

Service Appeal No. 23/2019

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	03.02.2021	<p><u>Present.</u></p> <p>Miss. Naila Jan, ... For appellant Advocate</p> <p>Mr. Muhammad Rasheed, ... For respondents Deputy District Attorney</p> <p>Vide our detailed judgment of today placed in connected Service Appeal No. 22/2019 Captioned Tariq Ex-Constable No. 1180 Versus Inspector General of Police Khyber Pakhtunkhwa and two other respondents, we accept the instant appeal by set-aside the impugned order dated 05.12.2018 passed by the Regional Police Officer, Mardan Region, Mardan, however, keeping in view our observations made in the judgment respondents-department are at liberty to conduct de-novo inquiry against the appellant while making full compliance of the rules on the subject. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><u>ANNOUNCED</u> 03.02.2021</p> <p>(Atiq-ur-Rehman Wazir) Member (Executive)</p> <p>(Muhammad Jamal Khan) Member (Judicial)</p>

23.11.2020

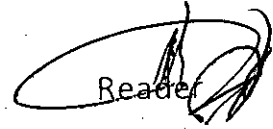
Due to non-availability of D.B, the case is adjourned to
03.02.2021 for the same as before.


Reader

11.5 .2020


Due to COVID19, the case is adjourned to

4/8 /2020 for the same as before.


Reader

04.08.2020

Due to summer vacation case is adjourned to 05.10.2020
before D.B for the same.



Reader

05.10.2020

Counsel for appellant present.

Mr. Muhammad Jan learned Deputy District Attorney
for respondents present.

Former made a request for adjournment. Adjourned.
To come up for arguments on 23.11.2020 before D.B.


(Atiq ur Reman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

14.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 14.02.2020 for record and arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

14.02.2020

Learned counsel for the appellant present. Mr. Riaz Paindakhel learned Assistant AG alongwith Mr. Fayyaz H.C for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for further proceedings on 18.03.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

18.03.2020

Appellant in person present. Mr. Muhammad Jan, DDA alongwith Mr. Fayaz, H.C for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourned. To come up for arguments on 11.05.2020 before D.B.


(MAIN MUHAMMAD)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

04.09.2019

Counsel for the appellant and Mr. Usman Ghani District Attorney alongwith Fayaz Khan, H.C for the respondents present.

Respondents No. 1 to 3 have furnished their joint reply which is placed on record. The appeal is assigned to D.B for arguments on 20.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.

Chairman

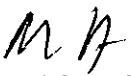


20.11.2019

Appellant alongwith counsel and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Fayaz, Head Constable for the respondents present.

The service appeal of the appellant was partially accepted and the respondent-department was directed to conduct de-novo inquiry in the mode and manner prescribed under the rules. The respondent-department has conducted first de-novo inquiry wherein the appellant was exonerated but no order was passed on the basis of such inquiry, the copy of second inquiry is available on the record but neither any order passed for initiation of second inquiry by the competent authority is available on the record nor charge sheet, statement of allegation are available on the record nor any show-cause notice and statement of witnesses mentioned in the second inquiry is available on the record. Representative of the department present in the court is strictly directed to furnish the aforesaid record on the next date positively. Case to come up for record and arguments on 14.01.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

18.06.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. The appeal was fixed for attendance as well as written reply of the respondents. However, learned counsel for the appellant pointed out that the address of respondents No. 2 & 3 were inadvertently wrongly mentioned. It was further contended that the appellant also filed application for correction of address of respondents No. 2 & 3 and requested that the address of respondent No. 2 Regional Police Officer Bannu Region Bannu may be corrected as Regional Police Officer Mardan Region Mardan and address of respondent No. 3, District Police Officer Bannu may be corrected as District Police Officer Nowshehra. Learned Additional AG expressed no objection. Accordingly, the application is accepted and the Muharrar is directed to make the correction in the address of respondents No. 2 & 3 accordingly. Notice be issued to the respondents No. 2 & 3 for written reply/comments. To come up for written reply/comments on 11.07.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member

11.07.2019

Appellant in person and Addl. AG present. No representative of the respondents is available.

Learned AAG is required to ensure attendance of representative of respondents and submission of written reply/comments on 04.09.2019 before S.B.


