

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.

Service appeal No. 1322/2019

Date of institution ... 24.09.2019  
 Date of decision .... 24.10.2019

Mushtaq Hussain (SI) CTD Mardan Region, Mardan.. ... (Appellant)

Versus

Inspector General of Police Khyber Pakhtunkhwa and 1 other. ...  
 (Respondents)

Present

Mr. S.M.Ilyas,  
 Advocate

... For appellant.

MR. HAMID FAROOQ DURRANI, ...

CHAIRMAN

JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

1. Instant appeal has been preferred against the order dated 03.05.2019 passed by respondent No.2 as well as the order dated 09.11.2017 (referred to in the prayer as impugned order).
2. The appellant was awarded major punishment of reversion from the rank of Confirmed Inspector to the rank of Sub Inspector after departmental proceedings through the impugned order. The appellant preferred a departmental appeal which was rejected. Subsequently, an appeal was submitted before this Tribunal on 19.02.2018 which was disposed of on 29.05.2018. Still feeling aggrieved, the appellant knocked at the door of Apex Court through Civil Petition No.2327 of 2018. The petition was, however, dismissed and leave to appeal was refused through order dated 17.12.2018. The appellant thereafter submitted another departmental representation regarding the issue. It was filed on 03.05.2019 owing to the fact that the matter was already

decided once. The appeal in hand was consequently preferred on 24.09.2019.

3. In the facts and circumstances of the case, when the issue agitated by appellant, already stands decided to the level of August Supreme Court of Pakistan, instant appeal is not entertainable under Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974,. It is also to be noted that there is considerable delay in submission of the appeal in hand.

4. In view of above, the appeal is dismissed in limine. File be consigned to the record room.



(Hamid Farooq Durrani)  
Chairman

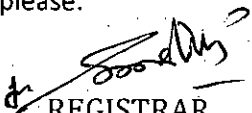
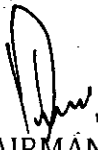
ANNOUNCED  
24.10.2019

Form- A

# FORM OF ORDER SHEET

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

Case No.- 1322/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/10/2019	<p>The appeal of Mr. Mushtaq Hussain resubmitted today by Mr. S.M.Ilyas Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	14/10/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24/10/19.</u></p> <p> CHAIRMAN</p>

The appeal of Mr. Mushtaq Hussain SI CTD Mardan Region Mardan received today i.e. on 23.09.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- The section of law under which appeal is filed is wrong.
- 2- Copies of charge sheet, statement of allegations, show cause notice and replies thereto are not attached with the appeal which may be placed on it.

No. 1644 /S.T,

Dt. 26-9- /2019.

  
REGISTRAR -  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. S.M.Ilyas Advocate,  
District Court Mardan.

10-10-19

Sir, Resubmitted after completion of objection no 1 while regarding the second objection respectfully submitted that prior to this appeal the matter once decided up to the APPEX court wherein the allegation, charge sheet & show cause notice has already been discussed. Also this appeal is on fresh cause of action which is annexed ~~on pg no 22-27~~ ~~attached~~  
F, pg no 22-27.

S. M. Ilyas  
Adv.

**Before the Khyber Pakhtunkhwa Service Tribunal  
Peshawar**

Appeal No. 1322 of 2019

Mushtaq Hussain Vs Inspector General Of Police KPK

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Appellant,

Through,

S.M Ilyas Advocate  
High Court at  
Distt: Courts Mardan

Before the Khyber Pakhtunkhwa Service Tribunal  
Peshawar

Appeal No. 1322 of 2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1298

Dated 24/9/2019

Mushtaq Hussain (SI) CTD Mardan Region Mardan  
(Appellant)

Versus

1. Inspector General of Police Khyber Pukhtoonkhwa Peshawar.
2. D.I.G CTD Khyber Pukhtoonkhwa

(Respondents)

APPEAL UNDER SECTION 4 OF KHYBER  
PUKHTONKHWA SERVICE TRIBUNAL ACT  
1974

Respectfully Sheweth,

1. That appellant remained in service as investigation inspector CTD D.I Khan Region in police department and now serving as SI in CTD Mardan Region Mardan.

2. That appellant was charge sheeted with statement of allegations in case FIR No.08 dated 26/02/2017 U/s 302-34 PPC with 7 ATA PS CTD D.I Khan Region KPK based on irregularities, irresponsibility with the allegation of submission of untraced case against the nominated accused. Second allegation recorded the statement of Muhammad Ramzan father of the deceased family U/s 164 Cr.PC in the court. Thirdly the attitude against the police disciplinary rules 1975 read with amendment, 2014 which speaks highly adverse on the part of the petitioner. (Copy of FIR is attached as annex A)

3. That departmental enquiry was carried out by Quaid Kamal Khan DSP HQrs CTD KPK, the petitioner

Filed to Registrar  
24/9/19

submitted his reply in defence but it was turned down.  
(Copy of inquiry report is attached as annexure "B")

