

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 3975/2020

Date of Institution ... 23.04.2020

Date of Decision ... 06.07.2021

Abid Zaman S/o Mir Madad Shah
R/o Surati Kala Tehsil Takht-e-Nasrati District, Karak.

... (Appellant)

VERSUS

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

... (Respondents)

Mr. SHAHID QAYUM KHATTAK,
Advocate

--- For appellant.

MR. MUHAMMAD RASHEED,
Deputy District Attorney

--- For respondents.


MR. SALAH-UD-DIN

MEMBER (JUDICIAL)

MR. ATIQ-UR-REHMAN WAZIR

MEMBER (EXECUTIVE)

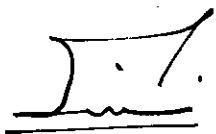
JUDGMENT:


SALAH-UD-DIN, MEMBER:- The appellant has filed the instant Service Appeal against the order dated 03.01.2020, whereby the penalty of dismissal from service with cumulative effect was imposed upon the appellant and his departmental appeal was not responded by the appellate Authority.

2. Precise facts as gleaned from the record are that the appellant while posted in Police Station Teri, was charged in case FIR No. 8 dated 20.03.2017 under sections 9(c)/14/15 of CNSA registered in Police Station ANF Kohat. Disciplinary action was initiated against the appellant and on conclusion of inquiry the penalty of removal from service was imposed upon him, which was challenged by the appellant

through filing of Service Appeal bearing No. 1395/2017, which was disposed of vide judgment dated 13.09.2017 with the observations reproduced as below:-

"As such, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service with the directions to the respondent-department to conduct de-novo inquiry in the mode and manner prescribed under Police Rules, 1975 and respondent-department is also directed to fully associate the appellant in inquiry proceedings, providing opportunity of cross-examination and issuing of show-cause notice alongwith copy of inquiry report. The issue of back benefits will be subject to the outcome of de-novo inquiry".



In light of judgment of the Tribunal, the competent Authority issued show-cause notice to the appellant and after conclusion of inquiry, the penalty of dismissal from service with cumulative effect was imposed upon the appellant. The departmental appeal of the appellant was not responded within the statutory period, hence the instant Service Appeal.

3. Respondents submitted their comments, wherein they resisted the averments of the appellant.

4. Learned counsel for the appellant has argued that despite clear directions of the Tribunal, neither copy of the inquiry report was handed over to the appellant nor any show-cause notice was issued to him after receipt of findings of the inquiry officer; that even opportunity of personal hearing was not provided to the appellant before passing of the impugned order; that the inquiry officer had recommended minor penalty of stoppage of increment, however the competent Authority has imposed the major penalty of dismissal from service upon the appellant, without mentioning any reasons for so doing; that the appellant has already been acquitted by the competent court of law in the criminal case, therefore, the order of his dismissal is liable to be set-aside.

5. Conversely, learned Deputy District Attorney for the respondents has argued that the appellant was involved in trafficking of

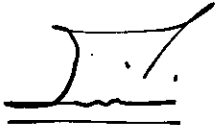
Narcotics and in this respect case FIR No. 8 dated 20.03.2017 under sections 9(c)/14/15 of CNSA was registered against him in Police Station ANF Kohat; that a regular inquiry was conducted against the appellant in accordance with provisions of Police Rules, 1975, who was found guilty of misconduct and was rightly dismissed from service; that the appellant has been acquitted under section 265-K Cr.PC, which cannot be considered as honourable acquittal and the same is having no bearing upon the disciplinary action taken by the department against the appellant. Reliance was placed on 2007 SCMR 562 and 2006 SCMR 554.

6. Arguments heard and record perused.

7. A perusal of the record would show that while deciding the earlier appeal bearing No. 1395/2017, filed by the appellant, this Tribunal had specifically directed that show-cause notice alongwith inquiry report shall be provided to the appellant. The appellant has specifically alleged in para-(d) of the appeal that neither an opportunity of personal hearing was afforded to him nor final show-cause notice and copy of inquiry report was given to him. The impugned order dated 03.01.2020, whereby the appellant was dismissed from service, would also show that it has not been mentioned therein that show-cause notice was issued to the appellant on receipt of inquiry. The available record also does not show that the copy of inquiry report was provided to the appellant and an opportunity of personal hearing was afforded to him. On receipt of the finding of the inquiry officer, the appellant was straight away dismissed by the competent authority vide the impugned order dated 03.01.2020, without issuing of show cause notice. This Tribunal has already held in numerous judgments that the issuance of final show cause notice along with the inquiry report is must under Police Rules, 1975. Reliance is also placed on the judgment delivered by august Supreme Court of Pakistan reported as PLD 1981 SC-176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of the final show cause notice and non-supply of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled

against him. Moreover, in its order dated 03.01.2020, the competent Authority has observed as below:-

"The inquiry officer reported that reinstatement order vide O.B No. 537 dated 17.12.2019 of Constable Abid Zaman No. 732 may please be sustained with the extent that his termination period with effect from 08.08.2017 to 17.12.2017 (02 years, 04 months and 09 days) be treated as intervening period as without pay. Furthermore, he is also recommended for minor punishment of stoppage of increment.


Keeping in view of the available record and facts on file, perusal of inquiry papers and adopted all legal and codal formalities, I did not agreed with the findings report and recommendations of the inquiry officer, found enormous flaws in it, so that, he is found guilty of the charges beyond any shadow of doubt and the punishment awarded to him is found correct. The defaulter constable has blemish service record, his retention in the Police Force is a stigma for the Police Department, although he is acquitted from the criminal case but he is indulged in extra illegal activities. Therefore, I Nausher Khan Mohmand as competent Authority withhold his subject punishment of dismissal from service with cumulative effect".

A careful perusal of the above mentioned portion of the impugned order would show that the same was passed in a slipshod manner as on one hand, the competent Authority has hold that there were enormous flaws in findings of the inquiry officer but on the other hand, he has imposed major penalty upon the appellant on the basis of same findings of the inquiry officer. In view of material legal dents in the inquiry proceedings, the same cannot be relied upon for awarding of major penalty to the appellant.

8. The disciplinary action was taken against the appellant on the ground that he was involved in case of Narcotics, however the appellant has already been acquitted by learned Judge Special Court (CNS)

Peshawar vide order dated 25.09.2018. The learned judge Special Court (CNS) Peshawar has observed in the acquittal order as below:-

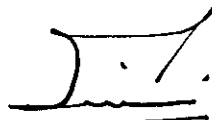
"As co-accused Umer Sharif and Abid Zaman were just travelling with the convicted accused and they had no conscious knowledge of the concealment of Narcotics in the vehicle as stated by the convicted accused Sirajam Khan in his statement recorded today, therefore, the co-accused can by no means be connected with the commission of offence. As such, there seems to be no probability of their being convicted in the case and therefore while accepting the request of counsel for accused Umer Sharif and Abid Zaman, they are acquitted U/S 265-K Cr.P.C of the charges leveled against them".

The contention of learned Deputy District Attorney that the acquittal of the appellant cannot be considered as honourable acquittal, is misconceived. It is by now well settled that every acquittal is honourable. Nothing is available on the record, which could show that the acquittal of the appellant has been challenged by the department through filing of appeal before the higher forum. In this situation, the acquittal order of the appellant has attained finality. In case of dismissal of civil servant on charges of registration of a criminal case, if the civil servant is later on acquitted, then the dismissal cannot remain in field.

9. In view of the above discussion, the instant appeal is allowed. The impugned order of dismissal of the appellant stands set aside and he is re-instated into service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
06.07.2021


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


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
06.07.2021

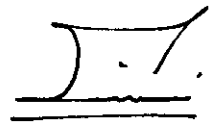
Appellant alongwith his counsel Mr. Shahid Qayum Khattak, Advocate, present. Mr. Waqar Ahmed, PASI alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is allowed. The impugned order of dismissal of the appellant stands set aside and he is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
06.07.2021



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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

28.01.2021

Junior counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Shahid, PSI, for the respondents, are also present.

Representative of the department submitted written reply on behalf of respondents which is placed on record. File come up for rejoinder and arguments on 13.04.2021 before D.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

13.04.2021


Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 06.07.2021 for the same as before.


READER

19.10.2020

Neither appellant nor his counsel is present. Mr. Kabirullah Khattak, Additional AG for the respondents is present.

Written reply on behalf of respondents not submitted. Learned Additional Advocate General sought time to contact the respondents for submission of written reply/comments. Time is allowed. Adjourned to 08.12.2020 on which date the requisite reply/comments shall be furnished before S.B.




(Muhammad Jamal Khan)
Member (Judicial)

08.12.2020

Junior counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

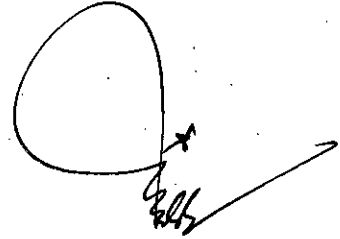
Representative of respondents is not in attendance, therefore, case is adjourned on the request of learned A.A.G with direction to submit reply/comments on 28.01.2021 before S.B.



(Rozina Rehman)
Member (J)

02.06.2020

None for the appellant present. Notices be issued to the appellant and his counsel. To come up for preliminary hearing on 11.08.2020 before S.B.




(MAIN MUHAMMAD)
MEMBER

11.08.2020

Counsel for the appellant present.

Contends that the appellant was acquitted of criminal charges by a court of competent jurisdiction while this Tribunal was pleased to remit for departmental proceedings through judgment dated 13.09.2019 while deciding Appeal No. 1395/2017. It was, inter-alia, ordered that the denovo proceedings be conducted in accordance with the rules and after issuance of a fresh show cause notice. On the other hand, respondent No. 3 while passing order dated 07.01.2020 not only ~~deferred~~ ^{diffused} with the recommendations of enquiry officer without assigning any reason but also kept under consideration some record extraneous to the matter in hand and relating to the past service of the appellant. The impugned order, therefore, is not sustainable under the law, it was added.

Appellant Deposited
Security & Process Fee


11/8/20

Subject to all just exceptions, the appeal in hand is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 19.10.2020 before S.B.




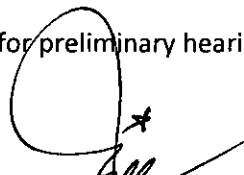
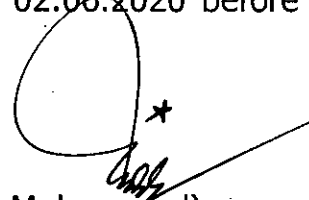
Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 3975 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30/04/2020	<p>The appeal of Mr. Abid Zaman resubmitted today by Mr. Shahid Qayyum Khattak Advocate, may be entered in the institution registrar and put up to the learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to touring S.B for preliminary hearing to be put up there on <u>15-05-2020</u></p> <p style="text-align: right;"> MEMBER</p> <p>15.05.2020</p> <p>None for the appellant present. Adjourned. To come up for preliminary hearing on 02.06.2020 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member</p>

The appeal of Abid Zaman received today i.e. 23.04.2020 by Mr. Shahid Qayum Khattak, Advocate is incomplete on the following score which is returned to his counsel for completion and resubmission within 15 days.

