

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15181/2020

Date of Institution ... 09.11.2020

Date of Decision ... 17.01.2022

Mr. Ismail Ex-LHC District Police Mardan.

... (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa Peshawar and others.

... (Respondents)

Taimur Ali Khan,
Advocate

... For Appellant

Muhammad Rasheed,
Deputy District Attorney

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the

case are that the appellant while serving as Constable in Police Department was charged in FIR U/Ss 365/302/419/420/468/470/471PPC & 15AA Dated 06-04-2020. The appellant was arrested by local police and was confined in judicial lockup. The appellant was also suspended from service and departmental proceedings conducted against him and ultimately the appellant, while in jail was dismissed from service vide order dated 17-09-2020. The appellant was released on bail vide judgment dated 07-08-2020. Feeling aggrieved of his dismissal, the appellant filed departmental appeal, which was rejected vide order dated 12-10-2020, hence the instant service appeal with prayers that the impugned orders

dated 17-09-2020 and 12-10-2020 may be set aside and the appellant may be reinstated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, rule and policy on subject and acted in violation of Article-4 of the Constitution and unlawfully issued the impugned order, which is unjust, unfair and hence not sustainable in the eye of law; that the appellant was not directly involved in criminal case but he was charged U/S 164 Cr.Pc and that too, with inordinate delay which by itself is the proof that the charge against the appellant is false and concocted and he was made a scapegoat on the basis of his family relations and because of the fact that he was serving in police department to damage his service career; that under police rules, the respondents were required to issue charge sheet/statement of allegation, which are requirement of law but they failed in utter disregard of set procedure and law, thus the impugned orders are unlawful and hence not tenable; that mere registration of FIR against the appellant cannot be taken as a Gospel truth in as much as the allegation have to be established in the competent court of law and until then the accused would be presumed to be innocent; that in view of this matter CSR 194 mandates that a civil servant who is charged for a criminal case and is arrested is to be deemed as suspended and until finally convicted by the competent court of law, mere on the basis of FIR cannot be dismissed from service; that the appellant was granted bail by the competent court of law and has not yet been convicted for the offense, hence the impugned orders are highly arbitrary in as much as the appellant was kicked out of service in the basis of unconfirmed and unproved allegations; that neither any inquiry was conducted into the case nor any documentary proof or oral evidence was recorded in presence of the appellant nor he was afforded opportunity to cross-examine such witnesses; that entire action was taken at the back of the appellant, thus the appellant was condemned unheard; that it is a well settled legal proposition that

regular inquiry is must before imposition of major penalty of dismissal from service; that Article-10A of the Constitution read with section-16 of Civil Servant Act, 1973 provides for right of fair trial and that too as per prescribed law and rules for the determination of every civil right and obligation or any criminal charge against a person, thus the impugned orders are void ab initio as well as against the principle of natural justice; that no meaningful opportunity of personal hearing was afforded to the appellant, which is mandatory requirement of law, thus the appellant was condemned unheard, as the action has been taken at the back of the appellant, which is against the principle of natural justice; that the appellant served the department for 11 long years and during the period, he has never been departmentally proceeded against, rather he has been awarded with commendation certificates.

03. Learned Deputy District Attorney for the respondent has contended that the appellant was placed under suspension on account of registration of FIR U/Ss 365/302/419/420/468/470/471PPC & 15AA Dated 06-04-2020; that the appellant was proceeded against departmentally and was afforded every opportunity of defense; that the appellant was served with charge sheet/statement of allegations as well as show cause notice; that during the course of inquiry, the appellant was afforded full opportunity of defense, but the appellant failed to prove his innocence; that after conclusion of the inquiry proceedings, the inquiry officer recommended the appellant for award of major punishment of dismissal from service, which does commensurate with gravity of the misconduct of the appellant; that departmental appeal of the appellant was considered but was rejected being devoid of merit.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant was proceed against, while he was behind the bars. The inquiry report to this effect would reveal that it was not a

regular inquiry, as the inquiry officer admitted to the fact that the official is behind the bar, but is involved in a criminal case, hence he should be dismissed from service, hence it was a summary procedure without ascertaining facts and without adhering to the method prescribed in law. Allegation of his involvement in criminal case would need a bigger inquiry as it would involve strong evidences for proving his guilt, but the respondents adopted easy way. The correct course would have been to suspend the appellant from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature and to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellants in absentia and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

06. Placed on record is charge sheet/statement of allegations dated 12-05-2020 containing the charges of his involvement in criminal case with no specific charges, thus the authorized officer failed to frame the proper charge and communicate it to the appellant's alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken into consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was a mandatory pre-requisite, which was to be followed. Reliance is placed on 2000 SCMR 1743. In addition, it is also not clear as to whether such charge sheet was actually served upon the appellant or it was only eyewash.


07. In absence of any solid proof, the inquiry officer only relied on his own wisdom. In a manner, the appellant was deprived of the right to defend his cause and which smacks malafide on part of the respondents. It is a cardinal principle of natural justice of universal application that no one should be condemned unheard and where there was likelihood of any adverse action against anyone, the principle of Audi Alteram Partem would require to be followed by providing the person concerned an opportunity of being heard. The inquiry officer recommended the appellant merely upon his involvement in FIR and with no solid evidence against the appellant. Mere reliance on FIR and that too without confronting the appellant with the same had no legal value and mere presumption does not form basis for imposition of major penalty, which is not allowable under the law.

08. In circumstances, the instant appeal is accepted. The impugned orders dated 17-09-2020 and 12-10-2020 are set aside and the appellant is re-instated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the provisions contained in Rule 16:2(2) of Police Rules, 1934, if decision in the criminal case was found adverse. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

17.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

ORDER

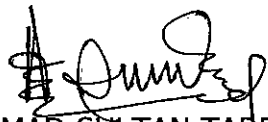
17.01.2022

Learned counsel for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for respondent present. Arguments heard and record perused.

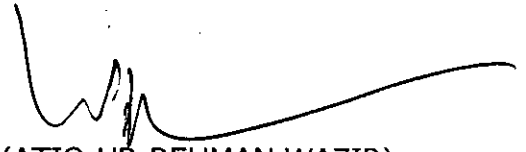
Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned orders dated 17-09-2020 and 12-10-2020 are set aside and the appellant is re-instated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the provisions contained in Rule 16:2(2) of Police Rules, 1934, if decision in the criminal case was found adverse. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

17.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



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

17/1/2022. DB - Pesh (T)

Mohd Ismail. Date of arrest. 7/5/2020

FIR - Dated. 5/4/2020

Bail

7/8/2020

Inquiry - 26/6/2020

Final sentence. 27/7/2020

Reply. 30/7/2020

The appellant was required to keep under supervision ✓✓

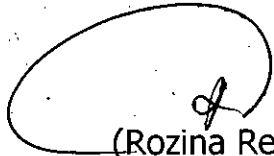
DDA - Criminal + Dept proceed
can run side by side.

15.09.2021

Counsel for appellant present.

Asif Masood Ali Shah learned Deputy District Attorney
alongwith Khyal Roz Inspector for respondents present.

Former requests for permission to file rejoinder. Request
is accorded with direction to furnish the same within 10 days in
office. To come up for arguments on 17.01.2022 before D.B.



(Rozina Rehman)
Member (J)


Chairman

10.03.2021

Junior to senior counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Khayal Roz, Inspector (Legal), for the respondents present.

Written reply on behalf of respondents not submitted. Representative of the department is seeking time for submission of written reply/comments. Request is accepted and time allowed. Case to come up for written reply/comments on 20.04.2021 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

20.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 20.05.2021 for the same as before.

20.05.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 07.07.2021 for the same as before.


Reader


Reader

07.07.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Khyal Roz, Inspector for the respondents present.

Respondents have furnished reply/comments. The appeal is entrusted to D.B for arguments on 15.09.2021.


Chairman

11.01.2021

Mr. Muhammad Amin Ayoub, Advocate, for appellant is present.

The sum total of what has been agitated at the bar is that, on implication in a criminal case, he was suspended from service vide FIR bearing No. 323 dated 06.04.2020 under sections 365, 302, 419, 420, 468, 470, 171 and 15A Police Station Saddar Mardan, on the basis of statement recorded under section 164 Cr. PC. He was able to be released on bail by the Hon'ble Peshawar High Court, Peshawar, on 07.08.2020. The disciplinary proceedings were initiated against appellant when he was in judicial lockup, therefore, no charge sheet was issued nor statement of allegations was served on appellant and irregular inquiry was conducted as a result of which he was awarded major penalty of dismissal from service, the departmental appeal moved for the purpose proved abortive, hence, the present service appeal.

The point so agitated at the bar needs consideration. The appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 10.03.2021 before S.B.

Appellant Deposited
Security and Process Fee

11/1/21

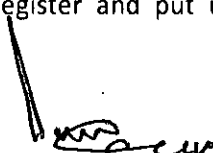

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 15181 /2020


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/11/2020	<p>The appeal of Mr. Ismail resubmitted today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>11/01/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Ismail Ex-LHC District Police Mardan received today i.e. on 09.11.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days:

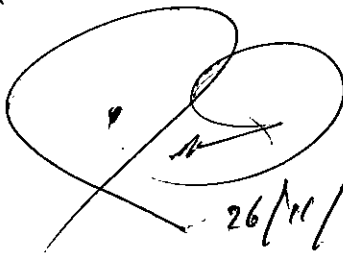
- 1- Copy of departmental appeal preferred by the appellant before respondent no.2 mentioned in para-4 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Page No. 7 of the appeal is illegible which may be replaced by legible/ better one.

