

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT D.I.KHAN.

Service Appeal No. 882/2019

Date of Institution ... 04.07.2019

Date of Decision ... 30.09.2021

Muhammad Bilal Hussain S/O Irshad Hussain,
R/O Basti Dewala, near Haidry Masjid, Tehsil & District Dera Ismail
Khan, Ex-Constable # 1855.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Home &
Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar and two
others.

... (Respondents)

MR. WAQAR ALAM,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

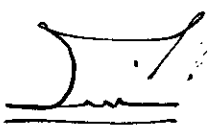
--- For respondents.

MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

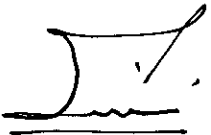
JUDGMENT:

SALAH-UD-DIN, MEMBER:-


Precise facts of the instant service appeal are that the
appellant was serving as Constable, when disciplinary action was
initiated against him on the allegations that he was directly
charged in case FIR No. 69 dated 22.01.2017 under sections
302/404/109/120-B/34 PPC PPC registered at Police Station City
District D.I.Khan. On conclusion of the inquiry, the competent
Authority awarded him major penalty of dismissal from service.
The appellant filed departmental appeal against the order of his
dismissal, however the same was dismissed, therefore, the

appellant filed Service Appeal No. 47/2018 before this Tribunal. The service appeal of the appellant was allowed vide judgment dated 28.11.2018, whereby the appellant was ordered to be reinstated in service and the respondents were directed to conduct de-novo inquiry within a period of 90 days from the date of receipt of judgment. On completion of the de-novo inquiry, the appellant was again awarded major penalty of dismissal from service. The departmental appeal of the appellant was also rejected, hence the instant service appeal.

2. Notice was issued to the respondents, who submitted their comments.

 3. Learned counsel for the appellant has contended that the appellant being on ex-Pakistan leave was out of country on the date of alleged occurrence of murder; that the de-novo inquiry was conducted in utter violation of relevant provisions of Police Rules, 1975 as the appellant has been condemned unheard; that the inquiry proceedings were conducted at the back of the appellant and he was not provided any opportunity of cross examination of the witnesses produced during the inquiry; that the respondents were required to have waited for outcome of the criminal case, however they acted in a hasty manner and declared the appellant as culprit, without any verdicts being given by the competent court; that the appellant has now been acquitted in the criminal case, therefore, the impugned orders are not sustainable in the eye of law and are liable to be set-aside; that the dismissal order of the appellant was passed by Salim Riaz District Police Officer D.I.Khan, who had initially conducted inquiry against the appellant in the same matter and had recommended the appellant for dismissal from service, therefore, the impugned order passed by the competent Authority is liable to be set-aside on this score alone. Reliance was placed on 2007 PLC (C.S) 997, PLJ 2010 Tr.C. (Services) 103, 2010 SCMR 1778, 2019 PLC (C.S) 255, 2000 PLC (C.S) 853, 1986 PLC (C.S) 176 and 2008 SCMR 1406.

4. On the other hand, learned Deputy District Attorney for the respondents has contended that departmental proceedings are

different from criminal proceedings, therefore, mere acquittal of the appellant in the criminal case cannot be considered as ground for his exoneration in the departmental proceedings conducted against the appellant; that regular inquiry was conducted in the matter by complying all legal as well as codal formalities and the appellant was afforded ample opportunities of his defense; that the charges against the appellant stood proved in a regular inquiry, therefore, he has been rightly dismissed from service.

5. Arguments heard and record perused.

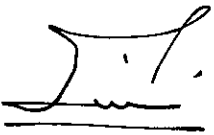
6. A perusal of the record would show that disciplinary action was taken against the appellant on the ground that the appellant while posted in Police Station City Dera Ismail Khan was directly charged in case FIR No. 69 dated 22.01.2017 under sections 302/404/109/120-B/34 PPC. A perusal of the concerned FIR would show that the same was registered against unknown accused, however in the statement of allegations, the competent Authority has mentioned that the appellant was directly charged in the FIR. The inquiry officer has categorically mentioned in his findings that the appellant was out of Pakistan on the day of the occurrence of murder of one Abdul Khaliq but even then the appellant was recommended for major penalty by the inquiry officer through mentioning of fanciful reasons of involvement of the appellant in the murder case. It is a settled principle of law that mere allegation of commission of an offence against a person and registration of FIR in respect of certain offence or more than one offences against such person would not ipso facto make him guilty of commission of such offence and he would continue to enjoy the presumption of innocence until convicted by court of competent jurisdiction after a proper trial with opportunity to defend himself on the allegations leveled against him. In the instant case, the respondents have declared the appellant as culprit, prior to outcome of the trial of the concerned criminal case.

7. During the previous inquiry, the appellant was awarded major penalty of dismissal from service, however the same was set-aside by this Tribunal vide judgment dated 28.11.2018 and

the matter was remanded for de-novo inquiry. However, while going through the findings of the inquiry officer as well as the impugned order dated 02.05.2019 passed by competent Authority, it appears that they were of the view that the penalty previously awarded to the appellant was still in field. In order to properly appreciate this point, the relevant portion of findings of the inquiry officer is reproduced as below:-

"RECOMMENDATIONS:

*Keeping the above facts and figures in view, I am fully satisfied that Constable Muhammad Bilal Hussain No. 1855 has rightly been dismissed from the Police Services as there is no room for the criminals and murderers in our esteem department. Hence, being an inquiry officer of the de-novo inquiry, I recommend that the **"Major punishment"** regarding his dismissal from police services may please be upheld".*



Similarly, the relevant portion of order dated 02.05.2019 passed by the competent Authority is reproduced as below:-

*"Therefore, in the light of above, I SALIM RIAZ, District Police Officer, D.I.Khan in exercise of powers conferred upon me under the Police Rules, 1975 amended 2014 **upheld his major punishment regarding dismissal from police services with immediate effect."***

It is thus evident that the inquiry officer as well as the competent Authority had acted in a mechanical way, without application of conscious mind.

08. The appellant was proceeded against departmentally on the ground that he was charged in case FIR No. 69 dated 22.01.2017 under sections 302/404/109/120-B/34 PPC PPC registered at Police Station City District D.I.Khan, however the appellant has now been acquitted in the said criminal case by learned Additional Sessions Judge/Judge Model Criminal Trial Court Dera


Ismail Khan vide judgment dated 05.10.2019. On page 34 of the judgment, the learned Trial Court has observed as below:-

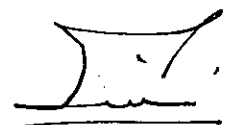
"On perusal of whole record, it is an admitted fact that the present occurrence is un-witnessed one, because neither any person was directly charged in FIR nor the complainant as well as other private witnesses were the eye witnesses. As such the statement of the complainant in itself is not sufficient to show any guilt of the accused facing trial, however reference was made to the statement whether he has made any justification behind the charge leveled against the accused facing trial. Private witnesses have referred to hearsay evidence, but that hearsay evidence is incomplete. No motive behind the occurrence or the purpose resulting into murder of the deceased was explained. The facts remained unexplained by the complainant and as such the statement of the complainant cannot be considered as ground accused facing trial".

It is settled law that acquittal of an accused in a criminal case even if based on benefits of doubt would be considered as honourable. In case of dismissal of civil servant/employee on charges of registration of a criminal case, if the civil servant/employee is later on acquitted, then the dismissal cannot remain in field.

09. In view of the above discussion, the appeal in hand is accepted and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.09.2021


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT D.I.KHAN


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN


Service Appeal No. 882/2019


ORDER
30.09.2021

Appellant alongwith his counsel Mr. Waqar Alam, Advocate, present. Mr. Muhammad Khalil, S.I (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is accepted and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.09.2021


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT D.I.KHAN

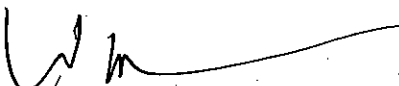

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN


23.11.2020

Appellant present through counsel.

Muhammad Jan learned Deputy District Attorney for respondents present.

Former submitted rejoinder with a request for adjournment. Adjourned. To come for arguments on 25.01.2021, before D.B at Camp Court DI.Khan.


(Atiq-ur-Rehman Wazir)
Member (E)
Camp Court, D.I Khan


(Rozina Rehman)
Member (J)
Camp Court, D.I Khan


25.1.2021


Due to COVID 19, The case is adjourned to 24.3.2021 for the same.

24.03.2021


Appellant alongwith his counsel present. Mr. Muhammad Khalil, S.I (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Former sought adjournment being not prepared for arguments today. Adjourned. To come up for arguments before D.B at Camp Court D.I.Khan on 21.06.2021.


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)
CAMP COURT D.I.KHAN


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

Due to COVID, 19 therefore to come up for the same on 30/9/21



25/3/2020

Due to COVID-19 the case is adjourned. To come up for the same 21/4/2020 at Camp Court, D.I Khan

Reader

21/4/2020

Due to COVID-19 the case is adjourned. To come up for the same 23/9/2020 at Camp Court, D.I Khan

Reader

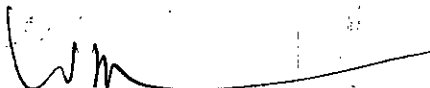
23.09.2020


Counsel for appellant present.

Mr. Muhammad Jan, learned Deputy District Attorney along with Khalid SI (Legal) for respondents present.

Counsel for appellant request for adjournment as issue involved in the present case is pending before Larger Bench of this Tribunal.

Adjourned to 23.11.2020 before D:B at Camp Court D.I Khan.


(Atiq-ur-Rehman Wazir)
Member(E)
Camp Court, D.I Khan


(Rozina Rehman)
Member (J)
Camp Court, D.I Khan

24.02.2020

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Khalid Nawaz, Inspector (Legal) for the respondents present. Representative of the department submitted para-wise comments on behalf of respondents No. 1 to 3. The same is placed on record. Case to come up for rejoinder and arguments on 25.03.2020 before D.B at Camp Court D.I.Khan.



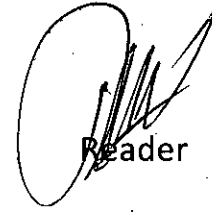
(Muhammad Amin Khan Kundi)

Member

Camp Court D.I.Khan


22/10/2019

Since tour to D.I.Khan has been cancelled .To come for the same on 25/11/2019.


Reader


25.11.2019

~~Appellant in Person Present~~ Mr. Ziaullah, Deputy District Attorney alongwith Mr. Khalid Nawaz, Inspector (Legal) for the respondents present. Written reply on behalf of respondents not submitted. Representative of respondents seeks adjournment. Case to come up for written reply/comments on 27.01.2020 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

27.01.2020

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Khalil, S.I (Legal) for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department requested for further adjournment. Adjourned to 24.02.2020 for written reply/comments before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan.

28.08.2019

Counsel for the appellant Muhammad Bilal Hussain present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was dismissed from service by the competent authority on the allegation of registration of FIR No. 69 dated 22.01.2017 against the appellant alongwith others under Section 302, 404, 109/34 PPC. It was further contended that after filing departmental appeal, the appellant filed service appeal which was partially accepted and the respondent-department was directed to conduct de-novo inquiry within a period of 90 days from the date of receipt of judgment vide detailed judgment dated 28.11.2018. It was further contended that the appellant was reinstated in service as per direction of the Service Tribunal judgment for the purpose of de-novo inquiry. It was further contended that the de-novo inquiry was initiated against the appellant but neither de-novo inquiry was conducted by the respondent-department as per Police Rules 1975 nor was conducted as per direction of the judgment of the Service Tribunal. It was further contended that the respondent-department was also directed to conduct de-novo inquiry within a period of 90 days by the Service Tribunal but the de-novo inquiry was completed after sufficient delay of 90 days therefore, the impugned order is illegal and liable to be set-aside.

The contentions raised by the 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 security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 22.10.2019 before S.B at Camp Court D.I.Khan.

Appellant Deposited
Security / Process Fee

30/8/19



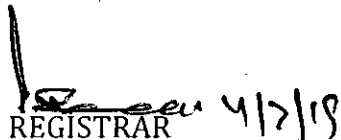

(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 882/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/07/2019	<p>The appeal of Mr. Muhammad Bilal Hussain received today by post through Mr. Muhammad Waqar Alam Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	8.8-2019	<p>This case is entrusted to touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>28.8-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>

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

In service Appeal No. 882 /2019

Muhammad Bilal Hussain **VERSUS**
(Appellant)

GOVT of KPK etc
(Respondents)

I N D E X

S.No.	Description of documents	Pages
1.	Memorandum of Appeal along with affidavit	
2.	Copies of service card along with pay slips	A 1-9
3.	Copy of FIR	B 12-13
4.	Copies of passport, letter dated 06/01/2017 and visa	C 14-18
5.	Copy of bail order	D 17-19
6.	Copy of order dated 19/05/2017	E 20-21
7.	Copies of service appeal and order 28/11/2018	F 22-25
8.	Copies of implementation application and order dated 02/01/2019	G 26-27
9.	Copies of statement of allegations, charge sheet and reply thereto	H 28-32
10.	Copy of inquiry report along with recommendations	I 33-36
11.	Copies of the final show-cause notice, its reply and writ petition along with order	J 37-39
12.	Copy of the impugned termination order dated 02/05/2019	K 40-43
13.	Copies of departmental appeal and order dated 20/06/2019	L 44
14.	Copies of earlier inquiry, statement of allegation, charge sheet	M 45-54
15.	Vakalatnama	--55

Dt: 2 /07/2019

Appellant's counsel

M. Waqar Alam
Advocate High Court
Dera Ismail Khan

ATTESTED


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**PESHAWAR**Khyber Pakhtunkhwa
Service TribunalService Appeal No. 882 /2019Diary No. 925Dated 06/07/2019

Muhammad Bilal Hussain son of Irshad Hussain r/o
Basti Dewala, near Haidry Masjid, Tehsil & District Dera
Ismail Khan. Ex-Constable # 1855

(Appellant)**VERSUS**

1. Government of KPK, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer/DIG, Region Dera Ismail Khan.
3. District Police Officer, Dera Ismail Khan.

..... **(RESPONDENTS)**

APPEAL UNDER SECTION 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER No. OB-743 DATED 02/05/2019 ISSUED BY RESPONDENT NO. 3, WHEREBY THE APPELLANT WAS DISMISSED FROM REGULAR SERVICE AND AGAINST THE ORDER OF RESPONDENT NO. 2 dated 20/06/2019 VIDE WHICH HE DISMISSED THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHOUT ANY COGENT REASONS.

Filed to-day

Registrar

4/7/19

PRAYER

On acceptance of the instant appeal and by setting aside all the impugned orders bearing OB-743 dated 02/05/2019 issued by respondent no. 3 and the impugned order No. OB 1067 dated 20/06/2019 issued by respondent No.2 and the respondents be directed to reinstate the appellant in service with all back benefits.

Note: Addresses given above shall suffice the object of service. All necessary and proper parties have been arrayed in the panel of respondents.

Respectfully Sheweth;

1. That the petitioner is law abiding citizen of Pakistan and is enjoying well reputation in the society and is educated person having domicile of District Dera Ismail Khan.
2. That he was appointed as Constable in Police Department Dera Ismail Khan and has been performed his duties with zeal and zest and to the entire satisfaction of his superiors. Copies of service card along with pay slips are jointly annexed as **Annexure-A**.
3. That the appellant was charged in a false and factitious criminal case vide FIR#69 dated 22/01/2017 u/s 302, 404, 109/34 PPC registered at Police Station Cantt: Dera Ismail Khan. Copy of the FIR is annexed as **Annexure-B**.
4. That at the time of lodging of FIR, appellant was admittedly abroad i.e. Iran and in this respect the appellant's Ex-Pakistan leave was also granted by the official respondents and in this respect the passport entries and visa of the appellant are very much clear. Copies of passport, letter dated 06/01/2017 and visa are jointly annexed as **Annexure-C**.
5. That the appellant, after coming back from Zawari, joined his duties and performed his duties accordingly and also drawn his monthly salaries till May 2017. Copy of pay slip is already annexed.
6. That the appellant was forcefully detained by the SHO Police Station Cantt: Dera Ismail Khan by calling him at P.S Cantt: by a telephonic call and detained him in illegal detention at unknown place for about 14 days. Thereafter, produced before the court of learned Judicial Magistrate Dera Ismail Khan. Thereafter the appellant made an application for post arrest bail before the court of learned Sessions Judge Dera

Ismail Khan which was accepted by the court of learned ASJ-I Dera Ismail Khan. Copy of bail order is annexed as **Annexure-D**.

7. That on 19/05/2017, the appellant was dismissed from service vide order OB-944 dated 19/05/2017 by the respondent#3 without any legal justification and reasons. Copy of order dated 19/05/2017 is annexed as **Annexure-E**.
8. That thereafter, the appellant filed a departmental representation against the order dated 19/05/2017 which was dismissed by the official respondents and ultimately the appellant preferred a service appeal in this Honourable Tribunal vide appeal#47/2018 which was very graciously be allowed in favour of appellant vide order dated 28/11/2018. Copies of service appeal and order 28/11/2018 are annexed as **Annexure-F**.
9. That the appellant after getting the attested copies of order dated 28/11/2018, applied for implementation of same order which was accordingly complied by the official respondents vide order dated 02/01/2019 by reinstating the appellant into service. Copies of implementation application and order dated 02/01/2019 are jointly annexed as **Annexure-G**.
10. That the vide letter No. 573 dated 01/02/2019, the de-novo inquiry was launched against the appellant and in this respect statement of allegations, charge sheet and reply thereto are jointly annexed herewith as **Annexure-H**.
11. That the inquiry officer submitted his de-novo inquiry report to the concerned authority vide letter#161 dated 11/03/2019. Copy of inquiry report along with recommendations is annexed herewith as **Annexure-I**.
12. That the appellant was issued a final show-cause notice after the period which was conditioned in the order of this Honourable Tribunal dated 28/11/2018, hence, being aggrieved with the final show-cause notice, the appellant preferred a writ petition before the Honourable Peshawar High

Court Bench Dera Ismail Khan which was disposed off by the learned High Court. Copies of the final show-cause notice, its reply and writ petition along with order are jointly annexed herewith as **Annexure-J**.

- 13.** That the appellant was again terminated from service vide order OB#743 dated 02/05/2019 by the respondent#3. Copy of the impugned termination order dated 02/05/2019 is annexed as **Annexure-K**.
- 14.** That feeling aggrieved with the above said order dated 02/05/2019, the appellant preferred a departmental appeal to the respondent#2 being appellate authority which was also dismissed vide the impugned order dated 20/06/2019. Copies of departmental appeal and order dated 20/06/2019 are jointly annexed as **Annexure-L**.
- 15.** That jurisdiction of this worthy service tribunal is being invoked in attending circumstances against the impugned order OB-743 dated 02/05/2019 issued by respondent no. 3 and the impugned order No. OB 1067 dated 20/06/2019 issued by respondent No.2, inter alia on the following grounds amongst others;

GROUND S

- a. That the impugned dismissal order OB-743 dated 02/05/2019 issued by respondent no. 3 and the impugned order No. OB 1067 dated 20/06/2019 issued by respondent No.2 are illegal, against services Law and rules, without jurisdiction, in violation of the precedents of Honourable apex courts of the country and is not justifiable for any reason whatsoever.
- b. That the appellant has been condemned unheard and as such the impugned orders are having no legal sanctity and thus, the same are not worth to be maintained.
- c. That the appellant has been charged in an unseen murder case and on the date occurrence i.e. 22/01/2017 was

present in Iran which fact is obvious from his passport besides the case is pending for trial before the competent court of law where the guilt or innocence of the appellant will be decided after recording evidence, hence, the impugned orders amount to pre-judgment without trial.

- d. That no proper procedure as laid under KPK Police Rules, 1975, has been adopted thus, impugned penalty cannot be imposed upon the appellant. No proper inquiry has been conducted into the matter, appellant was not given opportunity to defend his rights, rather all the inquiry proceedings were conducted at the back of appellant and appellant was not associated with the inquiry proceedings and no right of cross examination was given to the appellant over the alleged witnesses examined by the inquiry officer during the alleged inquiry, hence, on this sole ground the de-novo inquiry may also be declared as illegal, void ab initio and ineffective over the rights of appellant. }
- e. That already inquiry which was made by the respondent#3 in the year 2017 being inquiry officer, recommended major penalty against the appellant at that time then at present stage the respondent#3 has no power at all to dismiss the appellant from service being biased person and against the maxim "no one should be judge in his own cause", hence, the impugned dismissal order is illegal in the eye of law. Copies of earlier inquiry, statement of allegation, charge sheet are jointly annexed as **Annexure-M**.
- f. That it is pertinent to mention here that the earlier inquiry which was made in the year 2017 by the respondent#3 the then SP Rural, was not set aside by the respondents, hence, all the proceedings thereafter being without law and service rules.
- g. That the alleged de-novo inquiry is against law, service rules, hence, liable to be struck down by this honourable tribunal. It is pertinent to mention here that in the alleged

- g. That the alleged de-novo inquiry is against law, service rules, hence, liable to be struck down by this honourable tribunal. It is pertinent to mention here that in the alleged inquiry the appellant mainly declared on the allegation of murder despite the fact the trial in the criminal case has not yet been completed. The relevant portion of the recommendation of the inquiry office is reproduced as under, "keeping the above facts & figures in view, I, am fully satisfied that constable Muhammad Bilal Hussain#1855 has rightly been dismissed from police services as there is no room for the criminals and murderers in our esteemed department. Hence, being an inquiry officer of the de-novo inquiry, I recommend the MAJOR PUNISHMENT regarding his dismissal from police services may please be up-held". Hence, the recommendations made by the inquiry officer my please be declared as unjustified, illegal and against natural justice.
- h. That counsel for the appellant may kindly be allowed to raise additional grounds at the time of arguments.

It is thus most respectfully prayed that on acceptance of the instant appeal and by setting aside all the impugned orders bearing OB-743 dated 02/05/2019 issued by respondent no. 3 and the impugned order No. OB 1067 dated 20/06/2019 issued by respondent No.2 and the respondents be directed to reinstate the appellant in service with all back benefits.

Dated 2/07/2019

Your humble appellant

m Bilal

Muhammad Bilal Hussain

Through counsel

M. Waqar Alam
Advocate High Court

M. Waqar Alam
Qureshi

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In service Appeal No. _____/2019

Muhammad Bilal Hussain
(Appellant)

VERSUS

GOVT of KPK etc
(Respondents)

CERTIFICATE

Certified that appellant have not filed an appeal regarding the subject controversy, earlier in this august Tribunal.

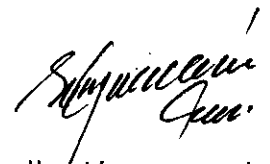
Dated 2/07/2019

Appellant

NOTE

Appeal with enclosure along-with required sets thereof are being presented in separate file covers.

Dated 2/07/2019


Appellant's counsel

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In service Appeal No. _____/2019

Muhammad Bilal Hussain
(Appellant)

VERSUS

GOVT of KPK etc
(Respondents)

AFFIDAVIT

I, **Muhammad Bilal Hussain**, appellant herein, do hereby solemnly affirm on oath:-

1. That the accompanying appeal has been drafted by counsel following our instructions;
2. That all para-wise contents of the appeal are true and correct to the best of my knowledge, belief and information;
3. That nothing has been deliberately concealed from this Honourable Court, nor anything contained therein, based on exaggeration or distortion of facts.

Dated: 01/07/2019



M Bilal
 Deponent

Identified By:-

M Waqar Alam

Waqar Alam
 1/7/19

0524-CIRCULAR ROAD, D.I.KHAN

Annex: "A"

Account Statement

-11-

MUHAMMAD BILAL HUSSAIN
NEAR TAIDR MASJID
DEEWALA
P.O. MURYALI
DIKHAN

Reg Cell No: 03468887151
IBAN No: PK71 UNIL 0112 0524 0108 5221 CIF#: 24051398

Statement Period :	From 01-JAN-2017 To 19-DEC-2017
Account No :	052401085221
Account Type :	CURRENT
Product Type :	BUSINESS PARTNER
Currency :	PAKISTANI RUPEE
Balance :	.00
As of :	19-DEC-2017

Date	Particulars	Inst No	Debit	Credit	Balance
01-JAN-2017	** OPENING BALANCE **				674.00 Cr
03-JAN-2017	CASH WITHDRAWAL - ATM		500.00		174.00 Cr
31-JAN-2017	SALARY (Ref # 201707160239)			25,286.00	25,460.00 Cr
01-FEB-2017	CASH WITHDRAWAL - ATM		20,000.00		5,460.00 Cr
01-FEB-2017	CASH WITHDRAWAL - ATM		5,000.00		460.00 Cr
28-FEB-2017	GOVT SALARY (Ref # 201710889965)			25,286.00	25,746.00 Cr
01-MAR-2017	CASH WITHDRAWAL - ATM		5,000.00		20,746.00 Cr
01-MAR-2017	CASH WITHDRAWAL - ATM		20,000.00		746.00 Cr
13-MAR-2017	CASH WITHDRAWAL - I LINK		500.00		246.00 Cr
13-MAR-2017	I LINK WITHDRAWAL FEE		15.00		231.00 Cr
31-MAR-2017	SALARY (Ref # 201715112584)			25,186.00	25,417.00 Cr
31-MAR-2017	CASH WITHDRAWAL - ATM		5,000.00		20,417.00 Cr
31-MAR-2017	CASH WITHDRAWAL - ATM		20,000.00		417.00 Cr
29-APR-2017	SALARY MAY-2017 (Ref # 201719369997)			25,286.00	25,703.00 Cr
30-APR-2017	CASH WITHDRAWAL - I LINK		20,000.00		5,703.00 Cr
30-APR-2017	I LINK WITHDRAWAL FEE		15.00		5,688.00 Cr
30-APR-2017	CASH WITHDRAWAL - I LINK		5,000.00		688.00 Cr
30-APR-2017	I LINK WITHDRAWAL FEE		15.00		673.00 Cr
06-MAY-2017	CASH WITHDRAWAL - ATM		500.00		173.00 Cr
31-MAY-2017	GOVT SALARY (Ref # 201723742827)			25,286.00	25,459.00 Cr
04-JUN-2017	CASH WITHDRAWAL - I LINK		20,000.00		5,459.00 Cr
04-JUN-2017	I LINK WITHDRAWAL FEE		15.00		5,444.00 Cr
04-JUN-2017	CASH WITHDRAWAL - I LINK		5,000.00		444.00 Cr
04-JUN-2017	I LINK WITHDRAWAL FEE		15.00		429.00 Cr
26-NOV-2017	PREMIUM DB MASTER CARD ANNUAL CHGS (BASIC)		429.00		.00
19-DEC-2017	** CLOSING BALANCE **				.00
Total Withdrawals & Total Deposits			127,004.00	126,330.00	
Total number of Transactions			24		

ATTESTED

[Signature]

ATTESTED

[Signature]
MUSADALI A.S.C.