4. That furthermore consequent upon the departmental enquiry the petitioner was served with final show cause Notice, for which the petitioner relied on his previous reply submitted during the course of enquiry. However the same was not considered and the petitioner was awarded a major punishment of reversion from the rank of confirmed inspector to the rank S.I by D.I.G CTD KPK vide his order/letter No.13162-69 dated 09-11-2017. (Copy of office order dated 09/11/2017 is attached as annex "C")
5. That appellant preferred an appeal to the Inspector General of Police KPK Peshawar but it was also rejected. The impugned orders was challenge before the Service Tribunal KPK Peshawar but the service tribunal vide his judgement dated 29/05/2018 dismissed the appeal of the petitioner though the impugned order was illegal and ultra vires and against the norms of justice and the same was liable to be set aside. (Copy of order dated 29/05/2018 is attached as annexure "D")
6. Thereafter appellant approached to the Supreme Court but the Honourable Supreme Court has not considered the points and appeal of appeal was dismissed on 17/12/2018. (Copy of Supreme Court Order is attached annex "E")
7. That investigation was carried out under the supervision of J.I.T which was consisted of the I-O (petitioner) and other high level officer so there was no margin for error or irregularities in investigation of the case, because the complainant charged the nominated accused on suspicious grounds for the murder of his son Ali Raza while the heirs of other two deceased were not interested to charge anyone in spite of the all-out efforts of the petitioner.
8. That challan of the subject case was submitted as untraced for the reason that there was no other evidence except the hearsay version of the complainant which was narrated initially in the FIR. Furthermore due to that lack of

evidence there was no hope of the subject case and the fate of the case would be decided forever in the court so that the challan was submitted as untraced in good faith the case on availability on solid evidence in future against the accused.

9. That it was a joint decision of the members of J.I.T to send the challan untraced. All the members also signed the proscribed Proforma and then the challan was forwarded as untraced to learned court duly signed by a gazette officer which was authority for final report under the law. The submission of challan is the collective responsibility of all the members of the J.I.T constituted for investigating the subject case and the sole responsibility cannot be laid down on shoulders of the petitioner. The record shows that recording of statement U/s 164 Cr.PC was not in contrary to the report and it was in the version given by the witness during the course of investigation. The statement was recorded just to avoid any mis-statement of the complainant party.
10. That the behavior/attitude of the appellant has been always remained moral, disciplinary with the general public and also with the superior officer through the entire career of the petitioner.
11. That the allegation has been just advanced punishment on the ground of professional jealousy and due to some difference with police officers who desired to humiliate the dignity and respect of the petitioner as he possesses good reputation in the police force through his hard work and honesty. The petitioner has unblemished record of a long service of 27 years in credit, during which the petitioner earned 1<sup>st</sup> position in every course and has also obtained many common accommodation certificate from high ups through his career.
12. That in this regard no anyone has raised the objection or filing a written complaint regarding any irregularity in investigating of the subject case including the complainant and the prosecution branch or any other objection noted by the learned court rather the enquiry has been conducted by the officers of CTD on their own discretion



without any legal justification. Hereafter on the transfer of the petitioner the investigation of the subject case has been entrusted to another I-O which remained under investigation with him for a long span of 09 months without obtaining fruitful progress except that which was obtained by the petitioner.

13. That the J.I.T framed for carrying out the investigation for the subject case consisted of other senior officers but they have been provided safe shelter while the petitioner has been solely awarded punishment in the same manner two gazetted officers in the rank of DSP and SP including the learned PP ATC D.I Khan has also put their signature on the case file which shows the innocence of the petitioner and also justifies the fact that no any irregularity has been observed while investigating the said case. The petitioner approached to the competent authority/respondents for the relief that now complete challan has submitted before the proper forum and prior to final decision the continuation of reduction in rank of petitioner will be an advanced punishment, but respondents ignored the application and passed the impugned Order dated No.1509 dated 03/05/2019 which illegal against law and facts and ineffective upon the right of the petitioner on the following grounds, (Copy of application and impugned order are attached as annexure "F")

### Grounds.

- a. That allegations leveled against the appellant are baseless and without reasonable evidence and the applicant had conducted the investigation of the mentioned case honestly fairly and without any laxity and made best efforts for success of the case.
- b. That the investigation was carried out under the supervision of JIT which was consisted of the IO (petitioner) and other high level officers so there was no margin for error or irregularities in investigation of the case. Because the complainant charged the nominated accused on suspicious grounds for the murder of his son Ali Raza while the heirs of the other two deceased were

not interested to charge any one inspite of all out efforts of the applicant and the challan in the subject case was submitted as untraced for the reason that there was no other evidence except the hearsay version of the complainant which was narrated initially in the FIR.

- c. That lack of evidence there was no hope of success of the subject case and the fate of the case of the subject case and fate of the case would be decided forever in the court so that the challan was submitted as untraced in good faith of the deceased to keep the investigation alive and to review the case on availability of solid evidence in future against the accused and it was a joint decision of the J.I.T to send the challan as untraced all the members also signed the prescribed proforma and then the challan was forwarded the challan as untraced to the learned court duly signed by a gazetted officer which was authority for final report.
- d. That the submission of challan was the collective responsibility of all the members of the J.I.T constituted for investigating the subject case and the sole responsibility cannot be laid down on the shoulders of the petitioner and recording of statement U/s 164 Cr.PC was not in contrary to the report and it was in the version given by the witness during the course of investigation. The statement was recorded just to avoid any mis-statement of the complainant party in future.
- e. That the behavior/attitude of the appellant has been always remained good disciplinary with the general public and also with the superior officers throughout with the general public and also with the superior officer throughout the entire career of the applicant and in this regard there is no oral or written complaint against the petitioner and the departmental inquiry has been conducted following the prevailing law/rules and regulations as neither the statement was recorded on oath nor the applicant was afforded the opportunity of cross examination of the witness as such there is no any evidentiary value of departmental proceedings.
- f. That any action against the appellant is based on malafide and has been passed in arbitrary manner by passing the

relevant law also is not based on true facts and figures rather the same is based on surmises and conjectures.

