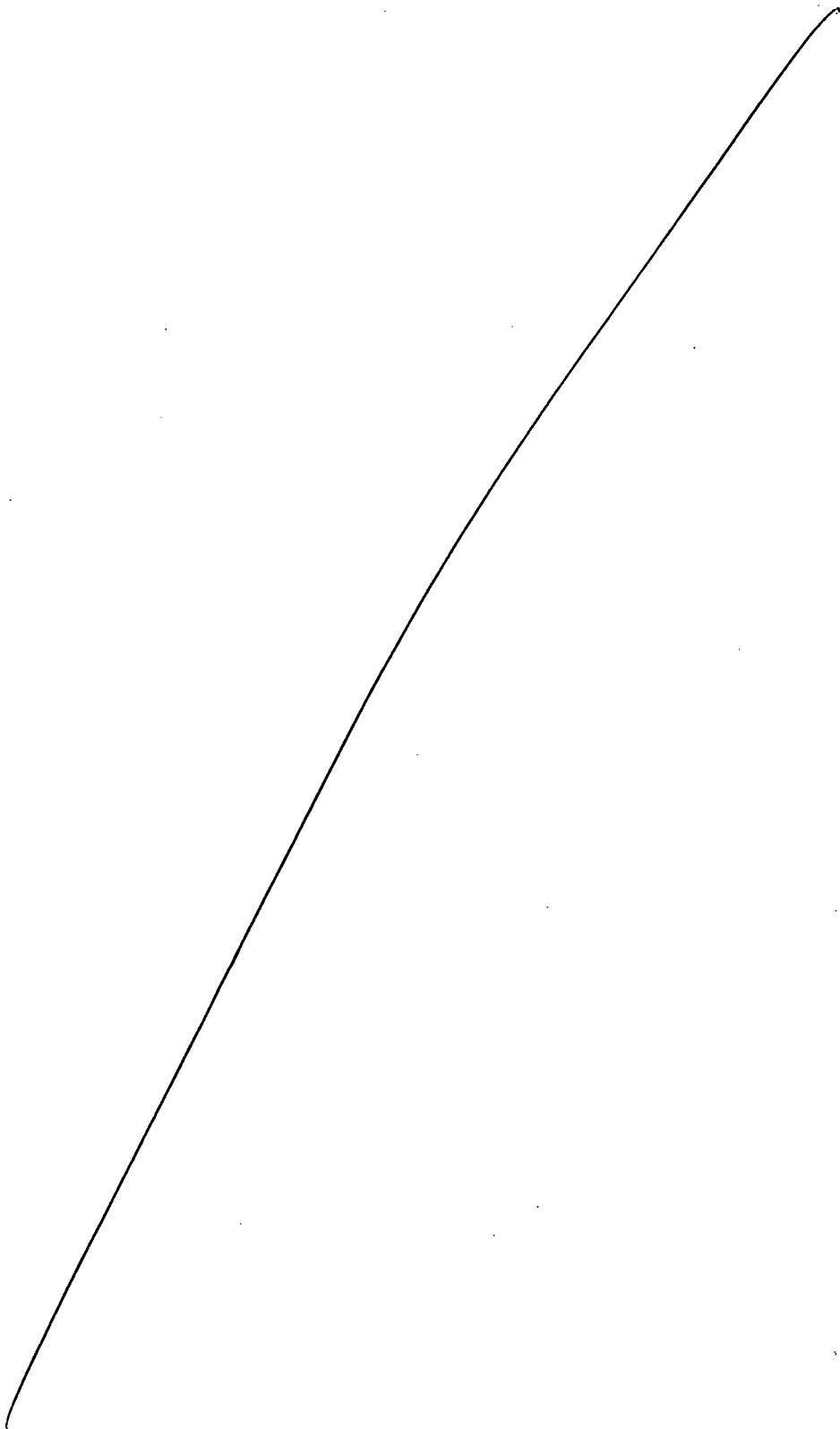
Arguments heard. To come up for order on 22.09.2022 before the D.B.

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a checkmark-like flourish.

(Mian Muhammad)  
Member (E)

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a flourish.

(Salah-Ud-Din)  
Member (J)

A large, solid black diagonal line that starts near the bottom left and extends towards the top right, crossing the page.

27<sup>th</sup> May, 2022

*Due to winter weather the*  
Clerk of the counsel present. Mr. Naseerud Din Shah,

Asstt. AG for respondents present.

*case is adjourned to come up*

Arguments could not be heard due to general strike of  
*for the same on 14-4-2022*  
the bar. Adjourned. To come up for arguments on 25.07.2022

before D.B.

(Fareeha Paul)  
Member (E)

(Kalim Arshad Khan)  
Chairman

14.04.2022

Appellant alongwith his counsel namely Uzma Said, Advocate present, who submitted fresh Wakalatnama on behalf of the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that she has been engaged today and has not gone through the record. Adjourned. Last opportunity given. To come up for arguments on 27.05.2022 before the D.B.

(Mian Muhammad)  
Member (E)

(Salah-ud-Din)  
Member (J)

27<sup>th</sup> May, 2022

Clerk of the counsel present. Mr. Naseerud Din Shah,

Asstt. AG for respondents present.

Arguments could not be heard due to general strike of  
the bar. Adjourned. To come up for arguments on 25.07.2022  
before D.B.

(Fareeha Paul)  
Member (E)

(Kalim Arshad Khan)  
Chairman

25-7-22

*proper DB not available to come up for the same as before on 20/9/22*



02.11.2020

Junior to counsel for the appellant and Addl. AG alongwith Zaheer Muhammad, PSI for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 11.01.2021 for hearing before the D.B.

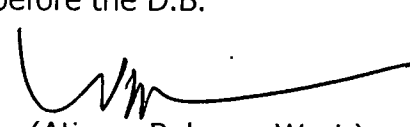
  
(Mian Muhammad)  
Member

  
Chairman

11.01.2021

Counsel for the appellant and Mr. Muhammad Rashid, DDA alongwith Khial Roz Inspector (Legal) for the respondents present.

Former requests for adjournment in order to further prepare the brief. Adjourned to 16.04.2021 for hearing before the D.B.

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

  
Chairman

16.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 10.08.2021 for the same as before.

  
Reader

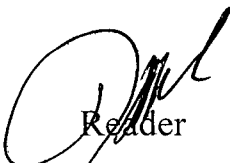
10.08.2021

Since, 1<sup>st</sup> Moharram has been declared as public holiday, therefore, case is adjourned to 27/12/2021 for the same as before.

  
Reader

26.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 15.06.2020 before D.B.

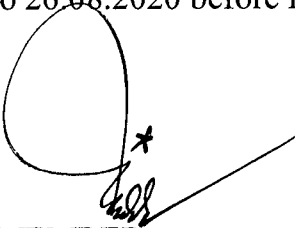
  
Reader

15.06.2020

Counsel for the appellant and Additional Advocate General alongwith Mr. Atta Ur Rehman, SI for respondents present.

Learned counsel for the appellant, during the course of arguments referred to standing order No.8 of 2007 dated 16.06.2007. The copies of referred standing order though had not been provided to the court nor the Learned AAG. Learned counsel, therefore, requests for ~~some~~ time to place on record the copies of all relevant documents within a fortnight.

Adjourned to 26.08.2020 before D.B.

  
MEMBER

  
CHAIRMAN

26.08.2020

Due to summer vacation case to come up for the same on 02.11.2020 before D.B.

Reader

11.09.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney alongwith Atta ur Rehman Inspector present. Representative of the respondent department submitted copy of affidavit of the appellant. Upon the request of learned counsel for the appellant, representative also submitted copy of Verification form for Initial Appointment of the appellant. Learned counsel for the appellant seeks adjournment for arguments. Being an old case of the year 2015, adjourned by way of last chance. To come up for arguments on 25.11.2019 before D.B.

  
Member

  
Member

25.11.2019

Due to general strike of the KP Bar Council, the case is adjourned. To come up on 27.01.2020 before D.B.

  
Member

  
Member

27.01.2020

Junior to counsel for the appellant and Addl. AG alongwith Attaur Rahman, Inspector (Legal) for the respondents present.

Due to general strike on the call of K.P Bar Council, instant appeal is adjourned to 26.03.2020 for arguments before the D.B.

  
Member

  
Member

10.04.2019


Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Atta Ur Rehman S.I for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for argument on 27.06.2019 before D.B

  
Member

  
Member

27.06.2019

Appellant in person and Addl. AG for the respondents present. Due to incomplete bench case is adjourned to 11.09.2019 for arguments before the D.B.

  
Reader

946/2015

26.12.2018

Appellant alongwith Taimuir Ali, Advocate and Mr. Ziaullah, DDA alongwith Attaur Rahman, S.I (Legal) for the respondents present.

Learned counsel for the appellant and learned DDA were heard at length. We, however, felt that the record pertaining to service of appellant, more particularly, the documents through which he has been alleged to have concealed the factum of his involvement in a criminal case, shall be important for decision of this case. The respondents are, therefore, directed to produce the said part of the record on 28.01.2019 before this D.B.

  
Member

  
Chairman

28.1.2019

Appellant with counsel and Addl. AG alongwith Attaur Rahman, S.I for the respondents present.

The representative of respondent department has produced copy of departmental proceedings against H.C Wazir Muhammad No. 2810 who had reported on the character/verification role in respect of appellant. The same is placed on record.

In order to reach just conclusion in the matter it would be necessary to examine the declaration form filled by the appellant upon which the verification process at the concerned Police Station was initiated. The same shall be produced alongwith any other affidavit/declaration on 10.04.2019 before the D.B.

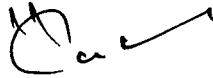
  
Member

  
Chairman

27.07.2018

Junior to counsel for the appellant and Mr. Zia Ullah, learned Deputy District Attorney alongwith present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 18.09.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

18.09.2018

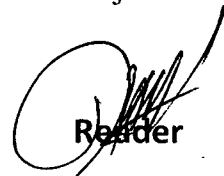
Appellant alongwith Mr. Taimur Ali Khan, junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, S.I (Legal) for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is stated busy before the Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 02.11.2018 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

02.11.2018

Neither appellant nor his counsel present. Mr. Ziaullah, Deputy District Attorney for the respondents present. Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 26.12.2018.

  
Reader

06.2.2018

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. AG alongwith S.I(Legal) for the respondents present. Due to shortage of time, arguments could not be heard. To come up for arguments on 05.4.2018 before the D.B.

  
Member

  
Chairman

05.04.2018

Learned counsel for the appellant and Mr. Zia Ullah, learned Deputy District Attorney alongwith Mr. Atta Ur Rehman, S.I (legal) for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 07.06.2018 before D.B

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

07.06.2018

Junior to counsel for the appellant and Mr. Muhammad Jan, Learned Deputy District Attorney alongwith Shafique Inspector for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned by way of last chance. To come up for arguments on ~~07.07~~ 07.07.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member


24.03.2017


Counsel for the appellant and Mr. Atta Ur Rahman, SI alongwith Mr. Kabir Ullah Khattak, Assistant AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 31.07.2017 before D.B.

  
Chairman

31/7/2017

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Attaullah, S.I (Legal) for the respondents present. Partly heard. Learned counsel for the appellant seeks adjournment. To come up for further arguments on 27/11/2017 before D.B.

  
(GUL ZEB KHAN)  
MEMBER

  
(Muhammad Hamid Mughal)  
MEMBER

27.11.2017

Clerk to counsel for the appellant and Addl: AG for respondents present. Due to general strike of the Bar arguments could not be heard. Adjourned. To come up for arguments on 06.02.2018 before D.B.

  
Member

  
Chairman



24.03.2016


Counsel for the appellant and Mr. Muhammad Ghani, S.I alongwith Assistant AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 13.7.2016.

  
Chairman

13.7.2016

Counsel for the appellant and Mr. Muhammad Ghani, SI alongwith Mr. Muhammad Jan, GP for respondents present. Rejoinder submitted copy of which is placed on file. To come up for arguments on

23-11-16

  
Member

  
Member

23.11.2016

Counsel for the appellant and Mr. Khalid Mehmood. H.C alongwith Mr. Muhammad Jan, GP for the respondents present. Learned counsel for the appellant submitted before the court that in the inquiry report there is mentioned a standing order; hence, the same be requisitioned. Request accepted. Representative of the department is directed to produce before the court available record. To come up for such record and arguments on 24.03.2017 before D.B.

  
(ABDUL LATIF)  
MEMBER

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

27.08.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to inquiry on the basis of a criminal case registered under sections 506/387/427/PPC vide FIR No. 542 dated 21.9.2014 at PS Hoti Mardan and dismissed from service on the allegations of involvement in the said criminal case vide impugned order dated 25.2.2015 regarding which he preferred departmental appeal which was rejected on 20.4.2015 and hence the instant service appeal on 19.5.2015.

Appellant Deposited  
Security & Process Fee



That the appellant is falsely implicated in the criminal case which is yet to be decided and in which the Court has extended the concession of pre-arrest bail to the appellant and that the said case would not be legally considered for passing the impugned order of dismissal from service.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 26.11.2015 before S.B.

  
Chairman

26.11.2015

Appellant in person and Mr. Muhammad Ghani, S.I alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 24.3.2016 before S.B.



  
Chairman

Form- A

FORM OF ORDER SHEET

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

Case No. 946/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21.08.2015	<p>The appeal of Mr. Amir Ali resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	24-8-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>27-8-15</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Amir Ali Ex-Constable No.391 Mardan Distt. Police received to-day i.e. on 19.05.2015 is incomplete on the following score which is returned to the counsel for the appellent for completion and resubmission within 15 days.

- 1- Copies of Final show cause notice and its reply mentioned in para-6 of the memo of appeal (Annexure-E&F) are not attached with the appeal which may be placed on it.
- 2- Annexure-J is not attached with the appeal which may be placed on it.
- 3- Appeal may be got signed by the appellent.
- 4- Index of the appeal may be prepared according to Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 777 /S.T,

Dt. 21/5 /2015

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. M. Asif Yousafzai Adv. Pesh.

1. Final show cause and reply will be produced at the time of hearing.
2. Removed
3. Removed.
4. Removed.
5. Removed.

Re-submitted  
Amir Ali

A.W.F. Province  
Service Tribunal  
Diary No. 983  
Dated 21-5-15

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 946 /2015

Amir Ali

V/S

Police Deptt:

**INDEX**

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-3
2.	Copy of FIR	A	4
3.	Copy of charge sheet	B	5
4.	Copy of statement of allegations	C	6
5.	Copy of reply to charge sheet	D	7
6.	Copy of dismissal order	E	8
9.	Copy of departmental appeal	F	9
10.	Copy of rejection order	G	10
11.	Copy of BBA confirmation	H	11-12
14	Vakalat nama	-----	13

APPELLANT

THROUGH:

  
(M.ASIF YOUSAFZAI)

&

  
(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR

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

APPEAL NO. 946 /2015

K.P.F. Provincial  
Service Tribunal  
Diary No. 511  
Dated 19-5-2015

Amir Ali, Ex- Constable No.391.

Mardan District Police.

(APPELLANT)

VERSUS

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

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 20.04.2015, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 25.02.2015 HAS BEEN REJECTED FOR NO GROUNDS.

PRAYER:

Filed to  
Registrar  
19/5/15

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 20.04.2015 AND 25.02.2015 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

re-submitted to Registrar  
and filed.