Note: The items and balance shown on this statement should be verified and the branch manager notified within 2 weeks of any discrepancies, otherwise it will be assumed as correct.

ابتدائی اطلاعی رپورٹ

ضلع D.I.Khan

تاریخ وقت وقوع 22/01/17 وقت: نامعلوم

تھانہ: چھاؤنی

نمبر 69

- ۱- تاریخ و وقت: رپورٹ 22/01/17 وقت 06:30 بجے چا کیدگی 22/01/17 وقت 07:15 بجے
- ۲- نام و سکونت اطلاع دہندہ مستغیث : محمد سلمان ناصر ولد عبدالخالق قوم مروت سکنہ مدینہ کالونی DIK نمبر 29/30 سال
- ۳- مختصر کیفیت مجرم (معدومہ) : گلی شارع عام مدینہ کالونی نزد مکان فرمان عباس شاہ جانب جنوب بقاصلہ 2/3 کلومیٹر PPC 302-404-109/34
- ۴- جائے وقوعہ فاصلہ تھانہ سے اور سمت : گلی شارع عام مدینہ کالونی نزد مکان فرمان عباس شاہ جانب جنوب بقاصلہ 2/3 کلومیٹر
- ۵- نام و سکونت ملزم : برسیدگی رپورٹ بشکل مراسلہ مقدمہ قائم ہوا۔
- ۶- کارروائی جو تفتیش کے متعلق کی گئی ہو۔ : بمنزلہ سپیشل رپورٹ
- ۷- تھانہ سے روانگی کی تاریخ و وقت :

ابتدائی اطلاع نیچے درج کرو

تحریری رپورٹ بشکل مراسلہ منجانب محمد نواز خان SHO کینٹ بغرض قائمی مقدمہ بدست کانسٹیبل امان اللہ 7950 موصول ہو کر ذیل ہے۔ رپورٹ محمد سلمان ناصر ولد عبدالخالق قوم مروت سکنہ مدینہ کالونی DIK نمبر 29/30 سال مورخہ 22/01/17 وقت 06:00 بجے اطلاع ملی کہ والد ام گلی شارع عام مدینہ کالونی نزد مکان فرمان عباس شاہ موٹر سائیکل کیساتھ گرا پڑا ہے جو اس اطلاع پر میں فوراً موقع پر پہنچا والد ام کو سنبھالا تو وہ اسلحہ آتشیں سے لگ کر جاں بحق ہو چکا تھا والد ام سول ہسپتال ڈیرہ میں بطور ڈسپنسر ملازم ہے جس کی سول ہسپتال میں رات کی ڈیوٹی تھی ڈیوٹی کے بعد گھر کو واپس آ رہا تھا بوقت نامعلوم جائے وقوعہ بالا پر نامعلوم ملزمان نے نامعلوم وجوہات کی بناء پر بذریعہ اسلحہ آتشیں بہ نیت قتل فائرنگ کر کے قتل کر دیا ہے۔ ہماری کسی کے ساتھ دشمنی نہیں ہے والد ام کے پاس موبائل نمبرات 0333-9960833-2، 0342-9366215 ہیں جن پر گھنٹی نہیں جاتی ہے والد ام کے قتل کرنے کا برخلاف نامعلوم ملزم ملزمان دعویٰ ہوں العبد و دستخط انگریزی مدعی بالا کارروائی پولیس تھانہ میں موجود تھا کہ وقوعہ ہذا کی اطلاع پا کر موقع پر پہنچا مدعی بالانے رپورٹ بالا کی جسکی رپورٹ ضبط تحریر میں لا کر پڑھ کر سنائی گئی جس نے صحت رپورٹ کو درست تسلیم کر کے زیر رپورٹ خود اپنا دستخط ثبت کیا ہے۔ جس کی میں تصدیق کرتا ہوں مقتول کے کاغذات مرگ تیار کر کے زیر حفاظت کانسٹیبل صلاح الدین 1813 بغرض پوسٹارٹھم سول ہسپتال بھجوایا جاتا ہے۔ مضمون رپورٹ سے سردست صورت جرم PPC 302 کی پائی جا کر بغرض قائمی مقدمہ بدست کانسٹیبل امان اللہ 7998 ارسال تھانہ ہے مقدمہ درج رجسٹر کر کے تفتیش کا بندوبست کیا جاوے دستخط انگریزی محمد نواز خان SHO مورخہ 22/1/17 کارروائی تھانہ آمدہ رپورٹ بشکل مراسلہ درج بال ہو کر پرچہ بجرائم بالا چاک ہو کر نقل FIR بغرض تفتیش حوالے Inv شاف کی جاتی ہے پرچہ بمنزلہ سپیشل رپورٹ گزارش ہے۔

Annexure - 14



Ministry of Interior,
Government of Pakistan
requires and requests
In the name of
The President
Islamic Republic of Pakistan
all those to whom it may concern
to allow the bearer
to pass freely without let or hindrance
and to afford the bearer such assistance
and protection as may be necessary

Director General
Immigration and Passports.

E5061044

ISLAMIC REPUBLIC OF
PAKISTAN
PASSEPORT

Name
P
HUSSAIN

Passport Number
UQ6893392

Date of Birth
M
27 JAN 1952

Issuing Office
12101-5917339-7

Date of Issue
M
28 NOV 2021

Country of Issue
PAKISTAN

Date of Expiry
27 NOV 2021

Machine Readable Zone
11501258042 E5061044



ATTESTED

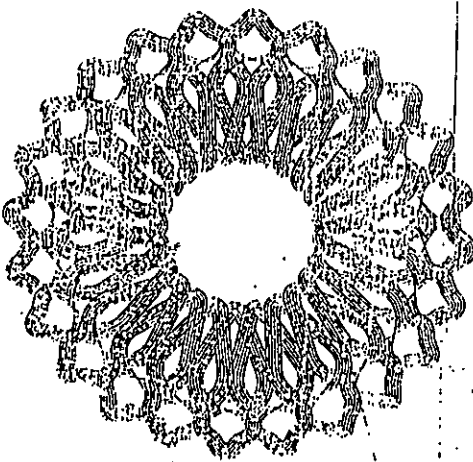
(Signature)

ATTESTED

(Signature)

E 5 0 6 1 0 4 4

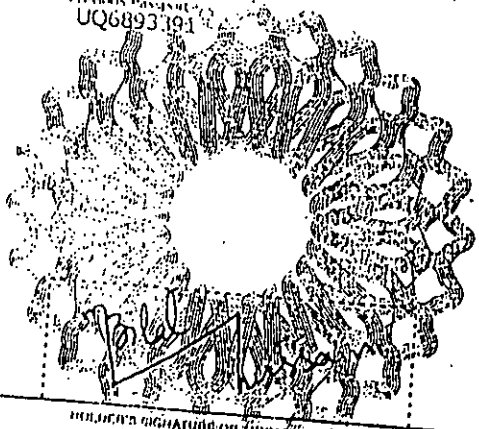
یہ پاسپورٹ عالمی سطح پر مقبول ہے
THIS PASSPORT IS VALID FOR ALL COUNTRIES IN THE WORLD EXCEPT ISRAEL.



ANNOTATIONS

Religion
ISLAM

Passport Number
UQ6893392



Machine Readable Zone
11501258042 E5061044

حال یہ پاسپورٹ عالمی سطح پر مقبول ہے

NOT VALID WITHOUT SIGNATURE ON THUMB IMPRESSION

یہ پاسپورٹ بغیر دستخط یا نشان انگڑیاں کے قابل استعمال ہے۔

ATTESTED

(Signature)

PAKISTAN
EXIT 10112
MENAR BORDER
I.R. EXAMINING & PASSPORT

Name: MUHAMMAD BILAL HUSSAIN
 Passport No.: U-2893392
 Duration of Stay (Days): 30
 No of Entries: double
 Validity from: 2017-01-13
 Validity until: 2017-04-12
 EQ: YEGGEM219557117
 1470933926PAKS201272M211123170412
 YOUSEF SADR
 FIRST CONSU

ATTESTED
[Signature]

ATTESTED
[Signature]
 AHMAD ALI A.S.C

PAKISTAN
 ENTRY
 14 FEB 2017
 TOP0037
 IMMIGRATION OFFICER

VISAS/12

VISAS/12

POLICE DEPARTMENT

D.I KHAN REGION

FOR PUBLICATION IN THE KHYBER PAKHTUNKHWA POLICE GAZETTE
PART-II ORDERS BY THE REGIONAL POLICE OFFICER, D.I KHAN
NOTIFICATION

Dated D.I Khan the 06/01/2017

No. 65 /ES; Ex-Pakistan Leave, Constable Bilal Hussain No. 65 of District Police D.I Khan is hereby granted 45-days Ex Pakistan Leave on full pay for performance of Zawari from the date of availing, under the Civil Servant Revised Leave Rules 1981.

He is allowed to proceed abroad.

ATTESTED

[Signature]
Regional Police Officer,
Dera Ismail Khan

OFFICE OF THE REGIONAL POLICE OFFICER, DERA ISMAIL KHAN.

No. 66-67 /ES Dated D.I Khan the 06/01/2017

Copy forwarded for favour of information & necessary action to

the:-

1. Addl: Inspector General of Police, Investigation, Khyber Pakhtunkhwa Peshawar. Two spare copies of the notification are enclosed for publication.
2. District Police Officer, D.I Khan with reference to his office memo No. 6035/EC dated 27.12.2016. His service roll also returned herewith.

[Signature]
Regional Police Officer,
Dera Ismail Khan

ATTESTED

[Signature]
Regional Police Officer,
Dera Ismail Khan

Amir D

-17-

IN THE COURT OF LIAQAT ALI
ADDITIONAL SESSIONS JUDGE-I, DIKHAN

Bail Application No : 289/IV of 2017
Date of Institution : 25.05.2017
Date of Decision : 02.06.2017

MUHAMMAD BILAL HUSSAIN VS THE STATE ETC

ORDER

Counsel for the accused/petitioner and APP
for the State present. Complainant with counsel
present. Arguments heard and record gone through.

2. Accused/petitioner; Muhammad Bilal
Hussain seeks his release on bail in case FIR No.69
date 22.01.2017 registered Under Sections
302/404/34/109/120B/512 PPC at Police Station
Cantt, D.I, Khan.

3. Brief facts of the case are such that one
Muhammad Salman Nasir S/o Abdul Khaliq aged
about 29/30 year on 02.02.2017 at 06:30AM
reported to local police that he was sleeping in his
house, when he at 06:21 hours he got the
information that his father in lying with his
motorcycle in the thoroughfare of Madian Colony
near the house of Qurban Ali Shah, so he rushed to

ATTESTED

[Signature]

[Signature]
Additional Sessions Judge-I
Dera Ismail Khan

the ... where in he found his father killed through fire arms. That his father serving as dispenser in civil hospital D.I.Khann. He was coming back to home after performing night duty. He has been killed by unknown accused at unknown time through unknown reasons. He has further reported that they have got no enmity with any person and has thus charge unknown accused/accused for the murder of his father.

4. Perusal of the record reveals that present accused has been charged after confessional statement of lady accused on 10.04.2017; wherein the role attributed to the present accused is that he assisted accused Irfan in arranging hired killers. Apart from the statement of lady accused; there is no other direct proof on case file. Nor the cellular data connects the cell number of present accused with others. As a rule of law, the evidence of an accomplice is unworthy of credit unless it is corroborated by material particulars. Moreover, the confession of a co-accused "if proved", could be used against the other co-accused. The accused also allege his alibi, in the shape of documentary

ATTESTED

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9/10
P.H. ...
...

evidence placed on file i.e ex-Pakistan leave was granted to him on 06.01.2017 while according to entry on his passport, he was entered on 22.1.2017 to Iran.

5. Under these circumstances the case against accused falls under the ambit of further inquiry, hence his bail petition is accepted and the accused/petitioner be released on bail subject to furnishing bail bonds in the sum of Rs.2,00,000/- with two local sureties, each in the like amount to the satisfaction of this Court.

6. File be consigned to record room and record be transmitted forthwith.

ATTESTED
[Signature]

[Signature]

Announced
Dated: 02.06.2017.

LIAQAT ALI,
ASJ-I, D.I. Khan
Additional Sessions Judge
District Court

Annex: "E" - 20 -

ORDER

This order is aimed to dispose off the departmental proceedings against Constable Bilal Hussain No.65 of this District Police who was served with charge sheet and statement of allegation on the charges that he while posted in PS/City DIKhan, District charged in case vide FIR No.69, dated 22.01.2017 u/s 302/34/404/109/120-B PS/City DIKhan.

The defaulter Constable was served with charge sheet and statement of allegations. An enquiry was conducted into the matter by Mr. Saleem Bilal ASI/PS/City DIKhan. The Enquiry Officer submitted his finding report in which he stated that keeping the above facts and figures in view it has been proved that defaulter constable is a murderer and there is no seat, no vacancy and no accommodation for a murderer in Police Department. Hence, he is recommended for major punishment of Dismissal from Police service with effect from the date of his absence i.e. 10.04.2017.

ATTESTED
[Signature]

Therefore, in the light of above I, DISTRICT POLICE OFFICER, DERA in exercise of powers conferred upon me under Police Rules 1975 amended-2004, hereby award Constable Bilal Hussain No.65 major punishment of Dismissal from service w.e.f. from 10.04.2017.

ORDER ANNOUNCED

[Handwritten initials]

OR 994

District Police Officer
Dera Ismail Khan
1915

DT 19-5-17

involved in the murder of Abdul Khaliq. The accused Mst: Riyasat Begum, during her confessional statement on 10.04.2017 before the court u/s 364/164 CrPC, had nominated the co-accused namely: Irfan Ullah, Constable Mohammad Bilal Hussain No. 65, Akhtar and Tauqeer and charged them for

BETTER COPY

-21-

ORDER

This order is aimed to dispose off the departmental proceedings against Constable Bilal Hussain No.65 of this District Police who was served with charge sheet and statement of allegation on the charges that he while posted in PS/City D I Khan. Directly charged in case vide FIR No.69, dated 22.01.2017 u/s 302/34/404/109/120-B PS/Cantt DIKhan.

The defaulter Constable was served with charge sheet statement of allegation an enquiry was conducted into the matter by Mr.Saleem Riaz acting SP/Rural DIKhan. The Enquiry Officer submitted his finding report in which he stated that keeping the above facts and figures in view it has been proved that defaulter Constable is a murdered and there is no scat, no vacancy and no accommodation for a murdered in Police department. Hence, he is recommended for major punishment of dismissed from his Police service with effect from the date of his absence i.e 10.04.2016.

Therefore, in the light of above, I, District Police Officer DIKhan in exercise of powers conferred upon me under Police Rules, 1975 amended 2014 hereby award Constable Bilal Hussain No.65 major punishment of Dismissal from service w.e from 10/04.2017.

ORDER ANNOUNCED

District Police Officer
Dera Ismail Khan

Amex "F" - 22 -

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, CAMP AT D.I.KHAN.**

Service Appeal No. _____ of 2018

Muhammad Bilal Hussain son of Irshad Hussain, resident of Diwala,
near Haidri Masjid, Tehsil & District D.I.Khan. Ex-constable No.65

Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Peshawar.
2. Secretary to Govt. of K.P.K. Home & Tribal Affairs Department, Peshawar.
3. Provincial Police Officer/Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
4. Regional Police Officer/Deputy Inspector General of Police, Dera Ismail Khan Region, Dera Ismail Khan.
5. District Police Officer, Dera Ismail Khan.

Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE K.P.K. SERVICE TRIBUNALS ACT, 1974, AGAINST ORDER BEARING NO.S/7490/17 DATED 21.11.2017 OF THE RESPONDENT NO.3, AND ORDER BEARING NO.3657/ES DATED 13.09.2017 OF THE RESPONDENT NO.4 WHEREBY THE DEPARTMENTAL APPEAL FILED BY APPELLANT AGAINST DISMISSAL FROM SERVICE ORDER BEARING NO. OB-944 DATED 19.05.2017 OF RESPONDENT NO.5 WAS DISMISSED.

ATTESTED

Signature

PRAYER:

ON ACCEPTANCE OF PRESENT SERVICE APPEAL AND BY SETTING ASIDE ALL THE IMPUGNED ORDERS BEARING NO.S/7490/17 DATED 21.11.2017 OF THE RESPONDENT NO.3, ORDER BEARING NO.3657/ES DATED 13.09.2017 OF THE RESPONDENT NO.4, AND ORDER BEARING NO. OB-944 DATED 19.05.2017 OF

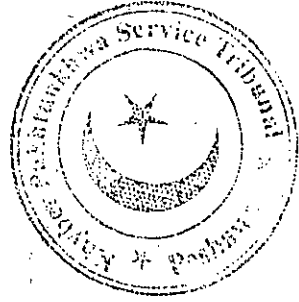
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT D.I.KHAN.

Appeal No. 47/2018

Date of Institution ... 11.01.2018

Date of Decision ... 28.11.2018



Muhamamd Bilal Hussain S/o Irshad Hussain, resident of Dewala, near Haidri Masjid, Tehsil and District D.I.Khan. Ex-constable No.65.

... (Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Peshawar and 4 others. ... (Respondents)


MR. MUHAMMAD WAQAR ALAM,
Advocate

--- For appellant.

ATTESTED

MR. USMAN GHANI,
District Attorney

--- For respondents


MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

ATTESTED


ARGUMENTS

2. Learned counsel for the appellant argued that he applied for Ex-Pakistan leave to visit Iran which was allowed vide order dated 06.01.2017 and returned from visit abroad on 14.02.2017, as is evident from the photocopy of his passport placed on file. On return he performed duty up to June 2017 and received salary up to 31.05.2017. That he was nominated in FIR no. 69 dated 22.01.2017 under Section 302, 404, 109, 34 and 120-B/PPC PS Cantt. D.I.Khan and was arrested by the

Police. He was released on bail in pursuance of judgment of Addl: Sessions Judge-I, D.I.Khan.

3. On the strength of the said FIR disciplinary proceedings were initiated against the appellant and upon culmination major penalty of dismissal from service was imposed on him vide impugned order dated 19.05.2017 followed by departmental appeal which was rejected on 13.09.2017. Thereafter he filed review petition on which no date is mentioned but was rejected on 21.11.2017 followed by the instant service appeal on 11.01.2018. Proper enquiry as per procedure laid down in the Police Rules 1975 was not conducted by the enquiry officer. He was not associated with the enquiry proceedings. Neither show cause notice was served on the appellant nor copy of enquiry report was provided to him. Opportunity of personal hearing was also denied to him. Reliance was also placed on case law reported as 1991 SCMR 2330, 2005 PLC (CS)1197, 2007 SCMR 192 and judgment of the august Supreme Court of Pakistan in Civil Petition.No.1097-L of 2004.

4. On the other hand learned District Attorney argued that the appellant conspired and arranged hired killers for the murder of Abdul Khaliq as is evident from the confessional statement of co-accused/wife of deceased/victim. Thereafter departmental proceedings were initiated and when charges had been established against major penalty of dismissal from service was imposed on him.

CONCLUSION.

5. To sift chaff from the grain we examined the relevant record available on file thoroughly. It has not been disputed by the respondents that 45 days Ex-Pakistan leave on full pay was granted to the appellant for performance of Zawari in Iran vide order dated 06.01.2017. The appellant left Pakistan for Iran on 22.01.2017, as per exit stamp affixed on his passport by FIA immigration staff deputed at the airport and returned on 14.02.2017. FIR no. 69 was lodged on 22.01.2017, when he had already proceeded to Iran. Even on return he continued performing duty.

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 EX-PAKISTAN
 Kayser Pakhtrunkhwa
 Service Tribunal
 Peshawar

Subsequently, on the basis of the said FIR departmental proceedings were initiated and after culmination major of dismissal from service was imposed on him vide impugned order dated 19.05.2017. Perusal of impugned order revealed that allegations of absence from duty was also leveled against him which was not part of the charge sheet and statement of allegations served on him. Moreover, the impugned order was passed with retrospective effect which was void ab-initio and no limitation runs against a void order. Enquiry proceedings initiated against him were conducted in flagrant violation of laid down procedure/rules. The respondents failed to serve show cause notice on the accused and also denied opportunity of hearing. These glaring illegalities alone are sufficient for defeating the purpose of disciplinary proceedings and also go against the principles of natural justice. He was condemned unheard.

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[Signature]

6. In view of the fore-going the appeal is accepted, impugned order dated 20.02.2016 is set aside and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry within a period of ninety days from the date of receipt of his judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

Sd/- Ahmad Hassan, Member
Comptroller D.I. Khan
Sd/- M. Amin Khan Kundi, Member

Certified to be true copy

[Signature]
 Kh. *[Signature]*
 Service Tribunal,
 Peshawar

(M)

ANNOUNCED
 28.11.2018

Date of Presentation of Application 10-12-18
 Number of Words 1200
 Copying Fee 8.00
 Urgent 2.00
 Total 10.00
 Name of Copyist *[Signature]*
 Date of Completion of Copy 10-12-18
 Date of Delivery of Copy 10-12-18

Annex:

"G" - 26 -

Dated: 12/12/2018

To
The Worthy District Police Officer
Dera Ismail Khan.

Subject: IMPLEMENTATION OF ORDER DATED 28/11/2018
PASSED BY KPK SERVICE TRIBUNAL IN SERVICE
APPEAL NO. 47/2018.

Respected Sir,

The applicant humbly submits as under;

That the applicant being dissatisfied with the order dated 19/05/2017 passed by the then District Police Office Dera Ismail Khan regarding termination of services of the applicant. The applicant filed a departmental appeals which were dismissed by the concerned authorities then the applicant filed service appeal No. 47/2018 before the learned KPK Service Tribunal Peshawar which was ultimately very graciously be allowed by holding as under,

"In view of the foregoing the appeal is accepted, impugned order 19/05/2017 is set aside and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry within a period of 90 days for the date of receipt of judgment. The issue of back benefits shall be subject to the outcome of De-novo enquiry".

It is therefore, humbly requested from your good-self to accept the arrival of the applicant in light of the judgment of Service Tribunal and the order dated 28/11/2018 may please be implemented with its true letter and spirit in the best interest of justice.

Note: In the Judgment mentioned above the last para#6 showing the impugned order as 20/02/2016 instead of 19/05/2017 which is clerical mistake and in this respect applicant approached for correction in the order to the concerned office by filing application. Copies of service appeal with order dated 28/11/2018 are annexed herewith.

Dated 12/12/2018

Yours Truly

mpilal

Muhammad Bilal Hussain
Constable No. 65
District Police Dera Ismail Khan

ATTESTED

[Signature]
[Signature]




-27-

**OFFICE OF THE
DISTRICT POLICE OFFICER
DERA ISMAIL KHAN**

No. 34 /EC,
Date 02-01 /2019

ORDER

In compliance of the Judgment dated 28/11/2018, of the Service Tribunal in service appeal No. 47/2018 and Provincial Police Officer, Khyber Pakhtunkhwa Peshawar office Memo: No.4841/Legal, dated 27/12/2018, Ex-Constable Muhammad Bilal Hussain No.65, is hereby reinstated in service with immediate effect. However, the Tribunal has allowed the department for de-novo enquiry. He is allotted constabulary No.1855.


District Police Officer,
Dera Ismail Khan

No. 35-42 /EC

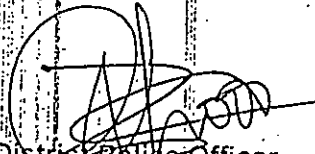
dated: DI Khan the 02/01 /2019

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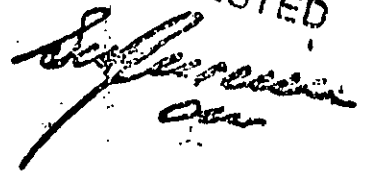
1. The Inspector General of Police, Khyber Pakhtunkhwa Peshawar w/r to his office Memo: No. quoted above.
2. The Regional Police Officer, DI Khan Region
3. The PSO to IGP, Khyber Pakhtunkhwa Peshawar
4. The Deputy Superintendent of Police, Legal DI Khan
5. The Office Superintendent, E-IV, CPO Peshawar
6. The District Accounts Officer, DI Khan.
7. Pay Officer, DPO Office DI Khan.
8. OHC DPO Office DI Khan.

AB - 23

DT - 4-1-19


District Police Officer,
Dera Ismail Khan

ATTESTED


on



Annex: H-28-

1448
7/2/09

Office of the
Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

No. 573 /E&I, dated Peshawar the 01/02/2019

To: The District Police Officer.
D.I.Khan.


Subject: SERVICE APPEAL NO.47/2018 TITLE MUHAMMAD BILAL HUSSAIN
VS PPO KP ETC.

Memo:

Please refer to your office letter No.43/EC dated 02-01-2019, on the subject cited above.

Denovo Departmental enquiry against Ex-Constable Bilal Hussain No. 1855 may be conducted through Mr. Nasir Mehmood ASP/SDPO City D.I.Khan (District Complaint Officer) and final outcome be communicated to this office on or before 08-02-2019 for the perusal of Worthy IGP KPK.

original Enquiry file etc is attached at.


(ASLAM NAWAZ)
AIG/C&E
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

No. 574 /E&I.

Copy of above is forwarded for information to:-

1. PSO to W/IGP Khyber Pakhtunkhwa, Peshawar.

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"H" - 29

DISCIPLINARY ACTION/
DENOVO ENQUIRY

1, DISTRICT POLICE OFFICER, Dera Ismail Khan as a competent authority am of the opinion that you Constable Muhammad Bilal Hussain, 1855 had rendered yourself liable to be proceeded against and committed the following acts/omissions within the meaning of the Khyber Pakhtunkhwa Police Rules 1975 amended-2014 for which you had been served with proper charged sheet vide this office Endst: No.1120-21/EC, dated 20.04.2017, found guilty of the charges by the enquiry officer & had been awarded Major Punishment of dismissal from Police Service vide this office Order OB: No.944, dated 19.05.2017.