It is therefore very humbly prayed and requested that on acceptance of this appeal the impugned office order may please be set aside, the appellant may be reinstated in his previous rank of confirm inspector with full benefits in greater interest of justice, because prior punishment of the under trial case is unfair prejudice and injustice, any other relief deemed fit may also be graciously granted in favour of the appellant.

23/09/2019

Appellant

Through

S.M Ilyas

Advocate, High Court

At District: Courts Mardan

Before the Khyber Pakhtunkhwa Service Tribunal  
Peshawar


Appeal No. \_\_\_\_\_ of 2019

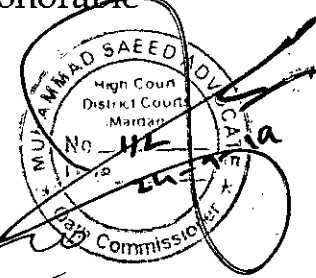
Mushtaq Hussain Vs Inspector General Police KPK

AFFIDAVIT

I Mushtaq Hussain do hereby solemnly affirm that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Date: 24/09/2019

  
Depoent



Mushtaq Husain SI

CTD Mardan.

CNIC No.16101-5495211-5

Cell No. 0347-5512595

Identified By

S.M.Ilyas Advocate

High Court

Before the Khyber Pakhtunkhwa Service Tribunal Peshawar

Appeal No. \_\_\_\_\_ of 2019

Mushtaq Hussain Vs Inspector General of Police KPK

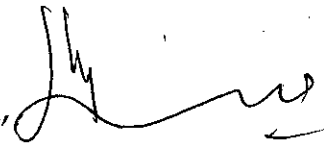
**MEMO OF ADRESSES**

**Appellant**

Mushtaq Husain S/o R/o (SI) CTD Mardan.

**Respondents**

3. Inspector General of Police Khyber Pukhtoonkhwa  
Peshawar
4. D.I.G CTD Khyber Pukhtoonkhwa

Through, 

S.M. Ilyas Advocate

High Court at District Courts

Mardan

پس منوبہ سردھارم نمبر ۷۳

گورنمنٹ پبلسکیشن ڈپارٹمنٹ لاہور 13/06/2011 (فارم نمبر ۱۵۱) (فارم نمبر ۲۳۳) (پولیس)

فارم نمبر ۲۳۳-۵ (۱)

نیل

ابتدائی اطلاع رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زینڈ ۱۵۱۲۱ مورخہ ۱۱/۰۶/۲۰۱۱ء مورخہ ۲۶/۰۶/۲۰۱۱ء

50		(08)	
26-06-17		26-06-17	
CNIC No: 12101-0989251-7		A11 302-36-7ATA	
ام وسکونت اطلاع دہندہ مستغنیث		کلیئر من راجد صاحب خان قوم نمبر 0346-4635717	
تفصیلات جرم (معدومہ) حال اگر کچھ لیا گیا ہو تو روزہ گورنمنٹ حیات جون لنگھا روڈ 35/ کھوسہ انارگار		باقی تعلقہ اور ضلع و ضلعی و سماجی قوم نمبر گورنمنٹ کبیر قوم نمبر 0346-4635717	
م وسکونت ملزم		پیر سیدتی وارنہ سردھارم دیابلی	
فاروانی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو		تفتیش کا سبب رپورٹ	
نمائندہ سے رواگی کی تاریخ و وقت		پیر 26/06/17 05:12	

جوان 5405 نمبر پر دست نشانی کے لئے گورنمنٹ کبیر قوم نمبر 0346-4635717 اور پتہ کبیر قوم نمبر 0346-4635717 کے لئے رپورٹ کی جا رہی ہے۔ رپورٹ کی تاریخ 26/06/17ء ہے۔

کلیئر من راجد صاحب خان قوم نمبر 0346-4635717 کے گھر پر 26/06/17ء کو ایک شخص نے داخل ہو کر کہا کہ میں ایک گھڑی چھین چکا ہوں، اسے تمہاری گھر میں رکھ دو، گھڑی کی قیمت تقریباً 5000 روپے ہے۔ گھڑی کی رنگت سیاہ اور کٹیج ڈیڑھ انچ کی تھی۔ گھر والوں نے اسے دیکھا تو اس نے کہا کہ میں نے یہ گھڑی نہیں دیکھی ہے، اس نے کہا کہ میں نے اسے کبیر قوم نمبر 0346-4635717 کے گھر سے لیا ہے۔

پیر سیدتی وارنہ سردھارم دیابلی کی پتہ کبیر قوم نمبر 0346-4635717 ہے۔ اس کے گھر پر 26/06/17ء کو ایک شخص نے داخل ہو کر کہا کہ میں ایک گھڑی چھین چکا ہوں، اسے تمہاری گھر میں رکھ دو، گھڑی کی قیمت تقریباً 5000 روپے ہے۔ گھر والوں نے اسے دیکھا تو اس نے کہا کہ میں نے یہ گھڑی نہیں دیکھی ہے، اس نے کہا کہ میں نے اسے کبیر قوم نمبر 0346-4635717 کے گھر سے لیا ہے۔

