

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15576/2020

Date of Institution ... 03.12.2020

Date of Decision ... 13.01.2022

Zakir Ullah S/O Babri Gul R/O Landi Jalandher, Domel, Tehsil Domel, District Bannu, Ex-Constable (1436), District Police, Bannu.

... (Appellant)

VERSUS

District Police Officer, DPO, Bannu and four others.

... (Respondents)

Farhan Ullah Shahbanzai,
Advocate

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

ROZINA REHMAN

...

MEMBER (JUDICIAL)

ATIQ-UR-REHMAN WAZIR

...

MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-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 dated 15-05-2018 U/S 9 CNSA and was arrested. Simultaneously, the appellant was proceeded against departmentally, and was ultimately dismissed from service vide order dated 22-06-2018, but in criminal case the appellant was acquitted of the charges by the Honorable High Court vide judgment dated 08-09-2020 and after release from jail, the appellant filed departmental appeal dated 28-10-2020, which was rejected vide order dated 13-11-2020, hence the instant service appeal with prayers that the impugned orders dated 22-06-2018 and 13-11-2020 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 impugned orders are against law, facts and norms of natural justice, hence are liable to be set aside; that the appellant has not been treated in accordance with law, as the appellant was not associated with proceedings of the inquiry; that the appellant was not afforded appropriate opportunity of defense, as such basic principle of natural justice is violated in the case of the appellant; that the appellant was exonerated of the same charges, upon which he was dismissed from service, hence there remains no reason to maintain the penalty so awarded; that absence of the appellant was neither willful nor intentional, rather due to compelling reasons of his arrest due to involvement in a criminal case, thus the same cannot be treated a ground for dismissal of the services of the appellant; that after his acquittal from the criminal case, the appellant filed departmental appeal within a period of one month, which was required to be considered in light of police rules 1934.

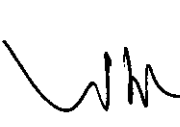
03. Learned Deputy District Attorney for the respondents has contended that the appellant was charged in an FIR Dated 15-05-2018 U/S 9CNSA(C); that due to criminal charges against him, the appellant was proceeded departmentally by serving a proper charge sheet/statement of allegation and DSP Headquarter was appointed as inquiry officer; that after impartial inquiry the appellant was found guilty of misconduct and was recommended by the inquiry officer for major punishment, hence he was awarded major penalty of dismissal from service vide order dated 22-06-2018.

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

05. Record reveals that the appellant was charged in FIR Dated 15-05-2018 u/s 9 CNSA and was arrested on the spot. Simultaneously departmental proceedings were also initiated against him and because of departmental proceedings, the appellant was dismissed from service vide order dated 22-06-

2018. In the meanwhile, the appellant was acquitted of the charges by the competent court of law vide judgment dated 08-09-2020.

06. Being involved in a criminal case, the respondents were required to suspend the appellant 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 appellant 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. The respondents however did not honor their own rules and dismissed the appellants in violation of rules.

07. As per provisions contained in Section 16:3 of Khyber Pakhtunkhwa Police Rules, 1934, the respondents were bound to re-instate the appellant after earning acquittal from the same charges, upon which the appellant was dismissed from service, but the respondents despite his acquittal, did not consider his departmental appeal ignoring the verdict of the court as well as of Police Rules, 1934. The respondents also violated section-54 of Fundamental Rules by not reinstating the appellant after earning acquittal from the criminal charges. In a manner, the appellant was illegally kept away from performance of his duty. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities

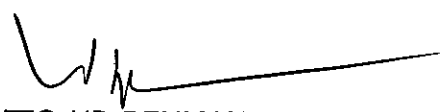
to take action and impose major penalty. Reliance is placed on 2003 SCMR 207, 2002 SCMR 57 and 1993 PLC (CS) 460.

08. Dealing with the question of delay in submission of departmental appeal, it is pointed out that the appellant preferred departmental appeal within one month after his acquittal from the criminal charge, which was well within time as the Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well-settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.

09. Needless to mention that disciplinary proceedings so conducted are also replete with deficiencies as the appellant was kept deprived of the opportunity to defend his cause. In view of the foregoing discussion, the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
13.01.2022


(ROZINA REHMAN)
MEMBER (J)

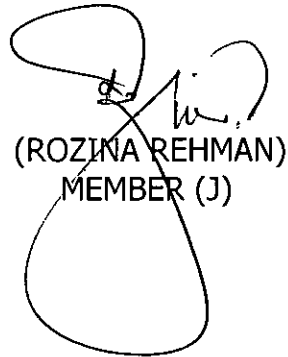

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

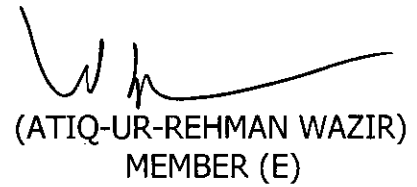
ORDER
13.01.2022

Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah,
Deputy District Attorney for the respondents present. Arguments heard
and record perused.

Vide our detailed judgment of today, separately placed on file, the
instant appeal is accepted as prayed for. Parties are left to bear their own
costs. File be consigned to record room.

ANNOUNCED
13.01.2022


(ROZINA REHMAN)
MEMBER (J)


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

10.01.2022

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

Learned Member Judicial (Rozina Rehman) is on leave, therefore, order could not be announced. To come up for order before the D.B on 13.01.2022



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

06.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 13.07.2021 for the same as before.


READER

13.07.2021

Nemo for the appellant. Mr. Kabirullah Khattak, Addl. AG alongwith Yaqub, H.C for the respondents present.

Respondents have furnished reply/comments. The appeal is entrusted to D.B for arguments on 01.12.2021.



Chairman

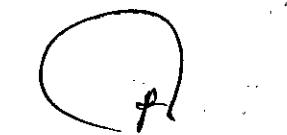
01.12.2021

Counsel for appellant present.

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

Arguments heard. To come up for order on 12.01.2022 before D.B.


(Atiq ur Rehman Wazir)
Member (E)



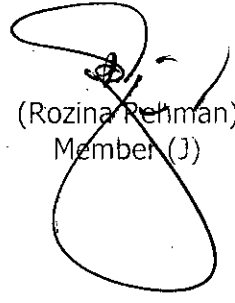

(Rozina Rehman)
Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 15576 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/12/2020	<p>The appeal of Mr. Zakirullah presented today by Mr. Farhanullah Shahabanzai 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>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>18/01/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	18.01.2021	<p>Appellant present through counsel. Preliminary arguments heard. File perused.</p> <p>Points raised need consideration. Admitted to regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for written reply/comments. To come up for written reply/comments on 06.04.2021 before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>

Appellant Deposited Security & Process Fee
18/1/21

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Appeal No. _____ / 2020

Zakir Ullah

.....Appellant.

VERSUS

DPO, Bannu & another.

.....Respondents.

I N D E X

Sr. No.	Description of Documents	Annexure	Page No.
1)	Memo of Appeal Along with Affidavit and Addresses of the Parties		1-7
2)	Copy of FIR No.151, dated:15-05-2018	A	8-9
3)	Copy inquiry report dated: 21-06-2019, B/c	B	10-15
4)	Copy of Impugned order of respondent No.01, dated: 22-06-2018, B/c	C	16-17
5)	Copies of appeal and order & judgment of appellate court dated:08-09-2020	D & E	18-32
6)	Copies of Departmental Appeal & impugned order of respondent No.04, dated: 13-11-2020	F & G	33-34
7)	Waqalat Nama		35

ذکر اللہ
APPELLANT.

Dated; 03/12/2020.

Through:-


(Farhan Ullah Shahbanzai)
Advocate High Court,
PESHAWAR

Cell No.0321-9171522

Office- F.F :30, 5th Floor, Bilour Plaza Peshawar Cantt,

Email : farhanullah190@gmail.com

①

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Appeal No. 15576 / 2020

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 16059

Dated 03/12/2020

Zakir Ullah S/O Babri Gul R/O Landi Jalandher, Domel, Tehsil Domel,
District Bannu, ex. Constable (1436), District Police, Bannu.

.....Appellant.

V E R S U S

- 1) District Police Officer, DPO, Bannu.
- 2) Superintendent of police, Investigation, Police Headquarters, Bannu.
- 3) Deputy Superintendent of police, Headquarters, Bannu.
- 4) Deputy Inspector General of Police Bannu, Region Bannu.
- 5) Regional Police Officer, Bannu Region, Bannu.

.....Respondents.

APPEAL U/S 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974
AGAINST THE ORDERS DATED:22/06/2018 of respondent
No.01 and 13/11/2020, of respondent No.04, WHEREBY
DEPARTMENTAL APPEAL OF THE APPELLANT WAS
DISMISSED BY RESPONDENT NO.04 AND EARLIER ORDER
OF RESPONDENT NO.1 OF THE APPELLANT TERMINATION
FROM SERVICE WAS MAINTAINED.

