

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

Service Appeal No.87/2019

Date of Institution ... 21.01.2019  
Date of Decision ... 27.07.2021

Kaleem Ullah Ex-Constable No.16, District Police, Tank.

... (Appellant)

**VERSUS**

The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and  
two others. ... (Respondents)

Taimur Ali Khan,  
Advocate

... For appellant.

Kabir Ullah Khattak,  
Additional Advocate General

... For respondents.

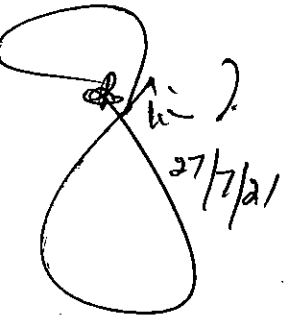
AHMAD SULTAN TAREEN  
ROZINA REHMAN

... CHAIRMAN  
... MEMBER (J)

**JUDGMENT**

ROZINA REHMAN, MEMBER (J) : The relevant facts leading to the filing of the instant appeal are that appellant joined Police Force as Constable. He stood charged in a criminal case and faced trial. Later on, he was acquitted on the strength of compromise. After earning acquittal, he received order dated 29.12.2011, whereby, he was dismissed from service. He filed departmental appeal which was also rejected.

2. We have heard Taimur Ali Khan Advocate learned counsel for appellant and Kabir Ullah Khattak learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

  
27/7/21

3. Taimur Ali Khan Advocate appearing on behalf of appellant, inter-alia, contends that departmental proceedings were initiated against the appellant in pursuance of F.I.R No.815 dated 06.10.2011 and that it was clearly noted in the impugned order dated 29.12.2011 that it was the outcome of the proceedings taken under the provisions of Khyber Pakhtunkhwa Government Servants Removal from Service (Special Powers) Ordinance, 2000. He submitted that the said Ordinance stood repealed on 15.09.2011 i.e. much before the date of lodging of F.I.R and initiation of proceedings against the appellant. He, therefore, argued that the impugned order is *coram non-judice* and not sustainable on that count. He further argued that the appellant was acquitted by court of competent jurisdiction on 12.01.2018 and thereafter, he submitted departmental appeal which was rejected. He argued that the appellant was never proceeded departmentally for his absence rather he was proceeded against departmentally for being involved in a criminal case but he has now been acquitted and that the appellant was condemned unheard.

4. Conversely, learned A.A.G submitted that the appellant was proceeded departmentally for misconduct and that acquittal by a court does not affect departmental proceedings as criminal proceedings and departmental proceedings can run side by side. He argued that the charge sheet was properly issued and departmental inquiry was conducted under Khyber Pakhtunkhwa Government Servants Removal from Service (Special Powers) Ordinance, 2000 and after fulfilling of codal formalities, impugned order was passed. He submitted that departmental appeal was rightly rejected being badly time barred.

27/7/21

5. Record shows that appellant Kaleem Ullah was charged in a criminal case vide F.I.R No.815 dated 06.10.2011 U/S 302/324/34 P.P.C Police Station Shaheed Mureed Akbar, Tank. The allegations which were pressed into service for disciplinary action against the appellant in formal course, are copied below from statement of allegations annexed with the charge sheet by the departmental authority:

*You, Constable Kaleem Ullah No.16 were found involved in criminal case vide F.I.R No.815 dated 06.10.2011 U/S 302/324/34 P.P.C Police Station Shaheed Mureed Akbar Tank which amounts to gross misconduct on your part and punishable under the rules, hence, the statement of allegations is issued.*

6. It was because of the occurrence reported in the above mentioned F.I.R that appellant was proceeded against departmentally. A departmental inquiry was conducted through an Inquiry Officer to conduct proper departmental inquiry under N.W.F.P Government Servants Removal from Service (Special Powers) Ordinance, 2000 Amendment Act, 2005. The disciplinary proceedings culminated into dismissal of the appellant from service under R.S.O, 2000 vide order bearing endorsement No.1573 dated 29.12.2011. Admittedly, the impugned order was the outcome of the proceedings taken under the provision of R.S.O, 2000. The said Ordinance stood repealed on 15.09.2011 i.e. much before the date of lodging of F.I.R (F.I.R No.815 dated 16.10.2011) and of initiation of the proceedings against the appellant. There is nothing on file which could show that the appellant was departmentally proceeded against for the absence period, therefore,


27/7/21

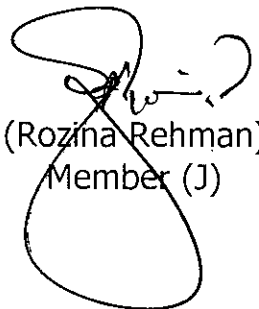
the impugned order is *coram non-judice* and is not sustainable on that account.

7. As a sequel to above, this appeal is accepted. Consequently, the impugned orders are set aside and it is directed that the appellant be reinstated into service with immediate effect. Absence period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.


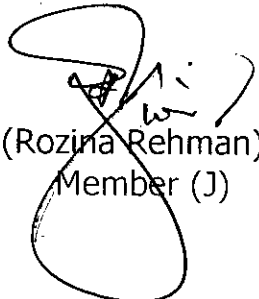
ANNOUNCED.

27.07.2021

  
(Ahmad Sultan Tareen)  
Chairman

  
(Rozina Rehman)  
Member (J)

Service Appeal No. 87/2019

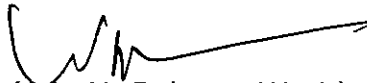
S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	27.07.2021	<p><u>Present:</u></p> <p>Taimur Ali Khan, Advocate ... For Appellant</p> <p>Kabir Ullah Khattak, Additional Advocate General ... For respondents No</p> <p>Vide our detailed judgment of today this Tribunal placed on file, instant appeal is accepted. The impugned orders are set aside and it is directed that the appellant be reinstated into service with immediate effect. Absence period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><u>ANNOUNCED.</u> 27.07.2021</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">               (Ahmad Sultan Tareen)              Chairman         </div> <div style="text-align: center;">               (Rozina Rehman)              Member (J)         </div> </div>

01.03.2021

Mr. Nouman Ali Bukhari Advocate on behalf of learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General present.

Former requests for adjournment as learned counsel for the appellant is not available today due to personal engagements.

Adjourned to 08.06.2021 for arguments before D.B

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

  
Chairman

08.06.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Arguments heard. To come up for order on 27.07.2021 before D.B.

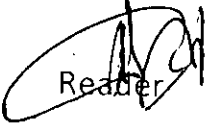
  
(Rozina Rehman)  
Member (J)

  
Chairman

11-5 .2020

Due to COVID19, the case is adjourned to

28/7/2020 for the same as before.

  
Reader

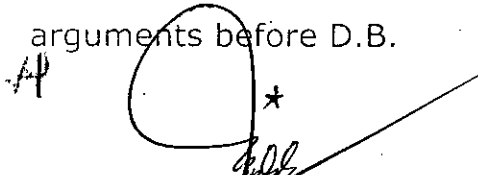
28.07.2020

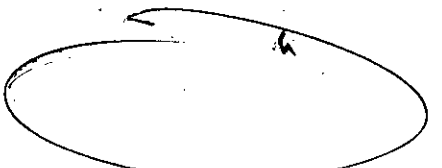
Due to COVID-19, the case is adjourned. To come for the same on 21.09.2020 before D.B.

  
Reader

21.09.2020

Mr. Taimur Ali Khan, Advocate for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present. Learned counsel for the appellant requested for adjournment. Adjourned to 30.11.2020 on which to come up for arguments before D.B.

  
(Mian Muhammad)  
Member (Executive)

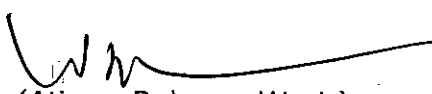
  
(Muhammad Jamat Khan)  
Member (Judicial)


30.11.2020

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Nadim H.C for respondents present.

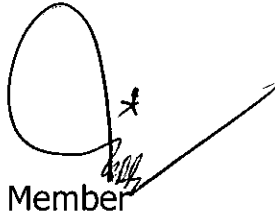
Former made a request for adjournment. Adjourned. To come up for arguments on 01.03.2021 before D.B.

  
(Atiq ur Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)

06.03.2020

Counsel for the appellant present. Mr. Ziaullah,  
DDA for respondents present. Learned counsel for the  
appellant seeks adjournment. Adjourned. To come up  
for arguments on 11.05.2020 before D.B.



Member



Member

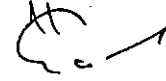


11.09.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 11.11.2019 before D.B.



Member



Member

01.11.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 03.01.2020 before D.B.