No. 3808 /S.T,

Dt. 09/11/2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Khaled Rehman Adv. Pesh.

در وقت رسیدگی به این پرونده
صالحه - صالحه

26/11/20

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2020

Ismail..... Appellant

Versus

The PPO and others.....Respondents

INDEX

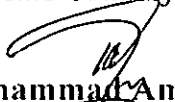
S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-4
2.	F.I.R No.323	06.04.2020	A	5
3.	Statement U/S 164 Cr.P.C	07.05.2020	B	6-7
4.	Bail granting order	07.08.2020	C	8-10
5.	Inquiry Report	14.06.2020	D	11
6.	Final Show Cause Notice	20.07.2020	E	12
7.	Reply to Show Cause Notice	30.07.2020	F	13
8.	Impugned original order	21.09.2020	G	14
9.	Departmental Appeal	October, 2020	H	15-16
10.	Impugned appellate order	12.10.2020	I	17-18
11.	Commendation Certificate		J	19
12.	Wakalat Nama			20

Through

Appellant


Khaled Rahman
Advocate,
Supreme Court of Pakistan

&


Muhammad Amin Ayub
Advocate, High Court

&


Muhammad Ghazanfar Ali
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: 09/11/2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15781/2020Khyber Pakhtunkhwa
Service TribunalDiary No. 14240Dated 09/11/2020Mr. Ismail

Ex-LHC,

District Police, Mardan Appellant

VERSUS

1. The Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
2. The Regional Police Officer,
Mardan Region, Mardan.
- ✓ 3. The District Police Officer,
District Mardan Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 17.09.2020 WHEREBY MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT AGAINST WHICH HE PREFERRED DEPARTMENTAL APPEAL TO RESPONDENT NO.2 BUT THE SAME WAS UNLAWFULLY REJECTED VIDE IMPUGNED APPELLATE ORDER DATED 12.10.2020.

PRAYER:

On acceptance of the instant appeal, the impugned order dated 17.09.2020 passed by Respondent No.3 and impugned appellate order dated 12.10.2020 passed by Respondent No.2 may graciously be set aside and appellant may be re-instated into service w.e.f. 17.09.2020 with all back benefits.

Filed to-day
Registrar
9/11/2020

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That the appellant was employed in the Police Force as Constable way back in the year 2009 and has rendered meritorious service for the Department. Throughout his service appellant has never been

Re-submitted to-day
and filed.
Registrar
9/11/2020

departmentally proceeded against and even a minor penalty has not been imposed upon him so far, thus the service of the appellant remained unblemished and spotless.

2. **That** the appellant while performing duties at RRU Mobile-II Katlang Circle Mardan, was suspended from service on the implication in Criminal Case FIR No.323 (*Annex:- A*) dated 06.04.2020 U/s 365, 302, 419, 420, 468, 470, 171 & 15AA Police Station Saddar, Mardan by recording Statement under Section-164 Cr.P.C. (*Annex:-B*) before the learned Judicial Magistrate, Mardan after considerable delay of one and a half month. Later on, appellant was got arrested by the local Police and confined to the judicial lock up. He moved applications for release before the lower fora but the same were fruitless. Eventually, appellant approached the Hon'ble Peshawar High Court, Peshawar wherein his bail application was accepted vide order dated 07.08.2020 (*Annex:-C*).
3. **That** while the appellant was in Judicial Lockup, the Respondents without issuing Charge Sheet and Statement of Allegations to the appellant conducted an irregular inquiry (Inquiry Report *Annex:-D*) at the back of the appellant wherein he was recommended for major punishment of dismissal from service. Appellant was issued a Final Show Cause Notice (*Annex:-E*) and since the charges were unfounded, misplaced therefore, appellant refuted the same and furnished a detailed reply (*Annex:-F*) on 30.07.2020 explaining his position before the Competent authority. (Reply to the Final Show Cause Notice may be considered as integral part of this appeal.)
4. **That** appellant was expecting that his reply to the Final Show Cause Notice will thoroughly be considered but to the utter bewilderment of the appellant neither his reply was appreciated by applying a judicial mind nor he was afforded a chance of personal hearing and was imposed upon the major penalty of dismissal from service vide impugned original order dated 21.09.2020 (*Annex:-G*) against which appellant preferred Departmental Appeal (*Annex:-H*) to Respondent No.2 who by means of impugned appellate order dated 12.10.2020 (*Annex:-I*) unlawfully rejected the same.

5. That appellant, being aggrieved of the impugned orders *ibid*, files this appeal, *inter-alia*, on the following grounds:-

GROUND:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That appellant was not implicated in the criminal case directly albeit he was charged U/S 164 Cr.P.C but that after an inordinate delay which by itself is the proof that the charge against the appellant is false and concocted and he was only made an scapegoat on the basis of his family relations and because of the fact that he was serving in the Police Department to damage his service career.
- C. That under the Police Rules 1975, Respondents were required to issue Charge Sheet and Statement of Allegations to the appellant which are requirements of law but they failed in utter disregard of set procedure and law and thus the impugned orders are unlawful and hence not sustainable.
- D. That without prejudice to the grounds mentioned above but in addition thereto it is submitted that mere registration of an F.I.R cannot be taken as a Gospel truth inas much as the allegations have to be established in the competent court of law and until then the accused is presumed innocent. In this view of the matter C.S.R 194 mandates that a civil servant who is charged for a criminal case and is arrested is to be deemed as suspended and until finally convicted by the competent court of law, mere on the basis of F.I.R he cannot be dismissed from service. The appellant has already been granted bail by the competent Court of law and has not yet been convicted for the offence. In this view of the matter, the impugned orders are highly arbitrary inas much as the appellant was kicked out of service on the basis of unconfirmed and unproved allegations.
- E. That neither regular inquiry was conducted into the case in hand nor any documentary or oral evidence was recorded in presence of the appellant nor was he provided an opportunity of cross-examination. The entire action was taken at the back of the appellant and thus he was condemned unheard. It is a settled law that where a major penalty is to be imposed then regular

inquiry is necessary which has not been done in the case in hand.

- F. That Article-10A of the Constitution of the Islamic Republic of Pakistan, 1973 read with Section-16 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 provides for the right of fair trial and that too as per prescribed law and Rules for the determination of every civil right and obligation or on any criminal charge against a person. Thus the impugned orders are void, ab-initio as well as against the principle of natural justice.
- G. That no meaningful opportunity of personal hearing was afforded to the appellant neither by the competent authority, nor by the Enquiry Officer which are the mandatory requirements of law. Thus appellant was condemned unheard as the action has been taken at the back of the appellant which is against the principle of natural justice.
- H. That the appellant served the Department for long 11 years and during this period he has never been departmentally proceeded against. Moreover, he has been awarded with Commendation Certificate (*Annex;- J*).
- I. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through

Appellant


Khaled Rahman,
Advocate,
Supreme Court of Pakistan

&


Muhammad Amin Ayub
Advocate, High Court

&


Muhammad Ghazanfar Ali
Advocate, High Court

Dated:09/11/2020

Presented by
1. Olong, Peshawar
Mardan, Peshawar
Government of
Punjab, Pakistan
PO Long, Ghanche
Mardan District

بدین معذرت خان ولد سردار محمد خان صاحب (مستفید) آباد طبرستان کے سرکار کے پاس
میری (9-8297566-16101) سے صفحہ بیان کیا ہے جو رقم $\frac{4}{20}$ کی رقم 12:00 بجے
دیے شدت اور طبرستان آباد میں سے ہم اراجم خان صاحب سے کوئی نہیں
مدرسہ خان صاحب نے اڈاکٹر احمد علی صاحب سے رقم $\frac{4}{20}$ کا کوئی بھی نہیں دیا
نیز دارالاجنبات ازان ابراہیم صاحب سے رقم اس لیے نہیں تین شدہ ہے
کھا کھانہ طبرستان میں سے ہم اراجم خان صاحب سے رقم بالاد اس لیے اور
صاحب خان کی تین شدہ (اس/نسب کی شناخت کی لہذا یہ رقم ملنے نہیں

نہ ملنے کے خلاف مدرسہ علامت $\frac{4}{20}$ رقم 302-365 کھانہ مدرسہ
رہنمائی سے ہم صاحب مدرسہ خان کی تلاش میں رہتے ہیں اور کھانہ آج
لہذا دارالاجنبات ازان ابراہیم صاحب سے رقم ملنے کے لیے

آباد طبرستان کے ہمارے دارچہ خیر خیر لہذا یہاں $\frac{4}{20}$ ملنے کے لیے
سہ اراجم خان صاحب، شاہ حسین صاحب ان سے رقم ملنے کے لیے
ہم سے بہترین ملک سے رقم ملنے کے لیے، ہمارے دارچہ خیر خیر
تا حال میں ملنے کے لیے ہمارے دارچہ خیر خیر ملنے کے لیے
خیر خیر لہذا یہاں $\frac{7}{8}$ ملنے کے لیے ہمارے دارچہ خیر خیر
ہم سے بہترین ملک سے رقم ملنے کے لیے، ہمارے دارچہ خیر خیر
ہمارے دارچہ خیر خیر، ہمارے دارچہ خیر خیر ملنے کے لیے

معذرت خان

محمد عثمان صاحب لہذا ہمارے دارچہ خیر خیر ملنے کے لیے
دلہ صاحب سے ملنے کے لیے ہمارے دارچہ خیر خیر ملنے کے لیے
ہمارے دارچہ خیر خیر، ہمارے دارچہ خیر خیر ملنے کے لیے