Registrar  
4/5/15

**RESPECTFULLY SHEWETH:**

**FACTS:**

1. That the appellant joined the police force on 20.12.2014 as recruit constable.
2. That the appellant was charged in criminal case in FIR No.542 dated 21.9.2014 on the basis of which charge sheet and statement of allegations was served to the appellant which was duly replied by the appellant in which he clear the real situation about the FIR and denied all the allegations therein. (Copy of FIR, charge sheet, statement of allegation and reply to charge sheet are attached as Annexure-A,B,C&D)
3. That without conducting inquiry and without giving final show cause notice the appellant was dismissed from service vide order dated 25.2.2015. (Copy of order dated 25.02.2015 is attached as Annexure-E)
4. That against the order dated 25.02.2015, the appellant filed departmental appeal, but the same was also rejected for no good ground on 20.04.2015. (Copies of departmental appeal and rejection order are attached as Annexure-F&G).
6. That now the appellant come to this august tribunal on the following grounds amongst others.

**GROUND:**

- A) That the impugned order dated 25.02.2015 and 20.04.2012 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.
- C) That no inquiry was conducted against the appellant and the appellant was removed in slipshod manner which is the rules and Superiors Courts judgment.
- D) That no final show cause was issued to the appellant before imposing major punishment of dismissal from service. Which is the violation of law and rules.

- E) That as the compromise was made between the appellant's family and the opposite party, the learned Session Judge Mardan also confirmed BBA in FIR no.542 dated 21.9.2014. (Copy of BBA confirmation is attached as Annexure-H)
- F) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- G) That the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- H) That as the appellant was acquitted in FIR No.542 dated 21.9.2015, therefore there remain no ground to punish him for the same offence.
- I) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT

Amir Ali 

THROUGH:

  
(M.ASIF YOUSAFZAI)

&

  
(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR





CHARGE SHEET UNDER NWFP POLICE RULES 1975


5  
B


I, Gul Afzal Khan District Police Officer, Mardan as competent authority hereby charge you Recruit Constable, as follows.

1. That you recruit constable Amir Ali, alongwith your brother Fawad Ali, Father Devish and two other persons namely Saeed, Imran Ali Ss/o Nimatullah were charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149 PPC vide FIR No. 542 dated 21.09.2014 PS Hoti but you concealed this fact at the time of your appointment as constable in this District Police and also managed a favourable report from concerned Police Station which is a gross misconduct on your part.

This amounts to grave misconduct on your part, warranting departmental action against you as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

2. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the NWFP Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
3. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
4. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
5. Intimate whether you desired to be heard in persons.

APPROVED  


  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 812 /R/D.A-P.R-1975.

Dated 4-2- /2015

DISCIPLINARY ACTION UNDER NWFP POLICE RULES - 1975

I, Gul Afzal Khan District Police Officer, Mardan as competent authority am of the opinion that Recruit Constable Amir Ali, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 of NWFP Police Rules 1975.

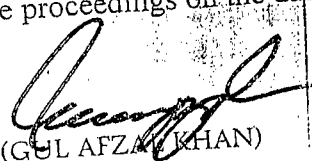
STATEMENT OF ALLEGATIONS

That you, Recruit constable Amir Ali, along with your brother Fawad Ali, Amber Azeesh and two other persons namely Saeed, Imran Ali Ss/o Nimatullah were charged by recruitment Uda Muhammad for the offence u/s 506/387/427/148/149 PPC vide FIR No. 542 dated 21.09.2014 PS Hoti but you concealed this fact at the time of your appointment as constable in this District Police and also managed a favourable report from concerned Police Station which is a gross misconduct on your part.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations Mian Imtiaz Gul DSP/Legal Mardan 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 defaulter official, record findings and complete within twenty five (25) days of the receipt of this order, recommendation for his punishment or other appropriate action against the accused officer.

4. The accused constable shall ensure and join the proceedings on the date and time fixed by the Enquiry Officer.

  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 812 /R, dated Mardan the 4-2- /2015.

Copy of above is forwarded to the:

1. DSP/Legal Mardan for initiating proceedings against the accused official / Officer namely Recruit Constable Amir Ali, under Police Rules, 1975.
2. Recruit Constable Amir Ali, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

\*\*\*\*\* !!! \*\*\*\*\*

**ATTESTED**



بیان ریکورڈ کانسٹیبل عامر علی

7  
D

جان عالی!

کوالہ چارج شیٹ نمبر 802/R حوض 2015-2-04 کے سلسلے میں  
گزارش ہے کہ میں محکمہ پولیس میں بھرتی ہونے سے تقریباً 3 ماہ پہلے ایک

مجھ سے مقدمے میں FIR NO 542 حوض 2014-9-21 میں ذمہ داری  
506/387/427/148/149 کے نام سے رجسٹر ہوا تھا۔ مقدمہ ہذا میں

کوئی صداقت نہیں تھی جس کی وجہ سے تقریباً 2 دن بعد مدعی مقدمہ نے  
خود راضی نامے کی خواہش ظاہر کر کے باہمی راضی نامہ کیا گیا۔ اسی سلسلے میں

مدعی مقدمہ نے حوض 2014-10-10 کو عدالت میں خود اپنا بیان قلم بند کر کے  
راضی نامہ کیا۔ (کاپی عدالت لف ہے)

اسی بناء پر عدالت نے حوض 2014-10-18 کو یعنی سائل کی تاریخ بھرتی سے  
دو ماہ قبل جملہ ملزمان کو بری کر کے معاملہ ختم کر دیا گیا۔

عدالتی فیصلہ اپنا لف ہے۔

اسی بناء پر متعلقہ پولیس نے سائل کے حق میں پولیس کلرکس رپورٹ کو کلرکس وارڈ کیا ہے  
چارج شیٹ اپنا میں سائل کے خلاف جس مقدمے کا ذکر ہے۔ وہ مقدمہ سائل کا  
پولیس میں بھرتی ہونے سے تقریباً 2 یا 3 ماہ قبل فیصلہ عدالت ہی ہو چکا ہے  
اس لیے استدعا ہے کہ سائل کے خلاف جاری کردہ چارج شیٹ کو داخل  
دفتر فرمائی جائے۔

المرحوم:-

الحاضر

ریکورڈ کانسٹیبل عامر علی  
پولیس لائن مردان

ATTESTED

ORDER

This order will dispose of departmental inquiry, which has been conducted against Recruit Constable Amir Ali No. 391 on the allegation that he along with his brother Fawad Ali, Father Darvish, and two other persons namely Saeed, Imran Ss/o Nimatullah were charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149 PPC vide FIR No. 542 dated 21.09.2014 PS Hoti but he concealed this fact at the time of his appointment as Constable in the District Police Mardan and manage a favorable report from the concerned Police Station. His attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975. Therefore he was recommended for departmental action.

In this connection, Recruit Constable Amir Ali No. 391, was charge sheeted vide this office No. 812/R, dated 04.02.2015 and also proceeded him against departmentally through Mr: Mian Imtiaz Gul DSP/Legal Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 243/LB dated 24.02.2015, as the allegation have been established against him.


The undersigned agreed with the findings of enquiry officer and the alleged Recruit Constable Amir Ali No. 391, is hereby dismissed from service, in exercise of the power vested in me under the above quoted rules.

*Order announced*

O.B No. \_\_\_\_\_

Dated \_\_\_\_\_/\_\_\_\_\_/2015

No 1914-191 dated Mardan the 26-2/2015

  
(Gul Afzal Afridi)  
District Police Officer,  
Mardan.

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.F Operations, Mardan.
3. The DSP/HQrs Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan.

ANNEXED



F (9)

خدمت جناب ڈی۔ آئی۔ جی پولیس ضلع مردان

اپیل بمراد بجالی سروس۔

جناب عالی!

گزارش بھنورا نور ہے کہ میرے خلاف محکمہ پولیس میں بھرتی ہونے سے تقریباً تین (3) ماہ پہلے ایک جھوٹے مقدمے میں FIR No: 542 مورخہ 21/9/2014 میں دفعات نمبر 506/387/427/148 and 149 تھا نہ ہوتی میں رجسٹر ہوا تھا۔ مقدمہ ہذا میں کوئی صداقت نہیں تھی۔

جس کی وجہ سے تقریباً 2 دن بعد مدعی مقدمہ نے راضی نامے کی خواہش ظاہر کی اور ہمارا راضی نامہ ہو گیا۔ اس سلسلے میں مدعی مقدمہ نے

مورخہ 10/10/2014 کو عدالت میں خود اپنا بیان قلم بند کر کے راضی نامہ کیا (عدالت کی کاپی ساتھ منسلک ہے) اس بنا پر عدالت نے

مورخہ 18/10/2014 کو یعنی سائل کی تاریخ بھرتی سے تین (3) ماہ قبل جملہ ملزمان کو بری کر کے معاملہ ختم کر دیا۔ (عدالت کی کاپی ساتھ منسلک ہے)

جناب عالی اس سلسلے میں DPO صاحب نے مجھے چارج شیٹ دی، میں نے چارج شیٹ کا جواب دیا۔ کہ اس کیس میں میں بے گناہ ہوں لیکن انہوں نے اپنی

کارروائی کے بعد مجھے مورخہ 25/02/2015 کو سروس سے برحاس کر دیا (کاپی ساتھ منسلک ہے)

جناب عالی جیسا کہ عام دستور ہے کہ آدمی غلطی کرتا ہے اور FIR میں سارے گھر کے افراد درج کیے جاتے ہیں۔ جھگڑا میرے بھائی نے کیا اور FIR میں

پورے گھر کے افراد درج کیے گئے۔

لہذا استدعا ہے کہ مجھ غریب پر رحم فرما کر مجھے اپنی ڈیوٹی پر دوبارہ بحال کیا جائے تاکہ میں قوم اور ملت کی خدمت کے ساتھ ساتھ اپنے بوڑھے والدین

سہارا بن سکوں۔

عین نوازش ہوگی۔

مورخہ:

العارض

میرا

بیلٹ نمبر 391 رگروٹ سپاہی عامر علی

①  
6  
⑩


**ORDER.**

This order will dispose-off the appeal preferred by Ex- Recruit Constable Amir Ali No. 391 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was dismissed from service vide District Police Officer, Mardan OB No. 354 dated 25.02.2015.

Brief facts of the case are that a departmental enquiry, which has been conducted against Recruit Constable Amir Ali No. 391 on the allegation that he along with his brother Fawad Ali, Father Darwish and two other persons namely Saeed, Imran Ss/o Nimatullah were charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149PPC vide FIR No. 542 dated 21.09.2014 PS Hoti, but he concealed this fact at the time of his appointment as Constable in the District and manage a favorable report from the concerned Police Station. His attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part. Therefore he was recommended for departmental action. In this connection he was charge sheeted and also proceeded against departmentally through Deputy Superintendent of Police Legal, Mardan, who after fulfilling necessary process submitted his findings which the allegations were established against him.

I have perused the record and also heard the appellant in Orderly Room held in this office on 15.04.2015, but he failed to justify his innocence and could not produce any cogent reason about his innocence. Therefore, I **MUHAMMAD SAEED** Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

ORDER ANNOUNCED.

  
**(MUHAMMAD SAEED) PSP**  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan.

No. 2446 /ES, Dated Mardan the 20/04 /2015. ✓

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 416/LB dated 07.04.2015.

(\*\*\*\*\*)



  
District Police Officer,  
Mardan.

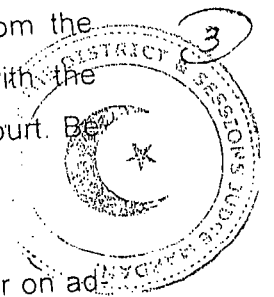
*District Mardan*

*2/107/9/15*

Order---04  
18.10.2014

سید فواد علی / سید امیر / سید سعید / سید انہار  
21/10/14 18/10/14 18/10/14  
یوم ترمیم H(11)  
173/5

The instant bail before arrest petition received from the vacant Court learned ASJ-II, Mardan in compliance with the general order dated 2338-46 dated 16.10.2014 of this Court. Bail entered in the relevant register.



Accused/petitioners Fawad, Amir, Saeed & Anhar on ad interim pre-arrest bail with counsel present. PP for the state present. Complainant Fida Mohammad in person present.

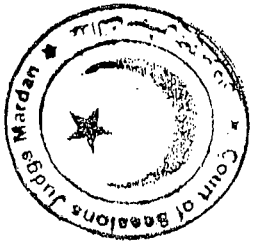
Accused/petitioners seek their pre-arrest bail charged u/section 506/387/427/148/149 PPC r/w 25 Telegraph Act & 15 AA, vide FIR No. 542, dated 21.09.2014, Police Station, Hoti, District Mardan.

Allegation against the accused-petitioners are that complainant Fida Mohammad made report that he has Kabab Hotel in Mayyar Bazar. On 19.09.2014 Fawad Ali given him threats and demanded Rs.150000/- through mobile No.0312-9344488 on his refusal, Amir, Darwaish, Saeed & Anhar Ali came to the hotel damaged the chairs and while leaving the spot also made aerial firing for criminal intimidation. The occurrence has been witnessed by Kamran son of the complainant.

Alongwith the BBA petition the affidavit of complainant is annexed to the effect that he has no objection on the confirmation of pre-arrest bail of accused-petitioners. On 10.10.2014 the complainant in court also confirmed the factum of compromise and even got recorded his statement.

*[Handwritten signature]*  
18/10/14

Perusal of file shows that section 506 PPC is compoundable, section 427 PPC is bailable, however, section 387 PPC is not compoundable. The compromise in non-compoundable offences could be taken into consideration for bail purpose. As the complainant himself forgotten and forgiven the crime and had made the outside court settlement and the superior court in a chain of authorities have held that you can



ATTESTED  
*[Handwritten signature]*

Certified to be True Copy  
*[Handwritten signature]*



bring a horse to the water but cannot compel him to drink. Reliance is placed on case law reported as 1999 P.Cr.L.J 1107.

In the attending circumstances, on acceptance of the petition in hand, pre-arrest bail of the accused/petitioners is confirmed accordingly on the strength of existing bail bonds.

File be consigned to the record room after its completion & compilation.

**ANNOUNCED**  
Dated: 18.10.2014

(SAJJAD AHMAD JAN)  
Sessions Judge, Mardan.



لایف کاپی

Name of Applicant	
Date of Presentation of Application	NO- 184 Dt 06-1-15
Date on which copy Prepared	06-1-15
Date on which copy Examined	06-1-15
No. of words	07P
Court fee stamps	
urgent fee	
Signature of Copyist	<i>[Signature]</i>
Date of Delivery	06/1/15

Certified to be True Copy  
EXAMINER  
Copying Department  
Sessions Court Mardan  
06-1-15

200 4107 00 00 00 00 00

# VAKALAT NAMA

NO. \_\_\_\_\_/20

IN THE COURT OF Service Tribunal, Peshawar

Amir Ali

(Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Police Department

(Respondent)  
(Defendant)

I/We Amir Ali

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar,** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs. *q. Taimur Ali Khan  
Adv*

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 21-8/2015

*Amir Ali*  
( CLIENT )

ACCEPTED

*M. Asif Yousafzai*  
**M. ASIF YOUSAFZAI**  
Advocate

**M. ASIF YOUSAFZAI**  
Advocate High Court,  
Peshawar.

**OFFICE:**

Room No.1, Upper Floor,  
Islamia Club Building,  
Khyber Bazar Peshawar.  
Ph.091-2211391-  
0333-9103240

*Taimur Ali Khan*  
**TAIMUR ALI KHAN**  
Advocate

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

Service Appeal No. 946/2015.

Amir Ali Ex-Constable No. 391.....Appellant.

**VERSUS.**

District Police Officer, Mardan & others.....Respondents.

**Respectfully Sheweth:**

**PRELIMINARY OBJECTIONS:-**

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.
7. That the instant appeal is barred by law.

**REPLY TO FACTS:-**

1. Incorrect. The appellant joined Police Force on 22.12.2014 as recruit.
2. Correct to the extent of FIR No. 542 & charge sheet statement of allegations issued to him.
3. Incorrect. Proper Departmental Inquiry has been conducted through DSP/Legal Mr. Mian Imtiaz Gul. The appellant has been treated under rules & as per procedure. **(Copy of Inquiry file is attached as Annexure-A)**
4. Pertains to record, hence, no comments. However, the impugned orders in according to law.
5. The appellant has rightly been punished under rule/law, so, there arises no grounds to stand on through this forum.