Member



Member

03.01.2020

Learned counsel for the appellant present. Mr. Kabirullah Khattak Additional Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.03.2020 before D.B.



(Hussain Shah)

Member



(M. Amin Khan Kundi)

Member

15.04.2019 Appellant with counsel present. Written reply not submitted. Sher Afzal SI representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 23.05.2019 before S.B



Member

23.05.2019 Learned counsel for the appellant present. Written reply not submitted. Sher Afzal SI Legal representative of respondent department absent. Respondents as well as absent representative be put to notice for submission of written reply/comments. Adjourn. To come up for written reply/comments on 03.07.2019 before S.B.



Member

03.07.2019 Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Abdul Ali ASI for the respondents present and submitted written reply/comments. Adjourned. To come up for rejoinder/arguments on 11.09.2019 before D.B.



Member

27.02.2019

Counsel for the appellant present.

Contends that the departmental proceedings were initiated against the appellant in pursuance of FIR No. 815 dated 06.10.2011. In the impugned order dated 29.12.2011 it was clearly noted that it was the outcome of proceedings taken under the provisions of Khyber Pakhtunkhwa Government Servants Removal from Service (Special Powers) Ordinance, 2000. The said Ordinance stood repealed on 15.09.2011 i.e much before the date of lodging of FIR and initiation of proceedings against the appellant. The impugned order was, therefore, coram-non-judice and not sustainable on that count. It was further argued that the appellant was acquitted on 12.01.2018 by a court of competent jurisdiction and thereafter submitted departmental appeal on 01.10.2018 which was rejected. Where-after the review petition of appellant was also rejected on 12.12.2018.

In view of the above, instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 15.04.2019 before S.B.

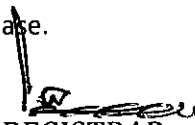
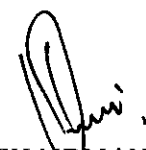
Appellant Deposited  
Security & Process Fee

  
Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No. 87/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	21/1/2019	<p>The appeal of Mr. Kaleem Ullah presented today by Mr. Taimur Ali Khan 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 21/1/19</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/2/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 87 /2019

Kaleem Ullah

V/S

Police Deptt:

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S.No.	Documents	Annexure	Page
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2.	Condonation application	-----	05-06
3.	Copy of FIR	A	07
4.	Copy of order dt:12.01.2018	B	08-09
5.	Copy of order dated 29.12.2011	C	10
6.	Copy of affidavit	D	11
7.	Copy of departmental appeal	E	12-16
8.	Copy of rejection order	F	17-18
8.	Copy of revision	G	19-21
9.	Copy rejection of revision	H	22
10.	Wakalat Nama	-----	23

APPELLANT

THROUGH:

  
(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT,

&  
  
(ASAD MAHMOOD)  
ADVOCATE HIGH COURT.

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 87 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 88

Dated 21-1-2019

Kaleem Ullah Ex- Constable, No.16,  
District Police, Tank.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Regional Police officer, Dera Ismail Khan Region.
3. The District Police Officer, Tank.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 12.12.2018 COMMUNICATE TO THE APPELLANT ON 28.12.2018, WHEREBY THE REVISION OF THE APPELLANT UNDER POLICE RULES 1975 AMENDED IN 2014 AGAINST THE ORDER DATED 01.10.2018 OF THE RESPONDENT NO.2 HAS BEEN REJECTED FOR NO GROUNDS WHEREIN THE RESPONDENT UPHOLD THE ORDER DATED 29.12.2011 OF THE RESPONDENT NO.3.

Filed to-day

Registrar

21/1/19

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 12.12.2018, 01.10.2018 AND 29.12.2011 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

**RESPECTFULLY SHEWTH:**

**FACTS:**

1. That the appellant joined the police force as Constable on 19.11.2007 and completed all his due trainings and has performed his duty up to the entire satisfaction of his superior what so ever assigned to him.
2. That the appellant was charged in criminal case vide FIR No.815, dated 06.10.2011 u/s 302/324 PPC, PS SMA, Tank. **(Copy of the FIR is attached as Annexure-A)**
3. The appellant after facing trial in the instant case was acquitted by the competent court of law vide order dated 12.01.2018 on the basis of compromise. **(Copy of order dated 12.01.2018 is attached as Annexure-B)**
4. That after acquittal the appellant, he received order dated order dated 29.12.2011, whereby the appellant was dismissed from service from the date of occurrence/his absence, but as the appellant was acquitted on the basis of compromise and one of the condition of the compromise was that the appellant will not live in his village for one year due to which the appellant could not file his departmental appeal in time and filed departmental appeal on 04.06.2018 against the dismissal order which was also rejected on 01.10.2018. **(Copies of order dated 29.12.2011, affidavit, departmental appeal and rejection order and are attached as Annexure-C,D,E&F)**
5. That due to the condition of compromise, the appellant also did not file revision under rule 11-A of the police rules 1975 amended in 2014 in time and file it on 05.12.2018, but the same was also rejected on 12.12.2018 and communicated to the appellant on 28.12.2018. **(Copy of revision and rejection of revision are attached as Annexure-G&H)**
6. That now the appellant come to this august tribunal on the following grounds amongst others.

**GROUND:**

- A) That the impugned order dated 12.12.2018, 01.10.2018 and 29.12.2011 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.

- B) That no proper inquiry was conducted against the appellant and the appellant was dismissed on the basis of one sided inquiry, if so conducted even the inquiry report was not provide to the appellant, which is violation of law and rules, therefore, the impugned order is liable to be set aside on this ground alone.
- C) That the appellant was dismissed from service on the basis of criminal case in which he later on acquitted, which means the reason on which the appellant was dismissed from service became vanished and therefore there remain no ground to penalize the appellant on criminal case.
- D) That the appellant was involved in criminal case and the department should suspended the appellant till the conclusion of criminal case against him, but the department dismissed him from service without waiting to conclusion of criminal case against which is clear violation of rule 194-A of CSR.
- E) That no charge sheet was served to the appellant before passing the impugned order of dismissal from service, which is the violation of law and rules.
- F) That even no show cause notice was issued to the appellate before imposing major punishment of dismissal from service, which is violation of law and rules.
- G) That the penalty of dismissal from service has been imposed upon the appellant from the date of absence i.e with retrospective and as per Superior Courts judgments executive/departmental authority has no power to pass orders with retrospective effect and such like order are void orders.
- H) That the punishment of dismissal from service is very harsh which was passed in violation of law and rules, therefore, not sustainable and liable to set aside.
- I) That the appellant has been condemned unheard and has not been treated according to law and rules.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.



K) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.



**APPELLANT**

Kaleem Shah

THROUGH:



**(TAIMUR ALI KHAN)**

**ADVOCATE HIGH COURT,**



**(ASAD MAHMOOD)**

**ADVOCATE HIGH COURT.**

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. \_\_\_\_\_/2019

Kaleem Shah

V/S

Police Deptt:

.....  
**APPLICATION FOR CONDONATION  
OF DELAY IN THE INSTANT APPEAL**

**RESPECTFULLY SHEWETH:**

1. That the instant appeal is pending before this Honourable Tribunal in which no date has been fixed so far.
2. That appellant was acquitted on the basis of compromise and one of the condition of compromise was that, that the appellant will come to his village for one year till November 2018, due to which he was unable to file his departmental appeal as well as revision in time.
3. That penalty imposed upon the appellant was with retrospective effect and as per superior court judgments and decision of larger bench of this august Service Tribunal in appeal No retrospective order is void order and no limitation runs against such order.
4. That the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking-out the litigants on technicalities including limitation. Therefore, appeal needs to be decided on merit 2003-PLD (SC) 724.

It is therefore most humbly prayed that the instant appeal may be decided on merit by condoning the delay on the basis of above mentioned reason to meet the ends of justice.

*Kaulah*

APPELLANT

THROUGH:

*Taimur Ali Khan*

(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT,

*Asad Mahmood*

(ASAD MAHMOOD)

ADVOCATE HIGH COURT.

**AFFIDAVIT:**

It is affirmed and declared that the contents of the above application are true and correct to the best of my knowledge and belief.

*Th*

Deponent



B (8)

فصل - بیابان (SMA) فیصلہ 27/11/17 فیصلہ 12/1/18  
نمبر مقدمہ 148/2

Amend  
C

IN THE COURT OF AURANGZEB SESSIONS  
JUDGE, TANK

Sessions Case No.148/2 of 2017

State Vs Saif-Ullah etc(Accused)

Case FIR No.815  
Dated: 06.10.2011  
Under Sections: 302/324 PPC  
Police Station: SMA,Tank

ORDER

12.01.2018

1. Dy:PP for the state and accused Shafi-Ullah and Kaleem-Ullah on bail alongwith counsel present. Local Commission submitted his report alongwith statement of lady Mst;Niaz Malooka, mother of the deceased.

