

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 687/2017

Date of Institution ... 30.06.2017

Date of Decision ... 03.06.2022

Mohammad Sohail Ex-Constable No. 87/Computer Operator
Investigation Wing Central Police Office, Peshawar.

... (Appellant)

VERSUS

Additional Inspector General of Police Khyber Pakhtunkhwa,
Peshawar and two others.

... (Respondents)

MS. ROEEDA KHAN,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

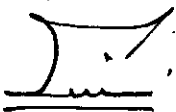
--- For respondents.

MR. SALAH-UD-DIN
MR. 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, who was appointed as Constable, was serving as Computer Operator in the office of DSP (Legal) CPO Peshawar. Departmental action was taken against the appellant on the allegations of absence from duty with effect from 29.05.2013 and he was eventually dismissed from service vide order dated 03.04.2014. The appellant after exhausting of departmental remedy, filed Service Appeal No. 1069/2014 in this Tribunal, which was allowed vide judgment dated 06.09.2016 with the directions to the department for conducting of de-novo inquiry in the matter. De-novo inquiry was thus conducted against the appellant and he was again dismissed from service vide order



dated 02.03.2017. The departmental appeal of the appellant was declined vide appellate order dated 01.06.2017, hence the instant service appeal.

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

03. Learned counsel for the appellant has contended that no charge sheet or summery of allegations was issued to the appellant during the de-novo inquiry proceedings and whole of the inquiry proceedings were conducted in haphazard manner; that the charge as was previously leveled against the appellant was absence from duty, however it is crystal clear from the record that as the appellant was being illegally arrested in a concocted case, therefore, he was unable to attend his duty; that during the de-novo inquiry proceedings, no witness was examined in support of the allegations leveled against the appellant; that the appellant has already been acquitted in case FIR No. 463 dated 03.06.2013 under Sections 419/420/468/471/411 PPC Police Station Chamkani Peshawar; that the impugned orders are wrong and illegal, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits.



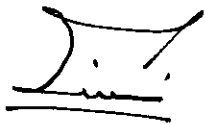
04. On the other hand, learned Deputy District Attorney for the respondents, while controverting the arguments of learned counsel for the appellant, has contended that the appellant had not only remained absent from duty but was also charged in various criminal cases pertaining to theft of vehicles; that stolen vehicles were recovered from possession of the appellant and he was also arrested and put behind the bars; that the appellant being involved in cases of theft of vehicles and sufficient material was available against him, therefore, he has rightly been dismissed from service.

05. Arguments heard and record perused.

06. A perusal of the record would show that the appellant had previously filed service appeal No. 1069/2014, which was decided

vide judgment dated 06.09.2016. Para-6 of the afore-mentioned judgment is reproduced as below:-

"We have carefully perused the record and have heard pro & contra arguments. A careful perusal of the enquiry report would show that the subject of inquiry is not in conformity with the allegations of the charge leveled against the appellant which charge is about absence from duty. To this charge reply of the appellant is that he was maliciously involved in a criminal case and his plea is that he was behind the bar in that case. The enquiry report does not show that the appellant was summoned from the judicial lockup to participate in the inquiry proceedings. It is thus clear that no chance of the defense has been given to the appellant. This is also worth mentioning that the criminal case against the appellant has not yet been decided. When the subject of enquiry is not in conformity with the charge of absence leveled against the appellant nor it was the charge that the appellant was involved in the offense of having possession of the stolen car which is the subject of inquiry, it is thus obvious that the proceedings against the appellant are not in accordance with rules and further that full opportunity of defense was not available to the appellant. In such a situation, the Tribunal is constrained to set aside the impugned orders. The same are set aside. The respondents are directed to put appellant to face proceedings de-novo in which full opportunity of defense be provided to the appellant. For the purpose of fresh proceedings, the appellant is reinstated into service. The proceedings shall be completed within a period of one month after receipt of this judgment. The matter of back benefits will be subject to the outcome of the de-novo proceedings. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room".




07. While going through the record we have observed that during the de-novo inquiry proceedings, vide office order dated 26.09.2016, Senior Superintendent of Police Investigation Khyber Pakhtunkhwa Peshawar had constituted an inquiry committee comprising of Mr. Tahir-ur-Rehman DSP and Mr. Shah Hassan DSP for de-novo inquiry into the matter. The relevant portion of the afore-mentioned office order dated 26.09.2016 is reproduced as below:-

"A committee comprising of Mr. Tahir-ur-Rehman and Mr. Shah Hassan DSPs Investigation of

this unit is hereby constituted to initiate de-novo proceedings against the above named official in the light of charge sheet and summery of allegations already issued as well as in the light of the decision of the Honourable Provincial Service Tribunal”.

08. It is thus evident from the contents of the above mentioned office order dated 26.09.2016 that no fresh charge sheet or summery of allegations were issued to the appellant and he was proceeded against on the same charge sheet and summery of allegations as were issued to him in the previous inquiry proceedings. Moreover, in his reply to the final show-cause notice, the appellant has categorically mentioned therein that no charge sheet and summery of allegations were issued to him during the de-novo inquiry proceedings. The charge sheet which was issued to the appellant in pervious inquiry proceedings is reproduced as below:-

"That you were posted in the office of DSP/Legal CPO, to work as computer operator, wherefrom you absented yourself without seeking any permission with effect from 29.05.2013 and hence DSP/Legal CPO reported the matter accordingly",

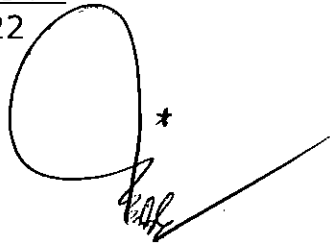


09. In view of the charge sheet issued to the appellant, the inquiry committee was required to have probed and submitted findings regarding absence of the appellant from duty but while going through the inquiry report, we have observed that main focus of the inquiry committee was on the allegations of involvement of the appellant in criminal cases pertaining to theft of vehicles. As far as the allegations of absence of the appellant is concerned, the appellant has mentioned in his reply to the show-cause notice that he rely on the reply submitted in response to charge sheet previously issued to him. In his reply to the charge sheet, the appellant has categorically mentioned that he was falsely implicated in case FIR No. 463/2013 of Police Station Chamkani and was confined in Central Jail Peshawar. The absence of the appellant was thus not willful, rather the same was due to his arrest in a criminal case, in which the appellant was later on acquitted vide judgment dated 10.03.2020 passed by Learned Judicial Magistrate-II Peshawar. During the previous inquiry proceedings, the fact of arrest of the appellant in a

criminal case, was well within the knowledge of the inquiry officer but even then the proceedings were kept continued which culminated into dismissal of the appellant from service vide order dated 03.04.2016. In view of material available on the record, it is evident that the inquiry proceedings were not conducted in the prescribed manner but carried out in a haphazard and slipshod way. The impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.

10. 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 with all back benefits. Findings in this judgment shall, however have no bearing upon the inquiry, if any, initiated against the appellant on the alleged allegations of his involvement in the concerned criminal cases. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
03.06.2022

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(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

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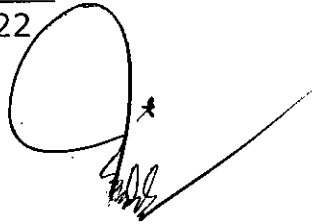
(SALAH-UD-DIN)
MEMBER (JUDICIAL)

O R D E R
03.06.2022

Learned counsel for the appellant present. Mr. Muhammad Asif, ASI alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments 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 with all back benefits. Findings in this judgment shall, however have no bearing upon the inquiry, if any, initiated against the appellant on the alleged allegations of his involvement in the concerned criminal cases. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
03.06.2022



(Mian Muhammad)
Member (Executive)

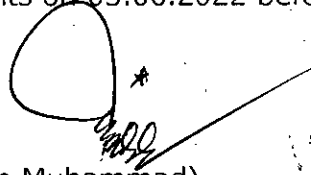


(Salah-Ud-Din)
Member (Judicial)

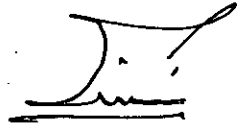
01.06.2022

Mr. Roeda Khan, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Muhammad Asif (ASI) for the respondents present.

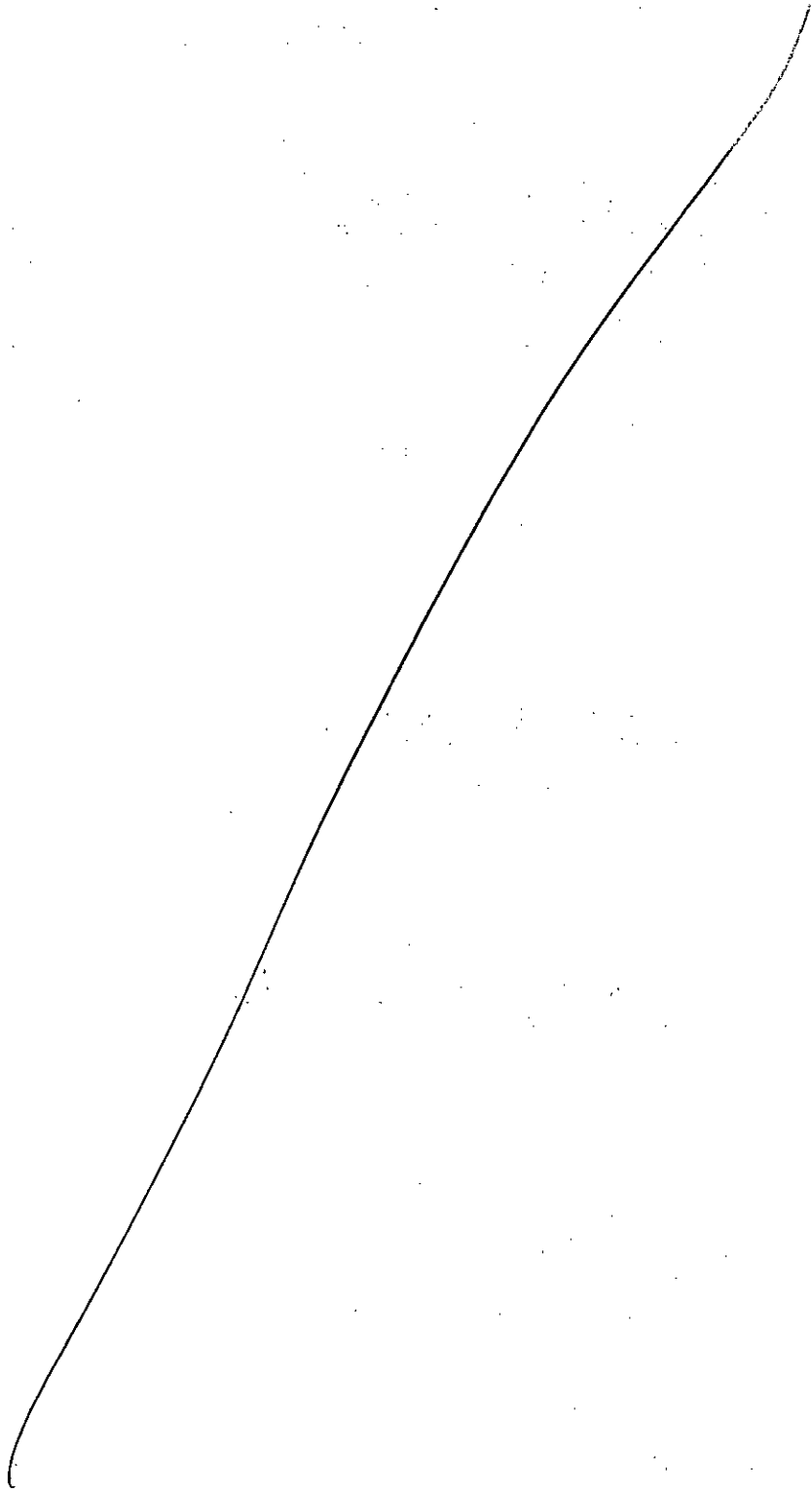
Partial arguments heard. To come up for remaining arguments on 03.06.2022 before D.B.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)



22.09.2021

Appellant present through counsel.

Muhammad Adeel Butt learned A.A.G alongwith
Muhammad Asif A.S.I for respondents present.

Former submitted rejoinder with a request for adjournment.
Adjourned. To come up for arguments on 24.12.2021 before
D.B.



(Rozina Rehman)
Member (J)



Chairman

24.12.2021

Due to winter vacations, case is adjourned to
31.03.2022 for the same as before.

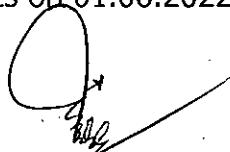


Reader


31st March, 2022

Counsel for the appellant present. Mr. Muhammad
Adeel Addl. A.G for the respondents present.

Learned counsel for the appellant seeks adjournment in
order to properly assist the court. Adjourned. To come up
for arguments on 01.06.2022 before the D.B.



(Mian Muhammad)
Member(Executive)



Chairman

25.01.2021

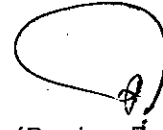
Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Asif A.S.I for respondents present.

A request for adjournment was made as issue involved in the instant case is pending before Larger Bench of this Tribunal. Adjourned. To come up for arguments on 12.04.2021 before D.B.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

12-4-21

*Due to COVID 19, the case is adjourned
to 28.7.21 for the same.*



Reader

28.07.2021

Clerk of counsel for the appellant present. Mr. Muhammad Asif ASI alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B. on 22.09.2021.



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



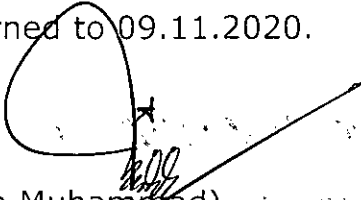
(SALAH-UD-DIN)
MEMBER (JUDICIAL)

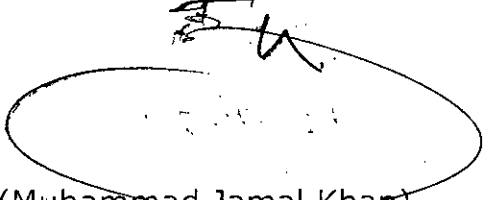
Service Appeal No. 687/2017

09.09.2020

Appellant Mohammad Sohail alongwith Miss. Roheeda Khan, Advocate are present. Mr. Usman Ghani, District Attorney for respondents is also present.

Learned counsel stated that the impugned order dated 02.06.2017 has been passed by the Senior Superintendent of Police Investigation Wing Central Police Office, Peshawar with retrospective effect. Since the issue with regard to retrospectivity of impugned orders is pending before the Larger Bench of this august Service Tribunal, therefore, it has to be submitted before that bench for consideration. Adjourned to 09.11.2020.