گورنمنٹ کبیر قوم نمبر 0346-4635717 کے گھر پر 26/06/17ء کو ایک شخص نے داخل ہو کر کہا کہ میں ایک گھڑی چھین چکا ہوں، اسے تمہاری گھر میں رکھ دو، گھڑی کی قیمت تقریباً 5000 روپے ہے۔ گھر والوں نے اسے دیکھا تو اس نے کہا کہ میں نے یہ گھڑی نہیں دیکھی ہے، اس نے کہا کہ میں نے اسے کبیر قوم نمبر 0346-4635717 کے گھر سے لیا ہے۔

گورنمنٹ کبیر قوم نمبر 0346-4635717 کے گھر پر 26/06/17ء کو ایک شخص نے داخل ہو کر کہا کہ میں ایک گھڑی چھین چکا ہوں، اسے تمہاری گھر میں رکھ دو، گھڑی کی قیمت تقریباً 5000 روپے ہے۔ گھر والوں نے اسے دیکھا تو اس نے کہا کہ میں نے یہ گھڑی نہیں دیکھی ہے، اس نے کہا کہ میں نے اسے کبیر قوم نمبر 0346-4635717 کے گھر سے لیا ہے۔

FINDINGS OF INQUIRYNST INSPECTOR MUSHTAQ HUSSAIN, OF  
HQrs: PESHAWAR.

Respected Sir,

The undersigned was entrusted with an inquiry against Inspector Mushtaq Hussain of CTD, with the following allegations that:

- I. While he was posted as Investigation Officer in case vide FIR No.08 dated 26-02-2017 u/s 302-34 PPC-7ATA PS CTD DI Khan Region made two mistakes/irregularities/irresponsibilities in the said case i.e submission of untraced Challan against the charged accused.
- II. He also recorded the statement of Mr. Mohammad Ramzan father of Mohammad Jameel u/s 164 Cr.P.C.
- III. His such attitude speaks highly adverse on his part & is against the Police Disciplinary Rules 1975 read with amendments 2014 which speaks highly adverse on his part.

PROCEEDING OF ENQUIRY:

During the course of enquiry the statements of following officials were got recorded.

1. DSP Mohammad Saeed Khan, CTD.
2. Inspector Mushtaq Hussain, CTD.
3. Inspector Iqbal Khan, GO Special Branch, D.I.Khan.
4. SI Faiz Kalim, CTD D.I.Khan, member JIT.
5. HC Nazir Ahmed, Special Branch D.I.Khan, member, JIT.

The defaulter Inspector Mushtaq Hussain CTD HQrs: submitted reply to charge sheet. He was also called upon in the office of undersigned and heard in person. Some important questions were asked from him but he failed to satisfy the undersigned. (Copy of questions & answers given by Inspector Mushtaq Hussain is enclosed).

Similarly DSP CTD Saeed Khan was also called upon in the office of undersigned to record his statement regarding his case Diaries available in the case file in which he showed his satisfaction over the process of the investigation of above mentioned case. During his statement, DSP Saeed Khan disagreed with the investigation carried out by Inspector

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(4)

(11)

narrated that although he signed the above mentioned case Diaries but the signature was taken in a routine official work and that he is totally disagreed with the way of investigation carried out by Inspector Mushtaq Hussain.

**BRIEF FACTS:**

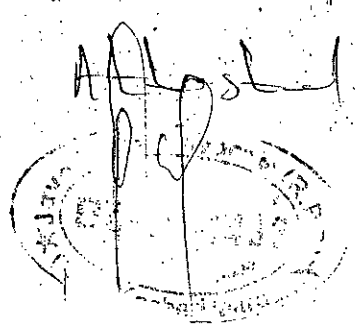
A case FIR No. 08 dated 26-02-2017 u/s 302-34 PPC-7ATA PS CTD DI Khan Region was registered by the complainant Bashir Hussain s/o Sahib Dad Caste Balouch. As per his statement to local Police in emergency room of civil hospital Paroa that he was present at his house at about 12:20 hrs, he got information that near Gounslar "mainer" someone had made firing on his son Ali Raza. He reached the spot and found that motorcycle was laying over there while his son Ali Raza, his nephew Saqlain Abbas and Mohammad Jamil were also laying dead. He took the dead bodies into civil hospital Paroa. During his statement he reported to the Police that he is sure that his son and his nephew were murdered by Kashif Ali, Mohammad Aslam and Iqbal because the accused belong to religious terrorist banned organization and they were threatening to kill them. He charged the above said accused for the commission of offence. It is worth mentioning that one Mukhtiar father of Saqlain Abbas one of the above mentioned deceased (cousin of complainant Bashir Hussain) was also killed by unknown terrorists. Accordingly an FIR No.36 dated 24-06-2015 u/s 302-34-7ATA has been registered in PS CTD D.I.Khan.