2. The accused were charged by the complainant Abdul Khalil for murder of Jawad Rehman vide FIR No.815 dated 06.10.2011 U/Ss' 302/324/34 PPC PS SMA,Tank.

3. On 19.12.2017, legal heirs of the deceased namely Abdul Khalil(father), Mst;Nasem Akhtar(mother of deceased Rehmat-Ullah), Abdul; Rahim(father of deceased Rehmat-Ullah) and Mst;Dilshad bibi(wife of deceased Rehmat-Ullah) recorded their joint statements of compromise and expressed no objection on acquittal of

A2  
12/1/18

Stamp and signature

ATTESTED  
District & Sessions Court Tank

9

the accused. Two attested mutations No.3513 & 3514 also produced whereby landed property has been transferred to minors/widow of Rehmat-Ullah.

4. The compromise statement of the L.Rs seems genuine and without pressure. The accused facing trial charge of compoundable offence, hence on the basis of compromise, they are acquitted. Their bail bonds stand cancelled accordingly. Case property be kept intact till the expiry period appeal/revision. File be consigned to record room after its completion and compilation.

Order announced  
12<sup>th</sup> January, 2018

*(Signature)*  
(Aurangzeb)  
Sessions Judge, Fank

~~ATTESTED~~  
~~(Signature)~~  
District & Sessions Court

ATTESTED  
*(Signature)*

ORDER:

*Handwritten signature/initials*

C (10)

This is an order in the Departmental Enquiry of Constable Kalimullah No 16 of this District Police committed the following acts of omission:-

That he while posted in Police Line Tank was involved in case FIR No. 815 dated 06.10.2011 U/S 302/324/34 PPC Police Station Shaheed Mureed Akbar Tank and declared Proclaimed Offender.

He was issued Charge Sheet and statement of allegation under the NWFP Removal from Service (Special Powers) Ordinance 2000, (Amendment Act 2005) and Mr. Faridullah Marwat DSP/Rural Tank was appointed as Enquiry Officer to conduct proper Departmental Enquiry into the matter. The enquiry Officer completed the enquiry and submitted his findings and held the delinquent constable guilty.

On having gone through the findings, recommendation of the Enquiry Officer and material placed on record, I, Mr. **MUHAMMAD IJAZ ABID** District Police Officer Tank being a Competent Authority do hereby award Major Punishment of **DISMISSAL FROM SERVICE** to Constable Kalimullah No. 16 from the date of occurrence/ his absence.

Order Announced:

*M. Ijaz*  
(MUHAMMAD IJAZ ABID)  
District Police Officer,  
Tank  
29/12

OB NO. 1573

DATED: 29-12-2011

ATTESTED

*Handwritten signature*





E (12)

The Honourable,  
Deputy Inspector General of Police,  
District Dera Ismail Khan.

**SUBJECT:**

**DEPARTMENT APPEAL / REPRESENTATION  
OF EX-CONSTABLE KALI MULLAH NO. 16 OF  
POLICE DEPARTMENT TANK AGAINST THE  
IMPUGNED ORDER OF DPO TANK WHEREBY  
THE APPELLANT WAS AWARDED MAJOR  
PENALTY OF DISMISSAL FROM SERVICE  
VIDE ORDER NO. 1573 DATED 29/12/2011.**

**Prayer:**

On acceptance this department appeal, the impugned order of DPO Tank regarding dismissal of appellant may kindly be set aside with full back wages and benefits of service or any other relief may deemed proper also be allowed.

**Respected Sir,**

**Brief facts:-**

That the appellant was enlisted as constable in Police Department Tank on 19/11/2007 vide OB No. 1660 dated 19/11/2007. After qualifying basic departmental training remained posted at various positions in Police Department Tank and served to the best satisfaction of my senior command. On 06/10/2011 while posting in Police Post City Tank, I was charged in a heinous case of murder and attempt to murder vide case FIR No. 815 Under Section 302/324/34 PPC Police Station SMA Tank illegal, the case was registered and investigated.

A separate Departmental appeal enquiry was also initiated against the appellant. Inspector Farid

Ullah Khan was nominated as Inquiry Officer. The enquiry was conducted. No chance of self defense was provided even the charge sheet was also not served upon the appellant. After completion of ex-parte proceedings, the inquiry officer has submitted defective report was submitted to DPO Tank upon which the appellant was awarded Major Punishment of Dismissal from service by the DPO Tank vide order Book No. 1573 dated 29/12/2011 which is unjustified and illegal because the enquiry was initiated and completed in my absentia, thus requires to be set aside.

**RESPECTFULLY SUBMITTED:-**

- 1- That the appellant was posted in Police post city Tank and was serving to the best satisfaction of my Senior Command. No chance of complaint was provided either of my colleague or senior command..
- 2- That while posting in PP City Tank, the appellant was charged in a criminal case vide FIR No. 815 under Section 302/324/34 PPC Police Station SMA Tank illegally and closed to police line Tank for departmental proceedings on the allegations of my involvement in the case.
- 3- That I was issued charge sheet along with statement of allegations containing false and baseless allegations but not served upon the appellant which is illegal and violative to law / rules. Annexure "A".
- 4- That the inquiry office was nominated. During enquiry no chance of self defense was provided by the inquiry officer nor any witness was examined in my case. Hence the allegations of my involvement is baseless as well as political basis.

ATTESTED  
[Signature]

5- That the inquiry committee has submitted a defective inquiry report containing false and fabricated report which is against the norms of justice.

6- That the authority without fulfillment of Codal formalities as required under the rules, announced harsh and aggressive order of my dismissal from service which is illegal and unjustified. Copy enclosed as Annexure "B".

7- That the impugned order of DPO Tank is against the justice and express provisions of law thus liable to be set aside inter alia on the following grounds:-

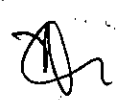
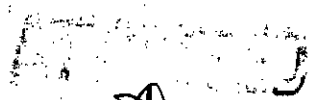
**GROUND:-**

- That the appellant was wrongly charged in a murder and attempt to murder case vide FIR No. 815 under section 302/324/34 PPC police station SMA tank thus the appellant was facing trial to prove my innocence in the Court of law.
- That the departmental enquiry was requires to keep pending till the decision of trial Court so case to meet the requirement of justice. After completion of trial, the appellant was acquitted of the charges vide judgment dated 12/01/2018 passed by the Court of District & Sessions Judge, Tank. Copy enclosed as Annexure "C".
- That the departmental proceedings initiated against the appellant was the result of personal ill will and was based on false statement because the charges were never proved in the inquiry thus the proceedings so conducted and completed were a mere eye wash and nullity in the eyes of law.
- That all the proceedings conducted against the appellant were violatave of law and against the mandatory provision of Khyber Pakhtunkhwa

*[Handwritten signature]*

Police rules 1975, the order impugned is thus liable to be set aside at naught.

- That the inquiry officer while conducting proceedings did not adhere to the mandatory provisions of Khyber Pakhtunkhwa, police Rules 1975, he conducted the inquiry in a novel way.
- That all the proceedings conducted against the appellant were illegal and unlawful as it runs counter to the express provisions of the Khyber Pakhtunkhwa Police Rules 1975.
- That during proceedings neither charge sheet was served upon the appellant nor any chance of self defense was provided thus the proceedings conducted and completed against the appellant are illegal, malafide and not tenable.
- That the impugned order of DPO Tank is not based on justice, the order impugned is thus liable to be set at naught because the appellant was acquitted of the charges by the Honourable Court of District & Sessions Judge, Tank.
- That now, the matter in respect of FIR No. 815, dated 06/10/2011 offence Under Section 302/324/34 PPC Police Station SMA District Tank have been patched up. Hence the appellant is entitled for reinstatement of service.
- That from 06/09/2011 to 12/01/2018 the appellant was absconder due to life threats, therefore, the departmental appeal before this Honourable forum is within the time after judgment of Session Judge, Tank. Copy of judgment dated 12/01/2018 is enclosed as **Annexure "D"**.
- That the appellant seeks the permission of Honourable Appellant authority to rely on additional grounds at the disposal of this appeal.