**REPLY TO GROUNDS:-**

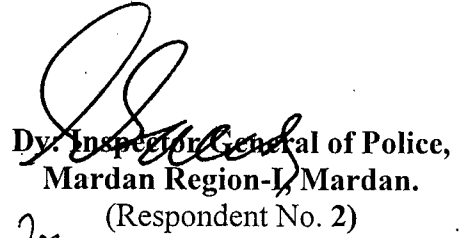
- A. Incorrect. The impugned orders was just, fair & in accordance with law/rules.
- B. Incorrect & baseless, rather, called upon & appeared before the W/DIG Mardan in orderly room at 15.04.2015 but could not justify his guilt. **(Copy of Appeal rejection order by DIG Mardan is Attached as Annexure-B)**
- C. Incorrect & replied already above in Para-3.
- D. Incorrect. All the codal formalities were fulfilled.
- E. Pertains to record, however, criminal proceedings & departmental proceedings stands separate & has no effect on each other at the conclusion of trial or proceedings.
- F. Incorrect. The appellant is a member of Police Force, so, dealt under Special Law i.e Police Rules.
- G. Incorrect. The appellant has been awarded punishment as he deserved.
- H. This Para is already replied above in Para-E.
- I. The respondents also seek permission of the Honorable tribunal to submit further grounds, if any, at the time of arguments.

**PRAYER:-**

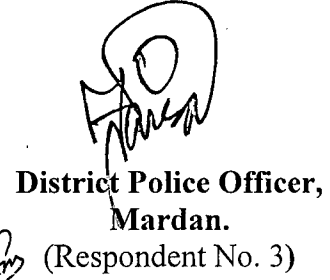
It is, humbly prayed that the appeal of the appellant is baseless and devoid of merits, may please be dismissed with costs.



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



**Dy. Inspector General of Police,  
Mardan Region-I, Mardan.  
(Respondent No. 2)**



**District Police Officer,  
Mardan.  
(Respondent No. 3)**

## FINDING.

This departmental inquiry has been conducted against Recruit Constable Amir Ali No. 391 in accordance with provisions of Khyber Pakhtunkhwa, Police Disciplinary Rules 1975 on the below mentioned charge:-

1. "That you Recruit Constable Amir Ali, alongwith your brother Fawad Ali father Dervish and two other persons namely Saeed, Imran Ss/o Niamatullah were charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149PPC vide FIR No. 542 dated 21.09.2014 PS Hoti but you concealed this fact at the time of your appointment as constable in this District Police and also managed a favorable report from concerned Police Station which is a gross misconduct on your part".
2. On the basis of said allegation, he was issued charge sheet with statement of allegations vide office endorsement No. 812/R, dated 04.02.2015 and I was appointed as inquiry officer.
3. On receipt of inquiry papers, the defaulter official was summoned and on his attendance charge sheet with statement of allegations was handed over to him who submitted his reply to it which was placed on file.
4. Statement of defaulter official was recorded wherein he has admitted that a criminal case vide FIR No. 542 dated 21.09.2014 u/s 506/427/387/148/149 PPC /25 Telegraph Act was registered against him and others in PS Hoti on the report of complainant Fida Muhammad. Presently he has been granted bail before arrest by court of Additional Session Judge -I, Mardan vide order dated 18.10.2014 due to compromise affected privately with the said complainant which is evident from the above mentioned order. The complainant of the said case namely Fida Muhammad was also examined by recording his statement who has supported the contents of FIR and has also stated that presently due to intervention of elders of Illaqa, he has effected compromise with the accused.
5. According to standing order No. 8/2007, issued by CPO vide endorsement No. 4807-72/C-I, dated 16.06.2007, a person involved in a criminal case which is still pending trial, will be considered for enlistment after his acquittal <sup>From</sup> the criminal charges by the court concerned. Defaulter official in the said case has not yet been acquitted. Moreover the offence u/s 387PPC relates to demanding of "Batta" which seems to be an offence of moral turpitude. The present defaulter official has been charged alongwith his brother, father and two uncles directly in FIR. Although the complainant has effected compromise privately with the accused including the present official and on this ground he was granted bail before arrest by court of ASJ-I, Mardan. Case is yet to be decided by trial court.
6. In view of standing order 08/2007 defaulter official cannot be retained in the department. It is suggested that that he may be removed from service being involved / charged in a criminal case mentioned above.
7. Submitted please.

*Approved*  
*CP*  
*23.11.015*

*[Signature]*  
Dy: Superintendent of Police,  
Legal, Mardan.

1

ORDER.

This order will dispose-off the appeal preferred by Ex- Recruit Constable Amir Ali No. 391 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was dismissed from service vide District Police Officer, Mardan OB No. 354 dated 25.02.2015.

Brief facts of the case are that a departmental enquiry, which has been conducted against Recruit Constable Amir Ali No. 391 on the allegation that he along with his brother Fawad Ali, Father Darwish and two other persons namely Saeed, Imran Ss/o Nimatullah were charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149PPC vide FIR No. 542 dated 21.09.2014 PS Hoti, but he concealed this fact at the time of his appointment as Constable in the District and manage a favorable report from the concerned Police Station. His attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part. Therefore he was recommended for departmental action. In this connection he was charge sheeted and also proceeded against departmentally through Deputy Superintendent of Police Legal, Mardan, who after fulfilling necessary process submitted his findings which the allegations were established against him.

I have perused the record and also heard the appellant in Orderly Room held in this office on 15.04.2015, but he failed to justify his innocence and could not produce any cogent reason about his innocence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

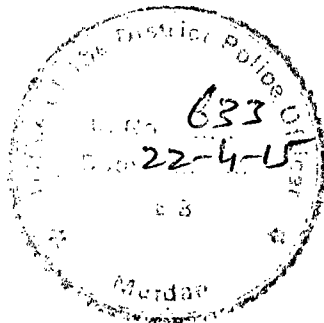
ORDER ANNOUNCED.

*(Signature)*  
**MUHAMMAD SAEED)PSP**  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan.

No. 2446 /ES, Dated Mardan the 20/04 /2015.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 416/LB dated 07.04.2015.

(\*\*\*\*\*)



EC  
For n/action

*(Signature)*  
DPO/Mardan  
20-4-15

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

**Service Appeal No. 946/2015.**

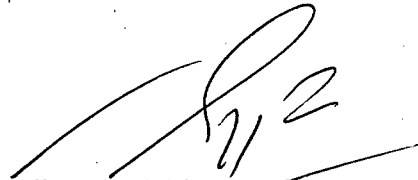
Amir Ali Ex-Constable No. 391.....Appellant.

**VERSUS.**

District Police Officer, Mardan & 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.



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



**Dy. Inspector General of Police,  
Mardan Region-I, Mardan.**  
(Respondent No. 2)



**District Police Officer,  
Mardan.**  
(Respondent No. 3)

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

Service Appeal No. 946/2015.

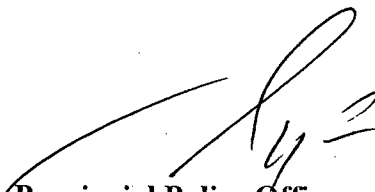
Amir Ali Ex-Constable No. 391.....Appellant.


**VERSUS.**


District Police Officer, Mardan & others.....Respondents.

**AUTHORITY LETTER.**

Mr. Muhammad Shafiq Inspector Legal, (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.

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

  
**District Inspector General of Police,**  
**Mardan Region-I, Mardan.**  
(Respondent No. 2)

  
**District Police Officer,**  
**Mardan.**  
(Respondent No. 3)



OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 812 /R/D.A-P.R-1975.

Dated 4-2- /2015

DISCIPLINARY ACTION UNDER NWFP POLICE RULES - 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority am of the opinion that Recruit **Constable Amir Ali**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.


STATEMENT OF ALLEGATIONS

That you, Recruit constable Amir Ali, along with your brother Fawad Ali, Father Devish and two other persons namely Saeed, Imran Ali Ss/o Nimatullah were charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149 PPC vide FIR No. 542 dated 21.09.2014 PS Hoti but you concealed this fact at the time of your appointment as constable in this District Police and also managed a favourable report from concerned Police Station which is a gross misconduct on your part.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Mian Imtiaz Gul DSP/Legal Mardan** 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 defaulter official, record findings and complete within twenty five (25) days of the receipt of this order, recommendation for his punishment or other appropriate action against the accused officer.

4. The accused constable shall ensure and join the proceedings on the date, time and place fixed by the Enquiry Officer.

  
(GUL AFZAL KHAN)

**District Police Officer,  
Mardan**

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

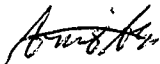
No. 812 /R, dated Mardan the 4-2- /2015.

Copy of above is forwarded to the:

1. DSP/Legal Mardan for initiating proceedings against the accused official / Officer namely Recruit **Constable Amir Ali**, under Police Rules, 1975.
2. Recruit **Constable Amir Ali**, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

\*\*\*\*\* !!! \*\*\*\*\*

109-13  
4-2-15

  
4/2/2015


## CHARGE SHEET UNDER NWFP POLICE RULES 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority hereby charge you **Recruit Constable**, as follows.

1. That you recruit constable Amir Ali, alongwith your brother Fawad Ali, Father Devish and two other persons namely Saeed, Imran Ali Ss/o Nimatullah were charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149 PPC vide FIR No. 542 dated 21.09.2014 PS Hoti but you concealed this fact at the time of your appointment as constable in this District Police and also managed a favourable report from concerned Police Station which is a gross misconduct on your part.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

2. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the NWFP Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
3. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
4. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
5. Intimate whether you desired to be heard in persons.

  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan

بیان ریکورڈ کانسٹیبل عامر علی بدلت نمبر 391

جنا عالی!

بجوالہ چارج شیٹ نمبر 802/R حوض 2015-2014 کے سلسلے میں

گزارش ہے کہ میں محکمہ پولیس میں بھرتی ہونے سے تقریباً 3 ماہ پہلے ایک

جموٹے مقدمے میں FIR NO 542 حوض 2014-2014 میں ذمہ داری ادا کرنے کے لئے  
506/387/427/148/149 کے نام سے رجسٹر ہوا تھا۔ مقدمہ عدالت میں

کوئی صداقت نہیں تھی جس کی وجہ سے تقریباً 2 دن بعد مدعی مقدمہ نے  
خود راضی نامے کی خواہش ظاہر کر کے باہمی راضی نامہ کیا گیا۔ اسی سلسلے میں

مدعی مقدمہ نے حوض 2014-10-10 کو عدالت میں خود اپنا بیان قلم بند کر کے  
راضی نامہ کیا۔ (کاپی عدالت لف ہے)

اسی بناء پر عدالت نے حوض 2014-10-18 کو یعنی سائل کی تاریخ بھرتی سے  
دو ماہ قبل جملہ ملزمان کو بری کر کے معاملہ ختم کر دیا گیا۔

عدالتی فیصلہ اذالہ ہے۔

اسی بناء پر متعلقہ پولیس نے سائل کے حق میں پولیس کلیرنس رپورٹ کو کلیر فرار دیا ہے۔  
چارج شیٹ اذالہ میں سائل کے خلاف جس مقدمے کا ذکر ہے۔ وہ مقدمہ سائل کا

پولیس میں بھرتی ہونے سے تقریباً 2 یا 3 ماہ قبل فیصلہ عدالت ہی ہو چکا ہے۔  
اس لئے استدعا ہے کہ سائل کے خلاف جاری کردہ چارج شیٹ کو داخل دفتر  
فرمانی جائے۔

المنعوم۔۔۔ 10/2/15

ریکورڈ کانسٹیبل عامر علی  
پولیس لائن مردان 391  
حوض

العارض

10/2/2015

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 946/2015

Amir Ali

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 No comments
- 2 Admitted correct by the respondents hence no comments.
- 3 Incorrect. While para 3 of the appeal is correct.
- 4 Admitted corrected by the respondents as the service record of the appellant is in the custody of the department. Moreover the impugned orders are not in accordance with law.
- 5 Not replied according to para 3 of the appeal. Moreover para 3 of the appeal is correct.
- 6 Incorrect. The appellant has not rightly punished under rule and law so the appellant come to this august Tribunal on the following ground amongst others.

**GROUND:**

- A. Incorrect. The impugned orders were not just, fair and in accordance with law and rules and therefore liable to be set aside.

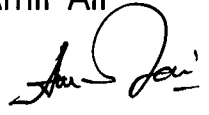
- B. Incorrect. While para B of the appeal is correct.
- C. Incorrect. While para C of the appeal is correct.
- D. Incorrect. No final show cause was issued to the appellant before imposing major punishment of dismissal from service which is mandatory in the law.
- E. Incorrect. The issue on which the appellant was charged in criminal case was resolved by the compromise between the appellant's family and the opposite party on which the learned Session Judge Mardan also granted bail, therefore there remain no ground to penalize the appellant on the issue which was resolved.
- F. Incorrect. While para F of the appeal is correct.
- G. Incorrect. The penalty of dismissal from service is very harsh and the same is not sustainable in the eyes of law.
- H. As replied in para E.
- I. Legal.

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

APPELLANT

Amir Ali

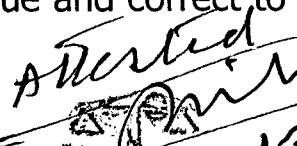
Through:

  
(M. ASIF YOUSAFZAI)  
&

(TAIMUR ALI KHAN)  
ADVOCATES, PESHAWAR

### AFFIDAVIT

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

  
Muzi Sibghat Ullah Khan  
Advocate  
Notary Public / Oath Commissioner  
13-07-2016

  
DEPONENT

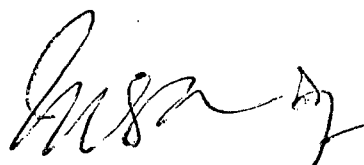
CIRCULAR ORDER NO- 8/2007.

The process of recruitment of Constable through out the province has since been finalized. After enlistment of Constable, when necessary verification of their Character/Antecedents were made, number of individuals were found involved in different categories of criminal offences, due to which some of the DPOs sought guidance for future course of action.

The case was examined at CPO and in the light of relevant Rules/Law, the following clarification has been made for the guidance of all concerned:-

- a. Any person involved in the criminal case but acquitted by the Court will be eligible for enlistment.
- b. Convicted person will not be eligible for enlistment in Police Department.
- c. As already circulated vide this office Endst: No. 20461-99/E-II, dated 30.10.2004, no Military Deserter or any other person dismissed from Govt. Service shall ~~not~~ be considered for enlistment as Constable in the Police Department.
- d. The persons involved in criminal cases which are still pending trial, will be considered for enlistment after their acquittal from the criminal charge by the Court concerned.

These Instructions may be followed with letter and spirit.



**(MUIHAMMAD SHARIF VIRK)**

Provincial Police Officer,  
NWFP, Peshawar.

No. 4807-72/C-I, dated Peshawar the 16/6 /2007.

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

1. All Heads of Police Offices in NWFP
2. All Branches in CPO.

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 812 /R/D.A-P.R-1975.

Dated 4-2- /2015

DISCIPLINARY ACTION UNDER NWFP POLICE RULES - 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority am of the opinion that Recruit Constable **Amir Ali**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.