(Mian Muhammad)
Member (Executive)



(Muhammad Jamal Khan)
Member (Judicial)

09.11.2020

Junior to counsel for appellant present. Zara Tajwar learned Deputy District Attorney alongwith Muhammad Asif ASI for respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 25.01.2021 for hearing before the D.B.


Chairman


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

28.02.2020

Learned counsel for the appellant present. Mr. Riaz Paindakhel learned Assistant Advocate General alongwith Mr. Shabir Ahmed SI for the respondents present. Learned counsel for the appellant seeks adjournment. To come up for arguments on 13.04.2020 before D.B.


Member


Member

13.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 01.07.2020 before D.B.

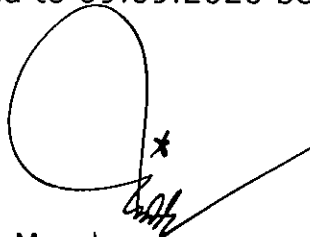

Reader


01.07.2020

Learned counsel for the appellant and Addl: AG alongwith Mr. Muhammad Arif, Inspector for the respondents present.

Former requests for adjournment to further prepare the brief.

Adjourned to 09.09.2020 before D.B.


Member


Chairman

23.10.2019

Learned counsel for the Appellant present. Mr. Kabirullah Khattak learned Addl. AG for the respondents present.

Learned counsel for the appellant requests for adjournment in order to further prepare the brief.

Adjourned to 27.12.2019 for arguments before D.B.


Member


Chairman

27.12.2019

Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney present. During the course of arguments, it came to surface that the appellant remained involved in several criminal cases. It is not clear that in which criminal case the appellant remained absconder and for how much time. Pertinent documents to this effect, are not available on file. Appellant is also not present before this Tribunal to assist in the matter. Adjourn. To come up for additional documents and arguments on 28.02.2020 before D.B. Appellant be put to notice for the date fixed.


Member


Member

16.05.2019

Appellant in person and Addl. AG for the respondents present.

Due to demise of his father, learned Member of the Bench (Mr. Hussain Shah) is on leave. Adjourned to 29.07.2019 for arguments before the D.B.

Chairman

~~Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney along with other State Inspectors present. Adjourn. To come up for arguments on 23.10.2019 before D.B.~~

Member

Member

29.07.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 23.10.2019 before D.B.

Member

Member

28.11.2018

Counsel for the appellant and Asst. AG alongwith Mr. Shair Alam S.I for the respondents present.

The former requests for adjournment that brief in the instant appeal could not be prepared due to over-load. Adjourned to 21.01.2019 before the D.B.


Member


Chairman

21.01.2019

Clerk of counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Umer, Inspector (Legal) for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 13.03.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

13.03.2019

Counsel for the appellant and Asstt. AG for the respondents present.

Learned senior counsel for the appellant requests for adjournment in order to seek fresh instructions from the appellant who is not in attendance today.


Adjourned to 16.05.2019 before the D.B.


Member


Chairman

06.07.2018

Counsel for the appellant in person present. Mr. Raghieb, Inspector alongwith Mr. Sardar Shoukat Hayat, Addl: AG for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 30.08.2018 before D.B.


(Muhammad Amin Kundi)
Member

30.08.2018

Counsel for the appellant and Mr. Riaz Ahmad Paindakhel, Assistant AG alongwith Mr. Sher Alam, S.I (Legal) for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 18.10.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

18.10.2018

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Shair Alam SI for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 28.11.2018 before D.B.


(Hussain Shah)
Member


(Ahmed Hassan)
Member

19.09.2017

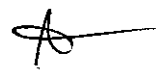
Counsel for the appellant and Addl: AG alongwith Mr. Sher Alam, ASI for respondents present. Written reply submitted. To come up for rejoinder and final hearing on 18.12.2017 before D.B.


(Ahmad Hassan)

Member

18.12.2017


Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Ghulam Hussain, DSP (Legal) for the respondents present. Counsel for the appellant seeks adjournment. To come up for arguments on 09.02.2018 before the D.B.


Member


Chairman

19.02.2018

Due to non availability of D.B. Adjourned. To come up on 23.04.2018 before D.B.


(Gul Zeb Khan)
Member

23.04.2018

Counsel for the appellant and Addl:AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.07.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

18.07.2017

Learned counsel for the appellant present. Preliminary arguments heard. Mohammad Sohail Ex-Constable has filed the present appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against Additional Inspector General of Police KPK, Peshawar and two others wherein he made impugned the order dated 02.03.2017 whereby he was held guilty and resultantly dismissed from service from the date of reinstatement in service in connection with de-novo enquiry.

Departmental proceedings against the appellant on the allegations of absence from duty and involvement in theft of vehicles culminated to his dismissal from service.

Points raised and agitated in the grounds of appeal need consideration. Present appeal is admitted for regular hearing subject to all just exceptions. The appellant is directed to deposit the security and process fee within 10 days, thereafter notices be issued to the respondents for written reply/comments for 22.08.2017 before S.B.

Appellant Deposited
Security & Process Fee



(Muhammad Hamid Mughal)
Member

22/8/2017

Clerk of counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. Clerk of counsel for the appellant requested for adjournment as his counsel is not available due to strike of the bar. To come up for written reply/comments on 19/9/2017 before SB.



(GUL ZEB KHAN)
MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 687 /2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	30/06/2017	<p>The appeal of Mr. Muhammad Sohail presented today by Roeda Khan Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>Sohail</i> REGISTRAR</p>
2	4-7-17	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>17/7/17</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
03.	17.07.2017	<p>Junior to counsel for the appellant present. Junior to counsel for the appellant seeks adjournment on the ground of senior counsel is not available. Adjourned. To come up for preliminary hearing on 18.07.2017 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> (Muhammad Hamid Mughal) Member</p>

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 687 /2017

Muhammad Sohail..... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa Police Department..... (Respondents)

I N D E X

S.No.	Description of Documents	Annex	Page No.
1	Grounds of Appeal		1-5
2	Affidavit		6
3	Addresses of Parties		7
4	Copy of judgment dt.06.09.2016	A	8-11
5	Final Show Cause Notice	B	12
6	Reply to the show cause notice	C	13-14
7	Copy of impugned order	D	15
8	Departmental appeal	E	16-17
9	Rejection order of departmental appeal	F	18
10	Wakalat Nama only with Original		19

Sohail
Appellant

Through:

R
Roeda Khan & Afshan.
Advocates.

4.

BEFORE THE KHYBER PAKHTUNKHWA TRIBUNAL
PESHAWAR

Service Appeal 687 /2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 736

Dated 30-6-2017

Mohammad Sohail Ex-Constable No. 87/Computer Operator
Investigation Wing Central Police Office, Peshawar.

.....Appellant

VERSUS

1. Additional Inspector General of Police KPK, Peshawar.
2. Deputy Inspector General of Police Headquarters
(Investigation) KPK Central Police Office, Peshawar.
3. Senior Superintendent of Police Investigation Wing Central
Police Office, Peshawar.

.....Respondents

APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974, AGAINST THE IMPUGNED ORDER
DATED 02/03/2017, PASSED BY THE
RESPONDENT NO. 01 WHEREBY THE
APPELLANT HAS BEEN DISMISSED FROM
SERVICE AGAINST WHICH THE
APPELLANT FILED DEPARTMENTAL
APPEAL AGAINST THE ORDER DATED
27/03/2017 WHICH WAS REJECTED ON
DATED 01/06/2017 ON NO GOOD GROUNDS.

Filed to-day


Registrar

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL THE
IMPUGNED ORDER DATED 02/03/2017 AND
01/06/2017 MAY PLEASE BE SET ASIDE. ANY
OTHER RELIEF NOT SPECIFICALLY ASKED
FOR MAY ALSO BE GRANTED TO THE
APPELLANT IF DEEMED FIT.

Respectfully Sheweth,

1. That the appellant was recruited as constable (Computer Operator) in the then Crime Branch now Investigation Wing Central Police Office Peshawar.
2. That in year 2010, appellant was posted as Computer Operator in the office of Deputy Superintendent of Police Legal Central Police office Peshawar. The appellant has rendered services for 13/14 years to the entire satisfaction of Senior's and Superiors and there is no adverse entry in his record.
3. That the same Police officers eventually implicated the appellant in false, concocted and fabricated criminal case vide FIR No. 463 dated 03/06/2013 under section 411 PPC Police Station Chamkani Peshawar.
4. That on the allegation of involvement of appellant in the said criminal case the respondent departments dismissed appellant from service on dated 03/04/2014

and due to involvement in criminal case the appellant was not able to continue his duty.

5. That on against that dismissal order the appellant filed service appeal No. 1069/2014 before this Hon'ble Tribunal and this Court re-instated the appellant in service and also direct the respondent department for deno inquiry. (copy of order as Annex 'A')
6. That respondent department re-instated the appellant in service and started the proceeding of deno inquiry, and the respondent department arrested the appellant under section 54 Cr.PC and sent the appellant to Judicial Lock-up being charged and other alleged case by FIR No. 157/2013, U/s 457/381 PPC, P.S Wah Cantt, Punjab and as a result of which he was placed under suspension order vide No. 13518-21/PC, Dated 01/12/2016 and was kept the appellant into the Judicial Lock-up for long period and due to that reason appellant was not able to join deno inquiry.
7. That on the ground of the said absentee the respondent department started disciplinary proceeding against the appellant and on 22/12/2016 respondent department send Show Cause Notice to the appellant. (Copy of Show Cause Notice is attached as annexure "B").
8. That in this regard the appellant reply the Show Cause Notice on 28/12/2016 where the appellant denied the allegation leveled against him. (Copy of Reply of Show Cause Notice is attached as annexure "C").

- 4
9. That on 02/03/2017 the respondent department against dismissed the appellant from service. (Copy of impugned order is attached as annexure "D").
 10. That on 27/03/2017 the appellant filed departmental appeal against the impugned order which was rejected on 01/06/2017 on no good grounds. (Copies of Departmental appeal and order of departmental appeal are attached as annexure "E & F").
 11. That the impugned orders are liable to be set-aside on the following grounds:-

GROUND:

- A. That the impugned order is illegal, unlawful, without lawful authority and thus of no legal effect.
- B. That the appellant was not directly charged in the instant alleged FIR in the appellant was unaware of the said FIR.
- C. That no regular inquiry has been conducted by the respondent department.
- D. That no chance of cross examination has been given to the appellant even though the appellant was not providing the opportunity of personal hearing.

E. That on allegation of involvement in criminal case is still pending and the respondent department has to be wait for the decision of the court.

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

Dated:30/06/2017

Sohid
Appellant

Through

R
ROHEEDA KHAN

Afshan
&

AFSHAN MANZOOR
Advocates Peshawar

6

BEFORE THE KHYBER PAKHTUNKHWA TRIBUNAL
PESHAWAR

Service Appeal _____/2017

Mohammad Sohail Ex-Constable

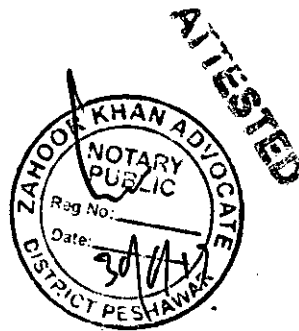
VERSUS

Government of Khyber Pakhtunkhwa and others

AFFIDAVIT

I, Mr. Mohammad Sohail Ex-Constable No. 87/Computer Operator Investigation Wing Central Police Office, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of the instant appeal are true and correct to best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Sohail
Deponent



BEFORE THE KHYBER PAKHTUNKHWA TRIBUNAL
PESHAWAR

Service Appeal _____/2017

Mohammad Sohail Ex-Constable

VERSUS

Government of Khyber Pakhtunkhwa and others

ADDRESS OF PARTIES

APPELLANT

Mohammad Sohail Ex-Constable No. 87/Computer Operator
Investigation Wing Central Police Office, Peshawar.

RESPONDENTS

1. Additional Inspector General of Police KPK, Peshawar.
2. Deputy Inspector General of Police Headquarters
(Investigation) KPK Central Police Office, Peshawar.
3. Senior Superintendent of Police Investigation Wing Central
Police Office, Peshawar. Dated:24/05/2017

Sohail
Appellant

Through

P
ROHEEDA KHAN
&
AFSHAN MANZOOR
Advocates Peshawar

8 (1)

Annex 'A'

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.



Service Appeal No.

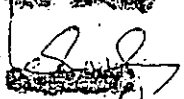
1069 /2014.

~~1020~~
~~24-7-2014~~

Muhammad Sohail ex-Constable No. 87/Computer Operator Investigation
Wing Central Police office, Peshawar ... Appellant.


Versus

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. Deputy Inspector General of Police Headquarters (Investigation)
Khyber Pakhtunkhwa Central Police Office Peshawar.
3. Senior Superintendent of Police Investigation Wing Central Police
Office Peshawar. ... Respondents.


24/7/14

APPEAL UNDER SECTION 4 OF THE NWFP (KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE
ORDER OF RESPONDENT NO. 3 DATED 03.04.2014 VIDE WHICH
APPELLANT WAS DISMISSED FROM SERVICE, AND RESPONDENT
NO. 2 TO WHOME APPEAL WAS PREFERRED BUT NO REPLY SO
FAR.


ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



Re-submitted to ~~1020~~
and filed:


22/8/16

S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate.
1	06.09.2016	<p style="text-align: center;">3</p> <p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> <u>PESHAWAR.</u></p> <div style="text-align: right;">  </div> <p style="text-align: center;">APPEAL NO. 1069/2014 (Muhammad Sohail-vs- Inspector General of Police Khyber Pakhtunkhwa Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER:</u></p> <p>Counsel for the appellant (Mr. Akbar Khan, Advocate) and Mr. Sattar, S.I alongwith Mr. Muhammad Jan, GP for respondents present.</p> <p>2. Recruited as Constable in the police department, the appellant was dismissed from service vide impugned order dated 03.04.2014 on the ground of absence from duty w.e.f 29.05.2013. The charged against the appellant given in the charge sheet reproduced below which is as follows:</p> <p style="padding-left: 40px;">“That you were posted in the office of DSP/Legal CPO, to work as Computer Operator wherefrom you absented yourself without seeking any permission w.e.f 29.05.2013 and hence DSP/Legal CPO reported the matter accordingly”.</p> <p>His departmental appeal seems to have been rejected by ^{an} undated order of the authority, after institution of this service appeal, instituted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p> <p>3. Arguments heard and record perused.</p>

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attested

#1000000

Y. N. M.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Learned counsel for the appellant submitted that charge against the appellant is that of absence but absence of the appellant was not willful. That the absence reason was a false involvement of the appellant in a baseless and concocted case in which the appellant was behind the Bar^{at} the relevant time. He further submitted that the same criminal case has not yet been decided and it is evident that without giving of any opportunity of being heard and defended the appellant has been unlawfully dismissed from service. He stated that the penalty is too harsh and the dismissal order is not is not a lawful order, hence on acceptance of this appeal, original dismissal order as well as the appellate order, both may be set aside

5. This appeal was resisted by learned GP on the ground that the appellant was involved in a criminal case of the stolen car which car was recovered from his possession. He also submitted that proper enquiry was conducted by a committee and in the light of that report the appellant was dismissed from service. He stated that the appeal may be dismissed having no merits in it.

