

Service Appeal No. 176/2019

02.12.2019

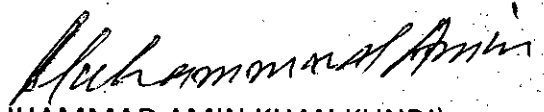
Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of five pages placed in connected Service Appeal No. 175/2019 titled "Muhammad Sajid Versus The provincial Police Officer, Government of Khyber Pakhtunkhwa and others", we partially accept the appeal, set-aside the impugned order and direct the respondent-department to conduct de-novo inquiry in the mode and manners prescribed under the Police Rules 1975. The appellant be fully associated in the inquiry proceeding and he should be provided opportunity of cross examination and also be sent the inquiry report alongwith show-cause notices. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

02.12.2019

  
(HUSSAIN SHAH)  
MEMBER

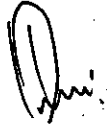
  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

28.08.2019

Counsel for the appellant and Addl. AG alongwith Muhammad Raziq, Reader for the respondents present.

The representative of the respondents submitted written reply on behalf of the respondents. The appeal is assigned to D.B for arguments on 16.10.2019. The appellant may submit rejoinder, if any, within a fortnight.

Chairman



16.10.2019

Counsel for the appellant present. Mr. Ziaullah, DDA alongwith Mr. M. Raziq, Reader for respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. Learned counsel for the appellant requested that complete record of the de-novo enquiry may be produced by the respondents well before the next date of hearing. Adjourned. To come up for such record and arguments on 02.12.2019 before D.B.

  
Member

  
Member

176/19

11.04.2019

Appellant in person and Addl. AG for the respondents present.

Learned AAG requests for time to procure the reply/comments from the respondents. Adjourned to 17.05.2019 before S.B.

  
Chairman

17.05.2019

Learned counsel for the appellant present. Written reply not submitted. Muhammad Raziq H.C representative of respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 02.07.2019 before S.B.

  
Member

02.07.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Raziq Head Constable representative of the respondents present and seeks time to furnish written reply/comments. Adjourned. To come up for written reply/comments on 28.08.2019 before S.B.

  
Member

05.03.2019

Counsel for appellant Muhammad Zahid present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department as Constable. It was further contended that major penalty of dismissal from service was imposed upon the appellant vide order dated 20.01.2017 on the allegation of involvement in criminal case under section 9CNCA. It was further contended that the appellant filed service appeal which was partially accepted on 02.07.2018 and the respondent-department was directed to conduct de-novo inquiry in the mode and manner prescribed under the Police Rules, 1975 but the respondent-department has not conducted the de-novo inquiry in the mode and manner prescribed under the Police Rules, 1975 and as per direction of this Tribunal in the aforesaid judgment and the appellant was again imposed major penalty of dismissal from service vide order dated 25.08.2018. The appellant filed departmental appeal on 16.11.2018 which was rejected on 16.01.2019 hence, the present service appeal on 16.02.2019. It was further contended that neither any show-cause notice was served upon the appellant nor opportunity of personal hearing and defence was provided to the appellant therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 11.04.2019 before S.B.

  
Appellant Deposited  
Security & Process Fee



  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

Form- A

FORM OF ORDER SHEET

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

Case No. 176/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/2/2019--	<p>The appeal of Mr. Muhammad Zahid presented today by Mr. Rizwanullah 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 6/2/19</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>5-3-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 176 /2019

1. Muhammad Zahid Ex-Head Constable No.1791, Police Station Daudzai, Peshawar.

**APPELLANT**

**VERSUS**

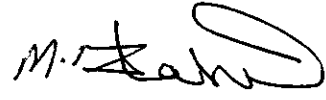
1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa etc.

**RESPONDENTS**

**INDEX**

S.No	Particulars	Annexure	Pages #
1	Service Appeal	-	1-8
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5	Copy of charge sheet	C	30
6	Copy of reply to charge sheet	D	31-32
7	Copy of enquiry report	E	33
8	Copy of de-novo enquiry report dated 29-06-2016	F	34-35
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Appellant

Through



Rizwanullah

Advocate High Court, Peshawar

Dated: 06-02-2019

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

Service Appeal No. 176 /2019

Diary No. 156

Dated 06-2-2019

1. Muhammad Zahid Ex-Head Constable No.1791, Police Station Daudzai, Peshawar..

**APPELLANT**

**VERSUS**

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Capital City Police Officer, Peshawar.
3. The Superintendent of Police, Headquarter, Peshawar.

**RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE**  
**KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL ACT, 1974 AGAINST THE**  
**IMPUGNED ORDER DATED 30-10-2018**  
**PASSED BY THE SUPERINTENDENT**  
**OF POLICE HEADQUARTER**  
**PESHAWAR (RESPONDENT NO. 3)**  
**WHEREBY THE APPELLANT WAS**  
**AWARDED MAJOR PENALTY OF**  
**DISMISSAL FROM SERVICE AGAINST**  
**WHICH A DEPARTMENTAL APPEAL**  
**WAS FILED WITH THE CAPITAL CITY**  
**POLICE OFFICER (RESPONDENT NO.2)**  
**ON 16-11-2018 BUT THE SAME WAS**  
**REJECTED ON 16-01-2019 .**

Filed to-day

Registrar

06/02/19



**Prayer in Appeal**

By accepting this appeal, the impugned orders dated 30-10-2018 and 16-01-2019 may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Any other relief deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.

**Respectfully Sheweth,**

**Short facts giving rise to the present appeal are as under:-**

1. That the appellant joined the Police force in-capacity as Constable in the year 2002 and then rose up to the post of Head Constable on account of his dedication, devotion and commitment to his job. He had 14 years unblemished service record to his credit.
2. That the appellant was falsely involved in a criminal case vide FIR No.218 dated 18-06-2014 U/S 9CNSA/15AA, Police Station Sardhari Charsadda for taking Chars and Pistol. He faced trial and acquitted by the Hon'ble Additional Sessions Judge-I/JSC, Charsadda of the charges vide judgment dated 16-03-2015.

(Copies of FIR & Judgment  
are appended as Annex-A & B)

3. That the appellant was placed under suspension and he was also served with a charge sheet for the aforesaid reasons. He submitted reply and denied the allegations and termed it as fallacious, malicious and misconceived.

(Copies of charge sheet &  
reply are appended as Annex-  
C & D.

4. That the above reply was not found satisfactory and Deputy Superintendent of Police, Subrub Circle was appointed as Enquiry Officer in the matter. He conducted discreet Enquiry and the following recommendations were made:

**“In circumstances, this office recommends that subject accused officials deserve to be released from suspension provided under R/r 16.17 PR 1934 and the instant enquiry may be filed without any further action”**

**(Copy of enquiry report is appended is Annex-E)**

5. That the Competent Authority (respondent No.3) was not agreed with the said findings of Enquiry Officer and Muhammad Yaseen Khan, Deputy Superintendent of Police, Saddar Circle, Peshawar was nominated to conduct de-novo enquiry in the matter. He conducted the so-called enquiry and held the appellant guilty of the allegations vide report dated 29-06-2016. Ultimately, the appellant was awarded major penalty of dismissal from service on 20-01-2017.

**(Copies of de-novo enquiry and impugned order are appended as Annexure-F & G).**

6. That the appellant after exhausting departmental/revisonal remedy, invoked the jurisdiction of this Hon'ble Tribunal by way of filing Service Appeal No. 993/2017 praying therein that the impugned order may graciously be set aside and the appellant may kindly be reinstated with full back wages and benefits.
7. That this Hon'ble Tribunal vide judgment dated 02-07-2018 partially accepted the appeal and reinstated the appellant in service. **“However,**

the respondent-department was directed to conduct de-novo enquiry according to prescribe law and rules within a period of 90 days from the receipt of judgment”.

(Copy of judgment is appended as Annex-H)

8. That after receipt of judgment by the Competent Authority (respondent No.3), one Niaz Muhammad, Inspector Police Lines was appointed as Enquiry Officer in order to conduct de-novo enquiry. He finalized the so-called enquiry and held the appellant guilty of the allegations and recommended him for major penalty but the report of such enquiry was not provided to him.
9. That in the light of above findings of Enquiry Officer, the appellant was straight-away awarded harsh and extreme penalty of dismissal from service in utter violation of law vide order dated 30-10-2018.

(Copy of impugned order is appended as Annex-I)

10. That the appellant felt aggrieved by the said order, filed a departmental appeal with the Capital City Police Officer (respondent No.2) on 16-11-2018 but the same was reject<sup>ed</sup> on 16-01-2019.

(Copies of departmental appeal and its rejection order are appended as Annex-J & K)

11. That the appellant is jobless since his dismissal from service.
12. That the appellant now files this service appeal before this Hon'ble Tribunal inter-alia on the following grounds:

## **GROUND OF APPEAL**

- A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned orders are not against the legal norms of justice.
- B. That the de-novo enquiry was not conducted in a manner prescribed by law as neither any witness was examined in the presence of appellant nor he was provided any opportunity of cross examination in order to impeach the credibility of the witnesses if any appeared against him. Similarly, he was also not provided any chance to produce his defence in support of his version. The above defect in enquiry proceeding is sufficient to declare entire process as sham and distrustful. Right of fair trial is a fundamental right by dint of which a person is entitled to a fair trial and due process of law. The appellant has been deprived of his indispensable fundamental right of fair trial as enshrined in **Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973**. Thus, the report of Enquiry Officer is perverse and the same is not sustainable under the law.
- C. That the Competent Authority (respondent No.3) was under statutory obligation to have considered the case of appellant in its true perspective and also in accordance with law and to see whether the de-novo enquiry was conducted in consonance with law as well as according to the order passed by this Hon'ble Tribunal and that the allegations thereof were proved against the appellant without any shadow of doubt or otherwise. But he has overlooked this important aspect of the case without any cogent and valid reasons and awarded him harsh and extreme penalty of dismissal from service despite the fact that there was no iota of evidence to connect the appellant with the commission of misconduct. Moreover, the said Authority (respondent No.3) was also legally bound to have served the appellant with a show cause notice alongwith copy of enquiry report so as to

offer proper reply of the same and rebut the findings of the Enquiry Officer. But he took no pain to do so and blatantly violated the law laid down by august Supreme Court of Pakistan in various judgments. Akin, the appellant was also not provided any opportunity of personal hearing before passing the impugned order and as such violated the law laid down by august Supreme Court of Pakistan reported in **2006-SCMR-1641 (citation-c)**. The relevant citation is mentioned below:

**2006-SCMR-1641**  
**(citation-c)**

**----Rr. 4(b), 5 & 6---Inquiry proceedings---Major penalty; imposition of---Personal hearing to civil servant, opportunity of---Scope---Such opportunity must be afforded by the authority competent to impose major penalty or his delegatee.**

Thus, the impugned orders are liable to be set aside on this count alone.