The same order had been up held by the Regional Police Officer DI Khan and the Worthy Inspector General of Police in response to your appeals against the said order, while in compliance with the Judgment dated 28.11.2018 rendered by KPK Services Tribunal you have been re-instated in Service vide this office Order Endst: No.34-42/EC, dated 02.01.2019.

In the light of direction received from Worthy Inspector General of Police vide his office letter No.573/E&I, dated 01.02.2018 to conduct Denovo departmental enquiry against you on the same following charges.

STATEMENT OF ALLEGATION

"You while posted at PS/City DI Khan, directly charged in case vide FIR No.69, dated 22.01.2017 u/s 302/34/404/109/120B-PPC PS/Cantt. This act on your part amounts to gross misconduct which is punishable under the rules"

Hence the statement of allegation.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation Mr. Nasir Mahmood, ASP/SDPO City DI Khan is appointed as enquiry officer to conduct Denovo enquiry under Police Rules 1975 amended-2014.

3. The enquiry officer shall in accordance with the provision of the ordinance, provide reasonable opportunity of the hearing to the accused, record its findings and make, within ten days of the receipt of this order recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date time and place fixed by the enquiry officers.

ATTESTED
[Signature]
District Police Officer,
Dera Ismail Khan

No. 576-77 /EC Dated DI Khan the 08-02 /2019
Copy to: -

1. Mr. Nasir Mahmood, ASP/SDPO City Dera Ismail Khan. The enquiry officer for initiating proceeding against the defaulter under the provision of Khyber Pakhtunkhwa Police Rules 1975 amended-2014, with the direction to complete the enquiry within 10-days. Enquiry papers containing 98 pages are enclosed.
2. Constable Muhammad Bilal Hussain, 1855 with the direction to appear before the E.O on the date, time and place fixed by the E.O, for the purpose of enquiry proceeding.

District Police Officer,
Dera Ismail Khan

CHARGE SHEET

- 30 -

Whereas, I am satisfied that a formal enquiry as contemplated, by Khyber Pakhtunkhwa Police Rules 1975 amended-2014 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation if established would call for a major penalty as defined in rules-4(i)(B) of the aforesaid rules.

AND THEREFORE, as required by Police Rules 6(1) of the aforesaid rules, I DISTRICT POLICE OFFICER Dera Ismail Khan hereby charge you Constable Muhammad Bilal Hussain, 1855 with the misconduct on the basis of the statement attached to this Charge Sheet.

AND, I, hereby direct you further under rules 6(i)(B) of the said rules to put in written defence within 7-days of receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state at the same time whether you desire to be heard in person or otherwise.

AND, in case, your reply is not received within the prescribed period, without sufficient cause, it would be presumed that you have no defence to offer and that Ex-partee proceeding will be initiated against you.

District Police Officer,
Dera Ismail Khan

ATTESTED

[Handwritten signature]

بخدمت جناب ناصر محمود صاحب A.S.P/S.D.P.O انکوٹری آفیسر صاحب ڈیرہ اسماعیل خان!

تحریری جواب منجانب کانٹیبیل محمد بلال حسین 1855-

بر Denovo انکوٹری لیٹر نمبر 57677 مورخہ 08/02/2019 وصول کردہ 21/02/2019

جناب عالی! من کانٹیبیل ذیل عرض رساں ہوں۔

- ۱۔ یہ کہ من کانٹیبیل مورخہ 26/07/2007 کو بطور کانٹیبیل خالی آسامی کے بر میرٹ بھرتی ہوا اور اپنی ڈیوٹی با احسن طریقے سے سرانجام دی ہے اور اس دوران افسران بالا کو کسی شکایت کا موقع نہیں دیا۔
- ۲۔ یہ کہ من کانٹیبیل کو جھوٹی FIR نمبر 69 مورخہ 22/01/2017 زیر دفعات 302/34-404/109/120BPPC تھانہ کینٹ میں ناجائز طور پر ملوث کیا گیا ہے جب کہ وقوعہ کے وقت من کانٹیبیل سرکاری چھٹی بروئے لیٹر نمبر 65 مورخہ 06/01/2017 مجریہ RPO ڈیرہ اسماعیل خان دی گئی جس کے بعد من کانٹیبیل ملک ایران چلا گیا اور اس نسبت پا سپورٹ کانٹیبیل واضح ہے۔ جس کے بعد من کانٹیبیل مورخہ 14/02/2017 کو ملک ایران سے واپس پاکستان آیا اور اس کے بعد تھانہ سٹی پراپنی ڈیوٹی سرانجام دیتا چلا آیا کہ اس دوران مورخہ 08/04/2017 کو DFC تھانہ چھاؤنی من کانٹیبیل کے گھر آئے کہ جناب SHO صاحب تھانہ چھاؤنی ڈیرہ اسماعیل خان فرما رہے ہیں کہ من کانٹیبیل تھانہ کینٹ آجائے جب من کانٹیبیل تھانہ کینٹ گیا تو من کانٹیبیل کو نامعلوم مقام پر منتقل کر دیا گیا اور مقدمہ نمبر 69 کی تفتیش کی جاتی رہی جس کے نتیجے میں کانٹیبیل کو بدوران غیر قانونی ہراست یکطرفہ طور پر کارروائی عمل میں لائی گئی اور اس دوران مورخہ 19/05/2017 کو ملازمت سے برطرف کر دیا گیا۔ جس کے بعد من کانٹیبیل کو عدالت میں پیش کیا گیا اور من کانٹیبیل اب جناب عدالت کے حکم پر ضمانت پر رہا ہوا ہوں اور مورخہ 05/06/2017 کو برطرفی حکم وصول کرنے کی نسبت درخواست گزاری جو کہ حوالے من کانٹیبیل کی گئی جس کے بعد من کانٹیبیل نے افسران بالا کو مختلف اپیل ہائے گزاریں جو کہ خارج ہوئیں اس کے بعد من کانٹیبیل نے معزز سروس ٹریبیونل خیبر پختونخواہ پشاور میں سروس اپیل دائر کی جو کہ مورخہ 28/11/2018 کو منظور ہوئی جس میں برطرفی مورخہ 19/05/2017 کو منسوخ فرماتے ہوئے من کانٹیبیل کو دوبارہ ملازمت پر بحال کرنے کا حکم فرمایا گیا اور ساتھ میں Denovo انکوٹری کا حکم صادر ہوا۔ جس کی نسبت من کانٹیبیل عرض رساں ہوں کہ من کانٹیبیل بے گناہ ہے۔

RECEIVED
21/02/2019

معزز عدالت جناب سیشن جج صاحب ڈیرہ اسماعیل خان نے مقدمہ نمبر 69 مذکورہ بالا سے من کاشیبل کو برضمانت رہا فرما دیا ہے۔ دعویٰ ذاری منجانب ریاست بی بی مورخہ 10/04/2017 فرضی، بوگس، بناوٹی ہے اور من کاشیبل کے حقوق پر غیر موثر ہے۔ من کاشیبل نا کردہ گناہ ہوں ایسے جرم کی نسبت سوچ بھی نہیں سکتا۔ برائے مہربانی من کاشیبل کو Denovo انکوائری میں خلاصی دی جائے اور Back Benefits کے ساتھ ملازمت پر بحال رکھا جائے اور شنوائی کا موقع دیا جائے اور تا تصفیہ مقدمہ نمبر 69 سال 2017 تھانہ کینٹ زیر تجویز معزز عدالت جناب ایڈیشنل سیشن جج ڈیرہ اسماعیل خان کسی بھی قسم کی کارروائی عمل میں نہ لائی جائے۔

مورخہ 25/02/2019

M. Bilal Hussain

ATTESTED
[Signature]

محمد بلال حسین۔ کاشیبل نمبر 1855 ڈسٹرکٹ پولیس ڈیرہ اسماعیل خان

نوٹ:-

تقدمہ مورخہ 26/11/2018 تھانہ سٹی لف ہے۔

نقل پاسپورٹ لف ہے۔

نقل Ex-Pakistan Leave لف ہے۔

نقل حکم ضمانت مورخہ 02/06/2017 از اعدالت ا-ASJ ڈی آئی خان لف ہے۔

OFFICE OF THE
ASSISTANT SUPERINTENDENT OF POLICE,
CITY CIRCLER, DERA ISMAIL KHAN

No. 161 City Dated DIKhan the 11-03 2019

To: The District Police Officer,
Dera Ismail Khan.

Subject: DE-NOVO ENQUIRY REPORT

Kindly refer to your office Endst: No. 576-77/EC, dated 08.02.2019.

Respected Sir,

In pursuance of your kind directives, the undersigned completed de-novo enquiry in the above cited case. Its step wise detail is given below:

BRIEF FACTS OF THE CASE:

On 22.01.2017, one Abdul Khaliq caste Marwat r/o Madina Colony DIKhan was killed and a case to this effect vide FIR No. 69, dated 22.01.2017, u/s 302/404/109/120-B/ 34 PPC, PS/Cantt DIKhan was registered against the unknown accused. During the course of investigation accused Constable Mohammad Bilal Hussain No. 1855, Irfan Ullah s/o Akram caste Bhattani, r/o Jhowk Qureshi, Tauqeer Abbas s/o Ghulam Shabbir, caste Baloch, r/o Haji Kura, Mst: Riasat Begum (widow of deceased Abdul Khaliq) and Akhtar Munir s/o Mohammad Hayat caste Baloch, r/o Basti Diwaia DIKhan were traced and later-on arrested. Constable Bilal was particularly arrested in section 109 PPC for abetment.

HISTORY OF DISCIPLINARY PROCEEDINGS:

Constable Mohammad Bilal Hussain No.1855 was charge sheeted; statement of allegation was issued to him and on receipt of finding report from the enquiry officer, the then DPO DIKhan vide OR No. 944, dated 19.05.2017 (F/A) dismissed him from service. The Constable concerned preferred an appeal to the RPO DIKhan who upheld the orders of DPO vide order Endst: No. 3658/ES, dated 13.09.2017. A review petition to Worthy IGP was also rejected vide order No. 7490/17, dated 21.11.2017.

The Constable concerned then approached to Service Tribunal Khyber Pakhtunkhwa and the court ordered for his re-instatement in service vide Judgment dated 18.11.2018 and ordered de-novo enquiry.

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In the above context, enquiry in hand was entrusted to undersigned. The accused Constable was summoned and heard in detail. His statement was recorded. The statement of First Investigating Officer HC Zaki-ul-Amin and Second Investigating Officer ASI Zameer Hussain were recorded before the accused Constable. The Constable was given opportunity of cross examination. The case file and concerned record was perused thoroughly.

STATEMENT OF CONSTABLE MOHAMMAD BILAL HUSSAIN NO. 1855

He rebutted all the allegations leveled against him. He stated, "I was in Iran on sanctioned Ex-Pakistan Leave (F/B) at the time of occurrence i.e. 22.01.2017. I came back to Pakistan on 14.02.2017 and joined my official duties at PS City DIKhan. On 08.04.2017, DFC of PS Cantonment summoned me for SHO. When I reached the PS, I was informed about my involvement in the murder case of Abdul Khaliq and police arrested me in the above mentioned case. A departmental enquiry was also initiated against me which culminated in my dismissal from police services." He added that he was innocent and had falsely been implicated in the case.

STATEMENT OF FIRST INVESTIGATING OFFICER HC ZAKI-UL-AMIN NO. 909

He stated, "during the days of occurrence, I was posted in the investigation staff of PS Cantonment, DIKhan. After registration of the case FIR No. 69, 22.01.2017, u/s 302/404/109/120-B/34 PPC, the investigation was entrusted to me wherein the complainant of the case had charged unknown accused for the murder of his father. During the course of investigation, CDR was obtained and found contacts between Mrs Riasat Begum and Irfan Ullah (her paramour). Mrs Riasat Begum was arrested who pleaded guilty before the competent court and disclosed the names of all other four accused as Irfan Ullah, Constable Bilal Hussain, target killers-Fauqeer and Akhtar. The investigation proved that accused Constable Bilal was in Iran for Zawari at the time of occurrence. Later on, accused Irfan was arrested who also disclosed the involvement of Constable Mohammad Bilal Hussain in the murder of Abdul Khaliq (husband of accused Riasat Begum). It is correct that Constable Mohammad Bilal Hussain was in Iran at the time of occurrence, but it was he, who had arranged and hired the target killers for the murder of deceased and had gone there for saving his skin."

Note: The Constable was given the opportunity of cross-examination but he put no question on the IO.

STATEMENT OF SECOND INVESTIGATING OFFICER ASI ZAMEER HUSSAIN:

He said on oath, "on 23.05.2017 the investigation of the case was marked to me when I was posted as In-charge of investigation at PS Cantonment, DIKhan. On same day Constable Mohammad Bilal Hussain was also handed over to him as arrested accused. During

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statement was recorded u/s 161 CrPC wherein he stated that accused Irfan was his friend and the paramour of Mrs Riasat Begum (wife of Abdul Khaliq). Irfan wanted to kill Abdul Khaliq and marry his wife Riasat Begum. To materialize his plan, Irfan requested Bilal to search shooters for him to shoot Abdul Khaliq. Hence, Bilal arranged two target killers - Akhtar and Tauqeer to fulfill the plan of Irfan. As per programme the task was entrusted to Akhtar and Tauqeer while Bilal proceeded to Iran on 45-days sanctioned Ex-Pakistan Leave for saving himself from being incriminated. In the absence of Bilal, Akhtar and Tauqeer killed Abdul Khaliq. The abetment of Constable Bilal in the murder of Abdul Khaliq has also been corroborated by Mrs Riasat Begum in her statement u/s 161 and 164 CrPC. Moreover, Bilal himself has confessed in his statement u/s 161 CrPC that he had arranged a meeting of accused Irfan Ullah with target-killers Akhtar and Tauqeer.

Note: Opportunity given. Cross nil.

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FINDINGS

The accused Constable Bilal was friends with Irfan (Co-Accused in the Case). Irfan had affair with Riasat Begum wife of Abdul Khaliq. Both Irfan and Riasat begum were unhappy on this fact and their illicit affairs continued even after her marriage. Irfan with the connivance of Riasat, decided to kill Abdul Khaliq and get married to Riasat Begum. For this, Irfan took the help of his friend Bilal. On the request and attractive offer of money by Irfan, Bilal hired two mercenary shooters/target killers (Akhtar and Tauqeer) to kill Abdul Khaliq. Bilal arranged a meeting of Irfan with Akhtar where the task was entrusted to Akhtar. Akhtar told Irfan that he would complete the task with the help of his friend Tauqeer. Irfan promised to pay Rs. 250,000 to the killers and Rs. 50,000 to Bilal as sweet. For saving his skin and avoiding incrimination, he proceeded to Iran on 14.01.2017 on 45-days Ex-Pakistan Leave. Abdul Khaliq was targeted and shot dead on 22.01.2017 by Akhtar and Tauqeer on the behest and connivance of troika Irfan, Riasat and Bilal. After his termination, Irfan informed Bilal through messages on 09/10.02.2017 that the task had been completed by Akhtar and Tauqeer. On 14.02.2017 Bilal came to Pakistan with surety that the so called alibi would save him from the clutches of law. It was in his knowledge that it would, rather, prove his intention, abetment and involvement in the murder of Abdul Khaliq. After his return, he kept in contact with Irfan. Investigation of the case has connected all the missing links. The confessional statement of Riasat Begum, Irfan and Bilal corroborated by CDR and circumstantial evidences incriminate Constable Bilal in the murder of Abdul Khaliq. His role of abetment u/s 109 PPC is equivalent to that of a murderer. In other words his role is not less than that of target killers-Akhtar and Tauqeer. The so-called alibi is also a strong proof against him. He can't befool the investigators and enquiry officers by the plea of his so-called alibi.

3.

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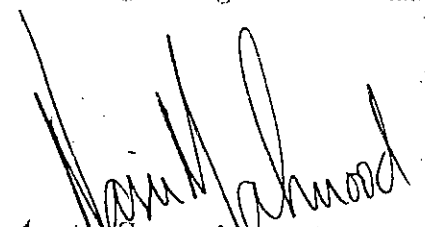


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Despite the fact that accused Constable Mohammad Bilal Hussain No. 1855 was in Iran at the date and time of occurrence, yet he is the main accused of the murder of Abdul Khaliq as it was he, who had managed and hired target killers--Akhtar and Tauqeer--for Irfan and had got his commission of Rs. 50,000. He himself had gone to Iran with the intention to avoid his implication in the case by showing his alibi afterward. In a nutshell, all the cogent circumstantial, documentary and ocular evidences including the so-called alibi not only prove his abetment but also prove him the central accused of the murder of Abdul Khaliq, hence, he does not deserve any leniency and mercy.

RECOMMENDATIONS

Keeping the above facts and figures in view, I am fully satisfied that Constable Mohammad Bilal Hussain No. 1855 has rightly been dismissed from the police services as there is no room for the criminals and murderers in our esteemed department. Hence, being an enquiry officer of the de-novo enquiry, I recommend that the "Major Punishment" regarding his dismissal from police services may please be upheld.


Asstt. Superintendent of Police,
City Circle, Dera Ismail Khan

ATTESTED


FINAL SHOW CAUSE NOTICE


I, DISTRICT POLICE OFFICER, DI Khan as competent authority under the Khyber Pakhtunkhwa Police Rules 1975 amended-2014, do hereby served you Constable Muhammad Bilal Hussain, 1855 as follow.

1. (i) That consequent upon the completion of de-novo enquiry conducted against you by the Enquiry Officer for which you were given opportunity of hearing vide this office communicator No. 576-77/EC, dated 08.02.2019.
- (ii) On going through the findings and recommendations of the enquiry officer, the material on record and other connected papers including your defence before the Enquiry Officer.

I am satisfied that you have committed the following acts/omissions specified of the said rules.

You while posted at PS/City DI Khan, directly charged in case vide FIR No.69, dated 22.01.2017 u/s 302/34/404/109/120B-PPC PS/Cantt.

2. As a result thereof, I, DISTRICT POLICE OFFICER, DI Khan as competent authority have tentatively decided to impose upon you the penalty of Major punishment of the said rules.
3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you.
4. If no reply to this notice is received within 7-days of its deliver, in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.
5. The copy of finding of the enquiry officer is enclosed.


District Police Officer,
Dera Ismail Khan

ATTESTED

جواب بر فائل شوکا ز نوٹس بحریہ DPO صاحب ڈیرہ اسماعیل خان

منجانب کانسٹیبل محمد بلال حسین 1855

جناب عالی! من کانسٹیبل حسب ذیل جواب فائل شوکا ز نوٹس پیش کرتا ہے۔

۱۔ یہ کہ من کانسٹیبل کو جناب انکوآری آفیسر صاحب نے شنوائی کا موقع ہرگز نہ دیا ہے بلکہ گواہان مندرجہ انکوآری رپورٹ پر جرح کا موقع بھی نہیں دیا اور نہ ہی کارروائی انکوآری من کانسٹیبل کے روبرو ہوئی بلکہ تمام کارروائی یکطرفہ طور پر پولیس رولز کا بلائے طاق رکھتے ہوئے عمل میں لائی گئی ہے اور وجوہات بیان کردہ انکوآری آفیسر صاحب ناقابل فہم ہیں۔

۲۔ یہ کہ انکوآری آفیسر صاحب کی دی گئی سفارشات اور Findings ناقابل فہم ہیں اور کسی قسم کا کوئی دستاویزی ثبوت انکوآری آفیسر صاحب نے ہمراہ انکوآری رپورٹ لف نہ کیا ہے بلکہ تمام کارروائی فرضی، مبنی بر قیاس آرائی برخلاف من کانسٹیبل عمل میں لاتے ہوئے سفارشات مرتب کی ہیں جو کہ قانون کی نظر میں قابل قبول نہ ہیں من کانسٹیبل نے تحریری جواب بمعہ دستاویزی ثبوت ہائے جناب انکوآری آفیسر صاحب کو پیش کئے تھے جو کہ انکوآری آفیسر صاحب نے اپنی فائل رپورٹ اسفارشات آنجناب کو پیش نہ کی ہیں جو کہ انکوآری آفیسر صاحب کا یہ فعل بدینتی پر مبنی ہے اور من کانسٹیبل کو ناقابل تلافی نقصان پہنچانے کی کوشش ہے۔ من کانسٹیبل کی جانب سے تحریری جواب مورخہ 25/02/2019 معہ دستاویزات لف ہمراہ ہیں۔

۳۔ یہ کہ من کانسٹیبل مقدمہ نمبر 69 مورخہ 22/01/2017 تھانہ کینٹ ڈی آئی خان میں براہ راست نامزد نہیں تھا بلکہ بعد از تاخیر ملی بھگت و ساز باز کے ذریعے ملزمان مقدمہ نمبر 69 نے کسی بلال نامی کانسٹیبل کا نام لیا تھا جو کہ محکمہ نے من کانسٹیبل کو قربانی کا بکرا بنایا گیا ہے جبکہ محکمہ پولیس ڈیرہ اسماعیل خان میں بلال نامی سینکڑوں اہلکاران موجود ہیں۔ من سائل کو ناجائز و بے گناہ طور پر مورخہ 08/04/2017 بذریعہ مقامی پولیس تھانہ چھاؤنی ڈی آئی خان خفیہ مقام پر مقید رکھا اور اسی عرصہ میں من کانسٹیبل کے خلاف یکطرفہ کارروائی عمل میں لا کر ملازمت سے برطرف کر دیا جس کے خلاف من کانسٹیبل نے اپنی دادرسی کیلئے خیبر پختونخواہ سروس ٹریبیونل پشاور میں سروس اپیل دائر کی جو کہ مورخہ 28/11/2018 کو منظور ہوئی اور آنجناب کو اندر 90 یوم انکوآری مکمل کرنے کی ہدایات جاری کی گئی جو کہ جاری کردہ انکوآری زائد المعیاد ہو چکی ہے بدیں وجہ حکم عدالت مورخہ 28/11/2018 قطعی حیثیت اختیار کر چکا ہے۔

ATTESTE

۴۔ یہ کہ مقدمہ مذکورہ بالا میں عدالت جناب ایڈیشنل سیشن جج اڈریہ اسماعیل خان نے من کانسیبل کے خلاف فرد جرم عائد کر رکھی جو مقدمہ کا ٹرائل زیر تجویز ہے اور من کانسیبل برضمانت ہوں اور مقدمہ کا فیصلہ بحق من کانسیبل ہونے کی قوی امکانات موجود ہیں بدیں وجہ قبل از فیصلہ فوجداری مقدمہ اٹرائل آنجناب کی جانب سے من کانسیبل کے خلاف حکمانہ کاروائی قرین انصاف نہیں ہے بلکہ ناجائز عجلت کا مظاہرہ ہے۔ مزید یہ کہ آنجناب پہلے بھی من کانسیبل کے خلاف انکوآری آفیسر رہ چکے ہیں اور من کانسیبل کے خلاف رپورٹ کر چکے ہیں اس لئے اب من کانسیبل کا مقدمہ سننایا کوئی آرڈر بر خلاف من کانسیبل کرنا قدرتی اصولوں کے خلاف ہوگا۔

۵۔ من سائل کو جناب انکوآری آفیسر صاحب نے کسی قسم کی شنوائی و گواہان مبینہ پر جرح کا موقع نہیں دیا ہے اور مقدمہ میں ملوث ملزمان کے بیانات بھی قلمبند نہیں کئے ہیں اور محض سنی سنائی باتوں پر یقین کرتے ہوئے سائل کے خلاف سخت قسم کی سفارشات آنجناب کو پیش کی ہیں جو کہ ہرگز حقیقت پر مبنی نہ ہیں مزید یہ کہ من کانسیبل کے خلاف جناب انکوآری آفیسر صاحب نے Plea of Alibi کو یکسر نظر انداز کرتے ہوئے من کانسیبل کو مقدمہ کا مرکزی ملزم قرار دیا ہے جبکہ معاملہ تا حال عدالت ٹرائل کورٹ میں زیر سماعت ہے بدیں وجہ جناب انکوآری آفیسر صاحب کی طرف سے جاری کردہ سفارشات کی کوئی قانونی حیثیت نہ ہے اور ایک باختیار عدالتی کاروائی میں خلل ڈالنے کی کوشش ہے۔ علاوہ ازیں جناب انکوآری آفیسر صاحب کی Findings حکم مورخہ 02/06/2017 صدرہ ازاں عدالت جناب ایڈیشنل سیشن جج اڈی آئی خان سے متصادم ہیں بدیں وہ بھی انکوآری آفیسر صاحب کی فائنڈنگز کو داخل دفتر فرمانا عین قرین انصاف ہے۔

لہذا استدعا ہے کہ بمظوری جواب ہذا، سفارشات و Findings ازاں انکوآری آفیسر صاحب کو کالعدم قرار دیتے ہوئے من کانسیبل کے خلاف جاری شدہ حکمانہ کاروائی ہائے کو بلا مزید کاروائی داخل دفتر فرمایا جائے۔

مورخہ 22/04/2019

22/04/19

کانسیبل محمد بلال حسین بیلک نمبر 1855۔۔۔۔۔ سائل

ATTESTED

[Handwritten Signature]

نوٹ:- دستاویزی ثبوت ہمراہ جواب لف ہیں۔

صفحہ نمبر 16 تا

ORDER

Annex: "K" - 40

This order is aimed to dispose-off the departmental proceedings conducted against Constable Muhammad Bilal Hussain No.1855 of this District Police who was dismissed from service vide this office Order Book No.944, dated 19.05.2017, but on acceptance of service appeal No.47/2018 vide judgment dated 28.11.2018 of KP Service Tribunal Peshawar, he was reinstated in service provisionally for the purpose of de-novo enquiry, vide this office Order/Endst: No.3542/EC, dated 02.01.2019.

He was served with charge sheet/statement of allegations, on the charges that he while posted in PS City DI Khan directly charged in case vide FIR No.69, dated 22.01.2017 u/s 302/34/404/109/120-B PPC PS Cantt.