صاحب
محمد عثمان

ATTESTED

P=2

کہ جس طرح کسان قذرتہ بالا کے عمر میں شہر کے کی نسبت سے دلچ
 بہ قیوم آباد واقع آزاد سینیہ سٹیشن کے سرکاری ٹریڈنگ کارکن اسحاق احمد
 نے کینڈن فری ریڈی میں طلبہ سے اخراج کیا گیا 20/6-5 لوقت ماسد
 کو قتل کرنے کے لیے بہ ابرام صاحب خان کو ساتھ بیگ لے کر دارا صاحبان
 اور اصبح شہزادی میں کھینچا گیا میں لہذا لہذا و شہلی لہذا
 کہ بہ ابرام صاحب خان کو قتل کرنے کے لیے ہم فلاں، حاجی ولد شہزاد
 صاحب ولد بہ آخان صاحبان ترم آباد طلبہ (3) محمد عثمان صاحب
 عمر نے پھر ولد سید ابوالاسر سید بخشاکی (4) خوشنواز ولد جبراع صاحب
 گنگلی باغ (5) عالمگیری صاحب عمر (6) سردار ولد انور خان صاحب (7) باغ (8)
 اسماعیل ولد امیر (9) صاحب عمر (10) سردار عمر (11) صاحب عمر (12) صاحب عمر

کاغذی Ex PA

محمد سعید خان

محمد سعید خان

محمد سعید خان ولد لہذا صاحب
 مکہ قذرتہ آزاد لہذا
 CNIC: 161018-297566-9

محمد سعید خان
 محمد سعید خان
 7-2020

ATTESTED

B *Ann*
Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.MBA No. 2188-P/2020.

Ismail Vs The State.

JUDGMENT

Date of hearing. 07.08.2020.
Petitioner(s) by: Mr. Lajbar Khan Khalil
Advocate.
Complainant by: Mr. Mudasser Iqbal Advocate.
State by: Mr. Muhammad Furqan Advocate.



IKRAMULLAH KHAN, J:- Through the instant bail petition, petitioner Ismail seek his release on bail in case FIR No. 323 dated 6.4.2020 registered under Sections 302/365/34/419/420/468/471/170/171 PPC/ 15 AA, at Police Station Saddar, District Mardan.

2. As per contents of FIR, Janas Khan brother of complainant Mufeed Khan was abducted by some unknown persons in Motorcar bearing registration No.871-Islamabad, whose dead body was lateron recovered, for which complainant charged unknown accused. Lateron, complainant in his supplementary statement recorded under Section 164 Cr.PC, before the

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EXAMINER
Peshawar High Court

- 4 -

learned Judicial Magistrate concerned, nominated the present petitioner alongwith co-accused for commission of offence.

3. I have heard learned counsel for the parties and have gone through the record.

4. Admittedly, petitioner has not been directly charged in the FIR by name rather he was nominated lateron by complainant in his supplementary statement recorded under Section 164 Cr.PC, before the learned Judicial Magistrate concerned for commission of offence but no source of his satisfaction regarding involvement of petitioner in the commission of offence has been disclosed by complainant in his above statement as to in whose presence petitioner has committed the offence. Even complainant is not the eye witness of the occurrence nor any other ocular or strong circumstantial evidence is available on file, which could connect the petitioner with the commission of offence. Besides, no incriminating has been recovered from the direct possession of petitioner or at his instance & pointation, which could link him with the commission of offence. Mere heinousness of offence as well nomination of petitioner for commission of offence is

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not sufficient to link him with the commission of offence until and unless strong and cogent corroborative evidence is brought on record against him, which at present lacks in the instant case. Moreover, the co-accused Khushrang from whose possession the alleged motorcar used in commission of offence was recovered, has also been granted bail by the august Supreme Court of Pakistan, so petitioner having been attributed weaker role than that of above co-accused, is also entitled to the concession of bail on the principle of consistency. Petitioner is behind the bar since his arrest and no more required to the Investigation Agency for further interrogation, therefore, this bail petition is allowed and petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.200,000/- with two sureties each in the like amount to the satisfaction of learned Illaqa/Duty Judicial Magistrate concerned, who shall ensure that the sureties are local, reliable and men of means.

The above are reasons of my short order of even date.

Announced:
07.08.2020.

[Signature]
JUDGE

Hon'ble Mr. Justice (Retired) Khan

"4. Qasim P.S." (18)

[Signature]
ATTESTED CERTIFIED TO BE TRUE COPY

MAJORITY
Magistrate (District) Muzaffargarh
Magistrate (District) Muzaffargarh
Magistrate (District) Muzaffargarh

19 AUG 2020

[Handwritten notes and signatures]
19/8/2020
19/8/2020



OFFICE OF THE
SUPERINTENDENT OF POLICE
OPERATIONS & HEADQUARTERS

MARDAN

Tell: 0937-9230117

Fax: 0937-9230111

E-Mail: Spons1506@gmail.com

Amir D

100 /PA,(Ops)

Dated: 5/06/2020
14/

The District Police Officer,
Mardan.

Subject: DEPARTMENTAL ENQUIRY AGAINST LHC ISMAIL
NO. 2637.

Memo:

Kindly refer to your office Memo: No. 261/PA dated 12.05.2020 on
the subject noted above.

Allegations:

The subject enquiry proceeding against LHC Ismail No. 2637 was
initiated under the allegations that he while posted at RRU Mobile-II Katlang
Circle (now under suspension Police lines) has been charged in a case Vide FIR
No. 323 dated 06.04.2020 u/s 365/302/419/420/468/471/470/171/15AA Police
station Saddar.

Proceedings:

Enquiry proceedings were initiated. Accused official is confined in
Central Jail Mardan. A copy of charge sheet along-with statement of allegation
was served upon him through office of the Superintendent Central Jail Mardan.
But he (accused official) failed to submit his reply so far indicating that he has
nothing to present in his defense.

Moreover, as per facts of the case he was involved in the above
murder case. During the course of investigation he made confession in his
statement got recorded u/s 161 CrPc. In the whole episode he extended full
co-operation to co-accused in committing the offense whereby a young chap was
brutally killed after kidnapping.

Recommendations:

Forgoing in view, an Ex-parte action is recommended against the
accused LHC Ismail No.2637. Any relief at this stage would be deemed to
encourage him for doing such like criminal activities in future. His retention in
police force may lead to any odd situation. Hence, he may be awarded Major
Punishment of Dismissal from Service under Police Rules 1975 amended 2014.

Submitted please.

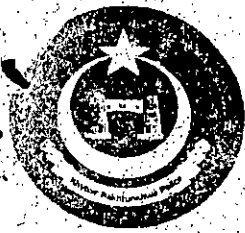
Superintendent of Police
Operations & Headquarters
Mardan

PA

Issued

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OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

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

2020

No. 73 /PA

Dated 20/7/2020

FINAL SHOW CAUSE NOTICE

LHC Ismail No.2637, while posted at RRU Mobile-II Katlang Circle (now under suspension & Central Jail Mardan), has been involved in a case vide FIR No.323 dated 06-04-2020 U/S 365/302/419/420/468/477/470/170/171/15AA PS Saddar.

In this connection, during the course of Departmental Enquiry, conducted by Mr. Waqar Azeem SP/Operations Mardan vide his office letter No.100/PA, (Ops) dated 24-06-2020, in pursuance of this office Statement of Disciplinary Action/Charge Sheet No.261/PA dated 12-05-2020, holding responsible you of gross misconduct & recommended for ex-parte action/dismissal.

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

Hence, I Dr. Zahid Ullah (PSP) District Police Officer Mardan, in exercise of the power vested in me under Rules 5 (3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you to Show Cause Finally as to why the proposed punishment should not be awarded to you.

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

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

Received by [Signature]

Dated: 27/07/2020

(Dr. Zahid Ullah) PSP
District Police Officer
Mardan

Copy to RI/Police Lines (Attention: Reader) to deliver this notice upon the alleged official in Central Jail Mardan & the receipt thereof shall be returned to this Office within (05) days for further necessary action.

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محکمہ خزانہ

جواب لکھ نائل شوگار ٹولز

برڈ نمبر 73 فرم 20/07/2020

جواب نمائندگی ذیل میں ہے۔

I۔ کہہ من سائل کے خلاف جاری شدہ الزام برآمد شدہ 6/4/2020

- 1۔ خلد اور جوٹ پیر میں ہے۔ جس کے مینجر عزم کا پرنسپل انچارج ہیں۔
- 2۔ کہہ من سائل میں ڈیوٹی سر جوڈیٹا۔ زیر آج اتھارٹی رپورٹ میں عزم کا پرنسپل
- 3۔ کہہ من سائل میں ڈیوٹی سر جوڈیٹا۔ اور جوڈیٹا کے مینجر انچارج ہیں۔

جس کا پرنسپل 07/08/2020 کو مقرر ہے۔

4۔ کہہ من سائل میں خلد اور جوٹ پیر میں ہے۔ اس صورت میں

مقررہ مینجمنٹ اور عدالتی فیصلہ تک الفیصلی کاروائی (محلک کاروائی)

فی الحال منتظر ہے کہ اس کا فیصلہ کیا جائے گا۔

کے بعد عدالت کی رپورٹ میں خلد اور جوٹ پیر کے مینجر انچارج

5۔ کہہ من سائل میں جوٹ پیر میں ہے۔ Statement of allegations

شوگار ٹولز میں (جوٹ پیر) میں ہے۔ درج ذیل صورتوں میں ہے۔

مینجر مینجمنٹ انچارج میں ہے۔

کہہ من سائل میں ہے۔

Statement of allegations کے تحت فرم نمبر 20/07/2020

ایم ایس اے (جوائنٹ سروس)

2637

Signature

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OFFICE OF THE 14
DISTRICT POLICE OFFICER,
MARDAN

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



No. 3492-95 /PA

Dated 21/10/2020

ORDER ON ENQUIRY OF LHC ISMAIL NO.2637

This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted at RRU Mobile-II Katlang Circle (now under suspension Police Lines Mardan), was placed under suspension and closed to Police Lines vide this office OB No.768 dated 11-05-2020, issued vide order/endorsement No.2481-85/OSI dated 11-05-2020, on account of charging in a case vide FIR No.323 dated 06-04-2020 U/S 365/302/419/420/468/471/470/171/15AA Police Station Saddar and proceeded against departmentally through Mr. Waqar Azeem, the then SP/Operations Mardan vide this office Statement of Disciplinary Action/Charge Sheet No.261/PA dated 12-05-2020, who (E.O) after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.100/PA,(Ops) dated 24-06-2020, recommending the alleged official for Ex-parte action/major punishment of dismissal from service.