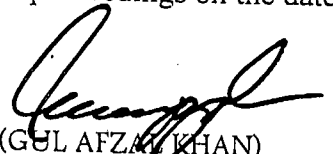
STATEMENT OF ALLEGATIONS

That you, Recruit constable Amir Ali, along with your brother Fawad Ali, Father Devish and two other persons namely Saeed, Imran Ali Ss/o Nimatullah were charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149 PPC vide FIR No. 542 dated 21.09.2014 PS Hoti but you concealed this fact at the time of your appointment as constable in this District Police and also managed a favourable report from concerned Police Station which is a gross misconduct on your part.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Mian Imtiaz Gul DSP/Legal Mardan** 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 defaulter official, record findings and complete within twenty five (25) days of the receipt of this order, recommendation for his punishment or other appropriate action against the accused officer.

4. The accused constable shall ensure and join the proceedings on the date, time and place fixed by the Enquiry Officer.

  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

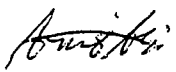
No. 812 /R, dated Mardan the 4-2- /2015.

Copy of above is forwarded to the:

1. DSP/Legal Mardan for initiating proceedings against the accused official / Officer namely Recruit Constable Amir Ali, under Police Rules, 1975.
2. Recruit Constable Amir Ali, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

\*\*\*\*\* !!! \*\*\*\*\*

109-13  
4-2-15

  
4/2/2015

## CHARGE SHEET UNDER NWFP POLICE RULES 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority hereby charge you **Recruit Constable**, as follows.

1. That you recruit constable Amir Ali, alongwith your brother Fawad Ali, Father Devish and two other persons namely Saeed, Imran Ali Ss/o Nimatullah were charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149 PPC vide FIR No. 542 dated 21.09.2014 PS Hoti but you concealed this fact at the time of your appointment as constable in this District Police and also managed a favourable report from concerned Police Station which is a gross misconduct on your part.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

2. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the NWFP Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
3. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
4. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
5. Intimate whether you desired to be heard in persons.



(GUL AFZAL KHAN)  
**District Police Officer,**  
**Mardan**



بیان ریکورڈ کانسٹیبل عامر علی دہکت نمبر 391

جناب عالی!

بجوالہ چارج شیٹ نمبر 802/R حوض 2015-2014 کے سلسلے میں

گزارش ہے کہ میں محکمہ پولیس میں بھرتی ہونے سے تقریباً 3 ماہ پہلے ایک

جموٹے مقدمے میں FIR NO 542 حوض 2014-2014 میں ذمہ داری میں  
506/387/427/148/149 تھکانہ ہوتی میں رجسٹر ہوا تھا۔ مقدمہ تھا میں

کوئی صداقت نہیں تھی جس کی وجہ سے تقریباً 2 دن بعد مدعی مقدمہ نے  
خود راضی نامے کی خواہش ظاہر کر کے باہمی راضی نامہ کیا گیا۔ اسی سلسلے میں  
مدعی مقدمہ نے حوض 2014-10-10 کو عدالت میں خود اپنا بیان قلم بند کر کے  
راضی نامہ کیا۔ (کاپی عدالت لف ہے)

اسی بناء پر عدالت نے حوض 2014-18-10 کو یعنی سائل کی تاریخ بھرتی سے  
دو ماہ قبل جملہ ملزمان کو بری کر کے معاملہ ختم کر دیا گیا۔

عدالتی فیصلہ اذالف ہے۔

اسی بناء پر متعلقہ پولیس نے سائل کے حق میں پولیس کلیرنس رپورٹ کو کلیر فرار دیا ہے۔  
چارج شیٹ اذال میں سائل کے خلاف جس مقدمے کا ذکر ہے۔ وہ مقدمہ سائل کا  
پولیس میں بھرتی ہونے سے تقریباً 2 یا 3 ماہ قبل فیصلہ عدالت ہی ہو چکا ہے۔  
اس لئے استدعا ہے کہ سائل کے خلاف جاری کردہ چارج شیٹ کو داخل دفتر  
فرمائی جائیں۔

آلہ ترمیم - 10/2/15

ریکورڈ کانسٹیبل عامر علی  
پولیس لائن مردان  
نور احمد

العارض

15/2/2015

Standing No. 8 / 2007 issued by CPVIDE  
Endorsement No. 4807-72/C-1, dated  
16.6.2007

## FINDING.

This departmental inquiry has been conducted against Recruit Constable Amir Ali No. 391 in accordance with provisions of Khyber Pakhtunkhwa, Police Disciplinary Rules 1975 on the below mentioned charge:-

1. "That you Recruit Constable Amir Ali, alongwith your brother Fawad Ali father Dervish and two other persons namely Saeed, Imran Ss/o Niamatullah were charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149PPC vide FIR No. 542 dated 21.09.2014 PS Hoti but you concealed this fact at the time of your appointment as constable in this District Police and also managed a favorable report from concerned Police Station which is a gross misconduct on your part".
2. On the basis of said allegation, he was issued charge sheet with statement of allegations vide office endorsement No. 812/R, dated 04.02.2015 and I was appointed as inquiry officer.
3. On receipt of inquiry papers, the defaulter official was summoned and on his attendance charge sheet with statement of allegations was handed over to him who submitted his reply to it which was placed on file.
4. Statement of defaulter official was recorded wherein he has admitted that a criminal case vide FIR No. 542 dated 21.09.2014 u/s 506/427/387/148/149 PPC /25 Telegraph Act was registered against him and others in PS Hoti on the report of complainant Fida Muhammad. Presently he has been granted bail before arrest by court of Additional Session Judge -I, Mardan vide order dated 18.10.2014 due to compromise affected privately with the said complainant which is evident from the above mentioned order. The complainant of the said case namely Fida Muhammad was also examined by recording his statement who has supported the contents of FIR and has also stated that presently due to intervention of elders of Illaqa, he has effected compromise with the accused.
5. According to standing order No. 8/2007, issued by CPO vide endorsement No. 4807-72/C-I, dated 16.06.2007, a person involved in a criminal case which is still pending trial, will be considered for enlistment after his acquittal <sup>From</sup> ~~from~~ the criminal charges by the court concerned. Defaulter official in the said case has not yet been acquitted. Moreover the offence u/s 387PPC relates to demanding of "Batta" which seems to be an offence of moral turpitude. The present defaulter official has been charged alongwith his brother, father and two uncles directly in FIR. Although the complainant has effected compromise privately with the accused including the present official and on this ground he was granted bail before arrest by court of ASJ-I, Mardan. Case is yet to be decided by trial court.
6. In view of standing order 08/2007 defaulter official cannot be retained in the department. It is suggested that that he may be removed from service being involved / charged in a criminal case mentioned above.
7. Submitted please.

*Approved*  
*23.2.015*

Dy: Superintendent of Police,  
Legal, Mardan.

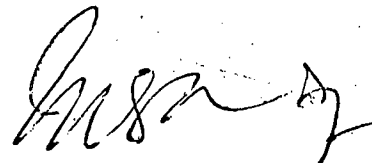
CIRCULAR ORDER NO. 8/2007.

The process of recruitment of Constable through out the province has since been finalized. After enlistment of Constable, when necessary verification of their Character/Antecedents were made, number of individuals were found involved in different categories of criminal offences, due to which some of the DPOs sought guidance for future course of action.

The case was examined at CPO and in the light of relevant Rules/Law, the following clarification has been made for the guidance of all concerned:-

- a. Any person involved in the criminal case but acquitted by the Court will be eligible for enlistment.
- b. Convicted person will not be eligible for enlistment in Police Department.
- c. As already circulated vide this office Endst: No.20461-99/I-II, dated 30.10.2004, no Military Deserter or any other person dismissed from Govt. Service shall ~~not~~ be considered for enlistment as Constable in the Police Department.
- d. The persons involved in criminal cases which are still pending trial, will be considered for enlistment after their acquittal from the criminal charge by the Court concerned.

These Instructions may be followed with letter and spirit.



(MUHAMMAD SHARIF VIRK)  
Provincial Police Officer,  
NWFP, Peshawar.

No. 4807-72/C-I, dated Peshawar the 16/6 /2007.

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

1. All Heads of Police Offices in NWFP
2. All Branches in CPO.

Handwritten notes and signatures at the top of the page, including names like 'Nadim' and '17/11/15', and a circular stamp of the District & Sessions Judge, Mardan.

Order-05  
06.07.2015

APP for the State present. All the five accused facing trial on bail with counsel present. Complainant also in person present.

Accused facing trial namely Darvesh Ali, Saad Ullah, Inhar Ali sons of Naimat Ullah, Fawad Ali, Amir Ali alias Amir sons of Darvesh Ali residents of Muhallah Sadi Khail, Mardan have been charged vide case FIR No. 542 dated 21.07.2014 u/s 506/387/427/148/149 PPC read with Section 25 Telegraph Act of Police Station Saddar, Mardan. Allegations against the accused facing trial are that they were demanding Rs. 1,50,000.- from the complainant Fida Muhammad son of Abdul Haq resident of Muhallah Aka Khail No. 2 Mayar, District Mardan through phone.

At the very outset, complainant appeared and stated that he has compromised the matter with the accused facing trial. Statement of the complainant recorded wherein he stated that the matter between him and the accused facing trial have been patched up and he has pardoned the accused unconditionally by waiving of all his legal rights and has got no objection on their acquittal in the instant case. To this effect he produced affidavit of compromise as Ex-P1 with copy of his CNIC as Ex P2.

Handwritten signature and initials on the left side of the page.

Handwritten note: (Contd.)

Certified to be True Copy  
EXAMINER  
Copying Department  
District Court Mardan

0-5  
(Contd)

3

Although Sections of law involved in the present case are non-compoundable but when the complainant is not interested in prosecution of the accused, there seems absolutely no chance of conviction of the accused facing trial in the case even further trial is held which will be an aimless exercise. Therefore, while invoking the provisions of under Section 249-A, Cr.P.C. accused facing trial are acquitted from the charge leveled against them in the present case. Accused are on bail, bonds furnished by them are cancelled and sureties thereunder are absolved form the liabilities towards the bonds. Case property be disposed of in accordance with law after expiry of period of appeal/revision.

File be consigned to record room after completion and compilation.

Announced  
06.07.2015

(Nisar Muhammad Khan)  
Judicial Magistrate, Mardan

*Handwritten signature*

Name of Applicant	
Date of Presentation	11/07/2015
Date on which copy prepared	11/8/15
Date on which copy filed	11/8/15
No. of words	27
Court Fee Stamp	
Urgent fee	
Signed of Copyist	<i>[Signature]</i>
Date of Delivery	11/8/15

Certified to be True Copy  
EXAMINER  
Copying Department  
Sessions Court Mardan

2010 P L C (C.S.) 924

[Supreme Court of Pakistan]

**Present; Iftikhar Muhammad Chaudhry, C.J., Raja Fayyaz Ahmed and Ch. Ijaz Ahmed, JJ**  
**MUHAMMAD NADEEM ARIF and others**

**Versus**

**INSPECTOR-GENERAL OF POLICE, PUNJAB, LAHROE and others**

Civil Petitions Nos.492 to 495 of 2009, decided on 13th May, 2009.

(Against the judgment dated 6-3-2009 passed by the Lahore High Court, Lahore in I.C.As. Nos. 154 to 157 of 2008).

**(a) Constitution of Pakistan (1973)---**

---Art.199---Civil Procedure Code (V of 1908), O.XX, R.1(2)---Constitutional petition---  
Announcement of judgment by High Court after six months of hearing the arguments of parties---  
Validity---Provisions of O.XX, R.1(2), C.P.C., were directory, but not mandatory---High Court,  
after considering contentions of petitioner had dismissed petition with cogent reasons---No  
prejudice was shown to have been caused to petitioner by announcing judgment after such  
delay---Supreme Court upheld impugned judgment in circumstances.

Muhammad Bakhsh's case 1989 SCMR 1473; Juma Khan's case PLD 2002 SC 823; Samiul  
Haq's case 2001 SCMR 1053; Ali Khan Subanpoto's case 1997 SCMR 1590; Raja Hamayun  
Sarfray Khan's case 2007 SCMR 307; Syed Iftikhar-ud-Din Haider Gardezi's case 1996 SCMR  
669 at 673 and Muhammad Ovais's case 2007 SCMR 1587 rel.

**(b) Administration of justice---**

---Every case is to be decided on its own peculiar circumstances and facts.

**(c) Police Act (V of 1861)---**

---S. 12---Instructions/rules/policy issued by Inspector-General of Police without approval of  
Provincial Government---Validity---Such instructions/rules would not be valid and would have no  
legal sanctity---Long practice of department to follow such instructions/rules conflicting with  
parent statute or rules could not remain operative, but must be ignored---No one would be obliged  
to obey such directions/instructions/departmental practice---Principles.

Qayyum Nawaz Khan's case 1999 SCMR 1594 ref. Siddiq Akbar's case 1998 SCMR 2013 rel.

**(d) Locus poenitentiae, principle of---**

----Award of benefit to a person in violation of law would not attract principle of locus poenitentiae.

Jalaluddin's case PLD 1992 SC 207 fol.

**(e) Interpretation of statutes---**

----Departmental construction of statute, though not binding on court, could be taken into consideration, if same was followed by department consistently.

Siddiq Akbar's case 1998 SCMR 2013 rel.

**(f) Interpretation of statutes---**

----Conflict between departmental practice/instructions/directions and rules---Effect---Rules would prevail---Principles.

The role of the directions/instructions is to supplement, never to contradict or conflict with rules. A direction/instruction cannot abridge or run counter to statutory provisions. If there is any conflict between the rules and the directions/instructions/departmental practice, then rules prevail. Instructions or departmental practice cannot amend or supersede the 'rules. A rule can be amended by another rule and not by a direction/instruction/departmental practice.

Departmental practice consistently followed by the department with regard to any issue or provision has force of law, but it is not absolute in all respect.

The principle of locus poenitentiae has more force than the principle qua the departmental practice followed by the department qua any instructions or rules consistently since long. Where the action is in derogation of section or law, then the locus poenitentiae is not absolute.

Anwar Ahmed Lari's case 1990 SCMR 1013; Chairman, Regional Transport Authority's case PLD 1991 SC 14; Messrs Airport Support Services' case 1998 SCMR 2268 and Jalaluddin's case PLD 1992 SC 207 ref.

**(g) Interpretation of statutes---**

----Departmental instructions and statutes must be read as an organic whole.

**(h) Words and phrases---**

----"Approval"---Meaning.

Black's Law Dictionary and Aftab Ahmed Khan Sherpao's case PLD 1997 Pesh. 93 ref.



**(i) Words and phrases---**

---"Approval" and "consultation or consent"---Comparison---Approval is more mandatory and stronger as compared to the word consultation or consent.

**(j) Constitution of Pakistan (1973)---**

---Art.9---Due process of law, doctrine of---Scope---Right of access to justice to all was founded on such doctrine---Such right would include a right to be treated according to law, a right to have a fair and proper trial and a right to have an impartial court or Tribunal---Justice could be done only by an independent judiciary---Principles.

Sharaf Faridi and 3 others v. The Federation of Pakistan PLD 1989 Kar. 404 and Fauji Foundation and another v. Shamimur Rehman PLD 1983 SC 457 rel.

**(k) Civil Service---**

---Seniority is a vested right of an employee.

Anwar Ahmed Lari's case 1990 SCMR 1013 rel.

**(l) Public offices---**

---Government offices being public trust should be regulated in a manner to promote sense of public service with a view to make a welfare State---Principles stated.

The Government officers are like public trust and, therefore, the same should be regulated in fair, transparent and economically so as to promote the sense of public service and thereby to make a welfare State. The public offices should not be held for improper motives. The social justice and economic justice can also be done through fair administrative policies. No policy can be congenial, if it breeds corruption.

**(m) Civil service---**

---Promotion---Out-of-turn promotion---Scope.

Out of turn promotion is not only against the Constitution, but also against Injunctions of Islam. Out of turn promotion in a public department generates frustration and thereby diminishes the spirit of public service. It generates undue preference in a public service. Element of reward and award is good to install the spirit of service of community, but it should not be made basis of accelerated promotion.

