

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 929/2019

Date of Institution ... 16.07.2019

Date of Decision ... 29.03.2021

Mr. Wali Badshah Head Constable No. 521 now posted at Police Post Political Sarai District Kohat.

... (Appellant)

**VERSUS**

Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa and three others.

... (Respondents)

Mr. Shahid Qayum Khattak  
Advocate.

... For Appellant

Mr. Kabirullah Khattak  
Assistant Advocate General

... For Respondents

MRS. ROZINA REHMAN

... MEMBER (J)

MR. ATIQ UR REHMAN WAZIR

... MEMBER (E)

JUDGMENT: -

**Mr. ATIQ UR REHMAN WAZIR MEMBER (E):** - Brief facts of the case are that the appellant while serving as Head Constable in Police Department was proceeded against on the charges of inefficiency, corruption and rude behavior. Charge sheet/statement of allegations dated 30-04-2018 was served upon the appellant, to which he responded accordingly. An inquiry to this effect was also conducted and show cause notice was served upon the appellant on 12-06-2018, which was also responded by the appellant on 20-06-2018 and which ultimately culminated into imposition of major penalty of reduction from higher stage to lower stage in the same time scale of pay for the period of two years

upon the appellant vide order dated 27-06-2018, against which the appellant filed departmental appeal dated 13-07-2018, which was rejected vide order dated 06-03-2019. The appellant filed revision petition on 28-05-2019, which was also rejected on 19-06-2019. Feeling aggrieved, the appellant filed the instant service appeal instituted on 16-07-2019 with prayers that impugned orders dated 27-06-2018, 06-03-2019 and 19-06-2019 may be set aside and pay of the appellant be restored with all back benefits.

2. Written reply/comments were submitted by respondents.

3. Arguments heard and record perused.

4. Learned counsel for the appellant contended that the appellant was proceeded against on the charges of being involved in getting illegal gratifications, rude behavior with public and reputation of being corrupt. Learned counsel for the appellant contended that the inquiry so conducted did not prove any of the allegations against the appellant, nor was any witness examined to substantiate their stance. Learned counsel for the appellant further contended that the inquiry officer has based his findings on assessments and speculations. Learned counsel for the appellant explained that before imposition of major penalty, the respondents were required to afford appropriate opportunity of defense to the appellant, which was not done. On the question of limitation, the learned counsel added that the rejection order dated 06-03-2019 passed on departmental appeal was received by appellant on 22-05-2019, hence the revision petition dated 28-05-2019 was well within time. Learned counsel for the appellant further argued that since the issue involves monetary loss to the appellant and which create fresh cause of action every

month, hence no limitation runs against the case of the appellant. Learned counsel for the appellant added that the impugned order is harsh, without any evidence, based on surmises & conjectures and is equally against the principle of natural justice and prayed that the impugned orders dated 27-06-2018, 06-03-2019 and 19-06-2019 may be set aside and pay of the appellant be restored to its original position with all back benefits.


5. Learned Additional Advocate General appeared on behalf of official respondents confined his arguments only to the extent of limitation and contended that the instant appeal is not maintainable being barred by time. Learned Additional Advocate General contended that the departmental appeal was rejected on 06-03-2019, whereas the appellant filed revision petition on 28-05-2019, which was required to be filed within thirty days from the date of communication of the order as is provided in Rule 11 of Police Rules, 1975. Learned Additional Advocate General added that when a departmental representation was barred by time, the appeal filed before the service Tribunal would be incompetent. Reliance was placed on 2015 SCMR 165, 2011 SCMR 676 and Service Appeal No 325/2011.


6. We have heard learned counsels for the parties and perused the record. We have observed that the charges leveled against the appellant were very general in nature and such charges cannot be reduced to a measurable and specific frame to prove or disprove in the process of inquiry. The only way to prove such allegations are to bring witnesses, supported with evidences, which however is not done in case of the appellant. The inquiry so conducted is replete with deficiencies as no specific allegations have been proved through evidence against the appellant and in the circumstances, imposition of major

penalty smacks malafide on part of the respondents. No evidence was brought on record to strengthen their claim against the appellant. The inquiry officer attempted to establish charges of corruption against the appellant by digging out the bank account of the appellant without showing any amount in his account as well as searching for a car registered in his name, which cannot be termed as an evidence to prove that the appellant was corrupt. In the nutshell, the appellant has not been treated in accordance with law and major penalty was imposed without proving the allegations against the appellant. We have observed that departmental appeal was rejected on 06-03-2019, which was received by the appellant on 22-05-2019 and revision petition was filed on 28-05-2019. Since the respondents did not confirm the mode of communication of such order, which was addressed to DPO Kohat with no copy to the appellant and the appellant collected such order from the office of DPO, so we are constrained to accept the plea of late receipt of such order taken by the appellant and which makes the revision petition preferred well within time.

7. In view of the situation, the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
29.03.2021

  
(ROZINA REHMAN)  
MEMBER (J)

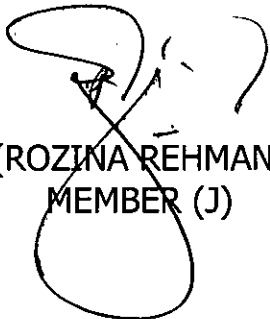
  
(ATIQ UR REHMAN WAZIR)  
MEMBER (E)

29.03.2021

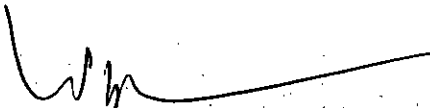
Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for respondents present.

Vide detailed judgment of today of this Tribunal 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  
29.03.2021



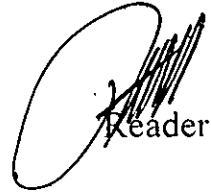
(ROZINA REHMAN)  
MEMBER (J)



(ATIQ UR REHMAN WAZIR)  
MEMBER (E)

13.05.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 17.08.2020 before D.B.



Reader

17.08.2020

Due to summer vacations, the case is adjourned to 19.10.2020 for the same.



Reader

19.10.2020

Junior to counsel for the appellant and Zara Tajwar, DDA alongwith Farhan Ahmad, Superintendent for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned <sup>to</sup> 24.12.2020 for hearing before the D.B.



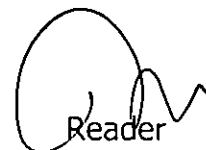
(Mir. Muhammad)  
Member



Chairman

24.12.2020

Due to summer vacation, case is adjourned to 29.03.2021 for the same as before.



Reader

22.11.2019

Appellant in person and Addl. AG alongwith Bilal Ahmad, H.C for the respondents present.

Representative of the respondents seeks time to furnish the requisite reply/comments. Adjourned to 07.01.2020 on which date reply/comments shall positively be furnished.

  
Chairman

07.01.2020


Junior to counsel for the appellant and Addl. AG alongwith Arif Saleem, Stenographer for the respondents present.


Parawise comments on behalf of respondents have been furnished. Placed on record. The appeal is assigned to D.B for arguments on 09.03.2020. The appellant may furnish rejoinder, within one month, if so advised.

  
Chairman

09.03.2020

Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior learned counsel for the appellant is not available. Adjourn. To come up for arguments on 13.05.2020 before D.B.

  
Member

  
Member

28.08.2019

Counsel for the appellant present.

Contends that the departmental appeal of the appellant was decided on 06.03.2019 and the decision was communicated on 22.05.2019. On 28.05.2019 a revision petition was submitted under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 which was well within time but was erroneously considered as barred by time and was rejected by respondent No. 1 on 19.06.2019. Arguing about merit of the case of appellant it was contended that the allegations noted in the statement of allegations and charge sheet were of the nature which required thorough probe by recording pro & contra evidence. The enquiry officer did not resort to such proceedings and recommended penalty for the appellant.

In view of available record and arguments of learned counsel instant appeal is admitted for regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 28.10.2019 before S.B.

Appellant Deposited  
Security & Process Fee

28/8/19

  
Chairman

28.10.2019

Appellant present in person and Addl. AG alongwith Arif Saleem, Stenographer for the respondents present.

Representative of respondents requests for time <sup>to</sup> furnish reply/comments. Adjourned to 22.11.2019 on which date the requisite reply/comments shall positively be furnished.

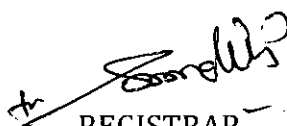

  
Chairman



Form- A  
FORM OF ORDER SHEET

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

Case No. 929/2019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	16-07-2019	<p>The appeal of Mr. Wali Badshah submitted today by Mr. Shahid Qayum Khattak, Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p> REGISTRAR</p>
2	18/07/19.	<p>This case is entrusted to S.B for preliminary hearing to be put up there on <u>28/08/2019.</u></p> <p> CHAIRMAN</p>

P-17  
Telang

BEFORE THE SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 929/2019

Wali Badshah ..... Appellant

Versus


Provincial Police Officer and others..... Respondents

INDEX

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5.	Copy enquiry report. & SCN	10-12
6.	Copy of impugned order dated 25/06/2018	13
7.	Copy of representation	14-16
8.	Copy of Impugned order dated 06/03/2019	17
9.	Copy of Revision	18-20
10.	Copy of Impugned order dated 19/06/2019	21
11.	Wakalat Nama	22

  
Appellant

Through

  
Shahid Qayam Khattak  
Advocate, Supreme Court  
of Pakistan  
Mob No. 0333-9195776

Dated: 15/07/2019

①

**BEFORE THE SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA PESHAWAR**

Service Appeal No. 929 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 989

Wali Badshah Head Constable No. /521 now posted at Police Post

Dated 16-7-19

Political Sarai District Kohat ..... Appellant

Versus

1. Provincial Police Officer/ Inspector General of Police  
Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police Kohat Region, Kohat.
3. District Police Officer, Kohat
4. Government of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar

.....Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 25/06/2018 PASSED BY RESPONDENT NO. 3 BY WHICH MAJOR PENALTY OF REDUCTION FROM HIGHER STAGE TO LOWER STAGE IN THE SAME TIME SCALE OF PAY FOR THE PERIOD OF 02 YEARS HAS BEEN AWARDED TO THE APPELLANT AND AGAINST THE ORDER DATED 06/03/2019 OF RESPONDENT NO. 2 BY WHICH THE DEPARTMENTAL APPEAL FILED BY APPELLANT HAS BEEN REJECTED AND AGAINST THE ORDER DATED 19/06/2019 PASSED BY RESPONDENT No. 1 BY WHICH THE REVISION PETITION FILED BY THE APPELLANT HAS BEEN REJECTED

PRAYER

On accepting this service appeal, the impugned order bearing OB No. 721 dated 25/06/2018 and order dated 06/03/2019 bearing No. 2074/EC, dated Kohat the 06/03/2019 and order dated 19/06/2019 bearing No. 2157/19, dated Peshawar the 19/06/2019 may graciously be set aside by declaring it illegal, void, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable and the appellant is entitled for all back benefits of pay and service

Respectfully Sheweth;

1. That appellant served police department from the past 20 years and has rendered satisfactory service in the Department and performed his duties with full zeal and enthusiasm.