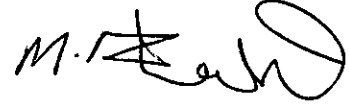
- D.** That it is evident that the impugned order was also passed on the basis of previous enquiry despite the fact that such enquiry was declared as farce and mockery in the eye of law by this Hon'ble Tribunal and that the impugned order based on such enquiry was set aside and the appellant was reinstated in service. Therefore, the Competent Authority (respondent No.3) was not justified at-all to consider the previous enquiry while passing the impugned order. But he was reluctant and bent upon to award punishment to the appellant in any way. Hence, the impugned orders are against the spirit of administration of justice.
- E.** That the Appellant Authority (respondent No.2) was under statutory obligation to have applied his independent mind to the merit of

the case by taking notice about the illegality and lapses committed by the Enquiry Officer as well as the Competent Authority (respondent No.2) as enumerated in Para-B to D above. But he failed to do so and rejected the departmental appeal without any cogent reasons. Therefore, the impugned orders are not tenable under the law.

- F.** That when the appellant was acquitted from the criminal case in FIR No. 218 dated 18-04-2014 thereafter, there remain no ground to penalize the appellant on that charge. Thus, the impugned orders are not sustainable on this count alone.
- G.** That the impugned orders are against law, facts of the case and norms of natural justice. Therefore, the same are not warranted under the law.
- H.** That the respondent No. 2 & 3 have passed the impugned orders in mechanical manner and the same are perfunctory as well as non-speaking and also against the basic principle of administration of justice. Thus, the impugned orders are bad in law.
- I.** That the impugned orders are based on conjectures and surmises. Hence, the same are against the legal norms of justice.
- J.** That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

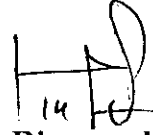
In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned orders dated 30-10-2018 and 16-01-2019 may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.



Appellant

Through



**Rizwanullah**

M.A. LL.B

**Advocate High Court, Peshawar.**

Dated: 06-2-2019

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2019

1. Muhammad Zahid Ex-Head Constable No.1791, Police Station Daudzai, Peshawar.

**APPELLANT**

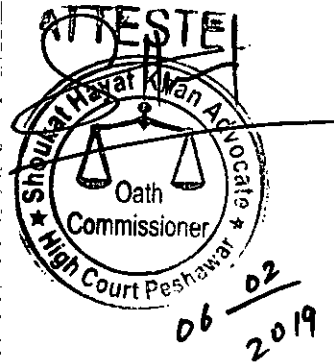
**VERSUS**

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa etc.

**RESPONDENTS**

**AFFIDAVIT**

I, Muhammad Zahid Ex-Head Constable No.1791, Police Station Daudzai, Peshawar, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



*M. Zahid*

**DEPONENT**



Annex-A

A

4

گورنٹ پریس ہاؤس لاہور نمبر 2286/13 نام شمارہ نمبر 4141 بڑا بازار لاہور 2001

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

تعداد شکیں

صفحہ	چاروں	14	218
تاریخ وقت	18:00 دقت	18:40 دقت	19:20 دقت
مکان	آسیا پیس پاس	آسیا پیس پاس	آسیا پیس پاس
ہونے والا واقعہ	ہونے والا واقعہ	ہونے والا واقعہ	ہونے والا واقعہ
مکان	آسیا پیس پاس	آسیا پیس پاس	آسیا پیس پاس
مکان	آسیا پیس پاس	آسیا پیس پاس	آسیا پیس پاس
مکان	آسیا پیس پاس	آسیا پیس پاس	آسیا پیس پاس

ابتدائی اطلاع نیچے درج کر رکھوتے ہیں۔ یہ سبھی رپورٹیں جمعہ 20 جون 2001ء کو جمع کرائی گئیں۔ اس میں ایک شخص نے اطلاع دی کہ وہ ایک گاڑی کے ساتھ ساتھ ایک شخص کو دیکھتا ہے جو گاڑی سے اترتا ہے۔ یہ شخص ایک سیاہ رنگ کی جینز کا لباس پہنتا ہے اور اس کے ہاتھ میں ایک ہتھیار ہے۔ اس شخص نے ایک دکان کے پاس جا کر ایک شخص کو ہتھیار سے روکا اور اس کو مارا۔ اس واقعہ کے بعد پولیس کو اطلاع دی گئی اور پولیس نے اس شخص کو گرفتار کیا۔ اس شخص کو عدالت میں پیش کیا گیا اور اس کو 5 سال کی سزا سنائی گئی۔

ASAC-PS-SP 18 74

ATTESTED

M. Ashraf  
Appellant

Annex B - (11)  
B  
11

IN THE COURT OF  
KHALID KHAN ADDITIONAL SESSIONS JUDGE-1/JSC,  
CHARSADDA

CNSA NO: 45/14 OF 2014  
Date of institution: 22.09.2014  
DATE OF DECISION: 16.03.2015

THE STATE ...VERSUS... 1. Iqbal Mohammad aged about 29/30 Years s/o Mir Rahman 2. Jamdad aged about 25/26 Years s/o Ramdad both r/o Sarband Peshawar 3. Sajid aged about 29/30 years s/o Ayub, 4. Muhammad Zahid aged about 29/30 years S/o Gul Khan residents of Matani District Peshawar.



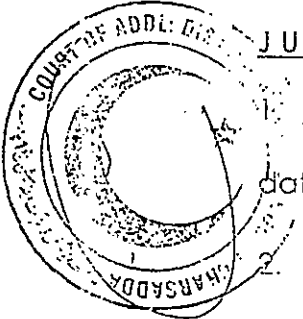
(Accused facing trial).

Charged vide FIR # 218, Dated 18.06.2014, U/S 9-C CNSA, Police Station, Sardheri.

JUDGMENT:

1. Accused named above faced trial in case FIR # 218, dated 18.06.2014 u/s 9-C CNSA Police Station, Sardheri.

2. Brief facts of the prosecution case are that on 18.06.2014, the complainant during mobile patrolling received information about smuggling of narcotics in the shape of chars on Palosa road towards Nisatta. On this information, the complainant alongwith other police officials conducted Nakabandi on the spotted place. In the meanwhile, a Motor car bearing No.B-6017/Peshawar



ATTESTED

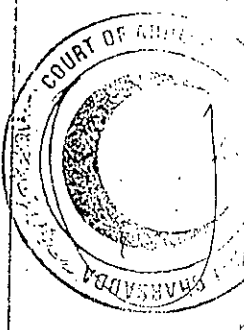
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was stopped for the purpose of checking. The driver disclosed his name as Jamdad, the person sitting in front seat as Noor Muhammad, whereas, two young boys sitting in the rear seat disclosed their names as Sajid and Zahid. Upon search, the complainant recovered a 30 bore pistol alongwith charger containing 15 live rounds from the possession of accused Zahid, whereas, during search of the Motor car, the complainant recovered 05 packets charas from beneath the driver seat, 05 packets from beneath seat of Noor Mohammad, 05 packets each lying near accused Zahid and Sajid. Each packet was weighed and was of 1000 grams (total 20000 grams). The complainant took into possession the contraband, arms and ammunition as well as motorcar and drafted the Murasila, on the basis of which the instant case F.I.R was registered.



3. After conclusion of investigation, case in hand came up for trial. During the trial, relevant copies were provided to the accused u/s 265-C Cr. PC. Formal Charge was framed on 13.10.2014, wherein, accused facing trial denied the allegations and opted to face trial. Prosecution was, therefore, allowed to produce its evidence.

ATTESTED  
 \*

ATTESTED  
 EXAMINER  
 Agency Branch  
 08/11/14

13

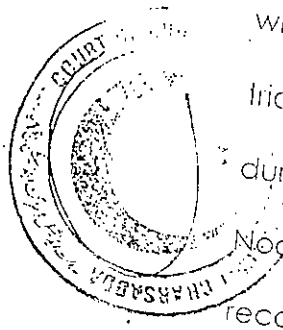
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4. Prosecution produced and examined 05-PWs, in order to substantiate the charge. The substance of their deposition is given below.

5. PW-1 is Ajmeer Shah Khan ASI;

He has stated that on the day of occurrence he alongwith Shehriyar and Danyal were on mobile gasht of Illaqa. He received information about the smuggling of narcotics in a vehicle registration No. B-6017 Peshawar of silver colour. On this information they came to under pass Palosa and laid Naka Bandi. After some time the above mentioned vehicle arrived and they signaled to stop which was stopped. He de-boarded the accused facing trial from the said vehicle and made their search and during search they disclosed their names as Jamdad, Noor Muhammad, Sajid and Zahid. Nothing was recovered from the person of the three accused however, from accuse Zahid a 30 bore pistol alongwith 15 live rounds were recovered. Thereafter, the vehicle was searched and during search, from driving seat of driver Jamdad 5 packets chars were recovered and from the seat of Noor Muhammad who was seated in the front seat with the driver 5 packet chars was recovered while from the seat of Sajid and Zahid chars 5/5 packet from



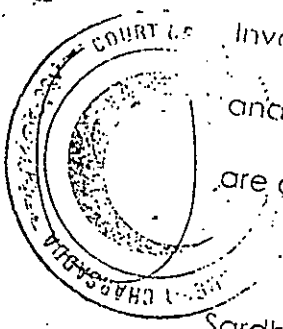
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*[Signature]*  
EXAMINER  
Special Agency Branch  
of Distt & Sessions Peshawar

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ATTESTED  
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accused recovered. He separated 5 grams from each packet and each packet was containing 1000 grams chars. He sealed the same in parcel No.1 to 20 for the purpose of FSL and the remaining 19900 gram chars were sealed in parcel No.21. He took into possession the said chars vide recovery memo Ex. PW1/1 in the presence of marginal witnesses: namely, Danyal and Shehriyar. The case property sealed into parcel No. 21 is produced before the court which is Ex. P-1. Thereafter, he drafted the Murasila Ex. PA/1 and sent the Murasila through constable Shehriyar for the registration of the case. The Investigating Officer prepared the site plan on his instance and pointation. The above mentioned documents, which are correct and correctly bear his signatures..



On 13.02.2015, Ajmeer Shah Khan ASI Police Station Sardheri Charsadda was re-examined. He stated that vide his application Ex. PW1/2, he sent the samples of chars to the FSL for chemical examination.