In this connection, he was served with a Final Show Cause Notice under K.P Police Rules-1975, issued vide this office No.73/PA dated 20-07-2020, to which, his reply was received and found un-satisfactory.

Final Order

LHC Ismail was heard in O.R on 16-09-2020, but failed to present any plausible reasons in his defense, therefore, awarded him Major Punishment of Dismissal from service with immediate effect, in exercise of the power vested in me under Police Rules-1975.

OB No. 1598
Dated 17/09/2020.

(Dr. Zahid Ullah) PSP
District Police Officer
Mardan

Copy forwarded for information & n/action to:-

- 1) The SP/Investigation Mardan.
- 2) The DSP/HQrs: Mardan.
- 3) The P.O & E.C (Police Office) Mardan.
- 4) The OSI (Police Office) Mardan with () Sheets.

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Annex 'H'

To: The Regional police Officer,
Police Department, Mardan.

Through: PROPER CHANNEL.

Subject: APPEAL AGAINST THE ORDER OF THE D.P.O. MARDAN,
DATED 21/09/2020, AWARDING THE PUNISHMENT OF
DISMISSAL FROM SERVICE.

Sir,

With reference to the captioned order, whereby I am dismissed from service on disciplinary grounds. (Copy attached).

1. that the impugned order is illegal, void, against the facts and against the principles of natural justice. Hence, the same is liable to be set-aside and I am entitled to be re-instated into service with continued service benefits.
2. that the charges, as levelled against me are incorrect, false and based on malice, on the part of the ~~opposite party~~ prosecution.
3. that the case does not concern any departmental offence, while, the relevant criminal case is yet under trial, where-in next date is fixed 08/10/2020, pending in the Court of the learned Additional Sessions Judge-IV, Mardan. Hence, the disciplinary proceedings in the present case, needed to have kept pending till the recording of evidence, for ascertaining the actual position of the case.
4. that no witness had been examined in my presence ~~there~~ and thus, I was deprived from the right of cross examination, ~~the~~ witnesses so examined.
5. that the evidence of a witness, not allowed to be subjected to the test of cross-examination, has no legal effect.
6. that I was not summoned to participate in the enquiry proceedings & even, my defence statement was not recorded.

Contd....P/2

[Signature]

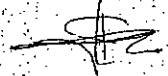
-: 2 :-

- 7. that I was in judicial custody in Mardan, during the period, when the enquiry proceedings are shown to have been carried out.
- 8. that I was not issued/communicated the alleged charge sheet along with statement of allegations.
- 9. that I was on duty in R.R.U Katlang, when I was arrested by Qazi Azmat, the Circle D.S.P., and detained in Quarter Guard.
- 10. that my defence version is not given any attention at any stage. Even, the factual point is not taken into consideration that I was not charged in the FIR. But, later-on, I was implicated through statement recorded under Section 164 Cr.P.C, malafidely.
- 11. that I have clean service records, prevailing over twelve years, without any stigma.

It is prayed that setting aside the impugned order, I may kindly be re-instated into service with back service benefits.

Dated: 24/09/2020.

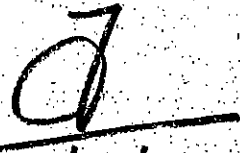
Your's obediently,

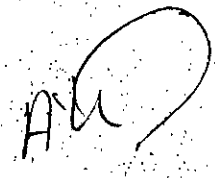


(ISMAIL)
& L.H.C/ 2637
Mardan Police

Address: Mohallah Aziz Abad
Village Jaber, Mardan.

Received the original of appeal


24/9/2020 LFC Branch



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Amal J

ORDER.

This order will dispose-off the departmental appeal preferred by Ex-LHC ismail No. 267³⁷ of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded major punishment of dismissal from service vide OB: No. 1598 dated 17.09.2020. The appellant was proceeded against departmentally on the allegations that he while posted at RRU Mobile-II Katlang Circle, was placed under suspension and closed to Police Lines, Mardan on account of involvement in a case vide FIR No. 323 dated 06-04-2020 U/S 365/302/419/420/468/471/470/171/15AA Police Station Saddar, Mardan.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Superintendent of Police Operations, Mardan was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities submitted his findings and recommended the delinquent Officer for ex-parte action by awarding him major punishment of dismissal from service.

He was issued Final Show Cause Notice to which his reply was received and found unsatisfactory. He was also provided opportunity of self defense by summoning him in the Orderly Room held in the office of District Police Officer, Mardan on 16.09.2020. But he failed to advance any cogent reason in his defense. Hence, he was awarded major punishment of dismissal from Service vide OB: No. 1598 dated 17.09.2020.

Feeling aggrieved from the order of District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 06.10.2020.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations leveled against the appellant have been proved beyond any shadow of doubt. During the course of investigation the accused confessed his guilt and circumstantial evidence were also collected which established the nexus of accused with the commission of offence. Moreover, the involvement of appellant in this heinous criminal case is clearly a stigma on his conduct. Hence, the retention of appellant in Police Department will stigmatize the prestige of entire Police Force as instead of fighting crime, he has himself indulged in criminal activities. Moreover, he

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could not present any cogent justification to warrant interference in the order passed by the competent authority.

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

Order Announced.

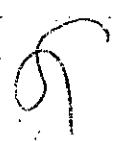

Regional Police Officer,
Mardan.

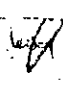
No. 6310 /ES, Dated Mardan the 12-10- /2020.

Copy forwarded to District Police Officer, Mardan for information and necessary w/r to his office Memo: No. 290/LB dated 01.10.2020. His service record is returned herewith.

(*****)

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 Police Officer,
Mardan.

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Annex J

KHYBER PAKHTUNKHWA

Commendation Certificate

Class II

Granted by

Mr. Muhammad Saeed (PSP)

DEPUTY INSPECTOR GENERAL OF POLICE
MARDAN REGION MARDAN.

TO Constable 18mail No. 2637

Son of Ridi Gull

District Mardan

In Recognition of

In his good performance

O.B. NO. _____

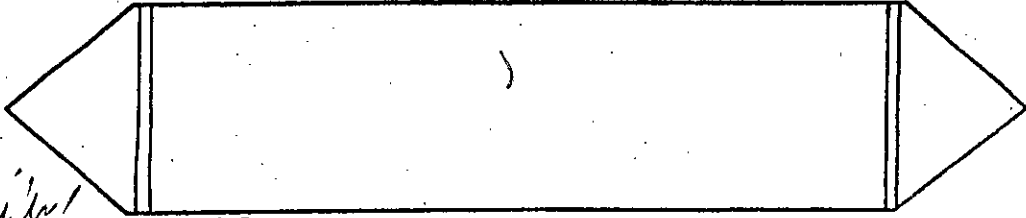
DATED _____

Deputy Inspector General of Police
Mardan Region Mardan.

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15181/26

بعدالت نامہ کی سرورس پروسیجر کے لئے



اسلام آباد
2020ء منجانب ڈی ایچ ای
بنام ایس ایس او

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئینکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیردیکھا جواب وہی دیکل کاروائی متعلقہ
آن مقام کے لئے مقررہ کیلئے تعمیراتی کارروائی
مقررہ کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دیئے جواب وہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھد یا کہ سند ہے۔

المرقوم 09 ماہ نومبر 2020ء

العبد _____ والا العبد _____

کے لئے منظور ہے۔

بمقام

16101-4888813-3
03138922889

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کوریج

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

Service Appeal No. 15181/2020

Ismail Ex-LHC District Police Mardan.....Appellant

VERSUS

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

.....Respondents

Para-wise comments on behalf of respondents:-

Respectfully Sheweth,

PRELIMINARY OBJECTIONS

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

REPLY ON FACTS

1. Para to the extent of enlistment in Police Department of appellant pertains to record needs no comments, while rest of the Para is not plausible because every Police Officer / Official is under obligation to render meritorious service because in this department no room lies for lethargy moreover clean and neat service record does not mean a clean chit for future wrong deeds.
2. Correct to the extent that the appellant while Posted at RRU Mobile-II Katlang Circle was placed under suspension on account of involvement in a case vide FIR No. 323 dated 06-04-2020 u/s 365/302/419/420/468/471/470/171 PPC /15AA Police Station Saddar, District Mardan. During the course of investigation the appellant made confession in his statement got recorded u/s 161 CrPc. In the whole episode the appellant extended full co-operation to co-accused in committing the offence whereby a young chap was brutally killed after kidnapping. While rest of the Para is incorrect, because criminal and departmental proceedings are two different entities which can run parallel and the fate of criminal case will have no effects on the departmental proceedings (Copy of FIR is annexed as "A").
3. Para to the extent of conducting irregular enquiry at the back of appellant is totally ill-founded hence denied, because he was issued Charge sheet with statement of allegations and Final Show Cause Notice was also issued to the

appellant, which was received by the appellant himself and in this regard he duly signed and thumb impressed the photo copy as token of its receipts. Moreover, during the course of enquiry the enquiry officer provided full-fledged opportunity to the appellant for defending himself but he bitterly failed to produce even a single iota of evidence therefore, plea taken by the appellant has no legal footing to stand on, besides the above, the appellant was also called in Orderly Room on 16.09.2020 but this time too he failed to justify his innocence (Copy of serving charge sheet, Final Show Cause Notice and enquiry report are annexed as annexure "B", "C" & "D").

