

186/2020

01.09.2020

Nemo for the appellant.

On the last date of hearing notice was required to be issued to the appellant/counsel for hearing today. The record shows that learned counsel for the appellant was duly served with a notice through registered post, despite, no one is in attendance on behalf of the appellant. It is already past 02.30 P.M while the case has been called several times.

Dismissed for non-prosecution. File be consigned to the record.



Chairman

ANNOUNCED

01.09.2020

24.02.2020

Appellant in person present and seeks adjournment as his counsel is not available. Adjourn. To come up for preliminary hearing on 09.04.2020 before S.B.



Member

09.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 02.07.2020 for the same. To come up for the same as before S.B.



Reader

02.07.2020

Nemo for the appellant.

On the last date of hearing, the matter was adjourned through reader's note, therefore, notice be issued to the appellant/counsel for 01.09.2020 before S.B. Adjourned.

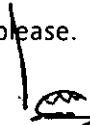


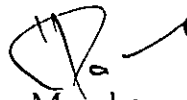


Chairman

FORM OF ORDER SHEET

Court of _____

Case No.- 186/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/01/2020	<p>The appeal of Mr. Nihad Khan presented today by Mr. Muhammad Adam Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR - 6/1/20</p>
2-	07/01/20	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21/01/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	21.01.2020	<p>Appellant present in person. Requests for adjournment due to general strike of the Bar. Adjourned to 24.02.2020 before S.B.</p> <p style="text-align: right;"> Chairman</p>
	24.02.2020	<p>Appellant in person present and seeks adjournment as his counsel is not available. Adjourn. To come up for preliminary hearing on 09.04.2020 before S.B</p> <p style="text-align: right;"> Member</p>

BEFORE THE SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 186 /2019.

Nihad Ali V/S The Police Deptt; etc;

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Total 16

Dated: 04.01.2020.
(Saturday)

APPELLANT


(Nihad Ali)

Through;


Muhammad Adam Khan
Advocate Mardan

Before The Service Tribunal Peshawar.

Service Appeal No. 186 /2020.

Nihad Ali (Ex-HC-2942, Police lines, Mardan).

Versus

Appellant.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 201

Dated 06/11/2020

1. The Secretary, Home Department, K.P, Peshawar.
2. The District Police Officer, Mardan.
3. The Regional Police Officer, Mardan.
4. The Police Chief/ The inspector General of Police,
Deptt; K.P Peshawar.

Respondents.

Filed to-day

Registrar

6/11/20 Appeal under Section-4 of the Service Tribunal Act, 1974, against the order of The DPO/ Respondent No.2 contained in O.B No.2174 dated 09.10.2019 (Endst No.7588-84/PA dated 10.10.2019), whereby the Appellant is awarded the punishment of "reduction in rank by one step" and Appeal thereagainst rejected by The RPO/Respondent No.3, on 05.12.2019.

FACTS: -

1. That the Appellant was appointed as constable in Police Deptt, Mardan on 05.09.2009.
2. That the Appellant was placed under

suspension on disciplinary grounds vide order dated 27.06.2019.

(Copy Annexure "A").

3. That the Appellant was served with the Charge Sheet and statement of allegation on 03.07.2019. (Copy Annexure-"B" to "C".)

4. That Appellant submitted defence reply on 05.07.2019. (Copy Annexure-"D").

5. That the Appellant was served with the final Show Cause Notice dated 06.08.2019.

(Copy Annexure-"E").

6. That Appellant submitted defence reply there to. (Copies Annexure "F").

7. That the DPO/Respondent No.2 awarded the Appellant with major penalty of "reduction in rank by one step vide O.B No.2174 dated 09.10.2019, (Endst; No.7588-84/PA dated 10.10.2019. (Copy Annexure-"G").

8. That the Appellant preferred representation thereagainst to the RPO/Respondent No.3 on 19.10.2019. (Copy Annexure-"H").

9. That the Representation inquestion was rejected vide Endorsement No.13805/ES dated 05.12.2019.

GROUND S :-

A. That the proceedings are not conducted under the relevant

disciplinary rules. Thus, the Appellant is condemned unheard.