Filed to  
Registrar

2. That respondent No. 3 issued a charged sheet to the appellant on 30/04/2018 which has been properly replied by the appellant. ( Copies of charge sheet and reply are attached as Annexure "A" & "A-I" )
3. That after the reply of appellant an enquiry was conducted but nothing material was brought on record against appellant and final show cause notice has been issued to the appellant on 12/06/2018 and thereafter respondent No. 3 passed impugned order dated 25/06/2018 vide which major punishment of reduction from higher stage to lower stage in the same time scale of pay for the period of 02 years has been imposed. (Copy of the enquiry report, Show Cause Notice and impugned order are attached as Annexure "B", "C" & "D")
4. That appellant filed departmental appeal/ representation against the impugned order before worthy respondent No. 2 who vide order dated 06/03/2019 issued/received on 22/05/2019 rejected the same without complying the codal formalities. ( Copy of representation and order are attached as Annexure "E" and "E-I").
5. That appellant has filed appeal/revision before respondent No. 1 who vide order dated 18/06/2019 rejected the same, hence, the petitioner feeling aggrieved from the above orders filling this appeal on the following amongst other grounds inter. ( Copy of the appeal/ revision and order are attached as Annexure "F" & "F-I")

GROUND:

- a. That impugned orders of the respondents are illegal, unlawful, without authority, based on mala fide intention, void abinitio, against the nature justice, in violation of the Constitution mandate and Service Law and equally with out jurisdiction, thus untenable in the eyes of law and is liable to be set aside.
- b. That impugned orders passed by respondents are very much harsh, without any evidence based on surmises & conjectures and is equally against the principle of natural justice.
- c. That the respondent No. 3 has not provided proper opportunity of hearing to appellant but this aspect has not been taken into consideration by learned respondent No. 1 and 2 at all thus the

impugned orders are nullity in the eyes of law and is liable to be set aside.

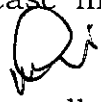
- d. That it is very much evident from the enquiry report that the allegation leveled in the charge sheet has not been proved through cogent evidence rather no person has been sighted as witness in the enquiry report.
- e. That the case of appellant has been treated in very arbitrary manners and no evidence what so ever has been brought on record to substantiate the allegation leveled against appellant rather he has been proceeded under the rules and regulation which are not at all applicable to petitioner being a civil servant.
- f. That the whole departmental file against appellant has been prepared in violation of law and rules as the enquiry officer has based his finding on assessment and speculations. The findings have not been based on sound reasons and any solid, material and cogent evidence.
- g. That the enquiry proceedings against appellant suffered from gross infirmities, illegalities and irregularities as no evidence what so ever has been produced or cited in the enquiry report nor any witness has been examined before the appellant.
- h. That the impugned order has been based on hallowed and unfounded assessments of enquiry officer who was otherwise not competent to conduct enquiry, therefore the orders based on such enquiry are worth set aside.
- i. That no show cause notice under the relevant provision of law has been issued to appellant which is mandatory under the law. Similarly appellant was not personally heard and no opportunity of defense has been provided to appellant nor proper proceeding under proper law has been carried against the appellant.
- j. That appellant in his departmental appeal and revision raised number of material grounds and his progress reports ( the same may please be taken as integral part of this appeal too) but the same has not been taken into consideration at all.

(4)

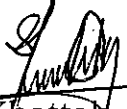
- k. That the entire service record of the appellant is unblemished therefore, the impugned order would be a black stigma on the clean service career of the appellant, therefore, the same is liable to be set aside. Furthermore performing official duties as per directions of the senior official, appellant can not be held responsible for any alleged offence.
- l. That impugned orders are suffered from gross infirmities, illegality , based on no evidence totally contradictory to the enquiry report further appellant being a civil servant has not been proceeded under relevant provision of rules and regulation.
- m. That the learned respondent No. 1 has not taken into consideration that copy of the order dated 06/03/2019 received late to appellant and from the date of receipt the revision is well within time.

It is, therefore, most humbly prayed that by accepting this service appeal, the impugned order bearing OB No. 721 dated 25/06/2018 and order dated 06/03/2019 bearing No. 2074/EC, dated Kohat the 06/03/2019 and order dated 19/06/2019 bearing No. 2157/19, dated Peshawar the 19/06/2019 may graciously be set aside by declaring it illegal, void, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable and the appellant is entitled for all back benefits of pay and service

Any other relief not specifically prayed for but deem appropriate in the circumstances of the case may also be granted.

  
Appellant

Through

  
Shahid Qayum Khattak  
Advocate, Supreme Court  
of Pakistan

Dated: /07/2019

Certified that as per instruction of my client no such appeal has been filed before this Hon'ble Forum.

  
Advocate

5

BEFORE THE SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2019

Wali Badshah ..... Appellant

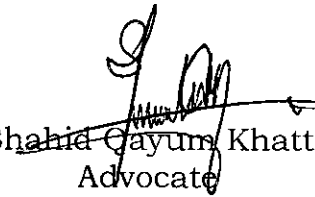
Versus

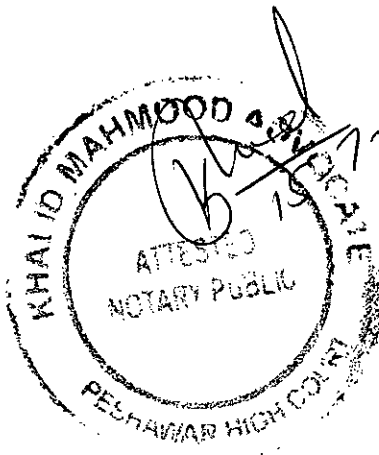
Provincial Police Officer and others..... Respondents

Affidavit

I, Wali Badshah Head Constable No. /521 now posted at Police Post Political Sarai District Kohat, do hereby solemnly affirm and declare on Oath that the contents of the above appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.

Identified by

  
Shahid Gayum Khattak  
Advocate



  
Deponent

6

BEFORE THE SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2019

Wali Badshah ..... Appellant

Versus

Provincial Police Officer and others.....Respondents

ADDRESS OF THE PARTIES

APPELLANT

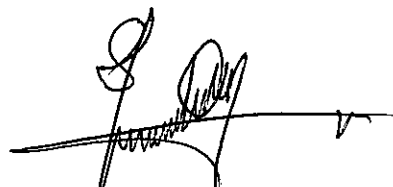
Wali Badshah Head Constable No. /521 now posted at Police Post  
Political Sarai District Kohat

RESPONDENTS

1. Provincial Police Officer/ Inspector General of Police  
Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police Kohat Region, Kohat.
3. District Police Officer, Kohat
4. Government of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar

  
Appellant

Through

  
Shahid Qayum Khattak  
Advocate, Supreme Court  
of Pakistan

Dated: /07/2019



7

Annex-A

Office of the  
District Police Officer,  
Kohat

Dated 30-4/2018

CHARGE SHEET.

1. ABBAS MAJEED KHAN MARWAT, DISTRICT POLICE OFFICER, KOHAT, as competent authority under Khyber Pakhtunkhwa Police Rules 1975 (amendments 2014) am of the opinion that you HC Walibat Shah the then Moharir PS Jarma rendered yourself liable to be proceeded against, as you have committed the following act/omissions within the meaning of Rule 3 of the Police Rules 1975.

While you posted as Moharir PS Jarma were found responsible for the following gross misconduct:-

- i. Reputation of being corrupt.
- ii. Inefficient Police Officer.
- iii. Rude behavior with the General Public.
- iv. Involved in getting illegal gratification from innocent people.

Your this act shows your in-efficiency, irresponsibility and professional misconduct on your part.

2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 of the Police Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the Rule 4 of Police Rules 1975.

3. You are, therefore, required to submit your written statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

Your written defense if any should reach the Enquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put in and ex-parte action shall be taken against you.

4. A statement of allegation is enclosed.







(8)

Annex A-1

Office of the  
District Police Officer,  
Kohat

26 /PA

Dated \_\_\_\_\_/2018

**DISCIPLINARY ACTION**

I, **ABBAS MAJEED KHAN MARWAT, DISTRICT POLICE OFFICER, KOHAT**, as competent authority, am of the opinion that you **HC Walibat Shah the then Moharir PS Jarma** have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

**STATEMENT OF ALLEGATIONS**

While you posted as Moharir PS Jarma were found responsible for the following gross misconduct:-

- i. Reputation of being corrupt.
- ii. Inefficient Police Officer.
- iii. Rude behavior with the General Public.
- iv. Involved in getting illegal gratification from innocent people.

Your this act shows your in-efficiency, irresponsibility and professional misconduct on your part.

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations **Mr. Jehanzeb Khan SP Investigation Wing Kohat** is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Rule-1975, provide reasonable opportunity of hearing to the accused official, record his findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

  
DISTRICT POLICE OFFICER,  
KOHAT 22/30/4.

No. 4291-92/PA, dated 30-4-2018.