Filed to-day

ew
Registrar

3/12/2020

PRAYER

On acceptance of the appeal the both the order dated:
22/06/2018 & 13/11/2020 of respondents No.1 & 4, may
graciously be set aside, and the appellant may graciously
be reinstated in service with all back benefits etc, and any
other orders deem proper may also be passed in the
matter.

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Respectfully Sheweth:-

1. That the appellant was appointed as Constable (BPS-05), in the police department vide office order dated:09-06-2007, and during his entire service he has got no adverse remarks or any other charge and as such having an excellent record and spot less service.

2. That on 15/05/2018 the appellant was coming from Thall Bazaar to Bannu, in the meantime a motorcar came the appellant inquired from the driver that whether he is going to Bannu as such appellant boarded in the said motorcar at Rs.700/- fare, as the motorcar reached Gurguri Police Station, at Kundi Check post, Karak, it was stopped and on checking the alleged contrabands was recovered, as petitioner has got no conscious knowledge about the alleged contrabands being a front seater, as such police officials charged appellant in false and concocted criminal case vide FIR No.151, Dated: 15-05-2018, U/S-9-C, CNSA 1997, of P.S:Gurguri, District Karak.
(Copy of FIR is annexed as A)

3. That appellant along with driver (A zeem Ullah) of the said motorcar were arrested, although appellant from jail submitted application to SP investigation along with Affidavits about his innocence but the same was not considered.

4. That case of the appellant was forwarded to the respondent No.03 for conducting of departmental inquiry proceedings against the appellant as such after the inquiry, the said officer submitted his recommendation vide inquiry and upon the recommendations of inquiry report dated: 21-06-2018.
(Copy inquiry report dated: 21-06-2018 is annexed as B)

5. That after receipt of departmental inquiry report respondent No.01, issued impugned order dated: 22-06-2018 whereby major punishment of termination from service with immediate effect was imposed upon the appellant.
(Copy of Impugned orders dated: 22-06-2018 is annexed as C)

6. That in the said FIR complete Challan against the appellant in case FIR No.151, dated:15-05-2018 was submitted for trial before the Hon'able Additional Session Judge/ Judge Special Court, Banda Daud Shah, District Karak, after trial the appellant along with Co-accused Azeem Ullah were convicted and sentence to life imprisonment along with fine of Rs.1,00,000/- in default with six months S.I vide order & judgment dated: 26-02-2019.

7. That being aggrieved from the order of the trial court appellant file Cr.A No.47-B of 2019 while co-accused Azeem Ullah file Cr.A No.47-B of 2019, as both the appeal have arisen from one and the same order, the Hon'able Peshawar High Court Bannu Bench has decided both the Appeals were disposed off through one detail judgment, whereby the appellate court allowed both the appeals and acquitted the appellant vide order & judgment dated: 08-09-2020.

(Copy appeal & judgment of the appellate court are annexed as D & E)

1) That after the release of the appellant from custody, being aggrieved from the impugned orders of respondent No.01 dated:22-06-2018, the appellant filed a departmental appeal/representation, which was not considered and departmental appeal of the appellant was dismissed by respondent No.04 vide impugned order dated: 13-11-2020.

(Copy of departmental appeal & impugned order dated: 13-11-2020 are annexed as F & G)

2) That the appellant now approaches this Hon,able court / tribunal for setting aside both the impugned orders and re-instatement in service on the following grounds amongst others.

G R O U N D S.

- A. That the both the orders of the respondent No.1 & 4 are against the law, facts and violation of the procedure as provided under the law, hence the same is liable to be struck down.
- B. That so-called departmental inquiry proceeding has not been initiated in accordance with proper procedure, and the entire proceeding has been completed in haphazard manner, hence the same is having no sanctity in the eye of law.
- C. That as per story of the prosecution alleged recovery of contrabands was effected from the Deggi of the said motorcar, wherein appellant was on the front seat of the vehicle, but no conscious Knowledge of the appellant was established on the record by the prosecution, as such appellant was only punished for taking the services of the said motorcar as taxi, and appellant has got no knowledge about any alleged recovery.

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- D. That now on one hand the learned appellate court after examination of record and evidence reached to the conclusion that appellant was innocent while on the other hand there is a one sided departmental inquiry proceedings, hence in the scale of justice sanctity will be attracted to the judicial proceedings as the same is based on the proper appreciating of record & evidence, hence the recommendations of the inquiry officer cannot be called as free & partial, hence the impugned orders passed by respondent no.1 & 4 on the basis of inquiry report is liable to be set-aside.
- E. That nor proper opportunity of hearing was provided to the appellant, as such the basic principle of natural justice is violated in the case of the appellant.
- F. That being a regular employee the appellant has served the department honestly and whole heartedly for sufficient time, and perform his duties candidly and unequivocally thus the appellant cannot be terminated from his service with a stroke of pen as done by the respondent No.1 & 4.
- G. That the conduct of the respondent No.1 & 4 clearly suggests that appellant has highly been discriminated which is not permissible under the constitution of Islamic Republic of Pakistan 1973.
- H. That absence of the appellant with neither willful nor intentional rather the termination orders of the appellant shows the reason of his absence was due to implication in a false and concocted case, thus the same cannot be treated a ground for termination of the services of the appellant.
- I. That as per facts and circumstances of the case the appellant was in custody and after his acquittal orders dated: 08-09-2020 the appellant file department appeal within a period of one month, wherein departmental appeal of the appellant was decided on 13-11-2020 and now the appellant within a period of one month file the instant service appeal, hence the appeal of the appellant is well within time, as per law laid down in the **PLD 2010 SC Page-695 citation H.**
- J. The contents of the departmental appeal/representation may be considered as integral part of the instant appeal.

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K. That on the permission of this Hon, able court the appellant may urge other additional ground if any, at the time of arguments.

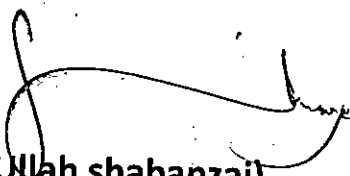
It is therefore most humbly prayed that On acceptance of the appeal both the impugned orders of respondent No.01 & 04 dated:22-06-2018 & 13-11-2020, may graciously be set aside, and the appellant may graciously be reinstated in service with all back benefits etc, and any other orders deem proper may also be passed in the matter


APPELLANT

Dated; 03/11/2020.

Through:-


(Rafi Ullah KHAN Wazir)
Advocate Peshawar,
PESHAWAR


(Farhan Ullah shabanzai)
Advocate High Court,
PESHAWAR

6

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Appeal No. _____ / 2020.

Zakir Ullah

.....Appellant.

VERSUS

DPO, Bannu & another.

.....Respondents.

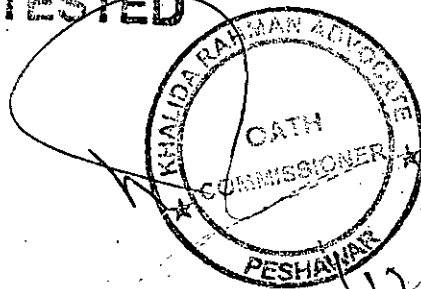
AFFIDAVIT

I, Zakir Ullah S/O Babri Gul R/O Landi Jalandher, Domel, Tehsil Domel, District Bannu, ex. Constable (1436), District Police, Bannu, do hereby solemnly affirm and states on oath that the contents of accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon' able Court.

زاکر اللہ
(Deponent)

CNIC No#11101-1335755-3

ATTESTED



03 / 12 / 2020

7

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Appeal No. _____ / 2020.

Zakir Ullah

.....Appellant.

VERSUS

DPO, Bannu & another.

.....Respondents.

ADDRESSES OF THE PARTIES

Zakir Ullah S/O Babri Gul R/O Landi Jalandher, Domel, Tehsil Domel,
District Bannu, ex. Constable (1436), District Police, Bannu

.....Appellant.

VERSUS

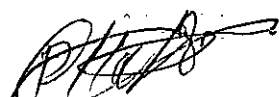
- 1) District Police Officer, DPO, Bannu.
- 2) Superintendent of police, Investigation, Police Headquarters, Bannu.
- 3) Deputy Superintendent of police, Headquarters, Bannu.
- 4) Deputy Inspector General of Police Bannu, Region Bannu.
- 5) Regional Police Officer, Bannu Region, Bannu.

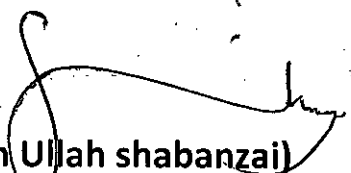
.....Respondents.


APPELLANT

Dated; 03/19/2020.