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**It is, therefore, humbly requested that on acceptance of this appeal the impugned order of DPO Tank may kindly be set aside and the appellant may be reinstated into service from the date of my dismissal from service so as to meet the requirements of justice please.**

Your Humble Appellant

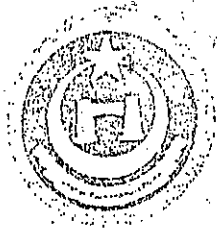
Dated: 07/06/2018

*Kaleem Ullah*

**Kaleem Ullah No. 16  
Ex Constable  
District Police, Tank.  
Cell # 0343-5428863  
CNIC#12101-1872180-5**

ATTESTED

*A*



OFFICE OF THE  
REGIONAL POLICE OFFICER  
DERA ISMAIL KHAN  
REGION

No. 3332 /ES, Dated DI Khan the 01/10/2018

ORDER

My this order will dispose-of the departmental appeal, preferred by Ex Constable Kaleem Ullah No. 16 of District Tank wherein he has prayed for setting aside the order of major punishment of Dismissal from Service imposed to him by DPO Tank vide CB No. 1573 dated 29.12.2011 after found him guilty of the following allegations:-

That the appellant while posted at Police Lines Tank was involved in a case vide FIR No. 815 dated 06.10.2011 U/S 302/324/34PPC of Police Station SMA Tank wherein he was declared as Proclaimed Offender.

His service record, inquiry papers and comments were received from DPO Tank which were perused and it was found that appellant was charge sheeted. Inquiry into the matter was conducted by DSP Rural Tank. The inquiry Officer submitted his findings report wherein the appellant was declared guilty of the charges leveled against him. The Competent Authority on the recommendations of Inquiry Officer and papers placed before him, has passed the order dated 29.12.2011. The case trail started in Sessions Court Tank and passed judgment dated 12.01.2018 and the appellant was acquitted on compromise basis.


Aggrieved from the impugned order, the appellant submitted the instant appeal which was sent to DPO Tank for comments and to provide his service record vide this office Endst: No. 2092/ES dated 05.06.2018. The DPO Tank has furnished the comments and service record of the appellant vide memo: No. 2411 dated 05.07.2018, wherein the appeal of the appellant was properly defended on cogent grounds.

During the perusal of his service record, it was found that the appellant has served Police Force for 04 years and during this period; he has been awarded a major punishment of Dismissal from service which was converted into minor punishment of censure. He has already been remained absent on different occasions and his total 12 days absence to this effect has been converted into leave without pay. It has also been transpired that the punishment order was passed by DPO Tank on 27.10.2010 but the defaulter constable preferred the instant appeal on 04.06.2018 which is grossly time barred & devoid of merit, furthermore, acquittal on the basis of compromise is not acquittal at all.

18

The undersigned also provided him opportunity of personal hearing. 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, DAR ALI KHAN KHATTAK, 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 being grossly time barred and endorse the punishment awarded to him by DPO Tank.

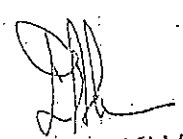
ORDER ANNOUNCED

  
(DAR ALI KHAN KHATTAK)PSP  
REGIONAL POLICE OFFICER  
DERA ISMAIL KHAN

No. 3333 /ES


Copy of above is sent to the DPO Tank for information with reference to his office memo: No. 2411 dated 05.07.2018 alongwith his service record.

Encl:-  
Service Roll  
Fauji Missal


  
(DAR ALI KHAN KHATTAK)PSP  
REGIONAL POLICE OFFICER  
DERA ISMAIL KHAN

PPS attached  
n/s  
03/10

g/c legal / scc / office  
for v / action

  
District Police Officer  
Tank  
3/10

OB 935  
Date 3-10-

APPROVED  



67 (19)

To: **The Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.**

**DEPARTMENTAL APPEAL AGAINST THE ORDER  
BEARING NO.3332 DATED 01.10.2018 OF  
THE REGIONAL POLICE OFFICER, D.I.KHAN  
REGION.**

**Respectfully Sheweth,**

1. That the petitioner was appointed as constable in the Police Department Tank and thereafter petitioner started to perform his official duties with zeal & zest, due diligence and devotion without any stigma on his entire career.
2. That the petitioner during his posting at Police Department, Tank, was implicated in a case vide FIR No.815 dated 06.10.2011 of Police Station SMA, District Tank registered under sections 302, 324, 34 PPC. However the said case was culminated on the basis of compromise and enders/intervenors had banned the petitioner from stepping into the Illaqa for a specific period.
3. That on the basis of same allegations of FIR, a departmental inquiry was conducted against the petitioner in which no fair chance of defence was given to him and finally the petitioner on the basis of ex-parte proceedings, petitioner was dismissed from service by the DPO Tank Office Order bearing OB No.1573 dated 21.12.2018 **(Annexure A)**.
4. That the trial in the above referred FIR No.815 was commenced in the court of learned Sessions Judge Tank and finally acquitted vide order dated 12.01.2018 **Annexure B**.
5. That thereafter, the petitioner preferred an appeal **(Annexure C)** before the Regional Police Officer, D.I.Khan Region, which





was dismissed vide order bearing No.3332/ES dated 01.10.2018 (Annexure D) which order has been communicated to the petitioner on 28.11.2018.

6. That petitioner has also passed ATS 56 Basic Course from Islamabad.
7. That aggrieved of Order bearing No.3332/ES dated 01.10.2018 of the RPO D.I.Khan Region and Order bearing No. OB-1573 dated 29.12.2011 of DPO Tank, the petitioner wants to place the same before your kind honour and beg to cancel the same on the following grounds, amongst others:

**GROUND:**

- i. That the petitioners has been proceeded on the basis of involvement in the criminal case despite the fact that the same was pending before a competent court.
- ii. That the petitioner 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.
- iii. That it is an admitted fact that the petitioner was dismissed from service on the basis of ex-parte proceedings and on this score alone, in order to meet the ends of justice, petitioner is entitled for reinstatement.
- iv. That the main reason for dismissal of petitioner is involvement in a murder case and in the said case the petitioner has been acquitted. It was the demand of propriety to keep the departmental proceedings pending till decision of the criminal case. Hence, a great injustice has been done to the petitioner.
- v. That no proper procedure as envisaged under Khyber Pakhtunkhwa Police Rules, 1975, has been adopted. Thus impugned penalty cannot be imposed upon the petitioner.
- vi. That no proper inquiry has been conducted into the matter. Petitioner was not given opportunity to defend his rights rather all the inquiry proceedings were conducted at the back of

APPROVED  
[Signature]

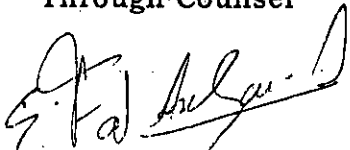
21

- petitioner and petitioner was not associated with the inquiry proceedings. On this score alone, the impugned orders are liable to be cancelled.
- vii. That the petitioner was not provided with the copy of inquiry report nor grounds of awarding him major penalty were apprised to petitioner by the authority. The entire enquiry process was conducted in a stereotype, slipshod, shortcut, hasty and unlawful manner particularly when factual charges were involved. No proper & regular inquiry was conducted into the matter which has resulted in grave miscarriage of justice.
- viii. That the impugned office orders are based on malafide and the petitioner has not been treated in accordance with the relevant law & record.
- ix. That the petitioner may be allowed to raise additional grounds at the time of arguments.

It is, therefore, humbly beseeched that on acceptance of the present appeal and by setting aside both the impugned orders of RPO D.I.Khan Region and DPO Tank, petitioner may please be reinstated into service along with all back/future benefits; and any other appropriate relief, which this Honourable Tribunal, in the given circumstances, may deem fit in the interest of justice may also be granted to the petitioner.

Yours Humble Petitioner

  
(Kaleemullah)  
Through Counsel

  
Shah Fahad Ansari  
Advocate High Court, D.I.Khan.

Dt. 05 December, 2018

ATTENDED





42

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

No. S/ 4868 /18, dated Peshawar the 12/12 2018.

To : The Regional Police Officer,  
Dera Ismail Khan.

3974  
21-12-018

Office of the  
Inspector General  
of Police  
3926  
17-12-18

Subject: REVIEW PETITION.

Memo:

The Competent Authority has examined and filed the review petition submitted by Ex-Constable Kaleem Ullah No. 16 of Tank District Police against the punishment of dismissal from service awarded by District Police Officer, Tank vide OB No. 1573, dated 29.12.2011 being time barred.

The applicant may please be informed accordingly.

EC/MS

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

14/12

Cc.

Ex-FC Kaleem Ullah No. 16 of Tank District Police (0343-5428863).

NO: 4256/ES dt 18-12-18

D/O Tank  
To inform the applicant  
accordingly.

*(Signature)*  
REGIONAL POLICE OFFICER  
DERA ISMAIL KHAN

Ex-FC Kaleem Ullah No. 16  
0343-5428863  
28-12-18

OHC  
To inform the applicant.