Copy of above to:-



(9)

Annex-A-1  
01-2018

BEFORE THE DISTRICT POLICE OFFICER, KOHAT

Subject: REPLY OF THE CHARGE SHEET

Respected Sir,

Kindly with reference to the charge sheet bearing No. 4291-92/PA dated 30.04.2018, it is submitted that I have got twenty years of Police service to my credit and during this period no complaint has been made against me from any quarters. I performed my duty devotedly and zealously to the entire satisfaction of my senior officers at various police stations in the district. So far no departmental enquiry has been conducted or punishment awarded to me on account of any of the allegations mentioned in the charge sheet referred to above. At present, I have been performing my duty as Muharrar PS Jerma since 12.9.2017 but no complaint has been made against me so far with regard to the allegations contained in the charge sheet. Moreover the statement of allegations does not show material forming basis of charges. Such omission will prove fatal to action taken against me.

In view of the above submissions, it is requested that the instant charge sheet may kindly be dropped to meet the ends of justice please.

Yours Obediently,

Date  
13-5-18  
received on 16.05.18

HC Wali Bad Shah  
District Lines Kohat

  
HC



Subject: ENQUIRY AGAINST HC GUL WALI BAT SHAH NO.521 PS JARMA  
POLICE LINE KOHAT

Sir

BRIEF

"That he while posted as Muharrar PS Jarma were found responsible for the following gross misconduct:-

- i. Reputation of being corrupt
- ii. Inefficient Police officer
- iii. Rude behaviour with General Public
- iv. Involved in getting illegal gratification from innocent people. Your this act shows your in-efficiency irresponsibility and professional misconduct on your part.

PROCEEDINGS

2. In this regard charge sheet & summary of allegation was issued to HC Wali Bat Shah No.521 by DPO Kohat vide No.4291/PA dated 30.04.2018. The undersigned was appointed as Enquiry Officer.
3. To probe into the matter against HC Wali Bat Shah No.521, he was summoned, charge sheet served upon him, he was heard in person an ample opportunity was given to defend himself. He submitted reply of the charge sheet (copy is enclosed).
4. In order to dig-out the assets/vehicles in the name of above named alleged official, Excise & Taxation office was addressed vide letter No.535/PA dated 18.05.2018, in response vide letter No.1153/MV dated 21.05.2018 it found registered a car No.U-7985 Toyota in the name of the alleged official.
5. Statement of HC Wali Bat Shah No.521 account exists in UBL Bank Kohat vide No.000214819331 obtained wherein it described that the amount so deposited in three phase. However, the available amount in the account was far than the status of a Government low paid official.
6. Alteration in Parcel cells of the case property FIR No.377 dated 20.11.2017 u/s 9CCNSA PS Jarma during his tenure also found, Naqalmad No.10 dated 24.04.2018 is attached.
7. Similarly, SMS complaint in taking of Rs.500 illegal gratification was also proved against the alleged official. Enquiry report annexed (copy enclosed).

FINDINGS

- 8 (A). In view of above discussion and other source report, the alleged HC Wali Bat Shah No.521 is stated to be ill reputed posted in any Police Station or elsewhere.
- B. According to the report of Excise & Taxation office a motor car registered in the name of the above mentioned alleged official bearing No.U-7985 Toyota/Hilux.
- C. Similarly, bank account exists in UBL bearing No.000214819331 has amount than his status or affordable any low paid constable. The alleged official cannot produce any cogent reason regarding his available amount in the same account.

(11)

behaviour with general public for ulterior motives has been proved beyond any shadow of doubt. Furthermore, he is also stated to be ill discipline. He is recommended major punishment of reduction to lower stage of time scale for a period of 02 years under Police & Disciplinary Rules, 1975, if agreed please

Enquiry report is submitted for kind perusal

*nd*

*J. S.*  
(JEHANZEB KHAN)  
SUPERINTENDENT OF POLICE  
INVESTIGATION, KOHAT

W/DPO KOHAT

(12)

Annex C



OFFICE OF THE  
DISTRICT POLICE OFFICER,  
KOHAT

Tel: 0922-9260116 Fax 9260125

No. 5847 /FA dated Kohat the 12-6/2018

**FINAL SHOW CAUSE NOTICE**

1. I, **Abbas Majeed Khan Marwat, District Police Officer, Kohat** as competent authority, under the Khyber Pakhtunkhwa Police Rules 1975, (amended 2014) is hereby serve you, **HC Walibat Shah the then Moharir PS Jarina** as follow:-

- i. That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide office No. 4291-92/PA dated 30.04.2018.
- ii. On going, through the finding and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the inquiry officer.

I am satisfied that you have committed the following acts/omissions, specified in section 3 of the said ordinance.

While you posted as Moharir PS Jarina were found responsible for the following gross misconduct:-

- a. Reputation of being corrupt.
- b. Inefficient Police Officer.
- c. Rude behavior with the General Public.
- d. Involved in getting illegal gratification from innocent people.

Your this act shows your in-efficiency, irresponsibility and professional misconduct on your part.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you major penalty provided under the Rules **ibid.**

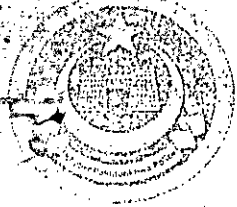
3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 07 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

5. The copy of the finding of inquiry officer is enclosed.

*Signature*

*Signature*  
DISTRICT POLICE OFFICER,  
KOHAT *11/6*



13

OFFICE OF THE  
DISTRICT POLICE OFFICER,  
KOHAT

Tel: 0922-9260116 Fax 9260125

Annex-D

No 5193-95 /PA dated Kohat the 27/6 /2018

### ORDER

This order is passed on the departmental enquiry against HC Walibat Shah the then Moharir PS Jarma under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendment 2014).

Brief facts of the case are that he while posted as Moharir PS Jarma were found responsible for the following gross misconduct:-

- i. Reputation of being corrupt.
- ii. Inefficient Police Officer.
- iii. Rude behavior with the General Public.
- iv. Involved in getting illegal gratification from innocent people.

This act shows his in-efficiency, irresponsibility and professional misconduct on his part.

He was served with Charge Sheet & Statement of Allegations. Mr. Jehanzeb Khan SP Investigation, Kohat was appointed as enquiry officer to proceed against him departmentally. The enquiry officer submitted finding report and found him guilty of the charges leveled against him.

He was called in O.R and heard in person. His reply was perused and found unsatisfactory.

In view of the above and available record, I agreed with the finding of enquiry officer, therefore, in exercise of powers conferred upon me under the rules ibid I, Abbas Majeed Khan Marwat, District Police Officer, Kohat impose a major punishment of reduction from higher stage to lower stage in the same time scale of pay for the period of 02 years on accused HC Walibat Shah with immediate effect.

Order Announced  
24.06.2018

OB No. 721  
Date 25-6 /2018

No 5193-95 /PA dated Kohat the 27-6-2018

CC:-

Reader/Pay Officer/SRC/OHC for necessary action.

  
DISTRICT POLICE OFFICER,  
KOHAT



(Better Copy)

Page No. 13

Annexure D

OFFICER OF THE  
DISTRICT POLICE OFFICER,  
KOHAT

Tel: 0923-9260116 Fax 9260125

No. 6198-95/PA Dated Kohat the 27/6/2018

---

**ORDER**

This order is passed on the departmental enquiry against Hc Walibat Shah the then Moharir PS Jarma under the Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014)

Brief facts, of the case are that be while posted as Moharir PS Jarma were found responsible for the following gross misconduct: -

- i. Reputation of being corrupt.
- ii. Inefficient Police Officer.
- iii. Rude behavior with the General Public.
- iv. Involved in getting illegal gratification from innocent people. This act shows his in-efficiency.

He was served with Charge sheet & Statement of Allegations. Mr. Jehanzeb Khan SP Investigation, Kohat was appointed as enquiry officer to proceed against him departmentally. The enquiry officer submitted finding report and found him guilty of the charges leveled against him.

He was called in O.R and heard in person. His reply was perused and found unsatisfactory.

In view of the above and available record, I agreed with the finding of enquiry officer, therefore, in exercise of powers conferred upon me under the **rules ibid I**, Abbas Majeed Khan Marwat, District Police Officer, Kohat impose a major punishment of **reduction from higher stage to lower stage in the same time scale of pay for the period of 02 years** on accused HC Walibat Shah with immediate effect.

Order Announced

24.05.2018

DISTRICT POLICE OFFICER,  
KOHAT

OB No. 721

Dated 25-6-2018

No. 3193-95/PA dated Kohat the 24-6/2018.

CC: -

Reader /Pay Officer / SRC / OHC for necessary action.



(14)

Annex E

TO THE DEPUTY INSPECTOR GENERAL OF POLICE,  
KOHAT REGION KOHAT

Subject: APPEAL AGAINST THE ORDER OF DPO KOHAT ISSUED  
VIDE OB NO. 721 DATED 25-06-2018 WHEREBY THE  
APPELLANT WAS AWARDED THE MAJOR PUNISHMENT  
OF REDUCTION FROM HIGHER STAGE TO LOWER  
STAGE AT THE SAME TIME SCALE OF PAY FOR A  
PERIOD OF TWO YEARS WITH IMMEDIATE EFFECT.

Respectfully Sheweth,

With due respect, the humble appellant prefers the instant appeal against the order of DPO Kohat mentioned as per subject above, for your kind and judicious consideration on the following grounds.

FACTS:

Briefly stated the following allegations were conveyed through the charge sheet to the appellant.

- A) Reputation of being corrupt.
- B) Inefficient police officer.
- C) Rude behaviour with the general public.
- D) Involved in getting illegal gratification from innocent people.

On the above allegations, the appellant was proceeded against departmentally and on the recommendation of the enquiry officer, the impugned order passed by DPO Kohat.

GROUND:

Perusal of record would show that the departmental enquiry suffered from several legal lacunae and non-observation of the

that rules. As such the impugned order was unlawful and not sustainable under the law.

A) The charge sheet has not been framed in accordance with the rules. The summary of allegation does not elaborate the charges. It does not show as to me what material the charges have been framed because no particulars are specified therein. The allegations are completely bald and devoid of specifications. The rules require communication of allegations to the appellant of the material exttanatory of the charge. In such circumstance final action taken by the DPO Kohat would be invalidated as failure to spell out details in summary of allegation would certainly cause prejudice to the accused police officer in his defence.