B. That the prosecution witnesses, even the alleged, complainant was not examined in presence of Appellant. Hence, the Appellant is condemned unheard.

C. That even if any person is examined, he having not been subjected to the test of cross-examination, his testimony has no force under the law.

D. That the charge levelled against the Appellant is incorrect & false. He had not involved himself in the commission of alleged offence.

E. That the defence point of Appellant is not taken in consideration at any stage.

F. That barden of proof was illegally shifted to Appellant.

G. That the copies of the relevant documents were not provided to Appellant with the charge Sheet.

H. That the suspension period illegally prolonged beyond the period of three months, which is violation of the relevant rules.

I. That the copy of enquiry report was not supplied to Appellant with the final Show cause Notice.

J. That the previous service record of Appellant, prevailing over Eleven years has been clean, throughout.

K. That the Appellant seeks leave of this Honourable Tribunal to claim further grounds also.

It is prayed that on acceptance of this Appeal, setting aside the impugned order, the Appellant may be ordered to be exonerated from the allegations, as leveled against him.


The cost of this appeal may be awarded in favour of Appellant against the Respondents.

Dated:- 04.01.2019.
(Saturday)

Appellant


(Nihad Ali)

Through:-

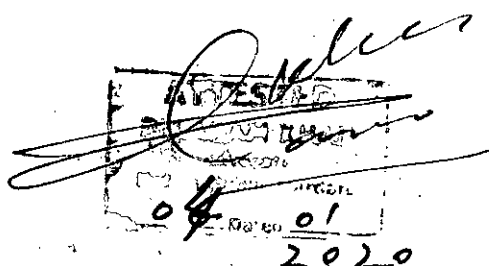

Muhammad Adam Khan
Advocate Mardan.

AFFIDAVIT

I, Nihad Ali Appellant, do hereby state on solemn affirmation that the contents of this appeal are true and correct to the best of my knowledge and belief.

Deponent


Nihad Ali





P/5
**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN.**

Tel No. 0937-9230109 & Fax No. 0937-9230111

Email dpo_mardan@yahoo.com

Facebook: District Police Mardan

Twitter: @dpomardan

Annexure :- A

2019
ATTESTED
Adam Khan

ADAM KHAN

ORDER

Consequent upon the complaint report vide DD No. 10 dated 25.06.2019 Traffic Office, Head Constable Nihad Ali No. 2942 is hereby placed under suspension with immediate effect, for his negligence and inefficiency.

OB No. 1364

Dated 26/06/2019


District Police Officer
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER MARDAN.

No. 3916-20 OSI, dated Mardan the 27/06/2019

Copies are forwarded to the:-

1. DSP Traffic, Mardan
2. DSP HQrs: Mardan.
3. Pay Officer to Stop Pay.
4. EC.
5. PA to issue Charge Sheet & Summary of allegation to the defaulter Head Constable.

A

26/6



(7) P/6
OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

ANNEXURE "B"


ATTESTED
Adam Khan
ADAM KHAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

CHARGE SHEET

I, SAJJAD KHAN (PSP), District Police Officer Mardan, as competent authority, hereby charge HC Nihad Ali No.2942, while posted as T.O (now under suspension Police Lines), 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

V

B



OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

ANNEXURE

ATTESTED
ADAM KHAN

No. 257 /PA

Dated 3/7/2019

DISCIPLINARY ACTION

I, SAJJAD KHAN (PSP), District Police Officer Mardan, as competent authority am of the opinion that HC Nihad Ali No.2942, himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Rules 1975.

STATEMENT OF ALLEGATIONS

Whereas, HC Nihad Ali No.2942, while posted as T.O. (now under suspension Police Lines), challaned one Bashir Hussain Shah Son of Syed Latif Shah Resident of Rawalpindi by fining Rs.2520/-, but when the said challan was checked at concerned Bank, it was found that out of total fine/amount, only Rs.300/- was deposited at Bank and the rest of Rs.2200/- was embezzled/taken by T.O Nihad Ali vide Naqal Mad No.10 dated 25-06-2019 Traffic Office Mardan, lodged by TI Amjid Khan.