4. Incorrect. Plea taken by the appellant is totally false because after conclusion of enquiry, the enquiry officer recommended the appellant for major punishment, in light of recommendation, the competent authority issued Final Show Cause Notice to the appellant, to which his reply which was received but found un-satisfactory. Moreover, the appellant was also provided right of self defense in Orderly Room on 16.09.2020, but he again failed to justify his innocence, therefore, he was awarded major punishment of dismissal from service which does commensurate with the gravity of misconduct of appellant. Besides, the appellant preferred departmental appeal and the appellate authority after paying due consideration, summoned and heard the appellant in Orderly Room held on 06.10.2020, but he bitterly failed to produce any cogent reason in his defense. Therefore, the same was rejected and filed being devoid of merit (Copy of rejection order is enclosed as Annexure "E").
5. That appeal of the appellant is liable to be dismissed on the following grounds amongst the others.

REPLY ON GROUNDS:

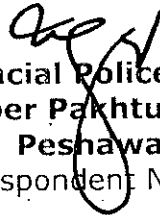
- A. Incorrect plea taken by the appellant is not plausible because respondents have no grudges against the appellant therefore, stance of the appellant is totally ill-founded.
- B. Incorrect plea taken by the appellant is not plausible because respondents have no grudges against the appellant, hence, stance of the appellant is totally ill-founded.
- C. Incorrect. Plea taken by the appellant is not plausible, the respondents fulfilled all the requirement and issued charge sheet with statement of allegations and final show case notice as per Police Rules, however, the orders passed by the competent authority as well as appellate authority are legal, lawful hence, liable to be maintained.
- D. Incorrect. That the appellant was placed under suspension on account of involvement in a case vide FIR No. 323 dated 06-04-2020 u/s 365/302/419/420/468/471/470/171 PPC /15AA Police Station Saddar, District Mardan. During the course of investigation the appellant made confession in his statement got recorded u/s 161 CrPc. In the whole

episode the appellant extended full co-operation to co-accused in committing the offence whereby a young chap was brutally killed after kidnapping. While rest of the Para is incorrect, because criminal and departmental proceedings are two different entities which can run parallel and the fate of criminal case will have no effects on the departmental proceedings.

- E. Incorrect as discussed earlier, the appellant was issued Charge Sheet with statement of allegation and enquiry was entrusted to the then SP Operations Mardan who during the course of enquiry provided full-fledged opportunity to the appellant for defending himself but he failed to produce any cogent evidence in his defense, he was also issued Final Show Cause Notice to which his reply was received but found un-satisfactory. Moreover, the appellant was also provided right of self defense in Orderly Room on 16.09.2020, but he again failed to justify his innocence, therefore guilt of the accused has been proved to the hilt.
- F. As discussed earlier the respondent department had no grudges / ill-will against the appellant therefore, stance taken by the appellant has no legal footings to stand on.
- G. Incorrect. Para explained earlier needs no comments.
- H. Pertains to record needs no comments.
- I. That the respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

PRAYER:-

It is therefore, most humbly prayed that on acceptance of above submissions, appeal of the appellant may very kindly be dismissed with costs.


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


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


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

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

Service Appeal No. 15181/2020

Ismail Ex-LHC District Police Mardan.....Appellant

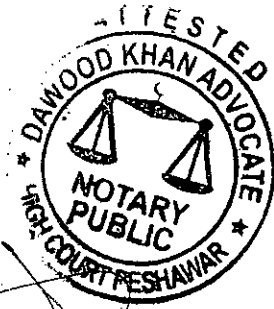
VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others


.....Respondents

COUNTER AFFIDAVIT

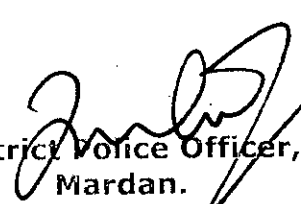
We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.



05 JUL 2021


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

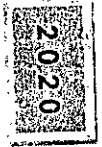

Regional Police Officer,
Mardan
(Respondent No. 02)


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



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

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



No. 261 /PA

Dated 12/5 /2020

DISCIPLINARY ACTION

I, **SAJJAD KHAN (PSP)**, District Police Officer Mardan, as competent authority am of the opinion that **LHC Ismail No.2637**, himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Rules 1975.

STATEMENT OF ALLEGATIONS

Whereas, **LHC Ismail No.2637**, while posted at RRU Mobile-II Katlang Circle (now under suspension Police Lines Mardan), has been involved in a case vide FIR No.323 dated 06-04-2020 U/S 365/302/419/420/468/471/470/170/171/15AA PS Saddar.

For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, **Mr. Waqar Azeem SP/Ops MDN is nominated as Enquiry Officer.**

The Enquiry Officer shall, in accordance with the provision of Police Rules 1975, provides reasonable opportunity of hearing to the accused Police Officer, record/submit his findings and make within (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused Official.

LHC Ismail is directed to appear before the Enquiry Officer on the date + time and place fixed by the Enquiry Officer.


(SAJJAD KHAN) PSP
District Police Officer
Mardan



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

"B"



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

CHARGE SHEET

I, **SAJJAD KHAN (PSP)**, District Police Officer Mardan, as competent authority, hereby charge **LHC Ismail No.2637**, while posted at RRU Mobile-II Katlang Circle (now under suspension Police Lines Mardan), as per attached Statement of Allegations.

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


(SAJJAD KHAN) PSP
District Police Officer
Mardan



0344-9473115
**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

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

2020

No. 73 /PA

Dated 20/7/2020

FINAL SHOW CAUSE NOTICE

LHC Ismail No.2637, while posted at RRU Mobile-II Katlang Circle (now under suspension & Central Jail Mardan), has been involved in a case vide FIR No.323 dated 06-04-2020 U/S 365/302/419/420/468/471/470/170/171/15AA PS Saddar.


In this connection, during the course of Departmental Enquiry, conducted by Mr. Waqar Azeem SP/Operations Mardan vide his office letter No.100/PA, (Ops) dated 24-06-2020, in pursuance of this office Statement of Disciplinary Action/Charge Sheet No.261/PA dated 12-05-2020, holding responsible you of gross misconduct & recommended for ex-parte action/dismissal.

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

Hence, I Dr. Zahid Ullah (PSP) District Police Officer Mardan, in exercise of the power vested in me under Rules 5 (3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you to Show Cause Finally as to why the proposed punishment should not be awarded to you.

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

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

Received by 

Dated: 27/07/2020


(Dr. Zahid Ullah) PSP
District Police Officer
Mardan

Copy to RI/Police Lines (Attention Reader) to deliver this notice upon the alleged official in Central Jail Mardan & the receipt thereof shall be returned to this Office within (05) days for further necessary action.

0931 239 27/07/2020
27/07/2020

کھنڈر، جناب
PRD

D/E = 01/02/2009
G.E 03
B.E 01

جواب لکھنے والے شخص کا نام
برو نمبر 73 فرم 20/07/2020

جواب نمبر 20/07/2020 کے تحت

I۔ یہ کہ میں سائل کے خلاف عدالت کی درخواست نمٹا رہا ہوں۔
6/9/2020

1۔ عدالت اور جج کی طرف سے جو فیصلے دیے گئے ہیں ان سے
میں اس فیصلے میں بالکل بے توجہ رہتا ہوں۔ سائل نے عدالت سے درخواست کی ہے کہ اسے
اپنی درخواست نمٹا دیا جائے۔
2۔ یہ کہ میں عدالت سے درخواست کر رہا ہوں کہ اسے اپنی درخواست نمٹا دیا جائے۔
3۔ یہ کہ میں عدالت سے درخواست کر رہا ہوں کہ اسے اپنی درخواست نمٹا دیا جائے۔

جس کی کاپی 07/08/2020 کو منجور ہے۔

4۔ یہ کہ میں عدالت سے درخواست کر رہا ہوں کہ اسے اپنی درخواست نمٹا دیا جائے۔
مقدمہ کا تفتیش اور عدالت کی فیصلے کا ردی (محلہ کاروائی)
میں احوال بدستور ہیں۔

5۔ یہ کہ میں عدالت سے درخواست کر رہا ہوں کہ اسے اپنی درخواست نمٹا دیا جائے۔
Statement of allegations

شہکار نون (بہن) جو کہ نہیں ہوا ہے۔ درجن میں اور جواب پیش کرتا ہے۔
نیز بہن نے عدالت سے درخواست کی ہے کہ اسے اپنی درخواست نمٹا دیا جائے۔
اس کے دوران قاضی نے عدالت سے درخواست کی ہے کہ اسے اپنی درخواست نمٹا دیا جائے۔
اس کے بعد عدالت نے اسے اپنی درخواست نمٹا دیا ہے۔
Statement of allegations کے تحت فراہم کیے گئے ہیں۔

07/08/2020

ایم اے ایچ (جوائنٹ جوائنٹ) LHC 2637
Chy

DPA

OR
DPA/MDA



No. 73

Head in O.R.

The officer could not satisfy the undersigned regarding his innocence.