- 1- In the heading of appeal the date of representation is blank which may be corrected.
- 2- In Para-6 copy of reply to show-cause notice is mentioned but the copy of the said is not attached with the appeal which may be placed on it.


No. 1032 /S.T,

Dt 23-04 /2020


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Shahid Qayum Khattak Adv, Peshawar.

objection completed with. Resubmitted for further n/o please


30/04/2020

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR

Service Appeal No. 3975/2020

Abid Zaman.....Appellant

VERSUS

Provincial Police Officer & Others

..... Respondents

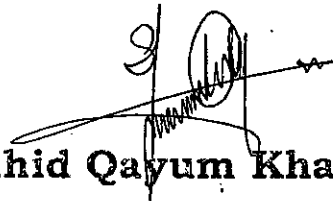
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Dated: 22/04/2020


Appellant

Through


Shahid Qayum Khattak
Advocate; Supreme Court
Cell#0333-9195776

①

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 3975/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2649

Abid Zaman S/o Mir Madad Shah R/o Surati Kala Tehsil Dated 23-4-2020
Takht-e-Nasrati District, Karak Appellant

Versus

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

Filed to-day
Registrar
23/4/2020

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 03/01/2020 PASSED BY
RESPONDENT NO. 3 BY WHICH MAJOR PENALTY OF DISMISSAL
FROM SERVICE WITH CUMULATIVE EFFECT HAS BEEN
AWARDED TO THE APPELLANT AND THE REPRESENTATION OF
THE APPELLANT FILED ON 11/01/2020 HAS NOT YET BEEN
DECIDED BY THE RESPONDENT NO. 2

Re-submitted and
Filed.
PRAYER
Registrar
30/4/2020

By accepting this service appeal, the punishment awarded to the
appellant through impugned orders dated 03/01/2017 issued on
07/01/2020 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
reinstatement with all back benefits of pay and service.

Respectfully Sheweth;

1. That appellant was serving as constable in police department and
was lastly posted in Police Station Teri. On 17/03/2017 appellant
has been granted two days emergency leave for treatment of her wife

and after availing the same he left home for purchasing medicine and thereafter joining duties on 20/03/2017. On reaching Amberi Kalla he notice scuffle between some persons on road side and while reaching near there he notice that some person are trying to kidnapped one police official Umar Sharif and one another person therefore, he intervened to rescue police official due to which those person who were in plan and white clothes also started beating appellant due to which appellant was injured. The people of the area also getter to safe us from kidnapper due to which they put us in vehicle in injured condition and stared journey toward Kohat. The Station House of Police Station Yaqoob Khan Sheheed on getting information of the incident followed the vehicle and intercepted it near old tool plaza Karak where some altercation took place between the SHO and imamatees of the vehicle however, they disclosed their indenty as official of Narcotics Force Fefore, SHO thus, we came to know that they are not kidnapper but staff of ANF although they are not in uniform. That the Narcotics force officials had only arrested Sirajam Khan under the charge of possession of "Charas" but they falsely and mala fidely showed the arrest of appellant and one Umar Sharif as accomplice of the Sirajam Khan.

2. That Norcitics Force Official registered Criminal Case vide FIR No. 08 dated 20/03/2017 U/s 09,14,15 CNSA against appellant, umar Shirif and Sirajam Khan. Appellant knocked at the door of different courts for grant of bail and finally succeeded in getting concession of release on bail.
3. That in addition to registration of criminal case by Anti Norcotice Force against appellant, departmental proceedings were also initiated against appellant on same set of allegations by respondent No. 3 and issued a Charge Sheet alongwith Statement of Allegation to appellant which was properly replied but the same has not been taken into consideration and passed impugned order dated 08/08/2017 and appellant has been removed from service.
(Copy of the Charge are attached as Annexure "A" "B"and "C")
4. That appellant filed departmental appeal against the impugned order before worthy respondent No. 2 but on receipt of no response within stipulated period of 120 days, appellant filed service appeal No. 1395/2017 before this Hon'ble Tribunal.

③

5. The appellant continued defense of criminal charge and departmental charges and ultimately the judge Special Court, Peshawar was please to order acquittal of appellant of the Crimal Charge vide order dated 25/09/2018 and similarly this Tribunal was also please to accept the service appeal of appellant vide order dated 13/09/2019 and issued direction of re-instatement of appellant in service with further directions to the department to conduct de-novo proceedings in the mode and manner prescribed under the Police Rules, 1975. (Copies of both the judgments are attached as Annexure "D" & "E")
6. That mala fide on the part of respondent is very much evident that appellant submitted the judgment of this Hon'ble Tribunal before learned respondent No. 3 soon after its receipt but the re-instatement order was delayed for several months and was later on issued vide OB No. 537 dated 17/12/2019. That after joining duties appellant was issued Show Cause Notice in pursuance of the directions of this Hon'ble Tribunal which was properly replied but without providing him proper opportunity hearing, informed him on 07/01/2020 regarding the passing of impugned order dated 03/01/2020 vide which the appellant has been dismissed from service. (Copy of the Impugned order is attached as Annexure "F")
7. That appellant filed departmental appeal against the impugned order before respondent No. 2 but till date the same has not yet been decided. (Copy of representation is attached as Annexure "G")
8. That the appellant feeling aggrieved from the impugned order hence, filling this appeal on the following amongst other grounds inter alia

GROUND:

- a. That impugned order dated 03/01/2019 passed by respondent No. 3 is illegal, unlawful, without authority, based on mala fide intention, against the nature justice, violative of the Constitution and Service Law and equally with out jurisdiction, hence, the same are liable to be set aside in the best interest of justice.

(4)

- b. That the impugned order is just like a novel as appellant was reinstated in service vide OB No. 537 dated 07/12/2019 and appellant joined and performed duties and no law and rules allow the authority to hold the order of dismissal from service dated 08/08/2017 with cumulative effect vide order passed on 03/01/2019 after re-instatement order issued on 17/12/2019. Again the word withhold has wrongly been used for the word hold which further create ambiguity in the impugned order.
- c. That impugned order passed by respondent is very much harsh, without any evidence based on surmises & conjectures and is equally against the principle of natural justice.
- d. That though the findings of enquiry officer were not supplied to appellant despite demand yet it is evident from the fourth para of the impugned order that the enquiry officer has made recommendation for considering the intervening period as without pay and award of minor punishment while the authority awarded major penalty of dismissal from service to appellant. Under the law and rules the authority is empowered to differ with the findings of enquiry officer subject to advance reasonable grounds and providing chance of defense to the defaulter officer. The reasons advanced by the authority are not plausible and no chance of personal hearing or issue final show cause notice was given to appellant, therefore, the impugned order is worth set aside.
- e. That this Hon'ble Tribunal in its judgment dated 13/09/2019 passed in service appeal No. 1395/2017, passed a very clear directions to the department to conduct de-novo proceedings in the mode and manner prescribed under Police Rules, 1975 and respondent department was further directed to fully associate the appellant in enquiry proceedings by providing opportunity of cross examination and issuing show cause notice alongwith copy of enquiry report. The directions of service tribunal were not complied with before passing the impugned order as no chance of examination of witnesses has been provided to appellant nor any witness has been examine before the appellant nor any final show cause notice has been issued to appellant, thus the impugned order is liable to be set aside.

- f. That the show cause notice based on allegations of involvement in Narcotics case registered vide FIR No. 08 dated 20/03/2017 U/s 9,14,15 CNSA was issued to appellant. The authority has admitted the acquittal of appellant of the criminal charges in the last para of the impugned order and has referred to blemished record of service of appellant but that to with out any substance. Under the law the authority is bound to pass the order in the light of charge mentioned in the charge sheet. No charge of bearing blemished record of service was issued to appellant therefore, the order has wrongly been passed and worth set aside.
- g. That respondent No. 3 has not taken into consideration the detail and plausible reply to the show cause notice but brushed aside it without any reason, grounds and without conducting any legal enquiry. Furthermore respondent No. 3 has not adopted proper procedure and passed impugned order which is liable to be set aside.
- h. That appellant was mala fidely arrested and involed by Norcotics Force Official in criminal case. The department instead of defending appellant issued initial dismissal from service order dated 08/08/2017 of appellant despite the fact that act of appellant was not falling within the mischief of misconduct. The appellant spent huge amount on defending the criminal charge before courts and departmental charge before Service Tribunal. Appellant belong to poor family and is entangled in debt. The re-instatement in service order dated 17/12/2019 was a hope for staying out of the debt but the impugned order not only shun the hope of the appellant but also forced the minor children of appellant to pass hunger life. Appellant has been vexed twice for the same offence.
- i. That the competent court has acquitted the appellant from the main charges of criminal case, therefore, the very foundation of the departmental charge was no more in existence, thus the impugned order has been passed against the law and facts on record.

- j. That the allegation leveled against the appellant are baseless, without any proof and cogent evidence and is based on malafide intention and are concocted one. No proper opportunity of personal hearing has been provided to appellant. Respondents have not adopted proper procedure nor statement of any witness has been recorded.
- k. That the impugned order has been passed in violation of law and rules of disciplinary proceedings and principles of natural justice. The authority wrongly and mala fidely based the impugned order on assessments and speculations, therefore the impugned order is bad in law.
- l. That the disciplinary proceedings against appellant suffered from gross infirmities, illegalities and irregularities as no evidence what so ever has been produce or cited in the respondents nor any witness has been examined.
- m. That major penalty of dismissal from service has been passed against appellant without conducting any regular inquiry and without examining any witness in support of the charges. Similarly no documentary evidence was brought on record to substantiate the allegations leveled against appellant, therefore, the impugned orders based on assessment is bad in law and has been passed in violation of settled principles governing the disciplinary action against the Police Officers.
- n. That the learned respondent has not taken into consideration that the rules under which the appellant has been charged are not applicable on him which clearly shows that the act of respondent is totally based on discrimination undue victimization beside that the impugned order is suffered from gross infirmities, illegality , based on no evidence totally contradictory to the enquiry.

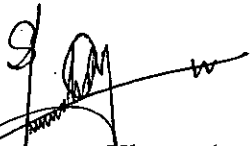
It is, therefore, most humbly prayed that on accepting this service appeal, the punishment awarded to the appellant through impugned order dated 03/01/2020 may graciously be set aside by declaring it illegal, void, unlawful, without

authority, based on mala fide, void abinitio, against the direction issued by this Hon'ble Tribunal and thus not sustainable and the appellant is entitled for reinstatement with 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

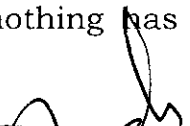

Dated: 20 /04/2020

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


Advocate

Affidavit

I, Abid Zaman S/o Mir Madad Shah R/o Surati Kala Tehsil Takht-e-Nasrati District, Karak 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.