6. We have carefully perused the record and have heard pro & contra arguments. A careful perusal of the enquiry report would show that the subject of inquiry is not in conformity with the allegations of the charge leveled against the appellant which charge is about absence from duty. To this charge reply of the appellant is that he was maliciously involved in a criminal case and has plea is that he was behind the bar^{at} that case. The enquiry report does not show that the appellant was summoned from the judicial lockup to participate in the inquiry proceedings. It is thus clear that no chance of the defense has been given to the appellant. This is also worth mentioning that the criminal case against the appellant has not yet been decided. When the subject of enquiry is not in conformity with the charge of absence leveled against the appellant nor it was the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attested D. Khan

charge that the appellant was involved in the offence of having possession of the stolen car which is the subject of inquiry, it is thus obvious that the proceedings against the appellant are not in accordance with rules and further that full opportunity of defense was not available to the appellant. In such a situation, the Tribunal is constrained to set aside the impugned orders. The same are set aside. The respondents are directed to put appellant to face proceedings de-novo in which full opportunity of defense be provided to the appellant. For the purpose of fresh proceedings, the appellant is reinstated into service. The proceedings shall be completed within a period of one month after receipt of this judgment. The matter of back benefits will be subject to the outcome of the de-novo proceedings. The appeal is disposed of in the above terms. Parties are left to bear their own cost. File be consigned to the record room.

Announced
06.09.2016 *Sd/- Pir Bakht Shah*
Member

Sd/- M. Amir Nazir
Member

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 09-09-2016
 Number of Words 1600
 Copying Fee 10-00
 Urgent 2-00
 Total 12-00
 Name of Copyist [Signature]
 Date of Completion of Copy 09-09-2016
 Date of Delivery of Copy 09-09-2016

[Signature]
[Signature]

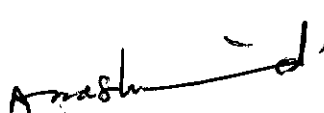
Annex-B (12)
FINAL SHOW CAUSE NOTICE

I, Abdur Rashid, Sr. Superintendent of Police Investigation, Unit CPO, Khyber Pakhtunkhwa, Peshawar as competent authority, under the Rules 2 (ii) of N.W.F.P (now Khyber Pakhtunkhwa) Police Rules 1975, do hereby serve you FC Muhammad Sohail No. 87 of Police Station Investigation Unit Warsak Road Peshawar, as follows:

Whereas you constable Muhammad Sohail No. 87 are called upon to explain the following.

1. ***That while posted as computer Operator in the office of DSP Legal CPO Peshawar, you absented yourself form duty w.e.f 29.05.2013 without seeking leave or permission from the Competent Authority and marked absent by DSP Legal vide Note Sheet dated 05.06.2013.***
2. ***That proper departmental enquiry was conducted against you, in accordance with the provisions of Khyber Pakhtunkhwa, Peshawar Rules 1975 and Inspector Mirza Ali Khan of Investigation was appointed as enquiry officer but consequent upon your no confidence upon enquiry officer, Mr. Ajmal Khan DSP and Inspector Akbar Khan of Investigation Unit CPO, Peshawar were appointed as enquiry officers vide order bearing No. 245/PA, SSP, Inv: CPO, dated 25.10.2013. But you failed to explain your absence and to produce any defence.***
3. ***That during the course of previous enquiry it was established that you remained involved in theft of vehicles and retaining stolen vehicles which were recovered from your possession.***
4. ***That consequent upon your re-instatement into service for Denove enquiry in compliance of judgment dated 06.09.2016, passed by Khyber Pakhtunkhwa Service Tribunal Peshawar, denove enquiry was entrusted to DSP Tahir Khan and DSP Shah Hassan of Investigation Unit CPO Peshawar, during the course of which your statement was recorded by the enquiry officers on 20.10.2016 wherein you denied allegations but failed to produce defence.***

In order to ascertain facts, you are once again called upon to explain your position regarding absence and involvement in theft of vehicles. You reply to Final Show Cause should be furnished within a period of 07 days failing which you would be punished in accordance with the provisions of N.W.F.P now Khyber Pakhtunkhwa, Police Rules 1975.


(ABDUR RASHID)PSP
Sr. Superintendent of Police,
Investigation Unit, CPO, K.P Peshawar

No. 14659 /EC, Inv; CPO, dated Peshawar the 22 / 12 /2016.

REPLY TO FINAL SHOW CAUSE NOTICE
DATED 22.12.2016

Respected Sir,

Kindly refer to the above cited show cause notice, it is submitted that allegations leveled in Para 1, 2 and 3 are previous which were challenged in appeal and analyzed by the tribunal and the tribunal was not satisfied from the enquiries who therefore ordered de-novo inquiry. No charge sheet and summary of allegations have been issued to me for conducting de-novo inquiry. I have given detail statements to the previously issued charge sheet and summary of allegations and relied upon those reply / statements and answer etc.

So for the recording of my statement on 20.10.2016, it is admitted that my statement was recorded but no evidence of any type has been recorded by the enquiry officers in my presence, nor any chance of cross examination was given to me, meaning thereby that the enquiry officers have acted upon the statements recorded by previous enquiry officers. It is worth mentioning here that the previous proceeding is nullity in the eyes of law as the tribunal has ordered by de-novo inquiry in which the recording of evidence is and opportunity of cross examination is must which is lacking in this entire process. Furthermore, I have not closed my defense nor given any such statement of not producing any defense. I reserve my right of defense which can be exercised after the prosecution evidence who has not yet examined.

The facts of involvement in criminal case came into my knowledge when I was presented before the ASI of PS Michni Gate for arrest by DSP Shah Hussain. Even this ^{SP} DSP and the ASI were not in possession of any legal documents in shape of perpetual warrant of arrest, FIR or other document. I was a Govt: Servant and proper provision for arrest of Govt: Servant as laid down in police rules was not complied with by the said DSP which speaks volumes of his bias attitude.

Handwritten signature
SP

(14)

The police of PS Wah Cantt has neither informed me about my involvement in the case nor sent any 204, 87 and 88 process against me. I being a Govt: employee was vulnerable for arrest through my officials. Even my name is not mention in FIR. Therefore I was not aware of the facts of that case which is nothing but conspiracy hatched against me by opponent with whom I have some civil disputes pertaining to the land of my mother. After knowing about the facts of case FIR No. 157, PS Wah Cantt, I have obtained proper bail and have given proper attention to case. There is nothing against me in that case and the balance of convenience is in my favour. I hope that I will be released U/s 169 Cr.P.C. as I am innocent.

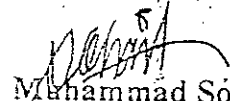
The case is pending investigation and no evidence has come forth on file against me so far and there is every probability of my release U/s 169 Cr.P.C. or discharge U/s 63 Cr.P.C. read with 249 Cr.P.C. and I cannot be held guilty of a crime which I have not committed nor sufficient reasons exists to believe that I am involve in the same.

Respected Sir,

For the reasons as stated above, it is requested that I may be exonerated of the charge or the enquiry be kept pending till the decision of the court or inquiry of officer of the criminal case.

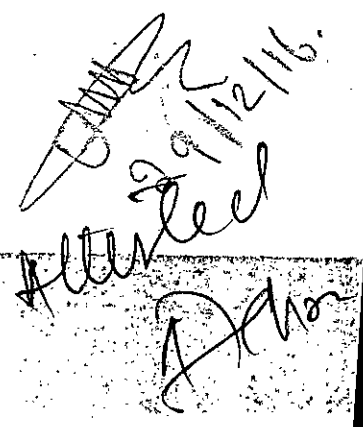
Submitted please for sympathetic consideration.

Yours Obediently,



Muhammad Sohail
No. 87 Constable / Computer Operator
Investigation CPO
Khyber Pakhtunkhwa, Peshawar

Dated: 28.12.2016



29/12/16
Attested
A. Khan

ORDER

This order is passed in de-novo departmental proceedings initiated against Muhammad Sohail Ex-Constable/Computer Operator No.87 of Investigation Unit, CPO. Facts forming the background of the departmental proceedings are as under: -

That Muhammad Sohail Constable/Computer Operator No.87 was dismissed from service vide order No.2747-51/EC, dated 03.04.2014 and he after exhausting departmental remedies filed service appeal No.1069/2014, and the case was remitted to respondent department for de-novo enquiry proceedings.

On receipt of the judgement, accused constable was re-instated in service vide order No.11433-39/EC/Invest: dated 26.09.2016 and enquiry committee also constituted vide same order for scrutinizing his conduct with reference to the charges levelled against him. The accused constable was declared as PO vide case FIR No. 157/2013 u/s 457/381-PPC PS Wah Cantt: as a result of which he was kept under suspension vide No. 13518-21/EC, dated 01.12.2016.

A committee comprising of Mr. Tahir-ur-Rehman DSP and Mr. Shah Hassan DSP constituted for de-novo enquiry proceedings vide above referred order.

The finding report of denovo enquiry received upon which final show-cause notice was issued to accused official on 22.12.2016, he submitted reply in response to the Final show cause notice on 28.12.2016. Accused constable was summoned time and again for personal hearing through Parwanas by Crimes Branch Police Station and thereafter by postal means and ultimately through newspapers, but he failed to appear for personal hearing.

After perusal of proclamation published in newspapers and proceedings of de-novo enquiry by the enquiry committee the undersigned is satisfied that the accused constable is wilfully avoiding appearance before the enquiry committee to defend himself.

Keeping in view the findings of enquiry, perusal of record and conduct of accused constable Muhammad Sohail No. 87, I Mr. Abdur Rashid Senior Superintendent of Police Investigation CPO KP Peshawar, in exercise of powers conferred upon me under Rule 5 (5) of Police Rules 1975 found the accused constable guilty and thereby dismiss him from service from the date of re-instatement in service in connection with denovo enquiry.

ANNOUNCED

Abdur Rashid
(ABDUR RASHID)

Senior Superintendent of Police,
Investigation, CPO, Peshawar

No 2116-21 /EC, dated Peshawar, the 2/02/2017.

Copies are sent for information and necessary action to the: -

1. Addl. IGP Investigation, Khyber Pakhtunkhwa, Peshawar for f/o information, please.
2. Registrar, Khyber Pakhtunkhwa, Services Tribunal Peshawar for favour of information w/r to his office letter No.1481/ST, dated 09.09.2016.
3. DIG Hqrs/Investigation, CPO, Peshawar.
4. DSP Admn Invest.
5. Accountant, Invest.
6. official concerned

Atiqe
Aaron

To,

The Additional Inspector General
of Police Investigation C.P.O.
Khyber Pakhtunkhwa Peshawar.

Muhammad Sohail Constable / Computer Operator No.87 V/S S.S.P /
investigation C.P.O. Peshawar

.....Appellant

SERVICE APPEAL AGAINST THE ORDER OF
SENIOR SUPERINTENDENT OF POLICE
INVESTIGATION C.P.O. DATED 02/03/2017 VIDE
WHICH THE S.S.P. INVESTIGATION HAS
DISMISSED THE PETITIONER /APPELLANT IN A
DENOVO INQUIRY CONDUCTED ON THE ORDER
OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.

Respectfully Sheweth,

The appellant most respectfully submit as under:

1. That the appellant was computer operator in the C.P.O. under your kind control and was working with zeal and dedication with D.S.P. legal for the last 16 years.
2. That during my service of 16 years, I have earned no bad reputation, ACR etc and was working to the entire satisfaction of my superiors.

Attested
Dewan

17
3. That the appellant was unaware of his involvement in CASE FIR No.157 of 013 U/S 457/381 PPC Police station WAH CANTT, and learnt through the enquiry officer.

4. That the enquiry officer would have directed the petitioner to approach the Police Station Wah Cantt, for vindicating the charges against him but he arrested the petitioner and sent him to judicial lock up U/S 54 Cr.P.C. where the petitioner was kept detained for sufficient long period and the petitioner was made unable to defend himself in the denovo enquiry.

5. That no proper opportunity was provided to the appellant for defense and once again he was condemned unheard.

In light of the above, it is most humbly prayed that on acceptance of this appeal/petition the order passed by Senior Superintendent Police C.P.O may please be set aside and the appellant may please be reinstated in service.

Dated: 27/03/2017

Appellant

Mohammad Sohil
Dam
MOHAMMAD SOHAIL
Constable/Computer
Operator No.87 C.P.O.
Peshawar.

ORDER

(18)

Annex-E

This order is hereby passed to dispose off the departmental Appeal, filed by Ex-Constable/Computer Operator Muhammad Sohail No. 87 of Investigation Unit CPO against the order of dismissal passed by SSP/Investigation CPO vide No. 2116-21/EC, dated 02.03.2017.

Backdrop of the departmental proceedings is as under:-

Muhammad Sohail Ex-Constable/Computer Operator No.87 was dismissed from service vide order No.2747-51/EC, dated 03.04.2014 for being charged in FIRs No. 1049/2012 u/s 381-A PPC PS Liaqat Abad Lahore (Punjab) and No. 463/2013 u/s 411/419/420/468/471-PPC PS Chamkani Peshawar. Hence he filed service appeal No.1069/2014 against the above mentioned dismissal order and the case was remitted to respondent department for de-novo enquiry proceedings vide judgement dated 06.09.2016.

On the receipt of copy of judgement, accused constable was re-instated in service and simultaneously an Enquiry Committee comprising of Mr. Tahir-ur-Rehman DSP and Mr. Shah Hassan DSP was constituted for de-novo enquiry proceedings vide order No.11433-39/EC/Invest: dated 26.09.2016 for scrutinizing his conduct with reference to the charges levelled against him. During the enquiry proceedings, the accused constable was learnt to have been declared Proclaimed Offender being charged in another case vide FIR No. 157/2013 u/s 457/381-PPC PS Wah Cantt: Punjab) as a result of which he was placed under suspension vide No. 13518-21/EC, dated 01.12.2016.