An enquiry was conducted into the matter through Mr. Nasir Mahmood ASP City Circle DI Khan, under Police Rules-1975, ammended-2014. The Enquiry Officer submitted his finding report in which he stated that Constable Muhammad Bilal Hussain No.1855 has rightly been dismissed from the Police Services as there is no room for the criminals and murderers in our esteemed department. Enquiry Officer further recommended that the "Major Punishment" regarding his dismissal from Police services may please be upheld.

He was also served with Final Show Cause Notice and reply submitted by defaulter Constable was examined thoroughly and found unsatisfactory.

He was summoned in Orderly Room to provide lawful opportunity of hearing. He appeared in Orderly Room on April 24th 2019, but failed to give any plausible explanation and also had nothing to offer in his defence.

Foregoing in view of the finding and recommendations of the Enquiry Officer, the undersigned came to the conclusion that the charges of misconduct stand proved against him beyond any shadow of doubt.

Therefore, in the light of above, I, SALIM RIAZ, District Police Officer, DI Khan in exercise of powers conferred upon me under the Police Rules 1975 amended-2014, upheld his Major Punishment regarding dismissal from Police services, with immediate effect.

TESTED
Signature

OB 743

OT 02-05-2019

21.06.2019
Constable Bilal Hussain No.1855
(SALIM RIAZ)
District Police Officer,
Dera Ismail Khan

attested

Signature
D.S.P / Legal
D. I. Khan
21/6/19

No.2159-66 /EC,

- Copy to:
- 1) The Inspector General of Police, Khyber Pakhtunkhwa Peshawar
 - 2) The Deputy Inspector General of Police Enquiry & Inspection KP Peshawar w/r to his office letter No.1418/CPO/IAB/C&E, dated 08.04.2019
 - 3) The Regional Police Officer, DI Khan Region
 - 4) The Deputy Superintendent of Police, Legal DI Khan
 - 5) Office Superintendent, E-IV, CPO Peshawar
 - 6) The District Account Officer DI Khan
 - 7) Pay Officer DPO Office DI Khan
 - 8) OHC DPO Office DI Khan

Signature
(SALIM RIAZ)
District Police Officer,
Dera Ismail Khan

بخدمت جناب ریجنل پولیس آفیسر صاحب ریجن ڈیرہ اسماعیل خان

محکمہ ایپل بر خلاف حکم برطانی مورخہ 29/04/2019، OB#743 مورخہ 02/05/2019

مصدرہ ازاں ڈسٹرکٹ پولیس آفیسر ضلع ڈیرہ اسماعیل خان جس کی رو سے من کانٹریبل محمد ملال حسین 1855 کو ملازمت سے بغیر کسی قانونی وجہ و بغیر شنوائی کا موقع دئے برطرف فرمایا گیا۔

جناب عالی! من کانٹریبل حسب ذیل عرض رساں ہے۔

۱۔ یہ کہ من کانٹریبل مورخہ 26/07/2007 کو محکمہ پولیس بھرتی ہوا اور افسران بالا کے خوشنودی و قانون کے مطابق اپنی ڈیوٹی سرانجام دیتا چلا آیا ہے اور کبھی بھی افسران بالا کو کسی قسم کی شکایت کا موقع نہیں دیا۔ اس نسبت سائل کا سروس ریکارڈ واضح ہے۔

۲۔ یہ کہ من کانٹریبل کے خلاف ایک جھوٹی دعویٰ داری کو بنیاد بنا کر جناب SP رورل ڈیرہ اسماعیل خان نے ایک یکطرفہ انکوائری عمل میں لا کر من سائل کے خلاف فائنڈنگز اس وقت کے DPO صاحب یا سر آفریدی صاحب کو پیش کیں جس کی بنیاد پر من سائل کو بدوران غیر قانونی حراست مورخہ 19/05/2017 کو ملازمت سے برطرف کر دیا گیا جس کے خلاف من سائل نے محکمہ ایپل ہائے دائر کیں جو کہ خارج ہوئیں جس کے بعد من سائل نے عدالت جناب سروس ٹریبیونل خیبر پختونخواہ پشاور میں سروس ایپل نمبر 2018-47 دائر کی۔ جو کہ بروئے حکم مورخہ 28/11/2018 کو معزز سروس ٹریبیونل KPK نے منظور فرماتے ہوئے من سائل کو دوبارہ ملازمت بحالی کا حکم صادر فرمایا جو کہ سابقہ DPO صاحب نے من سائل کو ملازمت پر مورخہ 02/01/2019 کو بحال فرمایا۔ نقولات لف ہیں۔

۳۔ یہ کہ من سائل کے خلاف دوبارہ De-novo انکوائری مبینہ طور پر عمل میں لائی گئی اور انہی بے بنیاد الزام کو بنیاد بنا کر من سائل کو دوسری مرتبہ بروئے حکم مورخہ 29/04/2019، OB#743 مورخہ 02/05/2019 ملازمت سے برطرف کر دیا گیا۔ نقل حکم برطانی لف ہیں۔

۴۔ یہ کہ من سائل بعد وصولی حکم برطانی مورخہ 29/04/2019 درج ذیل وجوہات کی بناء پر آنجناب کو محکمہ ایپل پیش کر رہا ہوں۔

وجوہات ایپل:-

۱۔ یہ کہ من سائل کو مبینہ De-novo انکوائری میں جناب انکوائری آفیسر صاحب نے شنوائی کا موقع ہرگز نہ دیا ہے بلکہ گواہان مندرجہ انکوائری رپورٹ پر جرح کا موقع بھی نہیں دیا اور نہ ہی کاروائی انکوائری من کانٹریبل کے

ATTESTED
[Signature]

رو برو ہوئی بلکہ تمام کارروائی یکطرفہ طور پر پولیس رولز کا بالائے طاق رکھتے ہوئے عمل میں لائی گئی ہے اور وجوہات بیان کردہ انکوائری آفیسر صاحب نا قابل فہم ہیں۔

۲۔ یہ کہ انکوائری آفیسر صاحب کی دی گئی سفارشات اور Findings نا قابل فہم ہیں اور کسی قسم کا کوئی دستاویزی ثبوت انکوائری آفیسر صاحب نے ہمراہ انکوائری رپورٹ لف نہ کیا ہے بلکہ تمام کارروائی فرضی، بنی برقیاس آرائی برخلاف من کانشیل عمل میں لاتے ہوئے سفارشات مرتب کی ہیں جو کہ قانون کی نظر میں قابل قبول نہ ہیں من کانشیل نے تحریری جواب بمعہ دستاویزی ثبوت ہائے جناب انکوائری آفیسر صاحب کو پیش کئے تھے جو کہ انکوائری آفیسر صاحب نے اپنی فائل رپورٹ اسفارشات DPO صاحب کو پیش نہ کی ہیں جو کہ انکوائری آفیسر صاحب کا یہ فعل بدینتی پر مبنی ہے اور من کانشیل کو نا قابل تلافی نقصان پہنچانے کی کوشش تھی جو کہ جناب DPO صاحب نے یکسر طور پر نظر انداز کرتے ہوئے من سائل کو شنوائی کا موقع دیئے بغیر ملازمت سے برطرف کر دیا ہے جو کہ یہ عمل قدرتی انصاف کے اصولوں کے منافی ہے اور حکم متدعوئیہ میں بیان کردہ وجوہات یہ کہ مورخہ 24/04/2019 کو من سائل کو Orderly Room میں بلا کر شنوائی کا موقع دیا گیا، ہرگز درست نہ ہے کیونکہ من سائل مذکورہ تاریخ کو حاضر ڈیوٹی تھا جس کی نسبت نقل مدروز نامچہ پولیس لائن لف ہمراہ ہے۔

۳۔ یہ کہ من کانشیل مقدمہ نمبر 69 مورخہ 22/01/2017 تھانہ کینٹ ڈی آئی خان میں براہ راست نامزد نہیں تھا بلکہ بعد از تاخیر ملی بھگت و ساز باز کے ذریعے ملزمان مقدمہ نمبر 69 نے کسی بلال نامی کانشیل کا نام لیا تھا جو کہ محکمہ نے من کانشیل کو قربانی کا بکرا بنایا گیا ہے جبکہ محکمہ پولیس ڈیرہ اسماعیل خان میں بلال نامی سینکڑوں اہلکاران موجود ہیں۔ من سائل کو نا جائز دے گناہ طور پر مورخہ 08/04/2017 بذریعہ مقامی پولیس تھانہ چھاؤنی ڈی آئی خان خفیہ مقام پر مقید رکھا اور اسی عرصہ میں من کانشیل کے خلاف یکطرفہ کارروائی عمل میں لا کر ملازمت سے برطرف کر دیا اور اب دوبارہ مبینہ De-Novo انکوائری کر کے من سائل کو Bent Upon پالیسی پر عمل درآمد کرتے ہوئے اور Competent Court of Law کے فیصلے کا انتظار کئے بناء من سائل کو بھگت میں محض قیاس آرائی کی بنیاد پر ملازمت سے برطرف کر دینا ہرگز قانونی عمل نہ ہے بلکہ سروس قواعد و ضوابط کے بھی منافی ہے۔ برطرفی حکم سائل ہرگز قابل پزیرائی نہ ہے بلکہ قابل منسوخی ہے۔

۴۔ یہ کہ جناب DPO صاحب من سائل کے خلاف سال 2017 میں مبینہ انکوائری عمل میں لائے تھے اور Major Penalty کے اصولوں کو بالائے طاق رکھ کر ملازمت سے برطرف کرنا ہرگز قانونی عمل نہ ہے بلکہ بلا اختیار عمل ہے اور قابل منسوخی ہے۔ علاوہ ازیں من سائل کے خلاف سفارشات کو بنیاد بنا کر برطرفی حکم یا کسی بھی قسم کا حکم جناب DPO صاحب نہ کر سکتے تھے جو کہ اس وجہ سے بھی برطرفی حکم قابل منسوخی ہے۔

ATTESTED

 ...

۵۔ یہ کہ حکم معزز عدالت سروس ٹریبیونل کو غلط طور پر تشریح کیا گیا ہے اور بے بنیاد و تاخیر کے ساتھ مبینہ De-novo انکوائری کر کے حکم عدالت کی بھی توہین کی گئی ہے۔ بدیں وجہ بھی برطرفی حکم مورخہ 29/04/2019 قابل منسوخ ہے۔


۶۔ یہ کہ انکوائری آفیسر کی فائنڈنگز اور Recommendations بے بنیاد الزامات کا شاخسانہ ہیں اور محض قیاس آرائی پر مبنی ہیں بدیں وجہ برطرفی حکم قابل پزیرائی نہ ہے بلکہ قابل منسوخ ہے۔

۷۔ یہ کہ انکوائری آفیسر صاحب اور جناب DPO صاحب نے معزز عدالت ASJ-1 ڈی آئی خان کے حکم ضمانت کو یکسر نظر انداز کرتے ہوئے سائل کو ملازمت سے برطرف کر دیا ہے جو کہ باختیار عدالتی کارروائی میں خلل ڈالنے کی کوشش ہے مبینہ مقدمہ نمبر 69/2017 تھانہ کینٹ ڈی آئی خان کا ٹرائل تاحال زیر تجویز معزز عدالت ہے اور معزز عدالت کی Findings/Short Order ضمانت حکم مورخہ 02/06/2017 کے مطابق من سائل بے گناہ و ناکردہ جرم ہوں۔ نقولات نسبت ٹرائل لف ہمراہ ہیں۔

۸۔ یہ کہ من سائل 12/13 سال تک محکمہ پولیس میں فرائض سرانجام دے چکا ہے۔ سائل غریب خاندان کا چشم و چراغ ہے اور اپنے خاندان کا واحد کفیل ہے اور ناکردہ گناہ ہے ایسے جرم کی نسبت کبھی سوچ بھی نہیں سکتا۔ بوقت مبینہ وقوع من سائل محکمہ پولیس کی اجازت سے ایران گیا ہوا تھا جس کو معزز عدالت ASJ-1 ڈیرہ اسماعیل خان نے بھی بوقت ضمانت تسلیم کیا ہے۔ بدیں وجہ حکم برطرفی کو منسوخ فرمانا عین قرین انصاف ہے۔

لہذا استدعا ہے کہ بمظوری اپیل ہذا حکم مورخہ 29/04/2019، OB#743 مورخہ 02/05/2019 مصدرہ ازاں DPO صاحب کو منسوخ کا لعدم فرماتے ہوئے من سائل کو دوبارہ ملازمت پر بحال فرماتے ہوئے سائل کو Back Benefits بھی عطاء فرمائیں جانے کا حکم صادر فرمایا جائے۔ من سائل تازیت دعا گو

مورخہ 06/05/2019



Ex کا نیشنل محمد بلال حسین بیلٹ نمبر 1855۔۔۔۔۔ سائل

نوٹ:- دستاویزی ثبوت ہمراہ جواب لف ہیں۔



Annex: L-44

OFFICE OF THE
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN
REGION

No. 2958 /ES,

Dated DI Khan the

13/06/2019

*D/No. 1487/EC
18-06-2019*

ORDER

My this order will dispose-of the appeal preferred by Ex Constable Muhammad Bilal Hussian, 1855 of District DIKhan wherein he has prayed for setting aside the order of major punishment of dismissal from service imposed to him by DPO DIKhan vide OB No. 743 dated 24.04.2019 after found him guilty of the following allegations:-

He while posted at Police Station City DI Khan was involved in case FIR No. 69 dated 22.01.2017 u/s 302/34/404/109/120-B of Police Station Cantt: DI Khan.

His service record, inquiry papers and comments were received from DPO DIKhan which was perused and it was found that he was earlier awarded major punishment of dismissal from service by DPO DIKhan vide OB No. 944 dated 19.05.2017. He preferred appeal before the appellate authority which was rejected being meritless vide this office order No. 3657/ES dated 13.09.2019. The appellant then preferred appeal before the competent authority which was also rejected vide CPO Peshawar order Endst: No. 5/7491-97/17 dated 21.01.2017. Later-on, he lodged a Service Appeal No. 47/2018 before the Khyber Pakhtunkhwa Service Tribunal Peshawar. The KP Service Tribunal Peshawar accepted his appeal and directed the respondents to conduct de-novo enquiry within a period of ninety days from the date of receipt of judgment vide dated 28.11.2018. After proper approval of the competent authority, DPO DIKhan has reinstated the appellant in service provisionally for conducting de-novo enquiry. The appellant was charge sheeted and de-novo enquiry into the matter was conducted by Mr. Nasir Mehmood, ASP City Circle DIKhan who submitted his findings report wherein stated that the defaulter constable has rightly been dismissed from service as there is no room for the criminals and murderers in our esteemed department and recommended to upheld the major punishment of dismissal to the appellant. He was issued Final Show Cause Notice. Reply to the same was received and found unsatisfactory by DPO DIKhan. He was also provided opportunity of personal hearing by DPO DIKhan in orderly room on 24.04.2019 but he failed to give any plausible explanation. Hence DPO DIKhan has passed the order dated 24.04.2019.

Aggrieved from the impugned order passed by DPO DIKhan, the appellant submitted the instant appeal on 06.05.2019 which was sent to DPO DIKhan for comments and to provide his service record vide this office memo: No. 2437/ES dated 09.05.2019. DPO DIKhan has submitted the comments and service record of the appellant vide his office memo: No. 2506/EC dated 20.05.2019, wherein appeal of the appellant was defended on cogent grounds.

Keeping in view the above, I can safely infer from the above that the appellant is incorrigible and his appeal is devoid of merit. There is no need of interference in the impugned order, therefore, I, FEROUZ SHAH, PSP, Regional Police Officer, DI Khan, in exercise of powers vested in me under Rule 11 clause 4(a) of Khyber Pakhtunkhwa Police Rules 1975 (amended 2014), hereby reject his appeal and endorse the punishment awarded to him by DPO DIKhan.

APPEALED
[Signature]

Attested
D.S.P / Legal
D. I. Khan
21/06/19

ORDER ANNOUNCED

Application received on 21.06.2019
a) Copying fee amount ---
b) Judgement cost for copying ---
c) No. of copies ---
d) Name of copyist ---
e) Copy completed on 18.06.2019
f) Copy delivered on 21.06.2019
g) Copy sent to ---

No. 2959 /ES

Copy of above sent to the DPO DIKhan for necessary action with reference to his office memo: No. 2506/EC dated 20.05.2019 alongwith 01-Service Roll & 01-Enquiry File of the appellant.

OB/E.C/O.H.C.
-Fas. 2/decision.
OB 1067
dt 20-6-19

(FEROUZ SHAH)PSP
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN

[Stamp]

Annex: "M" - 45



OFFICE OF THE
SUPERINTENDENT OF POLICE,
RURAL DIVISION, DERA ISMAIL KHAN

No. 741 ISP(R) Dated DIKhan the

18/05/2017.

To: The District Police Officer,
Dera Ismail Khan.

Subject: DISCIPLINARY ACTION AGAINST CONSTABLE MOHAMMAD BILAL HUSSAIN NO. 65

Kindly refer to your office Endst: No. 1120-21/EC, dated 20.04.2017.

Respected Sir,

In pursuance of your kind order, the undersigned completed enquiry in the above cited case. Its step-wise detail is given below:

STATEMENT OF ALLEGATIONS:

Constable Mohammad Bilal Hussain No. 65 while posted at Police Station City DIKhan, was directly charged in case vide FIR No. 69; dated 22.01.2017; u/s 302/34/404/109/120B PPC PS/Cantt: DIKhan. This act on his part amounts to gross misconduct which is punishable under the rules.

SUSPENSION ORDER:

Constable Mohammad Bilal Hussain No. 65 of District DIKhan has been placed under suspension vide OB No. 734, dated 20.04.2017 after he was charged directly in case FIR No. 69; dated 22.01.2017 registered u/s 302/34/404/109/120B PPC in PS/Cantt: DIKhan.

PROCEEDINGS

Search was made to trace the accused Constable Mohammad Bilal Hussain No. 65 but in vain as he was found absconder. The record of PS City and Cantt: DIKhan was also checked; the case file of investigation was also perused; the matter was discussed with the Investigating Officer ASI Zakki-ud-Din of PS/Cantt: at length; the statement of I.O was got recorded. All other relevant documents were collected and placed on the enquiry file in hand.

STATEMENT OF THE I.O:

The Investigation Officer ASI Zakki-ud-Din of PS/Cantt: stated in his statement that he was the I.O of the case FIR No. 69; dated 22.01.2017; registered u/s 302/34/109/404/120B PPC PS/Cantt: wherein one Abdul Khaliq had been shot dead by some unknown accused and the report had been lodged by one Mohammad Sulaiman Nasir, the son of deceased. During the course of investigation it had been transpired that Mst: Riyasat Begum w/o the deceased Abdul Khaliq and her paramour Irfan Ullah, the friend of Irfan Ullah named Mohammad Bilal (the constable under enquiry) and two hired target killers Akhtar Abbas and Tauqeer Abbas had been found equally involved in the murder of Abdul Khaliq. The accused Mst: Riyasat Begum, during her confessional statement on 10.04.2017 before the court u/s 364/164 CrPC, had nominated the co-accused namely: Irfan Ullah, Constable Mohammad Bilal Hussain No. 65, Akhtar and Tauqeer and charged them for

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the murder of her husband on her behest and connivance. She had also confessed that she had paid Rs. One lakh to her paramour Irfan for the murder of her husband after his death. The confessional statement of Mst: Riyasat Begum u/s 161 CrPC and 364/164 CrPC are attached herewith for ready reference. The I.O added that the complainant of the FIR Mohammad Sulaiman Nasir son of the deceased had also charged his mother Mst: Riyasat Begum, her paramour Irfan Ullah, the co-accused Constable Mohammad Bilal Hussain No. 65 and the hired killers: Akhter Muneer and Tauqeer Abbas for the murder of his father. The statement of Mohammad Suleman recorded u/s 164 is also annexed with this file.

ABSCONDENCE OF CONSTABLE MOHAMMAD BILAL HUSSAIN NO. 65

He made himself absent from his lawful duty vide DD No. 22, dated 10.04.2017 of PS/City where he was employed. It is the same date by which he was charged by Mst: Riyasat Begum for the murder of her husband (Abdul Khaliq) along with some other accused during her confessional statement u/s 364/164 CrPC.

The legal proclamation process has been completed against Constable Mohammad Bilal Hussain No. 65. He has been declared proclaimed offender now. Photocopies of warrant u/s 204 CrPC, proclamation process u/s 87 CrPC and statement of the DFC Khalid Waheed No. 1791 of PS/Cantt: DIKhan are appended herewith this enquiry file as a solid documentary proof.

CONCLUSION OF THE INVESTIGATION

Photocopy of the challan form submitted u/s 512 CrPC on 29.04.2017 is placed on this enquiry file. The co-accused Mst: Riyasat Begum is in Jail while Constable Mohammad Bilal Hussain No. 65 is proclaimed offender. The murder case of deceased Abdul Khaliq has been proved against all the five accused namely:

- 1) Mst: Riyasat Begum (w/o the deceased) ✓
- 2) Irfan Ullah (Paramour of Riyasat Begum) ✓
- 3) Constable Mohamad Bilal Hussain No. 65 (Friend of Irfan Ullah)
- 4) Akhter Muneer (the hired killer)
- 5) Tauqeer Abbas (the hired killer)

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EX-PAKISTAN LEAVE OF CONSTABLE BILAL HUSSAIN NO. 65

Though Constable Mohammad Bilal Hussain No. 65 was not present in Pakistan during the days of occurrence i.e the murder of Abdul Khaliq. His ex-Pakistan leave for 45 days had been sanctioned vide OB No. 84, dated 09.01.2017 i.e 13 days before the date of occurrence. He had been told to have gone to Iran. But this absentia or alibi proves his mala fide and involvement in the murder of Abdul Khaliq u/s 109 and 34 PPC etc. It was his futile scheme and plan to save his skin from the noose of law and is proving as evidence against him.

LETTER OF THE SSP INVESTIGATION DIKHAN

The SSP Investigation DIKhan has issued a letter No. 3031, dated 18.04.2017 to the DPO DIKhan for the arrest and departmental proceedings against Constable Mohammad Bilal Hussain No. 65. Duplicate of the letter is attached herewith upon which this enquiry has been initiated.

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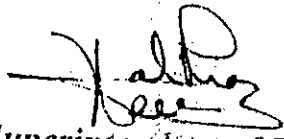
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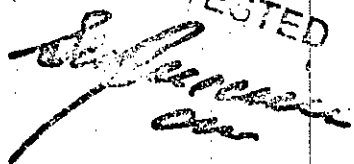
CONCLUSION:

Constable Mohammad Bilal Hussain No. 65 is involved in the murder case of Abdul Khaliq vide FIR No. FIR No. 69; dated 22.01.2017; registered w/s 302/34/109/404/120B PPC in PS/Cantt. From the investigation he has been proved guilty and has been declared as proclaimed offender. There is no chance of his appearance in the near future. As per investigation, it was he who had hired the target killers for the murder of Abdul Khaliq on the demand of Mst: Riyasat Begum's paramour, Irfan Ullah. The case is based on very strong and cogent proofs against him. There is no vacancy for the killers of innocent citizens in Police Department.

RECOMMENDATIONS

Keeping the above facts and figures in view it has been proved that Constable Mohammad Bilal Hussain No. 65 is a murderer and there is no seat, no vacancy and no accommodation for a murderer in Police Department. Hence, he is recommended for Major Punishment of Dismissal from police services with effect from the date of his absence i.e 10.04.2017.


Superintendent of Police,
Rural Division,
Dera Ismail Khan

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DISCIPLINARY ACTION

1, **DISTRICT POLICE OFFICER**, Dera Ismail Khan as a competent authority am of the opinion that you **Constable Bilal Hussain No.65** have rendered yourself liable to be proceeded against and committed the following acts/omissions within the meaning of the Khyber Pakhtunkhwa Police Rules 1975 amended-2014.

STATEMENT OF ALLEGATION

You while posted at PS/City DIKhan, directly charged in case vide FIR No.69 dated: 22.01.2017 u/s 302/34/404/109/120B-PPC PS/Cantt: DIKhan. This act on your part amounts to gross misconduct which is punishable under the rules.

Hence the statement of allegation.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation SP (Rural) Dera Ismail Khan is appointed as enquiry officer to conduct proper departmental enquiry under Police Rules 1975 amended-2014.

3. The enquiry officer shall in accordance with the provision of the ordinance, provide reasonable opportunity of the hearing to the accused, record its findings and make, within ten days of the receipt of this order recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date time and place fixed by the enquiry officers.

ATTESTED

District Police Officer,
Dera Ismail Khan

20-04-2017

No. 1/20-21 /EC Dated DIKhan the

Copy to: SP (Rural)

1. SP (Rural) Dera Ismail Khan. The enquiry officer for initiating proceeding against the defaulter under the provision of Khyber Pakhtunkhwa Police Rules 1975 amended-2014, with the direction to complete the enquiry within 10-days. Enquiry papers containing 04 pages are enclosed.
2. **Constable Bilal Hussain No.65** with the direction to appear before the E.O on the date, time and place fixed by the E.O, for the purpose of enquiry proceeding.

District Police Officer,
Dera Ismail Khan

P.O

Office of Police
Dera Ismail Khan

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CHARGE SHEET

Where as, I am satisfied that a formal enquiry as contemplated by Khyber Pakhtunkhwa Police Rules 1975 amended-2014 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation if established would call for a major penalty as defined in rules-4(i)(B) of the aforesaid rules.

AND THEREFORE, as required by Police Rules 6(1) of the aforesaid rules, I **DISTRICT POLICE OFFICER** Dera Ismail Khan hereby charge you **Constable Bilal Hussain No.65** with the misconduct on the basis of the statement attached to this Charge Sheet.

AND, I, hereby direct you further under rules 6(i)(B) of the said rules to put in written defence with in 7-days of receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state at the same time whether you desire to be heard in person or otherwise.

AND, in case, your reply is not received within the prescribed period, without sufficient cause, it would be presumed that you have no defence to offer and that Ex-parte proceeding will be initiated against you.

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District Police Officer,
Dera Ismail Khan

17/5/17
District of Police
Dera Ismail Khan

Handwritten notes and stamps on the right margin, including "پاکستان پولیس" and "10" in Urdu script.

REFERENCE ATTACHED

Constable Bilal Hussain No.65 of this District Police was served with charge sheet and statement of allegation on the charges that he while posted in PS/City DIKhan, directly charged in case vide FIR No.69, dated 22.01.2017 u/s 302/34/404/109/120-B PS/Cantt: DIKhan.