He is dismissed from service under the rules (para. 11).

Julius
16-9-2012

phone
no. 8120

OFFICE OF THE
SUPERINTENDENT OF POLICE
OPERATIONS & HEADQUARTERS
MARDAN

Tell: 0937-9230117

Fax: 0937-9230111

E.Mail: Spops1506@gmail.com

'D'

100 /PA,(Ops)

Dated 15/06/2020

The District Police Officer,
Mardan.

Subject:

**DEPARTMENTAL ENQUIRY AGAINST LHC ISMAIL
NO. 2637.**

Memo:

Kindly refer to your office Memo: No. 261/PA dated 12.05.2020 on
the subject noted above.

Allegations:

The subject enquiry proceeding against LHC Ismail No. 2637 was initiated under the allegations that he while posted at RRU Mobile-II Katlang Circle (now under suspension Police lines) has been charged in a case Vide FIR No. 323 dated 06.04.2020 u/s 365/302/419/420/468/471/470/171/15AA Police station Saddar.

Proceedings:

Enquiry proceedings were initiated. Accused official is confined in Central Jail Mardan. A copy of charge sheet along-with statement of allegation was served upon him through office of the Superintendent Central Jail Mardan. But he (accused official) failed to submit his reply so far indicating that he has nothing to present in his defense.

Moreover, as per facts of the case he was involved in the above murder case. During the course of investigation he made confession in his statement got recorded u/s 161 CrPc. In the whole episode he extended full co-operation to co-accused in committing the offense whereby a young chap was brutally killed after kidnapping.

Recommendations:

Forgoing in view, an Ex-parte action is recommended against the accused LHC Ismail No.2637. Any relief at this stage would be deemed to encourage him for doing such like criminal activities in future. His retention in police force may lead to any odd situation. Hence, he may be awarded Major Punishment of Dismissal from Service under Police Rules 1975 amended 2014.

Submitted please.

Superintendent of Police
Operations & Headquarters
Mardan

PA

Issue F.SCN

[Signature]
DPC/MAN

27/07/20

جای عالی

ط
مخبر نامہ شہزاد نور محمد منیر 73/PA 7/20 بجاریہ DPDP دوران

موضوع گرفتگی در اسما میں 2637/LHC جوہر خانہ لکھنؤ اردکان 323
6-4-020

تعمیر لکھنؤ میں گرفتگی دوران میں 365-302-419
420-468-170-171

پہلے شہزاد نور محمد منیر کی گرفتگی دوران کارڈ پائل میں مذکور
سے تصدیق حاصل کی گئی ہے رپورٹ منظر

Ri Police Line
Mardan
29/07/2020

بیان زمین (164) جن فلاسفین

بیان سعد خان درلورستان (کند) و آباد طبرستان که در 33 میل از درلورستان
مردی 5-8297566-16101 که حلف کرد تا کشته شود $\frac{4}{30}$ و گرفت 1250

دو پند و پیغام که در طبرستان آزاد بخشین بین هم از راجع خان صاحب خان کوخسری موزع
شدنشان ناصح به آنکها که اسیران و کفار صومعه $\frac{4}{30}$ که کوخسری حاکم شاه بندگی
به در اجماع از ان امره اصلاح بشناری من در دروغ اسیران بشناری قتل شده کینه
کفایت طبرستان به اسیران کی اطلاع به دست حاکم شاه و کوفه که 1150 که در دروغ
حاکم خان کی قتل شده (اسیران) کی شهادت کی کوه و کوه طبرستان موزع
ناصرح که طفلان موزع 323 مورد $\frac{4}{30}$ 302-345 کتاب که در دروغ
رهنمندی به نیت ناصرح موزع خان کی خلافت و بیرون کوه درلورستان که آن
لقدیر و دستهای کوئی که هم از راجع خان صاحب خان کوخسری و در پیغمبر زاره سنا که موزع
آباد طبرستان کوئی که بخارا رهنمندی در چاه طبرستان کوه کوخسری و در پیغمبر زاره سنا که موزع
به از ران کاشنه شاه حسنای سمران شهر زاره سنا که موزع آباد کوخسری کاشنه
حکم نیت سمران ملک سلطوری طبرستان و کوه طبرستان که در طبرستان و کوه طبرستان
آباد طبرستان نیت حاکم کوخسری طبرستان عاطف دلدو طبرستان سنا که موزع آباد کوخسری
کوه طبرستان $\frac{7}{8}$ منقل فعل سلطوری طبرستان نیت سلطوری طبرستان و کوه طبرستان
کوه طبرستان نیت سلطوری طبرستان 16 شاه طبرستان کوه طبرستان و کوه طبرستان
بخارا نیت حاکم که طبرستان طبرستان کوه طبرستان نیت حاکم کوخسری طبرستان
کوه طبرستان کاشنه عاطف کوخسری طبرستان نیت حاکم کوخسری طبرستان
محمد عثمان کوه طبرستان کوه طبرستان نیت حاکم کوخسری طبرستان نیت حاکم کوخسری طبرستان
ولد طبرستان و کوه طبرستان نیت حاکم کوخسری طبرستان نیت حاکم کوخسری طبرستان
کوه طبرستان نیت حاکم کوخسری طبرستان نیت حاکم کوخسری طبرستان نیت حاکم کوخسری طبرستان

موزع خان

سید احمد

10

P-2

ایک جمعہ صبح ساکنان قندھار نے پندرہ گھنٹے کی مسیبت سے دوپہر
 قریب آزاد واقعہ آباد میں شہادت پور سیداری صورت کار عملہ اسلام آباد 8711
 لہرے سنان فوجی وردی میں ملیر سے الحواد کمرے 20-4-5 کویت مصلح
 کو قتل کیا۔ لاش ہمہ ادرام صاحبہ خان کو سنان میں لہرے نرد اراہنیا
 ایم اے صلیح شہزادری میں کھینکا جہ میں لہرے لہرے اور شہابی لہرے سنان
 کے بہ ادرام صاحبہ خان کو قتل کر لیا کہ سنان کے حاجی ولد سید زارہ
 دے عاطف ولد صلیح آمان سنان قریب آزاد کمرے 33 میں عثمان کمرے سنان
 عرفہ میں ولد سید الہام سنان کھسالی 44 فوسٹ ریلک ولد صلیح صلیح سنان
 گلی باغ 45 میں علی بچہ بچہ عمر 7 میں سید ولد الزور سنان گلی باغ 46
 اسماعیل ولد زوری گلی سنان کمرے 45 آزاد حسین ولد سید زارہ سنان گلی باغ 47
 مافی EXPA ہے

xxx ص 2 ندرار

مقدول

سید سید خان ولد لہرے خان
 سنان قریب آزاد کمرے
 CNIC: 161018-297566-9

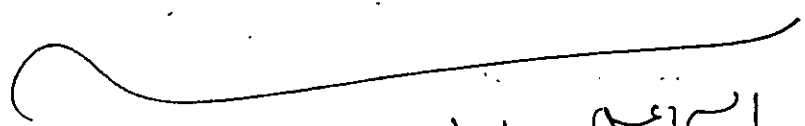
سید سید خان
 قریب آزاد کمرے
 CNIC: 161018-297566-9

7-5-2020

صلیح

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0344.9477495

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

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

2020

No. 3992-95 /PA

Dated 21/10/2020

ORDER ON ENQUIRY OF LHC ISMAIL NO.2637

This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted at RRU Mobile-II Katlang Circie (now under suspension Police Lines Mardan), was placed under suspension and closed to Police Lines vide this office OB No.768 dated 11-05-2020, issued vide order/endorsement No.2481-85/OSI dated 11-05-2020, on account of charging in a case vide FIR No.323 dated 06-04-2020 U/S 365/302/419/420/468/471/470/171/15AA Police Station Saddar and proceeded against departmentally through Mr. Waqar Azeem, the then SP/Operations Mardan vide this office Statement of Disciplinary Action/Charge Sheet No.261/PA dated 12-05-2020, who (E.O) after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.100/PA,(Ops) dated 24-06-2020, recommending the alleged official for Ex-parte action/major punishment of dismissal from service.

In this connection, he was served with a Final Show Cause Notice under K.P Police Rules-1975, issued vide this office No.73/PA dated 20-07-2020, to which, his reply was received and found un-satisfactory.

Final Order

LHC Ismail was heard in O.R on 16-09-2020, but failed to present any plausible reasons in his defense, therefore, awarded him Major Punishment of Dismissal from service with immediate effect, in exercise of the power vested in me under Police Rules-1975.

OB No. 1598

Dated 17/09 2020.

(Dr. Zahid-Ullah) PSP
District Police Officer
Mardan

Copy forwarded for information & n/action to:-

- 1) The SP/Investigation Mardan;
- 2) The DSP/HQrs: Mardan.
- 3) The P.O & E.C (Police Office) Mardan.
- 4) The OSI (Police Office) Mardan with (11) Sheets.

2637

[Handwritten signature]

[Circular stamp]

- 17

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"E"

ORDER.

This order will dispose-off the departmental appeal preferred by Ex-LHC ismail No. 267³⁷ of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded major punishment of dismissal from service vide OB: No. 1598 dated 17.09.2020. The appellant was proceeded against departmentally on the allegations that he while posted at RRU Mobile-II Katlang Circle, was placed under suspension and closed to Police Lines, Mardan on account of involvement in a case vide FIR No. 323 dated 06-04-2020 U/S 365/302/419/420/468/471/470/171/15AA Police Station Saddar, Mardan.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Superintendent of Police Operations, Mardan was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities submitted his findings and recommended the delinquent Officer for ex-parte action by awarding him major punishment of dismissal from service.