B) That final show cause notice as issued to the appellant, but copy of the finding report of the enquiry officer as not furnished to the appellant by DPO Kohat. Thus the principal of natural justice ware not observed in the instant case waiich failure has resulted in material prejudice to the appellant. In the given circumstances, the appellant was unable to rebut the findings recorded against the appellant by the enquiry officer.

(C) E None of the allegations leveled against the appellant have been substantiated by any solid evidence. None has appeared before the enquiry officer to depose against the appellant to substantiate the allegations.

D) & The appellant has got about 20 years of service to his credit but never punished on account of any of the allcagations.

*(Handwritten signature)*

(18)

(97)

The appellant has got joint family with his two other brothers serving in education and police department. They contribute their income to the joint account in addition to the income from the landed ancestral property and keeping pit animals as the appellant belongs to rural area where pit animals are kept by the people. I am not living beyond my sources as I have neither purchased any landed property nor owning any sort of vehicle in my name. there recommendations of the enquiry officer are based on rumours and conjectures.

**PRAYER:**

In view of the above submissions, it is prayed that the impugned order passed by DPO Kohat may kindly be set aside and justice done to the appellant.

Yours Obediently



H.S Wali Badshah

No 521

P.O Darmalak P.S Jarma, Kohat

PP pol.liceo sarai Distt. Kohat

Dated: 13-07-2018



11-16/18 (17)

Annex - E-I

File No: 9260112.  
No: 9260112.

From: - The Regional Police Officer,  
Kohat Region, Kohat.

To: - The District Police Officer, Kohat.

No. 2074 /EC, Dated Kohat the 06 /03 /2019.

Subject: - APPEAL.

MEMO:

With reference to your office Memo: No. 4341/SRC, dated 01.03.2019, appeal of HC Wali Badshah No. 521 was examined & filed by competent authority. He may be informed accordingly please.

13/1/05  
Regional Police Officer,  
Kohat Region

RYA  
Kohat

Received on  
22-5-19

(Signature)

(Better Copy)

Page No. 17  
Annexure E-1

Phone: 9260112.  
Fax No. 9260114.

From: - The Regional Police Officer,  
Kohat Region, Kohat

To: - The District Police Officer, Kohat.

No.2074/EC, Dated Kohat the 06/03/2019

Subject: - APPEAL

MEMO

With reference to your office Memo: No. 4341/SRC, dated 01.03.2019, appeal of HC Wali Badshah No. 521 was examined & filed by competent authority. He may be informed accordingly please.

**Regional Police Officer,  
Kohat Region**

18

Annex - 'F'

To

The Provincial Police Officer,  
Khyber Pakhtunkhwa Peshawar.

**THROUGH: PROPER CHANNEL**

**Subject: APPEAL U/S 11 (2) OF THE KHYBER PAKHTUNKHWA POLICE RULES, 1975 (AMENDED 2014) AGAINST THE ORDER OF REGION POLICE OFFICER, KOHAT WHERE IN APPEAL/REPRESENTATION OF APPELLANT FOR SET ASIDING THE MAJOR PUNISHMENT OF REDUCTION FROM HIGHER STAGE TO LOWER STAGE AT THE SAME TIME SCALE WAS AWARDED BY DPO, KOHAT Of Appellant WAS FILED VIDE HIS OFFICE LETTER NO. 2074/EC DATED 06.03.2019.**

**Respected Sir,**

The appellant submits the following review appeal against the order of worthy of Regional Police Officer, Kohat wherein representation/appeal of the appellant against the order of worthy of District Police Officer Kohat where in appellant was awarded punishment of reduction from higher rank to lower rank was awarded and the worthy of Regional Police Officer, Kohat has filed the representation/appeal vide his office letter cited as subject, on the following facts and grounds.

**FACTS:-**

1. Appellant was posted as Moharrar at Police Station Jarma in the year 2018 and was performing his official duty with all professional skill, zeal and zest.
2. That on 30.04.2019 charge sheet and summary of allegation were received by appellant, wherein appellant was charged for the following misconducts:-
  - a. Reputation of being corrupt.
  - b. Inefficient police officer.
  - c. Rude behavior with general public
  - d. involved in getting illegal gratification from innocent people.(Copy of charge sheet and summary of allegation. is enclosed as **Annexure- A&B**, wherein SP investigation Kohat was appointed as enquiry officer.

3. That appellant submitted plausible reply in response to charge to the enquiry officer. (Copy enclosed as **Annexure-C**)
4. That enquiry officer submitted one sided report to the worthy of District Police Officer Kohat and appellant was proved as guilty. (Copy enclosed as **Annexure-D**.)
5. That final show case notice was issued to appellant. Applicant submitted plausible reply. (Copy enclosed as **Annexure-E**)
6. That on 27.06.2018 worthy District Police Officer Kohat has issued the impugned order where in the above mentioned punishment was awarded to appellant vide his office Order No. 6193-95/PA dated 27.06.2018. (Copy enclosed as **Annexure-F**.)
7. That appellant submitted representation against the order of worthy of DPO, Kohat to worthy of Regional Police Officer, Kohat. Copy of representation appeal is enclosed as annexure G.
8. That on 06.03.2019 the appeal / representation of appellant was rejected vide RPO Office letter No.2074/EC dated 06.03.2019. Copy enclosed as **Annexure-H**. Hence this review appeal is submitted on the following grounds.

**GROUND:-**

- a. That enquiry officer has not properly evaluated the charges leveled against appellant
- b. That the charges were leveled on flimsy and hollowed grounds.
- c. That departmental enquiry has lack of several legal lacunas and non observance of codal formalities. Therefore the impugned order is unlawful.
- d. That charge level against appellant has not been framed according to rules. The summary of allegation is not elaborate. i.e. No specific evidence has been brought on record while framing charges. Therefore, the impugned order is unlawful and based on conjecture and surmises.
- e. None of the allegation leveled against the appellant have been substantiated by any solid evidence. None has appeared before the enquiry officer to depose against the appellant to substantiate the allegations.
- f. The appellant has got about 20 years service in his credit but never punished on account of any of the allegations.
- g. The appellant has got joint family with his two other brothers serving in education and police department. They contribute their

W

20

income to the joint account in addition to the income from the landed ancestral property and keeping pit animals as the appellant belongs to rural area where pit animals are kept by the people.

- h. That appellant neither living beyond my sources as a appellant has neither purchased any landed property nor any kind of vehicle on the my name of appellant. There recommendations of the enquiry officer are based on rumours and conjectures.

**PRAYER:-**

In view of the above submissions, it is prayed that the impugned order passed by District Police Officer Kohat may kindly be set aside and the status of appellant be restored to actual position.

Thanks

Yours obediently,



(WALI BADSHAH)  
Head Constable No/521  
Now posted at Police Post  
Political sarai district kohat

Dated 18 / 5 / 2019





(21)

Annex - F1

OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
Central Police Office, Peshawar.

No. S/ 2157 /19, dated Peshawar the 18.06.2019.

To: The Regional Police Officer,  
Kohat.

Subject: APPEAL/REVISION PETITION.

Memo.

Please refer to your office Memo: No. 5008/EC, dated 10.06.2019.

The Competent Authority has examined and filed the appeal-revision petition preferred by Head Constable Wali Badshah No. 521 of Kohat District Police against the punishment of reduction from higher stage to lower stage in the same time scale of pay for the period of 02 years awarded by District Police Officer, Kohat vide OB No. 721, dated 25.06.2018, being time barred.

The applicant may please be informed accordingly.

4598  
28/6/19

F.C.  
28/6

DPO Kohat

(SYED ANISUL-HASSAN)  
Registrar,  
For Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.

No 5608/EC  
dt 28/6/2019

For information of  
superior the office w/r to  
this office memo no. 1666/EC  
dated 31.5.2019.

OTC  
To informed to  
the concerned.

520  
28/6/19

DIG POLICE  
28/6/2019

Signature

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21/A

4601  
28-6-18

OFFICE OF THE INSPECTOR GENERAL OF POLICE, KPK PESHAWAR.

No. 3026-37 Legal Dated Peshawar the 09/06 2019.

Copy of the above is forwarded to Regional Police Officer, Kohat & District Police Officer, Kohat for further necessary action please.

SP Conf & Litigation  
For Inspector General of Police,  
Hyber Pakhtunkhwa, Peshawar

FC  
256

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Page No. 21  
Annexure F-1

**OFFICER OF THE  
INSPECTOR GENERAL OF POLICE,  
KHYBER PAKHUTNHWA  
Central Police Office, Peshawar  
No. 2157/19, Dated Peshawar the 19.06.2019**

---

**To: The Regional Police Officer,  
Kohat**




**Subject: APPEAL / REVISION PETITION**

**Memo**

Please refer to our office Memo No. 5008/FC dated 10.06.2019  
The Competent authority has examined and filed the appeal revision petition preferred by head Constable Wali Badshah No. 521 of Kohat district Police against the punishment of reduction from higher stage into lower stage in the same time scale pay for the period of 02 years awarded by District Police Officer, Kohat vide OR No. 721, dated 25.06.2018, being time bared.

The applicant may please be informed accordingly.

**(SYED ANIS-UL-HASSAN)  
Registrar  
For Inspector General of Police  
Khyber Pakhtunkhwa  
Peshawar**

50 روپے	7294			
ایڈویٹ: سٹالڈن فینوم جی ایچ ایچ		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 7677-10-20				
رابطہ نمبر: 0333-9195776				

بعدالت جناب: سر اسٹالڈن فینوم

منجانب:	دعویٰ:
ولی بار شاہ	علت نمبر:
بنام	مورخہ:
PCP Etc	جرم:
	تھانہ:

**باعت تحریر آگہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام کپٹان کے لیے سٹالڈن فینوم جی ایچ ایچ سید روحان شاہ کو وکیل مقرر

کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو

راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق

رز میں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یا طرفہ 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 تقرر کا اختیار ہوگا اور صاحب

مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم 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

المرقوم: 15/07/2019

DESHAHAR BAKHAR  
KHEER DAKHTUNKHW

المرقوم: 15/07/2019

المرقوم: 15/07/2019

المرقوم: 15/07/2019

لوگ باہتواہ جیسا شاہ  
سکتے کوڑ میلان، چوک  
جھنگ و صلی کو بیات

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

---

Service Appeal No. 929/2019

Wali Badshah Head constable No. 521

.....Appellant

**VERSUS**

Provincial Police Officer,  
Khyber Pakhtunkhwa, & others

..... Respondents

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.**

**Respectively Sheweth:-**

Parawise comments on behalf of respondent No. 1 to 3 are submitted as under:-

**Preliminary Objections:-**

- a) That the appellant has got no cause of action.
- b) That the appellant has got no locus standi.
- c) That the appeal is not maintainable in the present form.
- d) That the appellant is estopped to file the instant appeal for his own act.
- e) That the appellant has not come with clean hands to this Honorable Tribunal.
- f) That the appeal is time barred.