The Denovo Enquiry Committee constituted vide above referred order, submitted its finding report of denovo enquiry upon which final show-cause notice was issued to accused official on 22.12.2016. He submitted reply in response to the Final show cause notice on 28.12.2016. Accused official was summoned time and again for personal hearing through Parwanas delivered by the DFC of PS Investigation (Crimes Branch) and thereafter by postal means and ultimately through newspapers, but he did not appear for personal hearing.

Due to his wilful non-appearance for personal hearing, the SSP/Investigation CPO (competent authority) dismissed him from service from the date of his reinstatement in service i.e. initiation of Denovo Enquiry against him vide order No. 2116-21/EC, dated 02.03.2017. On 27.03.2017 the accused Constable/Computer Operator preferred the instant Service Appeal against the above mentioned order dated 02.03.2017 by taking the plea that he being confined in judicial lock up u/s 54-Cr.PC he was unable to defend himself in the denovo enquiry and hence he requested to set-aside the order dated 02.03.2017 passed by the SSP/Investigation CPO.

On receipt of his Service Appeal, the accused official was served with two separate Notices vide this office letter Nos. 4459-60/EC/Inv: dated 08.05.2017 and No. 4759/EC/Inv; dated 12.05.2017 with the direction to appear in this office for personal hearing. He acknowledged receipt of both the Notices in writing but did not appear to defend himself. It seems that he is not interested in pursuing his enquiry case.

In the light of above, the appeal preferred by Ex-Constable/Computer Operator Muhammad Sohail No.-87 is hereby rejected.

[Handwritten Signature]
[Handwritten Signature]

(DR. ISHTIAG AHMAD) PSP
Addl:Inspector General of Police,
Investigation, KP, Peshawar

No 5081-85 /EC, dated Peshawar, the 1 /06/2017.

Copies are sent for information and necessary action to the: -

1. DIG Hqrs/Investigation, CPO, Peshawar.
2. SSP/Investigation CPO, Peshawar.
3. DSP Admn Invest.
4. Accountant Invest.
5. official concerned

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service appeal No.687/2017

Muhammad Sohail Ex-Constable No.87/Computer Operator _____ (Appellant)

VERSUS

1. Addl: Inspector General of Police Investigation Khyber Pakhtunkhwa Peshawar

_____ (Respondents)

2. Dy: Inspector General of Police HQR: Investigation Central Police Office Peshawar

_____ (Respondents)

3. Sr: Superintendent of Police Investigation Central Police Office Peshawar

_____ (Respondents)

Subject: **REPLY/PARAWISE COMMENTS OF SERVICE APPEAL ON
BEHALF OF RESPONDENTS No.1 to 3.**

Respectfully shewith

The requisite comments to service appeal on behalf of respondents indicated the subject are submitted as below,

Preliminary objections:-

- a) The appellant has no cause of action to file instant service appeal.
- b) The service appeal is not maintainable its present form.
- c) The service appeal is bad in law due to mis-joinder and non-joinder of necessary parties.
- d) The appellant has not come to court with clean hints
- e) The appellant is timebarred.

FACTS:-

1. Admitted correct according to service record, need no comments.
2. Admitted correct upto the appointment of appellant as constable in police department, Para is denied because appellant not only absented himself for long period but was also found involved in dealing stolen property. Three stolen vehicles were recovered from the possession of appellant and he is still facing trial on the above charges; therefore his further retention in police department was not justified.
3. Incorrect, appellant has not pointed any malice on the part of Police in registration of criminal case against him. Furthermore, the guilty conscious of appellant led to registration of the case and according to investigation of the case three stolen vehicles were recovered from his possession.

4. Correct to the extent that appellant was found absent from duty for long time therefore charge sheet based on allegation of absence from duty was issued to him.
5. Admitted correct according to record in compliance of order passed by august service tribunal, need no comments. Correct to the extent of grant of bail to appellant.
6. Admitted correct according to record, need no comments.
7. Admitted correct according to record, need no comments.
8. The reply to show cause notice dated 28-12-2016 furnished by the appellant was not found satisfactory, therefore not entertained and the appellant once again ordered dismiss from service vide order No.2116-21/EC dated 02-03-2017 (copy enclosed as annexure A).
9. Admitted correct according to record of appellant copy of order enclosed at annexure A.
10. Admitted correct according to record, the departmental appeal filed by the appellant was rejected by the competent authority vide order 5081-85/EC dated 01-06-2017 (copy enclosed at annexure B).


GROUND

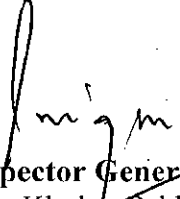
- A. Incorrect, the impugned order is just, legal and was passed in accordance with law after thorough evaluation of facts and evidence on record.
- B. Admitted correct to the extent that the appellant was not nominated in the FIRs however Motor Car No.AGS-184 GLL, ABG-249/Sindh Honda Civic and AB-8090 Honda Civic colours Black & Silver respectively were recovered from the possession as well as at the indication of appellant by Inspector Abdul Hameed Khan SHO PS: Chamkani on 03-06-2013 and the appellant was arrested in the case.
- C. Incorrect, Proper departmental enquiry was conducted by enquiry committee comprising of DSsP Tahir-ur-Rehman and Shah Hassan of Investigation Unit CPO. The copy of enquiry report dated 30-11-2016 and nomination of enquiry committee order No.11433-39/EC/Inv: dated 26-09-2016 (enclosed at annexure C/1) respectively. Proper opportunity of hearing and submission of reply was provided to the appellant.
- D. Incorrect, already explained vide ground C above, however the attitude of appellant remained non coordinative during the process of enquiry upto pronouncement of order by the


competent authority because he remained absent during enquiry proceeding and failed to appear before the competent authority in connection with personal hearing inspite of calling of the appellatant through DFC PS: Crimes Peshawar and publication of proclamation in National News Paper Daily Mashriq in its addition dated 30-01-2017 (copy of proclamation enclosed at annexure D.

- E. Admitted correct to the extent that criminal cases against the appellatant are pending trial in concerned courts of Peshawar, Rawalpindi and Lahore. However the departmental authority passed order of dismissal of appellatant from service in view of his authority contained in rule (5) class (5) of KP Police Rules 1975 amended in 2014 due to his direct involvement in theft of vehicle cases indicated in above para.

In the light of above facts and circumstances it is most respectfully submitted that service appeal filed by the appellatant may be dismissed being based on weak and flimsy grounds and without any solid reasons.


Addl: ICP Investigation,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No.1)


Deputy Inspector General of Police,
Inv: HQrs: Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)


/Senior Superintendent of Police,
Investigation wing CPO,
Peshawar.
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service appeal No.687/2017

Muhammad Sohail Ex-Constable No.87/Computer Operator _____(Appellant)

VERSUS

1. Addl: Inspector General of Police Investigation Khyber Pakhtunkhwa Peshawar

_____ (Respondents)

2. Dy: Inspector General of Police HQR: Investigation Central Police Office Peshawar


_____ (Respondents)

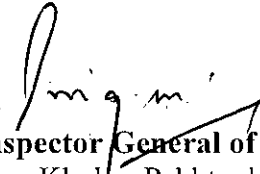
3. Sr: Superintendent of Police Investigation Central Police Office Peshawar

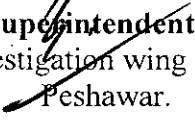
_____ (Respondents)

AFFIDAVIT

We the undersigned, Respondent No.1, 2 and 3 to hereby solemnly affirm and declare on oath that the contents of reply/parawise comments are true and correct according to our knowledge and believe and nothing has been concealed from the August Tribunal.


Addl: IGP Investigation,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No.1)


Deputy Inspector General of Police,
Inv: HQrs: Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)


Senior Superintendent of Police,
Investigation wing CPO,
Peshawar.
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service appeal No.687/2017

Muhammad Sohail Ex-Constable No.87/Computer Operator _____ (Appellant)

VERSUS

1. Addl: Inspector General of Police Investigation Khyber Pakhtunkhwa Peshawar

_____ (Respondents)

2. Dy: Inspector General of Police HQR: Investigation Central Police Office Peshawar


_____ (Respondents)

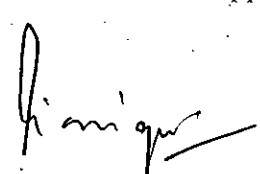
3. Sr: Superintendent of Police Investigation Central Police Office Peshawar


_____ (Respondents)

AUTHORITY LETTER/POWER OF ATTORNEY

We the undersigned, Respondent No. 1, 2 and 3 to hereby nominate Mr. Ghulam Hussain DSP-Legal Investigation Unit CPO as our departmental representative. As such, he is authorized to appear before the August Tribunal on behalf of undersigned, to prepare and institute parawise comments/reply to appeal before the tribunal and to assist Govt: Pleader during his conduct of professional duties before the tribunal till the decision of service appeal.


Addl: IGP Investigation,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No.1)


Deputy Inspector General of Police,
Inv: HQrs: Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)


/Senior Superintendent of Police,
Investigation wing CPO,
Peshawar.
(Respondent No.3)

14 Annex 'D'

ORDER

This order is passed in de-novo departmental proceedings initiated against Muhammad Sohail Ex-Constable/Computer Operator No.87 of Investigation Unit, CPO. Facts forming the background of the departmental proceedings are as under: -

That Muhammad Sohail Constable/Computer Operator No.87 was dismissed from service vide order No.2747-51/EC, dated 03.04.2014 and he after exhausting departmental remedies filed service appeal No.1069/2014, and the case was remitted to respondent department for de-novo enquiry proceedings.

On receipt of the judgement, accused constable was re-instated in service vide order No.11433-39/EC/Invest: dated 26.09.2016 and enquiry committee also constituted vide same order for scrutinizing his conduct with reference to the charges levelled against him. The accused constable was declared as PO vide case FIR No. 157/2013 u/s 457/381-PPC PS Wah Cantt: as a result of which he was kept under suspension vide No. 13S18-21/EC, dated 01.12.2016.

A committee comprising of Mr. Tahir-ur-Rehman DSP and Mr. Shah Hassan DSP constituted for de-novo enquiry proceedings vide above referred order.

The finding report of denovo enquiry received upon which final show-cause notice was issued to accused official on 22.12.2016, he submitted reply in response to the Final show cause notice on 28.12.2016. Accused constable was summoned time and again for personal hearing through Parwanas by Crimes Branch Police Station and thereafter by postal means and ultimately through newspapers, but he failed to appear for personal hearing.

After perusal of proclamation published in newspapers and proceedings of de-novo enquiry by the enquiry committee the undersigned is satisfied that the accused constable is wilfully avoiding appearance before the enquiry committee to defend himself.

Keeping in view the findings of enquiry, perusal of record and conduct of accused constable Muhammad Sohail No. 87, I Mr. Abdur Rashid Senior Superintendent of Police Investigation CPO KP Peshawar, in exercise of powers conferred upon me under Rule 5 (5) of Police Rules 1975 found the accused constable guilty and thereby dismiss him from service from the date of re-instatement in service in connection with denovo enquiry.

ANNOUNCED

Abdur Rashid
(ABDUR RASHID)

Senior Superintendent of Police,
Investigation, CPO, Peshawar

No 2116-21 /EC, dated Peshawar, the 2 /02/2017.

Copies are sent for information and necessary action to the: -

1. Addl. IGP Investigation, Khyber Pakhtunkhwa, Peshawar for f/o information, please.
2. Registrar, Khyber Pakhtunkhwa, Services Tribunal Peshawar for favour of information w/r to his office letter No.1481/ST, dated 09.09.2016.
3. DIG Hqrs/Investigation, CPO, Peshawar.
4. DSP Admn Invest.
5. Accountant, Invest.
6. official concerned

Abdur Rashid
1.3.17

ORDER

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Annex E.F

This order is hereby passed to dispose off the departmental Appeal, filed by Ex-Constable/Computer Operator Muhammad Sohail No. 87 of Investigation Unit CPO against the order of dismissal passed by SSP/Investigation CPO vide No. 2116-21/EC, dated 02.03.2017.

Backdrop of the departmental proceedings is as under:-

Muhammad Sohail Ex-Constable/Computer Operator No.87 was dismissed from service vide order No.2747-51/EC, dated 03.04.2014 for being charged in FIRs No. 1049/2012 u/s 381-A PPC PS Liaquat Abad Lahore (Punjab) and No. 463/2013 u/s 411/419/420/468/471-PPC PS Chamkani Peshawar. Hence he filed service appeal No.1069/2014 against the above mentioned dismissal order and the case was remitted to respondent department for de-novo enquiry proceedings vide judgement dated 06.09.2016.

On the receipt of copy of judgement, accused constable was re-instated in service and simultaneously an Enquiry Committee comprising of Mr. Tahir-ur-Rehman DSP and Mr. Shah Hassan DSP was constituted for de-novo enquiry proceedings vide order No.11433-39/EC/Invest: dated 26.09.2016 for scrutinizing his conduct with reference to the charges levelled against him. During the enquiry proceedings, the accused constable was learnt to have been declared Proclaimed Offender being charged in another case vide FIR No. 157/2013 u/s 457/381-PPC PS Wah Cantt: Punjab) as a result of which he was placed under suspension vide No. 13518-21/EC, dated 01.12.2016.

The Denovo Enquiry Committee constituted vide above referred order, submitted its finding report of denovo enquiry upon which final show-cause notice was issued to accused official on 22.12.2016. He submitted reply in response to the Final show cause notice on 28.12.2016. Accused official was summoned time and again for personal hearing through Parwanas delivered by the DFC of PS Investigation (Crimes Branch) and thereafter by postal means and ultimately through newspapers, but he did not appear for personal hearing.

Due to his wilful non-appearance for personal hearing, the SSP/Investigation CPO (competent authority) dismissed him from service from the date of his reinstatement in service i.e. initiation of Denovo Enquiry against him vide order No. 2116-21/EC, dated 02.03.2017. On 27.03.2017 the accused Constable/Computer Operator preferred the instant Service Appeal against the above mentioned order dated 02.03.2017 by taking the plea that he being confined in judicial lock up u/s 54-Cr.PC he was unable to defend himself in the denovo enquiry and hence he requested to set-aside the order dated 02.03.2017 passed by the SSP/Investigation CPO.

On receipt of his Service Appeal, the accused official was served with two separate Notices vide this office letter Nos. 4459-60/EC/Inv: dated 08.05.2017 and No. 4759/EC/Inv: dated 12.05.2017 with the direction to appear in this office for personal hearing. He acknowledged receipt of both the Notices in writing but did not appear to defend himself. It seems that he is not interested in pursuing his enquiry case.

In the light of above, the appeal preferred by Ex-Constable/Computer Operator Muhammad Sohail No. 87 is hereby rejected.