Through:-


(Rafi Ullah KHAN Wazir)
Advocate Peshawar,
PESHAWAR


(Farhan Ullah shabanzai)
Advocate High Court,
PESHAWAR

ابتدائی اطلاع رپورٹ

Amex

ابتدائی اطلاع نسبت جرم قابل و حد اندازی پولیس رپورٹ شدہ زیر دفعہ 152 مجموعہ ضابطہ فوجداری

A

8

مزرگی ضلع کرک

تاریخ وقت وقوعہ 15/5/15 وقت 16:00 بجے

رپورٹ	15/5/18	وقت	16:30	تیمپ	جانگدگی	15/5/18	وقت	17:15	
اطلاع دہندہ مستغنیث	1490724-1-14203	حجت اللہ خان SHO	03417693701	جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔	9CNSA (C)	تفصیلات	نامہ تھانہ سے اور سٹ گنز فیری پولیس سٹیشن چانچ شہر قلعہ عدلم 6/6 کلومیٹر تقریباً از قلعانہ	پیر نامہ	اعظم اللہ ولد گل شاہ خان سنگھ لکی مہر دین مزرگی تحصیل ٹھوسل ضلع بنوں
تعلقہ	گنی	اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	سر رسیدگی امرا سلسلہ پیر چور دیا جانا ہے	سر بسمل ڈراگ	رواگی کی تاریخ و وقت				

ابتدائی اطلاع نیچے درج کرو۔ اس وقت ایک تحریری مراسلہ مہیا نہ

حجت اللہ خان SHO ندرت کنیشن صریح الرحمن 300 موزوں پر کر حرف تحرف درج ذیل ہے مقرر گمانہ میں نمبر مشتاق احمد 185/444 قدر عظیم 444، صریح الرحمن 300، مہر فیری پولیس کے بوقت اوز مقام بالا سرائے چیلنگ روک تمام مشیات اور اسلحہ ناچا ہتر تاکہ بندری پیر موجود تھا۔ اسی دوران ایک فوٹر کار AWB 566 نرنگ سید جانب ٹل آکر پولیس اشارہ پر کھڑا کرنے کا اشارہ دیا گیا۔ ڈرائیور مہر کار نے بھاگنے کی ناکام کوشش کی مگر نہایت صفت یعنی سے ٹالو میں کیا گیا ڈرائیور نے دریافت پیر اپنا نام اعظم اللہ ولد گل شاہ خان سنگھ لکی مہر دین مزرگی تحصیل ٹھوسل ضلع بنوں جیلہ فرنیٹ سٹیٹ پیر سیتا سیرا شھن نے دریافت پیر اپنا نام زاکر اللہ ولد یابری گل سنگھ لکی مہر دین مزرگی تحصیل ٹھوسل ضلع بنوں بتلایا۔ اس طرح مہر فیری کار کی تلاش لینے پیر فوٹر کار کی ڈگی میں دو پلاسٹک ٹھوسل ضلع بنوں بتلایا۔ اس طرح مہر فیری کار کی تلاش لینے پیر فوٹر کار کی ڈگی میں دو پلاسٹک بوری کھلے جا کر بوری نمبر میں کل 13 پلاسٹک چرسس گروہ، بوری نمبر 2 سے 12 پلاسٹک چرسس گروہ ہوا۔ بوری نمبر 1 میں کل 2 پلاسٹک چرسس گروہ ہوا۔ پیر ایک پیکٹ کو ڈیجیٹل سٹراڈر سے زریعہ وزن کر کے پیر ایک پیکٹ 1250/1250 گرام لیس کل 31250 گرام نکلی پیر ایک پیکٹ سے 5/5 گرام علیحدہ علیحدہ پارسلوں یعنی پارسل 1 تا پارسل 25 میں ہر کے برائے تجزیہ FSL بتلایا۔ پیر ایک پیکٹ کو ڈیجیٹل سٹراڈر سے زریعہ وزن کر کے پیر ایک پیکٹ 16185/16185 گرام جبکہ بوری نمبر 2 یعنی پارسل 27 میں 14940/14940 گرام میں ہر پارسل کے لگے۔ پیر 2 کسان کو سہری انڈارو گیس کر کے بتلایا کہ یہ چرسس گروہ ہوا۔ شدہ آنکی ملکیت ہے اور بنوں کے جا رہے تھے۔ زاکر اللہ نے مزید بتلایا کہ وہ پولیس میں ملازم ہے اور تھانہ بساخیل ضلع بنوں میں تعینات ہے اور اپنا پولیس ڈیسپارٹمنٹ کارڈ بھی پیش کیا۔

Atif

9

چیس گروہ برہنہ نمبر 2 پلاسٹک بوری و موٹر کار نمبر ANB-566 رجسٹریشن

کا پی موٹر کار اور حکمہ پولیس کارڈ منظم زائر اللہ بروئے ضرورت سندھ پولیس میں کی گئی

پھر دو ملزمان سرنگھن بزم بالا کا پانچر حسب ضابطہ گرفتار کیے گئے میرا نام سے

کارڈ نمٹاری نمبر مقبوضگی بدست کنسٹبل صدیق الرحمن 300 نمبر کے قاضی مقدم

ا ارسال نمائندہ ہے پندرہ رجسٹریشن مقدمہ نقل FIR برائے تشہیر حوالہ

KBI سٹاف ہوئے۔ دستخط انسپری جنٹ عبداللہ خان SHO نمائندہ گروہ

15/5/18 کارروائی نمائندہ جس آمدہ میرا نام حرف بحرف رشتہ بالا ہو کر پھر

محمد مالک خان ہو کر نقل ہو گیا میرا نام کارڈ نمٹاری نمبر مقبوضگی بغرض تشہیر

حوالہ KBI سٹاف کیا جاتا ہے۔ پھر رجسٹریشن ہے

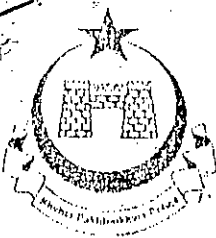
Naam
MHE-PS-44
15-5-18

Attested

Police Station
J.G.G. Karak

SHO PS 44

Attested



10

Annex B

OFFICE OF THE
DY. SUPERINTENDENT OF POLICE,
HQRS. BANNU.

Phone No: 0928-9270078.

Fax No: 0928-9270045

613/HQ, Dated. 21.06.2018.

DEPARTMENTAL ENQUIRY.

Reference. Charge sheet No. 245-46/SRC dated 17.5.2018, issued by District Police Officer, Bannu.

Accused. Constable Zakir ullah-1436.

Allegations. Allegations conveyed were as follow :-

That you Constable Zakir Ullah-1436 No: 1436 directly charged/arrested by the Police of District Karak vide in Case FIR No. 151/2018 u/s 9B CNSA PS Gurguri District Karak and recovered 31,250 gram charas along with Motor Cycle bearing registration No. AWB-566 from your possession.

Such act on your part is against service discipline and amounts to gross misconduct/negligence in duty and carry bad name for the Police Force.

Page- 7-14

Suspension. Constable Zakir Ullah-1436 has been placed under suspension vide O.B No. 495 dated 16.05.2018. Page-21

Order sheet. Order sheet maintained. Page- 4-6

DD Report. DD No. 21 dated 15.5.2018 PS Gorya Khel, Bannu (his absence from duty)

Salary. His salary has been stopped vide OB No. 495 dated 16.05.2018.

Reply to Charge sheet.

Constable Zakir Ullah-1436 submitted reply to charge sheet/summary of allegations, which is annexed at page-15-18

Vehicle. The recovery of charas has been effected from a Car No. AWB-566 not from Motor Cycle erroneously mentioned in the charge sheet.

FIR. FIR No. 151 dated 15.5.2018 u/s 9B CNSA PS Gurguri District Karak was chalked out against him. Page-20

Self defence. Opportunity for self defence against allegations provided to the accused official Constable Zakir Ullah-1436.

Attested

EO

Statements.

Statements of the following officers/officials recorded.

- a. Mohib Ullah SHO of PS Gurguri District Karak. Page-28
- b. IHC Mushtaq Ahmed-185 PS Gurguri. Page-29
- c. Constable Qad Azim-444 PS Gurguri. Page-30
- e. Accused Official Constable Zakir Ullah. Page-15-18
- f. ASI/I.O Salam Noor PS Gurguri Karak. Page-39

11

Questions/Answers between the then SHO Mohib Ullah of PS Gurguri & Constable Zakir Ullah-1436, and SHO replied that :- (venue District Jail Karak)

Reply-1. he has done legal work against you accused Zakir Ullah-1436 in the presence of witnesses and a proper FIR has been registered against you on recovery of charas.

Reply-2. he cannot pardon you and decision will come under law.

Questions/Answers between E.O & accused official Zakir Ullah-1436.

Accused constable Zakir Ullah-1436 replied that :-

Reply-1. accused Azeem Ullah is his driver, not relative and inhabitant of Umer Zai (Banna) and he has no question to put upon Investigating officer, IHC Mushtaq Ahmed-185 and Qad Azeem Constable-444.

Attested

Questions/Answers between E.O & IHC Mushtaq Ahmed-185 of PS Gurguri District Karak.

IHC Mushtaq Ahmed-185 replied that :-

Reply-1. on 15.5.2018, at 16:00 hours, they have recovered the Charas mentioned in the FIR.