22-4-2020



Deponent

8

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2020

Abid Zaman Appellant

Versus

Provincial Police Officer and others..... Respondents

ADDRESSES OF THE PARTIES

APPELLANT


Abid Zaman S/o Mir Madad Shah R/o Surati Kala Tehsil
Takht-e-Nasrati District, Karak

RESPONDENTS

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


Appellant

Through


Shahid Qayum Khattak
Advocate, Supreme Court

Dated: 20 /04/2020

(9)

CHARGE SHEET

1. I, Mian Nasib Jan, District Police Officer, Karak as competent authority, hereby charge you **Constable Abid Zaman No. 415 (suspended) Police Lines Karak** as follow:-

"You Constable Abid Zaman No. 415 have directly been charged/involved in criminal case FIR No. 08 dated 20.03.2017 u/s 9/14/15 CNSA Police Station Anti Narcotics Force, Kohat. Your this act is against service discipline and amount to gross misconduct."

2. By reason of your commission / omission, constitute miss-conduct under Police disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department and have rendered your-self liable to all or any of the penalties specified in Police Rule-1975 ibid.

3. You are, therefore, required to submit your written defense within 07-days of the receipt of this charge sheet to the enquiry Officer DSP/Banda Nazim Khan is appointed for the purpose of conducting enquiry. *Dy No: 202/13*

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

4 Intimate whether you desire to be heard in person.

5 A statement of allegation is enclosed.

[Signature]
District Police Officer, Karak

[Signature]
ATTESTED

[Signature]
Attested

DISCIPLINARY ACTION

8 (10)

1. I, Mian Nasib Jan, District Police Officer, Karak as competent authority, is of the opinion that **Constable Abid Zaman No. 415 (suspended) Police Lines Karak** has rendered herself liable to be proceeded against on committing the following act / commission within the meaning of Police Disciplinary Rule-1975 (Amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department.

STATEMENT OF ALLEGATION

"Constable/Abid Zaman No. 415 has directly been charged/involved in criminal case FIR No. 08 dated 20.03.2017 u/s 9/14/15 CNSA Police Station Anti Narcotics Force, Kohat. His this act is against service discipline and amount to gross misconduct."

2. The enquiry Officer DSI/Banda Nazim Khan in accordance with provision of the Police Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department may provide reasonable opportunity of hearing to the accused official, record her finding and make within 10-days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

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


District Police Officer, Karak

No. 160 /FC (enquiry), dated 22 / 3 /2017.

Copy to:-

204. The enquiry Officer for initiating proceeding against the accused under the Provision of the Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department.
14. Constable Abid Zaman No. 415 (suspended) Police Lines Karak.


ATTESTED


Attested

بیانِ نزاہت کنیشنل عالیہ نزاہت (11) 415/58 حال معطل کے پولیس اسٹیشن =

جناب عالی

جو کہ خارج ریٹ رکھا 159154/58 واریہ جناب کے صاحب کے کر کے حضور میں لکھتے ہیں
 یہ کہ سرف 17/17 کو کو الہ 8/8 تھانہ پٹریا بوجہ امیر حسین حسبا اجازت
 50/58 صاحب کے سرف 17/17 پر گورنر صاحب کے چونکہ شریک حیات تھے
 تکلیف کے حالات سے لقمی۔ اور سرف 13/13 کو شریک حیات ڈاکٹر
 لانا میراں مایہ امیر حسین نزاہت زچہ پٹریا کر کے جاکر چیک آپ لایا
 علاج سالہ جو میٹر کر کے ڈبلوئی میں 3 جن بعد ان کے کی ضرورت ہے
 شریک حیات کو وہیں گھر سے جاکر ڈاکٹر صاحب کی جو میٹر میں لکھ
 خرید کر مگر چند دوائی نہ ملنے کے وجہ سے دوبارہ امیر حسین صاحب کے
 بزرگ مشورہ سائیکل سے آکر دوائی خریدنے کے جائز تھا۔ جو امیر حسین
 کے چوک مٹا ہونے پہنچا۔ تو چند کسان جو سفید کیشورہ کنیشنل
 عمر شریف کے ساتھ ساتھ تھانہ تھانہ میں مصروف تھے۔ میں نے اپنی
 بندہ اور پٹریا میں بیٹھے کے ٹانگے بننے پھاڑ کر کے خالی کھانے پاس جاکر
 میں نے سفید کیشورہ کے واسطے شہناہ سے تھانہ مادی شریک حیات
 اور عمر شریف کے کنیشنل کو جاننے کی کمان کو شش کی۔ مگر ان
 شہناہ نے من کو بہرہ سٹارٹ میں میں ڈال دیا۔ جبے کو بیٹھ گیا
 کہ آپ کیوں، جبے عمر شریف کے ساتھ سٹارٹ میں میں ڈال دیا۔ کہ وہ
 پٹریا گیا کہ ہم دونوں کے رائیو کر رہے ہیں۔ کافی شور مچا رہا۔
 اور راستے میں لوگوں نے تھانہ یعقوب خان نے شہناہ کے
 خانہ سے ہمارے گاڑی کا پیچھا کر کے ٹھوٹے پلازہ کے
 اور ان کے کسان جو سفید کیشورہ میں تھے ساتھ ساتھ
 کٹے وٹکر رہ گیا۔ اور سفید کیشورہ والوں نے کہا کہ ہم ان
 واسطے ہیں۔ آپ جاکر ہمیں معلوم ہوا کہ کوئی سٹارٹ
 اور جس کو حادثے جاکر کنیشنل و میٹر کر کے جیل کو جاتا
 پھر میں بیٹھ گیا۔ کہ ہمارے طرف سے جس سنگت کے کا پتہ
 جس سے میں بالکل لاپتہ ہوا ہے کہ ہم حیران ہیں

Attest

ایک بھائی (12) جنات کی دستاویز کا موسم 17/7 کو صفحہ 2 پر
 موسم 17/7 کو جیل سے رہا کر کے ایک اور دفتر لپٹی اگر خاص
 کرنے کے خاطر دفاتر کا چکر لگاتا رہے۔ اور موسم 17/7 کو کسب اللہ دفتر
 بحال رہا۔ 5 روزہ 17/7 لپٹی لائن کے حاضر کی لپٹی کے
 اور تاحال سے نکل اور تفریح کے لئے بہتر ہے۔

جناب عالی

جہاں تک الزامات سے یا مقررہ میں پھنسیا گیا ہے۔ کس کی ذاتی ضمانت ہے۔
 اور موسم 17/7 کو یہ گرانٹ ہے جو حضرت حاضر کی ضمانت لپٹی میں ملا ہے
 یہ گرانٹ اور لپٹی نہ کر سکا۔ شریک ضمانت کے موسم 17/7، 19/3، 25/7
 ایک آپ اور لپٹی سورا علاج معالجہ ڈاکٹر صاحب سے نقل فرماتے ہیں
 ہے۔ میرا اس لئے نہیں ہے پھنسیا گیا ہے۔ باکل لپٹی اور لپٹی
 ہوں۔ میری ساتھ سے لپٹی لپٹی لپٹی ہے۔ بلکہ لپٹی لپٹی اور
 بال لپٹی لپٹی کے لئے کافی مقررہ ہے۔ لپٹی لپٹی لپٹی
 کے پاس ایک روز جانا ہے۔ بیان حقیقت پر مبنی ہے۔ لپٹی لپٹی
 میری تنخواہ کو لپٹی اور لپٹی لپٹی لپٹی لپٹی لپٹی لپٹی

0315 9548827 عابد زمان

1.6.2017

ATTESTED
 Attested

اس کے بعد عدالت سے ضمانت کی استدعا کر کے مورخہ 27/5/17 کو ضمانت منظور ہوئی مورخہ 28/5/17 کو جیل سے رہا ہو کر گھر آ کر اگلے روز دفتر پولیس آ کر حاضری کرنے کی خاطر دفاتر کا چکر لگا تا رہا اور مورخہ 7/6/17 کو حسب الحکم افسران بحوالہ مد 5 روز ناچھ 7/6/17 پولیس لائن کرک حاضری کی رپورٹ کی ہے اور تا حال معطل اور تنخواہ بھی بند ہے۔

جناب عالی!

جہاں تک الزامات یا مقدمہ میں پھنسیا گیا ہے کسی کی ذاتی مفادات اور مورخہ 19/3/17 کو بعد گزارنے 2 یوم رخصت حاضری تھانہ شیری میں مطلوب تھی بوجہ گرفتاری حاضری نہ کریگا شریک حیات کے مورخہ 19/3/17، 25/3/17 چیک آپ اور ڈیلوری علاج معالجہ ڈاکٹر صاحبہ نقل فوٹو سٹیٹ لف ہے میرا اس مقدمہ جس میں مجھے پھنسیا گیا ہے بالکل لاعلم اور بے گناہ ہوں میرے ساتھ سراسر ظلم و زیادتی ہوئی ہے بلکہ غریب بندہ اور بال بچے دار ہونے کے وجہ سے کافی مقروض ہو چکا ہوں اللہ تعالیٰ کے پاس ایک روز جانا ہے بیان حقیقت پر مبنی ہے استدعا ہے کہ میری تنخواہ کھولا جائے اور انکو آری چارج شیٹ بلا کارروائی کے داخل دفتر فرمائیں۔

دستخط انگریزی

عابد زمان

0315-9548827

1-6-2017

Attested

(13)

ORDER

My this Order will disposed off the departmental enquiry against Constable Abid Zaman No. 415 (suspended) of this district Police.

Facts are that Constable Abid Zaman No. 415 have directly been charged/involved in criminal case vide FIR No. 08 dated 20.03.2017 u/s 9/14/15 CNSA Police Station Anti Narcotics Force, Kohat. His this act is against service discipline and amounts to gross misconduct.

He was issued Charge Sheet and Statement of aliegation. Mr. Muhammad Nazir, SDPO, B.D.Shah was appointed as Enquiry Officer to conduct proper departmental enquiry against him and to submit his findings in the stipulated period.

The Enquiry Officer reported that it is transpires the recovery of Charges has actually been made from the accused Constable Abid Zaman No. 415 and he is found guilty of the charges leveled against him.

He was called and heard in person in the Orderly Room held in this office but he could not produce any cogent reason Enquiry papers perused.

Keeping in view of the above and available record and facts on file, he is found guilty of charges, therefore, he is awarded a major punishment of Removal from service with immediate effect.

OB No. 454
Dated 08/08/2017

Mashood
District Police Officer, Karakoram

ATTESTED

Attested

Handwritten signature and notes in Urdu script

ASRC
11/8/2017

Ord. 11

25.09.2018



[Handwritten signature]
25.09.18

Learned SP for the State and accused 1. Umer Sharif, 2. Abid Zaman and 3. Sirajam Khan on bail alongwith counsel present.