Qayyum Nawaz Khan's case 1999 SCMR 1594 ref.

Hafiz S.A. Rehman, Senior Advocate Supreme Court for Petitioners.

Ms. Afshan Ghazanfar, A.A.G., Naseer Baloch, DSP (Legal), Lahore and Fazal Rahim, DSP (Legal) Sheikhpura for official Respondents.

Nemo for Pro forma Respondents.

## ORDER

**CH. IJAZ AHMED, J.**---We intend to decide captioned petitions by one consolidated judgment having similar facts and law.

2. Detailed facts of the case are need not to be reproduced as the same have been stated in the impugned judgment as well as in the memo of petitions. However, necessary facts out of which the captioned petitions arise are that petitioners were initially appointed as Constables. Subsequently they were granted one step promotion as Head Constable Instructors on their joining the staff of Police Training School and they claimed confirmation in the rank of Head Constable from the date of one step promotion. The Inspector-General of Police vide letter dated 22-3-2008 declined their request on the plea that they had not qualified lower school course and could be detailed for such course on completion of at least 3 years at the training school and after having completed and passed successfully, only then they could be promoted as Head Constable and could retain their rank. Petitioners being aggrieved filed Constitutional petitions in the Lahore High Court with the prayer that one step promotion be declared promotion for all purposes and they may be allowed to join intermediate training course. The writ petitions were accepted by treating one step promotion of the petitioners as Head Constables as regular promotion in all respects. Petitioners were also held entitled for intermediate training course required for promotion as A.S.-I. Respondents Nos. 1 and 2 being aggrieved filed four I.C.As. in the Lahore High Court, Lahore which were accepted vide impugned judgment dated 26-8-2008. Hence the present petitions.

3. Learned counsel for the petitioners submits that I.C.As. were heard on 26-8-2008 whereas the judgment was announced on 6-3-2009, therefore, the impugned judgment is violative of law laid down by this Court in various pronouncements as the impugned judgment was announced after six months. He further urges that memorandum dated 22-3-2008 is also hit by Article 25 of the Constitution. Respondent No.1 had withdrawn the Office Order dated 23-2-2002 and office order dated 8-11-2002 through the Memorandum dated 22-3-2008. He further urges that memorandum in question wherein the criteria of promotion on the basis of seniority from the date of passing lower school course was introduced in violation of the previous policy and practice of the department. The Memorandum in question is also in consistent with or in violation of the law laid down by this Court in Qayyum Nawaz Khan's case (1999 SCMR 1594).

4. The learned Assistant Advocate-General Punjab, submits that selection policy issued by the competent authority vide memorandum dated 8-11-2002/23-2-2002 does not in any way indicate that an official can claim his promotion from the date he joins Police Training School/Police Training Institution. Policy dated 8-11-2002 clearly envisages that his seniority would be reckoned with the batch mates of lower school course. She further submits that learned High Court was justified to hold that afore-said Office Order dated 23-2-2002 issued by the

Inspector-General of Police, without approval of the Government of the Punjab, has no legal sanctity. She further submits that all the policies relied upon by the learned counsel of the petitioners were issued by respondent No.1 without securing approval from the Government of the Punjab in terms of section 12 of Police Act, 1861. She further submits that it appears that I. C. As. were heard on 26-8-2008 but the petitioners did not attach order of the Lahore High Court wherein the judgment was reserved. Therefore, the contention of the learned counsel that the judgment was announced after six months does not borne out from the record. Even otherwise no prejudice has been caused to the petitioners as all the contentions raised by the learned counsel for the petitioners were mentioned in the impugned judgment which were rejected by the learned High Court after application of mind with cogent reasons.


5. We have given our anxious consideration to the contentions of the learned counsel of the parties and perused the record. It is an admitted fact that date of hearing as mentioned in the impugned judgment is 26-8-2008 whereas it was announced on 6-3-2009. It is the duty of the petitioners to bring on record the order of the High Court wherein the judgment was reserved or copy of the relevant register wherein the intimation was sent by the staff of the High Court to the concerned branch that the judgment in question was reserved. However, in the interest of justice and fair play we have considered the contentions of the learned counsel for the petitioners to find out prejudice caused to the petitioners as the impugned judgment was announced after six months. The afore-said proposition of law was considered and decided by this Court in Muhammad Bukhsh's case (1989 SCMR 1473) and laid down the following principle:

"No doubt the judgment was announced one year after it had been reserved but we find that the learned Judge adverted to all the points as mentioned above. Nevertheless it is proper that once the arguments conclude and the judgment reserved, it has to be announced within reasonable period. We are sure that in future no unnecessary delay will take place in announcement of judgments."

The aforesaid principle was reaffirmed by this Court in Juma Khan's case (PLD 2002 SC 823) by observing that merely because of the delay in pronouncement of judgment, decision, itself is not vitiated unless and until prejudice has caused to the petitioners. It is also observed that Order XX, rule 1(2), C.P.C., is directory in nature and not mandatory in nature as observed by this Court in Juma Khan's case. The afore-said principle was also upheld in Samiul Haq's case (2001 SCMR 1053) in the following terms:--

"While interpretation rule 31 of Order XLI, C.P.C., the learned Division Bench has dealt with all the contentions of the petitioner's counsel in the judgment, therefore, no prejudice was caused to the petitioner. But it is always proper and advisable that after pronouncement of judgment, the High Court would write the judgment without unnecessary delay."

The aforesaid principle has also been followed in Ali Khan Subanpoto's case (1997 SCMR 1590) as depicted from para 10 wherein it is specifically mentioned that no prejudice seems to have been caused to the petitioner. Rule 30 and Rule 31 of Order XLI, C.P.C. were examined by this Court in Raja Hamayun Sarfraz Khan' case 2007 SCMR 307) and laid down the following



principle:--

"The examination of the above provisions of law and ingredients show that where a law provides for writing, announcing and signing a judgment, all that must be done in a way, to give validity to the judgment."

This Court has also considered the afore-said provisions of Rule 30 and 31 of Order XLI, C.P.C. wherein the impugned judgment was set aside as the same was not announced within six months. See Syed Iftikhar-ud-Din Haider Gardezi's case (1996 SCMR 669 at 673). Even in this case, this Court has observed as under:--

"It is not possible for this Court to determine this matter finally because substantial evidence available on record could not be considered by the High Court to come to some conclusion one way or the other. In other words, it could safely be held that the dispute between the parties was not decided keeping in view the evidence on record."

Similarly at page 675 it has been observed as under:

"This case is also hit by rule 31 as all the points which were argued and relied upon the learned counsel for the appellants were not considered for their proper determination on the basis of available evidence ..... We would also hold that evidence of Saeed Ahmad D.W. was not considered by the High Court the just decision of the appeal. This being so, the appeal of the appellants shall be deemed to be still pending decision before the High Court."

Contrary view has been taken by this Court in Muhammad Ovais' case (2007 SCMR 1587). Even in this case, the Court observed in para 8 as under:--

"In the lengthy arguments addressed before us on merits, we were referred to a bulk of documentary evidence going to the very route of the case which was never found mentioned in the impugned judgment of the High Court. This omission seems to be caused only and only due to the delay of ten months in question. "

It is proper to mention here that in the case in hand all the contentions raised before the learned High Court in the impugned judgment were noted, considered and rejected with cogent reasons coupled with the fact that the petitions were heard in the Lahore High Court on 26-8-2008 and judgment was announced on 6-3-2009. The petitioners have not brought on record any document to show that the judgment was reserved on 26-8-2008 by annexing with the petition interim order of the High Court or copy of the concerned register of the Lahore High Court. It is settled-law that each and every case is to be decided on its own peculiar circumstances and facts.

6. In view of the foregoing discussion who do not find any force in the contentions of the learned counsel of the petitioners that the judgment be set aside merely on the ground that it was announced after six months. The ratio of the afore-said cases is that it is the duty and obligation of the petitioners to point out that by announcing the judgment after considerable

delay had caused prejudice to the petitioners. The learned High Court in the impugned judgment after quoting all the relevant rules and provisions of Police Act had given findings of fact that office order dated 23-2-2002/8-11-2002 was issued by the Inspector-General of Police without approval of the Government of the Punjab, therefore, the same has no legal sanctity. Section 12 of the Police Act confers power upon the Inspector-General of Police to frame rules after securing approval from the Government of the Punjab. The learned counsel of the petitioners has failed to bring on record any document to show that the memorandum dated 23-2-2002/8-11-2002 or any instructions issued by the Inspector General of Police has the backing of the Government of the Punjab. The said provision was interpreted in Siddiq Akbar's case 1998 SCMR 2013 wherein Standing Order No.II issued by the Inspector-General of Police having not been approved by Provincial Government was devoid of its legal status and was, therefore, of no legal authority by observing that merely because a Standing Order has held ground for a number of years is not sufficient to assume grant of approval. The basic memorandum relating to the policy/rule which was issued by the Inspector-General of Police in favour of the petitioners was not valid itself having any legal backing, therefore, learned High Court was justified to declare the same having no legal sanctity. It is settled principle of law that where benefit is awarded to a person in violation of law then principle of locus poenitentiae does not attract as law laid down by this Court in Jalaluddin's case (PLD 1992 SC 207). The departmental construction of statute, although not binding on the Court, can be taken into consideration specially if it was followed by the department consistently and applying this principle Siddiq Akbar's case was decided while interpreting section 12 of the Police Act on 8-5-1998. The department consistently followed those instructions of the Inspector-General of Police which were issued without approval of the Provincial Government. The instructions as well as departmental practice are illegal and violative of the directions. or instructions on departmental practice conflicting with the parent statute or rule cannot remain operative and must be ignored even though they have been followed long, have been found to be convenient and have worked fairly in practice. No one is obliged to obey such directions/instructions /departmental practice. The role of the directions/instructions is to supplement, never to contradict or conflict with rules. A direction/instruction cannot abridge, or run counter to, statutory provisions. If there is any conflict between the rules and the directions/instructions /departmental practice, the rules prevails. Instruction or departmental practice cannot amend or supersede the rules. A rule can be amended by another rule and not by a direction/ instructions/departmental practice. Therefore, the argument qua department has consistently followed the instructions have no force. The afore-said dictum is binding on each and every organ of the State by virtue of Articles 189 and 190 of the Constitution.

7. Petitioners request was declined by the Inspector-General of Police vide memorandum dated 22-3-2008 which was challenged by the petitioners by invoking extraordinary jurisdiction of the High Court under Article 199 of the Constitution which was accepted by the learned Single Judge of the High Court vide judgment dated 6-5-2008. The judgment of the learned Single Judge was implemented by the respondents vide memorandum dated 18-2-2009 in the following terms along with others wherein the total numbers are 119:---

"In compliance of the orders of the Lahore High Court issued in writ petitions, following Head Constables are deputed for Intermediate School Course which commenced from 16-2-2009 in Police College, Sihala, subject to the decisions of the Intra Court appeals pending in the

Lahore High Court on the subject."

8. The judgment of the learned Single Judge was reversed by the Division Bench of the Lahore High Court vide judgment dated 6-3-2009 which was also implemented by the respondents vide memo. dated 6-4-2009 in the following terms:--

"In pursuance of the judgment dated 6-3-2009 passed by the honourable Lahore High Court, Lahore, in ICA/Appeal No.154 of 2008 the permission granted to the 126 officials (list enclosed) for joining Intermediate School Course commenced with effect from 16-2-2009 at Police College, Sihala is hereby withdrawn. "

9. Petitioners are 33 in numbers whereas their other colleagues in the orders of the respondents are not before this Court. The Petitioners have also alleged that action of the respondents is also hit by Article 25 of the Constitution as depicted from the different orders passed by the respondents dated 9-4-2007, 13-9-2007, 15-10-2007, 11-4-2007 and 14-11-2007 wherein similar requests of the head constables were accepted. There are various pronouncements of this Court with regard to one step promotion out of turn on account of bravery such as Qayyum Nawaz Khan's case (1999 SCMR 1594). The controversy in Qayyum Nawaz Khan's case supra was with regard to promotion of upper subordinates only. The seniority of upper subordinates is finally determined from the date of their confirmation in the post while seniority of lower subordinates is determined from the date of their appointment and their confirmation for the said purpose is immaterial as is depicted from para 15 of the impugned judgment. The relevant instructions on the subject dated 8-11-2002 are as follows:--

A constable with the qualification prescribed in para 6 above and not more than 30 years of age and having a minimum of seven years of service may be taken as Head Constable Instructor on one step promotion.

On successful completion of three years tenure he will be sent for lower school course. On successful completion of the lower school course, he will be brought on list C.I. as Head Constable and will be reverted back to his district/unit as Head Constable of list C.I.

His seniority on list C.I. of his district/range/unit would be reckoned with the batch mates of lower school course.

10. It is settled principle of law that instructions and statutes must be read as an organic whole. The claims of the petitioners, with regard to one step promotion as a Head Constable on joining the training school treating as regular promotion/confirmation in all respects, are not within the framework of the afore-said instructions. The question of validity of policy/instructions issued by the respondents off and on under section 12 of the Police Act, 1861 was not challenged except in Qayyum Nawaz Khan's case and Siddiq Akbar's case supra. In both the cases the rules regarding promotion, seniority were not under challenge. It is not doubt that departmental practice consistently followed by the department with regard to any issue or provision has force of law but it is not absolute in all respect. In the case in hand both the above-mentioned principles relating to discrimination and departmental practice have no force in view of facts and circumstances of the case in hand. The department had given benefit to the Head Constables, according to them due to one step out of turn promotion on the basis of the instructions issued by the Inspector General of Police under section 12

of the Police Act, 1861. which of course was issued without the approval of the Provincial Government. According to the Black's Law Dictionary the expression "approval" means the act of confirmation, ratifying, sanctioning or consenting to some act or thing done by another and implies knowledge and exercise of discretion after knowledge. See Aftab Ahmad Khan Serpao's case (PLD 1997 Pesh. 93). The word approval is more mandatory and stronger as compared to the word consultation or consent. This question arises first time with regard to grant of promotion one step out of turn promotion on account of performance of the personnel of the disciplinary force i.e. police force along with promotion from the date of joining the course in the training school. These instructions are in violation of Article 25 of the Constitution qua other members. In the disciplinary force who would not get a chance to show their worth would be entitled to get one step out of turn promotion along with seniority which is not in consonance of law and Constitution. In fact it creates frustration in the department among the officials of same batch on the well known principle of due process of law. "Doctrine of "due process of law"---Right of "access to justice to all" is a well recognized inviolable right enshrined in Art.9 of the Constitution and is equally found in the doctrine of "due process of law"---Right includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial Court or Tribunal-Justice therefore can only be done if there is an independent judiciary which should be separate from Executive and not at its mercy or dependent on it. Sharaf Faridi and 3 others v. The Federation of Pakistan PLD 1989 Kar.404.

"Due process of law" contained in America Constitution meaning and application of doctrine with reference to precedents. Fauji Foundation and another v. Shamimur Rehman PLD 1983 SC 457.

"the term "due process of law" is summarized as follows:--

- 1) He shall have due notice of proceedings which affect his rights.
- 2) He shall be given reasonable opportunity to defend.
- 3) that the Tribunal or Court before which his right are adjudicated is so constituted as to give reasonable assurance of his honesty and impartiality; and
- 4) that it is a Court of competent jurisdiction. Ibid

The seniority is vested right of an employee as laid down by this Courtly in Anwar Ahmed Lari's case (1990 SCMR 1013), therefore, such deviation is not in consonance with the object and spirit of the Police Act, 1861 red with Articles 4, 5(2) of the Constitution and Article 25 of the Constitution. It appears that the Inspector General of Police had issued instructions off and on without judicial application of mind which is the primary duty of the public functionary in view of the law laid down by this Court in Chairman, Regional Transport Authority's case (PLD 1991 SC 14). After addition of section 24-A in General Clauses Act, 1887 which was interpreted by this Court laying down the principle that public functionaries must have to pass the orders within reasonable time with reasons after applying independent mind as law laid down by this Court in Messrs Airport Support Services' case (1998 SCMR 2268). The principle of locus poenitentiae has more force than the principle qua the departmental practice followed by the department qua any instructions or rules consistently since long. Even then this Court laid down a law to deviate from the general principle of locus poenitentiae where the action is in derogation of section or law then the locus poenitentiae is not absolute as laid

down by this Court in Jalaluddin's case (PLD 1992 SC 207).