6. PW-2 is Danyal No.1056 Police Station Nisatta

He has stated that during the days of occurrence he was posted at Police Station Sardheri. He is marginal witness to the recovery memo Ex. PW2/1. On the day of occurrence he in the company of Ajmir Shah Khan and

EXAMINER  
 Jag Agency Branch  
 Dist & Sessions Judge  
 Bilaspur  
 03/02/15

ATTESTED

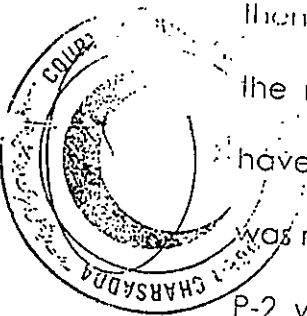
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Other officials were on gasht and Ajmeer Shah Khan had received some information upon which they made Nakahandi, in the meanwhile motorcar came which was stopped and searched upon the said search chas weighing 5/5 Kg beneath the feet of each of the accused was recovered. They also brought down Zahid accused who was having a pistol alongwith 15 rounds in his possession which was without number. Then they brought down driver Jamdad, then they brought down accused Noor Muhammad from the front seat and then Sajid from the rear seat. The complainant prepared recovery memo then they took the same to the Police Station. They took the motorcar to the Police Station. All the proceedings have been completed in 40/45 minutes. His statement was recorded by the Investigating Officer. The motorcar is P-2, while the 30 bore pistol alongwith 15 live rounds is P-3.

(STO by the defense counsels strongly objected the exhibition of motorcar P-2 that it is not the case property i.e. motorcar of the instant case rather, the case property of another case has been brought to the court today for exhibition). The above mentioned recovery memo which is correct and correctly bears his signature as well as signature of other marginal witness.



ATTESTED

*[Handwritten signature]*

ATTESTED

EXAMINER  
Copying Agency Branch  
Court of District Sessions, Ludhiana

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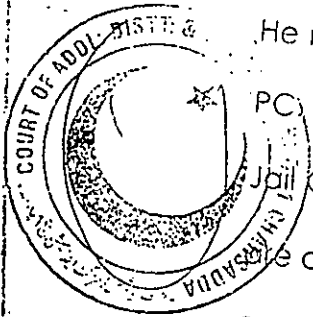
Inspector:

He has stated that during the days of occurrence he was at the Police Station (Circle Officer) Head Quarter Charsadda. He was interrogated accused facing trial in the Police Station on the following day i.e. 20.06.2014 he produced the accused before the court for further five days custody which was turned down and accused were ordered to judicial lock up vide application EXPW3/1. Vide application EXPW3/2, He sent a letter to the department against accused Mohammad Sajid No.2577 anticorruption Peshawar, Mohammad Zahid No.1791 HC. He recorded statement of accused under section 161 Cr. P.C. Thereafter admitted the accused facing trial to Sub Jail Charsadda. The above mentioned documents, which are correct and correctly bears his signature.

8. PW-4 is Qaisar Khan ASI Police Station, Sardheri Charsadda:

He has stated that on receipt of Murasila, he has correctly incorporated its contents into FIR Ex. PA which is correct and correctly bears his signature

9. PW-5 is Ijaz Khan SHO Police Station Charsadda:



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 Court of Adl Jisth & Charsadda

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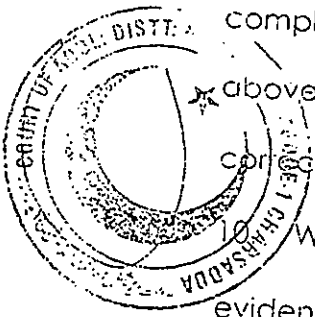
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... during the days of occurrence he ...  
 ... as SHO Police Station Sardheri. After ...  
 registration of the FIR, copy of the same was handed over ...  
 to him and so he started investigation in the instant case ...  
 and proceeded to the spot and prepared the site plan Ex. ...  
 PB of the instance of complainant. He has recorded ...  
 statements of the PWs u/s 161 Cr. PC. Vide his application ...  
 Ex. PW5/1, he produced the accused facing trial before ...  
 the judicial magistrate for 5 days police custody, but one ...  
 day custody was granted by the court. FSL report which ...  
 was in positive was received by Qaisar Khan SI/CIO which ...  
 is Ex.PK. After completion of investigation he submitted ...  
 complete challan against the accused facing trial. The ...  
 above mentioned documents, which are correct and ...  
 correctly bear his signatures.



10 With the statement of (PW-05), prosecution closed its ...  
 evidence, therefore, statement of the accused was ...  
 recorded u/s 342 Cr. PC. Accused did not opt to produce ...  
 evidence in his defense nor opted to be examined on ...  
 oath, Hence, arguments of the learned Assistant Public ...  
 Prosecutor and learned counsel for accused already ...  
 heard and record perused.

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 Distt R. Sardheri

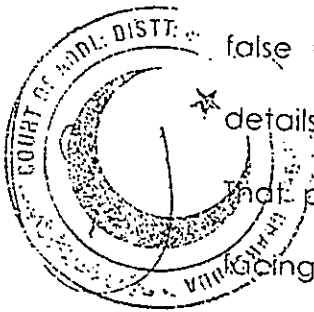
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11. Learned state counsel has argued that recovery of huge quantity of narcotics effected from the vehicle wherein all the four accused facing trial were present and the said recovery also effected from the seats of all the accused. That the recovery witnesses are police officials, but police officials are as good witnesses as others. That PWs are consistent on the point of recovery and other material points of other proceedings and despite lengthy cross-examination on the PWs nothing has been brought on record in favour of the accused. That FSL report is also in positive which supports prosecution case. That there is no question of false implication as there is no reason for false implication of the accused. That not giving the details of motorcar on record is of no use to the accused. That prosecution has proved its case against accused facing trial beyond shadow of reasonable doubt. That accused may be convicted and sentenced in accordance with law.



12. On the other hand learned counsel for the accused facing trial has argued that from the very inception prosecution case is doubtful, as on the point of alleged recovery the PWs are contradicting each other as some where it is stated that from beneath the seats of all the

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 Bangalore

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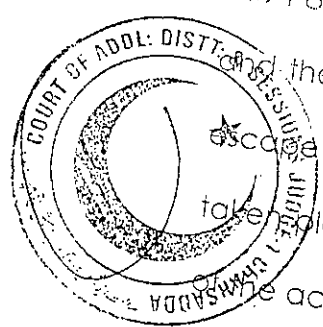
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four accused the recovery effected and some where it is stated that recovery effected near the accused. That it is also strange that why all the four accused have had the alleged narcotics in such an equal manner and that why the same was allegedly kept open by the accused. That it is also not clear on record that who amongst the PWs has effected the alleged recovery. That complainant has shown with him two officials and it is also alleged that one of that officials was handed over Mūrasila for Police Station for registration of case, then how the two officials have taken two vehicles as shown and four accused to the Police Station from the alleged place of occurrence and there is no resistance or struggle by the accused for escape which suggests that no occurrence at all has taken place. The alleged site plan also shows only points of the accused and though some points are there but the site plan is silent about that other three points and other details, thus the site plan is also not supporting the prosecution case. That on the point of leaving the Police Station for gasht the statement of complainant is contradictory. That allegedly only narcotics and pistol was recovered from the accused and nothing else other than the said recovery was recovered from the accused. That



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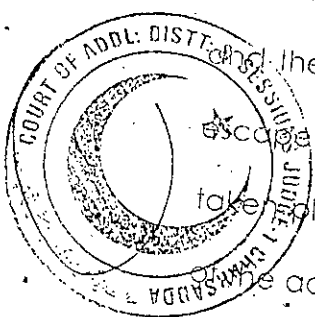
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and there is no resistance or struggle by the accused for escape which suggests that no occurrence at all has taken place. The alleged site plan also shows only points of the accused and though some points are there but the

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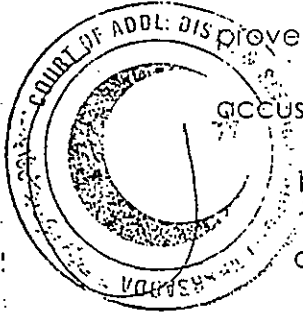
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the accused who was allegedly driving the car at the time of alleged recovery he was not identified in the court by PW-2 the alleged marginal witness to the alleged recovery. That the alleged narcotics were weighed in the court but none of the alleged recovered packets were of 1000 grams or 995 grams. That complainant was not able to show that how many slabs were there in the alleged recovered packets. That details of the vehicle i.e. chassis and engine number have not been given on record nor any investigation was carried out with respect to the said vehicle. That FSL report is delayed one. That prosecution case is full of doubts and prosecution has badly failed to

prove its case against the accused facing trial. That accused facing trial may be acquitted of the charges.



13. As per FIR Ex. PA, complainant alongwith constables Shehriyar and Danyal Khan was on gasht of Illaqa and on receiving information about smuggling of narcotics he mad Nakabandi, meanwhile motorcar bearing No. B-6017, Peshawar came and stopped for the purpose of checking. That the persons in the car disclosed their names and on their personal

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D. J. Khan  
Deputy District Judge  
Court of Addl. District Judge  
Chamashda

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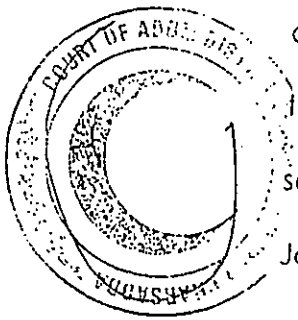
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search nothing was recovered from the three persons while from one Zahid 30 bore pistol and 15 rounds were recovered. That then the car was searched and from beneath seat of driver and other front seat 5/5 packet chars were recovered and similarly from the rear seat 5/5 packets near the accused Sajid and Zahor recovered.