*(Signature)*  
27/12

OB. NO - 1136  
Date - 28-12-18

ATTACHED

*(Signature)*

کلمہ الفکر منجانب (سروس ٹریڈ ہیونل کنسٹراور)  
کلمہ الفکر بنام محمد علی بولیس

مورخہ  
مقدمہ  
دعویٰ  
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام کسٹومرز کیلئے دستوری علی خان اور اسد محمود اور بولیس  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضعی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے  
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے  
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے  
سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں  
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Attested  
&  
Accepted

20

ماہ

المرقوم

العہد گواہ العہد

کے لئے منظور ہے۔

Kaullala

مقام

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER AKHTUNKHWA  
PESHAWAR.**

**APPEAL No. 87/2019.**

Ex-Const. Kaleem Ullah No. 16.

(Appellant).

**Versus**

1. Inspector General of Police,  
Khyber PakhtunKhwa, Peshawar.

2. Regional Police Officer ,  
Dera Ismail Khan Region.

3. District Police Officer,  
Tank.

) Respondents.

**Para-wise comments on behalf of Respondents**

**Respectfully Shewith,**

Para-wise comments on behalf of Respondents are submitted as under:-.

**PRELIMINARY OBJECTIONS:**

1. That the appellant has got no cause of action and locus standi to file the present Appeal.
2. That the appeal is bad for misjoinder/non-joinder of necessary parties.
3. That the appeal is not maintainable in its present form.
4. That the appellant has not come with clean hands to the Hon'able Tribunal.
5. That the appellant is estopped due to his own conduct.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appeal is badly time barred.
8. That the Hon' able Service Tribunal has no jurisdiction to entertain the instant appeal.

## **BRIEF ON FACTS.**

1. Pertains to record.
2. Pertains to record.
3. Correct to the extent of court judgment however he was proceeded departmentally for the misconduct and acquittal by a Court does not affect departmental proceedings. Moreover, criminal proceedings and departmental proceedings can run side by side. Furthermore, compromise in criminal cases by itself admits guilt on the part of accused.
4. Correct to the extent that the appellant was dismissed on the basis departmental proceedings i.e. issuing charge sheet and conducting proper departmental inquiry under RSO 2000 and after fulfilling all code formalities the impugned order was passed. However, the appellant filed a time barred departmental appeal which was rejected on 01.10.2018 being time barred (copies of charge sheet and statement of allegations, inquiry report are A,B and C).
5. The appellant was proceeded under RSO 2000 which does not allow second departmental appeal / revision so the instant appeal is badly time barred.
6. Incorrect because the appellant has got no cause of action and the instant Service Appeal is not maintainable.

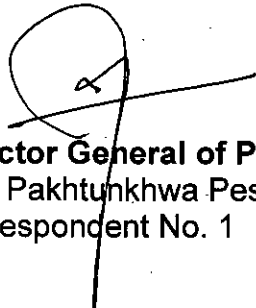
## **GROUND:**

- a. Incorrect because the orders passed by the Competent Authorities are legal and in accordance with the relevant law / rules.
- b. Incorrect proper procedure was adopted before passing the impugned orders.
- c. Incorrect the appellant was proceeded not only on involvement in criminal case but for absent as well further acquittal him criminal case does not affect departmental proceeding.
- d. Incorrect. Appellant being directly charged in case FIR No. 815 U/S 302/324 PPC dated 06.10.2011 PS SMA Tank. Later-on compromise has been affected in the cited case thereby meaning that appellant admit his guilt as compromise in criminal case admits guilt. Furthermore, criminal proceedings and departmental proceedings can run side by side. Hence, the instant stance taken by appellant is rebutted.


- e. As per Para "b".
- f. Incorrect because during ex-parte departmental enquiry, all kind of legal formalities were observed. Charge Sheet / statement of allegations were issued to appellant. DSP/Rural Tank was appointed as Inquiry Officer. Thus the punishment awarded to the appellant by the Competent Authority is legal and is in accordance with the law / rules.
- g. There is no illegality in the impugned orders.
- h. As per Para "A".
- i. As per Para "A".

J&k. That the Respondents may also be allowed to raise additional objection at the time of arguments


In view of above, it is humbly prayed that on acceptance of Para-wise comments, the Service Appeal may kindly be dismissed being meritless and badly time barred.



**Inspector General of Police**  
Khyber Pakhtunkhwa Peshawar  
Respondent No. 1



**Regional Police Officer,**  
Dera Ismail Khan Region.  
Respondent No. 2



**District Police Officer,**  
Tank.  
Respondent No. 3

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER AKHTUNKHWA  
PESHAWAR.**

**APPEAL No. 87/2019.**

Ex-Const. Kaleem Ullah No. 16.

(Appellant).

**Versus**

1. Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.

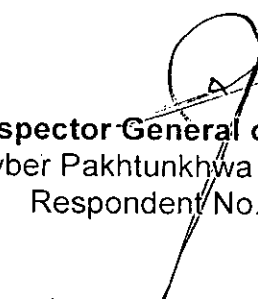
2. Regional Police Officer ,  
Dera Ismail Khan Region.

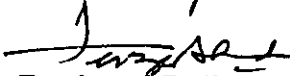
3. District Police Officer,  
Tank.

) 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 Honorable Tribunal.

  
**Inspector General of Police**  
Khyber Pakhtunkhwa Peshawar  
Respondent No. 1

  
**Regional Police Officer,**  
Dera Ismail Khan Region  
Respondent No. 2

  
**District Police Officer,**  
Tank.  
Respondent No. 3



**DISCIPLINARY ACTION.**

I, **ANWAR SAEED KUNDI** District Police Officer, Tank being a competent authority am of the opinion that you Constable Kaleemullah No. 16 rendered himself liable to be proceeded against for committing the following:-

**STATEMENT OF ALLEGATION.**


You Constable Kaleemullah No. 16 were found involved in criminal case vide FIR No. 815 dated 06.10.2011 U/S 302/324/34 PPC Police Station Shaheed Murad Akbar Tank, which amounts to gross misconduct on your part and punishable under the rules.

Hence this statement of allegation is issued.

2. For this purpose of scrutinizing the conduct of said official with reference to above allegation. Fazid Ullah Khan DSP Rural Tank appointed as Inquiry Officer to conduct proper department inquiry under the NWFP Removal from Service (Special Powers) Ordinance 2000 (Amendment Act-2005).

3. The Inquiry Officer shall in accordance with the provision of the ordinance provide reasonable opportunity of the hearing to the accused, record its findings and make recommendations as to punishment or other appropriate action against the official within Seven (7) days of the receipt of this Order.

4. The official and a well conversant representative of the department shall join the proceedings on the date, time and venue fixed by the Inquiry Officer.

  
(ANWAR SAEED KUNDI)  
District Police Officer  
Tank  
15/10

No. 4194-95 / Dated Tank the 17 / 10 / 2011.

Copy to the:-

1. Fazid Ullah Khan DSP Rural Tank the Inquiry Officer for initiating proceeding against the defaulter under the provision of NWFP Removal From Service (Special Powers) Ordinance 2000 (Amendment Act-2005) and submit finding report within (3) three days as per prescribed rules.

2. Cont: Kaleemullah No 16 with the direction to appear before the Inquiry Officer on the date, time and venue fixed by the Inquiry Officer for the purpose of inquiry proceedings.

  
(ANWAR SAEED KUNDI),  
District Police Officer,  
Tank  
15/10

9  
**CHARGE SHEET.**

I, **ANWAR SAEED KUNDI** District Police Officer, Tank as competent authority under the NWFP Removal from Service (Special Powers) Ordinance 2000 (Amendment Act-2005) do hereby inform you Constable Kaleemullah No. 16 as follow:-.

That you have committed the following serious misconduct:-.

You Constable Kaleemullah No. 16 were found involved in criminal case vide FIR No. 815 dated 06.10.2011 U/S 302/324/34 PPC Police Station Shaheed Mureed Akbar Tank, which amounts to gross misconduct on your part and punishable under the rules.

2. You appear to be guilty of misconduct of under Section-3 of the NWFP Removal from Service (Special Powers) Ordinance 2000 (Amendment Act-2005) and have rendered yourself liable to any one of the penalties including dismissal from service, in Section-3 of the Ordinance ibid.

3. You are therefore required to submit your written defense within Seven (7) days of the receipt of this Charge Sheet to the Inquiry Officer.