Today the case was fixed for evidence when learned counsel for accused Sirajam Khan requested that accused is desirous for pleading his guilt. It is stated at the bar that accused Sirajam Khan accepts the complete responsibility in respect of the recovery made from the vehicle; and that the other co-accused namely Umer Sharif and Abid Zaman have nothing to do with the recovery of contraband and have been malafidely roped in, in the case. On that point learned counsel for accused Umer Sharif and Abid Zaman also requested for the acquittal u/s 265-K Cr.P.C of the accused, as there is no probability of the accused being convicted in the case.

It is discernable from the record that the accused facing trial were apprehended and 2400 gms charas was recovered from vehicle motor car Toyota Corolla No. ICT-LK-604-Islamabad, which the accused were allegedly trafficking jointly and thus all the three accused were arrested on 20.03.2017. They remained in custody and then were released on bail and have been languishing in the agonies of trial since then, which by itself is punishment.

Record of the case further shows that the same has been put in Court on 12.07.2017 but up-till now not even the single PW could be examined and the case has been un-necessarily prolonging. Faced with the anomalous position, the accused Sirajam Khan stated at the bar that he admits his guilt and recorded his statement in this respect wherein he has stated that he belongs to a very poor background. He is laborer by profession, having large family and there is no one to look after them. That he cannot afford the agonies of protracted trial. That he was deceived by anti-social elements for commission of instant crime due to his poverty. That the other co-accused, namely Umer Sharif and Abid Zaman are his friends and co-villagers who were just travelling with him and was unaware of his trafficking of narcotic. He repents his crime and commits to be careful in future and also requests that lenient view may be taken in the matter.

Since the accused Sirajam Khan has made a clean breast admission of the commission of offence and since he has beseeched the mercy of this court, therefore, while considering the facts of the case, and punishment provided for the offence, accused Sirajam Khan

Attested

Certified to be True Copy

Z. A. R. Khan
Examiner 25/09/2018
Copying Branch Judge Special Court
(CNS) Khyber Pakhtunkhwa.

is convicted and sentenced to 02 year R.L. with a fine of RS. 5000/- (five thousand) in default of payment of fine, the convict shall suffer further five months S.L. Accused deposited the amount of fine.

Since the accused is first offender, therefore, instead of actual imprisonment he is allowed to be released on probation provided he furnishes surety bonds of RS.50,000/- (fifty thousand) with two sureties, each in the like amount to the satisfaction of Probation Officer Peshawar. Accused is on bail, taken into custody and shall be produced before the Probation Officer at Peshawar and if he succeeds in furnishing bail bonds to the Probation Officer concerned, he be released from custody, otherwise he kept in judicial lockup till production of bail bonds before the Probation Officer.

As co-accused Umar Sharif and Abid Zaman were just travelling with the convicted accused and they had no conscious knowledge of the concealment of narcotics in the vehicle as stated by the convicted accused Srajam Khan in his statement recorded today, therefore, the co-accused can by no means be connected with the commission of offence. As such, there seems to be no probability of their being convicted in the case and therefore while accepting the request of counsel for accused Umar Sharif and Abid Zaman, they are acquitted u/s 265-K Cr.P.C of the charges leveled against them. They are on bail, therefore, their bail bonds are cancelled and sureties are discharged from their liability under the bail bonds.

Personal belongings / non incriminating articles of the convicted as well as acquitted accused shall be returned to them as per recovery memo while charas shall be destroyed as per law but after expiry of appeal/revision period. As far as the vehicle Toyota Corolla car No. ICT-LK-604-Islamabad is concerned the same was already returned to its lawful owner. Sureties of the vehicle are absolved from their liabilities under the bonds. File be consigned to record room after completion and

Announced.
25.09.2018

(Mrs. Nusrat Yasmeen Intekhab) Judge Special Court (CNS) Peshawar

Certified to be True Copy.

ALLIANCE

20/09/2018

Examiner 25/19/2018
Copying Branch Judge Special Court
(CNS) Khyber Pakhtunkhwa.

14-09

(15)

Annexure - 'E'

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1395/2017

Date of institution ... 18.12.2017

Date of judgment ... 13.09.2019



Abid Zaman S/o Mir Madad Shah
R/o Surati Kala Tchsil Takht-e-Nasrati District, Karak ... (Appellant)

VERSUS

1. Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
 2. The Regional Police Officer, Kohat Region, Kohat.
 3. District Police Officer, Karak.
 4. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 08.08.2017 PASSED BY RESPONDENT NO. 3 BY WHICH MAJOR PENALTY OF REMOVAL FROM SERVICE WITH IMMEDIATE EFFECT HAS BEEN AWARDED TO THE APPELLANT AND THE REPRESENTATION OF THE APPELLANT FILED ON 21.08.2017 HAS NOT YET BEEN DECIDED BY THE RESPONDENT NO. 2.

Mr. Shahid Qayum Khattak, Advocate .. For appellant.
Mr. Usman Ghani, District Attorney .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. AHMAD HASSAN .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel and Mr. Usman Ghani, District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department as Constable. He was imposed major penalty

Attested

M. Amin
13.9.2019

ATTESTED

MEMBER (EXECUTIVE)
Khyber Pakhtunkhwa
Service Tribunal

of removal from service vide order dated 08.08.2017 on the allegation that he was involved in case FIR No. 8 dated 20.03.2017 under section 9/14/15 CNSA Police Station Anti Narcotics Force Kohat. The appellant filed departmental appeal on 21.08.2017 which was not responded hence, the present service appeal on 18.12.2017.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

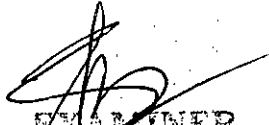
4. Learned counsel for the appellant contended that the appellant was serving in Police Department as Constable. It was further contended that the appellant was involved in case FIR No. 8 dated 20.03.2017 under section 9/14/15 CNSA Police Station Anti Narcotics Force Kohat alongwith two other persons namely Umar Sharif and Sirajum khan. It was further contended that the appellant was hon'able acquitted by the trial court vide detailed judgment dated 25.09.2018. It was further contended that the respondent-department was required to wait for conclusion of criminal case but without waiting for the fate of criminal case, the appellant was imposed major penalty of removal from service vide order dated 08.08.2017. It was further contended that neither proper departmental inquiry was conducted nor the appellant was associated in departmental proceeding nor any show-cause notice alongwith copy of inquiry report was issued to the appellant therefore the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was arrested on the spot by the Anti Narcotics force red handed. It was further contended that acquittal of the appellant is no ground for

M. Ameen
13.9.2019

Attested

ATTESTED


EXAMINER
Khyber Pakhtunkhwa

exonerating him from the departmental proceeding. It was further contended that proper departmental proceeding was initiated by the respondent-department and after fulfilling all the codal formalities, the appellant was rightly imposed major penalty of removal from service and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He was involved in Narcotics case vide FIR No. 8 dated 20.03.2017 under section 9/14/15 CNSA Police Station Anti Narcotics Force Kohat alleging therein that the Anti Narcotics Force recovered 2400 grams Chars from the motorcar driven by the Umer Sharif while the appellant alongwith one other person namely Sirajum was setting on the rear seat. The record further reveals that the respondent-department was required to wait for the fate of criminal trial but the respondent-department imposed major penalty of removal from service before conclusion of the criminal trial. The record further reveals that the appellant was acquitted by the trial court vide detailed judgment dated 25.09.2018. The record further reveals that the respondent-department initiated departmental proceeding against the appellant but the inquiry officer has not conducted the inquiry in the mode and manner prescribed under the Police Rule, 1975 even a show-cause notice alongwith copy of inquiry report was not handed over by the respondent-department to the appellant meaning thereby that the appellant was condemned unheard which has rendered the whole proceeding illegal and liable be set. As such, we partially accept the appellant, set-aside the impugned ^{order} and reinstate the appellant into service with the direction to the respondent-department to conduct de-novo ^{inquiry} in the mode and manner prescribed under Police Rules, 1975 and respondent-department is also directed to fully associate the appellant in inquiry proceeding, providing opportunity of cross examination and issuing show-cause

Umer Sharif
13.9.2019

Attested

ATTESTED

[Signature]
Member
Service Tribunal
Peshawar

18

notice alongwith copy of inquiry report. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

13.09.2019

(AHMAD HASSAN)
MEMBER

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 16-9-19
Number of Words 1600
Copying Fee 20-00
Urgent —
Total 20-00
Name of Copy [Signature]
Date of Completion of Copy 16-10-19
Date of Delivery of Copy 16-10-19

Attested

(19)

Annexure - 'E'

ORDER

My this Order will dispose off the denovo departmental enquiry initiated against Constable Abid Zaman No. -732 by the order of the Service Tribunal Khyber Pakhtunkhwa Peshawar and approval from the W/IGP, CPO/IAB KP Peshawar letter No. 3613/CPO/IAB dated 16.12.2019, of this district Police.


Facts are that as per order issued by the Service Tribunal KP Peshawar on the service appeal No. 1395/2017 dated 13.09.2019 regarding issuance of fresh Show Cause Notice that you Constable Abid Zaman No. 732 while on service committed and directly charged/involved in criminal case vide FIR No. 08 dated 20.03.20017 u/s 9/14/15 CNSA Police Station Anti Narcotics Force, Kohat. This is highly quite adverse on your part and shows your malafide intention in the discharge of your official obligations. This act on his part is against service discipline and amounts to gross misconduct.

He was issued with Show Cause Notice on the directions of the Service Tribunal KP Peshawar and a separate order regarding conducting denovo enquiry was also issued and Mr. Gul Nawaz Jadoon SP Investigation Wing Karak was appointed as an Enquiry Officer to conduct proper denovo enquiry against him and to submit his findings within the stipulated time.

The Enquiry Officer reported that reinstatement order vide O.B No. 537 dated 17.12.2019 of Constable Abid Zaman No. 732 may please be sustained with the extent that his termination period w.e. from 08.08.2017 to 17.12.2017 (02 Years, 04 months and 09 days) be treated as intervening period as without pay. Furthermore, he is also recommended for minor punishment of stoppage of increment.

Keeping in view of the available record and facts on file, perusal of enquiry papers and adopted all legal and codal formalities, I did not agreed with the findings report and recommendations of the Enquiry Officer, found enormous flaws in it, so that, he is found guilty of the charges beyond any shadow of doubt and the punishment awarded to him is found correct. The defaulter Constable has blemish service record, his retention in the Police Force is a stigma for the Police department, although he is acquitted from the criminal case but he is indulged in extra illegal activities. Therefore, I, Nausher Khan Mohmand as competent authority withhold his subject punishment of dismissal from service with cumulative effect.

OB No. 227-28
Dated 07-01-2020

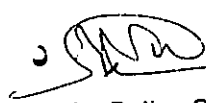

District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

No. 227-28 /PA(Enq), Karak the dated 07-01-2020.

- Copy of above is submitted for favour of information to:-
1. The Registrar, Service Tribunal Khyber Pakhtunkhwa Peshawar w/r to his office order dated 13.09.2019 issued on the service appeal No. 1395/2017, please.
 2. The Inspector General of Police CPO/IAB Khyber Pakhtunkhwa Peshawar w/r to his office 3726/CPO/IAB dated 31.12.2019, please.


Attested


District Police Officer, Karak

To,

The regional police officer,
Kohat Region, Kohat.

Subject:- Departmental appeal.

Respected sir,

Most humbly appellant submits departmental appeal against the order of learned district Police Officer dated 03-01-2020 OB No. 05 passed in De-Novo departmental proceeding initiated against appellant in pursuance of the judgment of Khyber Pukhtunkhwa Service Tribunal Peshawar dated 13-09-2019, passed in Service Appeal No. 1398/2017 filed by appellant against the dismissal from service order dated 08-08-2017 issued by District Police Officer, Karak.

FACTS:

1. That appellant was serving district Karak Police as Constable. On 17-03-2017, appellant while posted in Police Station Teri received an information about the suffering of the wife of Appellant from maternity pain. Appellant with due permission of station house Officer (SHO) left the Police Station for Home and made departure report in the daily diary of police station Teri vide Serial No. 08 dated 17-03-2017.
2. That on reaching home, appellant shifted the ailing wife to private maternity home run by Doctor Hijran Bibi, She was admitted to the hospital and on safe delivery of a child she was kept under treatment for several days.
3. That on 20-03-2017 appellant visited Amberi Kalla shopping centre situated along Indus High way for purchasing medicine where the appellant noticed fight between private persons. Therefore appellant intervened to prevent the nuisance.
4. That the persons in plain clothes later on confirmed the officials of Narcotics force not only beaten the Appellant and others but also drag appellant into vehicle and left towards Kohat. Station House Officer of Police Station Yaqoob Khan Shaheed on getting wind of the incident followed the vehicle and intercepted it near old tool plaza Karak where some altercation took place between that SHO and imamatees of the vehicle however, they disclosed their identity as officials of Narcotics force before SHO.
5. That the Narcotics force officials had only arrested Sirajam Khan under the charge of possession of "Charas" but they falsely and mala - Fidly showed the arrest of appellant and one Umer Sharif as accomplice of the Siranjam Khan.
6. That the Narcotics force official registered criminal case vide FIR No. 08 dated 20-03-2017 Under Section 09, 14, 15 CNSA Police station Anti Narcotics Kohat against appellant, Umer Sharif and Sirajam Khan.
7. That appellant knocked at the door of different courts for grant of bail and finally succeeded in getting concession of release on bail vide order of competent court.
8. That in addition to registration of criminal case by Anti Narcotics force against appellant, departmental proceedings was also imitated against appellant on same set of allegations by District Police Officer Karak which culminated in passing the dismissal from service order of appellant dated 08-08-2017 OB No. 454 of the office of District Police Officer Karak.
9. That appellant submitted departmental appeal before your good office against the afore mentioned order of district police officer Karak but on receipt of no response within stipulated period of 120 days, appellant filed service

[Handwritten Signature]
Arrested

appeal No. 1395/2017 before Khyber Pukhtunkhwa service tribunal, Peshawar.

10. The appellant continued defense of criminal charge and departmental charge the Judge Special Court Peshawar was pleased to order acquittal of appellant of the criminal charge vide order dated 25-09-2018 and similarly the Khyber Pakhtunkhwa service tribunal was pleased to accept the Service Appeal of appellant vide order dated 13-09-2019 and issued directions of re-instatement of appellant in service with further directions to the department to conduct de - novo proceedings in the mode and manner prescribed under Police rules 1975.

11. That appellant submitted the judgment of service of tribunal before learned district police officer, Karak soon after its receipt but the re - instatement order was delayed for several months and was Later on issued vide OB No. 537 dated 17-12-2019.

12. That appellant joined duties and Show Cause notice was issued to appellant in pursuance of the directions of service tribunal and the appellant submitted detailed reply and was informed by the office on 07-01-2020 about passing the impugned order dated 03-01-2020 vide which the appellant was again dismissed from service, then appellant submits this departmental appeal on the following grounds.

GROUND:-

(a) That the impugned order is novel as appellant was reinstated in service vide OB No. 537 dated 07-12-2019 and appellant joined and performed duties and no law and rules allow the authority to hold the order of dismissal from service dated 08-08-2017 with cumulative effect vide order passed on 03-01-2019 after re- instatement order issued on 17-12-2019 Again word withhold has wrongly been used for the word hold which further create. Ambiguity in the impugned order.

(b). That though the findings of enquiry officer were not supplied to appellant despite demand yet it is evident from the fourth Para of the impugned order that, the enquiry officer has made recommendations for considering the intervening period as without pay and award of minor punishment while the authority awarded major penalty of removal from service to appellant. Under the law and rules the authority is empowered to differ with the findings of enquiry officer subject to advance of reasonable grounds and providing chance of defense to the defaulter officer. The reasons advanced by the authority are not plausible and no chance of personal hearing or issuance of final show cause notice was given to appellant therefore the impugned order is worth set aside.

(c). That the services tribunal has passed clear directions in the judgment dated 13-09-2019 passed in service appeal No. 1395/2017 that the department to conduct de - novo proceedings in the mode and manner prescribed under Police rules 1975 and respondent department was also directed to fully associate the appellant in enquiry proceedings by providing opportunity of cross examination and issuing show cause notice along with copy of enquiry report. The directions of service tribunal were not complied with before passing the impugned order No chance of examination of witnesses was provided to appellant No final show cause notice was issued to appellant. Therefore that impugned order is not sustainable.

(d). That show cause notice based on allegations of involvement in Narcotics case vide FIR No 08- dated 03-2017 under sections 9, 14,15 CNSA Police stations Anti Narcotics was issued to appellant. The authority had admitted the acquittal of appellant of the criminal charge in the last Para of the impugned order and has referred to blemished record of service of


Attested

22

appellant Under the law the authority is bound to pass the order in the light of charges mentioned in the charge sheet. No charge of bearing blemished record of service was issued to appellant therefore the order has wrongly been passed and worth set aside.

(e) That appellant was mala - fidely arrested and involved by Narcotics force officials in criminal case. The department instead of defending appellant issued initial dismissal from service order dated. 08-08-2017 of appellant despite the fact that act of appellant was not falling within the mischief of misconduct. The appellant spent huge amount on defending the criminal charge before courts and departmental charge before Service Tribunal Appellant belong to poor family and is entangled in debt. The re- instatement in service order dated 17-12-2019 was a hope for staying out of the debt but the impugned order not only shun the hope of the appellant but also forced the minor children of appellant to pass hunger life.

(f). That the competent court has acquainted the appellant from the main charge of criminal case therefore the very foundation of departmental charge was no more in existence therefore the impugned order has been passed against the law and facts on record.

(g). That appellant wish personal hearing and agitating further grounds.

Your obediently,

Abid Zaman

Constable No. 732

Cell No. 0315-9548827

11/01/2020

Enclose copy of ~~res.~~ order.


Abid Zaman


SHOW CAUSE NOTICE
(UNDER RULE 5(3) KPK POLICE RULES, 1975).

1. That you Constable Abid Zaman No. 732 Police Lines Karak have rendered yourself liable to be proceed under Rule 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct.

"As per order issued by the Service Tribunal KP Peshawar on the service appeal No. 1395/2017 dated 13.09.2019 regarding issuance of fresh Show Cause Notice that you Constable Abid Zaman No. 732 while on service committed and directly charged/involved in criminal case vide FIR No. 08 dated 20.03.20017 u/s 9/14/15 CNSA Police Station Anti Narcotics Force, Kohat. This is highly quite adverse on your part and shows your non malafide intention in the discharge of your official obligations. Such act on your part is against the service discipline and amounts to gross misconduct."

That by reason of above, as sufficient material is placed before the undersigned; therefore, it is decided to proceeds against you in general Police proceeding without aid of enquiry officer.

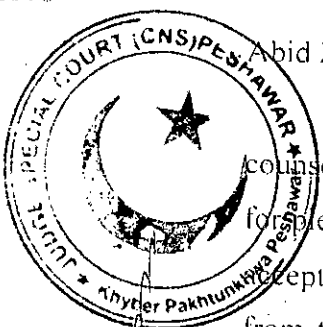
2. That the misconduct on your part is prejudicial to good order of discipline in the Police force,
3. That your retention in the Police force will amount to encourage in efficient and unbecoming of good Police officer.
4. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishment as provided in the Rules.
5. Your are called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for misconduct referred to above.
6. You should submit reply to this show cause notice within 07-days of the receipt of the notice failing which an ex parte action shall be taken against you.
7. You are further directed to inform the undersigned that you wish to be heard in person or not.


District Police Officer, Karak


Attested

23 (A)

Ord.....11
25.09.2018



Handwritten signature and date: 25.09.18

Learned SP for the State and accused 1. Umer Sharif, 2. Abid Zaman and 3. Sirajam Khan on bail alongwith counsel present.

Today the case was fixed for evidence when learned counsel for accused Sirajam Khan requested that accused is desirous for pleading his guilt. It is stated at the bar that accused Sirajam Khan accepts the complete responsibility in respect of the recovery made from the vehicle; and that the other co-accused namely Umer Sharif and Abid Zaman have nothing to do with the recovery of contraband and have been malafidely roped in, in the case. On that point learned counsel for accused Umer Sharif and Abid Zaman also requested for the acquittal u/s 265-K Cr.P.C of the accused, as there is no probability of the accused being convicted in the case.

It is discernable from the record that the accused facing trial were apprehended and 2400 gms charas was recovered from vehicle motor car Toyota Corolla No. ICT-LK-604-Islamabad, which the accused were allegedly trafficking jointly and thus all the three accused were arrested on 20.03.2017. They remained in custody and then were released on bail and have been languishing in the agonies of trial since then, which by itself is punishment.

Record of the case further shows that the same has been put in Court on 12.07.2017 but up-till now not even the single PW could be examined and the case has been un-necessarily prolonging. Faced with the anomalous position, the accused Sirajam Khan stated at the bar that he admits his guilt and recorded his statement in this respect wherein he has stated that he belongs to a very poor background. He is laborer by profession, having large family and there is no one to look after them. That he cannot afford the agonies of protracted trial. That he was deceived by anti-social elements for commission of instant crime due to his poverty. That the other co-accused namely Umer Sharif and Abid Zaman are his friends and co-villagers who were just travelling with him and was unaware of his trafficking of narcotic. He repents his crime and commits to be careful in future and also requests that lenient view may be taken in the matter.

Since the accused Sirajam Khan has made a clear breast admission of the commission of offence and since he has beseeched the mercy of this court, therefore, while considering the facts of the case, and punishment provided for the offence, accused Sirajam Khan

Certified to be True Copy

Handwritten signature and date: 27-09-2018
Examiner

Copying Branch Judge Special Court
(CNS) Khyber Pakhtunkhwa.

is convicted and sentenced to 02 year R.I. with a fine of Rs. 5000/- (five thousand) in default of payment of fine, the convict shall suffer further five months S.I. Accused deposited the amount of fine.

Since the accused is first offender, therefore, instead of actual imprisonment he is allowed to be released on probation provided he furnishes surety bonds of Rs.50,000/- (fifty thousand) with two sureties, each in the like amount to the satisfaction of Probation Officer Peshawar. Accused is on bail, taken into custody and shall be produced before the Probation Officer at Peshawar and if he succeeds in furnishing bail bonds to the Probation Officer concerned, he be released from custody, otherwise be kept in Judicial lockup till production of bail bonds before the Probation Officer.

As co-accused Umer Sharif and Abid Zaman were just travelling with the convicted accused and they had no conscious knowledge of the concealment of narcotics in the vehicle as stated by the convicted accused Sirajam Khan in his statement recorded today, therefore, the co-accused can by no means be connected with the commission of offence. As such, there seems to be no probability of their being convicted in the case and therefore while accepting the request of counsel for accused Umer Sharif and Abid Zaman, they are acquitted u/s 265-K Cr.P.C of the charges leveled against them. They are on bail, therefore, their bail bonds are cancelled and sureties are discharged from their liability under the bail bonds.

Personal belongings / non incriminating articles of the convictee as well as acquitted accused shall be returned to them as per recovery memo while charas shall be destroyed as per law but after expiry of appeal/revision period.

As far as the vehicle Toyota Corolla car No. ICT-LK-604-Islamabad is concerned the same was already returned to its lawful owner. Sureties of the vehicle are absolved from their liabilities under the bonds.

File be consigned to record room after completion and compilation.

(Mrs. Nusrat Yasmeen Intekhab)
Judge Special Court (CNS)
Peshawar.

Certified to be True Copy

2A/27-09-2018
Examined
Announced.
25.09.2018
Copying Branch Judge Special Court
(CNS) Hyber Pakhtunkhwa.

(No subject)

From: shahid qayum (shahidshahlaw@yahoo.com)

Cc: shahidshahlaw@yahoo.com

Date: Thursday, 30 April 2020, 08:29 am GMT+5

عذرات عرض کرتا ہوں۔ چارچ شہیت کے پس منظر سے گفتگو کا بیان ہے۔
 کے لیے درست تجزیہ کیلئے فروری ہیں۔

فن 2017۔
 سال 2017ء میں منظم ہائپسٹیل تھانہ ٹیری میں تعینات تھا۔ مدد فہم
 2017ء 17.03 کو گٹھ سے ہوی کے دروازہ میں مبتلا ہونے کی اطلاع موصول ہوئی لہذا شب اجازت
 فضا 2017ء حوالہ نمبر 8 مورخہ 2017ء 17.03 تھانہ ٹیری سے گھر چلا کر روانہ ہوا۔ چونکہ
 ہوی ہسٹور ڈر میں مبتلا تھی لہذا ایر ایئر ڈیم لیم سٹڈ ڈاکٹر بھیران کی لی کے گتے اور
 فینڈین زیر علاج لے جتے رہے اور رگھو کی تالہ گود میں آئے۔ مورخہ 2017ء 20.03 کو
 اپنے گٹھ سے امیری تلم لفظ دروازی صبر پر گیا وہاں سفیر بھارت سے چند آرٹھوں
 کو لے کر ہی ہو ڈیکو کریٹوں کے خلاصی کے عرض سے ان کے درمیان ہوا۔ انہوں نے منظم
 اور دیگر کئی نو روڈ کو آ کر کے سلاڈ گاڑی میں ڈالے اور لہرو کو ڈاکے روانہ
 تھے۔ تمام لیٹو خان شہید خان کے 2017ء واقعہ کا علم ہوا اور انہوں نے گاڑی کے اندر
 کیا اور پھر کئی بلڈزہ گاڑی کو لے کر نے میں لایا۔ ہوا۔ 2017ء اور ان
 سفیر بھارت سے ملوس کئی کے نام میں اور کلنگی ہونی کے درمیان انہوں نے
 اپنی شناخت اور بیٹی نارو ٹولس لڑوں کے وقتوں اور شہادت اور ہمیں منشیات
 سے گرفتاری کے متعلق۔ اگرچہ انہوں نے منشیات سے تعلق نہ ہو اور سراج خان کو
 گرفتار کیا تھا مگر منظم ہائپسٹیل اور غیر سرکاری کو بھی یہ تمام منشیات سے
 ملوث تھے۔ انہوں نے ہمیں کوڈ کے منتقل کیا اور پھر کے خلاصی کے وقت 2017ء
 مورخہ 2017-03-20 زبردست 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
 میں ہمیں سیرنا چورنگیل چلا اور ڈاکٹر کڈ جیل کو لے گئے۔
 منظم ہائپسٹیل کے مختلف عدالتوں کے دروازوں پر پھانسی پر لگائے رکھ کر
 آخر کار صحت پر بارہا ہوتی۔ عدم عسراں نامہ میں ملوث چھ کر کے کے علاوہ عدالت

حکومت اور عدالت میں شروع کی گئی۔ میں علم و حقائق اور ان کے گوش گزار بننے مگر من مکر
ہائیل کو جو حکم صادر ہوا۔ اس حکم کے خلاف حکمتانہ پریسل ڈاکٹر کیا مگر تین ہفتوں کے بعد
عدالت نے پریسل ڈاکٹر کی درخواست پر عدالت نے 13-09-2018 میں
کریسٹل ڈاکٹر کی درخواست پر عدالت نے 05-05-2018 میں
ص۔ 2018-09-05 کو عدالت نے خارج کر دیا حکم صادر کیا۔

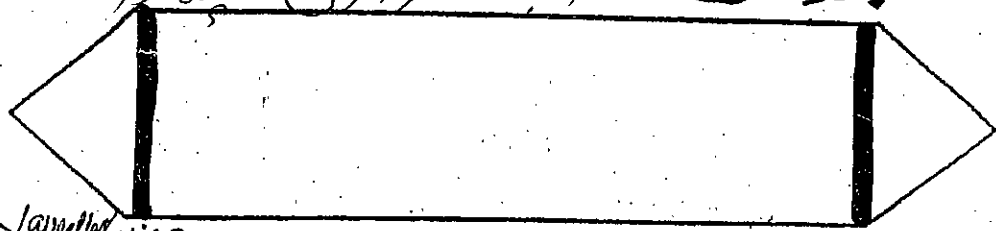
ص۔ 2018-09-05
حکمتانہ پریسل ڈاکٹر من مکر منشیات کے مقدمہ کے خلاف دفاع میں
جاری رکھی۔ مجاز عدالت نے پریسل ڈاکٹر کی درخواست پر
استدعا میں من مکر منشیات کے الزام سے جو حکم صادر ہوا 25-09-2018 میں
حکم صادر کیا اور عدالت نے 13-09-2018 منظور ہو کر من مکر
کے عدالت پر حکم صادر کیا اور حکم کو دوبارہ حکمتانہ عدالت کی بھی اجازت دے دی
ص۔ 2018-09-05 جاری کیا گیا۔

ص۔ 2018-09-05
من مکر انرجی ڈیویز میں من مکر منشیات کے مقدمہ کے خلاف
کے خلاف عدالت نے عدالت میں من مکر منشیات کے الزام سے جو حکم صادر ہوا
نے من مکر ہائیل کو زبردستی سے جسم پر مقدمہ چلایا گیا اور عدالت نے
ڈاکٹر اور پریسل ڈاکٹر میں من مکر منشیات کے مقدمہ کے خلاف
نے عدالت کی درخواست پر من مکر منشیات کے الزام سے جو حکم صادر ہوا
عدالت نے عدالت میں من مکر منشیات کے مقدمہ کے خلاف
کیا جو کہ عدالت نے عدالت میں من مکر منشیات کے مقدمہ کے خلاف

من مکر ہائیل کو عدالت میں من مکر منشیات کے مقدمہ کے خلاف
25-09-2018 میں من مکر منشیات کے مقدمہ کے خلاف
پر عدالت میں من مکر منشیات کے مقدمہ کے خلاف
منشیات کے مقدمہ کے خلاف عدالت میں من مکر منشیات کے مقدمہ کے خلاف
عدالت میں من مکر منشیات کے مقدمہ کے خلاف
منشیات کے مقدمہ کے خلاف عدالت میں من مکر منشیات کے مقدمہ کے خلاف

منشیات کے مقدمہ کے خلاف عدالت میں من مکر منشیات کے مقدمہ کے خلاف
منشیات کے مقدمہ کے خلاف عدالت میں من مکر منشیات کے مقدمہ کے خلاف
منشیات کے مقدمہ کے خلاف عدالت میں من مکر منشیات کے مقدمہ کے خلاف

بعدالت کرویں ٹریبونل لیتا اور



Petitioner/Appellant 2. منجانب

عالم زمان بنام حکومت

موزعہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کاروائی متعلقہ
 آن مقام لیتا اور کیلئے پیش کردہ مجموعہ دستاویزوں کو ملاحظہ فرمادیا گیا ہے۔
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار دیا گیا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقریر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ مندر ہے۔

الرقوم 29 ماہ اپریل 2020

عالم زمان علیہ سبب درصداہ سلمہ صورتی کلم
 اختیاری علیہ لرب

بمقام لیتا اور کے لئے منظور ہے۔ Accepto

[Handwritten signatures and stamps]

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

S.B

No.

APPEAL No. 3975 of 20 20

Abid Zaman

Appellant/Petitioner

Versus

Provincial Police Officer, Peshawar.

RESPONDENT(S)

Notice to Appellant/Petitioner

counsel.

Shahid Qayum Khatitak
Advocate, Sui Home Court.
Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 11/8/2020 at 9: am.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.


Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Received on
date: 02-07-2020

محمد رفیق
میرزا
[Signature]

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service appeal No. 3975/2020
Abid Zaman

... **Appellant**

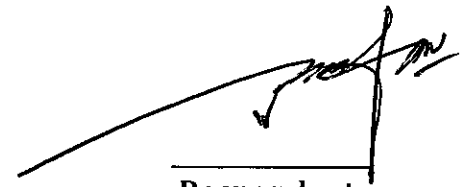
VERSUS

Provincial Police Officer,
Khyber Pakhtunkhwa & Others

... **Respondents**

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2.	Copy of FIR No. 08 dated 20-03-2017 u/s 9 C, 14, 15 CNSA 1997 Police Station Anti Narcotics Force Kohat	A	4
3.	Better Copy FIR No. 08 dated 20-03-2017 u/s 9 C, 14, 15 CNSA 1997 Police Station Anti Narcotics Force Kohat	-	5-6



Respondents
Through Representative

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

Service Appeal No. 3975/2020
Abid Zaman

..... Appellant

VERSUS

Provincial Police Officer,
Khyber Pakhtunkhwa & others

..... Respondents

PARAWISE COMMENTS, BY RESPONDENTS.

Respectively Sheweth:-

Preliminary Objections:-

- i. That the appellant has got no cause of action.
- ii. That the appellant has got no locus standi.
- iii. That the appeal is bad for misjoinder and non-joinder of necessary parties.
- iv. That the appeal is bad in eyes of law and not maintainable.
- v. That the appellant is estopped to file the instant appeal for his own act.
- vi. That the appeal is barred by law & limitation.

Facts:-

1. Appointment and posting of appellant pertains to record. However, the remaining para is incorrect, as the appellant submitted a concocted / unbelievable story. The Anti-Narcotics Force, recovered 2400 Gms Charas from the motorcar No. LK-604, ICT Islamabad, driven by Umar Sharif while the appellant alongwith another person / accused named Siraj was setting / travelling in the said motorcar. A case vide FIR No. 8 dated 20.03.2017 u/ss 9/14/15 CNSA Police station Anti-Narcotics force Kohat was registered against the appellant and co-accused. Copy of FIR is **annexure A**.
2. The appellant alongwith his co-accused named above were arrested by Anti-Narcotics Force, on spy information while trafficking narcotics in the aforesaid motorcar. No malafide is stated by the appellant regarding his arrest and co-accused. Furthermore, bail matter pertains to record of competent court of law.
3. Criminal and departmental proceedings are distinct in nature which can run side by side and orders in criminal case have no effect on the departmental proceedings. The departmental proceedings were conducted against the appellant and awarded punishment commensurate to the charges by the competent authority after observing all codal formalities.
4. Departmental appeal of appellant was found meritless and barred by limitation and disposed off. While service appeal was properly perused through pleader before the Honorable Tribunal.

5. The appellant was acquitted u/s 265 K CrPC by the competent court of law which does not amount to his honorably acquittal. Furthermore, judgment passed by this honorable Tribunal in service appeal No. 1395/2017, dated 13.09.2019 was honored and implemented by the respondents in letter and spirit.
6. Incorrect, the appellant was arrested by Anti-Narcotics Force vide aforesaid FIR and the appellant has not established any ill-will, malafide on the part of Anti-Narcotics Force regarding his arrest / involvement. Police is a disciplined department, therefore, on the basis of involvement of appellant in trafficking of narcotics, he was proceeded with departmentally, without any malafide in accordance with existing rules.
7. Incorrect, departmental appeal of the appellant was entertained by respondent No. 2 accordingly and being devoid of merits was rejected.
8. The appellant is estopped to file the instant appeal for his own act and wrongly challenged the legal / valid orders of respondents through unsound grounds.

Grounds:-


- a. Incorrect, the appellant was proceeded with departmentally by respondent No. 3 in accordance with facts and rules. The charges leveled against the appellant was established during course of probe and awarded appropriate punishment commensurate to the charge.
- b. Incorrect, the appellant was re-instated in service vide OB No. 537 dated 07.12.2019 in compliance with the judgment of the honorable Tribunal only for the purpose of de-novo inquiry. After conducting and finalization of de-novo inquiry, he was heard in person and dismissed from service vide OB No. 05 dated 03.01.2020. All the proceedings were carried out in accordance with established facts and rules.
- c. Incorrect, the appellant was found involved in moral turpitude offence which is highly objectionable in society. The appellant being member of a disciplined force, earned bad name for the entire department and a stigma on the department as well.
- d. Incorrect, all codal formalities were observed during the course of departmental inquiry. The appellant was associated with inquiry proceedings, provided ample opportunity of defense and heard in person. He failed to submit any plausible explanation to his gross professional misconduct / involvement in criminal case.
- e. The judgment of honorable Tribunal dated 13.09.2019 passed in service appeal No. 1395 was implemented in letter and spirit. The directives of this honorable Tribunal passed in the judgment were implemented in true spirit.


- f. The appellant alongwith co-accused were arrested by ANF and recovered huge quantity of narcotics from the motorcar in which they were travelling / trafficking. The appellant was acquitted u/s 265 K CrPC, which does not amount to his honorable acquittal from the charges.
- g. Incorrect, the reply submitted to the charge sheet and defense during the course of inquiry by the appellant was found unsatisfactory by respondent No. 3. Furthermore, all codal formalities were observed during the entire proceedings.
- h. Incorrect, no malafide or ill-will on the part of Anti-Narcotics Force was proved by the appellant. Furthermore, the appellant had not submitted any application to the authorities concerned regarding his false involvement in a criminal case.
- i. As replied above, the appellant was acquitted on technical grounds in the criminal case, which cannot be considered honorably acquittal.
- j. Incorrect, detail reply submitted in the above paras.
- k. Incorrect, all codal formalities were observed during the course of inquiry and the departmental proceedings were conducted against the appellant in accordance with rules.
- l. Incorrect, reply is submitted in the above para.
- m. Incorrect, proper regular departmental inquiry was conducted against the appellant in accordance with the rules. The charge leveled against the appellant was established during departmental probe and the appellant was awarded appropriate punishment commensurate to the charges.
- n. Incorrect, the appellant was proceeded departmentally in accordance with Police Rules wherein all the opportunities of self defense, hearing were provided to appellant without any discrimination or ill will.

Prayer:-

In view of the above stated facts, it is humbly prayed that the appeal is contrary to facts, & devoid of merits may kindly be dismissed with costs, please.


District Police Officer, Karak
(Respondent No. 3)


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


Provincial Police Officer/
Inspector General of Police,
Khyber Pakhtunkhwa.
(Respondent No. 1)

ابتدائی اطلاع کی رپورٹ

ابتدائی اطلاع نسبت خرم قابل دست اندازی پولیس رپورٹ شدہ ڈیڑھ 154 مجموعہ ضابطہ نوچرانی

تھانہ ANF کوہاٹ
علت نمبر 08

تاریخ وقت رپورٹ 20-03-2017 وقت 12:15 بجے

1-	تاریخ وقت رپورٹ	20-03-2017
2-	نام و سکونت اطلاع دہندہ دستخط	20-03-2017 چاکیڈی پرچہ وقت 16,15 بجے
3-	مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو	ابھل علی اسپیکر SHO/ تھانہ ANF کوہاٹ
4-	ہائے ذمہ داران نام و پتہ سے درست	240019 (C) CNS/1997 برآ 240019 گرام چرس
5-	نام و سکونت ملزم	نزد اسیری کلچر چوک انڈس ہائی وے ضلع کرک
6-	کارروائی جو تفتیش سے متعلقہ تھی اگر اطلاع درج کرنے میں تاخیر ہو، تو وہ بیان کرو	میر شریف خان ولد عمر ظیف خان قوم خٹک سکھ صورتی کلچر تحصیل تخت نصرتی ضلع کرک (2) عابد زمان ولد میر مدد شاہ قوم خٹک سکھ صورتی کلچر تحصیل تخت نصرتی ضلع کرک (3) - انہم تعلقہ زمان نامہ قوم انڈس ہائی وے ضلع کرک
7-	تھانہ سے روانگی کی تاریخ و وقت	12:15 بجے

ابتدائی اطلاع نیچے درج کرو۔ امروز افسران بالا کو خفیہ ذرائع سے اطلاع ملی کہ منشیات سمگلران 1 عمر شریف 2- عابد زمان 3- سراجم بذریعہ ٹیویٹا کارولا کار نمبر LK 604 ICT Islamabad بزرگ سفید کافی تعداد میں منشیات آج قریب 12:00 بجے براستہ انڈس ہائی وے کرک سے ڈیرہ اسامی عیسیٰ خان سمگل کرنے کے کوشش کریں گے۔ اس اطلاع کو مدد قہ جان کر حسب الحکم افسران بالا ایک ریڈنگ پارٹی بشمول سن اسپیکر SHO/ ہمراہ علی نقی نائب صوبیدار اظہار رحمن HC محمد شہاب، ربیع اللہ، مشتاق احمد، کاشمیریان ددیگر نفری تھانہ ANF کوہاٹ ہمراہ مخبر مدد سرکاری گاڑیاں تھوکیل ڈریور ان شا کر زمان، محمد ہارون، ریاض خان نزد اسیری کلچر چوک انڈس ہائی وے ضلع کرک پہنچ کر مناسب حکمت عملی ترتیب دیگر کرک کی جانب سے آنے والی گاڑی کی خفیہ نگرانی شروع کر دی قریب 12:15 بجے متذکرہ بالا مخبری شدہ کار جانب کرک سے آتی ہوئی دکھائی دی جس میں تین کس اشخاص سوار تھے جسے نشانہ ہی مخبر بالا ہمریان حکمت عملی سے اشارہ کر کے روک کر کار متذکرہ بالا کی ڈرائیونگ سیٹ پر بیٹھے ہوئے ایک شخص اور پیچھے بیٹھے ہوئے دو اشخاص کو باہر امداد ہمریان قابو کر لیا بد ریافت ڈرائیونگ سیٹ پر بیٹھے ہوئے شخص نے اپنا نام و پتہ عمر شریف ولد عمر ظیف خان قوم خٹک جبکہ ڈرائیونگ کے پیچھے بیٹھے ہوئے شخص نے اپنا نام عابد زمان ولد میر مدد شاہ قوم خٹک جبکہ فرنٹ سیٹ کے پیچھے بیٹھے ہوئے شخص نے اپنا نام سراجم خان ولد زکین شاہ قوم خٹک ساکنان صورتی کلچر تحصیل تخت نصرتی ضلع کرک بتلائے مذکوران عمر شریف خان اور عابد زمان

نے مزید بتلایا کہ وہ خیبر پختونخواہ پولیس کے اہلکار ہیں۔ منشیات کی بابت پوچھنے پر ڈرائیونگ سیٹ پر بیٹھے ہوئے شخص عمر شریف خان کچھ لیت لعل کے بعد ڈرائیونگ سیٹ کے نیچے ایک پیکٹ چرس کی موجودگی تسلیم کر کے نشاندہی کی جبکہ پچھلی سیٹ پر بیٹھے دو اشخاص عابد زمان اور سراج خان نے پچھلے سیٹ کے نیچے ایک پیکٹ چرس کی موجودگی تسلیم کر کے نشاندہی لی روبرو گواہان چیل کرنے پر ڈرائیونگ اور پچھلے سیٹ پر دو عدد پیکٹس پا کر فرد نشاندہی بر موقع مرتب کر کے گواہان سے تکمیل فرد کروائی جا کر اہل ملقاہ ہونا شروع ہو گئے اہل علاقہ زیادہ راتقاد ہونے کی وجہ سے مذکورہ بالا ملزمان کو چھوڑانے کی کوشش میں تھے کہ اسی دوران ملزم عابد زمان موقع سے فائدہ اٹھا کر بھاگنے کی کوشش کرتے ہوئے مال مقدمہ گاڑی کے ذریعے سے سرنگرا معمولی زخمی ہو گیا موقع پر نقص امن کے خدشہ اور حالات کو مد نظر رکھتے ہوئے حفظ ماتقدم کے تحت موقع سے مال مقدمہ کار معہ منشیات چرس و تین ملزمان کو ہمراہ ریڈنگ پارٹی لیکر تھانہ ANF کو ہاٹ پہنچ کر حسب ضابطہ کارروائی کرتے ہوئے ملزم عمر شریف خان نے برو گواہان زخود ڈرائیونگ سیٹ کے نیچے سے ایک پیک چرس بندبہ پلاسٹک وزر و انسولیشن ٹیپ من اسپیکٹر SHOI کے حوالے کیا ڈرائیونگ سیٹ کے نیچے سے برآمدہ ایک پیکٹ چرس کا وزن کرنے پر 1200 گرام چرس پائی جا کر جس میں سے 10 گرام چرس بطور تجزیہ کیائی علیحدہ کر کے پارسل نمبر 1 میں جبکہ بقایا چرس کو پارسل نمبر 2 میں بند کر کے پارسل ہائے پر 212 عدد سواہیر اسی AA مثبت کر کے سر بھہر کئے گئے جبکہ پچھلی سیٹ کے نیچے سے برآمدہ ایک پیکٹ چرس کا وزن کرنے پر 1200 گرام چرس پائی جا کر جس میں سے 10 گرام چرس بطور تجزیہ کیائی علیحدہ کر کے پارسل نمبر 1 میں جبکہ بقایا چرس کو پارسل نمبر 2 میں بند کر کے پارسل ہائے پر 212 عدد سواہیر اسی AA مثبت کر کے سر بھہر کئے گئے یوں مقدمہ ہذا میں کل چرس ہذا 2400 گرام برآمد ہوئی ملزمان تین کس کی جامعہ تلاشی لی جا کر جملہ منشیات و جامعہ تلاشی ملزمان و ٹویوٹا کرولا کار نمبری LK 604 ICT Islamabad بر رنگ سفید سمعہ کار بروز فرد قبضہ میں کر کے گواہان سے تکمیل فرد کروائی جا کر ملزمان تین کس بالا کو جرم بالا مرتکب پا کر حسب ضابطہ گرفتار کر کے پرچہ گزارش ہے۔

امجد علی اسپیکٹر SHOI

تھانہ ANF کو ہاٹ

20-03-2017

of hearing to the pre-emptors in whose favour the suit for pre-emption had been decreed and Mutation No.1187 was also sanctioned on 11-5-1985. The review of Mutation No.274 seems to have been sought by the informer for the purpose of defeating the pre-emption decrees. We are also satisfied that there was no contravention of provisions of paragraph 24 of the Regulation. No indulgence can be shown to the vendors or the informer, whose conduct is not appreciable. In our view, the impugned judgment of the High Court does not suffer from any defect or other legal infirmity and the same is just and fair doing complete justice between the parties.

8. For the foregoing reasons, we do not find any merit in these petitions which are dismissed and leave to appeal is refused accordingly.

S.A.K./F-4/SC Leave refused.

2006 S C M R 554

[Supreme Court of Pakistan]

Present: Javed Iqbal and Ch. Ijaz Ahmad, JJ

SAMI ULLAH---Petitioner

versus

INSPECTOR-GENERAL OF POLICE and others---Respondents

Civil Petition No.909-L of 2005, decided on 3rd-February, 2006.

(On appeal from the judgment, dated 5-4-2005 of the Punjab Service Tribunal, Lahore, passed in Appeals Nos.2873, 2874 and 2876 of 2004).

(a) Punjab Police (Efficiency and Discipline) Rules, 1975---

---Rr. 3 & 4---Punjab Service Tribunals Act (IX of 1974), S.4--- Constitution of Pakistan (1973), Art.212(3)---Dismissal from service--- Police constable---Facilitating escape of convict, charge of---Acquittal of petitioner/constable from criminal case registered against him--- Dismissal of appeal of constable by Service Tribunal---Validity--- Custody of convict had been handed over to armed police officials with official vehicle to escort prisoners---Petitioner was a member of such police party and had stopped vehicle to facilitate escape of convict on a pretext that he wanted to ease himself---Vehicle could have been

their duties diligently and with vigilance---Unarmed and handcuffed convict could not have been escaped without collective connivance and facilitation of police party---No individual member of police party could be absolved from its responsibility---Acquittal of petitioner from criminal case would have absolutely no bearing on the merits of the case--- Petitioner, after comprehensive inquiry, had been found responsible not only for gross negligence, but active connivance and facilitation resulting in escape of convict---Supreme Court dismissed petition and refused leave to appeal. [p. 557] A, B & C

Muhammad Aslam v. Government of N.-W.F.P. 1998 SCMR 1993; Deputy I.-G. Police v. Anis-ur-Rehman Khan PLD 1985 SC 134; Muhammad Ayub v. Chairman E.B. WAPDA PLD 1987 SC 195 and Muhammad Nazir v. Superintendent of Police 1990 SCMR 1556 ref.

(b) Civil service---

Disciplinary proceedings; initiation of---Acquittal of civil servant from criminal case---Effect---Such acquittal would have absolutely no bearing on merits of the case. [p. 557] B

Muhammad Aslam v. Government of N.-W.F.P. 1998 SCMR 1993; Deputy I.-G. Police v. Anis-ur-Rehman Khan PLD 1985 SC 134; Muhammad Ayub v. Chairman E.B. WAPDA PLD 1987 SC 195 and Muhammad Nazir v. Superintendent of Police 1990 SCMR 1556 ref.

Talal Farooq Sheikh, Advocate Supreme Court for Petitioner

Nemo for Respondents.

Date of hearing: 3rd February, 2006.

JUDGMENT

JAVED IQBAL, J.--- Pursuant to the proceedings initiated against the petitioner under the Punjab Police (Efficiency and Discipline) Rules, 1975 on account of gross negligence penalty of dismissal from service was imposed by D.P.O. Mianwali vide order dated 28-6-2002. Being aggrieved an appeal was preferred which was also rejected and assailed by way of appeal before the Punjab Service Tribunal but with no avail. It is to be noted that a criminal case under sections 222, 223 and 224, P.P.C. was also got lodged against the petitioner as well as the other accused at Police Station Mitha Tiwana on 3-1-2002 but were acquitted by learned Magistrate Section 30, Khushab vide order, dated

Acquittal from Criminal case, Absolutely no bearing on merits of case

Service Appeal # 3975/2020

For Respondents

6/2/06

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o appreciate the legal and factual aspects of the

Khan s Sami Ullah No.1156; Hidayat Ullah No.86 and No.301, District Mianwali did not perform your official duty in a proper and disciplined manner in that as per report of D.S.P.S.D.P.O., Mitha Tiwana received from the Superintendent of Police, Khushab vide his Memo. No.30/PA, dated 5-1-2001, on 2-1-2002, you were detailed to collect two criminals namely Muhammad Ramzan son of Allah Ditta caste Mitra resident of Harnoli involved in case F.I.R. No.92 dated 21-8-1999 under section 302/34, P.P.C. 7-A.T.A., Police Station Piplan from Central Jail, Mianwali to produce them in the Court of Special Judge, A.T.A. Sargodha. Official Vehicle No.4579/MIA was provided to escort the prisoners. H.C. Shahbaz Khan No.93 was driver of the said vehicle. The learned Special Judge convicted and sentenced them to undergo 14/17 years' R.I. each.

Thereafter, you along with above named convicts proceeded to Mianwali. At about 8-45 p.m., the vehicle was intentionally stopped near Tanveer Petroleum in the area of Police Station Mitha Tiwana, District Khushab in order to facilitate the convict Muhammad Ramzan to escape from police custody. As a result of your mala fide intention, he managed to escape from our lawful custody. In this regard, case F.I.R. No.2, dated 3-1-2002, under sections 222/223/224, P.P.C. was registered at Police Station Mitha Tiwana, District Khushab against you and other police officials which is under investigation and you have been placed under suspension.

It is thus, evident from the facts and circumstances that you all in connivance with each other facilitated the above named Muhammad Ramzan to escape from your lawful custody and also did not make any fruitful efforts to arrest him which amounts to grave misconduct under Punjab Police (E&D) Rules, 1975, warranting disciplinary action against you."

3. Heard Mr. Talat Farooq Sheikh, learned Advocate Supreme Court on behalf of petitioner who mainly argued that no evidence whatsoever has come on record on the basis whereof petitioner could be held responsible for the escape of convict Muhammad Ramzan which aspect of the matter has been ignored by the Police Department as well as learned Service Tribunal which resulted in serious miscarriage of justice. It is next contended that the petitioner could not have been dismissed from service after having clean a []ttal from the criminal

case got registered a []st him on the same charges in violative of the dictum as laid down by this Court in Muhammad Aslam v. Government of N.-W.F.P. 1998 SCMR.1993

4. We have carefully examined the contention as mentioned in the preceding paragraph, thrashed out the entire record and perused the judgment impugned carefully. After having gone through the entire record we are of the view that the factum of gross negligence has been proved. A comprehensive inquiry was got conducted and the petitioner was found responsible not only for gross negligence but active connivance and facilitation which resulted in the escape of convict Muhammad Ramzan who was convicted and sentenced to death with 14 years' R.I. by the learned Special Judge, A.T.A., Sargodha in case got registered vide F.I.R. No.92, dated 21-8-1992 under section 302/34, P.P.C. read with section 7 of the Anti-Terrorism Act, 1997. There is no denying the fact that custody of convict Muhammad Ramzan was handed over to the armed police party with official Vehicle No.4579/MIA to escort the prisoners and petitioner was admittedly the member of that police party. The vehicle was stopped without any justification to facilitate the escape of Muhammad Ramzan on a lame pretext that he wanted to ease himself. The vehicle could have been taken to Mitha Tiwana Police Station to avoid any untoward incident which smacks of mala fides. The police party duly armed with sophisticated weapons remained highly negligent and acted in a very irresponsible manner and failed to perform their duties diligently and with vigilance which speaks in volume about their conduct. How an unarmed and handcuffed convict could have been escaped without the collective connivance and facilitation of police party. It cannot be a case of negligence simpliciter as pressed time and again by the learned Advocate Supreme Court on behalf of petitioner. It hardly matters that the handcuffs of escaped convict was buckled with whose belt as they all were responsible for the safe custody of convicts and being vicarious liability no individual member of the police party can be absolved from its responsibility. We are not persuaded to agree with the prime contention of learned Advocate Supreme Court that after having clean acquittal from the criminal case there was absolutely no lawful justification for the initiation of disciplinary proceedings which culminated into dismissal from service for the reason that result of criminal proceedings would have absolutely no bearing on merits of the case. In this regard we are fortified by the dictum laid down in Deputy I.-G. Police v. Anis-ur-Rehman Khan PLD 1985 SC 134; Muhammad Ayub v. Chairman E.B. WAPDA PLD 1987 SC 195 and Muhammad Nazir v. Superintendent of Police 1990 SCMR 1556.

In our view the procedural lapses are not very serious and no prejudice whatsoever [] been caused against the petitioner. No question