Complainant of the case was examined as PW-1 who in his examination in chief has stated that he de-boarded the accused facing trial from the said vehicle and made their search. Further has stated that the vehicle was searched and during search from the driving seat of driver Jamdad 5 packets chars was recovered and from the seat of Noor Muhammad 5 packets chars was recovered and similarly from the seat of Sajid and Zahid 5/5 packets from each accused was recovered. In the FIR form front seat beneath the recovery was allegedly effected but in court statement it is stated that from the seat of Noor



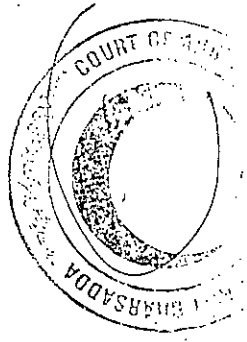
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of Distl & Sessions Judge

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Muhammad and Jamdad recovery was made instead of saying of the recovery from beneath the front seat. Similarly, in the rear seat near two of the accused the recovery is alleged, but in court statement it is stated that from seat of Sajid and Zahid 5/5 packets from each accused was recovered. It is also not stated by PW-1 in his examination in chief that who effected the recovery, but in cross examination this PW has stated that he made search of the vehicle through constables Shehriyar and Danyal and he was also present with them. That he was told by constable Danyal Khan about the presence of chars in the vehicle. Volunteered, that he was personally observing the same. The foregoing discussed situation is very much clear that complainant himself has not effected the recovery and the situation also suggest that he himself has not witnessed the actual recovery as alleged in the FIR. Similarly, PW-2 who is the alleged witness to the recovery has also not



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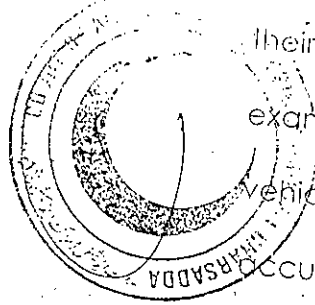
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stated in his examination in chief that who has effected the recovery, rather, PW-2 has stated in his examination in chief that upon search chars weighing 5/5 pockets beneath the seats of the accused was recovered. This PW-2 has also stated in his examination in chief that they brought down driver Jamdad, then accused Noor Muhammad, then Sajid and so has stated of accused Zahid. PW-1 has stated in his examination in chief that he de-boarded the accused facing trial from the said vehicle and made their search but PW-2 in his cross-examination has stated that he signaled the vehicle to stop and that he searched the accused. That he himself recovered pistol from the accused Zahid. So the PWs are also contradicting each other on the point of personal search of the accused, de-boarding them from the said car as will as on point of alleged recovery of pistol. F his cross-examination has stated that h by the constable Danyal about



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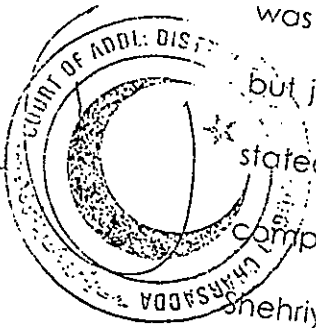
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presence of the chars in vehicle and that some of the packets were brought out from the vehicle by constable Danyal Khan and some of the chars was brought out by constable Shehriyar Khan which further clarifies that the complainant himself has not effected alleged recovery and so he cannot say that wherefrom or from whom the alleged recovery was effected and this also not case of the prosecution that alleged recovery effected by said constables. PW 1 in his cross-examination has stated that he was on gahst of the Illaqa from 12:00 noon, but just after the said sentence this PW has stated that he left the Police Station in the company of constable Danyal Khan and Shehriyar Khan and driver Manzoor at 1705 hours as per DD of Police Station vide Mad No.17. So, this PW-1 has himself contradicted his stance of receiving information about the alleged smuggling and being on gasht from 12:00 noon. This PW has also for the first time introduced another official driver Manzoor as



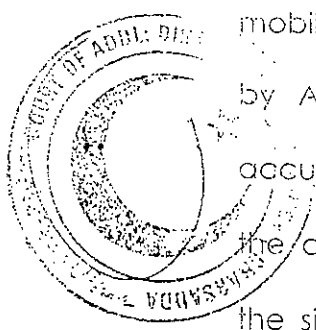
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in the FIR this Manzoor was not shown in his company. PW-1 has also stated in his cross-examination that he cannot say that as to whether each packet has several slabs or single slab. PW-1 has also stated in his cross-examination that Murasila was sent through Shehriyar Khan constable to the Police Station and PW-5 has stated that he has met Ajmeer shah Khan/PW-1 at about 1945 hours and site plan prepared on the spot, but PW-2 in his cross-examination has stated that the motorcar was driving by the driver of the mobile while the mobile vehicle was driven by Ajmeer Shah Khan ASI alongwith the accused facing trial. When PW-5 has joined the complainant as alleged and prepared the site plan as alleged, then why he was not shown in the company for taking the accused and vehicle to the Police Station, while presence of mobile and driver is not mentioned in the FIR but is introduced in the court statement by PW-1 and PW-2. PW-2 in his cross-examination has stated that he



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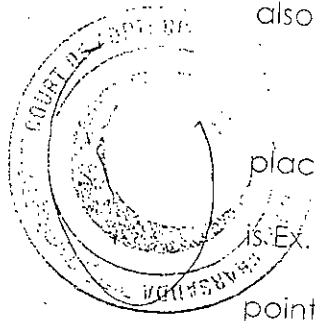
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cannot say that the said car was vitz or corolla. PW-2 has stated in his cross-examination that first recovery was effected from the accused Noor Muhammad and that he cannot identify the accused present in the court that who was driving the vehicle. PW-3 has stated in his cross-examination that he has not examined the vehicle as the same was not shown to him.

So from the above discussion it is clear that PWs have not only contradicted each other on the point of alleged recovery but also on other alleged proceedings.

So far as the site plan of the alleged place of occurrence is concerned the same is Ex. PB and in the same there are only three points except the accused shown in a car and the said other three points have not been explained and no other point given to show the presence of mobile vehicle, police officials etc, thus the site plan Ex. PB also not supporting the prosecution case. As



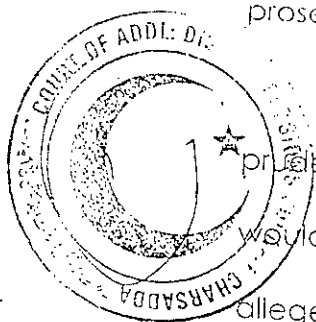
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Magistrate  
of First Class  
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discussed above this piece of evidence also belies PW-1 and PW-2.

In the instant case PW in whose custody the alleged samples were fill sending to FSL was not examined and similarly the person who has alleged taken the samples to the FSL for report has also not been examined, whereas, the alleged recovery effected on 18.06.2014, while the samples received in the FSL Peshawar on 03.07.2014 and so there is a considerable delay in the FSL report which is un-explained and goes against the prosecution.



Even otherwise it is not appealable to prudent mind that why all the four accused would have had such equal quantity of alleged narcotics in their possession and even on Nakabandi the same was not thrown away.

In the light of overall above discussed situation, prosecution has failed to prove its case against the accused facing trial beyond shadow of reasonable doubt,

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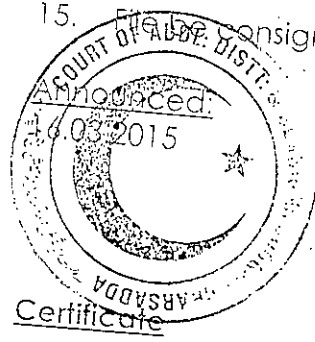
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therefore, by extending benefit of doubt to the accused facing trial, they are acquitted of the charges leveled against them. They are in custody, they be set free, if not required in any other case.

14. Case property confiscated to the state including the motorcar bearing No. B-6017-Peshawar as accused have denied the recovery of said motorcar from them, whereas, no other person mentioned on the record as owner of the same to whom notice be issued as required by the provisions of Control of Narcotics Substances Act 1997.

15. To be consigned to the RR after its completion.



Khaliid Khan  
Addl: Sessions Judge-I/JSC  
Charsadda

It is certified that my this judgment consists of 18 (eighteen) pages, every page has been read, corrected wherever it was necessary and duly signed by me.

Addl: Sessions Judge-I/JSC,  
Charsadda

ATTESTED

*[Signature]*  
Deputy Registrar  
Dist. Court, Charsadda

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ATTESTED

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Denvo Proceedings

CHARGE SHEET

Annex-C

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I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that HC Muhammad Zahid No.1791 & FC Sajid No.2577 of Capital City Police Peshawar with the following irregularities.

"That you following Constables while posted mentioned against each their names were involved in a criminal case vide FIR No.218 dated 18.06.2014 U/S 9CCNSA PS Sandan

S #	Name & No.	Posting
01	HC Muhammad Zahid 1791	PS Daudazi
02	FC Sajid 2577	Anti Corruption

This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case exparte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

ATTESTED

Attested

M. Zahid  
Appellant

SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

یہ تو اللہ تعالیٰ کی کہہ رہا ہے کہ میں کو اس سبب سے  
مل گئی۔ درجہ ہارسا کو

ما محمد سعید ۱۱ سبیل پور

ظاہر علی  
سبیل ڈیل گڈ میں کرتے۔

48  
1. یہ کہ سائل کو مدد محمد سعید پورالی کے مقدمہ عدالت

صفحہ 8 اجیم 1558 سے 9 کتا نہ خصوصاً ضلع حیات  
2016

میں بے گناہ ملوث کرنے گرفتار کیا گیا

2. یہ کہ تقریباً 9 ماہ جیل گڈ کرنے کے بعد عدالت نے

یہ بیوی چھوڑ دی  
مقدمہ کی نقل ہمراہ ہے (مکمل کیمپانی ہے۔)

3. یہ کہ مقامی پولیس نے یہاں اجیم کرنے کے احکامات

کا نا احترامی کا ثبوت اٹھانے سے روک دیا ہے

4. یہ کہ باپ یا عقیقہ سے کچھ میرا آمد نہیں ہوا

5. ہوسٹل کار جس میں میں نے آمدگی بنائی تھی وہ اس

کھانہ یا کسی اور کھانہ کا مال مقدمہ تھی۔ یا چور کی تھی

6. یہ کہ ہمارے باپ جس میں تھی۔ یہ میری عورت کا۔ بیکلیم کو

اپنے میرا بیوی کی وجہ سے تعلق میں ڈال دیا گیا۔ کیونکہ

ان لوگوں کے ساتھ اجیم نہ ہونے کا تعلق تھا۔

7. یہ تو والدین کی کہہ رہی ہے کہ میں کو اس سبب سے

مقدمہ سے بری ہے۔ حال گٹھ۔ درخت ہمارا تھا تو

ATTESTED

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Attested

M. H. Khan  
Appellant

امیدوار ہے تمام سہولتوں کا کام لے

۵) حکم کوئی نہیں ہوگا اسکا اللہ تعالیٰ سہولت

ہمیں اللہ تعالیٰ نے چھڑا دیا اور نہ لو لیں تعالیٰ نے

۶) امیدوار ہے تو ہمیں ماری پی دیا تھا -

۹) ۶ ماہ جیل میں ہے گناہ اور بے قصور گنہگار ہے

حکمی ضرر ہو چکا ہوگی -

۱۵) حقیقہ عدالت کی روشنی میں ہمیں سزا دے

حکم میں عدالت پر بحال و فراہم ہے اور

شہادتوں نے ۲۰۱۶ء جو دہائی سے اب تک کو کھول دیا جا

دعائیں روکا

ساتھ نوٹس لے لے

اتل عدالت

Attested

M. Zahid

Appellant

ATTESTED

[Signature]

OFFICE OF THE DEPUTY SUPERINTENDENT OF POLICE  
SUBURB CIRCLE PESHAWAR

NO: 3311 S. DATED: 07/07/2015

No. 1501/11

10-7-2015

Annex-E

33

admit report under rule G(V) police rules 1975, against constable Sajid No 2577 and HC Muhammad  
ahid 1791

No 73-UB  
14-7-2015

Departmental enquiry in hand was referred to this office vide order of enquiry with  
endorsement No 158/E/PA dated 05.9.2012, in order to ascertain the misconduct against the above  
officers, they being reportedly involved in a criminal case vide FIR 213 dt:18.6.2014 u/s 9CCNSA PS  
Sardheri, District Charsadda.