Mr. Salcem Riaz Acting SP/Rural DIKhan was appointed as Enquiry Officer with the directions to conduct proper Departmental Enquiry against him and submit his finding report within stipulated period. The Enquiry Officer submitted his finding report in which he stated that keeping the above facts and figures in view it has been proved that defaulter constable is a murderer and there is no seat, no vacancy and no accommodation for a murderer in Police Department. Hence, he is recommended for major punishment of Dismissal from Police service with effect from the date of his absence i.e. 10.04.2017 vide "F/A".

Submitted for order please.

O.S

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~~WORTHY DPO/DIKHAN.~~

Dismiss for sum

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statement on 10.04.2017 before the court u/s 364/164 CrPC, had nominated the co-accused namely: Irfan Ullah, Constable Mohammad Bilal Hussain No. 65, Akhtar and Tauqeer and charged them for

روزگار کے دوران ذوالفقار علی خان / ۱۹۷۰/۱۱۱۱۵ - ۰۷ - ۰۴ - ۰۸ - ۰۸ = ۱۰ = ۲۰

جس میں سے کچھ حصے کاغذ کی دکان کے لئے وقف کیے گئے ہیں۔
بعض حصے سٹیٹ بینک کے لئے وقف کیے گئے ہیں۔
بعض حصے قومی بینک کے لئے وقف کیے گئے ہیں۔

روزگار کے دوران ذوالفقار علی خان / ۱۹۷۰/۱۱۱۱۵ - ۰۷ - ۰۴ - ۰۸ - ۰۸ = ۱۰ = ۲۰

جس میں سے کچھ حصے کاغذ کی دکان کے لئے وقف کیے گئے ہیں۔
بعض حصے سٹیٹ بینک کے لئے وقف کیے گئے ہیں۔
بعض حصے قومی بینک کے لئے وقف کیے گئے ہیں۔
بعض حصے دیگر بینکوں کے لئے وقف کیے گئے ہیں۔

چچا علی
کے لئے
۱۷۰۸
M/Aty
26-11-18

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26-11-18

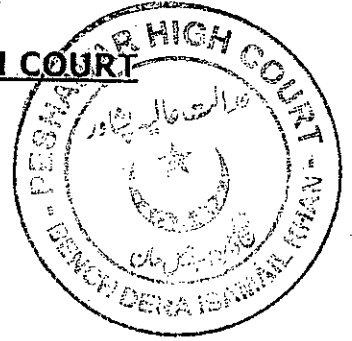


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BEFORE THE HONOURABLE PESHAWAR HIGH COURT

BENCH DERA ISMAIL KHAN



Writ Petition No. _____/2019

Muhammad Bilal Hussain son of Irshad Hussain r/o
Dewala, Near Haidry Masjid Tehsil & District Dera Ismail
Khan. Police Constable Beit#1855.

..... **Petitioner**

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Dera Ismail Khan Region, D.I.Khan.
4. District Police Officer, Dera Ismail Khan.

..... **Respondents.**

**WRIT PETITION UNDER ARTICLE, 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISATN 1973.**

Note: That the addresses of the Parties given in the heading of the
Petition are true and correct for the purpose of service.

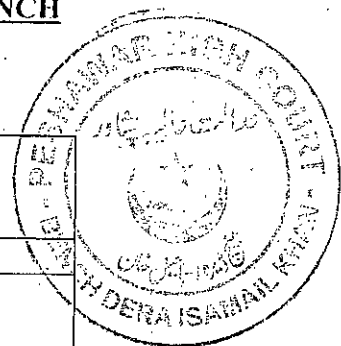
Prayer:

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**On acceptance of the instant writ petition an
appropriate writ may please be issued declaring the
initiation of departmental proceedings vide final show
cause notice received on 19/04/2019 as illegal,
unlawful, without lawful authority and in violation of
the judgment and order dated 28/11/2018 of the**

IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH

FORM OF ORDER SHEET



Date of order or proceedings	Order or other proceedings with signature of Judge(s).
(1)	(2)
30.4.2019.	<p><u>C.M. No.531-D/2019 in</u> <u>W.P. No.473-D/2019.</u></p> <p><u>Present:-</u> Muhammad Waqar Alam, Advocate for the petitioner.</p> <p style="text-align: center;">***</p> <p>Notice to the other side for a date to be fixed before upcoming D.B.</p> <p style="text-align: right;"><u>JUDGE</u></p> <p style="text-align: center; font-size: 2em;">2181</p> <p>G.R.No. _____</p> <p>Application Received on <u>30-04-19</u></p> <p>Copying Fee _____</p> <p>No of Pages <u>06 page</u></p> <p>Copies <u>04</u></p> <p>Urgency <u>24 C</u></p> <p>Case No. _____</p> <p>Copy sent to _____ <u>30-04-19</u></p> <p>Copy delivered to _____ <u>30-04-19</u></p> <p>Signature of the Judge _____</p> <p style="text-align: center; font-size: 1.5em;"><u>30-04-19</u></p>

Handwritten initials and date: 30/4

Kifayat/*

(S.B)

Hon'ble Mr. Justice S.M. Attique Shah

Handwritten signature and date: 30-04-19

certified to be true copy



Peshawar High Court

Authorised by the Bench

30-04-19

PESHAWAR HIGH COURT, D.I.KHAN BENCH

FORM OF ORDER SHEET

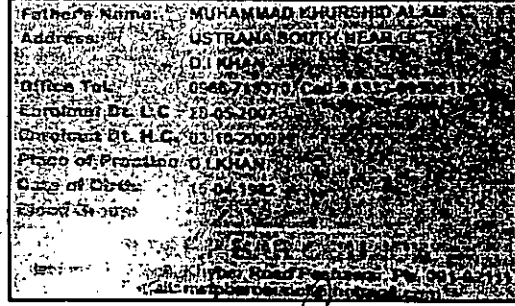
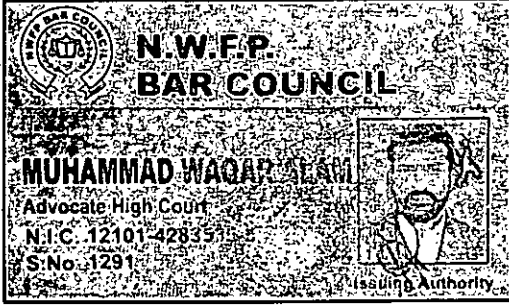
Date of Order or proceedings	Order or other proceedings with signature of Judge(s).
(1)	(2)
07.5.2019	<p><u>W.P.No.473-D/2019 (M) with C.M.No.531-D/2019 (N).</u></p> <p><u>Present:</u> Muhammad Waqar Alam, Advocate for the petitioner</p> <p>Asstt; A.G for respondents.</p> <p>***</p> <p><u>S.M. ATTIQUE SHAH, J.-</u> After arguing the case at certain length, the learned counsel for the petitioner requested for withdrawal of the instant petition in order to approach the proper forum.</p> <p>2. In view of above, the instant petition is dismissed as withdrawn. However, the petitioner is at liberty to approach the proper forum, if he is so advised.</p> <p><u>Announced.</u> <u>Dt:07.5.2019.</u></p> <p> JUDGE</p> <p> JUDGE</p>

Handwritten initials/signature

Habib/*

(DB)
Hon'ble Mr. Justice S.M. Attique Shah
Hon'ble Mr. Justice Shakeel Ahmad

وکالت نامہ



The Learned KPK Service Tribunal Peshawar جناب عدالت
appellant منجانب

M. Bilal Hussain بنام Govt. of KPK & others

SERVICE APPEAL u/s 4 دعویٰ یا جرم

Of the KPK SERVICE TRIBUNAL تفصیل دعویٰ یا جرم
Act 1974. باعث تحریر آنکہ

D. I. Khan مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے پیروی و جواہدی برائے پیشی یا تصفیہ مقدمہ بمقام کیلئے
محمد وقار عالم ایڈووکیٹ ہائی کورٹ

کوسب ذیل شرائط پر ذیل مقرر کی ہے، کہ ہر پیشی پر خود بذریعہ مختیار خاص رد و برد عدالت حاضر ہونا ہوگا۔ اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کر دیا جائے گا، اگر پیشی پر منظر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اسکے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کے اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اور مقدمہ صدر پکھری کے علاوہ اور جگہ نہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر منظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا بیان واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخل صاحب موصوف منظر کی کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو مرضی دعویٰ یا جواب دعویٰ یا درخواست اجراءے ڈگری و نظر ثانی اپیل و گمرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرانے اور ہر قسم کارروائی وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر ثالثی یا راضی نامہ و فیصلہ پر حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا، اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ بیرون از پکھری صدر پیروی مقدمہ مذکورہ نظر ثانی اپیل و گمرانی و ہر قسم مقدمہ یا سنوٹی ڈگری یا طرف یا درخواست حکم انتہائی یا ترقی یا ترقی قس از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا سنگی طبعہ جتانہ پیروی کا اختیار ہوگا اور تمام ساختہ پر داخل صاحب موصوف منظر کی کردہ ذات خود منظور قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزو کی کارروائی یا بصورت درخواست نظر ثانی اپیل یا گمرانی یا دیگر معاملہ مقدمہ مذکورہ کی دوسرے وکیل یا بیرسٹر کو اپنے بجائے اپنے ہمراہ مقرر کریں، اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ایسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور وہ ان مقدمہ میں جو کچھ ہر جائزہ التواہ پڑاگا، وہ صاحب موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پیروی نہیں تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ کسی مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے۔ تاکہ سند رہے

مورخہ یکم ماہ جولائی 2019 Accepted

M. Bilal Hussain
Advocate

مضمون وکالت نامہ سن لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

محمد وقار عالم
1-7-2019

العبد

العبد

M. Bilal Hussain

محمد وقار عالم ایڈووکیٹ ہائی کورٹ

Mob: 0333-9950616

Email: waqaralam1982@gmail.com

BEFORE THE HONOURABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No.882 of 2019

Muhammad Bilal Hussain son of Irshad Hussain r/o Basti Dewala, near Haidry Masjid Tehsil & District Dera Ismail Khan, Ex-Constable No.65...(Appellant)

Versus

1. Government of KP, through Secretary Home & Tribal Affairs
Deapartment, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer/DIG, Region Dera Ismail Khan.
3. District Police Officer, Dera Ismail Khan. ... (Respondents)

PARAWISE COMMENTS ON BEHALF OF
RESPONDENTS

Respectfully sheweth,

Parawise Comments are submitted as under:-

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action.
2. That the appeal is bad for misjoinder/non-joinder of necessary parties.
3. That the appeal is badly time barred.
4. That the appellant has not come with clean hands.
5. That the appellant is estopped due to his own conduct.
6. That the appellant has concealed the material facts from Honourable Tribunal.

REPLY ON FACTS

1. Pertains to record.
2. That the appellant was enlisted as Constable w.e.from 27.07.2007 on three years probation period. The remaining para is not correct.
3. Incorrect. That the appellant was charged in case FIR No. 69, dated 22.01.2017 u/s 302/34/404/109/120B PPC PS/Cantt as reported by SP/Inv: DIKhan vide his office No. 303/Inv, dated 18.04.2017. The appellant conspired and arranged hired killers for the offence as evident from the confessional statement of co-accused wife of deceased/victim. Copies **Annexure "A,B&C"**.
4. Incorrect. That the appellant had arranged hired killers and in order to save his skin, he managed Ex-Pakistan leave.
5. Correct to the extent that on his arrival, a proper charge sheet and summary of allegations were served upon him and departmental enquiry was conducted through a senior rank of officer SP/Rural DIKhan.
6. Incorrect. That the appellant was charged & arrested in above FIR No. 69 after the confessional statement of co-accused, wife of deceased /victim and also charge supported by other evidence, on basis of which complete challan submitted for trial.

7. Correct to the extent that the appellant was dismissed on the recommendation of enquiry officer in which he stated that keeping the above facts and figures in view it has been proved that defaulter constable is a murderer and there is no seat no vacancy and no accommodation for a murderer in Police department, hence he was awarded major punishment of dismissal from service vide OB No. 944 dated 19.05.2017.
8. Correct to the extent that his departmental appeal was dismissed and his service appeal was allowed by the Honourable KP Service Tribunal Camp Court DIKhan with the order to conduct De-novo enquiry. The appellant was reinstated in service provisionally for conducting de-novo enquiry. The appellant was charge sheet and de-novo enquiry into the matter was conducted by a Senior Rank of Officer ASP/City Circle DIKhan who submitted his ~~final~~^{final} report wherein stated that the defaulter constable has rightly been dismissed from service as there is no room for the criminals and murderer in our esteemed department and recommended to upheld the major punishment of dismissal to the appellant. He was issued final show cause notice, reply to the same was received found unsatisfactory by the Respondent No.3. He was also provided an opportunity of personal hearing by Respondent No.3 in orderly room on 24.04.2019 but he failed to give any plausible explanation, hence the order was passed by Respondent No. 3 to upheld his major punishment regarding dismissal from Police service dated 24.04.2019. **(Copy of Charge Sheet/Summary of Allegation, Reply, Final Show-cause Notice Annex "A")**
9. Pertains to record.
10. Pertains to record.
11. Pertains to record.
12. Pertains to record.
13. Pertains to record.
14. Pertains to record.
15. The instant appeal is not maintainable on following grounds.

REPLY ON GROUNDS

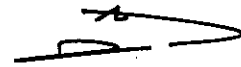
- a. Incorrect. All the proceedings and orders are in accordance with law & rules.
- b. Incorrect. An opportunity of personal hearing was given to the appellant in Orderly Room but he failed to give any plausible explanation, hence the Respondent No. 3 passed the order dated 24.04.2019.
- c. Incorrect. That the appellant was charged in case FIR No. 69, dated 22.01.2017 u/s 302/34/404/109/120B PPC PS/Cantt as reported by SP/Inv: DIKhan vide his office No. 303/Inv, dated 18.04.2017. The appellant conspired and arranged hired killers for the offence as evident from the confessional statement of co-accused wife of deceased/victim.
- d. Incorrect. All the proceeding were conducted in accordance with law & rules. Proper departmental enquiry was conducted. Final show cause notice was issued to the appellant but reply to the same was received found unsatisfactory. He was also provided an opportunity of personal hearing by

Respondent No.3 in orderly room on 24.04.2019 but he failed to give any plausible explanation, hence the Respondent No. 3 passed the order dated 24.04.2019.

- e. Incorrect. During the earlier inquiry conducted by SP/Rural in the year 2017 who found him guilty of the charges levelled him and recommended for major punishment of dismissal from service. That appellant being charged in a murder case and charged in inculpatory confessional statement of co-accused, wife of decease/victim, therefore was sufficient evidence to prove the charge levelled in the departmental proceedings.
- f. Incorrect. All the proceeding were conducted by Respondent No.3.
- g. Incorrect. All the proceedings were conducted during the de-novo enquiry are in accordance with law & rules. The de-novo enquiry was conducted by a Senior Rank of Officer ASP/City Circle DIKhan who submitted his fining report wherein stated that the defaulter constable has rightly been dismissed from service as there is no room for the criminals and murderer in our esteemed department and recommended to upheld the major punishment of dismissal to the appellant. He was issued final show cause notice, reply to the same was received found unsatisfactory by the Respondent No.3. He was also provided an opportunity of personal hearing by Respondent No.3 in orderly room on 24.04.2019 but he failed to give any plausible explanation, hence the order was passed by Respondent No. 3 to upheld his major punishment regarding dismissal from Police service dated 24.04.2019.
- h. The Respondents also seeks permission to raise further objections or additional evidence/record at the time of arguments.

PRAYER

In view of above, it is humbly prayed that on acceptance of these Parawise Comments, the instant appeal may kindly be dismissed, being meritless and badly time barred.



Secretary,
Home & Tribal Affairs Department
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)



Regional Police Officer,
Dera Ismail Khan
(Respondent No.2)



District Police Officer,
Dera Ismail Khan
(Respondent No.3)

BEFORE THE HONOURABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No.882 of 2019

Muhammad Bilal Hussain son of Irshad Hussain r/o Basti Dewala, near Haidry Masjid Tehsil & District Dera Ismail Khan, Ex-Constable No.65...(Appellant)

Versus

1. Government of KP, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer/DIG, Region Dera Ismail Khan.
3. District Police Officer, Dera Ismail Khan. ... (Respondents)

A U T H O R I T Y

We, the respondents do hereby authorised Inspector/Legal, DIKhan to appear before the Service Tribunal Khyber Pakhtunkhwa, Peshawar, on our behalf, He is also authorised to produce/ withdraw any application or documents in the interest of Respondents and the Police Department.

sd

Secretary,

Home & Tribal Affairs Department
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)

D. Saeed
Imbaj

Regional Police Officer,
Dera Ismail Khan
(Respondent No.2)

NO
ACW

District Police Officer,
Dera Ismail Khan
(Respondent No.3)

BEFORE THE HONOURABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No.882 of 2019

Muhammad Bilal Hussain son of Irshad Hussain r/o Basti Dewala, near Haidry Masjid Tehsil & District Dera Ismail Khan, Ex-Constable No.65...(Appellant)

Versus

1. Government of KP, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer/DIG, Region Dera Ismail Khan.
3. District Police Officer, Dera Ismail Khan.(Respondents)

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS

We, the respondents do hereby solemnly affirm and declare on oath that the contents, of Comments/Written reply to Appeal are true & correct to the best of our knowledge and nothing has been concealed from this Honourable Tribunal.

Sd/
Secretary,

Home & Tribal Affairs Department
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)

[Handwritten Signature]

Regional Police Officer,
Dera Ismail Khan
(Respondent No.2)

[Handwritten Signature]

District Police Officer,
Dera Ismail Khan
(Respondent No.3)



**SUPERINTENDENT OF POLICE
INVESTIGATION DIKHAN**

NO. 3031 /Inv:

Dated 18-4 /2017.

Fax No. 0966-9280081

Email Add: spinvdik@gmail.com

To The District Police Officer,
DIKhan.

Subject: CASE FIR # 69 DATED 22.01.2017 U/S 302/34/404/109/120B PPC PS
CANTT, DIKHAN.

Memo:

It is submitted that the accused Mohammad Bilal Hussain s/o Irshad Hussain, Caste Memon, r/o Basti Dewala District DIKhan has been charged in the subject cited case. The accused is Government Servant in Police Department as Constable No.65 under your command.

It is therefore, requested that the above named accused may please be arrested, handed over to local police of PS/Cantt DIKhan and also Departmental Proceeding may please be initiated against him under intimation to this office, please.

[Signature]
Superintendent of Police,
Investigation, DIKhan.

No. 3032 /Inv:

Copy to OII Police Station Cantt, DIKhan for information.

Eve
for n/action.

24
DP/DIKhan
A/ou

Arrested
[Signature]
Superintendent of Police
17/5/17

[Signature]
Superintendent of Police
17/5/17

Better Copy

13

ابتدائی اطلاعی رپورٹ

ضلع D.I.Khan

تاریخ وقت وقوعہ 22/01/17 وقت: نامعلوم

بچے چاکیرگی 22/01/17 وقت 07:15 بجے

محمد سلمان ناصر ولد عبدالخالق قوم مروت سکندہ مدینہ کالونی D.I.Khan نمبر 29/30 سال

PPC 302-404-109/34

گلی شارع عام مدینہ کالونی نزد مکان فرمان عباس شاہ جانب جنوب بقاعہ 2/3 کاویٹر

برسیدگی رپورٹ بشکل مراسلہ مقدمہ قائم ہوا۔

بمزلہ پیش رپورٹ

ابتدائی اطلاع شیپے درج کرو

غریبی رپورٹ بشکل مراسلہ منجانب محمد نواز خان SHO کینٹ بغرض قاضی مقدمہ بدست کانسٹیبل ایمان اللہ 7950 موصول ہو کر ذیل ہے۔ رپورٹ محمد سلمان ناصر ولد عبدالخالق قوم مروت سکندہ مدینہ کالونی D.I.Khan نمبر 29/30 سال مورثہ 22/01/17 بجے اطلاع ملی کہ والد ام گلی شارع عام مدینہ کالونی نزد مکان فرمان عباس شاہ موٹر سائیکل کیسٹو گراپڑا ہے جس اطلاع پر فوراً موقع پر پہنچا والد ام کو سنبھالا تو وہ اسلحہ آتشیں سے لگ کر چل بسا ہو چکا تھا والد ام سول ہسپتال ڈیرہ میں پلورڈ پینسر ملازم ہے جس کی سول ہسپتال میں رات کی ڈیوٹی تھی ڈیوٹی کے بعد گھر کو واپس آ رہا تھا بوقت نامعلوم ہائے وقوعہ والا پڑنا معلوم ملزمان نے نامعلوم وجوہات کی بناء پر بڑے لیبھ اسلحہ آتشیں بہ نسبت قتل فائرنگ کر کے قتل کر دیا ہے۔ ہماری کسی کے ساتھ دشمنی نہیں ہے والد ام کے پاس موبائل نمبرات 0333-9960833-1، 0342-9366245 میں جن پر مشتمل نہیں جاتی ہے والد ام کے قتل کرنے کا برخلاف نامعلوم ملزمان و عویدار ہوں التوجہ و دستخط انگریزی مدعی بالا کاروائی اپولیس، تراز میں موجود تھا کہ وقوعہ ہذا کی اطلاع پاکر موقع پر پہنچا مدعی بالا نے رپورٹ بالا کی جسکی رپورٹ ضبط کر لیا، الا کر پڑا کر ستائی گئی جس نے صحت رپورٹ کو درست تسلیم کر کے زیر رپورٹ خود اپنا دستخط ثبت کیا ہے۔ جس کی میں تصدیق کرتا ہوں مقتول کے کاخوات مہرگ تیار کر کے زیر حفاظت کانسٹیبل صلاح الدین 1813 بغرض پوسٹ مارٹم سول ہسپتال گجرا یا جاتا ہے۔ مسمول رپورٹ سے سر دست صورت جرم PPC 302 کی پائی جا کر بغرض قاضی مقدمہ بدست کانسٹیبل ایمان اللہ 7998 ارسال تھا نہ ہے مقدمہ درج رجسٹر کر کے تفتیش کا بندوبست کیا جاوے دستخط انگریزی محمد نواز خان SHO مورثہ 22/1/17 کاروائی تھا نہ آ رہا رپورٹ بشکل مراسلہ درج بال ہو کر پرچہ جبرائیم بالا چاک ہو کر نقل FIR بغرض تفتیش خواہے Inv سٹاف کی جاتی ہے پرچہ منظور پیش رپورٹ گزارش ہے۔

تھانہ: چھاؤنی
نمبر 69
1۔ تاریخ و وقت رپورٹ 22/01/17 وقت 06:30 بجے چاکیرگی 22/01/17 وقت 07:15 بجے
2۔ نام و سکونت اطلاع دہندہ منشیث
3۔ مختصر کیفیت مجرم (معدہ دفعہ)
4۔ پائے وقوعہ فاصلہ تھانہ سے اور سمت
5۔ نام و سکونت ملزم
6۔ کاروائی جو تفتیش کے متعلق کی گئی ہو۔
7۔ تھانہ سے روانگی کی تاریخ و وقت

Phone: (0966) 9280062
Fax: (0966) 9280293



-27-

**OFFICE OF THE
DISTRICT POLICE OFFICER
DERA ISMAIL KHAN**

No. 34 /EC,
Date 02-01 /2019

ORDER

In compliance of the Judgment dated 28/11/2018, of the Service Tribunal in service appeal No. 47/2018 and Provincial Police Officer Khyber Pakhtunkhwa Peshawar office Memo: No.4841/Legal, dated 27/12/2018, Ex-Constable Muhammad Bilal Hussain No.65, is hereby reinstated in service with immediate effect. However, the Tribunal has allowed the department for de-novo enquiry. He is allotted constabulary No.1855.

District Police Officer,
Dera Ismail Khan

No. 35-42 /EC

dated: DI Khan the 02/01 /2019

Copies to:-

1. The Inspector General of Police, Khyber Pakhtunkhwa Peshawar w/r to his office Memo: No. quoted above.
2. The Regional Police Officer, DI Khan Region
3. The PSO to IGP, Khyber Pakhtunkhwa Peshawar
4. The Deputy Superintendent of Police, Legal DI Khan
5. The Office Superintendent, E-IV, CPO Peshawar
6. The District Accounts Officer, DI Khan.
7. Pay Officer, DPO Office DI Khan.
8. OHC DPO Office DI Khan.

AB 23

DT 4-1-19

District Police Officer,
Dera Ismail Khan

ATTESTED

Attesting Officer



Annex: H - 28 -

1448
7/2/08

Office of the
Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

No. 573 /E&I, dated Peshawar the 01/02/2019

To: The District Police Officer.
D.I.Khan.

Subject: SERVICE APPEAL NO.47/2018 TITLE MUHAMMAD BILAL HUSSAIN
VS PPO KP ETC.

Memo:

Please refer to your office letter No.43/EC dated 02-01-2019, on the subject cited above.

Denovo Departmental enquiry against Ex-Constable Bilal Hussain No. 1855 may be conducted through Mr. Nasir Mehmood ASP/SDPO City D.I.Khan (District Complaint Officer) and final outcome be communicated to this office on or before 08-02-2019 for the perusal of Worthy IGP KPK.

original Enquiry file etc is attached PL.

(Signature)
(ASLAM NAWAZ)
AIG/C&E

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

No. 574 /E&I.

Copy of above is forwarded for information to:-

1. PSO to W/IGP Khyber Pakhtunkhwa, Peshawar.

ATTESTED

(Signature)

*DS/L
EL
KOS/192
7/2/08*

"H" - 29

**DISCIPLINARY ACTION/
DENOVO ENQUIRY**

I, DISTRICT POLICE OFFICER, Dera Ismail Khan as a competent authority am of the opinion that you Constable Muhammad Bilal Hussain, 1855 had rendered yourself liable to be proceeded against and committed the following acts/omissions within the meaning of the Khyber Pakhtunkhwa Police Rules 1975 amended-2014 for which you had been served with proper charged sheet vide this office Endst: No.1120-21/EC, dated 20.04.2017, found guilty of the charges by the enquiry officer & had been awarded Major Punishment of dismissal from Police Service vide this office Order OB: No.944, dated 19.05.2017.