(DR. ISHTIAQ AHMAD) PSP
Addl. Inspector General of Police,
Investigation, KP, Peshawar

No. 5081-85 /EC, dated Peshawar, the 1/05/2017.

Copies are sent for information and necessary action to the:-

1. DIG Hqrs/Investigation, CPO, Peshawar.
2. SSP/Investigation CPO, Peshawar.
3. DSP Admn Invest.
4. Accountant Invest.
5. official concerned

(Handwritten signatures and initials)

OFFICE ORDER

(8)

(32)

L153

In the light of the decision of Honourable Service Tribunal KP, Peshawar's judgement dated 06.09.2016, which was received to this office on 23.09.2016 vide this office Dy: No. 113/PA/SSP/Inv: Ex-Constable Muhammad Sohail No. 87/Computer Operator is hereby reinstated in service.

A Committee comprising of Mr. Tahir-ur-Rehman and Mr. Shah Hassan DSsP Investigation of this unit is hereby constituted to initiate Denovo proceedings against the above named official in the light of Charge Sheet and Summary of Allegtions already issued as well as in the light of the decision of the Honourable Provincial Service Tribunal. The enquiry proceedings should be completed within two weeks positively and submit the report.

Anash

(ABDUR RASHEED)

ok Senior Superintendent of Police,
Investigation Khyber Pakhtunkhwa
Peshawar 26/9

No. 11433-39 /EC/Inv: Dated Peshawar the 26/9 /2016

Copies are forwarded to the:-

1. Addl:IGP/Investigation KPK for favour of information please.
2. DIG/Investigation (Hqrs) CPO Peshawar.
3. Director I.T CPO Peshawar.
4. Mr. Tahir-ur-Rehman and Mr. Shah Hassan DSsP Investigation.
5. DSP/ Admn: Investigation, CPO
6. SHO PS Investigation (CB)
7. Accountant Investigation, CPO.

Anash

(ABDUR RASHEED)

ok Senior Superintendent of Police,
Investigation Khyber Pakhtunkhwa
Peshawar 26/9

محکمہ انکوائری رپورٹ

بحوالہ آرڈر: 11433-39/EC/Inv مورخہ 26.9.2016 مجاریہ دفتر جناب ایس ایس مجاریہ دفتر جناب SSP صاحب انوسٹی گیشن خیبر پختون خواہ سی پی او پشاور۔ مقدمہ علت 463 مورخہ 3.6.2013 جرم 411/420/468/471 تپ تھانہ چکنی ضلع پشاور۔

برخلاف محمد سہیل کانشیل نمبر 87 متعینہ کمپیوٹر آپریٹر دفتر ڈی ایس پی لیگل سی پی او پشاور۔ حال انوسٹی گیشن یونٹ سی پی او پشاور۔ جناب عالی!

جناب ایس ایس پی صاحب انوسٹی گیشن سی پی او کی طرف سے ایک حکم موصول ہوا۔ ملاحظہ کرنے پر پایا گیا کہ محمد سہیل کانشیل نمبر 87 جو کہ محکمہ پولیس سے بحوالہ حکم نمبر 51/EC-2747 مورخہ 3.4.2014 برطرف ہوا تھا۔ جس کو سروس ٹریبونل نے بحوالہ حکم نمبر 1069/2014 مورخہ 6.9.2016 کو اپنے حکم میں کانشیل مذکورہ کو دوبارہ از سر نو انکوائری میں آزادانہ طور پر شمولیت کے لیے نوکری پر بحال کیا۔ جس کی تعمیل میں جناب ایس ایس پی صاحب انوسٹی گیشن سی پی او نے بحوالہ حکم نمبری: 1433-39/EC/Inv مورخہ 26.9.2016 کو بحال کرتے ہوئے دوبارہ انکوائری کے لیے زیر دستخطی افسران کو مامور انکوائری کیا۔ مثل انکوائری کے مطالعہ پر معلوم ہوا کہ ما قبل جناب ایس ایس پی صاحب نے بحوالہ چارج شیٹ نمبری 4312-13-EC مورخہ 17.6.2013 میں کانشیل محمد سہیل نمبر 87 کے خلاف انکوائری انسپکٹر میرزا علی خان خان کو حوالہ کی۔ چونکہ اس وقت کانشیل محمد سہیل نمبر 87 بحوالہ مقدمہ علت 463 مورخہ 3.6.2013 جرم 411 تپ تھانہ چکنی گرفتار تھا۔ جس نے چارج شیٹ کا جواب سنٹرل جیل پشاور سے دیکر جو کہ ذیل ہے۔

That I have falsely been implicated in a concocted criminal case vide FIR No.463 dated 03.06.2013 u/s 411 PPC by Police Station Chamkani (Copy attached) and presently confined in Central Jail Peshawar and I am trying for bail. There is no evidence or other circumstances which could ensure my conviction. There is every likelihood of my Honourable acquittal and bail. At present I am confined to jail and therefore unable to make my proper defence.

تاہم سابقہ انکوائری افسر نے تھانہ چکنی جا کر روزنامہ چیک کر کے نقل نمبر 46 مورخہ 3.6.2013 علیحدہ مرتب کر کے

لف انکوائری کیا ہے۔ جس میں عبدالحمید خان SHO نے کانسٹیبل محمد سہیل کو چوری شدہ موٹر کار سمیت گرفتار کیا تھا۔ اس کی نشاندہی پر مزید دو عدد موٹر کاریں مسروقہ برآمد ہوئے تھے جو قبضہ پولیس کیے گئے تھے۔
عبدالحمید خان انسپکٹر SHO، گواہان فرد مقبوضگی کانسٹیبلان محمد زاہد خان نمبر 968، سراج نبی نمبر 3623 تھانہ چکنی کے بیانات قلمبند تفصیل ذیل ہے۔

۱۔ عبدالحمید انسپکٹر SHO تھانہ چکنی نے بیان کیا تھا کہ مورخہ 3.6.2013 کو انفارمر نے اطلاع دی کہ ایک موٹر کار نمبر GLI/184/AGS برنگ سبز جو پنجاب سے مسروقہ شدہ ہے۔ ایک شخص اُسے ریگ روڈ پر دوسری جگہ منتقل کر رہا ہے۔ اس اطلاع کے پیش نظر ریگ روڈ پیز زکوٹی پل پر ناکہ بندی کر کے پھندو چوک کی طرف سے موٹر متذکرہ آتا ہوا رکوا کر جس کی ڈرائیونگ سیٹ پر سوار شخص نے اپنا نام محمد سہیل ولد عبدالطیف سکنہ حاجی آباد کوہاٹ روڈ بتلایا۔ موٹر کار نمبر GLI 184/AGS چیسز NZE1402000062 بغیر کاغذات مشتبہ مسروقہ جان کر قبضہ پولیس کی۔ سہیل مذکورہ کو حسب ضابطہ زیر دفعہ 54 ض ف گرفتار کر کے سرسری انٹاروگیشن کے دوران مذکورہ نے حقیقت سے پردہ اٹھا کر بتلایا کہ حاجی آباد پارکنگ میں مزید دو مسروقہ گاڑیاں جو مختلف اوقات میں حاجی عرفان سکنہ بڈھ بیر نے حوالہ کر کے وہ معاوضہ لینے پر رکھوائی کر رہا ہے۔ لہذا اس کی نشاندہی پر مزید دو موٹر کار نمبر 249/ABG سندھ ہنڈاسوک برنگ کالا ماڈل 1996-97 سلور ماڈل 1995 چیسز نمبر EK5201333 دوسرا موٹر کار نمبر 8090/AB ہنڈاسوک برنگ سلور ماڈل 1995 چیسز نمبر PK4-5203341 موجودگی ڈی ایس پی صاحب برآمد ہو کر قبضہ ہوئے۔ اندریں بارہ پنجاب پولیس کے ساتھ رابطہ ہو کر موٹر کار نمبر GLI 184/AGS بحوالہ مقدمہ علت 157 مورخہ 27.5.2013 جرم 457/381-A تپ تھانہ واہ کینٹ راویلنڈی سے مسروقہ شدہ بتلایا۔ جو اب مقامی پولیس تھانہ واہ کینٹ کو حسب ضابطہ واپس کیا گیا ہے۔ جبکہ دوسرا موٹر کار جس پر نقلی نمبر 8090/AB بعد انکوائری اصل نمبر 0603/AB چیسز نمبر PK4-5203341 ماڈل 1995 سلور کلر ہنڈاسوک بمقدمہ علت 1049 مورخہ 8.11.2012 جرم 381-A تپ تھانہ لیاقت آباد لاہور کا مسروقہ پا کر بھی واپس ہوا۔ کانسٹیبل محمد سہیل کو جرائم پیشہ کار چوراہہ افراد کارکن اور شریک واردات ٹھہرا کر مقدمہ بالا میں صحیح گنہگار ملزم گردانا ہے۔

اسی طرح کانسٹیبلان محمد زاہد نمبر 968، سراج نبی نمبر 3623 تھانہ چکنی کے بیانات قلمبند کیے گئے تھے۔ جنہوں نے اپنے اپنے بیانات میں واضح کیا تھا کہ وہ SHO صاحب کے ساتھ دوران ناکہ بندی موجود تھے۔ اس دوران کانسٹیبل محمد سہیل ولد عبدالطیف سکنہ حاجی آباد بسواری موٹر کار نمبر 184/AGS کر دلا آیا۔ چیک کرنے پر اس کے ساتھ موٹر کار متذکرہ کے متعلق کسی قسم کے کاغذات موجود نہیں تھے۔ جس کو تھانہ لاہور SHO صاحب نے انٹاروگیشن کر کے اُس نے دو مزید مسروقہ موٹر کارز

پارکنگ حاجی آباد میں کھڑے ہونے کی نشاندہی کروائی۔ SHO صاحب نے جملہ حالات ڈی ایس پی صاحب کے نوٹس میں لا کر ہمراہ ڈی ایس پی صاحب سہیل کی نشاندہی پر مزید دو موٹر کارز برآمد کر کے قبضہ پولیس میں کیے۔ فردات مرتبہ پر درست دستخط ثبت، تصدیق کیے۔

انہی حالات واقعات، بیانات پر سابقہ انکوائری افسر انسپٹر میرزا علی خان نے مورخہ 5.7.2013 کو فائل رپورٹ مرتب کر کے افسران بالا کو بغرض کاروائی ارسال کی۔ جس پر کانٹینبل محمد سہیل نے تحریری اعتراض کر کے انکوائری افسر پر عدم اعتماد اور اپنے آپ کو پابند سلاسل ہونے کی وجہ سے اپنی دفاع درست طریقے سے نہ کرنے کا وجہ سے دوبارہ انکوائری کرنے کی استدعا کی۔ جس کو افسران بالا نے منظور کر کے دوبارہ انکوائری بحوالہ حکم نمبری: 245/PA/SSP/Inv مورخہ 25.10.2013 مجاریہ دفتر جناب ایس ایس پی صاحب انوسٹی گیشن انکوائری انسپٹر اکبر خان اور ڈی ایس پی صاحب محمد اجمل خان کو حوالہ کی۔ جبکہ اس دوران مذکورہ کانٹینبل باقاعدہ مورخہ 2.7.2013 سے عدالت عالیہ کے حکم پر برضمانت رہا ہو چکا ہے۔ لہذا دوبارہ انکوائری افسران نے بذریعہ پروانہ مورخہ 2.12.2013 مجاریہ ڈی ایس پی صاحب انوسٹی گیشن کانٹینبل محمد سہیل نمبر 87 کو طلب کیا جو کہ مورخہ 6.12.2013 حاضر دفتر انوسٹی گیشن ہو کر تحریری بیان دو قطعہ پیش کر کے لف شامل انکوائری ہیں۔

مورخہ 17.12.2013 انکوائری ہذا کے سلسلہ میں بحوالہ نمبر 5 روزنامہ 17.12.2013 عبدالحمید SHO،

کانٹینبل انکوائری کے سلسلہ میں برائے مورخہ 18.12.2013 طلب کیے تھے مگر حاضر نہ آئے۔

مورخہ 18.12.2013 بحوالہ نمبر روزنامہ 18.12.2013 تھانہ انوسٹی گیشن عبدالحمید، کانٹینبل انکوائری برائے مورخہ

19.12.2013 طلب کیے اسی روز انسپٹر معہ امیر حمزہ سب انسپٹر تھانہ چمکنی جا کر تھانہ چمکنی سے ذیل کاغذات نقل نمبر 18 روزنامہ

3.6.2013 بابت روانگی گشت SHO معہ کانٹینبل انکوائری، نقل نمبر 46 روزنامہ 3.6.2013 واپسی رپورٹ SHO جس میں تین

عدد موٹر کاریں قبضہ پولیس کیے۔ نقل ایف آئی آر علت 463 مورخہ 3.6.2013 جرم 411/420/468/471 تپ تھانہ

چمکنی، رجسٹر 19 مال مقدمات کی کاپی جو سلسلہ 282/2013 پر تینوں موٹر کارز کی اندراج ہوئی ہے۔ اور نقل نمبر 45 مورخہ

20.6.2013 پیش کر کے جن میں موٹر کار نمبر 184/AGS بمقدمہ علت 157 مورخہ 23.5.2013 جرم 457/381

تپ تھانہ واہ کینٹ مطلوب تھا۔ حوالہ تنویر محمد ASI تھانہ واہ کینٹ کیا گیا ہے۔ اور نقل نمبر 41 روزنامہ 8.7.2013 تھانہ چمکنی

جس میں موٹر کار نمبر 8090/AB، 504/AAR جو بمقدمات علت 526/2011 مقدمہ علت 1049/2012 بجرائم

381-A تھانہ لیاقت آباد لاہور چوری شدہ تھی۔ حوالہ عباس خان سب انسپٹر ABL کینٹ لاہور ہوئے ہیں۔ اور رجسٹر نمبر 6

متفرق کی فوٹو کاپی جس میں متذکرہ دو عدد موٹر کارز کا اندراج ہے اور انکوائری (3) 156 ض ف نواب گل خان سب انسپٹر کے ساتھ