Short facts are that both the above stated accused officers, in the company of co-accused  
namely Noor Muhammad and Jamdad were found, trafficking narcotics in a motor car R.C No B  
6017/Peshawar and were held during Naka Bardi, on the spotted place. Charras, total 20 packets  
weighing 20 KGs were recovered, they were booked by local police PS Sardheri u/s 9CCNSA vide FIR  
mentioned above. All the accused, including the subject police officials were arrested and after  
completion of investigation, they were committed to judicial lockup.

The accused police officials faced trial in the court of learned Additional District and Session  
Judge Charsadda and vide order dated 16.3.15 were acquitted from the alleged charge of trafficking  
narcotics.

The enquiry proceedings, referred to this office were kept pending till the disposal of afore  
stated criminal case. The accused officials have submitted attested copy of the court judgment which  
along with other record was thoroughly examined/consulted. It would be appropriate to clarify that if  
the evidence of the criminal case are recorded in this office, it shall not serve the purpose because the  
learned judge has shattered the integrity and veracity of these PWs, therefore they have been termed  
untrust worthy/unbelievable witnesses.

It may be added here, rather worth of clarification that the Hon'ble Supreme Court of Pakistan  
in its reported judgment PLJ 2011 5C, Page 283 has clearly observed that there is no shades in acquittal  
and every acquittal is honorable acquittal. Moreover, rule 16.3 PR 1934 provides that any person  
acquitted by the criminal court, shall not be punished departmentally except the provisos, contained  
therein. The court judgment do not indicate any exception, contained in the provisos of rule 16.3,  
therefore no consideration can be extended, to take any evidence in the case.

In circumstances, this office recommends that subject accused officials deserve to be released  
from suspension, provided u/r 16.17 PR 1934 and the instant enquiry, may be filed with out any further  
action.

All relevant documents are enclosed herewith.

DSL/legal

DEPUTY SUPERINTENDENT OF POLICE  
SUBURB CIRCLE PESHAWAR

For opinion, AP

*[Signature]*  
10/07/2015

Attested

*[Signature]*

Appellant

ATTESTED



Annex-F - F  
D/34

The Superintendent of Police,  
Peshawar.

SUBJECT: DENOVE ENQUIRY AGAINST HC ZAHID NO. 1791 AND FC SAJID NO. 2577.

Memo:

Please refer to your office end: No. 198/E/PA dated 16.09.2015 on the subject cited above.

ALLEGATIONS:

It is submitted that the denove enquiry has been marked to the undersigned by competent authority against the following Constables namely HC Muhammad Zahid No. 1791 of PS Daudzai and FC Sajid No. 2577 of PS Anti-Corruption as they committed a criminal case vide FIR No. 218, dated 18.06.2014, u/s 9C-CNSA PS Sardehri Distt: Charsadda. In this respect the undersigned was appointed as enquiry officer to scrutinize the conduct of the above accused officials.

PROCEEDING:

It is submitted that in this connection first of all the undersigned called all the officials ASI Tajmeer Shah, Constable Shahriyar No. 201, Constable Danial No. 1056 PS Sardehri Distt: Charsadda as well as the accused Constable Sajid No. 2577 and Muhammad Zahid No. 1791 and also recorded their statements, while are placed on enquiry file.

In this regard the undersigned visited to PS Sardehri Distt: Charsadda vide DD No. 06, dated 07.11.15 accordingly and the undersigned checked all the matter record as well as the Motor Car Alto B/No. B-6017 in the limit of session Court. The case file has been sent to DPP vide receipt No. 609/21 dated 10.09.14, while the case property (Charas) has been deposited in to the PM Malkhana vide receipt No. 163/19.

STATEMENT OF ASI AJMEER SHAH.

He stated in his statement that on the same day he was informed about the smuggling of Narcotics by someone. However, he alongwith other police party was rushed to the spot and conducted Nakabandi at under pass Palosa Sardehri. During Nakabandi one Motor Car Vitz Silwar Color Bearing registration No. B-6017-Peshawar: was coming rushly toward Palosa was signaled to stop the Car for checking. However, he conducted search of the Vehicle and also recovered 20-Kgs Charas containing 5/5Kgs of every person. Lateron, they all along with vehicle Motor Car Vitz No. B-6017-Peshawar and also registered a proper case vide FIR No. 213, dated 18.06.2014, u/s 9C-CNSA PS Sardehri. During search Driver disclosed his name as Jam Dad s/o Imdad, at the front seat disclosed his name as Noor Muhammad s/o Said Rahman rs/o Sarband and also at the near sated person disclosed his name as Sajid s/o Ayoub r/o Sarband and as Zahid s/o Gul Khan r/o Mattani. Now the case is investigated by the investigation unit PS Sardehri Distt: Charsadda.

issue final show  
cause notice

Attested  
Attested

ATTESTED  
12/10/17

STATEMENT OF CONSTABLE SHAHRIYAR AND DANYAL.

They both supported the version of the statement of the ASI Ajmeer Shah Khan of PS Sardehri.

STATEMENT OF CONSTABLE MUHAMMAD SAJID.

Constable Sajid stated his statement that he alongwith Constable Zahid and others were proceeded to Palosa and also they chased by the police and also falsely implicated by ASI Ajmeer Shah Khan. The ASI in-question involved falsely in the Narcotics case. He further stated that no any things was recovered by the ASI Ajmeer Shah but he wrongly Nominated in the falls FIR. He further disclosed that in this connection he along with Constable Zahid confined in Distt: Jail Charsadda about 09 Months accordingly. No any Narcotics was recovered with him, while the said quantity charas has taken into possession by local police vide in case FIR No. 676, dated 18.12.2013 u/s 9C-CNSA, recovery 20Kgs Charas and also the said recovered charas has been showed with them. He further stated that he was informed through his advocate that the said recovered Charas and M-Car Alto is the previous case property of the another case vide FIR No. 676, dated 18.12.2013, photo copy of FIR is attached here with for ready reference.

STATEMENT OF CONSTABLE ZAHID.

He supported the statement of constable Sajid.

FINDING:

Keeping in view the enquiry conducted so far reveals that a huge quantity charas 20-Kgs has been recovered from the above mentioned accused Constables namely Muhammad Sajid and Muhammad Zahid, accused Noor Muhammad s/o Mir Rahman and Jamdad s/o Imdad containing 5/5 packet from every accused in the Motor Car Vitz B/No. 6017 silver color and also registered a proper case vide FIR No. 218, dated 18.06.2014 u/s 9C-CNSA PS Sardehri. During enquiry it was found that the registered FIR against the officials mentioned no any entry of Eng: and Chases No. of the in-question Motor Car. While the undersigned found a Motor Car Alto Silver color on which installed a Number plate B/No. 6017, Eng: No. 377749 and Chases No. 916284 parked in the limit of session court Charsadda.

Nevertheless, it is recommended that in the subject matter case both the Constables were found guilty from the charge level against them. Furthermore, it was informed that both the officials/accused were released from the Jail about the poor investigation of the case. Therefore, in this respect an enquiry against the investigation unit PS Sardehri may be initiated that why the accused/officials were released from the Jail about the poor investigation. While during registering case No proper information i.e Eng: Ch: Nos as well as make and module in the in-question Motor Car was mention with FIR. All statements are attached for your kind perusal and information please. Submitted please.

(MUHAMMAD YASEEN KHAN)  
DEPUTY SUPERINTENDENT OF POLICE  
SADDAR CIRCLE, PESHAWAR

W.SP/Hgrs: Peshawar, please.

No. 1847 /PA.

Dated 29.06.16.

Encls: (180)

Attested

ATTESTED

253-1-17

Annex-67

36

ORDER

This office order relates to the disposal of formal departmental enquiry against HC Muhammad Zahid No.1791 & FC Sajid No.2577 on the allegations that they while posted at PS, Duadzal & Anti Corruption department were involved in criminal case vide FIR No.215 dated 18.06.2014 u/s 9CCNSA PS Sardheri (Charsadda).

227  
20-1-17  
PESHAWAR

In this regard, they were placed under suspension & issued charge sheet & summary of allegations. SDPO Suburb was appointed as E.O. He conducted the enquiry and submitted his report that defaulter officials deserve to be released from suspension. The E.O further recommended that the enquiry may be filed without any further action vide Enquiry Report No.3311/S dated 07.07.2015.

Upon the finding of E.O, the opinion of DSP Legal was sought. He opined that "acquittal in criminal case could not ipso facto lead to exoneration of a Civil Servant in departmental proceedings. He further stated that charged accused Constables fails under moral turpitude and is against the discipline of the force, leniency in such cases would be motivated other members of the force for indulgence in trafficking of narcotics.

Upon which they were issued final show cause notice which they received & replied.

The matter was discussed by the then SP-HQrs with DSP-Legal & denvo proceedings was ordered. SDPO Sadder Circle was appointed as Enquiry Officer. He conducted the denvo proceedings & submitted his report/finding that both officials found guilty of the charges vide Enquiry Report No.1847/PA dated 29.06.2016.

On receiving the finding of E.O, they were issued final show cause notices which they received & replied.

The opinion of DSP Legal was again sought. He opined that "finding of E.O gone through who found the accused officials guilty of the charges and recommended I.O of the case for departmental action for the poor investigation due to which the accused officials were acquitted of the charges. The enquiry may be disposed of in light of the recommendation as deem appropriate.

They were called & heard in person but their explanation found un-satisfactory.