**FACTS:-**


1. Service of the appellant, pertains to record, however, as per service record, the appellant has earned about 16 bad entries.
2. Correct, the appellant indulged himself in extra departmental activities detailed in the charge sheet and statement of allegations and issued by the respondent No. 3 against the appellant under the relevant rules.
3. SP Investigation Kohat was appointed as inquiry officer, who vide his report / finding in inquiry held him guilty of the charges and recommended for major punishment. Hence, on completion of all codal formalities a punishment was imposed on the appellant by respondent No. 3 being competent authority.
4. Pertains to record, hence no comments.
5. The representation of the appellant filed before respondent No. 1 was properly processed, found time barred and filed by the competent authorities.


**Grounds:-**


- a. Incorrect, the impugned orders were passed on the basis of departmental inquiry, based on facts and according to law & rules.
- b. Incorrect, the charges / allegations were established against the appellant beyond any shadow of doubt, however, the respondent No. 3 in exercise of powers conferred upon him had taken a lenient view in imposing punishment on the appellant.

- c. Incorrect, as evident from the impugned order passed by the respondent No. 3, the appellant was heard in person during orderly room, but he failed to defend himself.
- d. Incorrect, the inquiry report filed by SP investigation Kohat (E.O) is self-explanatory, wherein the charges leveled against the appellant were established and made recommendation for major punishment.
- e. Incorrect, all the proceedings were carried out against the appellant in accordance with law & rules.
- f. Incorrect, during the departmental proceedings against the appellant, all codal formalities were fulfilled in accordance with rules.
- g. Incorrect. All proceeding has taken according to law and rules.
- h. Incorrect, the competent authority is empowered to nominate any officer as inquiry officer in the departmental proceedings.
- i. Incorrect, final show cause notice vide number 5847/PA dated 12.05.2018 was issued by the respondent No. 3 against the appellant, in which the appellant had submitted reply dated 20.06.2018. Copy of reply is **annexure A**.
- j. Irrelevant, hence no comments.
- k. Incorrect, the appellant has earned about 18 bad entries in his service record and awarded different kind of punishment on different occasions for his misconduct.
- l. Incorrect, legal and speaking order was passed by respondents No. 1 to 3.
- m. Incorrect, the appellant willfully delayed in filling of representation/appeal to the respondent No. 1. The appellant failed to explain the reasons of delay, as well.

In view of the above, it is prayed that the appeal may graciously be dismissed.

  
Dy: Inspector General of Police,  
Kohat Region, Kohat  
(Respondent No. 2)

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

  
District Police Officer,  
Kohat  
(Respondent No. 3)

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

Service Appeal No. 929/2019  
Wali Badshah Head constable No. 521

.....Appellant


VERSUS

Provincial Police Officer,  
Khyber Pakhtunkhwa, & others


..... Respondents

**COUNTER AFFIDAVIT**

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of reply to restoration application are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.

  
Dy: Inspector General of Police,  
Kohat Region, Kohat  
(Respondent No. 2)

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

  
District Police Officer,  
Kohat  
(Respondent No. 3)

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 819 /ST

Dated 18 /05 / 2021


To

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

Subject: - JUDGMENT IN APPEAL NO. 929/2019, MR. WALI BADSHAH.

I am directed to forward herewith a certified copy of Judgement dated 29.03.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.



basis of inferences, only such circumstances as are well authenticated.

Where there are indications of design, in the preparation of a case resting on circumstantial evidence, the Court should be on its guard against the possibility of being deliberately misled into false inference.

5. By now, it is a consistent view that when any case rests entirely on circumstantial evidence then, each piece of evidence collected must provide all links making out one straight chain where on one end its noose fit in the neck of the accused and the other end touches the dead body. Any link missing from the chain would disconnect and break the whole chain, to connect the one with the other and in that event conviction cannot be safely recorded and that too on a capital charge. As was held in the case of *Fazal Elahi* (ibid) and in view of the changed social norms and standard of ethics of the society, to which the witnesses belong and also the questionable credibility of the investigating agency and its incompetency to professionally investigate such blind crimes, by now, the Courts have to exercise more and more cautions before accepting and resting its opinion of being guilty on circumstantial evidence collected apparently in a dishonest, dubious and rough manner.

6. Therefore, we are left with no option but to adopt the same care and caution, keeping in view the peculiar facts and circumstances of this case, which cannot be put apart from the one, cited above.

7. With all respects to the Bench of the learned Federal Shariat Court, these precautions and judicial care so required, was not observed and view of the trial Judge with regard to the guilt of the appellant was endorsed by it. Thus, the approach to the evidence in the case was not accord with the principle since long well settled.

8. Accordingly, while extending benefit of doubt to the appellant this appeal is allowed and the appellant Imran @ Dully is acquitted of all the charges, levelled against him by setting aside his conviction and sentences awarded to him. He be set free forthwith if not required in any other case.

9. In view of our above findings, Criminal Shariat Appeal No. 100 of 2014, *Fazal Ali v. Imran @ Dully etc.* has become

Muhammad Asif Chatha v. Chief Secretary, Government of Punjab (Ijaz Ahmed Chaudhry, J) 165.

2015 S C M R 165

[Supreme Court of Pakistan]

Present: Ijaz Ahmed Chaudhry and Umar Ata Bandial, JJ

MUHAMMAD ASIF CHATHA and others---Appellants  
versus

CHIEF SECRETARY, GOVERNMENT OF PUNJAB,  
LAHORE and others---Respondents

Civil Appeals Nos. 222 to 238 of 2012, decided on 25th November, 2014.

(On appeal against the judgment dated 25-11-2011 passed by Punjab Service Tribunal, Lahore in Appeals Nos. 2933 to 2936, 2939 to 2943, 2951 to 2005, 4416 of 2006, 500 to 505 and 591 of 2006).

(a) Constitution of Pakistan---

Art. 212(3)---Civil service---Appeal against judgment of Service Tribunal filed before the Supreme Court---Question of fact---Such question could not be gone into in appeal proceedings before the Supreme Court under Art. 212(3) of the Constitution. [p. 170] B

(b) Civil Servants (Appointment, Promotion and Transfer) Rules, 1974---

R. 8-B---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 13---Appointment on acting charge/officiating basis---Promotion---Scope---Appointment on acting charge/officiating basis did not confer any vested right for regular promotion. [p. 170] C

See also, Aziz-ud-Din's case 2010 SCMR 1301 ref.

(c) Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---

R. 13---Promotion to higher post on officiating basis---Civil servants having regularization of such promotion---Limitation---Delay of 3 months in raising issue of regularization of promotion---Effect---Three months delay in raising issue of regularization of promotion of civil servants

ASL

appointment on officiating basis in the years 1995-1998 could not have agitated the matter in the year 2001--Civil servants seemingly had accepted their appointment on officiating basis--Appeal filed by civil servants seeking regularization of their promotion was dismissed accordingly. [pp. 169, 170, 171] A, D, E & F

Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan PFD 1970 Quetta 115 distinguished.

(d) Service Tribunals Act (LXX of 1973)--

S. 4--Departmental representation, filing of--Limitation period Appeal filed before Service Tribunal--Limitation period and competency--When a departmental representation was barred by time then without disclosing any sufficient reason for delay, no subsequent order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed before the Service Tribunal would be incompetent. [p. 171] G

\* Abdul Wahid v. Chairman, Central Board of Revenue Islamabad and others 1998 SCMR 882 and NED University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453 ref.

Saif ul Malook, Advocate Supreme Court for Appellants (in all cases).

Respondents in person.

Mudassir Khalid Abbasi, A.A.-G. for Government of Punjab

Date of hearing: 13th November, 2014.

#### JUDGMENT

IJAZ AHMED CHAUDHRY, J.--These appeals by leave of the Court have been directed against the judgment dated 25-11-2011 passed by the learned Punjab Service Tribunal, Lahore, whereby the appeals filed by the appellants were dismissed.

2. Briefly stated the facts of the matter are that the appellants were possessing B.Sc. Engineering Degree were promoted to the post of Assistant Engineer/SDO in BS-17 on officiating basis between the years 1995 to 1998 whereas the respondents who were holding B.Tech (Honorary) degree were promoted to the same post on regular basis.