He was issued Final Show Cause Notice to which his reply was received and found unsatisfactory. He was also provided opportunity of self defense by summoning him in the Orderly Room held in the office of District Police Officer, Mardan on 16.09.2020. But he failed to advance any cogent reason in his defense. Hence, he was awarded major punishment of dismissal from Service vide OB: No. 1598 dated 17.09.2020.

Feeling aggrieved from the order of District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 06.10.2020.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations leveled against the appellant have been proved beyond any shadow of doubt. During the course of investigation the accused confessed his guilt and circumstantial evidence were also collected which established the nexus of accused with the commission of offence. Moreover, the involvement of appellant in this heinous criminal case is clearly a stigma on his conduct. Hence, the retention of appellant in Police Department will stigmatize the prestige of entire Police Force as, instead of fighting crime, he has himself indulged in criminal activities. Moreover, he

ATTESTED

H

ORDER

18 "E"

could not present any cogent justification to warrant interference in the order passed by the competent authority.

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

Order Announced.


Regional Police Officer,
Mardan.

No. 6310 /ES, Dated Mardan the 12 - 10 - /2020.

Copy forwarded to District Police Officer, Mardan for information and necessary w/r to his office Memo: No. 290/LB dated 01.10.2020. His service record is returned herewith.

(*****)


ATTESTED

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 15181/2020

Ismail Ex-LHC District Police Mardan.....Appellant


VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others


.....Respondents

AUTHORITY LETTER.

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


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


Regional Police Officer,
Mardan
(Respondent No. 02)


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

VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Ismael

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt.

(Respondent)
(Defendant)

I/We, Ismael

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

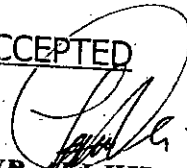
I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding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

Dated _____/2021



(CLIENT)

ACCEPTED



TAIMUR ALI KHAN
Advocate High Court

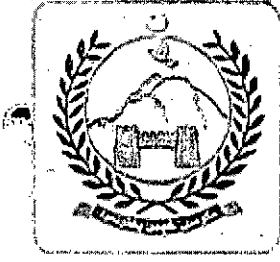
BC-10-4240

CNIC: 17101-7395544-5

Cell No. 0333-9390916

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 918 /ST

Dated: 13-4- /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The District Police Officer,
Government of, Khyber Pakhtunkhwa,
Mardan.

Subject: JUDGMENT IN APPEAL NO. 15181/2020, MR. ISMAIL

I am directed to forward herewith a certified copy of Judgement dated 17.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR.

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

For Appellant
Side Now

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR



APPEAL NO. 6598 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5250

Dated 19/5/2021

Imran-Ud-Din, Ex-S.I No. 1375/P,
Police Station Agha Mir Jani Shah, Peshawar.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Senior Superintendent of Police (Operation) Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE ORDER DATED 28.12.2020 WHEREBY THE
APPELLANT WAS DISMISSED FROM SERVICE AND
AGAINST THE ORDER DATED 20.04.2021 WHEREBY THE
DEPARTMENTAL APPEAL OF THE APPELLANT HAS
BEEN REJECTED FOR NO GOOD GROUNDS.

Filed to-day

Registrar

19/5/2021

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE
IMPUGNED ORDER DATED 28.12.2020 AND 20.04.2021 MAY
KINDLY BE SET-ASIDE AND THE RESPONDENTS MAY BE
DIRECTED TO REINSTATE THE APPELLANT INTO HIS
SERVICE WITH ALL BACK AND CONSEQUENTIAL
BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST
TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY
ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

ATTESTED

~~Khyber
Service
Tribunal
Peshawar~~

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6598/2021

Date of Institution ... 19.05.2021

Date of Decision ... 22.12.2021



Imran-Ud-Din, Ex-S.I No. 1375/P, Police Station Agha Mir Jani Shah, Peshawar
... (Appellant)

VERSUS

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

Asif Yousafzai,
Advocate

... For Appellant

Noor Zaman Khattak,
District Attorney

... For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

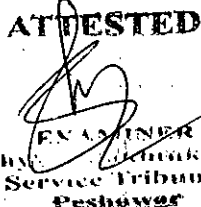
JUDGMENT

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

This single judgment shall dispose of the instant service appeal as well as the connected Service Appeal bearing No. 6599/2021 "titled Sheryar Ahmed Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others" as common question of law and facts are involved therein.

02. Brief facts of the case are that the appellants, while serving as SHOs in police stations; were charged in FIR Dated 24-06-2020 U/Ss 166/342/355PPC read with section 118 & 119 of Police Act, 2017 and section 20/21/22 and 24 of cyber crime Act, 2016. Consequently, the appellants were arrested and proper criminal procedure initiated against them. Simultaneously, departmental proceedings were also initiated against them and were ultimately awarded with

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major punishment of dismissal from service vide order dated 28-12-2020. Feeling aggrieved, the appellants filed separate departmental appeals, which were also rejected vide order dated 20-04-2021, hence the instant service appeals with prayers that the impugned orders dated 28-12-2020 and 20-04-2021 may be set aside and the appellants may be re-instated in service with all back benefits.

03. Learned counsel for the appellants has contended that the impugned orders are against law, facts and norms of natural justice, hence not tenable and liable to be set at naught; that the appellants has not been treated in accordance with law and their rights secured under the Constitution has badly been violated; that the appellants were not afforded appropriate opportunity of defense, as no regular inquiry was conducted against the appellants; that during the course of disciplinary proceedings, the appellants were behind the bars, inspite they were not associated with proceedings of the inquiry, as such the impugned orders are liable to be set aside on this score alone; that neither statements of the witnesses were recorded in presence of the appellants nor any opportunity was afforded to the appellants to cross-examine such witnesses; that the appellants were not directly charged in FIR, but upon the statement of the complainant u/s 164 CrPc, the appellants were nominated in that criminal case; that no statement of the complainant was recorded in presence of the appellants during the inquiry proceedings, which was a mandatory step in disciplinary proceedings; that no charge sheet was communicated to the appellants inspite of the fact that the appellants were in jail and it was very easy for the respondents to serve show cause notice through superintendent of Jail, which however was not done in case of the appellants; that show cause notice was issued to the appellants on 24-12-2020, which was received by Superintendent of Jails on 28-12-2020 and handed over to the appellants on the same day; that on the same day i.e. 28-12-2020, the appellants were dismissed from service, which shows malafide on part of the respondents; that the appellants were involved in a criminal case and as per CSR-

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194-A, the appellants were required to be suspended from service till the conclusion of the criminal case pending against them, but the respondents without waiting for decision in the criminal case, dismissed the appellants from service in violation of CSR-194.

04. Learned District Attorney for the respondents has contended that the appellants were proceeded departmentally on the charges of subjecting one Radiullah alias Aimeray Tehkalay to inhuman and degrading treatment; that a criminal case was also registered against them u/s 166/342/355 PPC read with section 118 and 119 of KP Police Act, 2017 and sections 20/21/22 and 24 of cyber crime Act, 2016; that the appellants were proceeded against departmentally on the same very charges and they were served with charge sheet/statement of allegations and SP City was appointed as inquiry officer; that during the course of inquiry, the inquiry officer found them guilty of the charges leveled against them; that upon receipt of findings of the inquiry officer, the appellants were issued final show cause notices; that after observing all the codal formalities, the appellants were awarded with appropriate punishment of dismissal from service vide order dated 28-12-2020.

05. We have heard learned counsel for the parties and have perused the record.

06. In order to fully appreciate the issue in hand, it would be useful to have a glimpse of the background of the case. Record reveals that a video was made viral on social media by unknown persons, where one Mr. Ridiullah alias Amir Tehkalay can be seen drunken, abusing senior police officers, which attracted wrath of police in shape of an FIR lodged against him in police station Yakatut, thereafter another video of Amir was made viral, where he is seen apologizing for his abusive language in his first video. After few days, another video of the same person went viral, wherein police officials can be seen inflicting brutal torture on him and striping him naked. High-handedness of police in the video came to the

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limelight, which was agitated and condemned from every corner including print and electronic media and which necessitated the senior police officials to take action against those involved in the issue. In the first place, an FIR U/Ss 166/342/355 PPC read with sections 118, 119 of Khyber Pakhtunkhwa Police Act, 2017 and sections 20/21/22/ & 24 of Cyber Crime Act, 2016 dated 24-06-2020 was registered against three police officials, namely ASI Zahir Ullah and constables Tauseef and Naeem, who can be clearly seen in the video. Amir, the victim, was produced before the court of judicial magistrate, who in his statement dated 01-07-2020 recorded U/S 164 CrPc; interalia had divulged that he was tortured by police on the directions of both the appellants, who at that time were SHO PS Yakatut and PS Tehkal, hence names of the appellants were also inserted in the FIR dated 24-06-2020 and both the appellants were arrested on 01-07-2020.

07. On the other hand, departmental proceedings were also initiated against the appellants. Being involved in a criminal case, the respondents were required to suspend the appellants from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellants and dismissed them from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

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08. Placed on record is charge sheet/statement of allegations dated 03-07-2020 containing the charges as discussed above and probable involvement of the appellants in the brutality and recording and making viral the videos of the victim. Record would suggest that such charge sheet/statement of allegations were not served upon the appellants, as the appellants at that particular time were in jail and it was very easy for the respondents to serve it upon the appellants through superintendent Jail, but the respondents confined its proceedings only to the extent of fulfillment of a formality, which shows malafide on part of the respondents. The allegations so leveled against the appellants are mainly based on the statement of the complainant, but it was responsibility of the inquiry officer to prove the charges leveled by the complainant, but the inquiry officer did not bother to conduct a proper inquiry and while sitting in his office, wrote a two page report, which is of no value in the eye of law. The authorized officer failed to frame the proper charge and communicate it to the appellant's alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken into consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was a mandatory pre-requisite, which was to be followed. Reliance is placed on 2000 SCMR 1743.