In the light of recommendations of E.O, DSP Legal opinion & other material available on record, the undersigned came to conclusion that the alleged officials found guilty of the charges. Therefore, they are hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect.

R. J. H. Q  
N/A  
19

*[Signature]*  
SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR

OB. NO. 316 / Dated 19/1/2017

No. 273-80 /PA/SP/dated Peshawar the 20/1/2017

Copy of above is forwarded for information & n/action to:

25/1/17 Police

- Capital City Police Officer, Peshawar.
- ✓ SSP Operations, Peshawar
- ✓ DSP/HQrs, Peshawar.
- ✓ P.O. Office, OASI, CRC & FMC along-with complete departmental file. Officials concerned.

LOI 1005  
fac delegation  
*[Signature]*  
R. J. 20/1/17

**Attested**

*[Signature]*  
Appreciant

**ATTESTED**

Annex-H

37

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

**SERVICE APPEAL NO. 993/2017**

Date of institution ... 18.08.2017  
Date of judgment ... 02.07.2018



Muhammad Zahid Ex-Head Constable No. 1791,  
Police Station Daudzai,

... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Capital Police Officer, Peshawar.
3. The Superintendent of Police, Headquarter, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST  
THE ORDER DATED 10.08.2017, WHEREBY THE REVISION OF  
THE APPELLANT UNDER POLICE RULES 1975 AMENDED IN  
2014 AGAINST THE ORDER DATED 09.03.2017 OF THE CCPO  
PESHAWAR HAS BEEN REJECTED FOR NO GROUNDS  
WHEREIN THE CCPO PESHAWAR UPHELD THE ORDER  
DATED 20.01.2017 OF THE SP HEADQUARTER PESHAWAR.

Syed Noman Ali Bukhari, Advocate.

.. For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.

MR. MUHAMMAD AMIN KHAN KUNDI  
MR. AHMAD HASSAN

.. MEMBER (JUDICIAL)  
.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: Learned counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant, submitted rejoinder, which is placed on record. Arguments heard and record perused.

ATTACHED

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar.

Muhammad Amin  
20-7-2018

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department as Head Constable and during service he was dismissed from service vide order dated 19.01.2017 on the allegation that he alongwith others were involved in case FIR No. 218 dated 18.06.2014 under sections 9CCNSA/15AA Police Station Sradheri, Charsadda. The appellant filed departmental appeal (undated) which was rejected on 09.03.2017 and thereafter he filed revision petition under rule 11-A of Police Rules, 1975 on 17.03.2017 which was also dismissed on 10.08.2017 hence, the present service appeal on 18.08.2017.

3. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that during service the appellant was involved in case FIR No. 218 dated 18.06.2014 under sections 9CCNSA/15AA Police Station Sradheri, Charsadda. It was further contended that the appellant alongwith others co-accused were acquitted by the competent court vide detailed judgment dated 16.03.2015. It was further contended that the appellant was dismissed from service vide order dated 19.01.2017. It was further contended that the appellant also filed departmental appeal as well as revision petition within time but the same was also rejected. It was further contended that initially inquiry officer recommended that the appellant was acquitted by the competent court therefore, inquiry may be filed without any further action vide inquiry report recommendation dated 07.07.2015 but the competent authority again directed to conduct de-novo inquiry against the appellant and the appellant was dismissed from service on the basis of de-novo inquiry. It was further contended that during de-novo inquiry, the inquiry officer has recorded the statement of the witnesses including statement of ASI Ajmir Shah, Constable Shahriyar and Danyal but the appellant was not given

M. Ajmir  
2-7-2018

ATTEST  
Khan  
Service Tribunal,  
Peshawar

opportunity to cross examine the aforesaid witnesses. It was further contended that the appellant was also issued show-cause notice by the competent authority but the copy of the inquiry was not provided to the appellant with the final show-cause notice therefore, the appellant was condemned unheard and the impugned order of dismissal of the appellant is illegal and liable to be set-aside and prayed for acceptance of appeal.

4. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was direct charged in the FIR of aforesaid criminal case. It was further contended that he was caught with red handed alongwith other while proceedings in the motorcar. It was further contended that the acquittal of the appellant in criminal case has no effect on the departmental proceeding/inquiry and the respondent-department has rightly proceeded the appellant under disciplinary proceedings. It was further contended that all the codal formalities of inquiry were fulfilled by the inquiry officer therefore, the appellant was rightly dismissed from service.

5. Perusal of the record reveals that the appellant was serving in Police Department and during service he alongwith three others were charged in the aforesaid criminal case for taking Chars and Pistol in the motorcar. The record further reveals that the appellant alongwith others co-accused was arrested by the local police on the spot. However, after facing trial the competent court vide detailed judgment dated 16.03.2015 acquitted the appellant alongwith others and they were released from the custody. The record further reveals that initially the inquiry officer submitted report dated 07.07.2015 to the competent authority that the inquiry pending against the appellant be filed without any further action mainly on the ground that the appellant was acquitted by the competent court

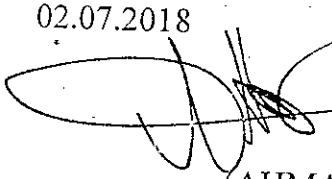
*M. Amin*  
2-7-2018

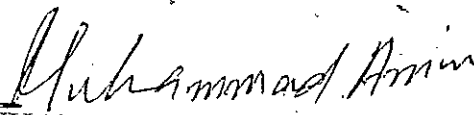
K. S. Srinivasan  
Senior  
Peon


40

but the competent authority did not agree with the report of the inquiry officer and directed to conduct de-novo inquiry. The record further reveals that the de-novo inquiry was conducted by the inquiry officer and the inquiry officer also recorded the statement of ASI Ajmir Shah, Constable Shahriyar and Danyal regarding the involvement of the appellant in the aforesaid criminal case but there is nothing in the inquiry report or other available record to show that the appellant was provided opportunity of cross examination against the aforesaid witnesses. Furthermore, the copy of the final show-cause notice available on record also shows that the copy of the inquiry was also not handed over to the appellant with the show-cause notice therefore, the appellant was condemned unheard and the respondent-department has violated the requirement of natural justice therefore, the impugned order of dismissal of the appellant from service is illegal and liable to be set-aside. As such we partially accept the appeal and reinstate the appellant into service. However, respondent-department is directed to conduct de-novo inquiry according to prescribe law and rules within a period of 90 days from the receipt of this judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
02.07.2018

  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

**Certified to be true copy**  
  
Secretary

Date of Presentation 30-7-18  
 Number of Writs 1680  
 Copying Fee 10  
 Urgent 2  
 Total 12  
 Name of Officer [Signature]  
 Date of 30-7-18  
 Date of Disposal 30-7-18

Annex-I

41

**ORDER**

This office order relates to the disposal of Denovo departmental enquiry against Head Constable Muhammad Zahid No.1791/3779 & Constable Sajid No.2577/2123 of Capital City Police Peshawar on the allegations that they involved in criminal case vide FIR No.218 dated 18.06.2014 u/s 9C-CNSA PS Sardheri District Charsadda.

The court judgment has been implemented, Head Constable Muhammad Zahid No. 1791 & Constable Sajid No.2577 reinstated in service and initiated denovo departmental enquiry subject to the outcome of the enquiry vide No.2146-52/PA dated 14.09.2018.

Inspector Niaz Muhammad of Police Lines was appointed as Enquiry Officer. He conducted the enquiry proceedings and submitted his finding/report that the allegations against the alleged officials have been proved. The Enquiry Officer further recommended major punishment for the alleged officials.

In light of the recommendations of E.O. previous enquiry and current enquiry findings, the undersigned came to the conclusion that they are guilty of this misconduct and not deserves an iota of leniency. In exercise of the power vested to me under Police & Disciplinary Rules-1975, they are therefore awarded the major punishment of dismissal from service with immediate effect.

*Bosny*  
**SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR**

OB. NO. 3314 / Dated 30/10/2018

No. 2601-07 /PA/SP/dated Peshawar the 31/10/2018

Copy of above is forwarded for information & n/action to:

- ✓ The Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Budget Officer, OASI, CRC & FMC along-with complete departmental file.
- ✓ Official concerned.

**Attested**

*M. Zahid*

Appellant



رحم درخواست بہ خلاف حکم مجاریہ SP ہیڈ کو اصرار صاحب کی نسبت اور  
محوالہ آرڈر کی نمبر 3314 مورخہ 30/10/18 دہشتہ SP ہیڈ کو اصرار صاحب کی نسبت  
2601-07 PA.58 مورخہ 31/10/18

Attested

M. Khan

Applicant

جناب عالی! مسائل حسب ذیل عرض دسان ہے

- 1) یہ کہ مسائل کو ایک حصے اور میں گھنٹت مقدمہ میں انٹوائری اصرار صاحب کی  
انٹوائری رپورٹ کی روشنی میں محکمہ لوہیوں سے درخواست کیا گیا  
یہ کہ مسائل کے گناہ ہونے کے باوجود 6 ماہ جو ڈسٹنٹل حوالات میں سپریم کورٹ کی  
اور مسائل کا ٹرائل ہونے پر سیشن جج نے حکم ثبوت پر مقدمہ سے باخبر ٹری  
کر دیا تھا۔ جو لف درخواست کے مطابق  
2) یہ کہ مسائل کا حکمانہ انٹوائری کا حکم ہوا جس میں مسائل کی سرسٹ انٹوائری  
DSP سپریم کورٹ نے انٹوائری کے لئے انٹوائری رپورٹ میں ماسٹر پریسٹر آئیڈیل  
تقریر کے مسائل کی سیشن حکم اور انٹوائری قابل ٹری اسٹیڈ کی غمی کیلین  
کے ہیڈ وائر میں دی انٹوائری کا حکم دیا۔ DSP سپریم کورٹ انٹوائری رپورٹ لف ہذا  
3) یہ کہ مسائل کی دی انٹوائری FIR پریگی اور سی انٹوائری نہ ٹری کے باوجود  
مسائل کو گناہ لاد کے مسائل کے خلاف انٹوائری رپورٹ میں فاسٹر با صبحہ ستر  
تقریر نے تقریر کیا گیا جس پر SP ہیڈ وائر میں مسائل کو محکمہ سے درخواست کرنے  
کا حکم صادر فرمایا۔ جو لف درخواست کے مطابق  
4) یہ کہ مسائل نے عدالت سپریم کورٹ میں سے رجوع کیا جس پر مسائل کا 18 مہینے  
کا ٹرائل کرنے کے موضوع سے مسائل کی اپیل ضلعوہ ٹری کے گھنڈر انوشٹیشن کی  
وجہ سے مسائل کو اصرار دینے کیے de-novo انٹوائری کا حکم صادر  
فرمایا۔ جو لف درخواست کے مطابق  
5) یہ کہ مسائل نے دوران de-novo انٹوائری، انٹوائری اصرار کو اپنا بیان  
گھنڈر ٹری القادی کہ اب صاحبان مال مقدمہ اللٹوہ کورٹ کی بھی