Appellants challenged the said order in Intra Court Appeal as also before this Court but remained unsuccessful. Thereafter, the Secretary, Communication and Works Department, Government of Punjab, took up the matter and vide the order dated 18-12-2002 he regularized the appointment of the appellants on the advice of the Regulating Wing of S&GAD and on the ground that regular posts were available in the year 1995-1998 at the time of promotion of the appellants on officiating basis. Consequently, the promotion of the respondents was converted as officiating. The respondents assailed this order before the learned Punjab Service Tribunal by filing Appeals. The learned Service Tribunal vide the order dated 10-12-2003 accepted the appeals and set aside the order dated 18-12-2002 of the Competent Authority and directed fresh hearing of the matter after hearing all concerned within a period of 60 days. Pursuant to the direction of the learned Service Tribunal, the Department again took up the matter and vide the order dated 27-7-2005 the Competent Authority decided that officiating promotion of the appellants could not be treated as regular. Feeling aggrieved, the appellants filed departmental appeals but as the same were not decided within the statutory period of 90 days, therefore, they filed the impugned appeals before the Punjab Service Tribunal. During the pendency of appeals before the Service Tribunal, it came to the notice of the learned Tribunal that one Section Officer in the office of Secretary C&W Department, Lahore, instead of putting departmental appeals before the Appellate Authority/Chief Secretary Punjab opted to decide these appeals of his own on 28-12-2005. On this, the learned Tribunal directed the Appellate Authority to decide the departmental appeals of the appellants within 60 days. Pursuant to this direction of the Tribunal, the Chief Secretary/Appellate Authority finally decided the matter and rejected the departmental appeals of the appellants. The learned Service Tribunal vide the impugned judgment also dismissed the appeals filed by the appellants. Thereafter, the appellants filed Civil Petitions Nos. 164 to 172, 230 to 236 and 240 of 2012 before this Court, out of which have arisen the instant appeals, in which leave was granted on 15-3-2012, which reads as under--

"Leave to appeal is granted in all these listed petitions, inter alia, to examine if an official/officer has been authorized to be competent authority to hold a post against a clear vacancy in officiating capacity, whether it would tantamount to his promotion because an employee cannot be allowed to continue on officiating position for an indefinite period; subject to all just exceptions keeping in view the case of Jafar Ali Akhtar

3. Learned counsel for the appellants has contended that appointment of a duly qualified person against a permanent vacancy could not be described as officiating as the same could be deemed regular under section 2(2) of the Punjab Civil Servants Act, 1974. The learned Service Tribunal while dismissing the appeals of the appellants has not taken into consideration the law laid down by this Court, that the learned Service Tribunal has wrongly relied upon the judgments of this Court reported at Tariq Aziz ud Din and others (2019 SCMR 1301) and Dr. S.M. Inqisar Ali v. Government of Sindh (2011 SCMR 121) and the unreported judgment passed in Civil Petition No.1583-L of 1998; that even if the case is not covered by Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, even then an appointment made in the prescribed manner could not be treated, as officiating, that during the period 1995-1998 the relevant qualification of the respondents for promotion was lacking; that long temporary service was to be considered as regular due to flux of time and that the competent authority had passed a detailed order on 18-12-2002, therefore, the same provided valid and legal basis for declaring the promotions of appellants as regular. Learned counsel in support of the contentions has relied on Jafar Ali Akhtar v. Islamic Republic of Pakistan (PLD 1970 Quetta 115); Muhammad Tahir v. Secretary, Communication and Works Department, Government of Punjab etc. (2009 PLC(C.S.) 527), Khaliq ur Rehman Khan, SP, Khanewal v. Muhammad Ali Mirza (1992 SCMR 989), Lugman Zareen and others v. Secretary Education, N.-W.F.P. etc. (2000 SCMR 1938), Irfan Majeed v. University of Karachi etc. (2010 PLC(C.S.) 1118) and Muhammad Amjad v. Dr. Israr Ahmed etc. (2010 PLC(CS) 760).

4. Respondent Muhammad Farooq Malik, who appeared in person submits that the appellants had accepted their promotion on officiating basis and never challenged the same before any forum for about 6 years that there was no question of ineligibility or lack of qualification on the part of the respondents because the matter stood finally decided by the competent authority that B.Tech. (Hons.) Degree be treated at par with B.Sc. (Engineering) Degree; that in view of Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, officiating promotion neither confers any right of promotion on regular basis nor any such promotee could claim the same; that since 1995 to 2002 three seniority lists have been shown as officiating

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respondents and were not eligible for such promotion on regular basis; they were rightly ignored and their promotion was rightly treated as on officiating basis.

5. Learned Assistant Advocate-General, who appeared on behalf of the Government of Punjab has supported the impugned judgment.

6. We have heard learned counsel for the appellants, respondent in person, as also learned Assistant Advocate General at some length and have perused the record.

7. The questions involved in these appeals are three fold: (i) whether the appointment of appellants on officiating basis was valid; (ii) whether the respondents were rightly promoted on regular basis in the year 2001; and (iii) whether the appeals before the Service Tribunal were time-barred?

8. After the enforcement of Punjab Civil Servants Act, 1974, as well as Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, the legal position is clear, the Punjab Civil Servants Rules framed by the Government pursuant to the powers conferred under section 23 of the Punjab Civil Servants Act, 1974. In terms of section 13 of the Rules, the Government conferred power on the appointing authority to make appointment by promotion against such post on officiating basis. It would be relevant to reproduce the said Rule, which is as under:-

13. Appointment on officiating basis.---(i) Where a post falls vacant as a result of deputation, posting outside cadre, leave, suspension or appointment on acting-charge basis of the (regular) incumbent or is reserved under the rules to be filled by transfer, if none is available for transfer, the appointing authority may make appointment by promotion against such post on officiating basis:

Provided that a post reserved for regular promotion; on deferment of a civil servant due to any reason, may be filled by promotion on officiating basis.

(ii) No person shall be promoted on officiating basis unless he possesses the qualifications and experience prescribed for the post and his promotion as such is approved by the chairman of the appropriate selection authority.

shall not confer any right of promotion

(iv) Officiating promotion shall be made on the same terms and conditions as to pay as are prescribed for regular appointment by promotion.

9. From the bare perusal of the above provisions, it is clear that the appointing authority is empowered to make appointments on officiating basis. This leads us to the question as to whether at the time of promotion of the appellants on officiating basis, were there permanent posts available or not? We have found that regarding this matter, three inquiries have been held in order to resolve the issue. First was held on 10-9-2002 and vide the order dated 18-12-2002, the appellants were declared to be promoted on regular basis. Second was dated 27-7-2005 whereby it was mainly held that there is no ground for considering the officiating promotion of appellants as on regular basis on the ground that promotion cannot be granted with effect from an early date. Third inquiry was carried out by a committee headed by Additional Chief Secretary on the direction of the Chief Secretary. The Committee after detailed deliberation on 27-10-2010 held that the prayer of the appellants for promotion on regular basis is not legally tenable and is liable to be rejected and that there were no permanent posts available at the time of appointment of the appellants on officiating basis. Except the order dated 18-12-2002 which was passed without hearing some of the parties, it is the consistent stand of the Department that the appellants could not have been promoted on regular basis. Whether at that time permanent posts were available or not is also a question of fact, which cannot be gone into in these proceedings. This Court in *Tariq Aziz-ud-Din case* reported at 2010 SCMR 1301 has specifically cleared that appointment on acting or charge basis does not confer any vested right for regular promotion, as is evident from Rule 8-B of the Civil Servants (Appointments, Promotion and Transfer) Rules, 1973. It is important to note here that the said Rule 8-B is *pari materia* to Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. It is also noteworthy that the appellants never challenged the condition of 'officiating' for a long period of about 6 years. It was for the first time in the year 2001 when they agitated the matter before the learned High Court when the respondents were promoted as Assistant Engineers/SDOs on regular basis. Besides, since 1995 three seniority lists were issued showing the appellants not only junior to the respondents but also

with law, then the question of limitation is also a question of law. The appellants after their appointment on officiating basis in the years 1995-1998 could not have agitated the matter in the year 2001. It seems they had accepted their appointment on officiating basis. It is by now a well-settled principle of law that if a departmental representation is barred by time then without disclosing any sufficient reason for delay, no subsequent order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed by the civil servant before the Tribunal would be incompetent. Reliance in this regard has been placed on *Abdul Wahid v. Chairman, Central Board of Revenue, Islamabad etc.* (1998 SCMR 882) and *NED University of Engineering and Technology v. Syed Ashfaq Hussain Shah* (2006 SCMR 453). The question of limitation being basic requirement has to be strictly dealt with. So far as the eligibility of respondents is concerned, we find that the Federal Government had issued a policy letter dated 26-10-1973 holding that B.Tech (Hons) degree be treated at par with B.Sc. (Engineering) degree. Pursuant to this decision, the Government of Punjab also issued a notification on 1-2-1981 declaring B.Tech. (Hons.) degree in particular specialization equivalent to corresponding B.Sc. (Engineering) degree. The Government of Punjab also amended the Rules of (i) Communication and Works Department, (ii) Irrigation and Power Department, and (iii) Housing Physical and Environmental Planning Department for promotion of Sub-Engineers. As a result several persons were promoted. Despite the above said amendment, several employees of Physical and Environmental Planning Department were not allowed promotion on the ground that B.Tech (Hons) degree is not equivalent to B.Sc. (Engineering) degree. Pakistan Engineering Council also refused to recognize B.Tech. (Hons.) degree equivalent to B.Sc. (Engineering) degree. The matter ultimately then came up before this Court in Civil Petition No.216 of 1991 but this Court dismissed the same on 5-12-1992. However, this Court in Suo Motu Review Petition No. 52 of 1993 reopened the matter and while recalling its earlier order directed the competent authority to consider the case of B.Tech (Hons) degree holders for promotion to BS-17. Pursuant to this Direction of this Court the service rules of Assistant Engineers were amended on 16-12-2000 whereby B.Tech. (Hons.) degree holders also became eligible for their promotion as Assistant Engineers/SDO. Even otherwise, it has been



been promoted on regular basis vide order dated 27-12-2011, whereas cases of three have been deferred due to their incomplete service, that since the last DPC, four more posts against 15% quota have fallen vacant and the appellants will be considered on their turn in the forthcoming meetings of Departmental Promotion Committee. The case reported as *Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan* (PLD 1970 Quetta 115) on the basis of which leave was granted is distinguishable as it relates to the period before the enforcement of Punjab Civil Services Act, 1974 and the Rules framed thereunder. The learned Punjab Service Tribunal has passed a well-reasoned judgment which is unexceptionable.

10. For what has been discussed above, we do not find any merit in these appeals, which are accordingly dismissed.

MWA/M-52/SC

Appeal dismissed

Ex parte Respondents Nos.3 to 8.

Date of hearing: 10th November, 2014.

2015 S C M R 172

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali,

Iqbal Hameedur Rahman and Qazi Faez Isa, JJ

The CHAIRMAN, NATIONAL ACCOUNTABILITY  
BUREAU---Appellant

versus

FEHMIDA BEGUM and others---Respondents

Civil Appeal No. 1038 of 2000, decided on 25th November, 2014.