Questions/Answers between E.O & Constable Qad Azeem-444 PS Gurguri Karak.

Constable Qad Azeem-444 replied that:

Reply-1. they have recovered 31,250/- gram charas duly mentioned in the FIR.

Reply-2. the place of occurrence was nearby FRP post Kundi area of PS Gurguri.

Questions/Answers between E.O & ASI/I.O Salam Noor PS Gurguri Karak.

The undersigned asked questions and ASI/I.O Salam Noor PS Gurguri District Karak replied that :-

E.O

12

Reply-1. In light of his investigation, accused Zakir Ullah-1436 is culprit and recovery of charas 31,250/- gram was effected from the Dego of his Car No.AWB-566.

Reply-2. FSL result has been come, which is positive about recovered charas and a piece of proof against accused Zakir Ullah-1436.

Conclusion :-

As discussed above, in light of the statements, the charas 31,250/- gram, was recovered by the then SHO Mohib Ullah of PS Gurguri from a Car No.AWB-566, which was in the possession of the accused constable Zakir Ullah-1436 and such car was driven by his driver Azceem Ullah admitted by him, thus the allegations mentioned in the charge sheet have been proved against Constable Zakir Ullah-1436 during the course of enquiry please.

Each page signed & numbered.
Encl: (39)

(AQIQ HUSSAIN, I.O)
DSP/HQrs; BANNU.

Attested.

(13)

Better
Copy
of Annex B

OFFICE OF THE
Dy. SUPERINTENDENT OF POLICE,
HQRS. BANNU

One No. 0328-9270078

Fax No. 0928-9270045

613/HQ, Dated: 21-06-2018.

DEPARTMENTAL ENQUIRY

Attested

Reference. Charge Sheet No. 245-46/SRC. Dated 17/05/2018, issued by District Police Officer, Bannu.

Accused. Constable Zakir Ullah-1436

Allegations. Allegations conveyed were as follow:-

That you Constable Zakir Ullah 1436-No. directly charged/ arrested by the Police of District Karak vide in Case FIR No. 151/2018 u/s 9B CNSA PS Gurguri District Karak and recovered 31,250 gram charas along with Motor Cycle bearing registration No. AWB-566 from your possession.

Such dot on your part is against service discipline and amounts to gross misconduct/negligence in duty and carry bad name for the Police Force.

Page- 7-14

Suspension. Constable Zakir Ullah-1436 has been placed under suspension vide O.B No. 495, dated 16/05/2018. Page-21

Order sheet. Order sheet maintained. Page-4-6

DD report. DD No. 21 dated 15/05/2018 PS Bosya khel, Bannu (his obscene from duty)

Salary. His salary has been stopped vide OB No. 495 dated 16/05/2018

Reply to Charge Sheet.

Constable Zakir Ullah-1436 submitted reply to charge sheet/summary of allegations, which is annexed at page-15-18.

Vehicle. The recovery of charas has been affected from a Car No. AWB-566 not from Motor Cycle erroneously mentioned in the charge sheet.

FIR. FIR No. 151 dated. 15/05/2018 U/s 9B CNSA PS Gurguri District Karak was chalked out against him. Page-20

Self defence. Opportunity for self defence against allegations provided to the accused official Constable Zakir Ullah-1436.

Letter
1900

14

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Statements. Statements of the following officers/officials recorded.

- | | |
|--|------------|
| a. Mohib Ullah SHO of PS Gurguri District Karak. | Page-28 |
| b. IHC Mushtaq Ahmed-185 PS Gurguri. | Page-29 |
| c. Constable Qad Azim-444 PS Gurguri. | Page-30 |
| d. Accused Official Constable Zakir Ullah. | Page-15-18 |
| e. ASI/I.O Salam Noor PS Gurguri Karak. | Page-39 |

Questions/Answers between the then SHO Mohib Ullah of PS Gurguri & Constable Zakir Ullah-1436, and SHO replied that: (venue District Jail Karak).

- Reply-1. He has done legal work against you accused Zakir Ullah-1436 in the presence of witness and a proper FIR has been registered against you on recovery of charas.
- Reply-2. He cannot pardon you and decision will come under law.

Questions/Answers between E.O & accused official Zakir Ullah-1436.

Accused constable Zakir Ullah-1436 replied that:-

Allegedly

- Reply-1. Accused Azeem Ullah is his driver, not relative and inhabitant of Umer Zai (Bannu) and he has no question to put upon investigating officer, IHC Mushtaq Ahmed-185 and Qad Azeem Constable-444.

Questions/Answers between E. & IHC Mushtaq Ahmed-185 of PS Gurguri District Karak.

IHC Mushtaq Ahmed-185 replied that:-

- Reply-1. On 15/05/2018, at 16:00 hours, they have recovered the Charas mentioned in the FIR.

Questions/Answers between E.O & constable Qad Azeem-444 Gurguri Karak.

Constable Qad Azeem-444 replied that:-

- Reply-1 they have recovered 31,250/- grams charas duly mentioned in the FIR.
- Reply-2 the place of occurrence was nearby FRP post kundi area of PS Gurguri.

Questions/Answers between E.O & ASI/I.O Salam Noor PS Gurguri Karak.

The undersigned asked questions and ASI/I.O Salam Noor PS Gurguri District Karak replied that:-

LS

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Reply-1 in light of his investigation, accused Zakir Ullah -1436 is culprit and recovery of charas 31,250/- gram was affected from the Degi of his car No.AWB-566.

Reply-2 FSL result has been come, which is positive about recovered charas and a piece of proof against accused Zakir Ullah- 1436.

Conclusion:-

As discussed above, in light of the statement the charas 31,250/- gram was recovered by then SHO Mohib Ullah of PS Gurguri from a car No.AWB-566, which was in the possession of the accused Zakir Ullah-1436 and such car was driven by his driver Azeem Ullah admitted by him, thus the allegation mentioned in the charge sheet have been proved against Constable Zakir Ullah-1436 during the course of enquiry please.

Each page signed & numbered.

Encl: (39)

(AQIQ HUSSAIN E.O)

DSP/HQrs, BANNU

Attested


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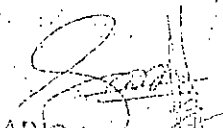
Annex "C"

This order of the undersigned will dispose of the departmental proceedings against accused Constable Zakir Ullah No. 1436 under Police Rule 1975 (As amended vide Kyber Pakhtunkhwa gazette Notification, No.27th of August 2014) by issuing charge sheet and statement of allegation to him for committing the following commissions/omissions.

- That Constable Zakir Ullah No. 1436 absented himself from lawful duty w.e. from 15.05.2018 till date vide DD No.21, dated 15.05.2018 Police Station Basia Khet.
- That Constable Zakir Ullah No. 1436 directly charged/ arrested by the Police of District Karak in case FIR No. 151/2018 u/s 9B CNSA PS Gurgun District Karak and recovered Rs.31250/- Charas alongwith Motorcycle bearing registration No. AWB-566 from his possession.
- Such act on his part is against service discipline and amounts to gross misconduct/negligence in duty and carry bad name for the Police Force.

Charge sheet and statement of allegation were issued to him and DSP/ HQrs., Bannu was appointed as Enquiry Officer to scrutinize the conduct of the officer. The Enquiry Officer submitted finding report and reported that in the light of the statements, the charas 31,250/- Charas was recovered by the then SHO Mohib Ullah of PS Gurgun from a Car No. AWB-566, which was in the possession of the accused constable Zakir Ullah No. 1436 and such car was driven by his driver Azam Ullah admitted by him, thus the allegations mentioned in the charge sheet have been proved against Constable Zakir Ullah No. 1436 during the course of enquiry please.

Keeping in view the position explained above. Record perused. In the light of the departmental proceeding, proved allegations against him by E.O and being member of Police Force, his act comes under category of gross misconduct. Hence, SADIQ HUSSAIN, District Police Officer Bannu, in exercise of the power vested in me under Police Rule 1975 (As amended vide Kyber Pakhtunkhwa gazette Notification, No.27th of August 2014), he is awarded Major punishment of "Dismissed from Service" with immediate effect.


(SADIQ HUSSAIN) DSP
District Police Officer,
Bannu.

OB No. 609
Dated: 22.06.2018.

No. 8086-90 /SRC dated Bannu, the 25/6/2018.

1. Reader, Pay officer, DSP, QASI for compliance.
2. Patilji Misal Clerk along with enquiry file for placing it in the Fauji Aircol of the concerned official.

Attested


17

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of annex "C"

ORDER:

This order of the undersigned will dispose of the departmental proceedings against accused Constable Zakir Ullah No. 1436 under the Police rule 1975 (as amended vide Khyber Pakhtunkhwa gazette Notification, No. 27th of August 2014) by issuing charge sheet & statements of allegation to him for committing the following commissions/omissions.