For the purpose of scrutinizing the conduct of the said accused official with reference to the above-allegations, Mr. Mushtaq Ahmed SP/Operations Mardan 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.

HC Nihad Ali 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

4/7/2019
last date 11/7/2019

C

P/8

ANNEXURE

ATTESTED
Adam Khan
ADAM KHAN

To

The District Police Officer,
Mardan.

Sub:- DEFENCE REPLY IN RESPECT OF CHARGE SHEET
DATED 03.07.2019.

Sir,

With reference to the charge sheet vide
Endorsement No. 257/PA dated 03.07.2019.

It is submitted that I had not committed the
said act willfully or malfidely.

In fact, the complainant was correctly charged
for Rupees 2520/- in the light of the violation of
numorous traffic offence committed by him.

On checking of the Challan Book, I noted that
all the three copies of tickets No. 4 and 6 were missing
therefrom. Since, in routine I charge fine between
Rs.300/00 and Rs.500/00 Ordinarily except in certain
cases in which numerous offence of violation of the
traffic Rules. Hence I deposited Rs.300/- in the relevant
case also. Yet, on disclosure of the case in hand, I

was deposited with the Reader of the Incharge
Traffic Inspector.

I apprehend that the two missing Tickets might have
been given to the relevant Offender due to rush of
vehicles and acute heat i.e. at about 1100/1200
O.Clock.

I had not misappropriated the amount malafidely.

I am innocent in the connection.

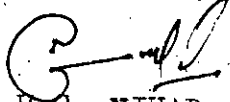
My 10/11 years long standing services is clean
through-out.

I have to support old parents and other family
Members including a kid also.

I assure yourself that I shall remain more
vigilant in future.

It is requested that I may kindly be exonerate from
the alleged offences and oblige.

Yours Obediently,


(H.C. NIHAD ALI)

No. 2942

Mardan Police.

Dated: 05.07.2019.



OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

ANNEXURE

ATTESTED
ADAM KHAN

No. 231 /PA

Dated 6 / 08 /2019

FINAL SHOW CAUSE NOTICE

Whereas, you LHC Nihad Ali No.2942, while posted as T.O (Now under suspension Police Lines), challaned one Bashir Hussain Shah Son of Syed Latif Shah Resident of Rawaipindi by fining Rs.2520/-, but when the said challan was checked at concerned Bank, it was found that out of total fine/amount, only Rs.300/- was deposited at Bank and the rest of Rs.2200/- was embezzled/taken by you vide Naqal Mad No.10 dated 25-06-2019 Traffic Office Mardan, lodged by TI Amjid Khan.

In this connection, during the course of Departmental Enquiry, conducted by Mr. Mushtaq Ahmed SP/Operations Mardan vide his office letter No.346/PA (Ops) dated 16-07-2019, in pursuance of this office Statement of Disciplinary Action/Charge Sheet No.257/PA dated 03-07-2019, holding responsible you of gross misconduct and recommended for suitable punishment.

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

Hence, I Sajjad Khan (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: 7 / 08 /2019

(SAJJAD KHAN) PSP
District Police Officer
Mardan

Copy to R.I. Police Lines to deliver this Notice upon LHC Nihad Ali No.2942 & the receipt thereof shall be returned to this office within (05) days positively for onward necessary action.