زیر تفتیش کاپی لف مثل انکوائری ہوئی۔

مورخہ 19.12.2013 گواہان حاضر نہ ہوئے انکو آڑی کے سلسلہ میں اکبر خان، امیر حمزہ خان اور DSP صاحب محمد اجمل خان حاجی آباد بلڈنگ کو ہاٹ روڈ گئے جہاں پر محمد سہیل کانٹھیل کرایہ پر رہائش پذیر تھا کالونی میں چوکیدار سیف الملوک ولد زیارت گل کے ساتھ گفت، شنید ہوئی۔ کسی قسم بیان دینے کو تیار نہ تھا صرف اتنا کہتا تھا کہ پولیس کالونی سے دو عدد موٹر کار لے گئے تھے اور ان کو یہ علم نہیں ہے کہ یہ موٹر کار چوری کے تھے یا نہیں۔ لیکن جب سہیل کانٹھیل نے کسی کے کہنے پر سمجھا کہ بعدہ بیان کے لیے پیش ہوا اور اپنے بیان میں کہا کہ محمد سہیل کانٹھیل جو اولاً اُس نے کو آڑ سے بلوا کر اندرون کو آڑ سے معلوم ہوا کہ خانہ خود میں موجود نہیں تھا۔ اور بعدہ اتر کر پولیس اپنے ساتھ لے گیا۔ جو بعد میں ضمانت پر رہا ہوا ہے۔ لیکن تحریری بیان میں دوبارہ موٹر کار دو عدد جو پولیس اپنے ساتھ لے گئے تھے۔ یہ نہیں بتلایا کہ موٹر کاریں کس کی ملکیت تھیں۔

یہ بات قابل ذکر ہے کہ سابقہ انکو آڑی افسران نے عبد الحمید خان سابقہ SHO چمکنی کو مورخہ 20.12.2013 کو موجودگی ملزم محمد سہیل طلب کر کے جس نے اپنی سابقہ بیان کی تائید کی۔ اور ساتھ ہی انکو آڑی افسران، ملزم سہیل کے کراس سوالات کے جوابات بھی دیے۔ اسی طرح مورخہ 26.12.2013 کو موجودگی ملزم سہیل ہی گواہان فرد موقع زاہد خان، سراج نبی کانٹھیلان پر بھی کراس سوالات، جوابات کیے گئے۔ جس کی تفصیل مثل انکو آڑی کے صفحہ 113 پر قابل ملاحظہ ہے۔ جس کے بعد محمد سہیل کانٹھیل کو زبانی ہدایت کی تھی کہ وہ اپنی صفائی کے بارے میں گواہان پیش کرے۔ اور بعدہ بحوالہ مد نمبر 8 روز نامہ 2.1.2014، بحوالہ مد نمبر 9 روز نامہ 8.1.2014، بحوالہ مد 9 روز نامہ 10.1.2014، بحوالہ مد 7 مورخہ 20.1.2014، بحوالہ مد نمبر 19 مورخہ 23.1.2014 بار بار اطلاعیاتی کے متعلق روز نامہ میں رپورٹ تحریر کر کے لف انکو آڑی ہے۔ جس سے یہ ثابت ہوا کہ مذکورہ کو اپنی صفائی اور جرح کا مکمل موقع فراہم کیا گیا ہے۔ لیکن سہیل کانٹھیل انکو آڑی کے سلسلہ میں سابقہ انکو آڑی افسر کو کوئی گواہ، صفائی پیش کرنے میں ناکام رہا۔

تفتیشی افسر واقف خان ASI نے بھی اپنا تحریری بیان سابقہ انکو آڑی افسر کو پیش کر کے جس میں اس نے مورخہ 20.6.2013 کو چالان مکمل دینا اور فرد مقبوضگی مرتبہ مورخہ 3.6.2013 پر دستخط گواہ کو مشکوک ہونے کے بارے میں مقدمہ ہذا بعد از چالان مختلف دفاتر، عدالت سے ہو کر شائد ملزم کانٹھیل کی کارستانی بیان کی۔ جملہ حالات پر سابقہ انکو آڑی افسران اکبر خان انسپٹر، اور ڈی ایس پی صاحب محمد اجمل خان نے فائل رپورٹ تیار کر کے بعد از رائے ڈی ایس پی لیگل افسران بالانے بحوالہ آرڈر نمبر 2747-51/EC مورخہ 3.4.2014 کو کانٹھیل مذکورہ کو نوکری سے برخاست کیا گیا۔ جس کے خلاف ملزم کانٹھیل محمد سہیل کمپیوٹر آپریٹر نے اپیل، سروس ٹریبونل میں کیس دائر کر کے معزز عدالت نے مورخہ 6.9.2016 کو اسز نو انکو آڑی کے لیے دوبارہ حال کرنے کے احکامات جاری کیے۔ جس کی روشنی میں جناب ایس ایس پی صاحب فوری طور پر بحوالہ ڈائری نمبر 103/PA/SSP/Inv

مورخہ 23.9.2016 کو دوبارہ نوکری پر بحال کیا۔ اور ساتھ ہی بحوالہ آرڈر نمبر: 11433-39/EC/Inv مورخہ

26.9.2016 زیر دستخطی کو انکوآری افسران مقرر کیے۔

دوران انکوآری جملہ ریکارڈ کا مطالعہ کرنے کے بعد نمبر 11 مورخہ 28.9.2016 مذکورہ کی یونٹ ہذا میں آمد اور بحالی کے آرڈر، فیصلہ عدالت کے نقول حاصل کر کے لف انکوآری کیے۔ کانشیل کو بغرض قلمبندی بیان، پیش کرنے شواہد کے تھانہ ہذا میں طلب کر کے جس نے مورخہ 20.10.2016 کو اپنا تحریری بیان تفصیلاً پیش کر کے اپنے آپ کو بے گناہ اور اپنے اوپر مقدمہ مذکورہ بالا کو من گھڑت اور بے بنیاد قرار دے رہا ہے۔ اور ساتھ ہی اپنے بیان میں انکوآری افسران کو پیش ہونے تفصیلی بیان پیش کرنے اور مقدمہ مذکورہ کے Put in Court ہونے پر عدالت سے بری ہونے کا بھی قوی امکان ظاہر کیا جانا تحریر کیا ہے۔ لہذا مذکورہ کے بیان کی روشنی میں محرر تھانہ چمکنی کو تحریری پروانہ بابت پیش کرنے مقدمہ علت 463 مورخہ 3.6.2013 جرم 411/420/468/471 تپ تھانہ چمکنی کی موجودہ صورتحال کی نسبت تحریر کیا گیا۔ اور کافی مرتبہ بذریعہ DFC ٹیلیفون بھی محرر تھانہ چمکنی سے معلومات حاصل کرنا چاہی لیکن مذکورہ ٹال مٹول اور جیلوں بہانوں سے کام لیتا رہا ہے۔

تاہم انکوآری ٹیم یونٹ ہذا نے خود تھانہ چمکنی جا کر ریکارڈ کا پڑتال شروع کیا۔ ریکارڈ پر موجود رسید نمبر 490/21 مورخہ 1.5.2014 کے سلسلہ میں DPP آفس جا کر معلوم ہوا کہ مثل مقدمہ مذکورہ رسید بالا پر وصول شدہ نہیں ہے۔

ریڈر DPP سید عظمت علی شاہ کا بیان حاصل کر کے لف انکوآری ہذا ہے۔ اور ساتھ ہی اس نے اپنے بیان میں مقدمہ ہذا کو

پشاور کے کسی بھی عدالت میں Put in Court نہ ہونا بھی تحریر کیا۔ مزید معلومات پر یہ معلوم ہوا کہ مثل مقدمہ مورخہ 5.5.2014

کو واپس بدست مختیار اللہ سابقہ DFC تھانہ چمکنی حال محررانوٹی گیشن تھانہ چمکنی واپس ہو چکا ہے۔ جس کی روانگی کی نقلد، بیان

حاصل کر کے لف انکوآری ہذا ہے۔ جملہ حالات کے تناظر میں محرر مختیار اللہ نے مثل مقدمہ کو کافی دیر بعد پیش کر کے بتلایا کہ یہ مثل

پینڈنگ امثلاً جات ولی خان ASI متعینہ تھانہ چمکنی سے برآمد ہوا۔ جس کی نسبت اس نے خود ہی بحوالہ نمبر 29 روز نامہ

26.5.14 مورخہ 23.11.2016 رپورٹ درج روز نامہ چمکنی کے نقلد لف انکوآری ہے۔ مثل مقدمہ کے مطالعہ سے معلوم ہوا کہ مورخہ

کو ولی خان ASI کو بغرض تکمیل ریمارکس تحریر شدہ ازاں DPP صاحب پشاور مارک ہوا تھا۔ جو کہ فرد خلاصہ مثل مقدمہ پر قابل

ملاحظہ ہے۔ جس کی تا حال تکمیل نہیں ہوئی ہے۔ اور یہ مارکنگ سابقہ محرر امجد اور OI محمود علی کے دور سے شروع ہو کر تا حال

پینڈنگ چلا آ رہا ہے۔ جبکہ مقدمہ ہذا بھی تقریباً ڈھائی سال تک بغیر تکمیل اور مزید کارروائی کے بستہ خاموشی میں مذکورہ بالا افسران کی

غفلت کی وجہ سے پڑا رہا۔

اسی طرح مقدمہ علت 463 مورخہ 3.6.2013 جرم 411/420/468/471 تپ تھانہ چمکنی کے ساتھ شروع کردہ (3) 156 ض ف انکواری تھانہ چمکنی میں قبضہ شدہ موٹر کاریں ا۔ 249/ABG ہنڈسوک ماڈل 1996-97 ۲۔ نقلی نمبر AB-18090 اصل نمبر AB-0603 برخلاف محمد سہیل کانشیل بھی تاحال غائب ہے۔ جس کی نسبت موجودہ محرر آپریشن شناف جمیل شاہ کو بار بار طلب کر کے مزید معلومات کے لیے وقت مانگ لیا۔ اور اپنے تحریری بیان میں موٹر کار نمبر AB-0603 دوران انکواری واپس SI عباس خان تھانہ لیاقت آباد لاہور ہے۔ جبکہ دوسری گاڑی رجسٹریشن نمبر ABG-249 کی پوزیشن سے لاعلمی ظاہر کی۔ تاہم خود ہی رجسٹر نمبر 19 سریل نمبر 282 کے مطالعہ سے پایا گیا۔ کہ مذکورہ بالا گاڑی نمبر AB-0603 بحکم عدالت محمد الیاس خان JMIC واپس حوالہ تھانہ لیاقت آباد لاہور ہو چکا ہے۔ جبکہ دوسری گاڑی باوجود اندراج بمعہ انکواری فائل تاحال لاپتہ ہے۔ جس کی تمام تر ذمہ داری سابقہ محرر زب اللہ، نواب گل خان SI حال ریٹائرڈ، ولی خان ASI تھانہ چمکنی پر عائد ہوتی ہے۔ جملہ حالات کے تناظر میں مورخہ 24.11.2016 کو بذریعہ محرر تھانہ انوسٹی گیشن ASI شاہد عرفان سرکاری فون نمبر 091-9210058 سے تھانہ واہ کینٹ نمبر 051-905523218 پر صغیر محرر سے معلومات ہو کر مذکورہ کانشیل محمد سہیل ولد عبدالطیف کو مجرم اشتہاری APO نمبر 84/15 بتلایا۔ جس پر حسب اجازت افسران بالا واہ کینٹ جا کر بذریعہ گل زمین خان SI ریکارڈ پڑتال تھانہ واہ کینٹ معلوم ہوا کہ واقعی مذکورہ مقدمہ علت 157 مورخہ 23.5.2013 جرم A-457/381 تپ تھانہ واہ کینٹ ضلع راولپنڈی میں ملزم اشتہاری گردانا گیا ہے۔ نقل نمبر 10 مورخہ 25.11.2016 بمعہ نقل FIR، رجسٹر نمبر ۴، وارنٹ، اشتہارات کی مصدقہ نقول حاصل کر کے حسب طلبی ملزم کانشیل محمد سہیل کو مزید حسب ضابطہ کاروائی کے لیے بحوالہ مد 13 روز نامچہ، 29.11.2016 تھانہ میچنی گیٹ پشاور ظاہر اللہ خان ASI کو حوالہ کیا گیا۔ جس نے ملزم بالا کو مقدمہ مذکورہ بالا میں پیش عدالت کر کے جوڈیشل رییمانڈ پر پشاور جیل منتقل کیا۔

نتیجہ۔

حالات واقعات، ریکارڈ انکواری، شواہد اور مثل مقدمات کے ملاحظہ سے پایا گیا کہ کانشیل محمد سہیل نمبر 187 اپنی ڈیوٹی سے غیر حاضر رہ کر اور مقدمہ علت 463 مورخہ 3.6.2013 تھانہ چمکنی میں نامزد ملزم ہونے کی وجہ سے محکمہ پولیس سے بعد از حکمانہ انکواری برخاست ہوا ہے۔ اور اپنی برخاستگی کے خلاف بعد از حکمانہ اپیل معزز عدالت سروس ٹریبونل پشاور سے رجوع کیا۔ سروس ٹریبونل کے حکم کے مطابق افسران بالا نے کانشیل مذکورہ کو دوبارہ بحالی، انکواری کا حکم کیا۔ دوران انکواری جس کو آزادانہ طور پر اپنی صفائی میں بیان، دیگر شواہد پیش کرنے کو موقع دیا گیا۔ جس نے سابقہ انکواری افسران کے علاوہ موجودہ انکواری میں بھی اپنا تفصیلی بیان پیش کیا۔ چونکہ مین مقدمہ علت 463 مورخہ 3.6.2013 جرم 1/419/420/468/471 تپ تھانہ چمکنی Put in Court نہ ہونے کی وجہ سے تاحال اپنے آپ کو بے گناہ بیان کر رہا تھا۔

جیکہ مقدمہ علت 157 مورخہ 27.5.2013 جرم 457/381 تپ تھانہ واہ کینٹ میں بھی مذکورہ کی گرفتاری درپیش ہے۔ اور دیگر مقدمہ علت 1049/2012 جرم 381-A تھانہ لیاقت آباد لاہور میں گرفتاری اور ملز میت بوجہ لاپتہ ریکارڈ، عرصہ دراز سے مثل مقدمہ کا غائب ہونے سے واضح نہیں ہو سکی ہے۔

لہذا مثل مقدمہ علت 463/2013 جرم 411/419/420/468/471 تپ تھانہ چکنی، مقدمات پنجاب کی نسبت کی، انکواری (3) 156 ض ف کی مثل انکواری کو غائب کرنے تا حال لاپتہ ہونے کی ذمہ داران افسران OII محمود علی، سابقہ محرر امجد، محرر زب اللہ، ASI دلی خان، نواب خان SI حال ریٹائرڈ انکواری افسر۔ اور تفتیشی افسر واقف خان ASI کی ناقص تفتیش اور غفلت ریکارڈ لاپتہ کرنے میں محکمانہ انکواری اور ساتھ ہی فوری طور پر لف اصل مثل مقدمہ پر ریمارکس DPP کی فوری تکمیل، Put in Court کی سفارش کی جاتی ہے۔ چونکہ کانسٹیبل محمد سہیل نمبر 87 مجرم اشتہاری گردانا گیا ہے۔ جس کا APO