- That Constable Zakir Ullah No. 1436 absent himself from lawful duty w.e.f from 15/05/2018 terminate vide DD No. 21, dated 15/05/2018 Police Station Basia Khel.
- The Constable Zakir Ullah No. 1436 directly charged/ arrested by the Police of District Karak vide in Case FIR No. 151/2018, U/s 9B CNSA PS Gurguri District Karak and recovered 31,250 grams charas along with Motor Cycle bearing Registration No. ADB-566 from his possession.
- Such act on his part is against service discipline and amount to gross misconduct/ negligence in duty and carry bad name for the Police Force.

Charge Sheet & statement of allegations were issued to him and DSP/HQrs, Bannu was appointed is inquiry officer to scrutinize the conduct of the officer. The inquiry officer submitted finding report and reported that in the light of the statements, the charas 31,250/- grams was recovered by then SHO Mohib Ullah of PS Gurguri from a Car No. ADB-566, which was in the possession of the accused constable Zakir Ullah No. 1436 and such a Car was driving by his driver Azeem Ullah admitted by him, thus the allegation mentioned in the charge sheet have been proved against constable Zakir Ullah No. 1436 during the course of inquiry please.

Keeping in view the possession explained above. Record perused. In light of departmental proceedings proved allegations against him by the E.O & being member of Police Force, his act come under the category of gross misconduct. Hence I SADIQ HUSSAIN, District Police Officer, Bannu, in exercise of the power vested in me under Police Rule 1975 (as amended vide Khyber Pakhtunkhwa gazette Notification, No. 27th of August 2014, he is awarded major punishment of "Dismissed from service" with immediate effect.

(SADIQ HUSSAIN)

District Police Officer,

BANNU.

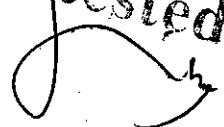
OB No. 602

Dated: 22/06/2018

No. _____/SRC, dated, Bannu, the 25/06/2018

Receiver, Pay Officer SRC, QASI for compliance.

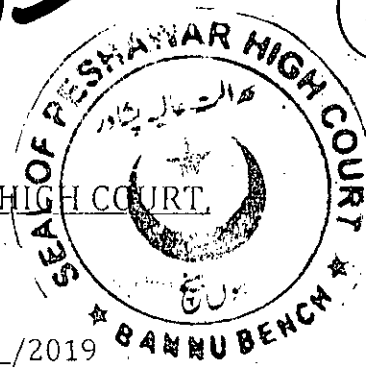
1. Reader, Pay officer, SRC, QASI for compliance.
2. Acting Misal Clerk along with inquiry file for placing it in the Fauji Misal of the concerned officials.

Attested


Annex "D"

18

BEFORE THE HON'BLE PESHAWAR HIGH COURT
BANNU BENCH



Criminal Appeal No. 49-B /2019

Zakirullah S/o Babri Gul R/o Landi Jalandher Domel Tehsil Domel District Bannu ~~~~~ (PETITIONER)

VERSUS

- 1. Mr. Mohaibullah Khan SHO Police Station Gurguri District Karak
- 2. The State ~~~~~ (RESPONDENTS)

CASE FIR # 151, DATED 15/5/2018
UNDER SECTION 9 (c) CNSA
REGISTERED AT POLICE STATION GURGURI DISTRICT KARAK.

SUBJECT:

APPEAL UNDER SECTION 48 OF THE CONTROL OF THE
NARCOTICS SUBSTANCES, ACT, 1997 AGAINST THE
IMPUGNED JUDGMENT DATED 26/02/2019 PASSED BY
THE LEARNED ADDL. SESSIONS JUDGE BANDA DAUD
SHAH KARAK, WHEREBY, HE CONVICTED THE
APPELLANT U/S 9(C) CNSA AND SENTENCED HIM TO
RIGOROUS IMPRISONMENT FOR LIFE. THE APPELLANT
WAS ALSO DIRECTED TO PAY FINE TO THE TUNE OF RS.
01 LAC AND IN CASE OF DEFAULT, HE SHALL FURTHER
UNDERGO SIX MONTHS SIMPLE IMPRISONMENT.
BENEFIT OF SECTION 382 (B) Cr.PC WAS EXTENDED TO
THE APPELLANT.

Om - 02/1
Adv

Filed Today
07 MAR 2019
District Registrar

ATTESTED
ATTORNEY
Peshawar High Court
Bannu Bench

Attested

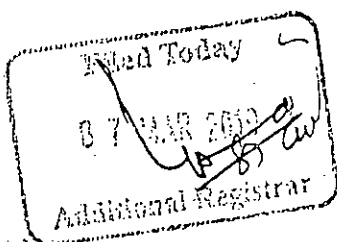
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PRAYER: ON ACCEPTANCE OF THIS APPEAL THE AFORESAID
JUDGMENT OF CONVICTION DATED 26/02/2019 MAY
KINDLY BE SET ASIDE AND THE ACCUSED/APPELLANT
MAY GRACIOUSLY BE ACQUITTED OF THE CHARGE
LEVELLED AGAINST HIM IN THIS CASE.

Respectfully Sheweth:

Brief facts of the case as per FIR are that on 15/5/2018, Mohaibullah Khan SHO P.S Gurguri Karak had conducted barricade at Kundi Police Check Post and in the meanwhile a motorcar bearing #AWB-560 was signaled to stop, however, its driver tried to flee but was overpowered. Driver of car disclosed his name as Azimullah S/o Gul Shah Khan while another person who was sitting in front seat of motorcar disclosed his name as Zakirullah S/o Babri Gul; that the SHO during search of motorcar, recovered two plastic bags from Deggi of motorcar out of which one was found containing 13 packets Gardha chars while second was found 12 packets Gardha chars; that a total 25 packets Gardha chars weighing 31250 grams (1250/1250 grams packets) were recovered. The SHO arrested both the accused, impounded the motorcar, drafted the murasila and sent the same to Police Station for registration of case. Hence, the instant case (copy of FIR is annexed "A").

Adv
 ADV



ATTESTED
 CLERK
 Peshawar High Court
 Bannu Bench

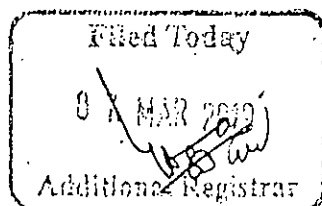
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- (2) That, both the accused Zakirullah and Azimullah were put to trial before the learned court of learned Addl. Sessions Judge Banda Daud Shah Karak. Trial was commenced.
- (3) That, at the conclusion of trial and after hearing pro and contra arguments the learned trial court convicted both the accused u/s 9(C)NSA and sentenced them to rigorous imprisonment for life. They were also directed to pay fine to the tune of Rs. 01 lac each and in case of default they shall further undergo six months simple imprisonment. Benefit of section 382 (B) Cr.PC was extended to the accused vide judgment dated 26/02/2019 passed by learned Addl. Sessions Judge Banda Daud Shah Karak. (Copy of judgment dated 26/02/2019 is annexed "B").
- (4) Aggrieved, the accused/appellant and having no other adequate and efficacious remedy, is filing the instant appeal against conviction before this Hon'ble Court *inter-alia* on the following grounds:

GROUNDS

- (1) That, the judgment of the learned trial court is against the law, facts and evidence on record; hence, untenable in this regard.
- (2) That, aforesaid judgment of conviction of the learned trial court is based on surmises, suppositions and presumptions.



ATTESTED
JUDGE
Peshawar High Court
Bannu Bench

Attested

21

- (3) That, no recovery of contraband has been effected from the direct possession of appellant.
- (4) That, the accused/appellant was neither driver nor owner of alleged motorcar nor he was having any knowledge of the alleged contraband.
- (5) That, in fact the appellant on the alleged day of occurrence i.e. 15/5/2018 had gone to Thall Bazaar in order to meet Haved Khan S/o Qader Khan and Noor Ahmad S/o ... Ahmad R/o Landi Jalandher Bannu who are running business of beverages at Thall Bazaar. The appellant had taken certain goods to said persons and also paid certain amount to them. After doing the needful, the appellant was waiting for vehicle at Thall Adda for Bannu where in the meantime a motorcar came and inquired from him as to whether he was going to Bannu. The appellant boarded in the said motorcar at Rs. 700/- fare and during journey when they reached Gurguri police check post, there on checking the alleged contraband was recovered. In this respect the petitioner had also submitted application to the SP investigation and also tendered affidavits from disinterred persons with regard to his innocence.
- (6) That, the I.O had not reweighed the alleged contraband and has also not taken the same through recovery memo.

Handwritten signature/initials

Filed Today
 07 MAR 2019
 Additional Registrar

ATTESTED
 JUDGE
 Punjab High Court
 Bannu Bench

Attested

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Moreover, the alleged parcels were also not prepared in presence of ¹⁻⁰ ~~appellant~~ ~~1-0~~

(7) That, there is considerable and unexplained delay of 6/7 days in sending and receiving alleged samples to FSL. The prosecution is bound to prove the safe custody of contraband till its dispatch to FSL. The alleged samples for 6/7 days remains in whose custody and whether the same was safe custody and undergo with safe transmission to FSL, to all these questions the prosecution case has not been established.