The same order had been upheld by the Regional Police Officer DI Khan and the Worthy Inspector General of Police in response to your appeals against the said order, while in compliance with the Judgment dated 28.11.2018 rendered by KPK Services Tribunal you have been re-instated in Service vide this office Order Endst: No.34-42/EC, dated 02.01.2019.

In the light of direction received from Worthy Inspector General of Police vide his office letter No.573/E&I, dated 01.02.2018 to conduct Denovo departmental enquiry against you on the same following charges.

STATEMENT OF ALLEGATION

"You while posted at PS/City DI Khan, directly charged in case vide FIR No.69, dated 22.01.2017 u/s 302/34/404/109/120B-PPC PS/Cantt. This act on your part amounts to gross misconduct which is punishable under the rules"

Hence the statement of allegation.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation Mr. Nasir Mahmood, ASP/SDPO City DI Khan is appointed as enquiry officer to conduct Denovo enquiry under Police Rules 1975 amended-2014.

3. The enquiry officer shall in accordance with the provision of the ordinance, provide reasonable opportunity of the hearing to the accused, record its findings and make, within ten days of the receipt of this order recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date time and place fixed by the enquiry officers.

ATTESTED
[Signature]
District Police Officer,
Dera Ismail Khan

No. 576-77 /EC Dated DI Khan the
Copy to:-

08-02 /2019

1. Mr. Nasir Mahmood, ASP/SDPO City Dera Ismail Khan. The enquiry officer for initiating proceeding against the defaulter under the provision of Khyber Pakhtunkhwa Police Rules 1975 amended-2014, with the direction to complete the enquiry within 10-days. Enquiry papers containing 98 pages are enclosed.
2. Constable Muhammad Bilal Hussain, 1855 with the direction to appear before the E.O on the date, time and place fixed by the E.O, for the purpose of enquiry proceeding.

District Police Officer,
Dera Ismail Khan

CHARGE SHEET

- 30 -

Whereas, I am satisfied that a formal enquiry as contemplated by Khyber Pakhtunkhwa Police Rules 1975 amended-2014 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation if established would call for a major penalty as defined in rules-4(i)(B) of the aforesaid rules.

AND THEREFORE, as required by Police Rules 6(1) of the aforesaid rules, I DISTRICT POLICE OFFICER Dera Ismail Khan hereby charge you Constable Muhammad Bilal Hussain, 1855 with the misconduct on the basis of the statement attached to this Charge Sheet.

AND, I, hereby direct you further under rules 6(i)(B) of the said rules to put in written defence within 7-days of receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state at the same time whether you desire to be heard in person or otherwise.

AND, in case, your reply is not received within the prescribed period, without sufficient cause, it would be presumed that you have no defence to offer and that Ex-parte proceeding will be initiated against you.

District Police Officer,
Dera Ismail Khan

ATTESTED

[Handwritten signature]

بخدمت جناب ناصر محمود صاحب A.S.P/S.D.P.O انکوٹری آفیسر صاحب ڈیرہ اسماعیل خان!

تحریری جواب منجانب کانٹینبل محمد بلال حسین 1855-

بر Denovo انکوٹری لیٹر نمبر 57677 مورخہ 08/02/2019 وصول کردہ 21/02/2019

جناب عالی! من کانٹینبل ذیل عرض رساں ہوں۔

۱۔ یہ کہ من کانٹینبل مورخہ 26/07/2007 کو بطور کانٹینبل خالی آسامی کے بر میرٹ بھرتی ہوا اور اپنی ڈیوٹی با احسن طریقے سے سرانجام دی ہے اور اس دوران افسران بالا کو کسی شکایت کا موقع نہیں دیا۔

۲۔ یہ کہ من کانٹینبل کو جھوٹی FIR نمبر 69 مورخہ 22/01/2017 زیر دفعات

302/34-404/109/120BPPC تھانہ کینٹ میں ناجائز طور پر ملوث کیا گیا ہے جب کہ وقوعہ کے وقت من

کانٹینبل سرکاری چھٹی برائے لیٹر نمبر 65 مورخہ 06/01/2017 مجریہ RPO ڈیرہ اسماعیل خان دی گئی جس کے

بعد من کانٹینبل ملک ایران چلا گیا اور اس نسبت پان سپورٹ کانٹینبل واضح ہے۔ جس کے بعد من کانٹینبل

مورخہ 14/02/2017 کو ملک ایران سے واپس پاکستان آیا اور اس کے بعد تھانہ ٹی پر اپنی ڈیوٹی سرانجام دیتا چلا آیا

کہ اس دوران مورخہ 08/04/2017 کو DFC تھانہ چھاؤنی من کانٹینبل کے گھر آئے کہ

جناب SHO صاحب تھانہ چھاؤنی ڈیرہ اسماعیل خان فرما رہے ہیں کہ من کانٹینبل تھانہ کینٹ آجائے جب من

کانٹینبل تھانہ کینٹ گیا تو من کانٹینبل کو نامعلوم مقام پر منتقل کر دیا گیا اور مقدمہ نمبر 69 کی تفتیش کی جاتی رہی جس کے

بعد من کانٹینبل کو بدوزان غیر قانونی ہراست یکطرفہ طور پر کارروائی عمل میں لائی گئی اور اس دوران

مورخہ 19/05/2017 کو ملازمت سے برطرف کر دیا گیا۔ جس کے بعد من کانٹینبل کو عدالت میں پیش کیا گیا اور

من کانٹینبل اب جناب عدالت کے حکم پر ضمانت پر رہا ہوا ہوں اور مورخہ 05/06/2017 کو برطرفی حکم وصول

کرنے کی نسبت درخواست گزاری جو کہ حوالے من کانٹینبل کی گئی جس کے بعد من کانٹینبل نے افسران بالا کو مختلف اپیل

ہائے گزاریں جو کہ خارج ہوئیں اس کے بعد من کانٹینبل نے معزز سروس ٹریبونل چیئر پختوانخواہ پشاور میں سروس اپیل

دائر کی جو کہ مورخہ 28/11/2018 کو منظور ہوئی جس میں برطرفی مورخہ 19/05/2017 کو منسوخ فرماتے

ہوئے من کانٹینبل کو دوبارہ ملازمت پر بحال کرنے کا حکم فرمایا گیا اور ساتھ میں Denovo انکوٹری کا حکم صادر ہوا۔

جس کی نسبت من کانٹینبل عرض رساں ہوں کہ من کانٹینبل بے گناہ ہے۔

معزز عدالت جناب سیشن جج صاحب ڈیرہ اسماعیل خان نے مقدمہ نمبر 69 مذکورہ بالا سے من کانشیل کو برضمانت رہا فرما دیا ہے۔ دعویٰ داری منجانب ریاست بی بی مورخہ 10/04/2017 فرضی، بوگس، بناوٹی ہے اور من کانشیل کے حقوق پر غیر موثر ہے۔ من کانشیل نا کردہ گناہ ہوں ایسے جرم کی نسبت سوچ بھی نہیں سکتا۔ برائے مہربانی من کانشیل کو Denovo انکوائری میں خلاصی دی جائے اور Back Benefits کے ساتھ ملازمت پر بحال رکھا جائے اور شنوائی کا موقع دیا جائے اور تا تصفیہ مقدمہ نمبر 69 سال 2017 تھانہ کینٹ زیر تجویز معزز عدالت جناب ایڈیشنل سیشن جج ڈیرہ اسماعیل خان کسی بھی قسم کی کارروائی عمل میں نہ لائی جائے۔

مورخہ 25/02/2019

M. Bilal Hussain

ATTESTED

محمد بلال حسین۔ کانشیل نمبر 1855 ڈسٹرکٹ پولیس ڈیرہ اسماعیل خان

نوٹ:-

تقدمہ مورخہ 26/11/2018 تھانہ سٹی لف ہے۔

نقل پاسپورٹ لف ہے۔

نقل Ex-Pakistan Leave لف ہے۔

نقل حکم ضمانت مورخہ 02/06/2017 ازال عدالت ا-ASJ ڈی آئی خان لف ہے۔

OFFICE OF THE ASSISTANT SUPERINTENDENT OF POLICE, CITY CIRCLER, DERA ISMAIL KHAN

No. 161 City Dated DIKhan the 11-03-2019

To: The District Police Officer, Dera Ismail Khan.

Subject: DE-NOVO ENQUIRY REPORT

Kindly refer to your office Endst: No. 576-77/EC. dated 08.02.2019.

Respected Sir,

In pursuance of your kind directives, the undersigned completed de-novo enquiry in the above cited case, its step wise detail is given below:

BRIEF FACTS OF THE CASE:

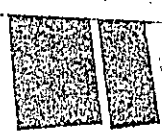
On 22.01.2017, one Abdul Khaliq caste Marwat r/o Madina Colony DIKhan was killed and a case to this effect vide FIR No. 69, dated 22.01.2017, u/s 302/404/109/120-B/ 34 PPC, PS/Cantt DIKhan was registered against the unknown accused. During the course of investigation accused Constable Mohammad Bilal Hussain No. 1855, Irfan Ullah s/o Akram caste Bhattani, r/o Jhowk Qureshi, Tauqeer Abbas s/o Ghulam Shabbir, caste Baloch, r/o Haji Kora, Mst: Riasat Begum (widow of deceased Abdul Khaliq) and Akhtar Munir s/o Mohammad Hayat caste Baloch, r/o Basti Diwala DIKhan were traced and later-on arrested. Constable Bilal was particularly arrested in section 109 PPC for abetment.

HISTORY OF DISCIPLINARY PROCEEDINGS:

Constable Mohammad Bilal Hussain No.1855 was charge sheeted; statement of allegation was issued to him and on receipt of finding report from the enquiry officer, the then DPO DIKhan vide OB No. 94-I, dated 19.05.2017 (F/A) dismissed him from service. The Constable concerned preferred an appeal to the RPO DIKhan who upheld the orders of DPO vide order Endst: No. 3658/ES, dated 13.09.2017. A review petition to Worthy IGP was also rejected vide order No. 7490/17, dated 21.11.2017.

The Constable concerned then approached to Service Tribunal Khyber Pakhtunkhwa and the court ordered for his re-instatement in service vide Judgment, dated 18.11.2018 and ordered de-novo enquiry.

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[Signature]
[Signature]



In the above context, enquiry in hand was entrusted to undersigned. The accused Constable was summoned and heard in detail. His statement was recorded. The statement of First Investigating Officer HC Zaki-ul-Amin and Second Investigating Officer ASI Zameer Hussain were recorded before the accused Constable. The Constable was given opportunity of cross examination. The case file and concerned record was perused thoroughly.

STATEMENT OF CONSTABLE MOHAMMAD BILAL HUSSAIN NO. 1855

He rebutted all the allegations leveled against him. He stated, "I was in Iran on sanctioned Ex-Pakistan Leave (F/B) at the time of occurrence i.e. 22.01.2017. I came back to Pakistan on 14.02.2017 and joined my official duties at PS City DIKhan. On 08.04.2017, DFC of PS Cantonment summoned me for SHO. When I reached the PS, I was informed about my involvement in the murder case of Abdul Khaliq and police arrested me in the above mentioned case. A departmental enquiry was also initiated against me which culminated in my dismissal from police services." He added that he was innocent and had falsely been implicated in the case.

STATEMENT OF FIRST INVESTIGATING OFFICER HC ZAKI-UL-AMIN

NO. 900

He stated, "during the days of occurrence, I was posted in the investigation staff of PS Cantonment, DIKhan. After registration of the case FIR No. 69, 22.01.2017, u/s 302/404/109/120-B/34 PPC, the investigation was entrusted to me wherein the complainant of the case had charged unknown accused for the murder of his father. During the course of investigation, CDR was obtained and found contacts between Mrs Riasat Begum and Irfan Ullah (her paramour). Mrs Riasat Begum was arrested who pleaded guilty before the competent court and disclosed the names of all other four accused as Irfan Ullah, Constable Bilal Hussain, target killers-Tauqeer and Akhtar. The investigation proved that accused Constable Bilal was in Iran for Zawari at the time of occurrence. Later on, accused Irfan was arrested who also disclosed the involvement of Constable Mohammad Bilal Hussain in the murder of Abdul Khaliq (husband of accused Riasat Begum). It is correct that Constable Mohammad Bilal Hussain was in Iran at the time of occurrence, but it was he, who had arranged and hired the target killers for the murder of deceased and had gone there for saving his skin."

Note: The Constable was given the opportunity of cross-examination but he put no question on the IO.

STATEMENT OF SECOND INVESTIGATING OFFICER ASI ZAMEER HUSSAIN:

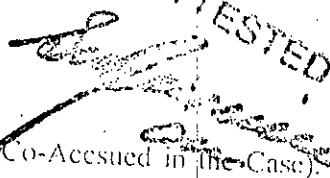
He said on oath, "on 23.05.2017 the investigation of the case was marked to me when I was posted as In-charge of investigation at PS Cantonment, DIKhan. On same day Constable Mohammad Bilal Hussain was also handed over to him as arrested accused. During

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ment was recorded u/s 161 CrPC wherein he stated that accused Irfan was his friend and the paramour of Mrs Riasat Begum (wife of Abdul Khaliq). Irfan wanted to kill Abdul Khaliq and marry his wife Riasat Begum. To materialize his plan, Irfan requested Bilal to search shooters for him to shoot Abdul Khaliq. Hence, Bilal arranged two target killers - Akhtar and Tauqeer to fulfill the plan of Irfan. As per programme the task was entrusted to Akhtar and Tauqeer while Bilal proceeded to Iran on 45-days sanctioned Ex-Pakistan Leave for saving himself from being incriminated. In the absence of Bilal, Akhtar and Tauqeer killed Abdul Khaliq. The abetment of Constable Bilal in the murder of Abdul Khaliq has also been corroborated by Mrs Riasat Begum in her statement u/s 161 and 164 CrPC. Moreover, Bilal himself has confessed in his statement u/s 161 CrPC that he had arranged a meeting of accused Irfan Ullah with target killers Akhtar and Tauqeer.

Note: Opportunity given. Cross nil.

FINDINGS

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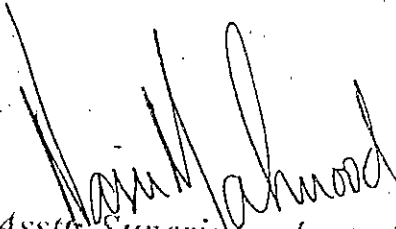
The accused Constable Bilal was friends with Irfan (Co-Accused in the Case). Irfan had affair with Riasat Begum wife of Abdul Khaliq. Both Irfan and Riasat Begum were unhappy on this fact and their illicit affairs continued even after her marriage. Irfan with the connivance of Riasat, decided to kill Abdul Khaliq and get married to Riasat Begum. For this, Irfan took the help of his friend Bilal. On the request and attractive offer of money by Irfan, Bilal hired two mercenary shooters/target killers (Akhtar and Tauqeer) to kill Abdul Khaliq. Bilal arranged a meeting of Irfan with Akhtar where the task was entrusted to Akhtar. Akhtar told Irfan that he would complete the task with the help of his friend Tauqeer. Irfan promised to pay Rs. 250,000 to the killers and Rs. 50,000 to Bilal as sweet. For saving his skin and avoiding incrimination, he proceeded to Iran on 14.01.2017 on 45-days Ex-Pakistan Leave. Abdul Khaliq was targeted and shot dead on 22.01.2017 by Akhtar and Tauqeer on the behest and connivance of troika - Irfan, Riasat and Bilal. After his termination, Irfan informed Bilal through messages on 09/10.02.2017 that the task had been completed by Akhtar and Tauqeer. On 14.02.2017 Bilal came to Pakistan with surety that the so called alibi would save him from the clutches of law. It was in his knowledge that it would, rather, prove his intention, abetment and involvement in the murder of Abdul Khaliq. After his return, he kept in contact with Irfan. Investigation of the case has connected all the missing links. The confessional statement of Riasat Begum, Irfan and Bilal corroborated by CDR and circumstantial evidences incriminate Constable Bilal in the murder of Abdul Khaliq. His role of abetment u/s 109 PPC is equivalent to that of a murderer. In other words his role is not less than that of target killers-Akhtar and Tauqeer. The so-called alibi is also a strong proof against him. He can't beguile the investigators and enquiry officers by the plea of his so-called alibi.



Despite the fact that accused Constable Mohammad Bilal Hussain No. 1855 was in Iran at the date and time of occurrence, yet he is the main accused of the murder of Abdul Khaliq as it was he, who had managed and hired target killers—Akhtar and Tauqeer—for Irfan and had got his commission of Rs. 50,000. He himself had gone to Iran with the intention to avoid his implication in the case by showing his alibi afterward. In a nutshell, all the cogent circumstantial, documentary and ocular evidences including the so-called alibi not only prove his abetment but also prove him the central accused of the murder of Abdul Khaliq, hence, he does not deserve any leniency and mercy.

RECOMMENDATIONS

Keeping the above facts and figures in view, I am fully satisfied that Constable Mohammad Bilal Hussain No. 1855 has rightly been dismissed from the police services as there is no room for the criminals and murderers in our esteemed department. Hence, being an enquiry officer of the de-novo enquiry, I recommend that the "Major Punishment" regarding his dismissal from police services may please be upheld.


Asstt. Superintendent of Police,
City Circle, Dera Ismail Khan

ATTESTED


Annex: "J" - 37-

FINAL SHOW CAUSE NOTICE

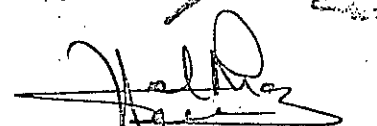
I, DISTRICT POLICE OFFICER, DI Khan as competent authority under the Khyber Pakhtunkhwa Police Rules 1975 amended-2014, do hereby served you Constable Muhammad Bilal Hussain, 1855 as follow.

1. (i) That consequent upon the completion of de-novo enquiry conducted against you by the Enquiry Officer for which you were given opportunity of hearing vide this office communicator No. 576-77/EC, dated 08.02.2019.
- (ii) On going through the findings and recommendations of the enquiry officer, the material on record and other connected papers including your defence before the Enquiry Officer.

I am satisfied that you have committed the following acts/omissions specified of the said rules.

You while posted at PS/City DI Khan, directly charged in case vide FIR No.69, dated 22.01.2017 u/s 302/34/404/109/120B-PPC PS/Cantt.

2. As a result thereof, I, DISTRICT POLICE OFFICER, DI Khan as competent authority have tentatively decided to impose upon you the penalty of Major punishment of the said rules.
3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you.
4. If no reply to this notice is received within 7-days of its deliver, in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.
5. The copy of finding of the enquiry officer is enclosed.


District Police Officer,
Dera Ismail Khan

ATTESTED



جواب بر فائل شوکا زٹولس بحریہ DPO صاحب ڈیرہ اسماعیل خان

منجانب کانٹیل محمد بلال حسین 1855

جناب عالی! من کانٹیل حسب ذیل جواب فائل شوکا زٹولس پیش کرتا ہے۔

۱۔ یہ کہ من کانٹیل کو جناب انکواری آفیسر صاحب نے شنوائی کا موقع ہرگز نہ دیا ہے بلکہ گواہان مندرجہ انکواری رپورٹ پر جرح کا موقع بھی نہیں دیا اور نہ ہی کاروائی انکواری من کانٹیل کے روبرو ہوئی بلکہ تمام کاروائی یکطرفہ طور پر پولیس رولز کا بالائے طاق رکھتے ہوئے عمل میں لائی گئی ہے اور وجوہات بیان کردہ انکواری آفیسر صاحب ناقابل فہم ہیں۔

۲۔ یہ کہ انکواری آفیسر صاحب کی دی گئی سفارشات اور Findings ناقابل فہم ہیں اور کسی قسم کا کوئی دستاویزی ثبوت انکواری آفیسر صاحب نے ہمراہ انکواری رپورٹ لف نہ کیا ہے بلکہ تمام کاروائی فرضی، مبنی بر قیاس آرائی برخلاف من کانٹیل عمل میں لاتے ہوئے سفارشات مرتب کی ہیں جو کہ قانون کی نظر میں قابل قبول نہ ہیں من کانٹیل نے تحریری جواب بمعہ دستاویزی ثبوت ہائے جناب انکواری آفیسر صاحب کو پیش کئے تھے جو کہ انکواری آفیسر صاحب نے اپنی فائل رپورٹ اسفارشات آنجناب کو پیش نہ کی ہیں جو کہ انکواری آفیسر صاحب کا یہ فعل بدینتی پر مبنی ہے اور من کانٹیل کو ناقابل تلافی نقصان پہنچانے کی کوشش ہے۔ من کانٹیل کی جانب سے تحریری جواب مورخہ 25/02/2019 معہ دستاویزات لف ہمراہ ہیں۔

۳۔ یہ کہ من کانٹیل مقدمہ نمبر 69 مورخہ 22/01/2017 تھا نہ کینٹ ڈی آئی خان میں براہ راست نامزد نہیں تھا بلکہ بعد از تاخیر ملی بھگت و ساز باز کے ذریعے ملزمان مقدمہ نمبر 69 نے کسی بلال نامی کانٹیل کا نام لیا تھا جو کہ محکمہ نے من کانٹیل کو قربانی کا بکرا بنایا گیا ہے جبکہ محکمہ پولیس ڈیرہ اسماعیل خان میں بلال نامی سینکڑوں اہلکاران موجود ہیں۔ من سائل کو ناجائز و بے گناہ طور پر مورخہ 08/04/2017 بذریعہ مقامی پولیس تھانہ چھاؤنی ڈی آئی خان خفیہ مقام پر مقید رکھا اور اسی عرصہ میں من کانٹیل کے خلاف یکطرفہ کاروائی عمل میں لا کر ملازمت سے برطرف کر دیا جس کے خلاف من کانٹیل نے اپنی دادری کیلئے خیر پختہ خواہ سروس ٹریبیونل پشاور میں سروس ایپل دائر کی جو کہ مورخہ 28/11/2018 کو منظور ہوئی اور آنجناب کو اندر 90 یوم انکواری مکمل کرنے کی ہدایات جاری کی گئی جو کہ جاری کردہ انکواری زائد المعیاد ہو چکی ہے بدین وجہ حکم عدالت مورخہ 28/11/2018 قطعی حیثیت اختیار کر چکا ہے۔

ATTESTE

۴۔ یہ کہ مقدمہ مذکورہ بالا میں عدالت جناب ایڈیشنل سیشن جج اڈیرہ اسماعیل خان نے من کانسیبل کے خلاف فرد جرم عائد کر رکھی جو مقدمہ کا ٹرائل زیر تجویز ہے اور من کانسیبل برصمانت ہوں اور مقدمہ کا فیصلہ بحق من کانسیبل ہونے کی قوی امکانات موجود ہیں بدیں وجہ قبل از فیصلہ فوجداری مقدمہ اثرائل آنجناب کی جانب سے من کانسیبل کے خلاف حکمانہ کارروائی قرین انصاف نہیں ہے بلکہ ناجائز غلت کا مظاہرہ ہے۔ مزید یہ کہ آنجناب پہلے بھی من کانسیبل کے خلاف انکوائری آفیسر رہ چکے ہیں اور من کانسیبل کے خلاف رپورٹ کر چکے ہیں اس لئے اب من کانسیبل کا مقدمہ سننایا کوئی آرڈر بر خلاف من کانسیبل کرنا قدرتی اصولوں کے خلاف ہوگا۔

۵۔ من سائل کو جناب انکوائری آفیسر صاحب نے کسی قسم کی شنوائی و گواہان مبینہ پر جرح کا موقع نہیں دیا ہے اور مقدمہ میں ملوث ملزمان کے بیانات بھی قلمبند نہیں کئے ہیں اور محض سنی سنائی باتوں پر یقین کرتے ہوئے سائل کے خلاف سخت قسم کی سفارشات آنجناب کو پیش کی ہیں جو کہ ہرگز حقیقت پر مبنی نہ ہیں مزید یہ کہ من کانسیبل کے خلاف جناب انکوائری آفیسر صاحب نے Plea of Alibi کو یکسر نظر انداز کرتے ہوئے من کانسیبل کو مقدمہ کا مرکزی ملزم قرار دیا ہے جبکہ معاملہ تاحال عدالت ٹرائل کورٹ میں زیر سماعت ہے بدیں وجہ جناب انکوائری آفیسر صاحب کی طرف سے جاری کردہ سفارشات کی کوئی قانونی حیثیت نہ ہے اور ایک باختیار عدالتی کارروائی میں خلل ڈالنے کی کوشش ہے۔ علاوہ ازیں جناب انکوائری آفیسر صاحب کی Findings حکم مورخہ 02/06/2017 صدرہ ازاں عدالت جناب ایڈیشنل سیشن جج اڈی آئی خان سے متصادم ہیں بدیں وہ بھی انکوائری آفیسر صاحب کی فائنڈنگز کو داخل دفتر فرمانا عین قرین انصاف ہے۔

لہذا استدعا ہے کہ بمنظوری جواب ہذا، سفارشات و Findings ازاں انکوائری آفیسر صاحب کو کالعدم قرار دیتے ہوئے من کانسیبل کے خلاف جاری شدہ حکمانہ کارروائی ہائے کو بلا مزید کارروائی داخل دفتر فرمایا جائے۔

مورخہ 22/04/2019

22/04/19

کانسیبل محمد بلال حسین بیلٹ نمبر 1855۔۔۔۔۔ سائل

ATTESTED

نوٹ:- دستاویزی ثبوت ہمراہ جواب لف ہیں۔

صفحہ نمبر 1 تا 16

This order is aimed to dispose-off the departmental proceedings conducted against Constable Muhammad Bilal Hussain No.1855 of this District Police who was dismissed from service vide this office Order Book No.944, dated 19.05.2017, but on acceptance of service appeal No.47/2018 vide judgment dated 28.11.2018 of KP Service Tribunal Peshawar, he was reinstated in service provisionally for the purpose of de-novo enquiry, vide this office Order/Endst: No.3542/EC, dated 02.01.2019.

He was served with charge sheet/statement of allegations, on the charges that he while posted in PS City DI Khan directly charged in case vide FIR No.69, dated 22.01.2017 u/s 302/34/404/109/120-B PPC PS Cantt.