09. Report of the inquiry so conducted was submitted on 24-11-2020, but it cannot be termed as a regular inquiry, as the same is replete with deficiencies. The inquiry officer did not bother to associate the appellants with the inquiry proceedings knowing the fact that the appellants are behind the bars, rather he has observed in his report that the appellants were called through summons/parwanas to attend his office, but they did not appear before the inquiry officer. It is ridiculous on part of the inquiry officer summoning a person, who is behind the bars and not taking the pain to attend to them in jail, which clearly shows that neither the appellants were associated with proceedings of the

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inquiry nor were they afforded any opportunity to defend their cause. Such an act on part of the inquiry officer is a clear manifestation of professional dishonesty and shirking responsibility, which raises a question as to what would be the evidentiary value of the contents of the inquiry report. The appellants were very clearly discriminated, which however was not warranted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

10. In the inquiry so conducted, no effort has been made to prove the charges leveled against them, nor statements of any witnesses were recorded. In absence of any solid proof, the inquiry officer only relied on his own wisdom. In a manner, the appellants were deprived of the right to cross-examine witnesses resulting in manifest injustice. Reliance is placed on 2008 SCMR 609 and 2010 SCMR 1554. Since the appellants were in jail, hence, they were unable to appear before the inquiry officer, but the inquiry officer was duty bound to associate them even in jail and to afford them opportunity of personal hearing, which however was not afforded by the respondents and which smacks malafide on part of the respondents. It is a cardinal principle of natural justice of universal application that no one should be condemned unheard and where there was likelihood of any adverse action against anyone, the principle of Audi Alteram Partem would require to be followed by providing the person concerned an opportunity of being heard. The inquiry officer mainly relied on hearsay with no solid evidence against the appellants. Mere reliance on hearsay and that too without confronting the appellants with the same had no legal value and mere

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presumption does not form basis for imposition of major penalty, which is not allowable under the law.

11. The respondents issued final show cause notice on 24-12-2020 asking the appellants to respond within seven days of the receipt of such notice. Record would suggest that such notice was received by Superintendent of Jail on 28-12-2020 and was delivered to the appellants the same day, but the respondents were bent upon removing the appellants from service, hence issued their dismissal order on 28-12-2020 without waiting for reply of the appellants, which shows a clear malafide on part of the respondents. We are conscious of the fact that the issue sparked the sense of insecurity at the hands of uniform personnel, besides creating panic in the society, which ultimately created uproar. In order to pacify the sentiments of public, the haste of respondents in making someone a scapegoat is understandable, but awarding major punishment without proving the guilt is not appropriate. Purpose of deterrent punishment is not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of society. Concept of minor penalty in law was to make an attempt to reform the individual wrong doer. In service matter, extreme penalty for minor act depriving a person from right of earning livelihood would defeat the reformatory concept of punishment in administration of justice. Reliance is placed on 2006 SCMR 60.

12. Though the appellants were granted bail by order of the Supreme Court of Pakistan vide judgment dated 18-12-2020, but due to a typographical error in the bail granting order, another order was issued by Supreme Court of Pakistan vide judgment dated 24-02-2021 and the appellants were released on bail on 26-02-2021. The criminal case is still pending against the appellants, which will be decided on its own merits in due course of time, but it is a well settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered

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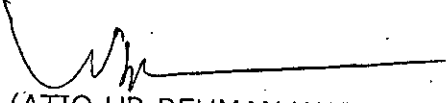
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opinion that the departmental proceedings were not conducted in accordance with law. The authority, authorized officer and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. The allegations so leveled had not been proved. The appellants suffered for longer for a charge, which is not yet proved.

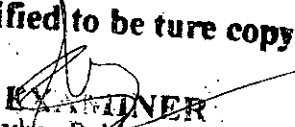
13. In circumstances, the instant appeal as well as connected Service Appeal bearing No. 6599/2021 "titled Sheryar Ahmed Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others" are accepted. The impugned orders dated 28-12-2020 and 20-04-2021 are set aside and the appellants are re-instated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the provisions contained in Rule 16:2(2) of Police Rules, 1934, if decision in the criminal case was found adverse. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
22.12.2021


(AHMAD SULTAN TAREEN)
CHAIRMAN)


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

Certified to be true copy


KHATIR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah

C.P.1641-L/2018

(Against the judgment of Punjab Service Tribunal, Lahore
dated 16.04.2018, passed in Appeal No.3719/2015)

Chief Secretary, Government of the Punjab, Lahore, etc.

.....Petitioner(s)

Versus

Parveen Shad, etc.

.....Respondent(s)

For the petitioner(s): Rana Shamshad Khan, Addl. A.G. Pb.
a/w Sh. Waqas Law Officer.

For the respondent(s): Mr. Safdar Shaheen Pirzada, ASC.

Date of hearing: 08.02.2021

ORDER

Syed Mansoor Ali Shah, J. The question of law before us is whether the respondents, who were initially appointed on contract basis and were subsequently regularized are entitled to pay protection for the period they remained on contract. In other words whether a contractual employee is entitled to the last salary, including all the increments earned and added to his salary over the years at the time of his regularization.

2. Clause 6 of the Notification dated 19.10.2009 issued by the School Education Department, Government of the Punjab, states as follows:-

"6. The salary component of such employees shall be in accordance with the pay scales plus the usual allowances prescribed for the posts against which they are being appointed. They will, however, not be entitled to the payment of 30% social security benefit in lieu of pension or any other pay package being drawn by them. However, pay of the contract employees being appointed in the basic pay scales shall be fixed at the initial of the respective pay scales and the increment(s) already earned during the contract appointment period shall be converted into Personal Allowance." (emphasis supplied)

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3. Learned Addl. A.G. submits that the respondents were appointed on contract in the year 2000 and their services were regularized from the date of Notification dated 19.10.2009, however, they were regularized on their initial pay as it stood in the year 2000, and the subsequent increments in the salary over the next nine years were not included in the salary, but instead, were separated from the salary and converted into Personal Allowance, which was granted to the respondents at the time of regularization. Addl. A.G. when asked whether by not including the increments in the salary under clause 6 of the Notification and converting them into Personal Allowance, the terms and conditions of service of the respondent employees were adversely affected, in as much as, they would not enjoy the same financial benefits which they would have, had their final salary been considered at the time of regularization. He pointed out that by converting the increments received by the respondents over the years into Personal Allowance and reversing their salary to the initial salary, all the future increments and benefits would be denominated with the initial salary thereby adversely affecting the financial prospects of the respondents.

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4. We have examined the said Notification and are of the view that clause 6 reproduced hereunder is not only harsh and unreasonable but also offends the right to livelihood and right to dignity ensured by the Constitution under Articles 9 and 14 of the Constitution. It is absurd to imagine that a contractual employee who has served the department for over nine years and has earned increments, upon regularization is taken back in time and given the initial salary on which he started his contractual service career almost a decade back. Regularization is a step up and must provide better terms and conditions of service, if not the same. Regularization cannot make the employee worse off by reducing his salary and going back in time by almost a decade and making the employee start all over again on his initial salary. q

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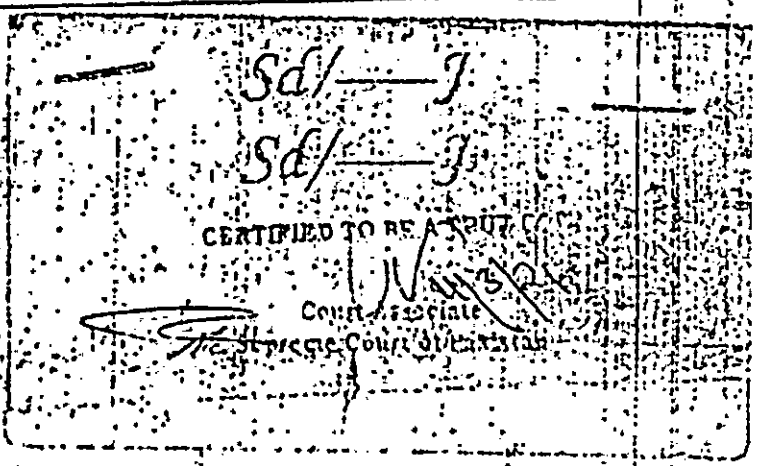
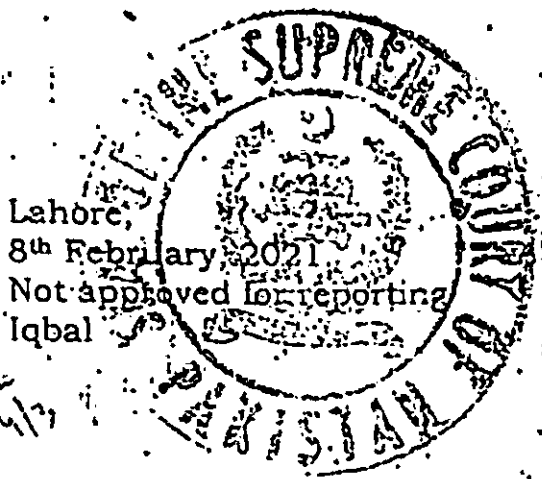
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C.P.1641-L of 2018

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5. For the above reasons, we are in agreement with the reasoning of the impugned judgment and therefore are not inclined to interfere in the impugned judgment. Therefore, this petition is dismissed and leave refused.



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