11. In view of the afore-said discussion the said pleas of the learned counsel of the petitioners have no force. The employees of the Police Department are serving in terms of instructions and policy issued by the Inspector-General of Police off and on in violation of section 12 of the Police Act, 1861. In this view of the matter, the Inspector-General of Police is well within his right to issue policy/framed rules keeping in view the circumstances and difficulties of the employees under section 12 of the Police Act, 1861 or Article 122 of Police Order, 2002. The Government offices are like public trust and, therefore, the same should be regulated in fair, transparent and economically so as to promote the sense of public service and thereby to make a welfare State. The public offices should not be held for improper motives. The social justice and economic justice can also be done through fair administrative policies. No policy can be congenial if it breeds corruption. Out of turn promotion, as envisaged in the impugned instruction, is not only against Constitution but also against Injunctions of Islam. Out of turn promotion in a public department generates frustration and thereby diminishes the spirit of public service. It generates undue preference in a public service. Element of reward and award is good to install the spirit of service of community but it should not be made basis of accelerated promotion. Let copy of this order be sent to all the Provincial Police Officers and Islamabad Capital City Police Officer to look into the matter and. frame rules to save the agony of police officials/officers as well as to save the public exchequer from unnecessary litigation.

12. In view of what has been discussed above we do not find any infirmity or illegality in the impugned judgment. Therefore, this petition has no merit and the same is dismissed. Leave refused.

S.A.K./M-78/SC

Leave refused.



**ORDER**

This order will dispose of departmental inquiry, which has been conducted against **Head Constable Wazir Muhammad No. 2810**, while posted at Police Station Hoti, had reported on the character/ verification role in respect of recruit constable Aamir Ali s/o Darvesh r/o Mohallah Sadi Khel Mayar to the effect that he has not been convicted in any criminal case. While as per record of PS Hoti, the said recruit constable along with his brother Fawad Ali and father Darvesh and two other persons has been charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149 PPC/25 Telegraph Act vide case FIR No. 542 dated 21.09.2014 Ps Hoti. The record further revealed that you had furnished the said report on 23.12.2014, while the case was registered against them on 21.09.2014. This case is still pending in court. This report clearly indicates that you had extended ~~favor~~ in respect of said Recruit Constable for some ulterior motive. This is highly irresponsible, inefficiency, lack of interest and negligence in performance of official duty, therefore he was recommended for departmental action.


In this connection, **HC Wazir Muhammad**, was charge sheeted vide this office No. 811/R, dated 04.02.2015 and also proceeded against departmentally through **Mr: Mian Imtiaz Gul DSP/Legal Mardan**, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 2509/LB dated 26.02.2015, as the allegation have been established against him.

The undersigned agreed with the recommendation of enquiry officer and the alleged **HC Wazir Muhammad**, is hereby awarded Minor punishment of **Forfeiture of 02 years service** with immediate effect under Police Rules-1975.

*Order announced*

O.B No. 485

Dated 17 / 3 /2015

  
(Gul Afzal Afridi)  
District Police Officer,  
Mardan.

No. 2553 - 32/ dated Mardan the 18 / 3 /2015

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan.

FINDING.

This departmental inquiry has been conducted against HC Wazir Muhammad No. 2810 in accordance with provisions of Khyber Pakhtunkhwa, Police Disciplinary Rules 1975 on the below mentioned charge:-

1. "That you HC Wazir Muhammad No. 2810, while posted at PS Hoti, had reported himself on the character / verification role in respect of recruit constable Amir Ali s/o Darvish Khan r/o Mohallah Sadi Kheil Mayar to the effect that he has not been convicted in any criminal case. While as per record of PS Hoti, the said recruit constable alongwith his brother Fawad Ali and father Darvish and two other persons has been charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149PPC /25 Telegraph Act vide case FIR No. 542 dated 21.09.2014 PS Hoti. The record further revealed that you had furnished the said report on 23.12.2014, while the case was registered against them on 21.09.2014. This case is still pending in court. this report clearly indicates that you had extended favour in respect of said constable for some ulterior motive".
2. On the basis of said allegation, he was issued charge sheet with statement of allegations vide office endorsement No. 811/R, dated 04.02.2015 and I was appointed as inquiry officer.
3. On receipt of inquiry papers, the defaulter official was summoned and on his attendance charge sheet with statement of allegations was handed over to him who submitted his reply to it which was placed on file.
4. From the circumstances of case it has been established that defaulter official due to his negligence and carelessness did not check village crime register (Register No. 9) which relates to entry of registered cognizable offences in that register. No mal-fide intention has been found on the part of defaulter official. However he was also required to have taken guidance from Head Muharrir. He has taken the plea that no proceedings were conducted against the concerned recruit constable as he had applied for bail before arrest after the occurrence, hence his name was not entered in Register No. 04 and 10 which were checked while village Crime Register (Register No. 09) was not checked by him unintentionally. He has shown a great negligence in discharge of his duty by not checking that Register at the time of making report on character role of recruit constable Amir Ali. Prior to it he had also remained Assistant Muharrirs for 02 years in PS Garhi Kapoora. He was well conversant with the procedure of making verification on character role. As such he is found guilty and is recommended for suitable punishment deemed fit.
5. Submitted please.

*On light of the above enquiry two (2) years service is proposed*

Dy: Superintendent of Police,  
Legal, Mardan.

*19.2.2015*


## CHARGE SHEET UNDER KPK POLICE RULES 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority hereby charge you **HC**, as follows.

That you Head Constable, while posted at Police Station Hoti, had reported on the character/ verification role in respect of recruit constable Aamir Ali s/o Darvesh r/o Mohallah Sadi Khel Mayar to the effect that he has not been convicted in any criminal case. While as per record of PS Hoti, the said recruit constable along with his brother Fawad Ali and father Darvesh and two other persons has been charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149 PPC/25 Telegraph Act vide case FIR No. 542 dated 21.09.2014 Ps Hoti. The record further revealed that you had furnished the said report on 23.12.2014, while the case was registered against them on 21.09.2014. This case is still pending in court. This report clearly indicates that you had extended faouvr in respect of said Recruit Constable for some ulterior motive.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section -- 02 (iii) of the NWFP Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.

  
(GUL AFZAL KHAN)  
**District Police Officer,**  
**Mardan**

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

No. 811 /R/D.A-P.R-1975.

Dated 4-2- /2015

**DISCIPLINARY ACTION UNDER KPK POLICE RULES - 1975**

I, Gul Afzal Khan District Police Officer, Mardan as competent authority am of the opinion that **Head Constable Wazir Muhammad No. 2810**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.


**STATEMENT OF ALLEGATIONS**

That **Head Constable Wazir Muhammad No. 2810**, while posted at Police Station Hoti, had reported on the character/ verification role in respect of recruit constable Aamir Ali s/o Darvesh r/o Mohallah Sadi Khel Mayar to the effect that he has not been convicted in any criminal case. While as per record of PS Hoti, the said recruit constable along with his brother Fawad Ali and father Darvesh and two other persons has been charged by complainant Fida Muhammad for the offence u/s 506/387/427/148/149 PPC/25 Telegraph Act vide case FIR No. 542 dated 21.09.2014 Ps Hoti. The record further revealed that you had furnished the said report on 23.12.2014, while the case was registered against them on 21.09.2014. This case is still pending in court. This report clearly indicates that you had extended faouvr in respect of said Recruit Constable for some ulterior motive.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Mian Imtiaz Gul DSP/Legal Mardan** 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 defaulter official, record findings and complete within twenty five (25) days of the receipt of this order, recommendation for his punishment or other appropriate action against the accused officer.

4. The defaulter officer shall ensure and join the proceedings on the date, time and place fixed by the Enquiry Officer.

  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan

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


No. 811 /R. dated Mardan the 4-2- /2015.

Copy of above is forwarded to the:

1. DSP/Legal Mardan for initiating proceedings against the accused official / Officer namely **Head Constable Wazir Muhammad No. 2810**, under Police Rules. 1975.
2. **Head Constable Wazir Muhammad No. 2810**, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

\*\*\*\*\* !!! \*\*\*\*\*

111-LB  
4-2-15

  
Mian Imtiaz Gul  
4-2-15

Handwritten notes in Urdu script, appearing to be bleed-through from the reverse side of the page. The text is dense and covers most of the page.

200

10/10/2010

200

XXXX

2810 Hic

From. The Dy: Superintendent of Police,  
Legal Mardan

To: The District Police Officer,  
Mardan

No. 259-/LB, dated Mardan the 26-2-/2015.

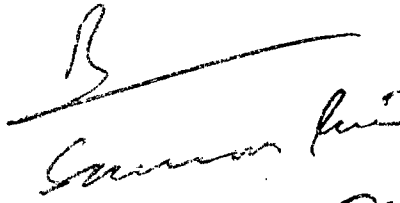
Subject: DEPARTMENTAL INQUIRY AGAINST HC WAZIR  
MUHAMMAD

**Memo:**

Kindly refer to your office endorsement No. 811/R, dated 04.02.2015, on the case noted above in the subject.

As directed, I conducted inquiry into the matter and submit my report herewith separately for favour of perusal and further necessary action please.


  
Dy: Superintendent of Police,  
Legal Mardan.

  
26.2


DEPARTMENTAL ENQUIRY AGAINST HC WAZIR MUHAMMAD NO. 2810.

04.02.2015 Departmental Inquiry papers received from the Office of W/DPO Mardan vide his Office endorsement No. 811 /R, dated 04.02.2015. Summon the defaulter official on 09.02.2015.


09.02.2015 Defaulter Official is present. He submitted reply to charge sheet which was placed on file. To come up for further proceeding on 13.02.2015.


  
Inquiry Officer.

13.02.2015 Defaulter official is present. His statement recorded. To come up for finding on 20.02.2015.

  
Inquiry Officer

20.02.2015 My finding report is attached herewith.

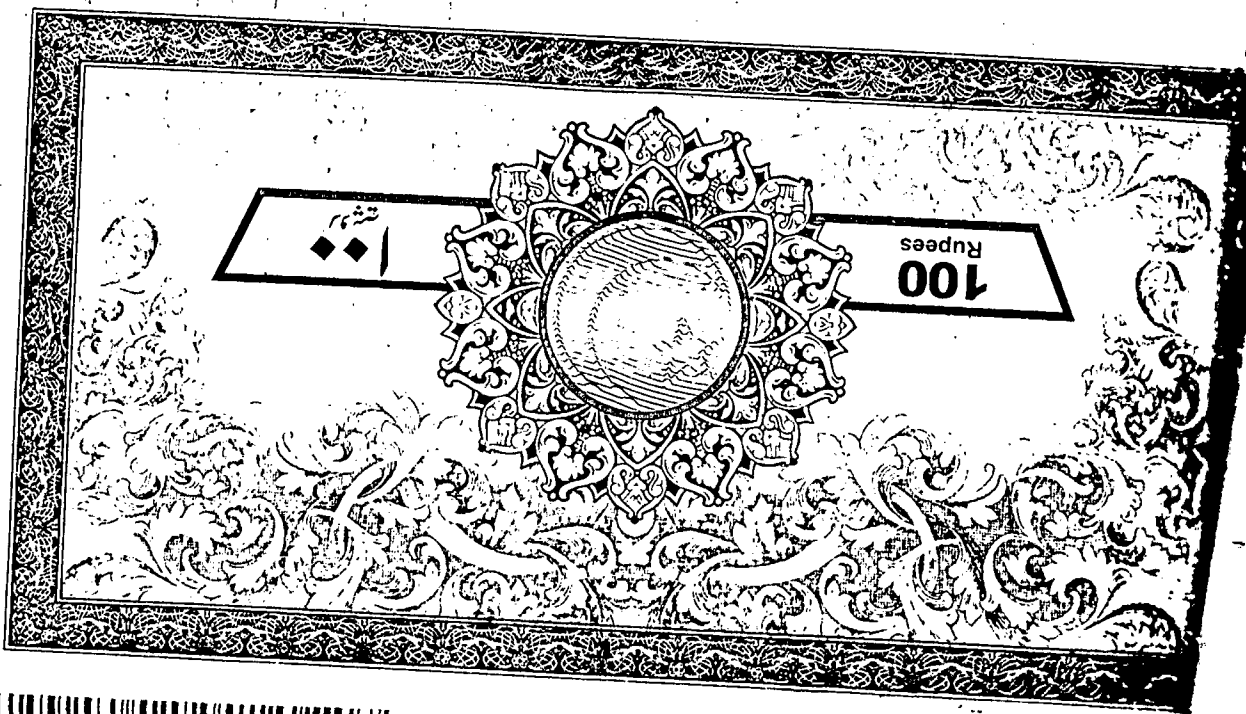
  
Inquiry Officer.

  
Inquiry officer

22/12/14

ذریعہ: 22-12-2014  
ذریعہ: 22-12-2014  
ذریعہ: 22-12-2014  
ذریعہ: 22-12-2014  
ذریعہ: 22-12-2014  
ذریعہ: 22-12-2014

- 1- ...
  - 2- ...
  - 3- ...
  - 4- ...
- ذریعہ: 22-12-2014







Handwritten text in Urdu script, likely a signature or official note.



Handwritten signature or initials.

2866

22.12.04

Vertical text on the left margin, including 'BY...', 'of p...', 'the', 'Id.', 'N.W.F.P.', 'GHSS, Mayer', 'S.S.T. B.P.S.', and '15/10/04'.