(On appeal from judgment of Lahore High Court, Lahore, dated  
30-6-2000, passed in Writ Petition No. 914 of 2000)*National Accountability Ordinance (XVIII of 1999)*------S. 5(o)---"Person"---Definition---Person standing as guarantor of  
a loan obtained by the company---Company defaulting in payment of  
loan---Such person/guarantor liable for prosecution before  
Accountability Court---Scope---Any person may be a director

the guarantee until all moneys due from the company had been paid,  
therefore, once the company defaulted in its liability to repay  
the loan amount, it was the obligation of the said employee/  
director to repay the loan amount---High Court was not right in  
holding that said employee/director, despite being a guarantor, was not  
liable for prosecution before the Accountability Court---Judgment of  
High Court was set aside in circumstances---Appeal was allowed  
accordingly [p. 176] A, B & C

Raja M. Ibrahim Satti, Senior Advocate Supreme Court and  
Qazi Zaffar, Additional DPG NAB for Appellant.

M. A. Siddiqui, Advocate Supreme Court for Respondents  
Nos.1 and 2.

## JUDGMENT

ANWAR ZAHEER JAMALI, J.---This civil appeal with leave  
of the Court in terms of the order dated 16-8-2000, is directed against  
the judgment dated 30-6-2000, passed by a five member Bench of the  
Lahore High Court, in Writ Petition No.914 of 2000, whereby the said  
petition filed by respondent No.1 was allowed and consequently the  
proceedings in Reference No.8 of 2000, against respondent  
No.2, Mukhtar Hussain, the husband of the petitioner, were quashed  
by a majority of three to two.

The controversy involved in the said petition revolved around  
interpretation of "person" as defined in subsection (o) of section 5 of  
National Accountability Bureau Ordinance, 1999 (in short "the NAB  
Ordinance"), which at the relevant time read as under:--

(o) "Person" includes in the cause of a corporate body, the  
sponsors, Chairman, Chief Executive, Managing Director,  
elected Directors, by whatever name called, and guarantors of  
the company or any one exercising direction or control of the  
affairs of such corporate body, but will not include employees  
appointed and designated as Director or Chief Executive; and in  
the case of any firm, partnership or sole proprietorship, the  
partners, proprietor or any person having interest in the said

innocence; the cause of his involvement projected by him is some political rivalry. But the evidence produced by the prosecution in bringing home the guilt does fully support and justify his involvement in the commission of offence, who has rightly been convicted for taking an innocent life of a child in a merciless and cruel manner for no fault of the minor boy. He does not deserve any leniency.

7. In view of the above, the appeal being without merit is dismissed accordingly.

N.H.Q./G-21/SC

Appeal dismissed

2011 S.C.M.R. 676

[Supreme Court of Pakistan]

Present: *Iftikhar Muhammad Chaudhry, G.J.*  
*Raja Fayyaz Ahmed and Ch. Ijaz Ahmed, JJ.*

RAJA KHAN---Petitioner

versus

MANAGER (OPERATION) FAISALABAD ELECTRIC SUPPLY  
COMPANY (WAPDA) and others---Respondents

Civil Petition No. 636 of 2009, decided on 21st May, 2009.

(Against the judgment dated 11-2-2009, passed by the Federal Service Tribunal, Islamabad, in Appeal No. 445(R) CB of 2005)

(a) *Removal from Service (Special Powers) Ordinance (XVII of 2000)*---

---Ss. 34 & 10---Constitution of Pakistan, Art. 212(3)---Compulsory retirement from service---Dismissal of first departmental appeal, being time barred---Dismissal of second departmental appeal as not competent---Dismissal of appeal by Service Tribunal on merits as its being time barred---Validity---Petitioner had filed appeal before Tribunal without fulfilling mandatory requirement of S. 4 of Service Tribunals Act, 1973 in regard to limitation---Court could not compromise on limitation---Petitioner during four years of service, had been punished for unauthorized absence as many as eight times---Petitioner by his subsequent conduct had accepted punishment of compulsory retirement by getting his pension claim and monthly pension regularly---Supreme Court refused to grant leave to appeal in such circumstances. [pp. 679, 680, 681, 682] A, B, F, H, I, M & N

2011 Raja Khan v. Manager (Operation) Faisalabad Electric Supply Company (Ch. Ijaz Ahmed, J) 677

Haji Ghulam Rasul's case PLD 1971 SC 376; Mst. Amina Begum's case PLD 1978 SC 220 and Nawab Syed Raunaq Ali's case PLD 1973 SC 236 rel.

(b) *Constitution of Pakistan*---

---Art. 212(3)---Service Tribunal, finding of fact---Such finding being finding of fact would not call for interference by Supreme Court. [p. 680] C

Ch. Muhammad Azim's case 1991 SCMR 255 rel.

(c) *Constitution of Pakistan*---

---Art. 212(3)---Concurrent findings of fact by Appellate Authority and Service Tribunal---Validity---Supreme Court would not interfere with such findings. [p. 680] D

Iftikhar Ahmed Malik's case 2005 SCMR 806 rel.

(d) *Service Tribunals Act (LXX of 1973)*---

---S. 4---Departmental appeal being time-barred---Effect---Appeal before Service Tribunal would not be competent. [p. 680] E

Chariman PIA and others v. Nasim Malik PLD 1990 SC 951; Muhammad Aslam v. WAPDA and others 2007 SCMR 513; and Government of Pakistan through Secretary, Establishment Division v. Bashir Ahmad Khan PLD 1985 SC 309 rel.

(e) *Limitation*---

---Appeal, if required to be dismissed for being time-barred, then its merits need to be discussed. [p. 681] G

Khan Sahib Sher Muhammad Mir's case 1987 SCMR 92 rel.

(f) *Constitution of Pakistan*---

---Art. 212(3)---Constitutional jurisdiction under Art. 212(3) of the Constitution---Discretionary in character. [p. 682] J

(g) *Constitution of Pakistan*---

---Arts. 185(3) & 212(3)---Grant of leave to appeal by Supreme Court---Discretionary. [p. 682] K

Ghulam Qadir Khan's case 1986 SCMR 1386 rel.

ADL  
Time barred

**(h) Constitution of Pakistan---**

---Arts. 199 & 212(3)--Void order--Constitutional jurisdiction of High Court and Supreme Court--Scope--Such jurisdiction might be refused, if same was meant to enable petitioner to circumvent provisions of law of limitation or if he was stopped by his conduct from challenging order. [p. 682] L

Muhammad Ismail's case 1983 SCMR 168; Abdur Rashid's case 1969 SCMR 141 and Wali Muhammad's case PLD 1974 SC 106 rel.

Haider Hussain, Advocate Supreme Court and M.S. Khattak Advocate-on-Record for Petitioner.

Nemo for Respondents.

**ORDER**

CH. IJAZ AHMED, J.---Raja Khan, petitioner, seeks leave to appeal against the impugned judgment dated 11-2-2009 whereby the learned Federal Service Tribunal, Islamabad, dismissed his appeal on merits as well as time-barred.

2. Detailed facts have already been mentioned in the impugned judgment. However, necessary facts out of which the present petition arises are that petitioner was appointed as Chowkidar with the respondents establishment from April, 1985. Show cause notice dated 23-2-2004 under section 5(4) of the Removal from Service (Special Powers) Ordinance, 2002 along with statement of allegations was served upon the petitioner containing the following charges:--

- (1) Whereas you Mr. Raja Khan, Chowkidar PESCO (WAPDA) Jhang Circle Jhang are charged with misconduct as per statement of allegations attached.
- (2) And whereas on the basis of documentary evidence available, it is not considered necessary to have formal inquiry against you and that proceedings are being initiated under section 5(4) of the Removal from Service (Special Powers) Ordinance 2002 which might entail imposition of a major penalty of dismissal from service as specified in section 3 of the said ordinance.
- (3) Now, therefore, you are required to show cause within 15 days from the date of receipt of this notice as to why the proposed action should not be taken against you.
- (4) If no response is received from you within the time stipulated above, it would be presumed that either you have no defence, to

offer and/or you have willfully declined to do so. The case shall then be decided on 'ex parte' without further reference.

Whereas you Mr. Raja Khan, Chowkidar, PESCO Jhang Circle Jhang are charged with gross misconduct, inefficiency, corruption and mal practices for the following charges and other relevant circumstances.

As per report of Mr. Shahzad Nasir, Telephone Attendant and Mr. Ghulam Abbas Bhatti Telephone Attendant PESCO Jhang Circle Jhang. You are absent from duty w.e.f. 6-2-2004 to 17-2-2004 without intimation/prior permission/sanction leave from the Circle Superintendent/Technical Officer/and by the undersigned.

If any mishap/incident create in Circle office, who are responsible. You are already so many times directed to present in the office after closing hours but you have failed in official duties."

Petitioner submitted reply to the show cause notice and admitted that he was absent from duty on account of illness. The competent authority after providing him personal hearing awarded major penalty of compulsory retirement from service w.e.f. 31-3-2004 vide order dated 29-3-2004. Petitioner being aggrieved filed departmental appeal on 6-4-2004 before the appellate authority who dismissed the same as time barred vide order dated 10-11-2004. Thereafter the petitioner filed another appeal before the Managing Director Power on 8-12-2004 which was dismissed vide order dated 4-2-2005 on the ground that there is no provision of second appeal "further appeal" under the rules. Petitioner being aggrieved filed Appeal No. 445(R)CS/2005 in the Federal Service Tribunal, Islamabad, on 12-4-2005 which was dismissed vide impugned judgment dated 11-2-2009. Hence the present petition.

3. Learned counsel for the petitioner submits that the impugned order of dismissal of the petitioner dated 29-3-2004 was passed by incompetent authority, therefore, the same was coram non iudice and without lawful authority. He further urges that impugned order of the department was void, therefore, no limitation would run against such type of order. It can be agitated at any time and could be ignored being a void order. Learned Service Tribunal had not adverted to this aspect of the case, therefore, the impugned judgment was passed by the learned Service Tribunal without application of mind.