P/11

"E"

ANNEXURE

(بیان ازاں نہاد علی LHC بلک نمبر 2942)

ATTESTED

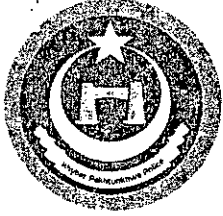
Adam Khan
ADAM KHAN

بحوال فائنل شوکا ز نمبر 231/PA مورخہ 06.08.2019 مجاریہ دفتر جناب ڈسٹرکٹ پولیس آفیسر

صاحب ضلع مردان معروض خدمت ہونکہ من سائیل نے ایک تحریری خود وضاحتی بیان ڈیپارٹمنٹل انکوائری میں جمع کیا تھا جسکی بنیاد پر من سائیل کو فائنل شوکا ز نوٹس دیا گیا ہے اس سلسلہ میں میری وہی بیان میرا بیان تصور کیا جائیں۔
سابقہ بیان کی ایک عدد نقل کاپی ہمراہ لف بیان ہذا ہے۔ من سائیل خاندان کا واحد کفیل ہوں اور غریب گھرانے سے ہوں افسران بالا سے رحم کی استدعا کرتا ہوں۔

العارض!

نہاد علی نمبر 2942 انڈر پشن حال پولیس لائن مردان



(4) P/12

"G"

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

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

ANNEXURE

NOTED
ATTESTED
Adam
ADAM KHAN

No. 7582-84/PA

Dated 10/10/2019

ORDER ON ENQUIRY OF HC NIHAD ALI NO.2942

This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted as T.O (Now under suspension Police Lines Mardan), was placed under suspension and closed to Police Lines vide this office OB No.1364 dated 26-06-2019, issued vide order/endorsement No.3916-20/OSI dated 27-06-2019, on account of challaning one Bashir Hussain Shah Son of Syed Latif Shah Resident of Rawalpindi by fining Rs.2520/-, but when the said challan was checked at concerned Bank, it was found that out of total fine/amount, only Rs.300/- was deposited at Bank and the rest of Rs.2200/- was embezzled/taken by T.O Nihad Ali vide Naqal Mad No.10 dated 25-06-2019 Traffic Office Mardan, lodged by T.I Amjid Khan, therefore, he was proceeded against departmentally through Mr. Mushtaq Ahmad SP Operations Mardan vide this office Statement of Disciplinary Action/Charge Sheet No.257/PA dated 03-07-2019, who (E.O) after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.346/PA (Ops) dated 16-07-2019, recommending the alleged official for suitable punishment.

In this connection, the alleged official was served with a Final Show Cause Notice, under K.P Police Rules-1975, issued vide this office No.231/PA dated 06-08-2019, to which, his reply was received & found unsatisfactory.

Final Order

HC Nihad Ali was heard in O.R on 08-10-2019, who failed to present any plausible reasons in his defense, therefore, awarded him **major punishment of reducing in rank by one step** & is reinstated in service from the date of suspension with counting his suspension's period as duty with immediate effect, in exercise of the power vested in me under Police Rules-1975.

OB No. 7174

Dated 9/10/2019

(Signature)
(SAJJAD KHAN) PSP
District Police Officer
Mardan

Copy forwarded for information & n/action to:-

- 1) The DSP/HQrs: Mardan.
- 2) The PO & E.C (Police Office) Mardan.
- 3) The OSI (Police Office) Mardan with () Sheets.

P/13

"H"

To

ANNEXURE

The Regional Police Officer,
Mardan Region, Mardan

ATTESTED

Adam Khan
ADAM KHAN

Subject:- Representation against the order of the D.P.O Mardan vide order dated 10.10.2019, awarding the punishment of "Reduction in rank by one step".

Sir,

Reference to the captioned order, whereby I am awarded the punishment of "reduction in rank by one Step", by the D.P.O Mardan.

It is Submitted that the impugned order is unjustified, illegal and too harsh in the circumstances of the case. Hence, the same is liable to be set-aside on the grounds mentioned below:-

1. That the inquiry in question was not conducted under the provisions of the relevant disciplinary rules, unto the relevant persons were not examined in the presence of appellant, during the inquiry proceedings and thus, the Appellant was not provided the opportunity of cross-examination.
2. That the copies of the relevant documents, were not provided to appellant with the charge-sheet.
3. That the suspension period was illegally prolonged beyond the requisite period of three months, which is in violation of the relevant rules.
4. That my previous service

9/14

records prevailing over eleven (11) years is clean through-out.

5. That defence points, as mentioned, in my defence reply dated 05.07.2019 to the charge-sheet are not taken into consideration.