نمبر 84/2015 تھانہ واہ کینٹ ہے۔ ایسے حالات میں مذکورہ کا پولیس فورس میں موجود ہونا محکمہ پولیس کے لیے بدنامی کا سبب ہے جس کی وجہ سے نہ صرف عوام الناس میں بلکہ پولیس فورس کا مورال متاثر ہوتا ہے۔ لہذا کانسٹیبل محمد سہیل کے خلاف کارروائی روپوشی حاصل کر کے مقامی پولیس تھانہ میچنی گیٹ پشاور کو حسب ضابطہ حوالہ کیا گیا۔ جنہوں نے حسب ضابطہ گرفتار کر کے جوڈیشل ریمانڈ پر پشاور جیل میں جمع کیا۔ تاہم مذکورہ کی مجرمیت بعد از فیصلہ عدالت ثابت ہوگی۔ سریدست موجودہ مذکورہ بالا حالات واقعات اور از سر نو انکواری کے تناظر میں حسب ضابطہ مزید کارروائی کے لیے افسران بالا سے مناسب احکامات کی سفارش کی جاتی ہے۔

(طاہر الرحمان)
30-11-2016
ڈی ایس پی انوسٹی گیشن یونٹ سی پی او پشاور

(شاہ حسن)
30/11/16
ڈی ایس پی انوسٹی گیشن یونٹ سی پی او پشاور

پشاور کی ایک اور دلچسپ کہانی کے لیے ایک نیا سلسلہ شروع کیا ہے جس کا مقصد قاریوں کو دلچسپی بخشنے اور ان کی معلومات کو بڑھانے ہے۔

پشاور کی ایک اور دلچسپ کہانی کے لیے ایک نیا سلسلہ شروع کیا ہے جس کا مقصد قاریوں کو دلچسپی بخشنے اور ان کی معلومات کو بڑھانے ہے۔

پشاور
کی ایک اور
دلچسپ کہانی



پشاور کی ایک اور
دلچسپ کہانی

صفحہ 13

پندرہ 23 اگست 31 مئی 2017ء 2:20 بجے 2:43 بجے تک 3:13 بجے تک 3:43 بجے تک 4:13 بجے تک 4:43 بجے تک 5:13 بجے تک 5:43 بجے تک 6:13 بجے تک 6:43 بجے تک 7:13 بجے تک 7:43 بجے تک 8:13 بجے تک 8:43 بجے تک 9:13 بجے تک 9:43 بجے تک 10:13 بجے تک 10:43 بجے تک 11:13 بجے تک 11:43 بجے تک 12:13 بجے تک 12:43 بجے تک 13:13 بجے تک 13:43 بجے تک 14:13 بجے تک 14:43 بجے تک 15:13 بجے تک 15:43 بجے تک 16:13 بجے تک 16:43 بجے تک 17:13 بجے تک 17:43 بجے تک 18:13 بجے تک 18:43 بجے تک 19:13 بجے تک 19:43 بجے تک 20:13 بجے تک 20:43 بجے تک 21:13 بجے تک 21:43 بجے تک 22:13 بجے تک 22:43 بجے تک 23:13 بجے تک 23:43 بجے تک

(27)

(66)

آخری نمونہ

آب کنسٹیبل محمد سہیل نمبر 87 ولد عبداللطیف سکنہ محلہ ہاہر گڑھی گاؤں دڈا کھانہ مریم زئی تھانہ
 قنی تحصیل ضلع پشاور کو بذریعہ عملہ انوسٹی گیشن یونٹ کراٹنبر براؤنچ CPO پشاور اور بذریعہ ڈاک
 بار بار اطلاع دی گئی کہ بسلسلہ انکوائری دفتر ہذا حاضر ہو جائیں لیکن آپ حاضر نہ ہوئے۔ اس لئے
 آپ کو بذریعہ اشتہار ہذا آخری بار مطلع کیا جاتا ہے کہ آپ اس اشتہار کے منسٹر ہونے کے 7 دن
 کے اندر اندر کسی بھی دن دفتری اوقات میں زبردستی کے سامنے پیش ہو بصورت دیگر یکطرفہ
 کارروائی عمل میں لائی جائے گی۔

اس کے بعد کسی بھی دن دفتری اوقات میں زبردستی کے سامنے پیش ہو بصورت دیگر یکطرفہ کارروائی عمل میں لائی جائے گی۔

Also available on NF(P) 51/2

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Say No to Corruption



پارٹیشن میں کوئی عہدہ کیا اور اجازت دیا ہے کہ وہ اس وقت تک اس کا سہیل کے پاس رہے۔
 یہ سہیل کے پاس رہے گا۔ اس کا پتہ ہے۔ اس کا پتہ ہے۔ اس کا پتہ ہے۔ اس کا پتہ ہے۔
 لکھا ہے کہ وہ کوئی عہدہ نہیں ہے۔ اس کا پتہ ہے۔ اس کا پتہ ہے۔ اس کا پتہ ہے۔ اس کا پتہ ہے۔
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خارجیہ
 نیشنل ایسوسی ایشن
 S.A.P.S. CHIL
 3-6-13

ان کے نام اور پتے کے ساتھ ساتھ ان کے پاس کے عہدوں کے نام بھی لکھے ہیں۔ اس کے ساتھ ساتھ ان کے پاس کے عہدوں کے نام بھی لکھے ہیں۔ اس کے ساتھ ساتھ ان کے پاس کے عہدوں کے نام بھی لکھے ہیں۔

"B" Annex

ابتدائی اطلاعاتی رپورٹ

کوئیٹہ

(ذیل کے) ابتدائی اطلاع نام نمبر ۱۱۱۱ اور ابتدائی اطلاع نمبر ۱۵۶ اور ابتدائی اطلاع نمبر ۱۱۱۱

تاریخ و وقت آغاز ۱۵/۱۳ ۳:۰۶ وقت ۱۵:۱۵ بجے

تعداد ۱ شخصیں
نمبر ۴۶۳

1	تاریخ و وقت رپورٹ	۱۵/۱۳ ۳:۰۶ وقت ۱۵:۱۵ بجے
2	نام و سکونت اطلاعاتی مہتمم و مسئیت	عبدالمجید خان ۵۴۰
3	مختصر کیفیت جرم (موردہ) حال اگر کوئی گیا ہو	۹۱۱
4	جائے وقوعہ فاصلہ تعداد سے اور سمت	رنگ پور باغیچوں کے قریب قریب مندرجہ ذیل ہے۔
5	نام و سکونت جرم	محمد حسین ولد عبدالمجید خان
6	کارروائی پولیس کے ہشتاد کی گئی اطلاعات درج کرنے	تعداد ۱ شخصیں (موردہ) حال اگر کوئی گیا ہو
7	تعداد سے روانگی کی تاریخ و وقت	ابتدائی اطلاع نمبر ۱۱۱۱ اور ابتدائی اطلاع نمبر ۱۵۶

پہلے ڈیڑھ

موردہ کار نمبر 184-911 اور ابتدائی اطلاع نمبر ۱۱۱۱ اور ابتدائی اطلاع نمبر ۱۵۶ اور ابتدائی اطلاع نمبر ۱۱۱۱
 ۱۳ ۱۵:۱۵ وقت ۱۵:۱۵ بجے ۳:۰۶ وقت ۱۵:۱۵ بجے
 صاحب محمد حسین ولد عبدالمجید خان صاحب آباد رنگ پور باغیچوں کے قریب قریب مندرجہ ذیل ہے۔
 قبیلہ لوہیوں میں سے ہے۔ گھر نمبر ۵۴ ہے۔ جو مندرجہ ذیل ہے۔
 گھر نمبر ۱۵۶ ہے۔ مندرجہ ذیل ہے۔
 شہر کے علاقوں میں سے ہے۔
 گھر نمبر ۱۵۶ ہے۔ مندرجہ ذیل ہے۔
 گھر نمبر ۱۵۶ ہے۔ مندرجہ ذیل ہے۔

تقریباً ۱۵۰ فٹ دور ہے۔
 رقم مجموعاً ۱۵۰ روپے ہے۔
 ۱۸/۱۳
 گھر نمبر ۱۵۶ ہے۔ مندرجہ ذیل ہے۔
 گھر نمبر ۱۵۶ ہے۔ مندرجہ ذیل ہے۔
 گھر نمبر ۱۵۶ ہے۔ مندرجہ ذیل ہے۔

دو مسودہ کارٹیاں جو مختلف اوقات میں حاجی عرفان سکیم پٹرہ سیرنگ پور
گروہ گوارنٹی میں چکی سے کروائی گئی ہیں اور ایسی دو کارٹیاں ایسی
یہاں پابندی میں کوئی ہے۔ پہلا جمعہ واقعات جناب ایڈیٹور صاحب سرنگ پور
میں پھر ذرا دیر سے جناب ایڈیٹور صاحب سرنگ پور کا پبلسٹیٹی کارڈ پبلسٹیٹی
پرو دوسری کارٹ ہے۔ 249 سندھ ہفت روزہ سرنگ پور ٹرسٹ کارڈ 1996 جسٹس
1997

808 سندھ ہفت روزہ سرنگ پور ٹرسٹ کارڈ 1995
201333-5117-2 حیدرآباد ٹریڈنگ کمپنی 808 سندھ ہفت روزہ سرنگ پور ٹرسٹ کارڈ 1995
PK-4-520334-4 سرنگ پور ٹریڈنگ کمپنی کا پبلسٹیٹی کارڈ 1995
نسبت کرشمہ کاغذات و پبلسٹیٹی وغیرہ میں آکر سے گا۔ جو مشتبہ رقم
علوم ہوئی ہے۔ سرنگ پور ٹریڈنگ کمپنی نے ذرا دیر سے 201333-5117-2
جو ایسی ہے۔ حیدرآباد ٹریڈنگ کمپنی کا پبلسٹیٹی کارڈ 1995
لگانہ ٹریڈنگ کارٹیاں زیر پبلسٹیٹی سندھ ہفت روزہ کا پبلسٹیٹی کارڈ 1995
کہ تین صدیوں سے سرنگ پور ٹریڈنگ کمپنی کا پبلسٹیٹی کارڈ 1995
کیا جائے۔ تاہم باقاعدہ دریافت کے بعد اسے عدالت میں پیش کر کے
156 لگانہ ٹریڈنگ کمپنی کا پبلسٹیٹی کارڈ 1995

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

In S.A # 687/2017

Muhammad Sohail

Versus

Police Department

REJOINDER ON BEHALF OF
APPELLANT

Respectfully Sheweth,

All the Preliminary objection raised by the Respondents are incorrect and baseless and not in accordance with law and rules rather the Respondents are stopped due to their own conduct to raised any objection at the stage on the appeal.

Facts

All the facts of the appeal are correct beside that the appellant has not been treated according to the judgment dated 06.09.2016 during the inquiry proceeding, because the appellant was dismissed on 03.04.2014 on the ground of the absentee and

the reason of the absentee was that the appellant was involved in Criminal Case while FIR NO.463 dated 03.06.2013 U/S 419/420/468/471/411 PPC which was properly replied by the appellant in reply of charge sheet which was clarified in page 2 para 6 line 4 and 5 judgment dated 06.09.2016 but according to Page 5 and 6 of the inquiry report attached with the comments of the Respondent department, that there is no departmental proceedings has been constituted by the inquiry officer because there is no record available with the concerned police station as well as the investigation officer and so concerned the recovered vehicle they will also disappeared from the PS concern as well as from the spot, so no investigation has been collected against the appellant and it should be admitted fact and no statement of appellant and no chance of defense would have been provided to the appellant the impugned order is also have no legal effects for the reason that de-novo proceeding has not been conclude for specific time directed by this Hon'ble Court. Furthermore the appellant already been acquittal in the above noted case by the court concern (Copy of acquittal order is attached).

And so concern the dismissal order dated 02.03.2017 where the appellant has been dismissed from the service on the ground of

absentee is not deliberate but a false and fabricated case has been made against the appellant by the respondent department while FIR No. 157 dated 23.05.2013 U/S 457/381 PS Wah Cantt Rawalpindi in which the Respondent department arrested the appellant under section 54 Cr.PC and sent the appellant to Judicial Lock-up being charged and other alleged case by FIR NO.157/2013, U/S 457/381 PPC, PS: Wah Cant, Punjab and as a result of which he was placed under suspension order vide No. 13518-21/PC, dated 01.12.2016 and was kept the appellant into the Judicial Lock-up for long period and due to that reason appellant was not able to join de-novo inquiry which has been admitted with the Respondent department in written reply of Para No.6 of the Respondent department so facts admitted need not to be prove which has also been clarified from Page 6 of the inquiry report that the appellant has been sent to Central Jail Peshawar in the said alleged case.

ON GROUNDS:-

All the grounds of the appeal are correct and accordance with law and prevailing rules and that of the Respondents are incorrect baseless and not in accordance with law and rules hence denied, because the respondent department should be waited for the decision

of the said alleged criminal case. The appellant was not directly charged in the criminal case the impugned order dated 02.03.2017 is also void because it has been passed by from retrospective effect, no statement of witness has been recorded nor opportunity of cross examination has been provided, no charge sheet no statement of allegation has been issued nor copy of inquiry has been handed over to the appellant so the whole proceeding is void and illegal.

It is, therefore, requested that on acceptance of the instant rejoinder the appeal of the appellant may kindly be accepted as prayed for.

Dated: 22-09-2021

Petitioner

Through



Roeda Khan

Advocate, High Court

Peshawar.

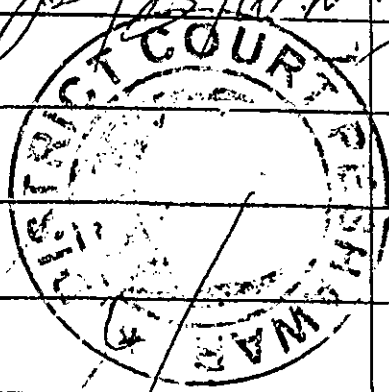
انڈیکس

تفصیلات ۱۵/۳/۲۰۲۰

۲۸۲
۱۸
۲

بجالات جناب لورڈ الہ جوڈیشیل مجسٹریٹ ایڈوارڈ

نام تفصیل
انڈیکس - اراڈیشن مائے
۲۶/۱/۲۶
۳۳-۲۵۷-۲



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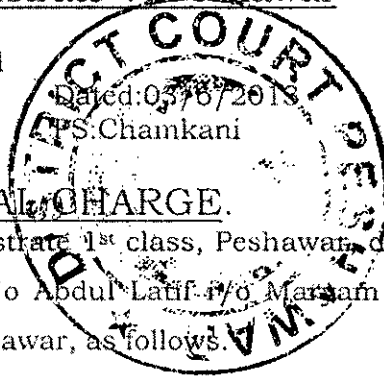
امر علیہ امی سی - II

کل تفصیلات
۲۲

ATTESTED
17 SEP 2020
(Examiner)
District Court Peshawar

In the court of Saima Irfan
Judicial Magistrate-V, Peshawar

State.....VS.....Sohail
FIR No.463
U/S:411/420/468/471 PPC



FORMAL CHARGE.