The case was entrusted for investigation to Inspector Mushtaq Hussain. During the course of investigation Inspector Mushtaq Hussain has committed the following mistakes/irregularities/irresponsibilities:-

1. He failed to bring evidence on case file against the charged accused and astonishingly submitted untraced Chalan in the instant traced case.
2. The complainant Bashir Hussain directly charged the following accused in the above mentioned case.
  - I. Kashif Ahmed s/o Allah Wasaya r/o Paroa D.I.Khan.
  - II. Mohammad Aslam s/o Ghulam Akbar r/o Paroa

ATTACHED

A. Hussain  
D.I.Khan

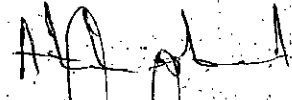
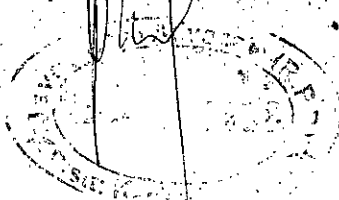




III. Mohammad Iqbal s/o Ghulam Yasin r/o Paroa D.I.Khan.

It is worth mentioning that Mohammad Ramzan father of one of the deceased Mohammad Jamil did not charge any accused in his statement u/s 161 CrPC before the I/O, but the I/O unnecessarily brought him again before the court for recording his statement u/s 164 CrPC to charge unknown accused for the murder of his son which caused a great damage to the traced case, therefore, the arrested accused were released on bail just within 09 days of their arrest.

- 3. He also failed to work on the medium of threats to the complainant i.e (verbal, written, telephonic etc) which would be the main evidence in the case.
- 4. Inspector Mushtaq Hussain did not make any effort to recover weapon of offence nor he carried out house search of the accused during their custody of the accused for the recovery of weapon of offence.
- 5. It is pertinent to mention that complainant of FIR No.08/2017 PS CTD D.I.Khan reported to the Police that the charged accused belong to defunct organization and the same stance is rectified by I/O Mushtaq Hussain in Diary No.13 & 15 during his investigation, but he failed to establish links and collect evidence in this regard. The accused themselves admitted their affiliation with the defunct organization in the past.
- 6. CDR was obtained and placed on case file without carrying out any analysis by himself or through CFU to establish links/communication/location of accused with the commission of offence.
- 7. During cross examination Inspector Mushtaq Hussain stated that all the members of JIT, established in the instant case, are satisfied with the process of his investigation but JIT members denied his stance in their statements and narrated that they were not even consulted during the course of investigation except their first meeting held after the registration of the instant case.

MUSHTAQ HUSSAIN



**CONCLUSION:**

As per the statements of the above mentioned officials and available record, it revealed that the charges leveled against Inspector Mushtaq Hussain have been proved. He willfully carried out sub standard investigation which not only provided benefit to the charged accused in the above mentioned case but also suffered the aggrieved families of the three deceased. Therefore, I being enquiry officer recommend that Inspector Mushtaq Hussain CTD deserves an appropriate punishment.

Submitted please.

*[Handwritten Signature]*  
10.10.2017

**(QUAID KAMAL)**  
**DSP Headquarter CTD,**  
**Peshawar.**

*[Handwritten Signature]*  
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**ATTACHED**



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CO  
KH

Ph # 3-94 Fax # 091-9218031.  
No. 13/62-19/PA. Dated 09/11/2017.

OFFICE OF THE,  
DEPUTY INSPECTOR GENERAL OF POLICE,  
DISCIPLINARY DEPARTMENT,  
PESHAWAR.

(14)  
Am C

**ORDER**

This order is passed today on 08-11-2017 to dispose of departmental proceedings initiated against Inspector Mushtaq Hussain of this Unit.

Inspector Mushtaq Hussain was charge sheeted under the Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) on the score of following allegations:-

1. While you were posted as Investigation Officer in Case FIR No. 08 dt: 26-02-2017 u/s 302/34-PPC/7-ATA PS CTD D I Khan Region make two mistakes/irregularities / irresponsibility in the said case i.e submission of untraced challan against the charged accused.
2. And also recorded the statement of Mr. Muhammad Ramzan father of Muhammad Jameel u/s 164 Cr.P.C.
3. Your such attitude speaks highly adverse on your part & is against the Police Disciplinary Rules 1975 read with amendments 2014 which speaks highly adverse on your part.

For conducting probe into the allegations leveled against Inspector Mushtaq Hussain of this Unit, Mr. Quaid Kamal Khan DSP/HQrs: CTD Khyber Pakhtunkhwa, was appointed as Enquiry Officer. The Enquiry Officer found him guilty as the charges leveled against Inspector Mushtaq Hussain have been proved. He willfully carried out sub standard investigation which not only provided benefit to the charged accused in the above mentioned case but also suffered the aggrieved families of the three deceased. The Enquiry Officer recommended him for appropriate punishment.

Called again and heard in person. The officer was given full opportunity of defense. His verbal explanation during Orderly Room and given in his reply to the Final Show Cause Notice were perused and found completely unsatisfactory.

The enquiry papers were also perused in detail. The Enquiry Officer has listed all major shortcomings in the investigation of case FIR No. 08 dt: 26-02-2017 u/s 302/34-PPC/7-ATA PS CTD D I Khan. It is evident from the findings of the enquiry that the charges leveled in the charge sheet have been proved. He is guilty of the charge/gross misconduct.

In the light of findings/recommendations of the Enquiry Officer and available record on file against Inspector Mushtaq Hussain, I, Mubarak Zeb, Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa being competent authority, hereby imposes the major punishment "of Reversion to the rank of Sub Inspector" with immediate effect.

Order announced.