5

**CONFIDENTIAL**

**Verification form for Initial Appointment  
Under the Government of K.P.**

(To be filled in by the Candidate personally)



1. Name Amir Ali 2. Father's Name Darwish Ali  
 3. Father's Profession Govt Servant 4. Caste Sadi Khat  
 5. Religion Islam 6. Sex Male  
 7. Date of Birth / Age 03-3-1992 8. District of Domicile Mardan  
 9. Present Address Village Mayar Moh-Sadi Khat P/O Mayar-Mardan  
 10. Permanent Address Moh-Sadi Khat P/O Mayar District / Mardan  
 11. Police Station Hoti 12. Mobile No. 0315-6688546  
 13. N.C. No. 16101-7610581-5 14. Passport No. NIL  
 (Please attach copy) (Please attach copy)  
 15. Previous Experience in Govt. Service (Army/Police/Civil) NIL  
 16. (a) Post Held with Grade NIL  
 16. (b) Date of Leaving Govt. Service NIL  
 16. (c) Reasons for leaving Govt. Service NIL


17. Educational Qualification:- (Please attach copy)

Certificate/Degree	Name of Institution	Year
M.A. (Science)	Frontier M.H. School Toru Mardan	2008
D.B.A	G.C.M.S. Mardan	2010

18. Family Detail

S.No	Name of Relative	Relation (Father / Brother / Son / Br. in Law)	Occupation	Age (Approximate)	Address
1	Darwish Ali	Father	Govt Servant	50 years	Po Mayar
2	Fawad Ali	Brother	Govt Servant	24 years	Po Mayar
3	Ahmad Ali	Brother	Student	18 years	Po Mayar
4	Saqib Ali	Brother	Student	14 years	Po Mayar
5	Furqan Ali	Brother	Student	13 years	Po Mayar
6	Bilal	Brother in Law	Militeri	22 years	Po Mayar

صواب ہے  
 پرنسپل و سیکرٹری کے نام سے  
 دویش علی سائنس، مینس، مینس  
 سزا یافتہ بااقتدار

  
 Amir Ali  
 13-12-2014

**CONFIDENTIAL**

**Verification form for Initial Appointments  
Under the Government of K.P.**

(To be filled in by the Candidate personally)



5

1. Name Amir Ali 2. Father's Name Darwazish Ali  
 3. Father's Profession Govt Servant 4. Caste Sadi Khel  
 5. Religion Islam 6. Sect Pathan  
 7. Date of Birth / Age 03-3-1992 8. District of Domicile Mardan  
 9. Present Address Village Mayar Moh-Sadi Khel P/O Mayar-Mardan  
 10. Permanent Address Moh-Sadi Khel P/O Mayar District / Mardan  
 11. Police Station Hoti 12. Mobile No. 0315-6688546  
 13. N.C No. 16101-7610581-5 14. Passport No. Nil  
 (Please attach copy) (Please attach copy)  
 15. Previous Experience in Govt. Service (Army/Police/Civil) Nil  
 16. (a) Post Held with Grade Nil  
 16. (b) Date of Leaving Govt. Service Nil  
 16. (c) Reasons for leaving Govt. Service Nil

17. Educational Qualification:- (Please attach copy)

Course/Title/Degree	Name of Institution	Year
Matric (science)	Frontier-M.H.School Toru, Mardan	2008
D-BA	G.C.M.S. Mardan	<del>2010</del> 2010

18. Family Detail

Sr. No.	Name of Relative	Relation (Father / Brother / Son / Br. in Law)	Occupation	Age (Approximate)	Address
	Darwazish Ali	Father	Govt Servant	50 years	P.O. Mayar
	Fawad Ali	Brother	Govt Servant	26 years	P.O. Mayar
	Ahmad Ali	Brother	Student	18 years	P.O. Mayar
	Saqib Ali	Brother	Student	14 years	P.O. Mayar
	Furqan Ali	Brother	Student	13 years	P.O. Mayar
	Bilal	Brother in Law	Master	27 years	P.O. Mayar

صواب علی  
 پرنسپل و سیکرٹری کے نام سے درخواست کی ہے کہ  
 دویش علی بھائی صاحب، صاحبزادے کے لئے  
 سزا یافتہ بااثریہ رہے۔

*(Signature)*  
 Hoti  
 3-12-2014

VAKALATNAMA

NO. \_\_\_\_\_ /20

IN THE COURT OF KP. Service Tribunal Peshawar

Amir Ali

Appellant  
Petitioner  
Plaintiff

VERSUS

Police

Respondent (s)  
Defendants (s)

I/WE Amir Ali

do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE 13/04/2022

Amir Ali

(CLIENT)

ACCEPTED

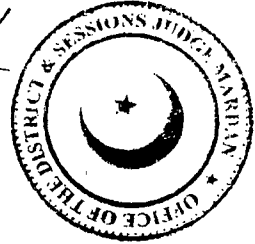
SYED NOMAN ALI BUKHARI  
ADVOCATE HIGH COURT

UZMA SYED

Advocate High Court

CELL NO: 0306-5109438

11-7-15 6-7-15 23-1-15 157/2



Handwritten signature in Urdu script.

Handwritten text: 506/387/427/148/149 PPC read with Section 25 Telegraph Act of Police Station Saddar, Mardan. 542 dated 21.09.2014 u/s 14

Order-05  
06.07.2015

APP for the State present. All the five accused facing trial on bail with counsel present. Complainant also in person present.

Accused facing trial namely Darvesh Ali, Saad Ullah, Inhar Ali sons of Naimat Ullah, Fawad Ali, Amir Ali alias Amir sons of Darvesh Ali residents of Muhallah Sadi Khail, Mardan have been charged vide case FIR No. 542 dated 21.09.2014 u/s 506/387/427/148/149 PPC read with Section 25 Telegraph Act of Police Station Saddar, Mardan. Allegations against the accused facing trial are that they were demanding Rs. 1,50,000/- from the complainant Fida Muhammad son of Abdul Haq resident of Muhallah Aka Khail No. 2 Mayar, District Mardan through phone.

At the very outset, complainant appeared and stated that he has compromised the matter with the accused facing trial. Statement of the complainant recorded wherein he stated that the matter between him and the accused facing trial have been patched up and he has pardoned the accused unconditionally by waiving of all his legal rights and has got no objection on their acquittal in the instant case. To this effect he produced affidavit of compromise as Ex-P1 with copy of his CNIC as Ex P2.

Handwritten signature and initials.

(Contd.)

Certified To Be True Copy

03 JUL 2020

Examiner Copying Station  
Sessions Judge Mardan

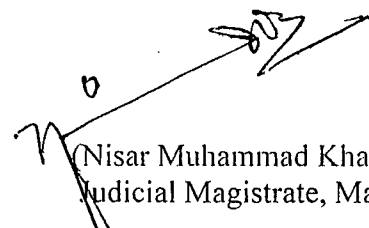
0-5  
(Contd)

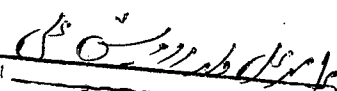
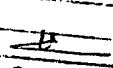
3

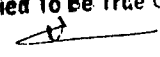
Although Sections of law involved in the present case are non-compoundable but when the complainant is not interested in prosecution of the accused, there seems absolutely no chance of conviction of the accused facing trial in the case even further trial is held which will be an aimless exercise. Therefore, while invoking the provisions of under Section 249-A, Cr.P.C. accused facing trial are acquitted from the charge leveled against them in the present case. Accused are on bail, bonds furnished by them are cancelled and sureties thereunder are absolved form the liabilities towards the bonds. Case property be disposed of in accordance with law after expiry of period of appeal/revision.

File be consigned to record room after completion and compilation.

Announced  
06.07.2015

  
(Nisar Muhammad Khan)  
Judicial Magistrate, Mardan

Name of Applicant	
Application No	8696
Date of Presentation of Application	30-1-2020
Date on which Application was filed	03-7-2020
Date on which Application was heard	03-7-2020
No.s of pages	02
Court Fee / Cost	
Urgent fee	NIL
Signed of copyist	
Date of Delivery	03-7-2020

Certified To Be True Copy  
  
03 JUL 2020  
Examiner Copying Branch  
Sessions Court Mardan

**1986 P L C (C.S.) 420**

**[Service Tribunal Punjab**

**Before S. Hafizur Rahman, Member**

**KHALID PARVEZ**

**versus**

**SUPERINTENDENT OF POLICE, SARGODHA and others**

Case No. 589/1402 of 1981, decided on 15th April, 1982.

**Punjab Police Rules, 1934--**

---R. 12.8--Punjab Police (Efficiency and Discipline) Rules, 1975, rr.4(3)(a) & 15--Punjab Civil Servants (Appointment and Conditions of Service) Rules No. 1974, r. 7--Discharge of, probationer A.S.I.--A.S.I. alleged to be facing criminal trial prior to enlistment and had concealed same at time of joining service--Removed from service while under training during probation--Removal order seen in light of r. 12.8 of Punjab Police Rules, 1934 unexceptionable because such person could justifiably be described as a person not considered desirable to continue in Police Service--Provisions of Punjab Police Rules dealing with penalties, however, no longer valid as having been repealed by Punjab Police (Efficiency and Discipline) Rules, 1975 and for matters of probation Police Officials governed by r. 7 of Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 hence provisions of "discharge" under r.12.8 of Punjab Police Rules, 1934 no longer available to competent authority--Action having been taken for alleged misconduct by implication for failing to Inform authorities of his involvement in criminal case- A.S.I: (appellant), held, entitled to proper proceedings under Punjab Police (Efficiency and Discipline) Rules, 1975--Appellant subsequently acquitted without any stigma by criminal Court--Impugned order, in circumstances, held, not only illegal but also unjustified--Service Tribunal accepting appeal reinstating appellant with all back benefits.

P L D 1963 S C 185; Raja Muhammad Nawaz 1981 S C M R 523; P L 0 1974 S C 393 ref.

Masud Ahmad Riaz for Appellant.

Haroonur Rashid Cheema, District Attorney for Respondents.

## **JUDGMENT**

The appellant in this case is Khalid Parvez who was removed from service as A.S.-I. of Police by order, dated 3-11-1981, made by the D.I.-G. of Police, Sargodha Range, after having completed nine months of the Course at Police Training College, Sihala, where he had been sent for training after enrolment in the Police as A.S. I. The impugned order was issued after it came to the D.I.-G's. notice that when the appellant entered the Police service he was involved in two criminal cases, in one of which (F.I.R. No. 761, dated 23-10-1978) he had been acquitted whereas the other (F.I.R. No. 269, dated 18-7-1980) was still pending in Court. It was felt that by concealing the fact of these two cases, ...from service on a charge of misconduct, as he would have never been appointed A.S. I. in the first place if the fact had been within the knowledge of the ---authorities.

The removal of the appellant took place under rule 12.8 of the Punjab Police Rules. He was given a personal hearing before the order was passed by the D.I.-G.

2. The appellant filed appeal in this Tribunal on 14-11-1981 and also filed an appeal before the Inspector-General of Police after some days, i.e. on 30-11-1980. During the course of the hearing, on 22-2-1982, learned counsel for the appellant also filed copy of judgment, dated 18-1-1982 delivered by Magistrate 1st Class, Sargodha, in the second criminal case involving the appellant, according to which judgment the appellant had been acquitted because he was not implicated either by the eye-witnesses or the injured person himself.

3. The parties were heard. Learned counsel for the appellant forcefully made out the point that the appellant could not have been removed from service in the manner adopted by the D.I.-G. and that, in fact, it was the S.P. and not the D.I.-G. who was competent to proceed against the appellant. It was submitted that at the time of enlistment in the Police the appellant was not required to state whether he.....rules 12.5, 12.6 and 12.7 of the Police Rules to strengthen his point. The impugned order stated that as the appellant "was facing trial in a criminal case he was not considered a desirable person to continue in the Police Department", meaning thereby that only the pending case was held against him and not the one in which he had been acquitted. With the appellant's acquittal in the second case subsequently, the Department should now have no objection to the appellant's continuance in service. In any event, mere involvement in a case is no charge as held in P L D 1963 S C 185. Learned counsel also cited the case of Raja Muhammad Nawaz, published as 1981 S C M R 523, to show that once the appointment had been made and acted upon it had achieved finality and that, in the light of that judgment, the appellant's case could not be reviewed in the context of appointment. It was also argued that with the promulgation of the Police E&D Rules all punitive parts of the Police Rules stood automatically repealed as provided by rule 15 of the E&D Rules. Thus rule 12.8 of the Police Rules, whereunder the appellant had been removed, was no longer a valid rule and the D.I.-G could not take recourse to that rule to remove him, and the appellant could only be proceeded against by the S.P. under the Police E&D Rules. On behalf of the respondents, the learned Deputy Attorney submitted that when the D.I.-G. used the words "removed from service" in the impugned order the obvious intention was to say that the appellant had been "discharged" since the order had been passed in pursuance of rule 12.8 of the Police Rules which provided for "discharge".

4. Rule 12.8 states that during the probation period an A.S. I. can be discharged if he is guilty of grave misconduct or is deemed for sufficient reason to be unsuitable for service in the Police. In the present case there was no charge of misconduct, but the D.I.-G. stated in the impugned order that in view of the case in which he was facing trial the appellant was not considered a desirable person to continue in service in the Police Department. The obvious inference was that the authority had decided to ignore the first case in which the appellant had already been acquitted and objected only to his standing trial in a criminal case. It would logically follow from this that the D.I.-G. did not hold the appellant's failure to inform the department about his (past) involvement in the first case as a handicap or as a point against his enlistment in the Police. Thus the only hurdle in the way of the appellant's acceptability as A.S. I. was that he was facing trial in a Court of law. But in this case also he was later acquitted, with neither the injured person nor any of the P.Ws. implicating him in the incident which was the subject of the trial. The appellant has thus been left with a clean slate in so far as the second case is concerned. This is the situation of the appellant as it stood after 18-1-1982, when the trial Court acquitted him. But before that date the D.I.-G. had no means of knowing what the outcome of the case would be and he had to act on the circumstances then prevailing, and these were that the appellant was standing trial in a criminal case and thus could justifiably be described as a person not considered desirable to continue in Police Service. Seen in that light the impugned order is unexceptionable. However, there is another



aspect of this case which has to be kept in mind while adjudicating it. It has been submitted that with the Police E&D Rules in the field those of the Police Rules which deal with penalties are no longer valid and thus the D.I.-G could not take recourse to rule 12.8 of the Police Rules. Moreover, at the time of passing of the impugned order the appellant was admittedly on probation and would fall within the mischief of the relevant parts of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, promulgated in pursuance of the Punjab Civil Servants Act., 1974. It was submitted that in respect of probation also the provision of "discharge" in rule 12.8 of the Police Rules would no longer be available to the competent authority and, in that case, the competent authority! would be the S.P. and not the D.I.-G.

5. In this view of the matter I am persuaded to hold that with the coming into force of the Civil Servants (Appointment and Conditions of Service) Rules, the appellant, who was on probation when the impugned order was issued, would be governed by rule 7 of these rules read with rule 4(3)(a) of the Police E&D Rules. That would make the S.P. the competent authority in case of the appellant and there would be no escape from the contention raised by learned counsel for the appellant that the D.I.-G. was not competent to pass the impugned order. There is also another aspect of the matter. When the appellant was enlisted in the service as A.S.-I., he was not asked to state whether he was involved in any criminal case or not. In the absence of such a requirement it cannot be legitimately asserted that the appellant had failed to inform the authorities concerned of his involvement. Moreover, it is presumed that before he was enlisted the appellant's antecedents must have been investigated and he must have been given a clean chit by the agency responsible for this purpose. Learned counsel also submitted that by issuing the impugned order the D.I.-G. had, so to say, questioned the very appointment of the appellant and characterised it as irregular. In this context 1981 S C M R 523 was cited to argue that even if the appointment was irregularly made it could not be terminated since the appellant had, in the meantime, acquired valuable rights, and if it was to be terminated as "discharge" then seen in the light of rule 4(3) of the Police E&D Rules, the competent authority would be the S.P., thereby rendering the D.I.-G's. order void and unlawful. Another case cited by learned counsel was that of P L D 1974 S C 393 which laid down that the service of a civil servant on probation could be terminated without notice if his performance was found wanting, but if he was to be discharged for misconduct then he was entitled to proceedings under the, E&D Rules. In the instant case it was not the appellant's official performance which had been found unsatisfactory but, by implication, he was charged with misconduct for failing to inform the authorities of his involvement in a criminal case and was thus entitled to proper proceedings. under the E&D Rules.

6. The upshot of the above discussion is that the impugned order of discharge is found to have been incompetently passed. Moreover, in view of the fact that the appellant was acquitted without any stigma in the case in which he was standing trial at the time the impugned order was issued, there was no justification left to effect his discharge by even the competent authority. Consequently, this appeal is accepted and the appellant is re-instated in service with all back benefits. There shall be no order as to costs.

A.E.

Appeal accepted.