(8) That, the chain of custody was broken, suspicious, debatable, unsafe and secure so it cause doubt and mitigate the conclusiveness and reliability of the FSL report.

(9) That, the chemical examination report is not proved according to law as entire page of the report about relevant protocols and text was not only substantially keep blank but the same had also been scored off by crossing it from top to bottom. Such is a complete failure of compliance of relevant rules and such failure reacted against reliability of report produced by the prosecution before the learned trial court. So the FSL report is not fulfilling the requirement of Sec. 36 CNSA as well as not qualified the context of sec 36 CNSA.

ACH

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10/10/13
Magistrate

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JUNIOR
Peshwar High Court
Karnal Bench

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(10) That, there are material contradictions and improvements in the statement of PWs and prosecution has miserably failed to prove its case against the accused beyond any shadow of doubt.

(11) That, the appellant is also not a previous convict nor had been found involved in such like cases.

(12) That, learned counsel for the appellant may kindly be permitted to raise additional grounds at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this appeal, the conviction judgment of accused/appellant may kindly be set aside and appellant may graciously be acquitted of the charges in the instant case just to meet the ends of justice.

Dated: 04/03/2019

Zakir Ullah (Ap, ~~...~~)
Through counsel

Imran Ali Shah
IMRAN ALI SHAH
Advocate High Court Bannu

CERTIFICATE

Certified that no such appeal has been filed earlier before any other forum and that the assertions of this appeal are true and correct.

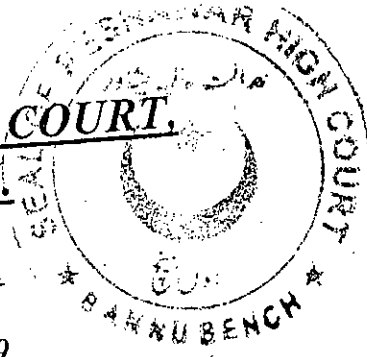
Imran Ali Shah
IMRAN ALI SHAH
Advocate High Court Bannu

Attested

Filed Today
04 MAR 2019
Attested
Additional Registrar

ATTESTED
IMRAN ALI SHAH
Advocate High Court Bannu

THE PESHAWAR HIGH COURT,
BANNU BENCH.



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[Judicial Department].

Cr. A No. 49-B of 2019

Zakirullah Khan

Vs.

The State etc.

Annex "E"

JUDGMENT

Date of hearing: 08.09.2020

For Appellant: Mst. Farhana Naz Marwat and
Mr. Imran Ali Shah advocate

For State: Mr. Shahid Hameed Qureshi Addl: A.G

SAHIBZADA ASADULLAH, J.--- Vide my detailed common judgment of the even date placed on connected "Cr. A No. 47-B of 2019, titled "Azimullah Vs The Sate." the instant criminal appeal is allowed, the impugned judgment of conviction dated 26.02.2019, rendered by learned Additional Sessions Judge, Banda Daud Shah, Karak is set-aside and consequently appellants Zakirullah Khan in case F.I.R No. 151 dated 15.05.2018 u/s 9 (c) CNSA, Police Station Gurguri is acquitted of the charge leveled against him. He be set at liberty forthwith, if not required in any other criminal case.

Announced.
08.09.2020
*Azam/P.S'

Sd/ Justice Ms. Musarrat Hilali, J
Sd/ Mr. Justice Sahibzada Asadullah, J

CERTIFIED TO BE TRUE COPY

Examiner

Peshawar High Court (Bannu Bench)
Authorised Under Article 87 of
The Qanun-e-Shahadat Ordinance 1984

SCANNED

Khalid Khan

(P.P) Ms. Justice Musarrat Hilali and Mr. Justice Sahibzada Asadullah

9/9/20
10/9/20

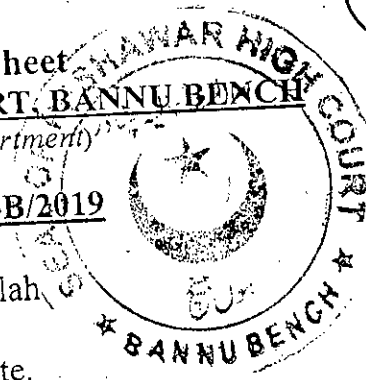
Asadullah

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Judgment Sheet
PESHAWAR HIGH COURT, BANNU BENCH
(Judicial Department)

Cr. A No. 47-B/2019

Azim Ullah
Vs
The State.



JUDGMENT

Date of hearing: 08.9.2020.

For Appellant: M/S Imran Ali Shah & Umar Farooq
Wazir, Advocates.

For State: Mr. Shahid Hameed, Addl: A.G.

Sahibzada Asadullah, J.- This judgment shall dispose of two criminal appeals, bearing Cr.A. No.47-B of 2019 titled Azimullah Vs. The State and Cr.A. No.49-B of 2019 titled E. Mohib Khan Vs. The State etc, as both have arisen out from one and the same judgment dated 26.02.2019, rendered by learned Additional Sessions Judge/Judge Special Court, Banda Daud Shah, District Karak, whereby both the appellants have been convicted under Section 9(c) of Control of Narcotic Substances Act, 1997 and sentenced to life imprisonment and to pay fine of Rs.1,00,000/- or in default thereof to undergo six months simple imprisonment. Benefit of Section 382-B, Cr.P.C. has been extended to the convicts.

2. Facts of the case as unfolded from the FIR, Ex.PA, registered on the basis of murasila Ex. PA/1, is that on 15.5.2018, complainant Mohibullah Khan SHO (PW-2) alongwith police

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contingents had laid *Nakabandi* on the spot for checking of narcotics peddlers and illegal weapons, meanwhile a motorcar No.AWB/566 of white colour came from Tall side which was signaled to stop, the driver tried to decamp, but was followed and apprehended. Who disclosed his name as Azeem Ullah son of Gul Shah Khan, whereas, the person sitting alongside the driving seat introduced himself as Zakir Ullah son of Babri Gul. From search of the motorcar, two plastic sacks were recovered. One plastic sack contained thirteen packets of Charas Gardha whereas the other contained twelve packets of Charas Gardha. The recovered contraband was weighed and each packet came out to be 1250 grams Charas Gardha, whereas the total Charas stood 31250 grams. Five gram Charas was separated from each packet and was sealed in separate parcels, whereas the remaining Charas was sealed in parcels No.26 & 27. On cursory interrogation, the accused disclosed that the recovered narcotics are their ownership which they intended to transport it to Bannu. The co-accused Zakir Ullah disclosed that he is police official and posted at police station Basia Khel, District Bannu and also presented his service card. The seized narcotics and the motorcar were taken into custody, accused were arrested and pursuant thereto *murasila* was drafted and sent to police station, where a case vide the captioned FIR was registered against the accused.

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

3. After completion of investigation, complete challan was submitted before the learned trial Court. Accused were charged for the offence to which they pleaded not guilty and

Attested

claimed trial. At the commencement of trial, the prosecution produced and examined as many as five witnesses, whereafter, accused were examined under section 342 Cr.P.C, wherein they professed innocence and false implication, however, neither they opted to be examined under section 340(2) Cr.P.C., nor produced evidence in their defence. Learned trial Court, after hearing arguments, vide impugned judgment dated 26.02.2019, convicted the appellants and sentenced them, as mentioned above, which has been assailed through these two appeals.

4. Arguments heard and record gone through.

5. It is the case of prosecution that complainant SHO Mohibullah Khan (PW-2) was present on the spot alongwith police Nafri when a motorcar was stopped and on search, 25 packets containing 31250 gram charas were recovered from two sacks lying in the trunk of the motorcar. While going through the evidence produced at trial, one could reach to an irresistible conclusion that the prosecution case is full of contradictions and numerous doubts surfacing in the statements of witnesses, which are highlighted below.