4. Your written defense, if any should reach the Inquiry Officer within specified period, failing which it shall be presumed that you have no defense to put in and in that case exparte action shall be taken against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

  
**(ANWAR SAEED KUNDI)**,  
District Police Officer,  
Tank  
15/10

## فائنل رپورٹ محکمانہ انکوائری ازان کنسٹیبل کلیم اللہ 16

جناب عالی

بحوالہ انکوائری برخلاف کنسٹیبل کلیم اللہ 16 معروض ہوں کہ کنسٹیبل مذکورہ پر بحوالہ مقدمہ نمبر 815 مورخہ 6-10-2011 جرم 302/324/34 PPC تھانہ ٹانک دعویٰ ہوئی جس پر جناب DPO صاحب ٹانک نے چارج شیٹ ڈسپلنری ایکشن برخلاف کنسٹیبل کلیم اللہ 16 جاری کر کے بحوالہ حکم نمبر 4194-95 من DSP رورل کو انکوائری آفیسر مقرر فرمایا۔ اس ضمن میں ذیل کاروائی عمل میں لائی گئی۔

کنسٹیبل کلیم اللہ 16 کو بذریعہ پروانہ جات نمبری 269 مورخہ 27-10-2011، نمبر 213/R مورخہ 29-10-2011، و 248/R مورخہ 16-11-2011 گھر کے پتہ واقع دیہہ اماخیل اطلاع یابی کی گئی۔ لیکن نہ تو کنسٹیبل مذکورہ خود حاضر آیا اور نہ ہی کوئی تحریری جواب ارسال کیا جبکہ چارج شیٹ ڈسپلنری ایکشن بھی عدم تعمیل شدہ موصول ہوئے۔ جو کہ شامل انکوائری ہذا کئے گئے۔

مورخہ 18-11-2011 کو بذریعہ پروانہ نمبر 248/R تعمیل کنندہ DFC بغرض قلمبندی بیان طلب کر کے حاضر آیا اور بیان کیا کہ SHO صاحب نے پروانہ جات نمبری 209، 213 اور 248 بغرض طلبی کنسٹیبل کلیم اللہ 16 ولد عبدالرحیم قوم کٹڈی سکندہ اماخیل بغرض طلبی کنسٹیبل کلیم اللہ 16 ولد عبدالرحیم قوم کٹڈی سکندہ اماخیل مقدمہ 815 مورخہ 6-10-2011 جرم 302/324/34 PPC تھانہ ٹانک میں مجرم اشتہاری ہے اور اپنی جائز گرفتاری سے گریزاں ہے۔ اور کسی نامعلوم مقام پر روپوش ہو چکا ہے۔ پروانہ جات اور چارج شیٹ، ڈسپلنری ایکشن برخلاف کنسٹیبل کلیم اللہ 16 عدم تعمیل بھجوائے ہیں۔ اسی طرح میرا سلم خان انچارج تفتیش ٹانک نے حلفاً بیان کیا کہ کنسٹیبل کلیم اللہ 16 مقدمہ 815 مورخہ 6-10-2011 جرم 302/324/34 میں ملوث اور گنہگار ہے اور بعد از تکاب جرم روپوش ہو چکا ہے۔

کردہ انکوائری، بار بار طلبی کے باوجود کنسٹیبل کلیم اللہ 16 کے حاضر نہ آنے اور بیانات میرا سلم خان: SI/Inv، DFC حیات اللہ 320 تھانہ ملازی آئی کے بیانات سے یہ بات ثابت ہوئی ہے کہ:

کنسٹیبل کلیم اللہ 16 واقعہ مقدمہ 815 مورخہ 6-10-2011 جرم 302/324/34 تھانہ ٹانک میں ملوث ہے۔

لہذا MAJOR PUNISHMENT دینے کی سفارش کی جاتی ہے۔

فائنل انکوائری رپورٹ بغرض مناسب حکم مرتب ہو کر گزارش ہے۔

فرید اللہ مروت

ڈپٹی سپرینٹنڈنٹ آف پولیس رورل ٹانک

انکوائری آفیسر ٹانک

ORDER.

This is an order in the Departmental Enquiry of Constable Kalimullah No 16 of this District Police committed the following acts of omission:-

That he while posted in Police Line Tank was involved in case FIR No. 815 dated 06.10.2011 U/S 302/324/34 PPC Police Station Shaheed Mureed Akbar Tank and declared Proclaimed Offender.

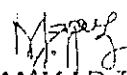
He was issued Charge Sheet and statement of allegation under the NWFP Removal from Service (Special Powers) Ordinance 2000, (Amendment Act 2005) and Mr. Faridullah Marwat DSP/Rural Tank was appointed as Enquiry Officer to conduct proper Departmental Enquiry into the matter. The enquiry Officer completed the enquiry and submitted his findings and held the delinquent constable guilty.

On having gone through the findings, recommendation of the Enquiry Officer and material placed on record, I, Mr. **MUHAMMAD IJAZ ABID** District Police Officer Tank being a Competent Authority do hereby award Major Punishment of DISMISSAL FROM SERVICE to Constable Kalimullah No. 16 from the date of occurrence/ his absence.

Order Announced:

OB NO. 1573

DATED: 29-12-2011

  
(MUHAMMAD IJAZ ABID)  
District Police Officer,  
Tank

27/12

From: The District Police Officer,  
Tank.

To: The Regional Police Officer,  
Dera Ismail Khan Region.

No. 2411 / Dated TANK The 5-7-2018.  
Subject: APPEAL - EX-CONST. KALEEM ULLAH NO. 16.

Memo:- Kindly refer to your office Endst: No. 2092/ES, dated 05.06.2018, on the subject cited above.

The Para-wise comments are submitted below:-

1. Correct to the extent.
2. Correct to the extent because the appellant while posted in Police Post City Tank was charged / nominated in heinous crime of murder and attempt to murder vide Case FIR No. 815, dated 06.10.2011 U/Ss 302/324/34-PPC Police Station, Shaheed Mureed Akbar. The remaining Para regarding his illegal involvement in heinous crime, relates to case file.
3. Incorrect because after charging of appellant in heinous crime of murder and attempt to murder he did not join the investigation of the case and became at large; therefore in light of existing rules, on involvement of appellant in heinous crime a separate departmental enquiry was also initiated against the appellant which is legal and justified.
4. Incorrect because after involvement / nomination in heinous crime of murder and attempt to murder, the appellant became at large and did not join the investigation of the criminal case or departmental proceedings nor submit his defense reply to the Inquiry Officer resultantly, the Inquiry Officer has submitted ex-parte departmental proceedings finding report in accordance with the relevant law / rules which is justified.
5. Incorrect because the departmental proceedings against the appellant were initiated and completed in accordance with the relevant law / rules which is justified.
6. Incorrect because during departmental enquiry proceedings, all legal formalities were observed; therefore the punishment awarded to the appellant is correct.
7. Incorrect because the order of punishment passed by the Competent Authority is legal and justified.

GROUND:-

1. Relates to Case File.

incorrect because ex-parte departmental proceedings was initiated and completed in accordance with the relevant law / rules whereas according to judgment passed in the criminal case, the appellant (accused) was acquitted of the charges on compromise basis between the parties vide Judgment dated 12.01.2018. Copy of the Judgment is enclosed.

3. Incorrect because the departmental proceedings initiated and completed against the appellant purely on merit in which no malafide or bad intention was found involved thus the proceedings initiated and completed against the appellant is in accordance with the relevant law / rules.

4. Incorrect because during conducting departmental proceedings, all legal formalities were strictly observed thus the order passed by the Competent Authority is legal and justified.

5. As discussed above in Para No. 04.

6. As discussed above in Para No. 04 & 05.

7. Incorrect because the appellant was at large and not available in the area of jurisdiction of Police Department Tank. During enquiry, all possible resources were utilized to ensure the participation of appellant in enquiry proceedings but of no use and resultantly ex-parte action was taken which is legal and justified.

8. Incorrect because the order passed by the Competent Authority is legal and justified.

9. Relates to Case File.

10. Needs no comments.

13. Needs no comments.

His Service Record along with enquiry file and appeal are enclosed herewith for kind perusal and return please.

  
District Police Officer,  
Tank.



OFFICE OF THE  
REGIONAL POLICE OFFICER  
DERA ISMAIL KHAN  
REGION

3139  
04-10-18

No. 3332 /ES, Dated 01 Di Khan the 10 /10/2018

ORDER

My this order will dispose-of the departmental appeal, preferred by Ex Constable Kaleem Ullah No. 16 of District Tank wherein he has prayed for setting aside the order of major punishment of Dismissal from Service imposed on him by DPO Tank vide CB No. 1573 dated 29.12.2011 after found him guilty of the following allegations:-

That the appellant while posted at Police Lines Tank was involved in a case vide FIR No. 815 dated 06.10.2011 U/S 302/324/34PPC of Police Station SMA Tank wherein he was declared as Proclaimed Offender.

His service record, inquiry papers and comments were received from DPO Tank which were perused and it was found that appellant was charge sheeted. Inquiry into the matter was conducted by DSP Rural Tank. The inquiry Officer submitted his findings report wherein the appellant was declared guilty of the charges leveled against him. The Competent Authority on the recommendations of Inquiry Officer and papers placed before him, has passed the order dated 29.12.2011. The case trail started in Sessions Court Tank and passed judgment dated 12.01.2018 and the appellant was acquitted on compromise basis.