بیان ریفرنس کنٹینر خمار علی بسٹ ٹرا

بیان کیا کہ میں نے چارج شیٹ کے جواب  
بیان دیا ہے وہی میرا بیان ہے۔

xxxx منجانب ریفرنس آفس  
سے۔ کیا یہ درست ہے کہ گھار جیل میں  
مقامی طور پر مقرر عدالت نے 24/4/2015ء کو  
معدنی جیل کے 148/149/2015/427/387/2015  
میں دوسری بار کی  
نقص؟  
25.7.15

ج۔ یہ درست ہے۔

س۔ آپ نے مقدمہ درج بالدرجہ میں عدالت کی پیشین گوئی  
معدنی سے عدالت نے 24/4/2015ء کو گھار جیل میں  
ازگرنی میں منظور کیا ہے۔

ج۔ یہ درست ہے، مگر عدالت میں ازگرنی میں منظور  
معدنی ہے۔

س۔ کیا یہ درست ہے کہ گھار جیل میں  
درج بالدرجہ میں عدالت نے؟

ج۔ یہ درست ہے۔ ازگرنی میں مقدمہ میں  
تاریخ پیشین مقرر نہیں ہے۔

14/2/2015 RoAAC

بیان از ان فدا محمد ولد عبد الحق سکنہ اکابر و صاحب

بیان کیا۔ یہ صیغہ صیغہ بازار میں کیا۔ گورنر دوکان ہے۔

سال ۱۹۹۱ء کو فواد علی ولد درویش سکنہ علم الہدی اصل صیغہ

نے محمد بدلیو صاحب کو کال کر کے دھلی امر لہو میں کہا  
کہ تم بیگم ایل لاکھو صاحبہ کے پاس جا کر صیغہ دہلی کا نسخہ لے کر  
صرف تمہارا ہی نام لکھو۔

گورنر نے انکار کر دیا۔ لہذا بدلیو نے صیغہ ۱۹۹۱ء کو فواد علی

سے اپنے بیان حاضر۔ حالہ ام درویش وہ چچا گان سے صیغہ  
انگار میں بہ مسلح صیغہ دوکان لہر آج۔ اور دوکان میں گھوڑ  
مچوڑ کر دی۔ اور ساتھ ہی ڈران دھکان ہوئی فائز کی۔  
اور کہا کہ اگر فوج کا نسخہ نہیں لیا۔ کہ ہم دوبارہ آکر  
انگور دینگے۔

اس واقعہ کے متعلق میں نے تمام ہوائی میں رپورٹ درج کر دی  
البتہ گاؤں کے مشران کے مداخلت پر میں نے اتنے سوائے نام  
نہ دیا۔

یہی ہے بیان ہے

فراغ

7-56047-11-16101

+ + +

نہ درو

1  
TSA Appellant  
Amir Ar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1077/2019

Date of Institution ... 22.08.2019

Date of Decision ... 13.01.2021

*No show cause  
along with  
insurg  
Reply*

Waleed Mehmood, Ex-Constable Investigation Branch, District Hangu.  
... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others.  
... (Respondents)

Present.

Syed Numan Ali Bukhari,  
Advocate.

... For appellant

Mr. Muhammad Rashid,  
Deputy District Attorney,

... For respondents.

MR. HAMID FAROOQ DURRANI,  
MR. ATIQ-UR-REHMAN WAZIR,

... CHAIRMAN  
... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. Instant appeal has been preferred against the order dated 11.06.2019 passed by respondent No. 3, whereby, major penalty of dismissal from service was awarded to the appellant. The appellant is also aggrieved of order dated 29.07.2019, issued by the respondent No. 2. Through the order his departmental appeal was rejected.

2. The appellant joined the Police Department as Constable on 12.05.2015. It is claimed that he was on bed rest due to fracture in his leg when falsely implicated in FIR No. 380 dated 27.02.2019 u/s 381-A PPC. He was charge sheeted on the allegation of recovery of two motorcycles from his godown. The appellant submitted reply to the charge sheet and denied the ownership of

godown. Final show cause notice was issued to the appellant where-after the impugned order dated 11.06.2019 was passed. His departmental appeal also could not find favour and was rejected on 29.07.2019.

3. Learned counsel for the appellant as well as learned Deputy District Attorney, on behalf of the respondents, heard and available record gone through.

4. It was the argument of learned counsel that the allegation against the appellant was based solely on the factum of having been charged in criminal case. On the other hand, he was acquitted under section 249-A Cr.PC on 01.10.2019. Speaking about the illegalities committed by the respondents during the departmental proceedings, it was emphasized that no enquiry report was provided to the appellant alongwith show cause notice. He was of the view that mere allegations could not form basis for penalty also in view of principles of natural justice, which were part of every statute. Learned counsel also contended that the appellant was penalized on the basis of presumptions which was not allowable under the law. In support of his arguments learned counsel referred to judgments reported as PLD 1981-Supreme Court-186, 2007-SCMR-192, 2008-SCMR-1516, 2002-SCMR-579, PLD 2010-695, 1998-SCMR-1993, PLD 2003-Supreme Court-187 and 2002-PLC(C.S) 503. Judgments of this Tribunal in Service Appeals No. 666/2016 and 847/2017 were also relied upon.

Learned DDA, while attempting to dislodge the arguments from other side, firstly referred to paragraph-2 in the Parawise comments by the respondents. He contended that the stolen motorcycles were duly recovered from the godown of the appellant; therefore, the departmental proceedings were rightly initiated against him. He further argued that the acquittal in criminal proceedings had no bearing upon the merits of departmental proceedings,

therefore, the acquittal of appellant was to be disregarded in the instant case. He relied on 2007-SCMR-562 and 2006-SCMR-554. Decision in Service Appeal No. 1049/2015 was also referred to by him. It was the argument of learned DDA that all codal formalities were completed by the respondents in conducting proceedings against the appellant. The impugned orders were, therefore, not to be interfered with.

4. We have considered the available record in the light of arguments on behalf of the parties. On the record there is a copy of FIR dated 17.04.2019, wherein, the complainant Ziaul Haq did not charge anyone directly for theft of motorcycle(s). Needless to note, that the FIR was registered after about two months of the occurrence and upon recovery of incriminating articles. It was noted that the recovery was effected from the godown of the appellant. In the said context, it is important to note that no statement of any person from the locality, regarding the ownership of godown, was ever recorded. The respondents also failed to place on record any copy of the recovery memo in that regard. On the record, the appellant categorically denied the ownership/occupation of the godown and stated in his statement that the same was rented out to his uncle namely Wazir Khan son of Nasar Khan who paid the rent thereof. Wazir Khan was not included in the investigation proceedings, which was an act not very normal on the part of respondents.

5. We have also gone through the enquiry report dated 13.05.2019, wherein, interalia, it has been noted that had the appellant been innocent, he should have attempted to complete the trial and awaited the decision on merits. It is useful to iterate that the criminal proceedings/charge against the appellant was dropped u/s 249-A CPC. The view of enquiry officer, noted hereinabove, was based absolutely on conjectures and presumptions. The Enquiry Officer also

grudged the exercise of his legal right by the appellant. He, therefore, could not be penalized in the matter by the competent authority.

6. The provision of copy of enquiry report alongwith the show cause notice has not been claimed by the respondents nor the stance of appellant in that regard is denied. Seeking guidance from 1987-SCMR-1562 and PLD-1981 Supreme Court-176, it is not unsafe to hold that the act on the part of respondents was fatal to the validity of orders passed against the appellant. The record is also silent regarding placing of appellant under suspension till the decision of criminal case. Thus the violation of CSR by the respondents is established through the record.

7. We are mindful of the fact that the charge against the appellant was squarely based on contents of FIR. The criminal proceedings ensuing there-from resulted in acquittal of appellant. In the said manner the substratum of departmental proceedings vanished, therefore, the impugned orders lost validity. The judgments reported as PLD-2003-Supreme Court-187, 2007-SCMR-192 and 2008-SCMR-1516 are respectfully followed in the above context.

8. For what has been discussed above, the appeal in hand is allowed and the appellant is reinstated into service with back benefits. The absence period of appellant, however, shall be treated as leave of the kind due. The parties are, however, left to bear their respective costs. File be consigned to the record room.

  
(ATIQU-UR-REHMAN WAZIR)  
MEMBER(E)

  
(HAMID FAROOQ DURRANI)  
CHAIRMAN

ANNOUNCED  
13.01.2021

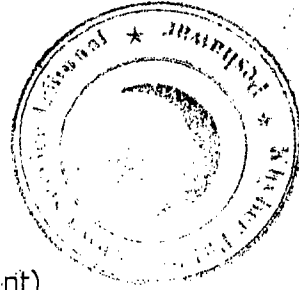
*For Appellant*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No ... 135/2019

Date of Institution ... 29.01.2019

Date of Decision ... 22.06.2021



Mr. Zeeshan Ex-Constable No. 1732 District Police Bannu.

... (Appellant)

VERSUS

Regional Police Officer Bannu Region and another.

... (Respondents)

SYED NOMAN ALI EUKHARI,  
Advocate

... For Appellant

MR. MUHAMMAD RASHEED  
Deputy District Attorney

... For Respondents

MR. AHMAD SULTAN TAREEN  
MR. ATIQ UR REHMAN WAZIR

...

...

CHAIRMAN  
MEMBER (EXECUTIVE)

JUDGMENT

Mr. ATIQ UR REHMAN WAZIR MEMBER (EXECUTIVE):- Brief facts of the

case are that the appellant, while serving as constable in Bannu police, was proceeded against on the charges of leaking out official information to criminals and was dismissed from service vide order dated 22-10-2015. The appellant filed service appeal No. 53/2016, which was decided vide judgment dated 08-10-2018 with directions to the respondents to conduct de-novo inquiry in prescribed manner as per rule and law within a period of ninety days. Consequently, the appellant was reinstated in service for the purpose of de-novo inquiry vide order dated 25-10-2018 and was proceeded against in light of judgment of this Tribunal, but was dismissed again from service vide order dated 13-12-2018. Feeling aggrieved, the appellant

ATTESTED

*[Signature]*  
CHAIRMAN  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



filed departmental appeal dated 21-12-2018, which was also rejected vide order dated 23-01-2019, hence the instant service appeal with prayers that the impugned orders dated 13-12-2018 and 23-01-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Written reply/comments were submitted by respondents.

03. Arguments heard and record perused.

04. Learned counsel for the appellant have referred to the earlier judgment of this Tribunal directing the respondents to conduct de-novo inquiry as per law and rule, but the respondents conducted de-novo proceedings in a slip shod manner; that the appellant was not afforded appropriate opportunity of defense including non-service of show cause notice and opportunity of personal hearing as well as cross examination; that the appellant was not associated with the inquiry proceedings nor copy of such inquiry was provided to the appellant; that the apex court as well as this Tribunal in a series of its judgments have declared such sketchy proceedings as null & void. Learned counsel for the appellant argued that the only evidence produced against the appellant was CDR record of the appellant and his alleged contacts with brother of the accused, which does not carry any legal value and that too without confronting the appellant with the same; that not a single piece of evidence is available to prove guilt of the appellant; that the allegations leveled against the appellant are based on presumptions having no value in the eyes of law. Reliance was placed on 1989 SCMR 1690, 1987 SCMR 1562, 2004 PLC (CS) 957, PLJ 2008 SC 65, PLD 1989-FSC-39, Service Appeal No 832/2019, Service Appeal No. 613/2017, Service Appeal No. 335/2017, Service Appeal No. 1014/2012 and Service Appeal No. 1077/2019, Service Appeal No. 1045/2017. Learned counsel for the appellant prayed that in view of the aforementioned situation, the appellant may be

ATTESTED

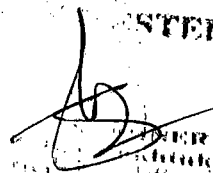
BY  
 THE  
 CLERK  
 TRIBUNAL

re-instated with all consequential benefits by setting aside the impugned orders dated 13-12-2018 and 23-01-2019.

05. Learned Deputy District Attorney appeared on behalf of official respondents contended that the appellant was afforded appropriate opportunity of defense, but he failed to prove his innocence, as his telephonic contacts with brother of the accused as is evident from CDR data, was an underliable proof; that sp investigation bannu was appointed as inquiry officer, who conducted proper inquiry and the appellant was afforded opportunity of personal hearing, but he badly failed to rebut the allegations; that the impugned orders are according to law, facts and norms of justice. Learned Deputy District Attorney prayed that the instant appeal being devoid of merit may be dismissed.

06. We have considered the available record in the light of arguments on behalf of the parties. Record reveals that an FIR u/s 324/394/15AQ/411/412/7ATA registered against an accused Afshan was under investigation and after checking data of mobile phone of the accused Afshan and his brother Mustafa, it was divulged that the appellant was in contact with brother of the accused on 3/4 occasions and the investigation officer on the basis of presumptions have concluded that such telephonic contacts contemplates that the appellant leaked official information as well as movements of police to the accused, whereas the appellant categorically denied such allegations with clarifications that the accused and his brother are co-villagers of the appellant and such contacts does not necessarily mean that he leaked out official information to the accused and if the authorities are still adamant, they must check voice data of the appellant. we have observed that the inquiry officer in the previous proceedings as well as in the de-novo proceedings have mainly relied on CDR data, rather the de-novo proceedings is re-cap of the previous proceedings, particularly the establishment of charges pertaining to leaking official information to criminals, which was required to be proved with the help of solid evidence, but which is not

TESTED

  
 DEPUTY DISTRICT ATTORNEY  
 DISTRICT COURT  
 DISTRICT JUDICIAL OFFICE

forthcoming in the said report. Mere reliance on CDR and that too without confronting the appellant with the same had no legal value and mere presumptions does not form basis for imposition of major penalty, which is not allowable under the law. We are also mindful of the fact that a police personnel of the level of constable have no access to official secrets, especially pertaining to police raids on sensitive targets, hence it would be immaterial to substantiate that the appellant leaked official information to the criminals, so the impugned orders are liable to be set at naught on this score alone and there is hardly any need to touch other aspects of the case, but in order to sensitize the respondents about their responsibilities, we would like to point out various inherent flaws in the inquiry proceedings. This Tribunal in its earlier judgment pertaining to the appellant in Service Appeal No. 53/2016 announced on 08-10-2018 have categorically reiterated that the appellant was condemned unheard, as showcause notice was not served upon the appellant nor copy of the inquiry report was provided to the appellant, moreover the appellant was deprived of his inalienable right of personal hearing and opportunity to cross examine witnesses. Based on such fatal lapses, the case was remanded back to the respondents to conduct de-novo proceedings, but it was noted with concern that the respondents did not bother to prove the charges through solid evidences, rather relied on the previous proceedings. Serving of show cause notice was mandatory requirement as well as of principle of natural justice having support of numerous judgments of the apex court followed by this Tribunal. By doing so, the opportunity of offering proper defense was snatched from the appellant. This tribunal has been consistently following this yardstick almost in all cases, so departure from the set pattern and that too without any cogent reason in the present case would cause irreparable damage to the appellant at the cost of substantial justice. Such inquiry proceeding could not be termed as fair, just and reasonable, as the respondents badly failed to prove that the appellant has leaked certain official information to the criminals. Contention of


W/M  
 WITNESSED


[Signature]  
 MEMBER  
 TRIBUNAL

the learned attorney on behalf of official respondents to the effect that there is no concept of show cause notice under police rules 1975 does not hold any force, as this tribunal has already delivered numerous judgments, wherein it has been decided that the issuance of final show cause notice along with the inquiry report is must under these rules. Reliance is also placed on the famous case of Syed Muhammad Shah delivered by august Supreme Court of Pakistan (PLD 1981 SC-176) in which it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. The right of cross examination could not be presumed to have been afforded to the appellant as was the opinion of the respondents. The inquiry officer was bound to have given the right of cross examination expressly. There is no material on record whether the appellant was given any right of defense and depriving a civil servant from affording appropriate opportunity of defense is nullity in the eyes of law.

07. In view of the situation, the impugned orders dated 13-12-2018 and 23-01-2019 are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
22.06.2021

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

  
(ATIQ UR REHMAN WAZIR)  
MEMBER (EXECUTIVE)

copy  
Khan  
Served  
per  
A  
Khan  
Served  
per

Date of Presentation of Application 5/10/20  
Number of Words 2000  
Copying Fee 22/-  
5/-  
26/-  
5/10/20  
5/10/20