The seizing officer while appearing before the Court as PW-2, in his examination-in-chief reiterated the same story as mentioned in the FIR, however, he added that he drafted murasila Ex.PA/1 and sent the same alongwith card of arrest of the accused and recovery memo through constable Sadiq ur Rehman No.300 to the police station for registration of FIR against both the accused. Firstly, he omitted to mention in the murasila the name

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EXAMINER
Peshawar High Court
RAMEL BACHA

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of official who took the aforesaid papers to the police station; secondly he did not mention about handing over the case property nor he deposed about the same while appearing in the witness box. Non-mentioning of the above fact in the murasila as well as in his statement by PW-2, cannot simply be brushed aside as the prosecution has to prove safe transmission of the case property from the spot to the police station till it is received in the Forensic Science Laboratory. While perusing the statement of Salim Noor Khan Investigating Officer (PW-1), we are surprised that he did not state about the papers which were allegedly sent by the seizing officer as well as he never stated about handing over of the recovered contraband to him, rather he stated at the very inception in the cross examination that "I have not weighed the recovered contraband nor same was sealed into parcel in my presence nor I have desealed the same so I have not seen the same". Besides the above, the alleged recovery was effected on 15.5.2018, whereas it appears from the FSL report Ex. PZ that the samples were received in the FSL on 21.5.2018. Needless to say that it is not established from the prosecution evidence that where remained the samples of Charas from 15.5.2018 till their sending to the Forensic Science Laboratory on 21.5.2018. In view of the above, the chain of safe transmission of the case property from the spot to police station has been broken and in such situation the Honourable Supreme Court of Pakistan, in case titled The State through Regional Director ANF Vs. Iman Bakhsh and others (2018 SCMR 2039), held that:-

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 JUDGE
 Peshawar High Court
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 JUDGE

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"The chain of custody begins with the recovery of the seized drug by the Police and includes the separation of the representative sample (s) of the seized drug and their dispatch to the Narcotics Testing Laboratory. This chain of custody, is pivotal, as the entire construct of the Act and the Rules rests on the Report of the Government Analyst, which in turn rests on the process of sampling and its safe and secure custody and transmission to the laboratory. The prosecution must establish that the chain of custody was unbroken, unsuspecting, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering incapable of sustaining conviction".

Guidance is also sought from the dicta laid down by the apex Court in cases titled Abdul Ghani and others Vs. The State and others (2019 SCMR 608), Kamran Shah and others Vs. The State and others (2019 SCMR 1217) and Mst. Razia Sultana Vs. The State and another (2019 SCMR 1300).

6. Besides the above, PW-3, Mushtaq IHC, the marginal witness to the recovery Ex. PC, in cross-examination contradicted the Investigating Officer PW-1 by stating that the Investigating Officer also conducted weight of the each parcel before it was sealed in parcels. His statement is contrary to the statement Investigating Officer as the Investigating Officer only stated that on receipt of copy of FIR, he proceeded to the spot, rather never stated about rest of the documents which were allegedly sent to him by the seizing officer from the spot. Similarly Gul Samad PW-4, who allegedly took the samples to the FSL deposed that on 21.5.2018, the Madad Moharrir of police

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

Attested

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station handed over to him samples of the recovered Charas i.e. 1 to 25 parcels alongwith receipt Ex. PW 1/3 for taking the same to FSL Peshawar for examination, which were handed over to him on 21.5.2018 at morning time. This deposition of PW-3 is negated by seizing officer (PW-2), who stated that he had not described in the murasila as well as in recovery memo that the samples were sent to FSL alongwith application rather he had mentioned that they will be sent. Here the seizing officer PW-2 negated the version of PW-4 by stating that on the next day i.e. 16.5.2018, he sent all the samples through constable Samad to FSL. This contradiction casts serious doubt with regard to safe transmission of the samples to the FSL.

Similarly, Noor Shah Ali Moharrir (PW-5) stated that he incorporated the contents of murasila brought by constable Sadiq ur Rehman drafted by Mohibullah Khan SHO alongwith the card of arrest and recovery memo, into FIR Ex. PA and after registration of FIR, he handed over copy of FIR alongwith recovery memo to the Investigating Officer for investigation. This version of PW-5 is negated by the Investigating Officer PW-1, who stated to have received only the copy of FIR and proceeded to the spot, while he did not state about handing over of card of arrest and recovery memo to him by Moharrir. PW-5 deposed in cross examination that while recording his statement under section 161, Cr.P.C. he had stated that constable Sadeeq ur Rehman handed over to him the recovery memo and card of arrest, but it is not so recorded in the said statement, meaning

ATTESTED
EXAMINER
Peshawar High Court
Babar Ahmad

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thereby that PW-5 has tried to bring his testimony in line with the prosecution case notwithstanding the glaring contradictions *inter se* the statements of PWs, as highlighted above.

7. The Control of Narcotic Substances Act, 1997 has provided stringent punishment for those involved and also the law enforcing agencies have been put under a heavy responsibility to bring solid and material evidence against the accused and even the laboratories concerned have been provided a mechanism which they are to follow while analyzing the test samples. The law as well as the apex Court time and again emphasized that while dealing with the test samples and preparing the reports on its strength, the concerned laboratories are under heavy obligation to adhere to the procedure in this respect and especially to specify the protocols of the test applied and this is the duty of the trial Courts to examine the contents of report and to assess its evidentiary value. In case titled *Ikramullah and others Vs. The State (2015 SCMR 1002)*, it was held that:-

"We have particularly noticed that the report submitted by the Chemical Examiner (Exhibit-P.W.2/5) completely failed to mention the basis upon which the Chemical Examiner had come to a conclusion that the samples sent to him for examination contained charas. According to Rules 5 and 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001 a complete mechanism is to be adopted by the Chemical Examiner upon receipt of samples and a report is then to be submitted by him referring to the necessary protocols and mentioning the tests applied and their results but in the case in hand we note that no protocol whatsoever was mentioned in the report submitted by the Chemical Examiner and no test was referred to on the basis of which the

ATTESTED
EXAMINER
High Court
Karachi Branch

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Chemical Examiner had concluded that the samples sent to him for examination contained charas".

Guidance is also sought from the judgments of apex Court reported as Qaiser Javed Khan Vs. The State through Prosecutor General Punjab, Lahore and another (PLD 2020 S.C 57), KHair-ul-Bashar Vs. The State, (2019 SCMR 930), Muhammad Boota Vs. The State and another (2020 SCMR 196).

8. To say the least, these glaring discrepancies should not have escaped notice of the learned trial Court, while convicting the appellants/accused and awarding them the impugned sentences. Resultantly, both the appeals are allowed, the impugned judgment of conviction dated 26.02.2019, rendered by learned Additional Sessions Judge/Judge Special Court, Banda Daud Shah, Karak, is set aside and consequently, the appellants are acquitted of the charge levelled against them. They be set-at-liberty forthwith, if not required in any other criminal case.

9. Above are the reasons of our short order of even date.

Sd/ Justice Ms. Musarrat Hilali, J
Sd/ Mr. Justice Sahibzada Asadullah, J

Announced
Di: 08.9.2020
Kifayat/PS*

CERTIFIED TO BE TRUE COPY
Examined
Peshawar High Court Bench
Authorized Under Article 27 of
The Qanun-e-Shahadat Ordinance 1984

24/11/20

SCANNED

Khand Khan

(D.B)

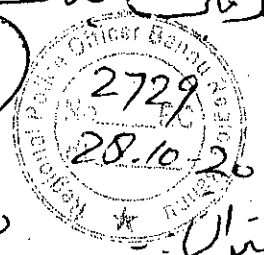
Hon'ble Ms. Justice Musarrat Hilali
Hon'ble Mr. Justice Sahibzada Asadullah.

Attested

6909
Date of Presentation of Application 7-10-2020
No of Pages 15 P
Copying /
Urgent Fee /
Fetal 30
Date of Preparation 26-10-2020
Date Given for De 29-10-2020
Date of Delivery of 29-10-2020
Received By [Signature]

خدمت خراب ڈیڑھی الیکٹریٹیٹی آف پولیس قلم نون

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درخواست نمبر بحالی سروس معہ تنخواہ

حوالہ مقدمہ 151 حورثہ 5/18 حیرم (C) CNCA 9 تیانہ ٹریری کر

"F"

Award

تفیش حسب ذیل ہے

خواب عالی

- 1- تیانہ ٹریری محکمہ پولیس میں حورثہ 6/09 کو رپورٹ پیش کی گئی تھی۔
- 2- تیانہ ٹریری نے اس دوران ضاح نیوں کے تمام تیانہ جات میں ڈیوٹی سرانجام دی ہے۔ جن سائٹل نے بھی بھی دوران ڈیوٹی مختلف کا مظاہرہ نہیں کیا۔ اور نہ ہی آفران کو شکایت کا موقع دیا۔
- تیانہ ٹریری تیانہ ٹریری میں تعینات تھا۔ حورثہ 5/18 کو من سائٹل رشتہ داروں کے پاس ٹل گیا تھا۔ بددعا والی بی بی تیانہ ٹریری قلم نون پہنچا۔ تو مقامی پولیس اشرار کے اس کے ساتھ موجود ڈرائیور نے گاڑی روکا۔ سائٹل نے پولیس کو اپنا شناختی کارڈ پیش کیا۔ پولیس نے سائٹل کو اپنا شناختی کارڈ پیش کیا۔ تیانہ ٹریری نے کافی مدت معافی لی۔ اور تیانہ ٹریری کو دیکھا گیا۔ تیانہ ٹریری نے کافی مدت معافی لی۔ اور تیانہ ٹریری کو دیکھا گیا۔ تیانہ ٹریری نے کافی مدت معافی لی۔ اور تیانہ ٹریری کو دیکھا گیا۔
- اور تیانہ ٹریری کو اطلاع دیا گیا۔ اور حورثہ 5/18 کو تیانہ ٹریری نے تیانہ ٹریری کو دیکھا گیا۔ تیانہ ٹریری نے کافی مدت معافی لی۔ اور تیانہ ٹریری کو دیکھا گیا۔ تیانہ ٹریری نے کافی مدت معافی لی۔ اور تیانہ ٹریری کو دیکھا گیا۔