Dy No 1468 CTD MCD  
9-11-2017

(MUBARAK ZEB) PSP  
Deputy Inspector General of Police,  
CTD, Khyber Pakhtunkhwa,  
Peshawar.


**Endst: No. & date even.**

Copy of the above is forwarded to the:-


1. The Inspector General of Police, Khyber Pakhtunkhwa.
2. All Addl IGP/Khyber Pakhtunkhwa.
3. Deputy Inspector General of Police, HQrs: Khyber Pakhtunkhwa.
4. Regional Police Officer, Mardan.
5. Senior Superintendent of Police/Ops CTD Central Zone.
6. Superintendent of Police. CTD Mardan.
7. Superintendent of Police/HQrs: CTD.
8. Officer concerned.

Recd  
for file  
9/11/17

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Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	29.05.2018	<p style="text-align: right;"></p> <p style="text-align: center;"><b>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</b></p> <p style="text-align: center;">Appeal No. 235/2018</p> <p>Date of Institution ... 19.02.2018 Date of Decision ... 29.05.2018</p> <p style="text-align: center;">Mushtaq Hussain S.I CTD Mardan Region Mardan.</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"><li>Inspector General of Police Khyber Pakhtunkhwa Peshawar.</li><li>D.I.G of Police CTD Khyber Pakhtunkhwa Peshawar.</li></ol> <p style="text-align: center;"><b>JUDGMENT</b> <b>MUHAMMAD HAMID MUGHAL, MEMBER:</b> - Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney on behalf of the respondents present.</p> <p>2. The appellant (Ex-Inspector CTD D.I.Khan) has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 09.11.2017 vide which he was awarded major punishment of reversion to the post of Sub Inspector and against the order dated 13.02.20158 whereby his departmental appeal was rejected.</p> <p>3. Learned counsel for the appellant argued that the appellant joined the Police Force as Constable and has unblemished record of long service of 27 years at his credit. Further argued that the appellant while serving as Investigation Officer as Inspector CTD</p>

29.05.2018

**ATTESTED**  
  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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D.I.Khan Region was charge sheeted on the allegations that he conducted substandard investigations in case F.I.R No.08 dated 26.02.2017 u/s 302-34.PPC/7ATA Police Station CTD D.I.Khan Region by submitting untraced challan against the charged accused and that he also recorded the statement of Muhammad Ramzan father of deceased/victim Muhammad Jameel u/s 164 Cr.P.C. Further argued that the appellant submitted reply to the charge sheet and after the departmental inquiry the appellant was also served with final show cause notice which he also replied. Further argued that the respondent department did not consider the defense of the appellant and awarded major punishment vide impugned order and that the departmental appeal against the same also failed. Further argued that the impugned orders are illegal and unjustified. Further argued that allegations leveled against the appellant are baseless and that the appellant was condemned without any evidence. Further argued that the appellant conducted investigation of the above mentioned criminal case with honesty without any laxity. Further argued that the complainant/father of the victim Ali Raza charged/nominated the accused on suspicious grounds while the heirs of other two deceased/victims were not interested to charge any one, as such challan was submitted as untraced. Further argued that it was the decision of the Members of JIT to send the challan as untraced hence all the members of JIT were collectively responsible. Further argued that the appellant was made victim of professional jealousy and differences with Police Officers. Further

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Khyber Pakhtunkhwa  
Service Tribunal,  
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argued that the impugned punishment is otherwise harsh. Learned counsel for the appellant vehemently stressed for setting aside the impugned orders and reinstatement of the appellant in his previous rank of Inspector.

4. As against that learned Deputy District Attorney while opposing the present service appeal argued that disciplinary action was initiated against the appellant due to substandard investigations in a triple murder case of sensitive nature. Further argued that during the disciplinary proceedings all the codal formalities were fulfilled. Further argued that the appellant willingly submitted untraced challan in a traced case and the appellant unnecessarily brought father of the deceased/victim Muhammad Jameel before the court for recording the statement u/s 164 Cr.P.C to charge unknown accused for the murder of his son. Further argued that the appellant made no contact with the members of JIT during the course of investigation which fact is evident from the report of the inquiry officer. Further argued that the appellant was held guilty during the departmental inquiry and was provided full chance to defend himself.

5. Arguments head file perused.

6. There is no dispute that the appellant was served with charge sheet which he also replied. Regular inquiry was conducted on the charges mentioned in the charge sheet and statement of allegation. The appellant also appeared before the inquiry officer. The inquiry officer recorded the statements of the officials and observed that

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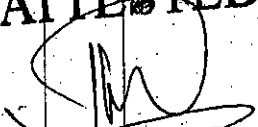
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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the appellant committed mistakes/irregularities/irresponsibilities as many as 7 in numbers, explained in the inquiry report. The inquiry officer has held that the charges leveled against the appellant stood proved and he willfully carried substandard investigation and thereby provided benefit to the charged accused. The appellant was served with show cause notice which he also replied.