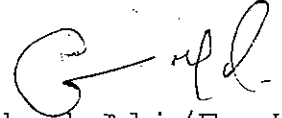
~~6. That I have been jobless after the impugned order.~~

Copy attached herewith.

It is requested that on acceptance of this Appeal, the impugned order may be set-aside and I may kindly be exonerated from the charges as leveled against me.

Dated. 19-10-2019

Your's obediently



(Nihad Ali/Ex.HC)
No.2942 Mardan
Police.

①
P/15
ANNEXURE 2
ATTESTED
ADAM KHA

ORDER.

This order will dispose-off the departmental appeal preferred by **Head Constable Nihad Ali No. 2942** of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded major punishment of Reduction in rank by one step i.e from the rank of Head Constable to his substantive rank of Constable vide OB No. 2174 dated 09.10.2019.

Brief facts of the case are that, the appellant, while posted as Ticketing Officer was placed under suspension and closed to Police Lines, on account of challaning one Bashir Hussain Shah Son of Syed Latif Shah resident of Rawalpindi by fining him Rs.2520/-, but when the said challan was checked at concerned Bank, it was found that out of total fine/amount, only Rs.300/- had been deposited at Bank and the rest of Rs.2200/- had been allegedly embezzled/taken by Ticketing Officer Nihad Ali. A report to this effect was lodged vide DD No.10 dated 25-06-2019 at Traffic Office Mardan by Traffic Incharge Amjid Khan. Consequently, proper departmental enquiry proceedings were initiated against him. He was issued charge sheet alongwith statement of allegations and enquiry was entrusted to Mr. Mushtaq Ahmad, Superintendent of Police Operations Mardan. The Enquiry Officer after fulfilling necessary formalities, submitted his finding report and recommended the delinquent official for suitable punishment.

He was served with a Final Show Cause Notice, to which, his reply was received and found unsatisfactory. He was also provided opportunity of self defence by summoning him in the orderly Room, by the competent authority. But he failed to advance any cogent reasons in his defence, therefore he was awarded the aforementioned punishment.

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 03.12.2019.

From the perusal of Enquiry file and material available on record the charges against the appellant have been proved beyond any shadow of doubt. Besides, the appellant failed to present any cogent reasons in his defence to justify his innocence. Moreover, the competent authority has already treated the appellant leniently.

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

Order Announced.


**Regional Police Officer,
Mardan.**

No. 13805 /ES,

Dated Mardan the 05 - 12 - /2019.

Copy forwarded to District Police Officer, Mardan for information and necessary w/r to his office Memo: No. 449/LB dated 14.11.2019. His Service Record is returned herewith.

(*****)

VAKALAT NAMA

In the Court of

Service Tribunal Peshawar

Appeal

No.

of 2020

Nihad Ali

(Petitioner)

(Plaintiff)

(Appellant)

VERSUS

The Police Deptt, etc;

(Respondent)

(Defendant)

I/We

Nihad Ali

the

above noted

Appellant

do

hereby appoint and constitute **Muhammad Adam Khan, Advocate Mardan** as Counsel in subject proceedings and authorize him to appear, plead etc., compromise, withdraw or refer to arbitration for me/us, as my/our Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated: _____

(Nihad Ali)

(Signature of Client)

(Signature)

Accepted

MUHAMMAD ADAM KHAN
B.A LLB Advocate
High Court Mardan

N.W.F.P. Bar Council

ADVOCATE
High Court

ADAM KHAN

No. DC-09-0600

A. Jahan
Secretary's Signature

Father's Name: BADSHAH GUL
Address: VILL. GOJARIGARHI DISTT. MARDAN

Office Tel: 0931-630133 Fax: 0931-63450
Enrolment Date: LC: 03/08/1978
Enrolment Date: H.C: 31/05/1990
Place of Practice: MARDAN
Date of Birth: 04/04/1945
Blood Group: AB+VE
N.I.C.No: 6102-1512619-5

N.W.F.P. BAR COUNCIL