I, Saima Irfan, Judicial Magistrate 1st class, Peshawar, do hereby charge you accused Muhammad Sohail s/o Abdul Latif r/o Marjam Zai Mattani, at present Haji Abad Kohat Road, Peshawar, as follows.

- 1.) Firstly; on 03/6/2013 at about 15:15 hours, within the jurisdiction of PS Chamkani, the local police recovered the stolen motorcar bearing number GLI-184/AGS, and Chassis No.NZE 140-2000062 (white color) in case FIR No.157, dated 23/5/2013, u/s 457 PPC, of police station Wah Cantt, Rawalpindi, in question from your possession and thus you have thereby committed offence under section 411 PPC and within my cognizance.
- 2.) Secondly; on same date, time and place, you accused being driver/owner of the motorcar mentioned above, fraudulently obtained the motorcar in question by showing yourself as driver/owner of the motorcar in question and you have thereby committed an offence under section 420 PPC and within my cognizance.
- 3.) Thirdly; on same date, time and place, you accused was apprehended by the local police and recovered from your possession the motorcar in question which you have obtained by committing forgery and thus you thereby committed an offence under section 468 PPC and within the cognizance of this court.
- 4.) Fourthly; on same date, time and place, you accused knowingly used the forged motorcar in question as genuine with intent to cheat and thus you thereby committed offence under section 471 PPC and within the cognizance of this court.

And I thereby direct that you be tried by this court on the above said charges.

R.O & A.C.
29-04-2017

ATTESTED
17 SEP 2021
Saima Irfan (Magistrate)
JMIC-V, Peshawar District Court Peshawar

Q. Have you heard and understood the charges?
A. Yes.
Q. Do you plead guilty or claim trial?
A. I do not plead guilty and claim trial.

Sohail Khan Sohail
Certified under section 164/364 Cr.PC.

29/06/13
Saima Irfan
JMIC-V, Peshawar
29/06/13

Order
10/03/2020

Accused namely *Muhammad Sohail S/o Abdul Latif*, present. Learned SPP for State present.

Arguments on application u/s 249-A Cr.P.C already heard and record perused.

Vide my detailed separate judgment/order of today, the instant application under section 249-A Cr.P.C is accepted and accused facing trial, is acquitted of the charges leveled against him under section 249-A Cr.P.C. The accused is on bail. His sureties are discharged from the liability of bail bonds.

Case property/motor car in question be transferred through proper channel to the concerned police station at Punjab in connection with FIA No. 157 dated 23.05.2013 under section 457/381-A PPC of PS Cantt; Rawalpindi accordingly if not already shifted/transferred.

File be consigned to record room after necessary completion and compilation.

Announced:
10/03/2020

11



NAVEED ULLAH GIGYANI
Judicial Magistrate-II, Peshawar

~~ATTESTED~~

17 SEP 2021

(Examiner)
District Court Peshawar

IN THE COURT OF NAVEED ULLAH GIGYANI, JUDICIAL
MAGISTRATE-II, PESHAWAR

Criminal Case No.....282/2 of 2018
Date of original institution21/01/2017
Date of Institution in this Court...09/04/2018
Date of decision.....10/03/2020

State through Inspector Abdul Majeed Khan SHO
Chamkani Peshawar.....Complainant

VERSUS

1. Muhammad Sohail S/O Abdul Latif R/O Marimzai
Mattani presently Haji Abad Kohat
Peshawar.....Accused

FIR No. 463/2013, dated 03/06/2013, U/Ss
420/468/471/411 PPC registered at Police Station
Chamkani, Peshawar

Judgement
10/03/2020

- 12
1. This criminal case was initiated against accused *Muhammad Sohail S/o Abdul Latif*, on bail present, charged in case FIR No. 463, dated 03/06/2013, u/s 420/468/471/411 PPC, Police Station Chamkani, district Peshawar.
 2. As per contents of FIR, on 03.06.2013 motorcar No. GLI-184/AGS Corolla taken into possession by the local police of PS Chamkani vide Mad No. 46 dated 03/06/2013 from the possession of accused. After

ATTESTED
17 SEP 2020
(Examiner)
District Court Peshawar

fulfillment of codal formalities, inquiry was initiated and after completion of inquiry, FIR was lodged against the accused.

3. After completion of investigation, complete challan was put up before the court on 21/01/2017. Accused facing trial appeared before the court on 06/03/2017 and provisions of section 241-A Cr.PC complied with. Formal charge against the accused facing trial was framed on 29/04/2017, but the accused facing trial did not plead his guilt and claimed trial. Hence, prosecution was directed to produce their respective evidence to prove the allegations against the accused facing trial.

4. However, so far the prosecution could not record statement of a single PW despite repeated summons/warrants and directions. Accused facing trial submitted an application for his acquittal under section 249-A Cr.P.C on 21/10/2019, notice whereof given to the prosecution.

5. Arguments already heard and record perused.

6. In view of the arguments advanced by learned counsel for the accused facing trial as well as learned SPP for the state and having perusal of record, it transpires that

ATTESTED

17 SEP 2021

(Examiner)
District Court, Raigarh

formal charge against the accused was framed on 29/04/2017 and prosecution was directed to produce its evidence but prosecution failed to produce its evidence despite their service. This act of the prosecution shows their lack of interest towards this *lis*. It was the responsibility of prosecution to prove charges leveled against the accused through evidence but prosecution has failed to fulfill its legal obligations. No independent private witness has been associated with the recovery proceedings which is violation of section 103 Cr.P.C. Accused has remained in police custody for sufficient time but he has not confessed his guilt under section 164/364 Cr.P.C. Though, allegedly stolen motor car No. AGS-184 (original No. LEA-9623, chassis No. NZE-140-2000062) was recovered from the possession of the accused facing trial but there is nothing available on file to show that accused was in knowledge of the motor car being stolen one. Previously, a similar 249-A application of the accused was dismissed vide order dated 26.05.2018, by my learned predecessor-in-office and revision petition against the said order was also dismissed by the learned ASJ-XI, Peshawar vide order dated 13.10.2018, however, the said application was not

19

ATTESTED

17 SEP 2021

(Examiner)
District Court Peshawar

disposed of on merits and was dismissed on the ground that the charge was recently framed and application was premature. Moreso, vide order dated 13.10.2018 the learned ASJ-XI, Peshawar had directed this court to conclude the trial within the shortest possible period while the prosecution was also directed to change its attitude, take interest in pursuing the case and to positively produce its evidence. However, unfortunately despite the said direction of the learned Revisional Court, the prosecution was unable to produce a single PW or to conclude its evidence till date. This shows extreme lack of interest on the part of the prosecution and police in proceedings of the case. Accused is facing agony of trial for the last about three years without any fault on his part. The case cannot be left pending proceedings for indefinite time at the mercy of the prosecution/police. It is settled maxim of the law that justice delayed is justice denied.

- 15
7. The above stated facts make it clear that prosecution has lost its interest in the instant case. There is no probability of conviction of accused even if the prosecution is given further time and even if all the remaining evidence is recorded. Therefore, further proceedings, in the circumstances would be merely

ATTESTED

17 SEP 2021

(Examiner)

Inspector Peshawar

wastage of precious Court's time and will also cause further inconvenience to the accused facing trial.

8. Consequently, the instant application is accepted and accused facing trial, is acquitted from the charges leveled against him under section 249-A Cr.P.C. The accused is on bail. His sureties are discharged from the liability of bail bonds.

Case property/motor car in question be transferred through proper channel to the concerned police station at Punjab in connection with FIA No. 157 dated 23.05.2013 under section 457/381-A PPC of PS Cantt; Rawalpindi accordingly if not already shifted/transferred.

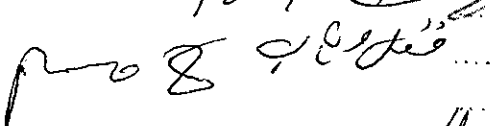
File be consigned to record room after necessary completion and compilation.

Announced.
10/03/2020


NAVEED ULLAH GIGYANI
Judicial Magistrate-II, Peshawar

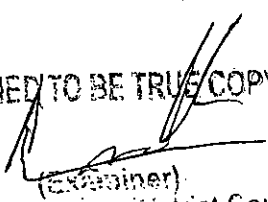
CERTIFICATE

16 Certified that my this judgement consist of Five (05) pages, each page has been signed, and corrected by me where required.

No.	40304
Date	18 9 20
Signature of Copyist	
Dated of Preparation	18 9 20
Dated of Delivery	18 9 20


NAVEED ULLAH GIGYANI
Judicial Magistrate-II, Peshawar

10-3-2020
CERTIFIED TO BE TRUE COPY


(Examiner)
Copying Agency District Court
Peshawar.

18 9 20

15 687/17 Rpt. June 2013

CHARGE SHEET

I, Javed Zamir-ud-Din Farooqi SSP/Investigation, CPO Peshawar being competent authority, hereby charge you Constable/Computer Operator Muhammad Sohail No. 87 of Computer Section Investigation Unit CPO as follows:-

That you were posted in the office of DSP/Legal CPO, to work as Computer Operator wherefrom you absented yourself without seeking any permission w.e. from 29.05.2013 and hence DSP/Legal CPO reported the matter accordingly.

By reasons of the above, you appear to be guilty of misconduct under Police Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the above mentioned Rules.

You are therefore, required to submit your written defence with in seven days of the receipt of this Charge Sheet to the Enquiry Officer (s)/Committee, as the case may be.

Your written defence if any should reach the Enquiry Officer (s)/Committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case exparte action shall be taken against you.

Intimate whether you desire to be heard in person or otherwise.

A statement of allegations is enclosed.

710 4.3 12-13/EE
17/6/13.

(JAVED ZAMIR-UD-DIN FAROOQI)
Senior Superintendent Police,
Investigation CPO KPK,
Peshawar

13/6
J. J. D. P. A. C. 12/13
17.6.13

(16)

Annex "D"

DISCIPLINARY ACTION


I Javed Zamir-ud-Din Farooqi SSP/Investigation, CPO Peshawar being competent authority am of the opinion that you Constable/Computer Operator Muhammad Sohail No. 87 of Computer Section Investigation Unit CPO have rendered yourself liable to be proceeded against, as you have committed the following acts of omissions/commissions under Police Rules 1975.

STATEMENT OF ALLEGATIONS

- i. That you were posted in the office of DSP/Legal CPO, to work as Computer Operator wherefrom you absented yourself without seeking any permission w.e. from 29.05.2013 and hence DSP/Legal CPO reported the matter accordingly.
- ii. The above act depicts your inefficiency, disobedience, indiscipline attitude and lack of interest in the official duty which is tantamount to grave misconduct on your part warranting stern disciplinary action.

For the purpose of scrutinizing the conduct of the said officer with reference to above allegations, Mr. Mirza Ali Khan Mugh is hereby nominated as Enquiry Officer in the matter under Rule-5 of the said Rules.

The Enquiry Officer shall, in accordance with the provisions of said Rules, provide reasonable opportunity of hearing to the accused officer, record and submit its finding within 10-days of the receipt of this order and his recommendations as to punishment or other appropriate action against the accused official.



(JAVED ZAMIR-UD-DIN FAROOQI)
Senior Superintendent Police,
Investigation CPO KPK,
Peshawar

13/6

(17)

Annex "E"

The SSP
Investigation CPO
Peshawar

Subject: SHOW CAUSE NOTICE

Respected Sir,

Kindly refer to show cause notice No. 4312-13 dated 17.06.2013.

My reply to show cause notice is submitted as under:

That I have falsely been implicated in a concocted criminal case vide FIR No. 463, dated 03.06.2013 U/s 411 PPC by Police Station Chamkani (Copy attached) and presently confined in Central Jail Peshawar and I am trying for bail. There is no evidence or other circumstances which could ensure my conviction. There is every likelihood of my Honourable acquittal and bail. At present i am confined to Jail and therefore unable to make my proper defense.

Yours Obediently,

Muhammad Sohail
Constable
(Computer Operator No. 87)

Handwritten notes in Urdu script, including the name 'Ri Adnan' and the date '26.6.2013'.

Ri Adnan
26.6.2013

(19)

Amex

APPEAR

FINAL SHOW CAUSE NOTICE

1. WHEREAS, you, Constable/Computer Operator Muhammad Sohail No. 87 posted in the office of DSP Legal CPO, committed gross misconduct, as defined in Rule of 3 Police Rules 1975 that *you absented yourself without seeking any permission w.e. from 29.05.2013 and hence DSP/Legal CPO reported the matter accordingly and subsequently you were also learnt to have been charged in a criminal case vide FIR No. 463 dated 03.06.2013 U/S 411-PPC PS Chamkani Peshawar*. Resultantly you were issued charge sheet with summary of allegations. Enquiry Committee consisting of Inspector Mirza Ali of was constituted to enquire into the matter.
2. WHEREAS, the Enquiry Officer finalized the enquiry proceeding by giving you full opportunity of defence as well as cross examination and the statements of all PWs have been recorded in your presence. Consequent upon completion of enquiry proceedings, the Enquiry Committee held you guilty of the charges levelled against you. A copy of the Enquiry Committee's report is enclosed herewith.
3. AND WHEREAS, on going through the Findings and recommendation of the Enquiry Committee, material placed on record and other connected papers including your defence before the Enquiry Committee, I am satisfied that you have committed the misconduct and are guilty of the charges levelled against you as per statement of allegations already conveyed to you which stands proved and render you liable to be awarded punishment under the said Rules.
4. NOW THEREFORE, I, Javed Zamir-ud-Din Farooqi SSP Investigation CPO Peshawar competent authority have tentatively decided to impose upon you, any one or more penalties including the penalty of "Dismissal from Service as defined in the said Rule. You, are, therefore, required to submit reply to this Show Cause Notice within Seven days of the receipt of this notice, as to why the aforesaid penalty should not be imposed upon you, failing which it shall be presumed that you have no defence to offer and an ex parte action shall be taken against you. In the meantime also intimate as to whether you desire to be heard in person or otherwise.

No 3848/2013

dt: 22/7/2013

(JAVED ZAMIR-UD-DIN FAROOQI)
Senior Superintendent of Police,
Investigation CPO Khyber Pakhtunkhwa
Peshawar