7. In the light of above this Tribunal is of the considered view that all the codal formalities were completed before the issuance of impugned order and the inquiry report also speaks against the appellant for his irresponsible attitude while carrying out investigation in a triple murder case as such the appellant has not been able to make out the present case in his favor. Perusal of the inquiry report however would suggest that DSP Muhammad Saeed Khan CTD also remained engaged in the above mentioned criminal case and he in his Case Dairies showed his satisfaction over the process of investigation but astonishingly the respondent department has not called for any explanation from him. The appellant has a reasonable length of service at his credit and as per principle enshrined in FR-29, the authority ordering reduction to a lower grade or post or to a lower stage in time scale shall specify the period for which it shall be effective. In the attending circumstances this Tribunal is constrained to decide the present appeal in terms that the punishment of reversion to the rank of sub-inspector, awarded to the appellant, shall be for a period of three (03) years. Parties are left to bear their own costs. File be

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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consigned to the record room

*sd/-*  
**Ahmed Hassan**  
Member

*sd/-* (Mughal)  
**Muhammad Hamid Mughal**  
Member

**Certified to be true copy**  
*[Signature]*  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 5-6-18  
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**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

Present:

**MR. JUSTICE UMAR ATA BANDIAL**  
**MR. JUSTICE IJAZ UL AHSAN**

**Civil Petition No.2327 of 2018**

(On appeal from the judgment/order 29.05.2018  
of the Khyber Pakhtunkhwa Service Tribunal,  
Peshawar passed in Appeal No. 235/2018).

Mushtaq Hussain,

**Petitioner(s)**

**VERSUS**

Inspector General of Police Khyber Pakhtunkhwa,  
Peshawar and another

**Respondent(s)**

For the Petitioner(s) Mr. Muhammad Younis Taheem, ASC

For Respondent(s) N.R.

Date of Hearing 17.12.2018

**ORDER**

**UMAR ATA BANDIAL, J.—** Consequent upon regular inquiry held under the allegation of, *inter alia*, substandard investigation by the petitioner in a triple murder case, the petitioner was awarded major penalty of reduction of rank to sub-Inspector vide order dated 09.11.2017. The learned Tribunal has considered the facts of the case and placed a limit of three years on the punishment awarded to the petitioner. On merits, the learned Tribunal has not disagreed with the finding given by the competent authority.

2. We consider that the defaults committed by the petitioner suffer from either *mala fide* or professional incompetence. The finding that a defective investigation was conducted by the petitioner in a triple murder case, <sup>has</sup> <sub>very</sub> serious repercussions. Such a finding cannot be taken lightly.

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Court Associate  
Supreme Court of Pakistan  
Islamabad

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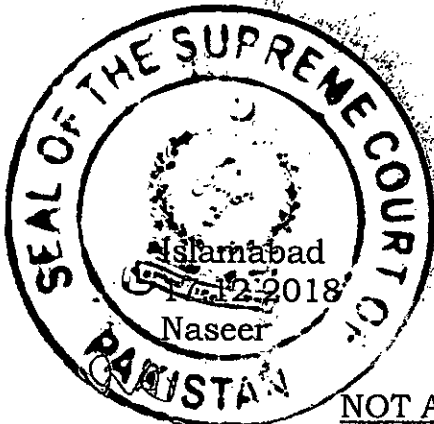
In the circumstances, we are not inclined to interfere with the impugned judgment. This petition is accordingly dismissed and leave to appeal is refused.

Sd/-J

Sd/-J

Certified to be True Copy

Court Associate  
Supreme Court of Pakistan  
Islamabad



NOT APPROVED FOR REPORTING.

10/11/19

GR No: 31634/18 Civil/Criminal

Date of Presentation: 21/12-18

No of Words: 600

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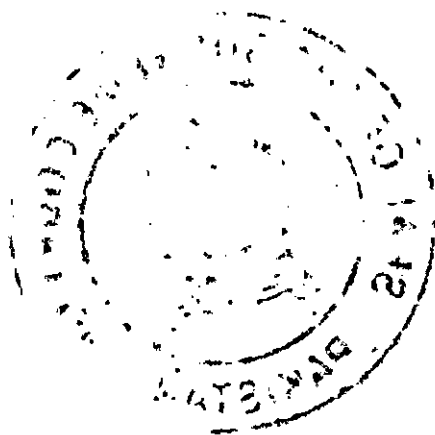
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To,  
The Inspector General of Police  
Khyber Pakhtunkhwa Peshawar  
Dear Sir,

Respectfully submitted

1. That applicant was serving as investigation inspector CTD D.I Khan Region in police department. I was charged sheeted with statement of allegations in case FIR No.08 dated 26/02/2017 U/s 302-34 PPC with 7 ATA PS CTD D.I Khan Region KPK based on irregularities, irresponsibility with the allegation of submission of untraced case against the nominated accused. Second allegation recorded the statement of Muhammad Ramzan father of the deceased family U/s 164 Cr.PC in the court. Thirdly the attitude against the police disciplinary rules 1975 read with amendment, 2014 which speaks highly adverse on the part of the applicant.
2. That departmental enquiry was carried out by Quaid Kamal Khan DSP HQrs CTD KPK, the applicant submitted his reply in defence but it was turned down.
3. That furthermore consequent upon the departmental enquiry the applicant was served with final show cause Notice, for which the applicant relied on his previous reply submitted during the course of enquiry. However the same was not considered and the applicant was awarded a major punishment of reversion from the rank of confirmed inspector to the rank S.I by D.I.G CTD KPK vide his order/letter No.1409 dated 09-04-2017.