4. We have given our anxious consideration to the contentions of the learned counsel of the petitioner and perused the record. It is an admitted fact that show cause notice was served upon the petitioner

under the provisions of Removal from Service (Special Powers) Ordinance, 2002 wherein it is specifically provided under the provision of the Ordinance that petitioner has to file departmental appeal within the prescribed period of 15 days. The order of compulsory retirement was passed by the competent authority on 29-3-2004. The petitioner filed departmental appeal on 6-4-2004 which was dismissed as time barred on 10-11-2004. Thereafter the petitioner filed second appeal before the Managing Director on 8-12-2004 which was also dismissed on 4-2-2005 in the following terms:-

"It is to inform you that your appeal under reference does not merit consideration as there is no provision of second appeal "further appeal" under the rules."

5. The learned Service Tribunal had rightly come to the conclusion that appellate authority was justified to dismiss his appeal as time barred and second appeal was also dismissed with cogent reasons on account of non availability of any provision under the rules to file second appeal to higher authority after dismissal of the first appeal. We have also re-examined the material on record with the assistance of the learned counsel of the petitioner. We do not find any infirmity or illegality with regard to the conclusion arrived at by the learned Service Tribunal with regard to the finding mentioned in para 7 of the impugned judgment. It is settled principle of law that finding of service tribunal having findings of fact would not call for interference by this Court as law laid down by this Court in Ch. Muhammad Azim case (1991 SCMR 255). Even otherwise this Court does not interfere with the concurrent findings of fact arrived at by the departmental authorities and learned service Tribunal while exercising the power under Article 212(3) of the Constitution. See *Itikhar Ahmed Malik case*, (2005 SCMR 806). It is settled proposition of law that when an appeal of the employee was time barred before the appellate authority then the appeal before the Tribunal was also not competent in view of the various pronouncements of this Court. See *Chairman PIA and others v. Nasim Malik* (PLD 1990 SC 951) and *Muhammad Aslam v. WAPDA and others* (2007 SCMR 513). The question of law with regard to the representation has already been decided by this Court in *Government of Pakistan through Secretariat Establishment Division v. Bashir Ahmad Khan* (PLD 1985 SC 309). The relevant observation is as follows:-

"He challenged his first compulsory retirement through a review application filed on 23rd of October, 1974, which was decided on 3-6-1975. This was the final order passed on review. It could be challenged within 30 days, before the Tribunal under section 4 of the Service Tribunals Act. If the appellant chose not to file an appeal but only to repeat a representation before the same

authority who had decided the review, that by itself would not give him another cause of action to file an appeal under section 4. The period spent in making the representation this second or any other representation after the decision of the review application, could not be excluded as of right in counting the period of limitation ..... The review petition filed by the respondent in that behalf was decided on 13-6-1978. Instead of filing an appeal before the Tribunal under section 4 within 30 days of this final order passed on review, he made another representation which caused further delay. The period consumed during the processing of the subsequent representation could not be excluded as of right. And there being no condonation on any good ground by the Tribunal, the appeal filed on 14-1-1979, was clearly time barred and should have been dismissed accordingly."

6. The appeal of the petitioner before Service Tribunal is incompetent under section 4(1)(b) of the Service Tribunal Act, 1973. Since the petitioner has filed appeal before the Service Tribunal without fulfilling the mandatory requirement of section 4 in regard to limitation and court cannot compromise on the limitation. See:-

Muhammad's case (1998 SCMR 1354)

Messrs Raja Industries' case (1998 SCMR 307)

Mst. Sirajun-Munira's case (1998 SCMR 785)

7. It is admitted fact that appeal is obviously time barred and it has been held by this Court in *Khan Sahib Sher Muhammad Mir's case* (1987 SCMR 92) that when an appeal is required to be dismissed on limitation, its merits need not be discussed. In spite of the aforesaid law laid down by this Court the learned Service Tribunal has considered the case on merits and the appeal was also dismissed on merits. It is pertinent to mention here that the competent authority awarded penalty of compulsory retirement vide order dated 29-3-2004. The petitioner had accepted the punishment awarded by the respondents due to his conduct on the basis of subsequent events as the petitioner applied for payment of his pensionary benefit to the respondents. Petitioner got settled his pension claim within three months after his retirement and received Rs. 155,733 as well as monthly pension. He also received his monthly pension regularly. Petitioner preferred appeal before the Service Tribunal on 12-4-2005. This fact was also noted in the impugned judgment in para 10. Even on merits the learned Service Tribunal was justified to dismiss his appeal on the well known principal of "approve and reprobate." See *Haji Ghulam Rasul's case* (PLD 1971 SC 376). The learned Service Tribunal was justified to dismiss his appeal on the well



known principle of estoppel keeping in view subsequent events: See Mst Amina Begum's case (PLD 1978 SC 220).

8. The conduct of the petitioner has been highlighted by the Service Tribunal in para 10 of the impugned judgment which is reproduced herein below:--

"We have seen placed on the record a number of documents which indicate the service record of the appellant. From 1989 to 27-3-2003, the appellant has been punished for unauthorized absence as many as eight times. The punishment included censure, stoppage of one annual increment for one year (1983), reduction to three lower stage in time scale for a period of three years (1990), stoppage of one annual increment for one year (1993) and stoppage of annual increment for one year (1995)."

9. It is settled principle of law that constitutional jurisdiction under Article 212(3) is discretionary in character. It is settled law that grant of leave to appeal is discretionary. See Ghulam Qadir Khan's case (1986 SCMR 1386). It is also settled law that constitutional jurisdiction against void order may be refused if it was meant to enable petitioner to circumvent provisions of law of limitation or if he was estopped by his conduct from challenging of order. See:--

Muhammad Ismail's case (1983 SCMR 168)

Abdur Rshid's case (1969 SCMR 141)

Wali Muhammd's case (PLD 1974 SC 106)

10. Keeping in view the conduct of the petitioner mentioned herein above in para 10 of the impugned judgment we are not inclined to exercise our discretion in favour of the petitioner on the well known maxim that he who seeks equity must come with clean hands as law laid down by this Court in Nawab Syed Raunaq Ali's case (PLD 1973 SC 236).

11. In view of what has been discussed above we do not find any infirmity or illegality in the impugned judgment. Even otherwise the learned counsel has failed to raise any question of public importance in the present case as contemplated under Article 212(3) of the Constitution. The petition has no merit and the same is dismissed. Leave refused.

S.A.K./R-7/SC

Leave refused

2011 S C M R 683

[Supreme Court of Pakistan]

Present: M. Javed Butt, Muhammad Farrukh Mahmud  
and Muhammad Sair Ali, JJ

GHULAM SHABBIR AHMED and another---Appellants

versus

THE STATE---Respondent

Criminal Appeal No. 265 of 2005, decided on 28th May, 2009.

(On appeal against the judgment dated 24-10-2002 passed by the Lahore High Court, Multan Bench in CrI: A. No: 34 of 2002):

(a) Penal Code (XLV of 1860)---

---S. 302(b)---Re-appraisal of evidence---Double murder---Prompt F.I.R.---Ocular account supported by medical evidence---Identity of accused was not disputed at all and he had been described by name and by his deeds in promptly lodged F.I.R.---Statements of prosecution witnesses were fully supported by medical evidence and corroborated by the facts---Matter was reported to police within 45 minutes and postmortem of both the deceased were conducted on the same night within six hours of their death---Motive as given in F.I.R. also stood proved and was corroborated by ocular account---Ocular account was also supported from report of Forensic Science Laboratory which revealed that empties recovered from spot were fired from one weapon---Statements of defence witnesses did not help the accused---Effect---Prosecution had successfully proved its case beyond doubt against accused and he was rightly convicted under S. 302(b), P.P.C.---Sentence of death awarded to accused by Trial Court and maintained by High Court was not interfered with by Supreme Court---Appeal was dismissed. [p. 687] A

(b) Penal Code (XLV of 1860)---

---S. 302(b)---Qanun-e-Shahadat (10 of 1984), Art. 22---Re-appraisal of evidence---Identification of accused in Court---Photographs of accused---Accused was not previously known to prosecution witnesses and was only described by features, who was arrested after two years of the occurrence---Prosecution witnesses had seen accused for very short time and they did not identify him during identification parade but identified him at the time of recording of his statement in Court---Effect---Such identification in Court was meaningless as by that time accused was already known to prosecution witnesses as only that

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

Service Appeal No. 325/2011

Date of Institution ... 27.01.2011

Date of decision ... 23.10.2017

Akhtar Wahid S/O Gul Wahid  
R/O Village Mohammad Khawaja, Tehsil & District Hangu.

... (Appellant)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 2 others.  
..... (Respondents)

MR. ABDULLAH QAZI,  
Advocate

... For appellant.

MR. ZIAULLAH  
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. GUL ZEB KHAN,

... CHAIRMAN  
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was discharged from service under police rules on 13.10.2008, against which he filed departmental appeal on 01.12.2010 which was rejected on 27.12.2010 and thereafter the present service appeal on 27.01.2011.

ARGUMENTS

3. The learned counsel for the appellant argued that at the relevant time the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was in vogue and the original order was passed under the Police Rules which is illegal. That no show-cause

*Time barred.*

*When the case is time barred the matter could not be discussed.*

*Ziaullah*  
*01/3*

*AM*

notice was issued to the appellant. That in para-4 of the comments of the respondents it has been admitted that the service was made on the father of the appellant and not on the appellant.

4. On the other hand, the learned Deputy District Attorney argued that the appeal is hopelessly time barred because the departmental appeal was time barred. In this respect he relied upon judgments reported in 2006 SCMR 453 and 2007 SCMR 513. He further argued that the appellant himself admitted in para-4 of the appeal that he could not perform his duty due to family reasons. That the whole proceedings were initiated under the RSO 2000 and only final order was made under the police rules because the RSO did not provide for any penalty in case of willful absence.

#### CONCLUSION.

5. This Tribunal can enter into the merits of the case only when the appeal is within time. It has been time and against held by the superior courts that if a case is time barred then merit could not be discussed. The present departmental appeal is clearly time barred after having been preferred some 26 months. There is no application for condonation of delay. In accordance with the ruling reported as 2006 SCMR 453 time barred departmental appeal if decided on merits the same cannot be presumed to bring the departmental appeal and for that matter the service appeal within time.

6. As a result of the above discussion, this appeal is hopelessly time barred which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Niaz Muhammad Khan)  
Chairman

(Gul Zeb Khan)  
Member

ANNOUNCED  
23.10.2017

1

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