انڈیا ٹریڈ کے لئے جو کہ حکمانہ سہولت دہری ہے عمارت صدقہ میں عدالت  
سینٹر جمع ہوئی ہے جو کہ اس سے حال صدقہ ہے جسٹس ای  
کا وکٹس انٹیکو بکٹی ہے دوران کا اٹال چار سہ سے برآمد کر کے حکمانہ سہولت  
دور نافہ سال 2013 حوالہ ہے۔ چنانچہ جسٹس ای کے وکیل نے عدالت  
میں ثابت کیا۔ لیکن شاید ایسے ایسے ایسے نہیں کیے اور اسے ایسے  
دورٹ کے وقت میں ہمیں دوبارہ تہاہ کار قرار دینا سہولت دینے کے لئے ہے جو کہ  
سائل نے سہولت سہولت دہری اور نا اعلیٰ ہے۔

۷) کہہ سائل نے اپنے صدقہ عدالت سینٹر جمع کے لئے دو وکیل رجسٹرڈ حوالہ  
اور اب تہاہ کے لئے کافی رقم لوگوں سے قرض لے رہی ہے جو اب  
خاصہ الاذہ سے کہیں سائل کیا کریں۔

۸) کہہ سائل واحد گھنٹہ کا خود کفیل ہے اور وہ کسی زمین معاشی نہیں ہے  
سائل نے ذمے آسے کے مجموعے کے لئے اور سائل نے اپنے مال کے لئے  
جوہر قیام حاصل کر دیا۔

۹) کہہ سائل نڈرلہ قوامت اب صاحبان سے رقم کی درخواست کرنا ہے  
کیونکہ سائل نے بچوں کی تعلیم اور سائل کے مستقبل کا سوال ہے  
سائل نے تہاہ بیوں کے ساتھ آپ صاحبان سے اپنی نائی بیوں تہاہ  
کی معافی کا انتظار ہے۔ سائل کو معاف کر کے دوبارہ حکمانہ سہولت میں عدالت  
کا موقع دیا جائے۔

سائل کا صاحبان اب صاحبان کے لئے دعا گوہ دینگا

Attested

العاضی

M. H. Khan

M. H. Khan

1791  
3779

القاعلین سید نسیم محمد زاہد علیہ

Appellant

0302-5986465

16.11.2018

Handwritten signature



OFFICE OF THE  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR

Phone No. 091-9210989

Fax No. 091-9212597

Annex - K

44

ORDER.

This order will dispose off the departmental appeal preferred by Ex-Constable Muhammad Zahid No.3779 who was awarded the major punishment of "Dismissal from service" by SP/HQrs Peshawar vide No.3314, dated 30-10-2018.

2- The allegations leveled against him were that he while posted at Police Station Daudzai involved in criminal case vide FIR No.218, dated 18-06-2014 u/s 9C CNSA PS Sardheri Charsadda which was ended into his dismissal from service. He feeling aggrieved filed a departmental appeal which was rejected by this office and the appellant sought remedy at Honorable Services Tribunal Khyber Pakhtunkhwa by filling service appeal which was decided in his favour with the direction to conduct denovo enquiry into the matter.

3- A denovo departmental enquiry was conducted against the appellant by Inspector Niaz Muhammad on the order of SP/HQrs Peshawar. The enquiry officer after conducting proper enquiry submitted his finding while recommending the appellant for major penalty. The competent authority after examining the recommendation of the enquiry officer awarded him the major punishment of dismissal.

4- He was heard in person in O.R. The relevant record perused along with his explanation but the appellant failed to submit any plausible explanation. Therefore his appeal for reinstatement in service is hereby dismissed/rejected.

(QAZI JAMIL UL REHMAN) PSP  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR

No. 143-48 /PA dated Peshawar the 16-01-2019

Copies for information and n/a to the:-

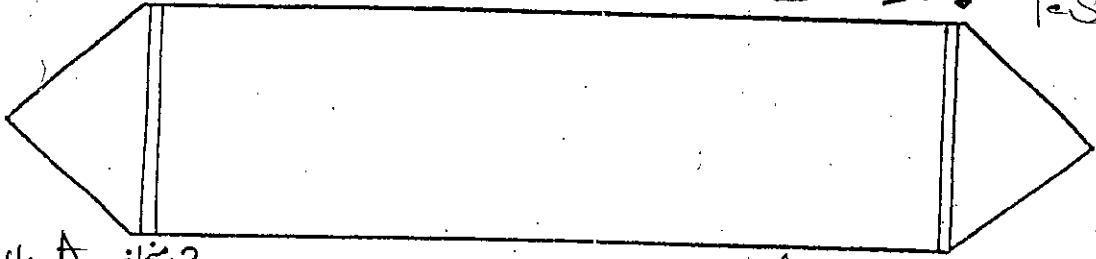
1. SP/HQrs Peshawar.
2. BO/OASI/CRC for making necessary entry in his S.Roll.
3. FMC along with FM
4. Official concerned.

**Attested**

M. Zahid

Appellant

Before the Honorable Chairman, KPK Service Tribunal,  
پشاور بعدالت Peshawar.



(Appellant) 2 منجانب بنام

Muhammad Zahid

VS

موزخه  
مقدمہ  
دعویٰ  
جرم

The Provincial Police Officers etc

باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کارروائی متعلقہ  
Reg. No. 114/2019 Peshawar کیلئے

آن مقام مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
دکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برادگی اور منسوخی  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کارروائی 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 اختیارات حاصل ہوں گے اور اس کا ساختہ  
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائہ التوائے مقدمہ کے سبب سے ہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ مندر ہے۔

Accepted  
11/2/2019  
14/2/2019

2019 February

1st

پشاور کے لئے منظور ہے۔

بمقام

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

**Service Appeal No.176/2019**

Muhammad Zahid Ex- Head Constable No. 504 Police Lines, Peshawar.....**Appellant.**

**VERSUS.**

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs: Peshawar.....**Respondents.**

**PRELIMINARY OBJECTIONS.**

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appellant has got no locus standi and cause of action to file the instant appeal.

**FACTS:-**

- 1- Para No.1 pertains to record, however the record is not upto the mark.
- 2- Para No.2 is incorrect. In fact, the appellant along with constable Muhammad Sajid were directly charged in a criminal case vide FIR No. 218 dated 18.06.2014 u/s 9-C CNSA PS Charsadda by recovering 20 KGs Chars from their possession while attempting to smuggle the same in Motor Car No. 6017/B Peshawar.
- 3- Para No.3 is incorrect. The appellant was issued charge sheet and statement of allegations to which he replied, but his reply was found unsatisfactory.
- 4- Para No.4 is correct to the extent that the enquiry was conducted by DSP/Suburb and after completion of codal formalities submitted his finding/recommendation to the competent authority. However the recommendation of enquiry officer are not binding upon competent authority.
- 5- Para No.5 is correct to the extent that Denovo Enquiry was conducted against him. During the course of enquiry, the appellant failed to rebut the charges and the enquiry officer conducted thorough probe into the matter and found the appellant guilty of the charges. After fulfilling all codal formalities, he was awarded major punishment of dismissal from service by the competent authority.
- 6- Para No.6 is correct to the extent that the appellant sought remedy from Service Tribunal Peshawar in Service Appeal No. 993/2017.
- 7- Para No.7 is correct to the extent that the Honorable Service Tribunal partially accepted his appeal and remanded it back to the respondent department to conduct denovo enquiry.

- 8- Para No.8 is incorrect. In light of the court judgment the appellant was re-instated in service and de-novo proceedings were initiated against him. Inspector Niaz Muhammad was appointed as enquiry officer. He conducted detailed denovo enquiry in accordance with law/rules, and proper opportunity of defense was provided to the appellant. The allegations were reported, proved beyond any shadow of doubt by the enquiry officer.
- 9- Incorrect. After fulfilling all the codal formalities, he was awarded major punishment of dismissal from service as per law/rules.
- 10- Para is correct to the extent that the appellant filed departmental appeal which after due consideration was filed/rejected because the appellant failed to submit any plausible explanation.
- 11- Incorrect. The appellant himself is responsible for the situation by committing gross misconduct.
- 12- That appeal of the appellant being devoid of merits may kindly be dismissed on the following grounds.


**GROUND:-**

- A- Incorrect. The appellant was treated as per law/rules and no provision of law has been violated.
- B- Incorrect. The appellant was associated in the enquiry proceedings and proper opportunity of defense was provided to appellant but he failed to defend the charges leveled against him. The whole enquiry were conducted purely on merit and in accordance with law/rules. The enquiry officer after detailed probe into the matter reported that the charges against the appellant were proved.
- C- Incorrect. The enquiry officer has conducted detailed denovo enquiry in accordance with law/rules, and proper opportunity of defence was provided to the appellant. After fulfilling all the codal formalities, he was awarded major punishment. The punishment orders are liable to be upheld.
- D- Incorrect. The punishment orders are just legal, and have been passed in accordance with law/rules. Proper denovo enquiry was conducted and the enquiry officer reported that the charges leveled against the appellant were proved, therefore the punishment orders were passed.
- E- Incorrect. During the course of enquiry the appellant failed to rebut the charges and the enquiry officer conducted through probe into the matter and found the appellant guilty of the charges. The charges leveled against him were proved, hence the punishment orders were passed.
- F- Incorrect. Acquittal in a criminal case would not ipso facto lead to exonerate a Civil Servant in departmental proceedings.

- G- Incorrect. The punishment orders passed by the competent authorities as per law/rules.
- H- Incorrect. Proper denovo proceedings were conducted against him in accordance with law/rules. Appellant was found guilty and the punishment orders were passed in accordance with law/rules.
- I- Incorrect. The charges leveled against him were proved, hence he was awarded the major punishment.
- J- That respondent may also be allowed to advance additional ground at the time of hearing of the appeal.

**PRAYER.**

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed.



**Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.**



**Capital City Police Officer,  
Peshawar.**



**Superintendent of Police,  
HQrs: Peshawar.**

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

**Service Appeal No.176/2019**


**Muhammad Zahid Ex- Head Constable No. 504 Police Lines, Peshawar.....Appellant.**

**VERSUS.**

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs: Peshawar.....**Respondents.**

**AFFIDAVIT**

We respondents No. 1 ,2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.**

  
**Capital City Police Officer,  
Peshawar.**

  
**Superintendent of Police,  
HQrs: Peshawar.**



5

**DENOVO PROCEEDING**

**CHARGE SHEET**

I, Capital City Police Officer, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Head Constable Muhammad Zahid No.1791 of Capital City Police Peshawar with the following irregularities.


"That you Head Constable Muhammad Zahid No.1791 while posted at Police Lines, Peshawar were involved in criminal case vide FIR No.218 dated 18.06.2014 u/s 9-CCNSA PS Sardheri. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

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

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

9

**DENOVO PROCEEDING**

**DISCIPLINARY ACTION**


I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Head Constable Muhammad Zahid No.1791 has rendered himself liable to be proceeded against under the provision of Police Disciplinary Rules-1975

**STATEMENT OF ALLEGATION**

"That Head Constable Muhammad Zahid No.1791 while posted at Police Lines, Peshawar was involved in criminal case vide FIR No.218 dated 18.06.2014 u/s 9-CCNSA PS Sardheri. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and Insq. Niaz Mohammed is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officers, record his finding within 07-days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.
3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

No. 158 /E/PA, dated Peshawar the 13/09 /2018

1. \_\_\_\_\_ is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.
2. Official concerned

**REFERENCE ATTACHED**

Subject: **DENOV ENQUIRY**  
**FC SAJID 2577**

**HC MUHAMMAD ZAHID NO.1791 &**

Please refer to the attached enquiry papers received from your good office vide: No.158/PA, & No.159/PA dated 22.06.2018 against FC Muhammad Zahid No.1791 & Sajid No.2577 on the allegations;

**ALLEGATION**

"That they while posted at Police Lines, Peshawar & Anit Corruption Establishment KPK were involved in case FIR No.218 dated 18.06.2014 u/s 9-C CNSA PS Sardheri District Charsadda.

**PROCEEDINGS**

1. In order to dig-out the real facts, they were summoned, appear before the undersigned, and deliver charge sheet & summary of allegation upon them. Their replies received in stipulated time, they were also cross examined.
2. HC Muhammad Zahid No.1791 denied the entire allegation & stated that he is innocent in the above mentioned case of PS Sardheri. During trial he was acquitted by the learned court of ASJ Charsadda. He pleaded not guilty.
3. FC Sajid No.2577 also denied the allegations & stated he went to District Charsadda when his friend namely Noor Muhammad to bring his outstanding amount from One Feroz Shah Bacha of district Charsadda. On their return to district Peshawar the local Police of PS Sardheri & registered a false case against them, produced them before the court and obtain one day custody and later sent them to prison. They were acquitted by the learned court being found innocent.
4. Mr. Noor Muhammad their co accomplice was summoned & his statement recorded and heard in person. He submitted his reply & stated the same story as recorded the above mentioned alleged officials. He also denied the allegation. He was also cross examined.
5. Mr. Jahandad s/o Mada Khan r/o Sarband the co accomplice of the above mentioned alleged officials was also summoned, statement recorded & heard in person. He narrated the same story as previously recorded by the above named officials. He also denied the allegation.
6. The complainant of the case ASI Ajmeer Shah was summoned, his statement recoarded, who stated that on 18.06.2014, he along with FC Shehryar No.256 & FC Danyal 1056 was deployed on Nakabandi point Nisata Under Pass meanwhile a motor car bearing No.B-6017-Peshawar were came to his side, he stopped the same Motor Car after thoroughly checked, and recovered 20-bags chars from their possession. All the four accused were arrested & proper case was registered against them. The murasila & recovery memo of case FIR No.218 dated 18.06.2014 u/s 9 C CNSA was registered against them.

The undersigned also recorded the statements of FC Danyal & FC Shehryar and witnesses the recovery memo. Both the witnesses supported the statement of complainant ASI Ajmir Shah.

7. For more clarification, the undersigned visited PS Sardheri and obtain the attested photocopies of the case property Motor Car B-6017/Peshawar from Register No.19 & attested copy of FIR in which the case property has been written. The undersigned also examined the case file particularly recovery memo of the case. It was found that neither in the recovery memo nor in Register No.19 the Engine & Chasis No. Model has not been mentioned. The undersigned examined the said case property Alto Motor Car B-6017/Peshawar parked in court yard bearing Engine No.377749 chasis No.916284 white colour.

8. During course of enquiry the undersigned also recorded the statement of Ex Muharrir PS Sardheri MASI Noshir Khan who stated that in the year of 2014 he was posted as Muharrir. On 18.06.2014 ASI Ajmir Shah during Nakabandi arrested the 04 accused namely Sajid etc & recovered chars from their possession and registered a criminal case against them. It is worth mentioning that IO of the case Inspector Shujat Ali Khan has been died.

**FINDINGS**

After going through the enquiry papers, statements recorded personal visit following points need consideration;

- A). From perusal of detail judgment of the court the complainant/prosecution could not prove his case in court which resulted their acquittal.
- B) There is a lot of contradiction in the statements of the complainant and eye witnesses.
- C). In the site plan the three accused has been mentioned while 4th accused has not been mentioned for unknown reason.
- D). During investigation both the alleged officials did not confess his guilt nor during trail.
- E). After acquittal from the court the alleged officials were dismissed from the service. They put appeal to W/CCPO Peshawar for re-instatement in service which was rejected.
- F). Later on, they approached to service tribunal for re-instatement which was accepted.
- G) During the course of enquiry both the alleged officials found guilty, could not produce any solid evidence in their self defence. A huge quantity of narcotics i.e (20 Kg) recovered from direct from their possession. It is worth mentioning that such immoral criminal cases will badly effect on the society and also stigma on the Police Force and defaming the image of Police department in the eyes of general public.

**RECOMMENDATIONS**

In view of the above circumstances & other material available on record, the allegations against HC Zahid No.1791 & FC Sajid No.2577 are proved and not deserves an iota of leniency. Therefore, they are recommended to be awarded major punishment, if agreed please.

**(NIAZ MUHAMMAD)**  
**INSPECTOR POLICE LINES**  
**CCP PESHAWAR**

31/10/2018

W/SP/HQrs

PA SB  
Process the  
Case

31.10.2018

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 176/2019

1. Muhammad Zahid Ex-Head Constable No. 1791, Police Station Daudzai, Peshawar.

**APPELLANT**

**VERSUS**

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer, Peshawar
3. The Superintendent of Police, Headquarter, Peshawar

**RESPONDENTS**

**REJOINDER ON BEHALF OF  
APPELLANT IN THE ABOVE  
CAPTIONED APPEAL**

**RESPECTFULLY SHEWETH,**

**PRELIMINARY OBJECTIONS**

- 1-7. All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped by their own conduct to raise any objection.

**ON FACTS**

1. Para-1 is incorrect as the respondents were legally bound to have scanned the relevant record and confirmed the real

position of appellant. But they failed to do so and “**beat around the bush**” hence, para is deemed as admitted by the respondents.

1. Para No. 2 is incorrect, misconceived and hence, denied as the appellant was falsely roped in a criminal case vide FIR No. 218 dated 18-03-2014 under section 09-CNSA/15AA, Police Station Sardhari, Charsadda. However, he was acquitted by the competent Court of jurisdiction.
2. Para No.3 is incorrect as the reply to the charge sheet was based on sound reasons and correct appreciation of law. But despite thereof, the same was not found satisfactory.
3. Para-4 is incorrect and that of appeal is correct.
4. Para-5 is incorrect as the inquiry in question was conducted in utter violation of law.
5. No rejoinder is offered as the instant Para is admitted by respondents.
6. Same reply as offered in Para-6 above.
7. Para-8 is incorrect, misconceived and is denied as denovo inquiry was not conducted in a manner prescribed by law as neither any witness was examined in the presence of

appellant nor he was provided any opportunity of cross examination in order to impeach the credibility of the witnesses if any appeared against him. Similarly, he was also not provided any chance to produce his defence in support of his version. The above defect in enquiry proceeding is sufficient to declare entire process as sham and distrustful. Right of fair trial is a fundamental right by dint of which a person is entitled to a fair trial and due process of law. The appellant has been deprived of his indispensable fundamental right of fair trial as enshrined in **Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973**. Thus, the report of inquiry officer is perverse and the same is not sustainable under the law.

8. Para-9 is incorrect and that of appeal is correct.
9. Para-10 is also incorrect as the departmental appeal was supported by sound reasons.
10. Para-11 is incorrect as the appellant was falsely implicated in the criminal case.
11. Para-12 is also incorrect as the appellant has a good prima-facie case to invoke the jurisdiction of this Hon'ble court.

**ON GROUNDS**



- A. Para-A is incorrect and that of appeal is correct.
- B. Para-B is also incorrect and detail reply offered in Para-8 of the facts above.
- C. Same reply as furnished in Para-8 of facts above.
- D. Para-D is incorrect and that of appeal is correct.
- E. Para-E is incorrect and that of appeal is correct.
- F. Para-F is also incorrect and that of appeal is correct.
- G. Para-G is incorrect as the impugned orders were passed against the spirit of administration of justice.
- H. Same reply as offered in Para-8 of the facts above.
- I. Para-I is incorrect as there was no iota of evidence to connect the appellant with the commission of so-called misconduct. But despite thereof, he was awarded major penalty in utter violation of law.
- J. Arguments are restricted to the positions taken in the pleadings.

It is therefore, respectfully prayed that while considering the above rejoinder, the appeal may kindly be accepted with special costs.

Through

**Dated:** 15-10-2019

  
Appellant

  
**Rizwanullah**

M.A. LL.B

**Advocate High Court, Peshawar.**

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 175/2019

1. Muhammad Sajid Ex-FC No. 2577, Police Station Anti Corruption,  
Peshawar Department, Peshawar.

**APPELLANT**

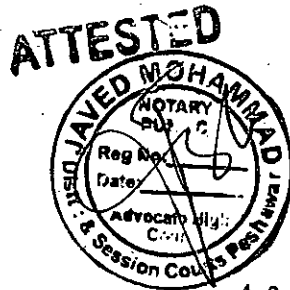
**VERSUS**

1. The Provincial Police Officer, Government of Khyber  
Pakhtunkhwa, Peshawar and others.

**RESPONDENTS**

**AFFIDAVIT**

I, Muhammad Zahid Ex-Head Constable No. 1791, Police Station Daudzai, Peshawar do hereby solemnly affirm and declare that the contents of the accompanied rejoinder are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



*M. Zahid*  
**DEPONENT**

16 OCT 2019