Aggrieved from the impugned order, the appellant submitted the instant appeal which was sent to DPO Tank for comments and to provide his service record vide his office Endst: No. 2092/ES dated 05.06.2018. The DPO Tank has furnished the comments and service record of the appellant vide memo: No. 2411 dated 05.07.2018, wherein the appeal of the appellant was properly defended on cogent grounds.

During the perusal of his service record, it was found that the appellant has served Police Force for 04 years and during this period, he has been awarded a major punishment of Dismissal from service which was converted into minor punishment of censure. He has already been remained absent on different occasions and his total 12 days absence to this effect has been converted into leave without pay. It has also been transpired that the punishment order was passed by DPO Tank on 27.10.2010 but the defaulter constable preferred the instant appeal on 04.06.2018 which is grossly time barred & devoid of merit. Furthermore, acquittal on the basis of compromise is not acquittal at all.

*(Handwritten mark)*

The undersigned also provided him opportunity of personal hearing. 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, DAR ALI KHAN KHATTAK, 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 being grossly time barred and endorse the punishment awarded to him by DPO Tank.

**ORDER ANNOUNCED**

*(Signature)*  
(DAR ALI KHAN KHATTAK) PSP  
REGIONAL POLICE OFFICER  
DERA ISMAIL KHAN

No. 3333 /ES

Copy of above is sent to the DPO Tank for information with reference to his office memo No. 2411 dated 05.07.2018 alongwith his service record.

Encl:-  
Service Roll  
Fauji Missal

*(Signature)*  
(DAR ALI KHAN KHATTAK) PSP  
REGIONAL POLICE OFFICER  
DERA ISMAIL KHAN

*PPS attached*  
*1/3*  
*03/10*

*g/c legal / sae / office*  
*pr n / oct / is*

*(Signature)*  
DPO Tank  
*3/10*

*OB 935*  
*Date 3-10-*



To: The Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.

DEPARTMENTAL APPEAL AGAINST THE ORDER  
BEARING No.3332 DATED 01.10.2018 OF  
THE REGIONAL POLICE OFFICER, D.I.KHAN  
REGION.

Respectfully Sheweth,

1. That the petitioner was appointed as constable in the Police Department Tank and thereafter petitioner started to perform his official duties with zeal & zest, due diligence and devotion without any stigma on his entire career.
2. That the petitioner during his posting at Police Department, Tank, was implicated in a case vide FIR No.815 dated 06.10.2011 of Police Station SMA, District Tank registered under sections 302, 324, 34 PPC. However the said case was culminated on the basis of compromise and enders/intervenors had banned the petitioner from stepping into the Illaqa for a specific period.
3. That on the basis of same allegations of FIR, a departmental inquiry was conducted against the petitioner in which no fair chance of defence was given to him and finally the petitioner on the basis of ex-parte proceedings, petitioner was dismissed from service by the DPO Tank Office Order bearing OB No.1573 dated 21.12.2018 (Annexure A).
4. That the trial in the above referred FIR No.815 was commenced in the court of learned Sessions Judge Tank and finally acquitted vide order dated 12.01.2018 Annexure B.
5. That thereafter, the petitioner preferred an appeal (Annexure C) before the Regional Police Officer, D.I.Khan Region, which

was dismissed vide order bearing No.3332/ES dated 01.10.2018 (Annexure D) which order has been communicated to the petitioner on 28.11.2018.

6. That petitioner has also passed ATS 56 Basic Course from Islamabad.
7. That aggrieved of Order bearing No.3332/ES dated 01.10.2018 of the RPO D.I.Khan Region and Order bearing No. OB-1573 dated 29.12.2011 of DPO Tank, the petitioner wants to place the same before your kind honour and beg to cancel the same on the following grounds, amongst others:

**GROUND:**


- i. That the petitioner has been proceeded on the basis of involvement in the criminal case despite the fact that the same was pending before a competent court.
- ii. That the petitioner 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.
- iii. That it is an admitted fact that the petitioner was dismissed from service on the basis of ex-parte proceedings and on this score alone, in order to meet the ends of justice, petitioner is entitled for reinstatement.
- iv. That the main reason for dismissal of petitioner is involvement in a murder case and in the said case the petitioner has been acquitted. It was the demand of propriety to keep the departmental proceedings pending till decision of the criminal case. Hence, a great injustice has been done to the petitioner.
- v. That no proper procedure as envisaged under Khyber Pakhtunkhwa Police Rules, 1975, has been adopted. Thus impugned penalty cannot be imposed upon the petitioner.
- vi. That no proper inquiry has been conducted into the matter. Petitioner was not given opportunity to defend his rights rather all the inquiry proceedings were conducted at the back of

petitioner and petitioner was not associated with the inquiry proceedings. On this score alone, the impugned orders are liable to be cancelled.

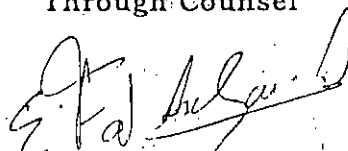
- vii. That the petitioner was not provided with the copy of inquiry report nor grounds of awarding him major penalty were apprised to petitioner by the authority. The entire enquiry process was conducted in a stereotype, slipshod, shortcut, hasty and unlawful manner particularly when factual charges were involved. No proper & regular inquiry was conducted into the matter which has resulted in grave miscarriage of justice.
- viii. That the impugned office orders are based on malafide and the petitioner has not been treated in accordance with the relevant law & record.
- ix. That the petitioner may be allowed to raise additional grounds at the time of arguments.

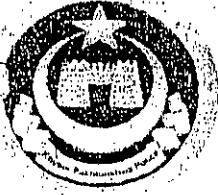
It is, therefore, humbly beseeched that on acceptance of the present appeal and by setting aside both the impugned orders of RPO D.I.Khan Region and DPO Tank, petitioner may please be reinstated into service along with all back/future benefits; and any other appropriate relief, which this Honourable Tribunal, in the given circumstances, may deem fit in the interest of justice may also be granted to the petitioner.

Yours Humble Petitioner

  
(Kaleemullah)  
Through Counsel

Dt. 05 December, 2018

  
Shah Fahad Ansari  
Advocate High Court, D.I.Khan.



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

No. SI 4868 /18, dated Peshawar the 12/12 /2018.

*[Handwritten signature]*

To : The Regional Police Officer,  
Dera Ismail Khan.

3974  
21-12-018

Office of the  
Inspector General  
of Police  
3926  
17-12-18

Subject: REVIEW PETITION.

Memo:

The Competent Authority has examined and filed the review petition submitted by Ex-Constable Kaleem Ullah No. 16 of Tank District Police against the punishment of dismissal from service awarded by District Police Officer, Tank vide OB No. 1573, dated 29.12.2011 being time barred.

The applicant may please be informed accordingly.

EC/AS

*[Signature]*  
(SYED ANIS-UL-HASSAN)

Registrar,  
For Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.

14/12

Cc.

Ex-FC Kaleem Ullah No. 16 of Tank District Police (0343-5428863):

NO: 4256/ES dt: 18-12-18

DPO/Tank  
To inform the applicant  
accordingly.

*[Signature]*  
REGIONAL POLICE OFFICER  
DERA ISMAIL KHAN

Ex-FC Kaleem Ullah No. 16 of Tank District Police  
0343-5428863  
28-12-18

*[Signature]*  
28-12-18

OB. NO - 1136  
Date - 28-12-18

OHC  
To inform the Applicant  
*[Signature]*  
20/12



IN THE COURT OF AURANGZEB SESSIONS  
JUDGE, TANK

Sessions Case No. 148/2 of 2017

State Vs Saif-Ullah etc (Accused)

Case FIR No. 815  
Dated: 06.10.2011  
Under Sections: 302/324 PPC  
Police Station: SMA, Tank

ORDER

12.01.2018

Dy:PP for the state and accused Saif-Ullah and

Kaleem-Ullah on bail alongwith counsel present. Local

Commission submitted his report alongwith statement of

lady Mst;Niaz Malooka, mother of the deceased.

The accused were charged by the complainant Abdul

Khalil for murder of Jawad Rehman vide FIR No. 815

dated 06.10.2011 U/Ss' 302/324/34 PPC PS SMA, Tank.

On 19.12.2017, legal heirs of the deceased namely

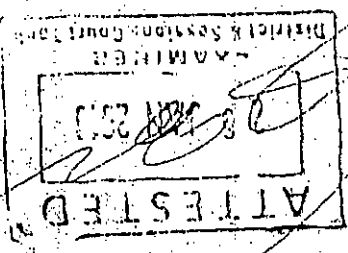
Abdul Khalil(father), Mst;Nasem Akhtar(mother of

deceased Rehmat-Ullah), Abdul; Rahim(father of

deceased Rehmat-Ullah) and Mst;Dilshad bht/w/o

Rehmat-Ullah) recorded their joint statements of

compromise and expressed no objection on account of



Handwritten signature and date: 12/01/18

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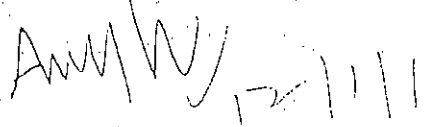
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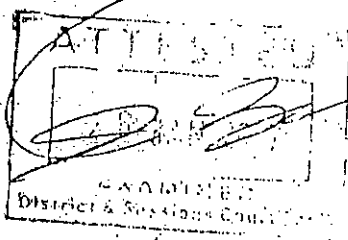
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the accused. Two attested mutations No.3513 & 3514 also produced whereby landed property has been transferred to minors/widow of Rehmat-Ullah.

4. The compromise statement of the L.Rs seems genuine and without pressure. The accused facing trial charge of compoundable offence, hence on the basis of compromise, they are acquitted. Their bail bonds stand cancelled accordingly. Case property be kept intact till the expiry period appeal/revision. File be consigned to record room after its completion and compilation.

Order announced  
12<sup>th</sup> January, 2018

  
(Aurangzeb)  
Sessions Judge, Fank








Ullah Khan was nominated as Inquiry Officer. The enquiry was conducted. No chance of self defense was provided even the charge sheet was also not served upon the appellant. After completion of ex-parte proceedings, the inquiry officer has submitted defective report was submitted to DPO Tank upon which the appellant was awarded Major Punishment of Dismissal from service by the DPO Tank vide order Book No. 1573 dated 29/12/2011 which is unjustified and illegal because the enquiry was initiated and completed in my absentia, thus requires to be set aside.

**RESPECTFULLY SUBMITTED:-**

- 1- That the appellant was posted in Police post city Tank and was serving to the best satisfaction of my Senior Command. No chance of complaint was provided either of my colleague or senior command.
- 2- That while posting in PP City Tank, the appellant was charged in a criminal case vide FIR No. 815 under Section 302/324/34 PPC Police Station SMA Tank illegally and closed to police line Tank for departmental proceedings on the allegations of my involvement in the case.
- 3- That I was issued charge sheet along with statement of allegations containing false and baseless allegations but not served upon the appellant which is illegal and violative to law / rules. Annexure "A".
- 4- That the inquiry office was nominated. During enquiry no chance of self defense was provided by the inquiry officer nor any witness was examined in my case. Hence the allegations of my involvement is baseless as well as political basis.



5- That the inquiry committee has submitted a defective inquiry report containing false and fabricated report which is against the norms of justice.

6- That the authority without fulfillment of Codal formalities as required under the rules, announced harsh and aggressive order of my dismissal from service which is illegal and unjustified. Copy enclosed as Annexure "B".

Z- That the impugned order of DPO Tank is against the justice and express provisions of law thus liable to be set aside inter alia on the following grounds:-

**GROUND:-**

- > That the appellant was wrongly charged in a murder and attempt to murder case vide FIR No. 815 under section 302/324/34 PPC police station SMA tank thus the appellant was facing trial to prove my innocence in the Court of law.
- > That the departmental enquiry was requires to keep pending till the decision of trial Court so case to meet the requirement of justice. After completion of trial, the appellant was acquitted of the charges vide judgment dated 12/01/2018 passed by the Court of District & Sessions Judge, Tank. Copy enclosed as Annexure "C".
- > That the departmental proceedings initiated against the appellant was the result of personal ill will and was based on false statement because the charges were never proved in the inquiry thus the proceedings so conducted and completed were a mere eye wash and nullity in the eyes of law.
- > That all the proceedings conducted against the appellant were violatave of law and against the mandatory provision of Khyber Pakhtunkhwa

(15)

Police rules 1975, the order impugned is thus liable to be set aside at naught.

- That the inquiry officer while conducting proceedings did not adhere to the mandatory provisions of Khyber Pakhtunkhwa, Police Rules 1975, he conducted the inquiry in a novel way.
- That all the proceedings conducted against the appellant were illegal and unlawful as it runs counter to the express provisions of the Khyber Pakhtunkhwa Police Rules 1975.
- That during proceedings neither charge sheet was served upon the appellant nor any chance of self defense was provided thus the proceedings conducted and completed against the appellant are illegal, malafide and not tenable.
- That the impugned order of DPO Tank is not based on justice, the order impugned is thus liable to be set at naught because the appellant was acquitted of the charges by the Honourable Court of District & Sessions Judge, Tank.
- That now, the matter in respect of FIR No. 815, dated 06/10/2011 offence Under Section 302/324/34 PPC Police Station SMA District Tank have been patched up. Hence the appellant is entitled for reinstatement of service.
- That from 06/09/2011 to 12/01/2018 the appellant was absconder due to life threats, therefore, the departmental appeal before this Honourable forum is within the time after judgment of Session Judge, Tank. Copy of judgment dated 12/01/2018 is enclosed as Annexure "D".
- That the appellant seeks the permission of Honourable Appellant authority to rely on additional grounds at the disposal of this appeal.

It is, therefore, humbly requested that on acceptance of this appeal the impugned order of DPO Tank may kindly be set aside and the appellant may be reinstated into service from the date of my dismissal from service so as to meet the requirements of justice please.

Your Humble Appellant

Dated: 27/06/2018

*Kaleem Ullah*

Kaleem Ullah No. 16  
Ex Constable  
District Police, Tank.  
Cell # 0343-5428863  
CNIC#12101-1872180-5

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL**

Appeal No. 87/2019

Kaleem Ullah

VS

Police Department

**REJOINDER ON BEHALF OF APPELLANT**

Respectfully Sheweth:-

**PRELIMINARY OBJECTIONS:-**

(1-8) All objections raised by the respondents are incorrect and baseless, rather the respondents are estopped by their own conduct to raise any objection.

**FACTS:-**

1. Admitted correct as the service record of the appellant is present with the department.
2. Admitted correct as the service record of the appellant is present with the department.
3. Correct to the contents that criminal proceedings and departmental proceedings can run side by side but the reason on which the appellant was dismissed from service became vanished and there remain no ground to

penalize on that ground. Moreover, as per superior court judgments all acquittal are Honourable acquittal

4. Incorrect. No charge sheet was communicated to the appellant and one sided inquiry was conducted against the appellant and on the basis of that one sided inquiry the appellant was dismissed from service. Moreover, the appellant was involved in criminal case and after acquittal he filed departmental appeal. Furthermore, as the appellant was involved in criminal case therefore, the department should suspend him under CSR 194 till the conclusion of criminal case pending against the appellant.
5. Incorrect. While para 5 of the appeal is correct as the appellant was proceeded under wrong law.
6. Incorrect. The appellant has good cause of action to file the instant appeal.

**GROUND:-**

- A. Incorrect. The impugned orders passed by competent authority are not in accordance with law and rules, therefore, not tenable and liable to be set aside.
- B. Incorrect. No proper procedure was adopted before passing the impugned order.
- C. Incorrect. While para-C of the appeal is correct.

D. Incorrect. As replied in Para-3 above.

E. Incorrect. As replied in Para-B above.

F. Not replied according Para-F of the appeal. Moreover,  
Para-F of the appeal is correct.

G. Incorrect. While Para-G of the appeal is correct.

H. Incorrect. As replied in Para-A above.

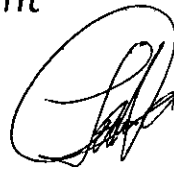
I. Incorrect. As replied in Para-A above.

J. Legal.

It is therefore, most humbly prayed that the  
appeal may kindly be accepted as prayed for.

Appellant

Through

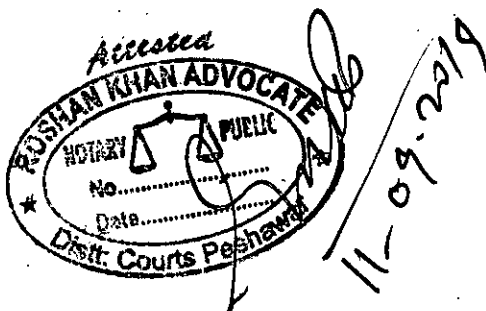


TAIMUR ALI KHAN

Advocate High Court Peshawar

AFFIDAVIT:-

It is solemnly affirm that the contents of this rejoinder is true  
and correct and nothing has been concealed from this  
Honourable Tribunal.



Deponent  
Kamulah