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4. That applicant preferred an appeal to the Inspector General of Police KPK Peshawar but it was also rejected. The impugned orders were challenged before the Service Tribunal KPK Peshawar but the service tribunal vide his judgement dated 29/05/2018 dismissed the appeal of the applicant though the impugned order was illegal and ultra vires and against the norms of justice and the same was liable to be set aside.
5. Thereafter applicant approached in appeal but the Honourable Supreme Court has not considered the record properly and appeal of petitioner was dismissed on 17/12/2018 after assessment tentatively.
6. That applicant also approached to the Human rights commission of Chief Justice of Pakistan for justice, wherein applicant was directed to seek remedy in proper forum, because the case will be put in court for trial, meaning thereby that the case required further probe but because the case against prosecution has not been proved.
7. Applicant is totally innocent and the allegation leveled against the applicant are baseless, incorrect and without reasonable evidence.
8. That applicant has conducted the investigation of the above mentioned case honestly, fairly and without any laxity.
9. That investigation was carried out under the supervision of J.I.T which consisted of the I-O (Applicant) and other high level officer so

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there was no margin for error or irregularities in investigation of the case, because the complainant charged the nominated accused on suspicious grounds for the murder of his son Ali Raza while the heirs of other two deceased were not interested to charge anyone in spite of the all-out efforts of the applicant.

10. That challan of the subjected case was submitted as untraced for the reason that there was no other evidence except the hearsay version of the complainant which was narrated initially in the FIR. Furthermore due to that lack of evidence there was no hope of the subject case and the fate of the case would be decided forever in the court so that the challan was submitted as untraced in good faith of the deceased to keep the investigation alive and to review the case on availability on solid evidence in future against the accused.

11. ***That it was a joint decision of the members of J.I.T to send the challan untraced.*** All the members also signed the proscribed Performa and then the challan was forwarded as untraced to learned court duly signed by a gazette officer which was authority for final report under the law. The submission of challan was the collective responsibility of all the members of the J.I.T constituted for investigating the subject case and the sole responsibility cannot be laid down on the shoulders of the applicant. The record shows that recording of statement U/s 164 Cr.PC was not in contrary to the report and it was in the version given by the witness during the course of investigation. The statement was recorded

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just to avoid any mis-statement of the complainant party.

12. That the behavior/attitude of the applicant has been always remained good, disciplinary with the general public and also with the superior officer through the entire career of the applicant.

13. That the allegation has been just advanced punishment on the ground of professional jealousy and due to some difference with police officers who desired to humiliate the dignity and respect of the applicant as he possesses good reputation in the police force through his hard work and honesty. The applicant has unblemished record of a long service of 27 years in credit, during which the applicant earned 1<sup>st</sup> position in every course and has also obtained many common accommodation certificate from high ups through his career.

14. That in this regard no anyone has raised the objection or filing a written complaint regarding any irregularity in investigating of the subject case including the complainant and the prosecution branch or any other objection noted by the learned court rather the enquiry has been conducted by the officers of CTD on their own discretion without any legal justification. Hereafter on the transfer of the applicant the investigation of the subject case has been entrusted to another I-O which remained under investigation with him for a long span of 09 months without obtaining fruitful progress except that which was obtained by the applicant.

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15. That the J.I.T framed for carrying out the investigation for the subject case consisted of other senior officers but they have been provided safe shelter while the applicant has been solely awarded punishment in the same manner two gazette officers in the rank of DSP and SP including the learned PP ATC D.I Khan has also put their signature on the case file which shows the innocence of the applicant and also justifies the fact that no any irregularity has been observed while investigating the said case.

It is therefore very humbly prayed and requested that the case may be decided on the humanitarian grounds, that the applicant may be reinstated in his previous rank of confirm inspector w.e.f the date of impugned order with full benefits in greater interest of justice, because prior punishment of the under trial case is unfairness prejudice and injustice.

Applicant

*[Handwritten signature]*  
29.4.2019

Mushtaq Husain SI  
CTD Mardan.  
CNIC No.16101-5495211-5  
Cell No. 0347-5512595

**ATTACHED**

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*[Handwritten signature]*



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

No. S/ 1509 /19, dated Peshawar the 03/05/2019.

To: The Deputy Inspector General of Police,  
Counter Terrorism Department,  
Khyber Pakhtunkhwa, Peshawar.

Subject: APPLICATION.

Memo:

The Competent Authority has examined and filed the present application submitted by SI Mushtaq Hussain No. MR/88 of CTD Mardan for restoration of his rank of Inspector. He may please be informed that all his legal appellate avenues have been exhausted. After this his representation cannot be entertained.

  
(SYED ANIS-UL-HASSAN)  
Registrar.

For Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.

**ATTESTED**

کورٹ فیس

مورخہ: 24/09/2019 20 منجانب ایڈوانٹ

مقدمہ: مشاہد حسین نام P.C.A

دعویٰ: اسل

جرم:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام P.C.A سروس ٹرائی بیورل سے لئے اس - الم ایسی 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 و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق ذراں پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمد ہوگی اور منسوخ دائر کرنے کی اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مذکور کے عمل یا جزدی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برداشت منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا ذخیرہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا ادکالت نامہ لکھ دیا کہ سندر ہے۔

الرقوم 24 ماہ ستمبر 2019ء

العبد گواہ شدہ العبد

بمقام: سروس ٹرائی بیورل کے لئے منظور ہے۔

Handwritten signature and name: M. Ijaz A. S.

Vertical handwritten text on the right margin: مشاہد حسین