No 3754/E
- dt 28/10/02c

D/O Bannu
Per Comment
Please

Amud
Awwal
381
RPO Bannu Reg

4- تیانہ ٹریری نے تقریباً 7 سال سے جیل میں گزارا ہے۔ دوران خواب سروس میں تیانہ ٹریری نے باعزت طور پر سروس کیا ہے۔

استدعا ہے۔ کہ سائٹل بال حورثہ ہے۔ صرف اسی تنخواہ اور پورے خاندان کا سپورٹ ہے۔ سائٹل کو ان سروس کے دوران میں سائٹل نے تیانہ ٹریری کو دیکھا گیا۔ تیانہ ٹریری نے کافی مدت معافی لی۔ اور تیانہ ٹریری کو دیکھا گیا۔

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Annex "G"

POLICE DEPARTMENT

BANNU REGION

ORDER

My this order will dispose off departmental appeal, preferred by Ex-Constable Zakir Ullah No.1436 of District Police Bannu, wherein, he has prayed for setting aside the order of Major punishment of "dismissal from service", imposed upon him by DPO Bannu, vide O3 No.602 dated 22.06.2018 on the following omissions:-

- That the appellant absented himself from law full duty w.e.from 15.05.2018 till the order of dismissal, vide DD No.21 dated 15.05.2018 PS Basia Khel.
- That the appellant directly charged/arrested by the local police of District Karak, vide FIR No.151 dated 15.05.2018 u/s 9-B CNSA PS Gurguri District Karak and recovered 31250 gm chars along with motorcar bearing registration No.AWB-556 from his possession.

Service record, inquiry file of the appellant and comments received from DPO Bannu were perused. The appellant was also heard in person in orderly room today on 11.11.2020 but he did not substantiate his innocence.

Therefore, I, Awal Khan, Regional Police Officer, Bannu Region Bannu, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules, 1975 (amended in 2014) hereby file his appeal and endorse the punishment awarded to him by DPO Bannu, vide OB No.602 dated 22.06.2018.

ORDER ANNOUNCED

(AWAL KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu




No. 3974 /EC, dated Bannu the 13 /11/2020

Copy to District Police Officer, Bannu for information and necessary action w/ to his office letter No.14325 dated 09.11.2020 along with his complete service record including departmental inquiry file for record in office which may be acknowledged please.

Awal Khan
(AWAL KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

11/11/20

Attested
[Signature]

قیمت 50 روپے	66231			
ایڈوکیٹ: مرحان اللہ شہانزیں راجہ اللہ سنگھ بڈوکی		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل / ایسوسی ایشن نمبر: 313-11-66				
رابطہ نمبر: 0321-9171522				

بعدالت جناب: **خیبر پختونخواہ سروسز ٹریبونل** در

منجانب: ایڈوانسٹ	دعویٰ: سروسز ایبل
 <p>DPo</p>	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعث تحریر آگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام **مرحان اللہ شہانزیں** راجہ اللہ سنگھ بڈوکی کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز ذمیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جو اب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یا کٹرفرنہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے لے کر اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور ان کا ساختہ پر داخست منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم: **مرحان اللہ شہانزیں**

راجم اللہ ولد راجہ بابری گل
 سندہ لنڈھی جالندھر فیصل ڈسپلینری ٹریبونل (سٹیٹسٹیشن 11436)

مقام **پشاور** کے لیے منظور ہے۔

Accepted by **مرحان اللہ شہانزیں**

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No.15576/2020

Zakir Ullah s/o Babri Gul r/o Landi jalandher, Domel, Tehsil Domel, District Bannu Ex-
Constable No.1436, District Police, Bannu **Appellant**

Versus

The Regional Police Officer, Bannu Region, Bannu and others.

..... **Respondents**

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Deponent

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No.15576/2020

Zakir Ullah s/o Babri Gul r/o Landi jalandher, Domel, Tehsil Domel, District Bannu Ex-Constable No.1436, District Police, Bannu **Appellant**

V e r s u s

The Regional Police Officer, Bannu Region, Bannu and others.

..... **Respondents**

PARA WISE COMMENTS/REPLY ON BEHALF OF RESPONDENTS NO.1, 2, 3, & 4

Preliminary Objections

1. That the appeal of the appellant is badly time-barred.
2. That the appeal is not maintainable in its present form.
3. That the appellant has concealed the actual facts from this Honorable Tribunal.
4. That the appeal is bad in law due to mis-joinder and non-joinder of necessary parties.
5. That the appellant has approached the Honourable Tribunal with unclean hands.
6. That the appellant has got no cause of action and locus-standi to file the instant appeal.
7. That the appellant has been estopped by his own conduct.

OBJECTIONS ON FACTS:

Respectfully Sheweth

1. Pertains to record. Hence, needs no comments.
2. Incorrect. On 15.05.2018, a motorcar bearing No.ADB-566 was coming from Thall Bazar driving by Azeem Ullah and the appellant Zakir Ullah was accompanied on front seat. When the said motorcar reached at Kundi Check Post District Karak, the police contingent signaled to stop the said motorcar. But the driver did not stop the car and he tried to escape. The police foiled his attempt. After searching the vehicle, two plastic bags containing 31,250 grams chars were recovered from Digi of the car. The appellant along with his driver namely Azeem Ullah were

arrested and took the car into possession. During investigation, it was dig out that owner of the car is the appellant. In this respect, a proper case vide FIR No.151 dated 15.05.2018 u/s 9CNSA (C) PS Gurguri District Karak was registered.

3. Pertains to record. Hence, needs no comments.
 4. Incorrect. The appellant was properly charge sheeted with summary of allegations and DSP HQrs/ Bannu was appointed as inquiry officer to probe into the matter. After impartial inquiry, the culprit was found guilty. After establishment of charges, the I.O recommended the appellant for major punishment.
 5. Correct. Hence, needs no comments.
 6. Correct. Hence, needs no comments.
 7. Pertains to record. Hence, needs no comments.
- 1) The appeal of the appellant was rejected by the appellate authority being devoid of merit.
 - 2) The appellant is clearly found guilty in the departmental proceedings and after found guilty, was dismissed as per law/rules.


OBJECTIONS ON GROUNDS

- A. Incorrect. The order issued by the Respondent No.1 & 4 is quite legal and in accordance with law/rules.
- B. Incorrect. After proper inquiry/proceedings conducted by DSP/HQrs, allegations were proved beyond any shadow of doubts and was dismissed from service.
- C. Incorrect. After proper inquiry conducted by DSP/HQrs Bannu, it was found that the motorcar in question was the property of the appellant driving by his driver Azeem Ullah.
- D. Incorrect. The departmental inquiry and trial of the case are two different things and according to ESTA Code they can run parallel.
- E. Incorrect. Proper opportunity of personal hearing was provided to the appellant by Respondent's Department, but he badly failed to substantiate him innocent.
- F. Reply has already been given in Para "C".


- G. Incorrect. The appellant was treated in accordance with law/rules and no discrimination has been made.
- H. Incorrect. He was involved in case vide FIR No. 151 dated 15.05.2018 u/s 9-CNSA (C). After proper inquiry/proceedings conducted by DSP/HQrs, allegations were proved beyond any shadow of doubts and was dismissed from service.
- I. Pertains to record. Hence, needs no comments.
- J. The Respondents department may kindly be allowed to advance any other grounds & material as evidence in the time of arguments.

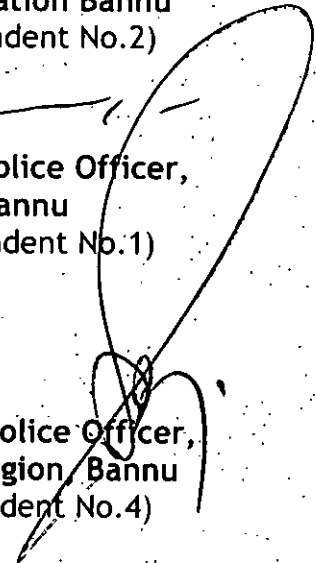
PRAYER:

In view of the above replies, it is most humbly prayed that the appeal of the appellant may kindly be dismissed with cost please.


Dy; Superintendent of Police,
HQrs/ Bannu
(Respondent No.3)

Superintendent of Police,
Investigation Bannu
(Respondent No.2)


District Police Officer,
Bannu
(Respondent No.1)


Regional Police Officer,
Bannu Region, Bannu
(Respondent No.4)



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 201 /ST

Dated: 31/01 /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,
Bannu.

Subject: JUDGMENT IN APPEAL NO. 15576/2020 MR. ZAKIR ULLAH.

I am directed to forward herewith a certified copy of Judgement dated
13.01.2022 passed by this Tribunal on the above subject for compliance please.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR