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 Tehsil 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)

M Jones 12019

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 MR. AHMAD HASSAN MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

<u>MUHAMMAD AMIN KHAN KUNDI, MEMBER: -</u> 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

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. Amini

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 righty imposed major penalty of removal from service and prayed for dismissal of appeal.

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 respondentdepartment 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 and reinstate the appellant into service with the direction to the respondent-department to conduce de-novo in the mode and manner prescribed under Police Rules, 1975 and respondentdepartment is also directed to fully associate the appellant in inquiry proceeding, providing opportunity of cross examination and issuing show-cause

1 Januari 15.8:20 B 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.

<u>ANNOUNCED</u>

13.09.2019

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

(AHMAD HASSAN) MEMBER 19.06.2019

Appellant in person and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Tasawar Hussain, ASI for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department requested for further adjournment. Case to come up for written reply/comments on 12.07.2019 before S.B.

(Muhammad Amin Khan Kundi) Member

12.07.2019

Counsel for the appellant and Addl. AG alongwith Tasawar Hussain, PASI for the respondents present. Written reply submitted. To come up for arguments on 13.09.2019. The appellant may submit rejoinder, within a fortnight, if so advised.

Member

13.09.2019

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

Vide our detailed judgment of today consisting of four pages placed on file, we partially accept the appellant, set-aside the impugned and reinstate the appellant into service with the direction to the respondent-department to conduce de-novo 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 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.

<u>ANNQUNCED</u>

13.09.2019

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

whommad Amim

IMAD HÄSSAN) MEMBER 04.2.2019

Counsel for the appellant and Addl. AG for the respondents present.

Learned AAG requests for adjournment as he has not been contacted by representative of respondents regarding preparation of reply/comments. Adjourned to 27.03.2019 before S.B.

Chairman

27.03.2019

Learned counsel for the appellant present. Written reply not submitted. Muhabbat Ali SI legal representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 25.04.2019 before S.B

Member

25.04.2019

Counsel for the appellant present. Addl: AG alongwith Mr. M. Zafaran, PASI for respondents present. Written reply not submitted. Requested for adjournment. Adjourned but as a last chance. Case to come up for written reply/comments on 19.06.2019 before S.B.

(Ahmad Hassan) Member 11.12.2018

Counsel for the appellant Abid Zaman Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department as Constable. It was further contended that the appellant was removed from service vide order dated 08.08.2017 on the allegation that he was involved in criminal case vide FIR No. 8 dated 20.03.2017 under sections 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. Learned counsel for the appellant further contended that the appellant was honorable acquitted by the competent court vide order dated 25.09.2018. It was further contended that before imposing major penalty of removal from service neither proper inquiry was conducted nor any show-cause notice was issued to the appellant and the appellant was removed from service vide order dated 08.08.2017 while the trial of the criminal case was concluded by the competent court on 25.09.2018 therefore, without waiting for the conclusion of the criminal case the impugned order is illegal and liable to be set-aside.

Appellant Deposited Security & Process Fee The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit of security and process fee, thereafter notice be issued to the respondents for written reply/comments for 04.02.2019 before S.B.

(Muhammad Amin Khan Kundi)

Member

03.05.2018

The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 28.06.2018 before S.B.

Reader

28.06.2018

None present on behalf of the appellant. Adjourned. To come up for preliminary hearing on 30.07.2018 before S.B.

(Muhammad Amin Khan Kundi)
Member

30.07.2018

Mr. Shahab Faheem, Advocate, counsel for the appellant present and requested for adjournment. Granted. Case to come up for preliminary hearing on 06.09.2018 before S.B.

Chairman

06.09.2018

None present on behalf of the appellant. Adjourned. To come up for preliminary hearing on 24.10.2018 before S.B.

(Muhammad Amin Khan Kundi) Member Due To Retirement of Honorable

Chairman The Tribonal's mon

functional therefore the case is

adjaurned to come up for in

Sime on 16-12-2018

Reader

25/1/2018

Junior to counsel for appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 21/2/2018.

Dav.

(Muahammad Hamid Mughal)
MEMBER

21.02.2018

Appellant along with his counsel present and seeks adjournment. Adjourned. To come up for preliminary hearing on 15.03.2018 before S.B.

(Gul Zeb Khan) Member

15.03.2018

Appellant in person present and seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for preliminary hearing on 11.04.2018 before S.B.

(Muhammad Amin Khan Kundi) Member

11.04.2018 Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 63.5.18.

Member

Form-A FORMOF ORDERSHEET

Court of_		· ·	
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Case No	-	1395/ 2017	4

	Case No.	1395/2017
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	, 2	.3
1	18/12/2017	The appeal of Mr. Abid Zaman presented today by Mr.
		Shahid Qayum Khattak Advocate may be entered in the
	\	Institution Register and put up to Worthy Chairman for proper
		order please.
		REGISTRAR 18/12/17
2-	22/12/17.	This case is entrusted to S. Bench for preliminary hearing
	,	to be put up there on $03 0 /8$.
		CHAIRMAN
03.01.	2018	Counsel for the 'appellant present and seeks
03.01.		ournment. Adjourned. To come up for preliminary hearing
	5	25.01.2018 before S.B.
		· (Gul Zeb Khān) MEMBER(E)
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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No.	1395	2017
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Dated:

/12/2017

Abid	Zaman		i e	A
Abiu Zan	Zaman	ıman		. Appellant

Versus

Provincial Police Officer and others.....Respondents

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8.	Wakalat Nama		

Through

Appellant

Shahid Qayum Khattak Advocate, High Court

Peshawar

Mob No. 0333-9195776

&.

Advocate

(1)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1395/2017

Abid Zaman S/o Mir Madad Shah R/o Surati Kala Tehsil

Takht-e-Nasrati District, Karak Appellant

Khyber Pakhtukhwa Service Tribunal

Versus

Diary No. 1430 Dated 18-12-2017

- 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, PeshawarRespondents

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 EMMEDIATE 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

Filedto-day

PRAYER

By accepting this service appeal, the punishment awarded to the appellant through impugned orders dated 08/08/2017 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 day emergency leave for treatment of her wife and after availing the same he left home for 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 stated 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. Later on we came to know that they are not kidnapper but staff of ANF although they are not in uniform. But on reaching to ANF Police station I alongwith other were falsely implicated in Narcotics Case.
- 2. That respondent No. 3 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")

- 3. That appellant filed departmental appeal against the impugned order before worthy respondent No. 2 on 21/08/2017 but till date the same has not yet been decided. (Copy of the Representation is attached as Annexure "D")
- 7. That the appellant feeling aggrieved from the impugned order hence, filling this appeal on the following amongst other grounds inter alia

GROUNDS:

a. That impugned order dated 08/08/2017 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.

- b. 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.
- c. 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.
- d. That final show cause notice has issued to appellant and no regular inquiry has been conducted for confirming the allegation and scrutinizing the conduct of appellant with reference to the charges therefore, the very foundation of the impugned order was baseless and groundless and not sustainable under the law and rules.
- e. 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 any statement of any witness has been recorded.
- f. That previous unblemished record of appellant has not been taken into consideration. Further more mere charge in criminal case is no ground for removal from service, until and unless the charge has been proved against appellant.
- g. That the trial of the criminal case is still pending adjudication before the competent Court of law and pre-trail conviction order of removal from service is not justified.
- h. 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 malafidly based the

impugned order on assessments and speculations, therefore the impugned order is bad in law.

- i. 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.
- j. That major penalty of removal 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. Similarly n show cause notice has been issued against appellant which also make it a void order.
- k. 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.
- 1. That the entire service record of the appellant is unblemished therefore, the impugned order would be a black stigma on the clean service career of the appellant, therefore, the same is liable to be set aside.

It is, therefore, most humbly prayed that on accepting this service appeal, the punishment awarded to the appellant through impugned order dated 08/08/2017 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.

(5)

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

Appellant

Through:

Shahid Qayun Khattak Advocate, High Court Peshawar

/12/2017

Dated:

&

Shahab Faheem Advocate

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

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.

Commissioner

Pawar High Co

Deponent

14203-1276887-5



BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

ADDRESSES OF THE PARTIES

APPELLANT

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

RESPONDENTS

- 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 1

Shahid Qayum Khattak Advocate, High Court

Peshawar

Dated:

/12/2017

Annexure- A

No. 159 150 Dated 221 3 19017

CHARGE SHEET

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 Conducting enquiry.

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.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

District Police Officer, Karak

ATTESTED

5

DISCIPLINARY ACTION



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 DSB and NGSIN PM 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:-

- 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.
- Constable Abid Zaman No. 415 (suspended) Police Lines Karak.

ATESTED

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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 allegation. 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 Charos 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.

District Police Officer, Karas

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To:

The Deputy Inspector General Of Police, Kohat Region, Kohat

SUBJECT:-

DEPARTMENTAL APPEAL

Respected Sir,

Appellant submits departmental appeal against order of Diatrict Police Officer, Karak bearing OB No. 454 dated 08.08.2017 vide which appellant was removed from service.

FACTS:

That in march,2017, appellant was posted in Police Station Teri and paid visit home for availing leave. On 20.03.2017appellant left home for joining duties and on reaching Amberi Kalla stand noticed an unarneced fight between that persons. Being police officer intervened into the fight for removing that along main indus High Way. Appellant also sustained injuries.

That later it came to light that the fight was between Umer Sharif police officer FRP Kohat and narcoties police. Both the parties were in plain and white clothes.

That appellant, Umer Sharif and one another were implicated in narcoties case FIR NO 08/2017under section 9, 14,15,CNSA PS ANF,Kohat.

That on Umar sharif 0n bail; appellant resumed duties and was removed service impugned order. Hence departmental appeal on the following grounds.

That appellant has falsely been in implicated the narcoties case, Appellant intervened into the fight along the Indus High to remove it which annoyed the official of narcoties police who were in plain clothes and implicated appellant in the case.

That the narcoties has allegedly been recovered from moter car ,neither appellant was trevelling the moter car nor was having any concern with the moter car.

That appellant also sustained injuries while intervening in the fight. Departmental dial not take notice of injuries and responding to the call of duties rather removed appellant from service.

That the previous rank of servic of applicant is unblemished. Ex part /departmental proceeding were conducted. No chance of defense was provided to applicant. No one was examined in process of appellant. No chance of cross examination of witness was provided to applicant. Thus the entire departmental find was propassed in violation of law and rules.

That mere change in criminal case is not grouned for removed from service, untills and unless the change in proved norcotics un-registered against applicant is still pending trial, Therefore pre trial or pre conviction order of removed from service is not justified.

That matter was finding report of inquiry officer was not supplied to applicant nor final show cause notice was issued to applicant. Thus no apportunity of defense was provided to applicant.

It is therefore requested that impugned order may be set aside with back benefits.

ANTESTED

Yours Obediently

Abid Zaffian /2/20/7 -Ex-Constable NO 415 District Karak

03159548827

J. 199

م معبر <u>و</u>

t.

الله الحق نقليدورا في ورا العالمان ciolo: 3.12:45 cos 7 = 12/2000 plo/Elb/500 عام ١٩٥٢ تسريف ميلي فون الخليج دي دير شرعا مرتفان ١٩١٥ معطل سريه كويم افران بالدك ما و محاري در الورنا في كرب أورن 0,90,060 . Sirz Zorworded 10 pm

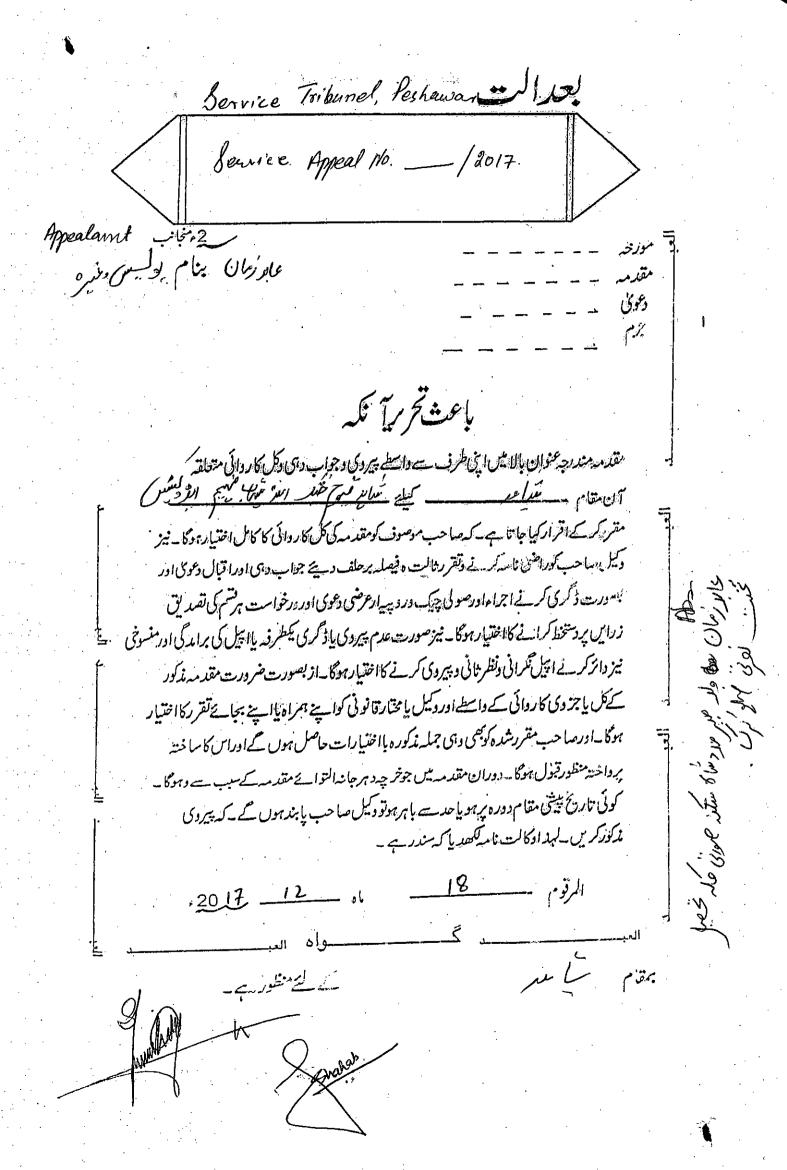
ک هوالثانی لبذي ڈاکٹر راز ہجران واكم شاه يي ي چلڈرن اینڈ الٹراساؤنڈسپیشلسگ ماہرامراض نسوال زاچہ بچہ 0300-5654539 بالمقابل يوميلني سنورسول سيبتال روذ كرك كلينك: _ بالمقابل يوميلنى سٹور كرك Patient's Name (b) N/s ay/own / d Clinical Record Record pos who M. (1) 6 Tesp2 - 20 quontes An Augmentin 13) y Mule Le mace sures + polemie prein n Melo Anerforden 14 paul in RI penal ough voren 5 M n Tille Up 25p. 110/20 Bioglaleic 1/ Byp Ala olis U/cs

AD SERVER

Oles 4.5.

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ليرى و اكثرراز اجران (١٥) موالثاني واكرشاه في محد چلڈرن ایڈ الٹراسا وَ تڈسپیٹٹٹسٹ ما*هرامراض نسوال زچه بچ*ه 0300-5654539 بالمقابل يوليلتي سنورسول بهينتال رود كرك كلينك: _بالقائل بوليلى ستوركرك Patient's Name Destruction Age Sex Date 25/3/17 Clinical Record | Rge Breech delivery 19 Dead Tiz Pr - 20 ry luj P.T.P +1 pency volverent 18m velocrif 520 ry Ceip. (2Box) poustous porte pefol-int P/A - psyciell. Da. olis us



Before Hon'able Corvice Tribunel, Peshawar.

Abid Zaman Vs Police.

Application for adjournment of above titled Jennie Appeal

espectfully Sheweth lo

That the above titled service appeal is pending before this. hon'able forum and is fixed for today i.e. 25/1/2018.

That the Council for appealant is busy before the horable bound Peshawar 14th Court in Some important cases.

hat applicant requires the permission of this hor able forum adjournment the appeal for any convient date.

It is therefore, humbly prayed that upon acceptance of his application. We case may graciously be adjourned.

ed: 25/01/218.

Applicant
Through Shows Takeeni
Advocate.

(ii) (ii) .

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service appeal No. 1395/2017 Abid Zaman,	۔ Appellant
\	
VER	sus
Provincial Police Officer, Khyber Pakhtunkhwa & others	Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

INDEX

SN	Description of documents	Annexure	pages
1.	Reply Parawise comments	-	01-03
2.	Counter affidavit .		04
3.	Copy of FIR No. 8/2017 PS ANF Kohat	А	05-06
4.	Copy of order respondent No. 2 dated 09.05.2018	В	07

District Police Officer, Karak

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1395/2017			
Abid Zaman,		•	Appellan
	VERSUS		

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar & Other

.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectively Sheweth

Parawise comments are submitted as under:-

Preliminary Objections:-

- i. That the appellant had got no cause of action.
- ii. That the appellant has got no locus standi.
- iii. That the appeal is not maintainable in the present form.
- iv. The departmental appeal of the appellant was rejected by respondent No. 2 on 09.05.2019, against which the appellant has not sought any therefore, the appeal is not maintainable.
- v. That the appellant is estopped to file the instant appeal for own act.
- vi. That the appellant has not come to this Hon: Tribunal with clean hands as the appellant was arrested in a narcotics case by Anti-Narcotics Force Kohat.
- vii. That the appeal is time barred.

FACTS

- 1. Correct the extant of enrolment of appellant in Police department. The remaining para of the appeal is a concocted story submitted by the appellant which is against the facts. Actually, on 20.03.2017, the appellant alongwith another Constable named Umar Sharif and Sirajum Khan while traveling in motorcar No. LK 604/ICT Islamabad was intercepted/ apprehended by the Anti-Narcotics Force near Amberi Kalye chowk Indus Highway Karak. During search of motorcar ANF recovered 02 pickets of charas form the motorcar. A case vide FIR No. 8 dated 20.03.2017 u/Ss 9C, 14, 15, CNSA/1997 Police station ANF Kohat was registered against the appellant and others. Copy is annexure A.
- 2. The appellant in addition to commission of criminal act also committed Professional misconduct involved himself in smuggling of narcotics was proceeded with departmentally SDPO, Banda Daud Shah, district Karak was appointed as inquiry officer. The defense / reply was submitted by the appellant during the course of departmental proceedings was not satisfactory. Therefore, on completion of all codal formalities under the law /

Page &

Rules the appellant was award a punishment of removal from service immediate effect vide competent authority (Respondent No. 3) order date 08.08.2017.

- **3.** Incorrect, departmental appeal of the appellant was processed by the respondent No. 2. The appellant was called and heard in orderly room held on 09.05.2018, but he failed to submit any plausible explanation to his act. The appeal was devoid of merit and rejected vide order dated 09.05.2018.
- 4. The appeal is stopped to file instant for his own act.

GROUNDS:-

- a) Incorrect, proper departmental proceedings were conducted against the appellant in accordance with law & rules. Furthermore, the respondents No. 2 & 3 have passed orders according to law / rules.
- b) Incorrect, the appellant was charged / arrested by Anti-Narcotics Force while trafficking narcotics in a motorcar, who earned bad name to discipline department. Therefore, the appellant was deserved for the punishment awarded to him.
- c) Incorrect, the appellant failed do depend to himself during course of enquiry. Furthermore, the appellant did not submit any ill-will or malafide on the part of Anti-Narcotics Force. All codal formalities were completed in the departmental proceedings.
- d) Incorrect, proper departmental enquiry was conducted in accordance with law & rules. Furthermore, there is no provision of final show cause notice u/s 5 (3) of Khyber Pakhtunkhwa, Police Rules (amended 2014) 1975.
- e) Incorrect, the appellant alongwith other were apprehended by Anti-Narcotics Force and 02 picket's charas weighing 2400 Gms was recovered from the motorcar.
- f) The appellant was proceeded with departmentally for the commission of offence detailed above. The appellant was charged for a moral / social crime and earned bad name to the department. Therefore, retention of the appellant in a discipline force shall earn bad name to the entire department.
- g) Criminal and departmental proceedings are distinct in nature. Therefore, the department in not bound to wait for disposal of criminal case pending under trial in any court of law.
- h) Incorrect, both the orders passed by respondent No. 2 & 3 are in accordance with the law & rule.

i) Incorrect, the disciplinary proceedings conducted against the appellant were a according to law & rules and all codal formalities were fulfilled.

j) Incorrect, the appellant indulged himself in criminal / extra departmental activities, transporting narcotics. The appellant failed to submit any malafide or ill-will on the paret of ANF, Kohat. The allegations / charge leveled aginst the appellant was established beyond any shadow of doubt and held guilty of the charges.

k) Incorrect, the appellant alongwoth other was apprehended with recovery of narcotics from motorcar in which they were travelling / trafficking. The appellant was proceeded departmental on the above score of charge which was established. Therefore, no question of discrimination or victimization is arising.

1) The appellant was taken to task under the law for the commission of offence / his own act, which earned a bad name to the entire police department. His retention in a discipline department will be black stigma.

In view of the above, the appeal is devoid of merits, without any substantiate and legally defective may graciously be dismissed please.

Provincial Police Officer, Inspector General of Police, Khyber Pakhtunkhwa, (Respondent No. 1) Govt: of Khyber Pakhtunkhwa, through Chief Secretary (Respondent No. 4)

District Police Officer, Karak

(Respondent No. 3)

Regional Police Officer

Kohat

(Respondent No. 2)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service appeal No. 1395/2017 Abid Zaman, ..Appellant

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa & others

..... Respondents

COUNTER AFFIDAVIT

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

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

-District Police Officer,

Karak

(Respondent No. 3)

Govt of Khyber Pakhtunkhwa, through Chief Secretary

(Respondent No. 4)

Regional Police Officer.

(Respondent

ANNEX-BY

Annexure "A Better Copy OF FIR NO.08

ابترائي اطلاعي يريون

ابندانی اطلاع است جرم قابل دست اندازی پولیس زیورٹ شده زیز دفعه 154 مجموعه ضابط فوجداری ANF كوبات

عابين نمسر تارنى 2017-03-20-03رنت 15: 12 <u>- م</u>ح

[]		12, 10, 11
	تارخ ُووت ريږر ب	20-03-2017 پاکیدگار چه 2017-03-20، برت 16:15 بخ
	نام و کونت اطلاع دبنده دمستغیث	ا بجد على انسيكنر SHOl تحانه ANF كوباث
	- فنقر کفیت خرم (معه دفیه) حال اگریچه لیا گیا ہو	(C)14,15 CNS/1997 گرام پیری (C)14,15 CNS/1997
\[\frac{1}{2} \]	ماست وگویدفا صلرتی ندست اورسمنت	نزدامیر ی کلے چوک انڈس ہائی دے ضلع کرک
		شمرشریف خان دلد عرفظیف خان قوم خنگ سکنه صورتی کارمختصیل تحت امرتی منطع کرک (2) ما بدُّنه مان دلد میر مدوشاه قوم خنگ سکنه صورتی کارمختصیل تخت امرتی منطع کرک (3) ما ایم خلاصه دانمین شاه قوم نگل این مدتی کارتشمیل تدین در تی خان در
- _A	کاروانی باقتیش می ^{اننانا} کی گن آگراطان دری کریشه تاریخ تف دادو دوبه بیان کرو	بالأراث
1		بـ من ال

ابتدائی اطلاح نیجے درج کرو: _امروز أفسران بالا کوخفیہ ذیرائع سے اطلاع ملی کہ منشیات سمگلران 1 عمرشریف2_ عابدز مان 3 _ سراجم بذريعة ويونا كارولا كارنمبر LK 604 ICT Islamabad برنگ مفيد كافي تعداديين لنشیات آج قریب 12:00 بج براسته اعلاس بائی وے کرک سے ڈیرہ اساعیل خان سمگل کرنے کے کہشش کریں ے۔ امن اطلاع کو معدقہ جان کر حسب انکام افسران بالا ایک دیڈیے یارٹی بشمول من آسپیکٹر SHO جمراہ علی فقی نا ترب صوبیدارا نظیم رحمن HC محد شهاب ، ربیج الله ، مشاق احمد ، کانسٹیبلان دریگرنفری تھانہ ANF کوباٹ ہمراہ مخبر معیسرکاری گاڑیاں بخویل ڈرئیواران شا کرز مان جھے ہارون مریاض خان تر داسپیری کلے جوک انڈی ہاگی دے۔ ضلع کرک پہنچکر مناسب حکمت عملی تر تنب دیگر کرک کی جانب ہے آنے والی گاڑی کی خفیہ مگر انی شروع کر دی قرایب 12:15 بیجے متنذ کر وبالامخبری شدہ کار جانب کرک ہے آتی ہوئی دکھائی دی جس میں تین کس داشخاص سوار نظ جمين الله عن الله مريان حكمت عملي في اشاره كرك روك كركار منذكره بالاكي دُرا سُونَك سيث يربيني موئ ایک اُخص اور بیجھے بیٹھے ہوئے دواشخاص کو باامداد ہمرایماں قابوکرلیابدریادنت ڈیرائیونگ سیٹ پر بیٹھے ہوئے خص نے ا پنانام و پیتہ عمر شریف ولد عمر نظیف خان قوم ختک جبکہ ڈرائیونگ کے پیچھے سیٹ پر بیٹھے ہوئے خص نے اپنانام عابد ز مان ولد میر مدوشاه توم خشک جبکه فرنٹ سیٹ کے چھلی سیٹ پر بیٹھے ہوئے شخص نے اپنانام سراجم خان ولد رَئِين الناه قوم خلک ساکنان صورتی کا بخصیل تحتی نصرتی نشلع کرک بنلائے مذکوران مرشریف خان اور عابد زمان t) Page 6

، نے مزید بنلایا کہ دہ خیبر پختونخو او پولیس کے اہلکار ہیں۔ بنشات کی بابت پوچھنے پرڈرائیونگ سیٹ پر بیٹھے ہوئے شخص عمر شریف نیان کچھ لیت لعل کے بعد ڈرائیونگ سیٹ کے پچھے آنیک پیکٹ چرس کی موجود گی تنافیم کر کے نیٹا ندہی کی جبکہ پہلی سیٹ پر بیٹے دوا نفاص عابدز مان اور سراجم خان نے بچیلے سیٹ کے پچھے ایک پیکٹ جزئ کی موجود گ اتنکیم کریدناندن کی روبرو لواهان چیک کرنے پرڈرائیونک اور پیپلے سیٹ پردومدد پیکس پا کرفروا ثاند ہی برموقع مرتب کرئے گواسان ہے بھیل فرد کروائی جا کراہل ملاقہ ہونا شروع ہو گئے اہل علاقہ زیادہ رتعداد ہونے کی وجہ سے ندکورہ بالاملز مان کو جیوڑانے کی کوشش میں نتھے کہائی دوران ملزم عابدز مان موقع سے فائدہ اٹھا کر بھا گئے کی کوشش کرتے ہوئے مال مقدمہ گاڑی کے ذردوازے سے سرلکر امعمولی زخمی ہوگیا موقع پرنقص امن کے خدشہ اور حالات کوید نظرر کھتے ہوئے خفظ مانقدم کے تحت موقع سے مال مقدمہ کار معد منشات جرس و نین ملز مان کوہمراہ ر یڈنگ پارٹی لیکرنھانہ ANF کو ہائے پہنچکر حسب ضابطہ کاروائی کرتے ہوئے ملزم عمر شریف خان نے بروگواھان انخود ڈرائیونگ سیٹ کے پچھے سے ایک پیک چری بند بہ بلاسٹک وزر دانسولیشن شپ من انسپیکٹر SHO کے حوالے کیاڈ رائیونگ بیٹ کے بچھے سے برآیدہ ایک پیکٹ چرس کا دزن کرنے پر 1200 گرام چرس پائی جا کر جسمہیں ے 10 گرام چرس بطور تجزیہ کمیائی علیحدہ کرے پارس نمبر 1 میں جبکہ بقایا چرس کو پارس نمبر 2 میں بند کرے پالسل ہائے پر 212 عدد مواہیرائی AA ثبت کر کے سر بمہر کیئے گئے جبکہ بچیلی سیٹ کے تیجھے سے برآ مدہ ایک یک جس کا و ن کرنے پر 1200 گرام جس مالی جاکر جسمیں ہے 10 گرام جس بطور بجزی کیائی علیمہ کے بار کی نبر 1 میں جا۔ افایا جس کو پار کی نبر 2 میں جنو کر کے بار سل بائے پر 2/2 عدر مواہیر اس AA نسب کر کے سر بمہر کیے گینے بول مقد مدنعذ امیں کل جری هذا 2400 گرام برآ مد ہوئی ملز مان تین کس کی جامعہ تلاظی کی جاکر جمله منظیات و جامعه نلاشی ملز مان والو بوتا کرولا کار نمبری LK 604 ICT Islamabad بردنگ سفیا بمعه کار بروز فرد قبضہ میں کر کے گواهان ہے تھیل فرد کاروائی جا کر طزیان نین کس بالا کو جرم بالا مرتکب پا کر حسب ضابطہ گرفتار کرے پر چہ گزارش ہے۔

> امبریل آمپیکر SHO*l* تخانهٔ ANF کوبات 20-03-2017

Annexus

POLICE DEPTT:

KOHAT REGION

ORDER.

This order will dispose of a departmental appeal, moved by Ex-Constable Abid Zaman No. 415 of Karak district Police against the punishment order, passed by DPO Karak vide OB No. 454, dated 08.08.2017, whereby he was awarded major punishment of Removal from service for the allegations of his involvement in case vide FIR No. 08. dated 20.03.2017 u/s 9/14/15 CNSA Police Station Anti-Narcotics Force Kohat.

He preferred an appeal to the undersigned, upon which comments were obtained from DPO Karak and his service record was perused. He was also heard in person in Orderly Room, held in this office on 09.05.2018, but he did not advance any plausible reply in his defense.

I have gone through the available record and came to the conclusion that the allegations leveled against the appellant are proved beyond any shadow of doubt and the authority has passed a legal and speaking order. Therefore, his appeal, being devoid of merit is hereby rejected.

Order Announced 09.05.2018

(MUHAMMANJAZ, PSP)

Region Folice Kohat Region.

dated Kohat the

Copy to the District Police Officer, Karak for information w/r to his office Memo: No. 11654/LB, dated 16.10.2017. His service record is returned herewith please.

(MUHAMMAI) LAZ, PSP) Region Police

Kohat Regio

(1)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1395 /2017

Abid Zaman..... Appellant

Versus

Provincial Police Officer and others.......Respondents

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth;

Preliminary objection

That the reply/para-wise comment has not been competently filed and nor any affidavit has been filed in accordance with law nor the same has been properly attested, hence the same has no value in the eyes of law.

Rejoinder to Preliminary objection

Preliminary objection raised by respondents are erroneous, frivolous, based on male fide intention and having no factual and legal backing thus not tenable. Respondents have failed to explain as why the appellant has no cause of action when he has been awarded punishment and filing appeal is his substantive right and he has aggrieved party hence filed this appeal; why the appellant has no locus standi after award of punishment; how the appeal is not maintainable in the present form; why the departmental appeal was not decided on time; how the appellant has been estopped to filed the instant appeal; that what material fact has been concealed by the appellant from this Hon'ble Tribunal; who the appeal is not based on facts; how the appeal is time barred; No plausible explanation has been given by the respondents. No specific and due objection regarding the controversial question of facts and law involved in the instant service appeal has provided, therefore, appellant is unable to submit proper rejoinder to the preliminary objection raised by the respondents. However it is submitted that appellant was dismissed from service thereof appellant has got every right to file service appeal after exhausting departmental remedy.

Appellant was mala fidely implicated in Criminal case by Anti- Narcotics Force officials and the respondent department instead of defending appellant issued the impugned orders of dismissal from service without conducting proper enquiry and waiting for the decision of the trial court. Appellant has filed the service appeal within time before proper and competent forum thus the preliminary objections raised by respondents are unestablished and without footing. It is pertinent to mention here that after passing of the impugned order dated 08/08/2017 appellant filed departmental appeal will with in time but the same has not been decided within the stipulated period and accordingly appellant filed an appeal before this Hon'ble Tribunal and thereafter once the matter become sub-judice before this Hon'ble Tribunal, respondent can not legally passed any order.

Rejoinder to Facts of Reply/ Parawise comments

- In response to Para No. 1 and 2 of the reply / parawise comments 1. it is submitted that no doubt the anti Norcotics Force implicated appellant in criminal case by planting of narcotics against appellant but the trial court i.e Judge Special Court Peshawar recorded acquittal order of appellant dated 25/09/2018. Furthermore appellant was acquitted of the charges under section 265-K Cr.PC. The trial court was of the opinion that there was no life in the charges against appellant therefore, issued the acquittal order. Furthermore mere charging in criminal case is not a justified ground for awarding of major punishment unless the allegation is proved. Here the appellant has been acquitted by the competent court of the alleged allegation leveled against him, therefore, the impugned order is liable to be set aside. departmental enquiry has not been conducted in accordance to law and no witness whatsoever has been examined against accused in his presence nor any evidence except charge in criminal case has been brought on record which clearly show the innocence of appellant after acquittal. The learned Trial court recorded acquittal order in the criminal case therefore, departmental order based on criminal charges will automatically fail. (Copy of acquittal order is attached)
- 2. In response to para No. 3 & 4, it is submitted that impugned order was passed on 08/08/2017 and accordingly appellant filed departmental appeal on 21/08/2017 but the case has not been

(3)

decided after the laps of 90 days and appellant filed appeal before this Hon'ble Tribunal on 18/12/2017 much prior than the alleged order i.e 09/05/2018. Once an appeal is filed before this Hon'ble Tribunal then respondent has left with no power and authority to decide the subjudice matter, hence there is no need to challenge the same before this Hon'ble Tribunal is the same is nullity in the eyes of law. It is further submitted that appellant being a Civil Servant has wrongly been proceeded with under the Police Rules 1975 nor adopted proper procedure. Further it submitted that proper procedure for disposal of appeal has not been adopted by respondent No. 2 envisages in the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986. Hence, appellant left with no other option but to filed the present appeal.

Rejoinder to the Grounds of Reply/ Parawise comments

- a) Para No. a- c of the reply / parawise comments are incorrect and that of memo of appeal are correct. The entire departmental file has been prepared in violation of law and rules. Both the orders are illegal, unlawful, without authority, based on mala fide, void abinitio. Appellant was mala fidely arrested and the learned trial stamped and corroborated the stance of appellant correct by recording acquittal order of appellant in the criminal case. No opportunity of defence was provided to appellant. The appellant has been proceeded with the rules and regulation which are not applicable to him nor proper procedure has been adopted by the respondents to determine the guilt of appellant. No evidence whatsoever has been procured against appellant. No statement of any witness recorded by the enquiry officer in presence of appellant.
- b) Para No. d- h of the reply / parawise comments are incorrect hence denied. Detail given in the memo of appeal is correct the same has not been properly replied. The respondents did not adhere to the rules while conducting departmental proceedings. The appellant has been victimized without conviction in a criminal case which were the main allegation against him. Now appellant has been acquitted by the learned Trial Court in the Criminal case therefore, the allegation leveled against appellant is liable to be set aside. Under the law in opportunity of cross examination of witnesses is the unalienable right of appellant but no opportunity of hearing

has been provided to him, even then no statement is recorded against appellant which also support his stance. The penalty imposed on appellant is only on the basis of surmises and conjunctures without taking into consideration the documents and evidence provided by the appellant. The stance forwarded by the appellant has not been taken into consideration. Whether a person can be penalized only on here say evidence and whether this important aspect of the case has been considered by the respondent while awarding punishment to appellant. And whether it is justified under any canon of law that a person has to be penalized on mare charging in criminal case without waiting for his conviction. No evidence whatsoever has been attached against the appellant with the Parawise Comments, which speaks about the veracity of the accusation. The respondents had based the charge sheet and both the orders on criminal case and no other allegation of commission of misconduct were leveled against appellant. Acquittal from criminal charges washed all the allegation against appellant.

c) Para No. i- 1 of the reply / parawise comments are incorrect hence denied. No proper procedure of enquiry or awarding of punishment has been adopted by the respondent. The whole departmental proceeding were not conducted in accordance with rules and regulations. The acquittal from criminal charges washed all the allegation. The appellant being Civil Servant has wrongly been proceeded with. It is the ultimate purpose of law and rights guaranteed by the Constitution that no body has to be condemned unheard but here the basic right of the appellant has been violated and he has been condemned unheard, hence both the orders are liable to be set aside in the best interest. The Learned respondent No. 2 has not adopted proper procedure as mentioned in the Rules, 1986. The Khyber Pakhtunkhwa Civil Servants (Appeal) question arises that whether there is any evidence regarding the allegation leveled against appellant and whether the punishment awarded to appellant being a civil servant is in accordance with law, rule and regulation. The procedure adopted by the respondents clearly show male fide intention, discrimination and undue victimization of the appellant and the appellant approaches this Hon'ble Tribunal being the final and highest forum of appeal. It is further submitted that rules and regulation have been blatantly violated.



It is therefore, most humbly prayed that by accepting this rejoinder and the ground of main appeal the order of respondent No. 3 dated 08/08/2017 and that of Respondent No. 2 dated 09/05/2019 may please be set aside and respondent may please be reinstated on service with all back benefits of service and pay.

Appellant

Through

Shahid Qayum Khattak Advocate, Supreme Court

Dated:

/09/2019

Commissioner

Affidavit

I, do hereby solemnly affirm and declare on Oath that the contents of the above rejoinder are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.

Deponent

Ord11

25:09 20 GNS IN CONTROL SPECIAL SPECIA

Learned SP for the State and accused 1. Umer Sharif, 2.
Abid Zaman and 3. Sirajam Khan on bail along with 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 Unier 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 gins 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

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Franch Judge Special Court Star 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 R\$50,000/- (lifty 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 déstroyed 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 omi som dregett . compilation.

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Announced.

og Branch Judge Special Court ber Pakhiunkhwa,

(Mrs. Nusrat Yasmeen Intekhab)

Judge Special Court (CNS)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1774 /ST

To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Kaijak

SUBJECT: -

JUDGMENT IN APPEAL NO. 1395/2017, MR. ABID ZAMAN.

I am directed to forward herewith a certified copy of Judgement dated 13.09.2019 passed by this Tribunal on the above subject for strict compliance.

REGISTRAR '
KHYBER PAKHTUNKHWASERVICE TRIBUNAL
PESHAWAR.

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والعب مالازمال، 3 بيل لوجر العرف و 2 وقعت بركو و الما كال الما را الموالي كوفة المرجاب حرال رئيس مل كأب رئيد دوائيال في مرزال مرفودوال مراكة الوزاري الفيرا ما أحيد الموناء الموناء من المراك المونا كالمراب كالمارة الموناء جرب ، مالازمال ، وزناد ميلائيري بقامه برناكي دولالم مرا 8 افزناد قرام الما الماري و المراكا و المركا و المراكا و المركا و المراكا و المركا و المركا و المركا و المركا و المركا و المركا و

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