An enquiry was conducted into the matter through Mr. Nasir Mahmood ASP City Circle DI Khan, under Police Rules-1975, ammended-2014. The Enquiry Officer submitted his finding report in which he stated that Constable Muhammad Bilal Hussain No.1855 has rightly been dismissed from the Police Services as there is no room for the criminals and murderers in our esteemed department. Enquiry Officer further recommended that the "Major Punishment" regarding his dismissal from Police services may please be upheld.

He was also served with Final Show Cause Notice and reply submitted by defaulter Constable was examined thoroughly and found unsatisfactory.

He was summoned in Orderly Room to provide lawful opportunity of hearing. He appeared in Orderly Room on April 24th 2019, but failed to give any plausible explanation and also had nothing to offer in his defence.

Foregoing in view of the finding and recommendations of the Enquiry Officer, the undersigned came to the conclusion that the charges of misconduct stand proved against him beyond any shadow of doubt.

Therefore, in the light of above, I, SALIM RIAZ, District Police Officer, DI Khan in exercise of powers conferred upon me under the Police Rules 1975 ammended-2014, upheld his Major Punishment regarding dismissal from Police services, with immediate effect.

OB 743
OT 02-05

Constable Bilal Hussain No. 1855
District Police Officer,
Dera Ismail Khan

No.2159-66 IEC,

- Copy to:
- 1) The Inspector General of Police, Khyber Pakhtunkhwa Peshawar
 - 2) The Deputy Inspector General of Police Enquiry & Inspection KP Peshawar w/r to his office letter No.1418/CPO/IAB/C&E, dated 08.04.2019
 - 3) The Regional Police Officer, DI Khan Region
 - 4) The Deputy Superintendent of Police, Legal DI Khan
 - 5) Office Superintendent, E-IV, CPO Peshawar
 - 6) The District Account Officer DI Khan
 - 7) Pay Officer DPO Office DI Khan
 - 8) OHC DPO Office DI Khan

SALIM RIAZ
District Police Officer,
Dera Ismail Khan

RECEIVED
D.S.P / Legal
D. I. Khan
21/6
/019

بخدمت جناب ریجنل پولیس آفیسر صاحب ریجن ڈیرہ اسماعیل خان

محکمانہ اپیل برخلاف حکم برطرفی مورخہ 29/04/2019، OB#743 مورخہ 02/05/2019

مصدرہ ازاں ڈسٹرکٹ پولیس آفیسر ضلع ڈیرہ اسماعیل خان جس کی رو سے من کانٹریبل محمد بلال حسین 1855 کو ملازمت سے بغیر کسی قانونی وجہ و بغیر شنوائی کا موقع دئے برطرف فرمایا گیا۔

جناب عالی! من کانٹریبل حسب ذیل عرض رساں ہے۔

۱۔ یہ کہ من کانٹریبل مورخہ 26/07/2007 کو محکمہ پولیس بھرتی ہوا اور افسران بالا کے خوشنودی و قانون کے مطابق اپنی ڈیوٹی سرانجام دیتا چلا آیا ہے اور کبھی بھی افسران بالا کو کسی قسم کی شکایت کا موقع نہیں دیا۔ اس نسبت سائل کا سروس ریکارڈ واضح ہے۔

۲۔ یہ کہ من کانٹریبل کے خلاف ایک جھوٹی دعویداری کو بنیاد بنا کر جناب SP رورل ڈیرہ اسماعیل خان نے ایک یکطرفہ انکوائری عمل میں لا کر من سائل کے خلاف فائنڈنگز اس وقت کے DPO صاحب یا سر آفریدی صاحب کو پیش کیں جس کی بنیاد پر من سائل کو بدوران غیر قانونی حراست مورخہ 19/05/2017 کو ملازمت سے برطرف کر دیا گیا جس کے خلاف من سائل نے محکمانہ اپیل ہائے دائر کیں جو کہ خارج ہوئیں جس کے بعد من سائل نے عدالت جناب سروس ٹریبیونل خیبر پختونخواہ پشاور میں سروس اپیل نمبر 2018-47 دائر کی۔ جو کہ بروئے حکم مورخہ 28/11/2018 کو معزز سروس ٹریبیونل KPK نے منظور فرماتے ہوئے من سائل کو دوبارہ ملازمت بحالی کا حکم صادر فرمایا جو کہ سابقہ DPO صاحب نے من سائل کو ملازمت پر مورخہ 02/01/2019 کو بحال فرمایا۔ نقولات لف ہیں۔

۳۔ یہ کہ من سائل کے خلاف دوبارہ De-novo انکوائری مبینہ طور پر عمل میں لائی گئی اور انہی بے بنیاد الزام کو بنیاد بنا کر من سائل کو دوسری مرتبہ بروئے حکم مورخہ 29/04/2019، OB#743 مورخہ 02/05/2019 ملازمت سے برطرف کر دیا گیا۔ نقل حکم برطرفی لف ہیں۔

۴۔ یہ کہ من سائل بعد وصولی حکم برطرفی مورخہ 29/04/2019 درج ذیل وجوہات کی بناء پر آئینہ کو محکمانہ اپیل پیش کر رہا ہوں۔
وجوہات اپیل:-

۱۔ یہ کہ من سائل کو مبینہ De-novo انکوائری میں جناب انکوائری آفیسر صاحب نے شنوائی کا موقع ہرگز نہ دیا ہے بلکہ گواہان مندرجہ انکوائری رپورٹ پر جرح کا موقع بھی نہیں دیا اور نہ ہی کاروائی انکوائری من کانٹریبل کے

ATTESTED
[Signature]

روہرو ہوئی بلکہ تمام کارروائی یکطرفہ طور پر پولیس رولز کا بالائے طاق رکھتے ہوئے عمل میں لائی گئی ہے اور وجوہات بیان کردہ انکوائری آفیسر صاحب نا قابل فہم ہیں۔

۲۔ یہ کہ انکوائری آفیسر صاحب کی دی گئی سفارشات اور Findings نا قابل فہم ہیں اور کسی قسم کا کوئی دستاویزی ثبوت انکوائری آفیسر صاحب نے ہمراہ انکوائری رپورٹ لف نہ کیا ہے بلکہ تمام کارروائی فرضی، مبنی برقیاس آرائی برخلاف من کانشیل عمل میں لاتے ہوئے سفارشات مرتب کی ہیں جو کہ قانون کی نظر میں قابل قبول نہ ہیں من کانشیل نے تحریری جواب بمعہ دستاویزی ثبوت ہائے جناب انکوائری آفیسر صاحب کو پیش کئے تھے جو کہ انکوائری آفیسر صاحب نے اپنی فائل رپورٹ اسفارشات DPO صاحب کو پیش نہ کی ہیں جو کہ انکوائری آفیسر صاحب کا یہ فعل بدنیقی پر مبنی ہے اور من کانشیل کو نا قابل تلافی نقصان پہنچانے کی کوشش تھی جو کہ جناب DPO صاحب نے یکسر طور پر نظر انداز کرتے ہوئے من سائل کو شنوائی کا موقع دیئے بغیر ملازمت سے برطرف کر دیا ہے جو کہ یہ عمل قدرتی انصاف کے اصولوں کے منافی ہے اور حکم متدعو یہ میں بیان کردہ وجوہات یہ کہ مورخہ 24/04/2019 کو من سائل کو Orderly Room میں بلا کر شنوائی کا موقع دیا گیا، ہرگز درست نہ ہے کیونکہ من سائل مذکورہ تاریخ کو حاضر ڈیوٹی تھا جس کی نسبت نقل مدروز نامچہ پولیس لائن لف ہمراہ ہے۔

۳۔ یہ کہ من کانشیل مقدمہ نمبر 69 مورخہ 22/01/2017 تھا نہ کینٹ ڈی آئی خان میں براہ راست نامزد نہیں تھا بلکہ بعد از تاخیر ملی بھگت و ساز باز کے ذریعے ملزمان مقدمہ نمبر 69 نے کسی بلال نامی کانشیل کا نام لیا تھا جو کہ محکمہ نے من کانشیل کو قربانی کا بکرا بنایا گیا ہے جبکہ محکمہ پولیس ڈیرہ اسماعیل خان میں بلال نامی سینکڑوں اہلکاران موجود ہیں۔ من سائل کو نا جائز و بے گناہ طور پر مورخہ 08/04/2017 بذریعہ مقامی پولیس تھا نہ چھاونی ڈی آئی خان خفیہ مقام پر مقید رکھا اور اسی عرصہ میں من کانشیل کے خلاف یکطرفہ کارروائی عمل میں لا کر ملازمت سے برطرف کر دیا اور اب دوبارہ مبینہ De-Novo انکوائری کر کے من سائل کو Bent Upon پالیسی پر عمل درآمد کرتے ہوئے اور Competent Court of Law کے فیصلے کا انتظار کئے بناء من سائل کو عجلت میں محض قیاس آرائی کی بنیاد پر ملازمت سے برطرف کر دینا ہرگز قانونی عمل نہ ہے بلکہ سروس قواعد و ضوابط کے بھی منافی ہے۔ برطرفی حکم سائل ہرگز قابل پزیرائی نہ ہے بلکہ قابل منسوخی ہے۔

۴۔ یہ کہ جناب DPO صاحب من سائل کے خلاف سال 2017 میں مبینہ انکوائری عمل میں لا چکے تھے اور Major Panolty قدرتی انصاف کے اصولوں کو بالائے طاق رکھ کر ملازمت سے برطرف کرنا ہرگز قانونی عمل نہ ہے بلکہ بلا اختیار عمل ہے اور قابل منسوخی ہے۔ علاوہ ازیں من سائل کے خلاف سفارشات کو بنیاد بنا کر برطرفی حکم یا کسی بھی قسم کا حکم جناب DPO صاحب نہ کر سکتے تھے جو کہ اس وجہ سے بھی برطرفی حکم قابل منسوخی ہے۔

ATTESTED

 [Illegible text]

۵۔ یہ کہ حکم معزز عدالت سروس ٹریبیونل کو غلط طور پر تشریح کیا گیا ہے اور بے بنیاد و تاخیر کے ساتھ مبینہ De-novo انکوائری کر کے حکم عدالت کی بھی توہین کی گئی ہے۔ بدیں وجہ بھی برطرفی حکم مورخہ 29/04/2019 قابل منسوخی ہے۔

۶۔ یہ کہ انکوائری آفیسر کی فائنڈنگز اور Recommendations بے بنیاد الزامات کا شاخسانہ ہیں اور محض قیاس آرائی پر مبنی ہیں بدیں وجہ برطرفی حکم قابل پزیرائی نہ ہے بلکہ قابل منسوخی ہے۔

۷۔ یہ کہ انکوائری آفیسر صاحب اور جناب DPO صاحب نے معزز عدالت ا-ASJ ڈی آئی خان کے حکم ضمانت کو یکسر نظر انداز کرتے ہوئے سائل کو ملازمت سے برطرف کر دیا ہے جو کہ باختیار عدالتی کارروائی میں خلل ڈالنے کی کوشش ہے مبینہ مقدمہ نمبر 69/2017 تھانہ کینٹ ڈی آئی خان کا ٹرائل تا حال زیر تجویز معزز عدالت ہے اور معزز عدالت کی Findings/Short Order ضمانت حکم مورخہ 02/06/2017 کے مطابق من سائل بے گناہ و نا کردہ جرم ہوں۔ نقولات نسبت ٹرائل لف ہمراہ ہیں۔

۸۔ یہ کہ من سائل 12/13 سال تک محکمہ پولیس میں فرائض سرانجام دے چکا ہے۔ سائل غریب خاندان کا چشم و چراغ ہے اور اپنے خاندان کا واحد کفیل ہے اور نا کردہ گناہ ہے ایسے جرم کی نسبت کبھی سوچ بھی نہیں سکتا۔ بوقت مبینہ وقوع من سائل محکمہ پولیس کی اجازت سے ایران گیا ہوا تھا جس کو معزز عدالت ا-ASJ ڈیرہ اسماعیل خان نے بھی بوقت ضمانت تسلیم کیا ہے۔ بدیں وجہ برطرفی کو منسوخ فرمانا عین قرین انصاف ہے۔

لہذا استدعا ہے کہ بمنظوری اپیل ہذا حکم مورخہ 29/04/2019، OB#743 مورخہ 02/05/2019 مصدرہ ازاں DPO صاحب کو منسوخ/کالعدم فرماتے ہوئے من سائل کو دوبارہ ملازمت پر بحال فرماتے ہوئے سائل کو Back Benefits بھی عطا فرمائیں جانے کا حکم صادر فرمایا جائے۔ من سائل تازیت دعا گو

مورخہ 06/05/2019



Ex کا ٹیپیل محمد بلال حسین بیلٹ نمبر 1855۔۔۔۔۔ سائل

نوٹ:- دستاویزی ثبوت ہمراہ جواب لف ہیں۔

رہے گا۔
ATTESTED




Annex: L-44

OFFICE OF THE
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN
REGION

No. 2958 /ES,

Dated DI Khan the 13/06/2019

D/No. 148/EC
18-06-2019

ORDER

My this order will dispose-of the appeal preferred by Ex Constable Muhammad Bilal Hussian, 1855 of District DIKhan wherein he has prayed for setting aside the order of major punishment of dismissal from service imposed to him by DPO DIKhan vide OB No. 743 dated 24.04.2019 after found him guilty of the following allegations:-

He while posted at Police Station City DI Khan was involved in case FIR No. 69 dated 22.01.2017 u/s 302/34/404/109/120-B of Police Station Cantt: DI Khan.

His service record, inquiry papers and comments were received from DPO DIKhan which was perused and it was found that he was earlier awarded major punishment of dismissal from service by DPO DIKhan vide OB No. 944 dated 19.05.2017. He preferred appeal before the appellate authority which was rejected being meritorious vide this office order No. 3657/ES dated 13.09.2019. The appellant then preferred appeal before the competent authority which was also rejected vide CPO Peshawar order, Endst: No. S/7491-97/17 dated 21.01.2017. Later-on, he lodged a Service Appeal No. 47/2018 before the Khyber Pakhtunkhwa Service Tribunal Peshawar. The KP Service Tribunal Peshawar accepted his appeal and directed the respondents to conduct de-novo enquiry within a period of ninety days from the date of receipt of judgment vide dated 28.11.2018. After proper approval of the competent authority, DPO DIKhan has reinstated the appellant in service provisionally for conducting de-novo enquiry. The appellant was charge sheeted and de-novo enquiry into the matter was conducted by Mr. Nasir Mehmood, ASP, City Circle DIKhan who submitted his findings report wherein stated that the defaulter constable has rightly been dismissed from service as there is no room for the criminals and murderers in our esteemed department and recommended to uphold the major punishment of dismissal to the appellant. He was issued Final Show Cause Notice. Reply to the same was received and found unsatisfactory by DPO DIKhan. He was also provided opportunity of personal hearing by DPO DIKhan in orderly room on 24.04.2019 but he failed to give any plausible explanation. Hence DPO DIKhan has passed the order dated 24.04.2019.

Aggrieved from the impugned order passed by DPO DIKhan, the appellant submitted the instant appeal on 06.05.2019 which was sent to DPO DIKhan for comments and to provide his service record vide this office memo: No. 2437/ES dated 09.05.2019. DPO DIKhan has submitted the comments and service record of the appellant vide his office memo: No. 2506/EC dated 20.05.2019, wherein appeal of the appellant was defended on cogent grounds.

Keeping in view the above, I can safely infer from the above that the appellant is incorrigible and his appeal is devoid of merit. There is no need of interference in the impugned order, therefore, FEROUZ SHAH, PSP, Regional Police Officer, DI Khan, in exercise of powers vested in me under Rule 11 clause 4(a) of Khyber Pakhtunkhwa Police Rules 1975 (amended 2014), hereby reject his appeal and endorse the punishment awarded to him by DPO DIKhan.

ATTESTED
[Signature]

Attested

ORDER ANNOUNCED

1) Copying fee announced on 21.06.2019
2) Judgement not for copying
3) Name of copyist
4) Copy completed on 18.06.2019
5) Copy delivered on 21.06.2019

Constable Bilal Hussian No: 1855 (FEROUZ SHAH) PSP
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN

D.S.P / Legal
D.I. Khan
21/06/19

No. 2959 /ES

Copy of above sent to the DPO DIKhan for necessary action with reference to his office memo: No. 2506/EC dated 20.05.2019 alongwith 01-Service Roll & 01-Enquiry File of the appellant.

OB/E/C/office
- for decision. OB 1067
Dt 20-6-19

(FEROUZ SHAH) PSP
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN

Annex "M" - 45



OFFICE OF THE
SUPERINTENDENT OF POLICE,
RURAL DIVISION, DERA ISMAIL KHAN

No. 741 / SP(R) Dated DIKhan the

18/05/2017.

To: The District Police Officer,
Dera Ismail Khan.

Subject: DISCIPLINARY ACTION AGAINST CONSTABLE MOHAMMAD BILAL
HUSSAIN NO. 65

Kindly refer to your office Endst: No. 1120-21/EC, dated 20.04.2017.

Respected Sir,

In pursuance of your kind order, the undersigned completed enquiry in the above cited case. Its step-wise detail is given below:

STATEMENT OF ALLEGATIONS:

Constable Mohammad Bilal Hussain No. 65 while posted at Police Station City DIKhan, was directly charged in case vide FIR No. 69; dated 22.01.2017; u/s 302/34/404/109/120B PPC PS/Cantt: DIKhan. This act on his part amounts to gross misconduct which is punishable under the rules.

SUSPENSION ORDER:

Constable Mohammad Bilal Hussain No. 65 of District DIKhan has been placed under suspension vide OB No. 734, dated 20.04.2017 after he was charged directly in case FIR No. 69; dated 22.01.2017 registered u/s 302/34/404/109/120B PPC in PS/Cantt: DIKhan.

PROCEEDINGS

Search was made to trace the accused Constable Mohammad Bilal Hussain No. 65 but in vain as he was found absconder. The record of PS City and Cantt: DIKhan was also checked; the case file of investigation was also perused; the matter was discussed with the Investigating Officer ASI Zakki-ud-Din of PS/Cantt: at length; the statement of I.O was got recorded. All other relevant documents were collected and placed on the enquiry file in hand.

STATEMENT OF THE I.O:

The Investigation Officer ASI Zakki-ud-Din of PS/Cantt: stated in his statement that he was the I.O of the case FIR No. 69; dated 22.01.2017; registered u/s 302/34/109/404/120B PPC PS/Cantt: wherein one Abdul Khaliq had been shot dead by some unknown accused and the report had been lodged by one Mohammad Sulaiman Nasir, the son of deceased. During the course of investigation it had been transpired that Mst: Riyasat Begum w/o the deceased Abdul Khaliq and her paramour Irfan Ullah, the friend of Irfan Ullah named Mohammad Bilal (the constable under enquiry) and two hired target killers Akhtar Abbas and Tauqeer Abbas had been found equally involved in the murder of Abdul Khaliq. The accused Mst: Riyasat Begum, during her confessional statement on 10.04.2017 before the court u/s 364/164 CrPC, had nominated the co-accused namely: Irfan Ullah, Constable Mohammad Bilal Hussain No. 65, Akhtar and Tauqeer and charged them for

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the murder of her husband on her behest and connivance. She had also confessed that she had paid Rs. One lakh to her paramour Irfan for the murder of her husband after his death. The confessional statement of Mst: Riyasat Begum u/s 161 CrPC and 364/164 CrPC are attached herewith for ready reference. The I.O added that the complainant of the FIR Mohammad Sulaiman Nasir son of the deceased had also charged his mother Mst: Riyasat Begum, her paramour Irfan Ullah, the co-accused Constable Mohammad Bilal Hussain No. 65 and the hired killers: Akhter Muneer and Tauqeer Abbas for the murder of his father. The statement of Mohammad Suleman recorded u/s 164 is also annexed with this file.

ABSCONDENCE OF CONSTABLE MOHAMMAD BILAL HUSSAIN NO. 65

He made himself absent from his lawful duty vide DD No. 22, dated 10.04.2017 of PS/City where he was employed. It is the same date by which he was charged by Mst: Riyasat Begum for the murder of her husband (Abdul Khaliq) along with some other accused during her confessional statement u/s 364/164 CrPC.

The legal proclamation process has been completed against Constable Mohammad Bilal Hussain No. 65. He has been declared proclaimed offender now. Photocopies of warrant u/s 204 CrPC, proclamation process u/s 87 CrPC and statement of the DFC Khalid Waheed No. 1791 of PS/Cantt: DIKhan are appended herewith this enquiry file as a solid documentary proof.

CONCLUSION OF THE INVESTIGATION

Photocopy of the challan form submitted u/s 512 CrPC on 29.04.2017 is placed on this enquiry file. The co-accused Mst: Riyasat Begum is in Jail while Constable Mohammad Bilal Hussain No. 65 is proclaimed offender. The murder case of deceased Abdul Khaliq has been proved against all the five accused namely:

- 1) Mst: Riyasat Begum (w/o the deceased) ✓
- 2) Irfan Ullah (Paramour of Riyasat Begum) ✓
- 3) Constable Mohammad Bilal Hussain No. 65 (Friend of Irfan Ullah)
- 4) Akhter Muneer (the hired killer)
- 5) Tauqeer Abbas (the hired killer)

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EX-PAKISTAN LEAVE OF CONSTABLE BILAL HUSSAIN NO. 65

Though Constable Mohammad Bilal Hussain No. 65 was not present in Pakistan during the days of occurrence i.e the murder of Abdul Khaliq. His ex-Pakistan leave for 45 days had been sanctioned vide OB No. 84, dated 09.01.2017 i.e 13 days before the date of occurrence. He had been told to have gone to Iran. But this absentia or alibi proves his mala fide and involvement in the murder of Abdul Khaliq u/s 109 and 34 PPC etc. It was his futile scheme and plan to save his skin from the noose of law and is proving as evidence against him.

LETTER OF THE SSP INVESTIGATION DIKHAN

The SSP Investigation DIKhan has issued a letter No. 3031, dated 18.04.2017 to the DPO DIKhan for the arrest and departmental proceedings against Constable Mohammad Bilal Hussain No. 65. Duplicate of the letter is attached herewith upon which this enquiry has been initiated.

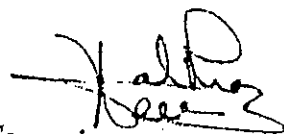
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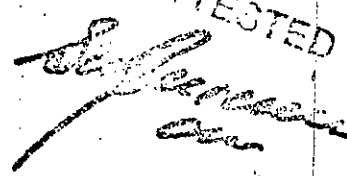
CONCLUSION:

Constable Mohammad Bilal Hussain No. 65 is involved in the murder case of Abdul Khaliq vide FIR No. FIR No. 69; dated 22.01.2017; registered u/s 302/34/109/404/120B PPC in PS/Cantt. From the investigation he has been proved guilty and has been declared as proclaimed offender. There is no chance of his appearance in the near future. As per investigation, it was he who had hired the target killers for the murder of Abdul Khaliq on the demand of Mst: Riyasat Begum's paramour, Irfan Ullah. The case is based on very strong and cogent proofs against him. There is no vacancy for the killers of innocent citizens in Police Department.

RECOMMENDATIONS

Keeping the above facts and figures in view it has been proved that Constable Mohammad Bilal Hussain No. 65 is a murderer and there is no seat, no vacancy and no accommodation for a murderer in Police Department. Hence, he is recommended for Major Punishment of Dismissal from police services with effect from the date of his absence i.e 10.04.2017.


Superintendent of Police,
Rural Division,
Dera-Ismaail Khan

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DISCIPLINARY ACTION

I, DISTRICT POLICE OFFICER, Dera Ismail Khan as a competent authority am of the opinion that you Constable Bilal Hussain No.65 have rendered yourself liable to be proceeded against and committed the following acts/omissions within the meaning of the Khyber Pakhtunkhwa Police Rules 1975 amended-2014.

STATEMENT OF ALLEGATION

You while posted at PS/City DIKhan, directly charged in case vide FIR No.69 dated: 22.01.2017 u/s 302/34/404/109/120B-PPC PS/Cantt: DIKhan. This act on your part amounts to gross misconduct which is punishable under the rules.

Hence the statement of allegation.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation SP (Rural) Dera Ismail Khan is appointed as enquiry officer to conduct proper departmental enquiry under Police Rules 1975 amended-2014.

3. The enquiry officer shall in accordance with the provision of the ordinance, provide reasonable opportunity of the hearing to the accused, record its findings and make, within ten days of the receipt of this order recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date time and place fixed by the enquiry officers.

District Police Officer,
Dera Ismail Khan

20-04-2017

No. 112.0-2.1 /EC Dated DIKhan the

Copy to: SP (Rural)

1. SP (Rural) Dera Ismail Khan. The enquiry officer for initiating proceeding against the defaulter under the provision of Khyber Pakhtunkhwa Police Rules 1975 amended-2014, with the direction to complete the enquiry within 10-days. Enquiry papers containing 04 pages are enclosed.
2. Constable Bilal Hussain No.65 with the direction to appear before the E.O on the date, time and place fixed by the E.O, for the purpose of enquiry proceeding.

District Police Officer,
Dera Ismail Khan

17/5/17

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CHARGE SHEET

Where as, I am satisfied that a formal enquiry as contemplated by Khyber Pakhtunkhwa Police Rules 1975 amended-2014 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation if established would call for a major penalty as defined in rules-4(i)(B) of the aforesaid rules.

AND THEREFORE, as required by Police Rules 6(1) of the aforesaid rules, I DISTRICT POLICE OFFICER Dera Ismail Khan hereby charge you Constable Bilal Hussain No.65 with the misconduct on the basis of the statement attached to this Charge Sheet.

AND, I, hereby direct you further under rules 6(i)(B) of the said rules to put in written defence with in 7-days of receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state at the same time whether you desire to be heard in person or otherwise.

AND, in case, your reply is not received within the prescribed period, without sufficient cause, it would be presumed that you have no defence to offer and that Ex-parte proceeding will be initiated against you.

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District Police Officer,
Dera Ismail Khan

[Signature]
District Police Officer
Dera Ismail Khan
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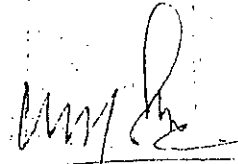
REFERENCE ATTACHED

Constable Bilal Hussain No.65 of this District Police was served with charge sheet and statement of allegation on the charges that he while posted in PS/City DIKhan, directly charged in case vide FIR No.69, dated 22.01.2017 u/s 302/34/404/109/120-B PS/Cantt: DIKhan.

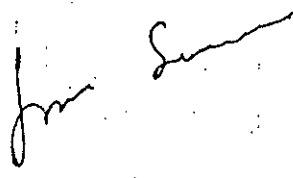
Mr. Salceem Riaz Acting SP/Rural DIKhan was appointed as Enquiry Officer with the directions to conduct proper Departmental Enquiry against him and submit his finding report within stipulated period. The Enquiry Officer submitted his finding report in which he stated that keeping the above facts and figures in view it has been proved that defaulter constable is a murderer and there is no seat, no vacancy and no accommodation for a murderer in Police Department. Hence, he is recommended for major punishment of Dismissal from Police service with effect from the date of his absence i.e. 10.04.2017 vide "F/A".

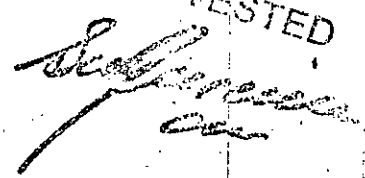
Submitted for order please.

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WORTHY DPO/DIKHAN.

Dismiss for Sum 

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statement on 10.04.2017 before the court u/s 364/164 CrPC, had nominated the co-accused namely: San Ullah, Constable Mohammad Bilal Hussain No. 65, Akhtar and Tauqeer and charged them for

میرزا محمد نورانی زوالفقار ۱۹۵۰/۱۱۱۵ جولہ ۰۱-۰۷-۰۴-۰۸ صوبہ ۰۸-۴۰=۵۱
 درجہ اول میں صوبہ کافر کے لیے سزا مندوبی کی ہے جس میں صوبہ کافر کے لیے
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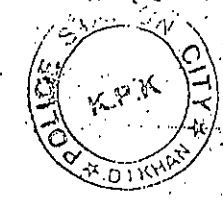
میرزا محمد نورانی زوالفقار ۱۹۵۰/۱۱۱۵ جولہ ۰۱-۰۷-۰۴-۰۸ صوبہ ۰۸-۴۰=۵۱
 درجہ اول میں صوبہ کافر کے لیے سزا مندوبی کی ہے جس میں صوبہ کافر کے لیے
 کافر و دیگر صوبہ کے لیے سزا مندوبی کے لیے سزا مندوبی کے لیے سزا مندوبی کے لیے
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محمد علی
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 ۲۶-۱۱-۱۸

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 Signature

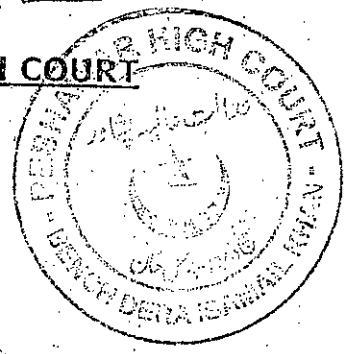
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 ۲۶-۱۱-۱۸



BEFORE THE HONOURABLE PESHAWAR HIGH COURT

BENCH DERA ISMAIL KHAN



Writ Petition No. _____/2019

Muhammad Bilal Hussain son of Irshad Hussain r/o Dewala, Near Haidry Masjid Tehsil & District Dera Ismail Khan. Police Constable Beit#1855.

..... **Petitioner**

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Dera Ismail Khan Region, D.I.Khan.
4. District Police Officer, Dera Ismail Khan.

..... **Respondents.**

WRIT PETITION UNDER ARTICLE, 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISATN 1973.

Note: That the addresses of the Parties given in the heading of the Petition are true and correct for the purpose of service.

Prayer:

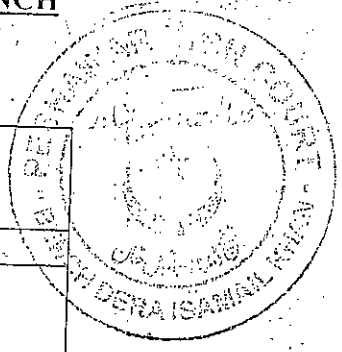
On acceptance of the instant writ petition an appropriate writ may please be issued declaring the initiation of departmental proceedings vide final show cause notice received on 19/04/2019 as illegal, unlawful, without lawful authority and in violation of the judgment and order dated 28/11/2018 of the

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REGISTERED
30-04-19
EXAMINED
Peshawar High Court
D.I.Khan Bench

IN THE PESHAWAR HIGH COURT, D.I. KHAN BENCH

FORM OF ORDER SHEET



Date of order or proceedings (1)	Order or other proceedings with signature of Judge(s). (2)
30.4.2019.	<p><u>C.M. No.531-D/2019 in</u> <u>W.P. No.473-D/2019.</u></p> <p><u>Present:-</u> Muhammad Waqar Alam, Advocate for the petitioner.</p> <p>***</p> <p>Notice to the other side for a date to be fixed before upcoming D.B.</p> <p style="text-align: right;"><u>JUDGE</u></p> <p>G.R.No. <u>2181</u></p> <p>Application Received on <u>30-04-19</u></p> <p>Copying of the order <u>06 page</u></p> <p>No of pages <u>04</u></p> <p>Cost <u>24/-</u></p> <p>Copy to the <u>30-04-19</u></p> <p>Copy to the <u>30-04-19</u></p> <p>3. Date of <u>30-04-19</u></p>

ok
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Kifayat/*

(S.B)

Hon'ble Mr. Justice S.M. Attique Shah

Notified to the other side
30-04-19
Peshawar High Court, D.I. Khan Bench
Attique Shah

PESHAWAR HIGH COURT, D.I.KHAN BENCH

FORM OF ORDER SHEET

Date of Order or proceedings (1)	Order or other proceedings with signature of Judge(s). (2)
07.5.2019	<p><u>W.P.No.473-D/2019 (M) with C.M.No.531-D/2019 (N).</u></p> <p><u>Present:</u> Muhammad Waqar Alam, Advocate for the petitioner</p> <p>Asstt; A.G for respondents.</p> <p>***</p> <p><u>S.M. ATTIQUE SHAH, J.-</u> After arguing the case at certain length, the learned counsel for the petitioner requested for withdrawal of the instant petition in order to approach the proper forum.</p> <p>2. In view of above, the instant petition is dismissed as withdrawn. However, the petitioner is at liberty to approach the proper forum, if he is so advised.</p> <p><u>Announced.</u> <u>Dt:07.5.2019.</u></p> <p style="text-align: right;"><u>JUDGE</u></p> <p style="text-align: right;"><u>JUDGE</u></p>

Handwritten initials/signature

Habib/*

(DB)

Hon'ble Mr. Justice S.M. Attique Shah
Hon'ble Mr. Justice Shakeel Ahmad

-/-

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA DERA ISMAIL KHAN

Service Appeal No. 882/2019
Next Date of hearing 25/03/2020
Before Double Bench Camp Court Dera Ismail Khan.

Muhammad Bilal Hussain

Versus

Govt. of KPK and others

REJOINDER FROM APPELLANT IN WRITTEN REPLY OF
RESPONDENT No. 1 to 3.

Respectfully Sheweth:;

REPLY ON PRELIMINARY OBJECTIONS:-

1. Para#1 is incorrect, hence, denied. The appellant being dismissed from service, hence, being aggrieved person having good cause of action and locus standi.
2. Incorrect.
3. Incorrect. Appeal of the appellant is well within time.
4. That the answering respondents have not explained that how the appellant has not come to this Honourable Tribunal with unclean hands. This para is misconceived and incorrect.
5. Incorrect.
6. Incorrect. Appellant has never ever concealed any fact from this Honourable Court, hence preliminary objection of the official respondents is totally incorrect and misconceived.

OBJECTIONS ON FACTS:-

- 1) Admitted by the respondents because the petitioner is laws abiding citizen of Pakistan and is enjoying well reputation in the society.
- 2) Partially admitted but unfortunately other para is totally incorrect.

- 3) Incorrect. Because of the fact the appellant is duty full Police Constable and performed his duties to the entire satisfaction of the official respondents in this respect the Madd No. 12 dated: 08-04-2017 at page 51 of the Appeal of the appellant is very much clear, hence the falls case FIR No. 69 dated: 22-01-2017 PS: Cant in which the appellant was acquitted from the charges leveled against him vide order dated: 05-10-2019 by ASJ/ Model Criminal Trial Court Dera Ismail Khan. Hence this fact is resolved the anxiety of the official respondent.
- 4) Incorrect misconceived the appellant was acquitted from the Competent Court of Law and Justice, hence the allegations of the official respondents are become infrectuas and inapplicable over the vested rights of appellant.
- 5) Admitted by the official respondents but that inquiry was declared illegal by this Honourable Tribunal.
- 6) Incorrect misconceived the statement of one lady is totally baseless and wrong one because of the fact the appellant was acquitted from the charges in the case FIR No. 69 dated: 22-01-2017. 7/6
- 7) Incorrect misconceived.
- 8) Incorrect misconceived because of the fact the respondents by violating the judgment of this Honourable Tribunal conducted and ex-parte time barred De-novo inquiry and later on the appellant was reinstated.
- 9) Admitted by the respondents
- 10) Admitted by the respondents.

- 11) Admitted by the respondents.
- 12) Admitted by the respondents, hence no reply.
- 13) Admitted by the respondents.
- 14) Admitted by the respondents.
- 15) Incorrect misconceived the appeal of the appellant is maintainable and the dismissal order of the appellant was liable to be set-aside by this Honourable Tribunal.

REPLY ON FACTS:

1. Incorrect misconceived.
2. Incorrect misconceived the appellant was not treated in accordance with law and judgment of this Honourable Tribunal. Hence whole the proceedings conducted by the official respondents are based on illegal assumption. Hence the order dated: 20-06-2019 is illegal in the eyes of law.
3. Incorrect misconceived the allegations on which the services of the appellant was vanished by the official respondents is now being resolved by the competent court of justice. Copy of Judgment dated: 05-10-2019 is enclosed is herewith as ready reference.
4. Incorrect misconceived the De-novo inquiry was not conducted in accordance with the judgment of this Honourable Tribunal and the final order was passed after the

lap of given time, hence whole the proceedings is illegal and ineffective upon the rights of the appellant.

5. Incorrect misconceived against the settle norms of justice because of the fact the earlier inquiry officers who made an inquiry against the appellant which was very graciously be set-aside by this Honourable Tribunal then after remand of the matter the same inquiry was ditto and by violating the settle law that inquiry officer made dismissal order of the appellant which is against the natural justice because of the fact he already conducted an inquiry and pass his recommendations against the appellant hence, legally he was bound to not made any order in case of the appellant.

6. Incorrect misconceived the respondent NO. 3 was not competent to hold De-novo inquiry because of the fact he was already conducted earlier inquiry being SP/ Rural in the year 2017 and made his recommendations against the appellant on flimsy ground.

7. Incorrect misconceived the ASP City by violating the settle law of the land recommended major punishment against the appellant which alien to law because of the fact the appellant was acquitted from the charges leveled against him.

8. Incorrect misconceived.

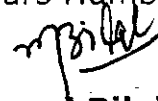
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In wake of submissions made above, the appeal of the appellant may please be accepted as prayed for and the appellant was reinstated into service with all back benefits in the best interest of justice and equity.

Any other relief deems appropriate may please be given to the appellant.

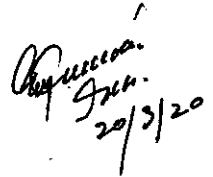
Dated: 20/03/2020

Yours Humble Appellant



Muhammad Bilal Hussain
Through Counsel

Muhammad Waqar Alam
Advocate High Court




20/3/20

AFFIDAVIT:

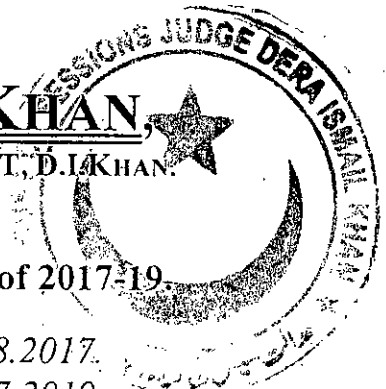
I, **Muhammad Bilal Hussain**, the appellant, do hereby solemnly affirm and declare on Oath that contents of the Rejoinder are true and correct to the best of my knowledge and belief; and nothing has been deliberately concealed from this Honourable Court.

Dated: 20/03/2020



DEPONENT

IN THE COURT OF **USMAN WALI KHAN**,
ASJ/JUDGE MODEL CRIMINAL TRIAL COURT, D.I.KHAN.



Sessions Case No..... 77/VII MCTC of 2017-19

Date of Original Institution..... 22.08.2017.

Date of receiving to MCTC 29.07.2019.

Date of Decision..... 05.10.2019.

The State

.....Versus.....

1. **MST. RIYASAT BEGUM** widow of Abdul Khaliq aged about 44/45 years Caste Marwat R/o Madina Colon District D.I.Khan.
2. **MUHAMMAD BILAL** son of Irshad Hussain, aged about 35/36 years Caste Memon R/o Basti Dewala District D.I.Khan.
3. **IRFANULLAH** son of Muhammad Akram aged about 29/30 years Caste Bhattani, presently r/o Bhakkar road Qureshi More District D.I.Khan.
4. **TOUQEER ABBAS** son of Ghulam Shabbir, aged about 28 years Caste Baloch r/o Haji Mora District D.I.Khan.....(*Accused facing trial*)

FIR# 69 DATED 22.01.2017 U/S. 302/109/120-B/404/34 PPC POLICE STATION CANTT, D.I.KHAN

Present: Mr. Farasat Ullah, Dy: PP for the State.
Muhammad Ismail Alizai Advocate, counsel for complainant.

Mr. Ghulam Hur Baloch Advocate, Mr. Saifur Rehman Khan Advocate, Miss Shumaila Awan Advocate & Muhammad Bilal Alizai Advocate, counsels for all accused.

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Examiners

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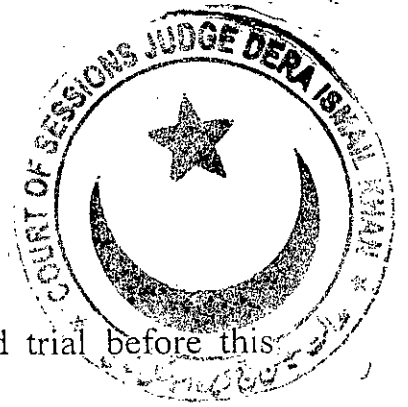
USMAN WALI KHAN
ASJ/JUDGE MODEL CRIMINAL TRIAL COURT
DERA ISMAIL KHAN

05/10/19

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JUDGMENT

05.10.2019



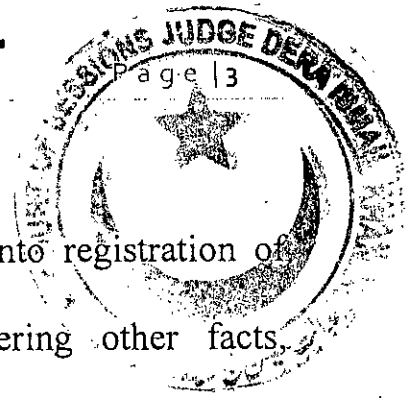
1. The above named accused have faced trial before this Court in abovementioned case FIR # 69 dated 22.01.2017 registered U/S. 302/109/120-B/404/34 PPC at Police Station Cantt D.I.Khan.

2. Brief facts as narrated in the FIR based Murasila are that on 22.01.2017 at about 06:30 hours, complainant Muhammad Suleman Nasir alongwith the dead body of his deceased father Abdul Khalig reported the matter to the local police on the spot that he was sleeping in his house and at 0600 hours received information that his father's dead body was lying in a thoroughfare of Madina colony near the house of one Qurban Abbas Shah, on this information, he went to the spot and attended his father who had succumbed to injuries after having been hit with firearm. It has been stated by the complainant that his father was government employee and was working as dispenser in DHQ hospital DIKhan and was performing night duty. After performing his duty, he was coming back to his house when at unknown time, unknown persons fired at him for unknown reasons. They had no enmity with anyone. Initially he charged the unknown accused for the commission of offence. The report of the complainant was reduced into writing in shape

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of Murasila, subsequently which resulted into registration of instant case. Subsequently, while discovering other facts, complainant charged the present accused facing trial alongwith co- absconding accused for the commission of offence by recording his statement U/S. 164 Cr.PC.

3. After the arrest of accused Mst. Riyasat Begum and on completion of investigation, complete challan was put in Court to the court for commencement of trial wherein remaining accused were shown to be absconders. After the arrest of remaining accused namely Muhammad Bilal, Irfanullah and Touqeer Abbas, their supplementary Challans were submitted. Accused were summoned to face the trial, on their appearance, provisions of section of 265-C Cr.PC were complied with. Formal charges were framed against the accused on their arrest and subsequent submission of Challans, to which they pleaded not guilty and claimed trial and prosecution was directed to produce its evidence in support of its case.

4. Prosecution in support of its case produced and examined as many as 15-witnesses. A gist of prosecution evidence is as under: -

- PW-1 is Dr. Nasimullah MO, who stated that on 22.01.2017 at about 07:00 AM, dead body of deceased Abdul Khaliq s/o Abdul Hameed Caste Marwat Resident of Madina Colony was brought to hospital for PM

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USMAN VALI KHAN
Addl. Distt. & Sessions Judge
Judge Model Court Trial Court
Dera Ismael Khan

5/19

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examination which was duly identified by Muhammad

\ Suleman Nasir s/o Abdul Khaliq and Abdul Wahid s/o

Abdul Hameed. He conducted autopsy of deceased

namely and found the following:

EXTERNAL APPEARANCE.

Mark of ligature on neck and dissection, etc: NIL

CONDITION OF THE SUBJECT:

A middle age man with mildly open mouth and close eyes, wearing shalwar and qameez. No rigor mortis developed

WOUNDS:

1. *Entry wound on the right side of occiput size 1/4 x 1/4 inch. Pieces of brain found.*
2. *Exit wound on the right side of head 1/3 x 1/3 inch.*
3. *Second entry wound on the right side of antero-medial surface of thigh size 1/4 inch x 1/4 inch.*
4. *Third entry wound on the right foot 1/4 x 1/4 inch.*

CRANIUM & SPINAL CORD

Scalp, skull and brain damaged. Vertebrae, membranes and spinal cord healthy and normal.

THORAX

All healthy.

ABDOMEN

Mouth, pharynx and oesophagus: Bleeding from mouth while pharynx and oesophagus were normal. Rest of all were healthy.

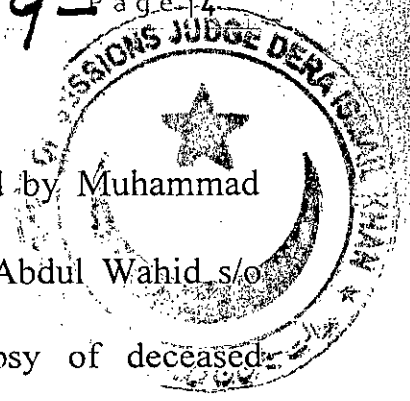
Muscles, Bones and Joints:

Injury: As already described.

Fracture: Skull fracture seen.

REMARKS BY MEDICAL OFFICER.

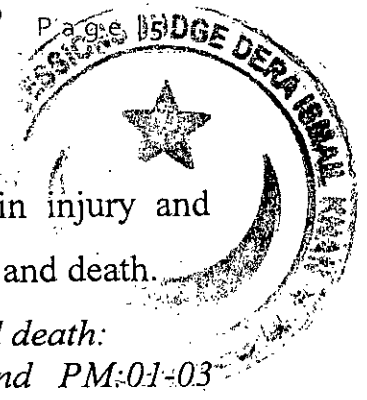
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Add: Dist. & Sessions Judge
Judge Model Jail Trail Court
Dera Ismail Khan

05/10/19

08/10/19



In his opinion the cause of death is brain injury and bleeding from inside brain leading to shock and death.

Probable time elapsed between injuries and death:

15-30 Minutes while Between death and PM:01-03 hours.

He prepared the PM examination report which consist on six pages, correct and correctly bears his signature and is Ex.PM. The injury sheet and the inquest report presented by the police with the dead body were also endorsed by him which are Ex.PW1/1 and Ex.PW1/2 respectively. After PM examination, he handed over the dead body, medico-legal documents and shalwar and qameez to local police

→ PW₁ is Constable Salahud Din No.1813, who stated that he escorted the dead body of Abdul Khaliq from the spot to the hospital under the directions of the SHO Police Station Cantt, who had delivered to him injury sheet and inquest report as well in respect of the deceased which at hospital he delivered to the Medical Officer. During escort none had interfered with the dead body. At the close of postmortem examination the postmortem report already exhibited as Ex.PM, inquest report and injury sheet, both endorsed by the Medical Officer alongwith the dead body of deceased. He delivered the dead body to the legal heirs while delivered the postmortem report, inquest report, injury sheet and Shalwar and Qameez of the deceased to the Investigating Officer. The postmortem report bears his signature in token of

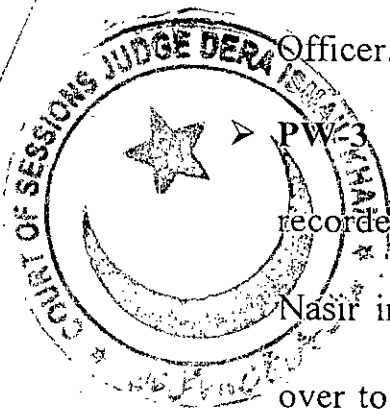
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05/10/19

USMAN WAZIR KHAN
Addl Dist. & Sessions Judge
Judge D. J. Criminal Trial Court
Dera Ismail Khan

05/10/19

receipt. His statement was recorded by the Investigating Officer.



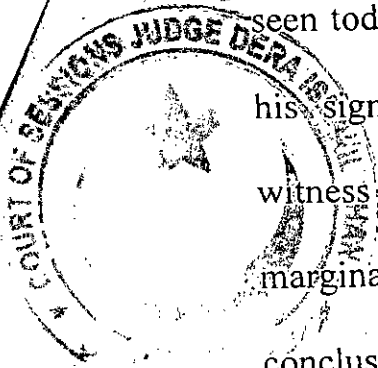
PW-3 is Muhammad Nawaz SHO, who on 22.01.2017 recorded the report of complainant PW Muhammad Suleman Nasir in the form of Murasila on the spot which was read over to the complainant who after admitting the contents as correct put his signature under his report. He prepared the injury sheet and inquest report in respect of deceased Abdul Khaliq and dispatched the dead body to the hospital for postmortem through Constable Salahud Din No.1813 and transmitted the Murasila to Police Station Cantt through Constable Aminullah No.7958 for registration and investigation of the case. He has seen the Murasila today in the court which is signed by him as token of correctness and is Ex.PA. The injury sheet is Ex.PW3/1 and inquest report is Ex.PW3/2 (two pages), each duly signed by him as token of correctness. On 10.04.2017 he had arrested accused facing trial Mst. Riyasat Begum and issued her card of arrest which is Ex.PW3/3. Later she was given in custody of the Investigating Officer in due course. He had also arrested the accused facing trial Muhammad Bilal Hussain on 21.05.2017 and issued his card of arrest which is Ex.PW3/4 and later handed him over to the Investigating Officer. He is also marginal witness to the memo Ex.PW3/5 which he has

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Addl. Distt. & Sessions Judge
Judge Model Court of Trial Court
Dera Ismail Khan

05/19

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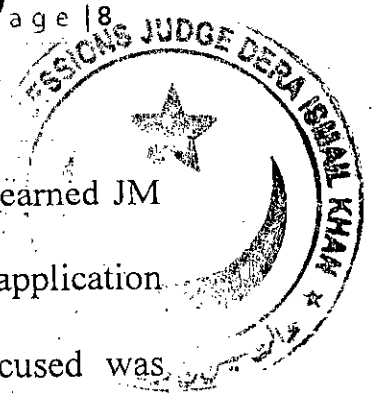


seen today in the Court and is correct in its contents having his signature as marginal witness. He is also marginal witness to memo Ex.PW3/6 bearing his signature as marginal witness in token of correctness. Later, on conclusion of investigation, record of the present case was presented to him for the purpose of submission of Challan. Initially he has submitted Challan on 29.04.2017 against Mst. Riyasat Begum as arrested and rest of the accused as absconding which is Ex.PW3/7. Later after the arrest of accused Muhammad Bilal Hussain and on completion of investigation in his respect the record was again presented for submission of supplementary Challan against him, which he did and the supplementary challan is Ex.PW3/8. He verify correctness the record exhibited by him today in the court. His statement was also recorded by the Investigating Officer during the course of investigation U/S. 161 Cr.PC.

➤ PW-4 is Zameer Hussain SI, who stated that after arrest of accused Muhammad Bilal by the then SHO/SI Muhammad Nawaz, the said accused was handed over to him for the purpose of seeking physical custody. I accordingly produced the said accused before the JM and sought ten days custody vide his application dated 22.05.2017 Ex.PW4/1. The learned court grated two days physical remand. Where-after he interrogated the accused and recorded his statement. On

USMAN WAHAB
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Judge Model Criminal Trial Court
Dera Ismail Khan
05/15

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24.05.2017, he produced the accused before the learned JM for recording of his confession statement vide his application dated 24.05.2017 Ex.PW4/2. However, the accused was committed to judicial lockup by the JM. Later, he handed over the record to the SHO for submission of supplementary Challan.

➤ PW-5 is Mst. Rehana Bibi widow of Abdul Khaliq, who stated that deceased Abdul Khaliq was her husband, she was her second wife while the first wife namely Mumtaz Begum is by now dead. The 3rd wife of deceased was accused Riyasat Bibi. She is staff nurse in civil hospital DIKhan while the deceased was also employee in the said Hospital as dispenser. During the night of occurrence she accompanied the deceased to the hospital for their respective duties. After dropping her at the hospital the deceased went to his respective Ward. In between 09/10:00 P.M the deceased asked her to come to his ward for taking tea. She went there and since she was diabetic she refused to take tea. During that period deceased informed her that he will not be visiting Madina Colony house and will stay at his Ward. She then returned to her Ward. In the morning, she came to know that deceased had been killed.

➤ PW-6 is Wahidullah Khan, who stated that deceased Abdul Khaliq was his neighbor in Madina Colony. He runs a tea

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05/19

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