Chairman

20.03.2019

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Addl; AG for the respondents present. Learned counsel for the appellant submitted application for correction of addressed of respondents No. 2 & 3 which is placed on file. Adjourn. To come up for further proceeding/arguments on that application for 18.04.2019 before S.B.


(Hussain Shah)
Member


17.04.2019

Due to general strike of the bar, the case is adjourned. To come up for further proceedings as per preceding order sheet on 23.04.2019 before S.B.


Member.

23.04.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney for respondents present. Learned counsel for the appellant submitted correct address of respondents no.2 and 3 which is placed on file. Notices be issued to respondents no. 2 and 3 for submission of written reply/comments. Case to come up for written reply/comments on 18.06.2019 before S.B.


(Ahmad Hassan)
Member

06.02.2019

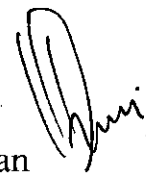
Appellant in person.

States that in pursuance to judgment of this Tribunal dated 30.05.2018 the respondents had conducted denovo enquiry and passed the impugned order dated 02.10.2018 whereby he was awarded minor punishment of stoppage of three increments with cumulative effect and reinstatement into service with immediate effect without back benefits. The denovo enquiry proceedings were not conducted in accordance with rules in terms that the appellant was not issued charge sheet/statement of allegations nor the show cause notice before passing of impugned order.

Instant appeal is admitted for regular hearing in view of submissions made at the bar. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 20.03.2019 before S.B.

The respondents shall also produce record of order passed on 02.10.2018 vide OB No. 1077 on the next date.

Chairman





Admitted
Security & Process Fee

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 23/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/1/2019	<p>The appeal of Mr. Tariq Sikandar resubmitted today by Naila Jan 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 8/1/19.</p>
2-	16-1-19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>6-02-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Tariq Sikandar Ex-Constable no. 1167 district police Nowshera today i.e. on 31.12.2018 is incomplete on the following score which is returned again to the counsel for the appellant for completion and resubmission within 15 days.

- ✓ 1- Memorandum of appeal may be got signed by the appellant.
- ✓ 2- Annexures F and H of the appeal are illegible which may be replaced by legible/better one.
- ✓ 3- Annexures of the appeal may be attested.
- ✓ 4- Annexure-A of the appeal is missing.

No. 925024 /S.T,

Dt. 31/12 /2018.

L. A. Khan
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Naila Jan Adv. Pesh.

*demanded all the
annexures
and resubmitted
by Naila Jan
3/1/2019*

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A. 213 /2018

Tariq Sikandar

VERSUS

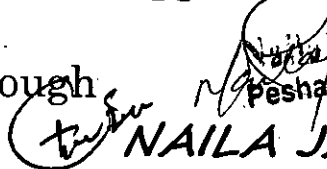
Inspector General of Police Khyber Pakhtunkhwa

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Appellant

Through


NAILA JAN

Advocate
Peshawar High Court

Advocate, High Court
Peshawar.

Dated: 31/12/2018

①

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A. 23 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1830

Dated 31-12-2018

Tariq Sikandar Ex-Constable No. 1167 R/O
Kweshgi Tehsil and District Nowshera.

-----*(Appellant)*

VERSUS

1. Inspector General of Police Khyber
Pakhtunkhwa.

2. Regional Police officer ^{Mardan} ~~Bannu~~ ^{Mardan} Region ~~Bannu~~.

3. District Police officer ^{Nowshera} ~~Bannu~~.

-----*(Respondents)*

Filed to-day

Registrar

31/12/18

**APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL
ACT, 1974 AGAINST THE ORDER DATED
02/10/2018 WHEREBY THREE
PUNISHMENTS E.G 1. MINOR
PUNISHMENT OF STOPPAGE OF THREE
INCREMENT WITH ACCOMMODATIVE
EFFECT II, REINSTATEMENT WITHOUT
BACK BENEFITS III, BAN ON APPELLANT
POSTING IN ANY OFFICE AND AGAINST
THE APPELLATE ORDER DATED 05/12/2018
WHEREBY DEPARTMENTAL APPEAL OF
THE APPELLANT WAS REJECTED BY THE
RESPONDENT NO. 2 WITHOUT ANY
JUSTIFICATION IN A CURSORY MANNER**

PRAYERS:-

**ON ACCEPTANCE OF THE INSTANT APPEAL
THE IMPUGNED ORDERS DATED 02-10-2018,**

Naila Jafar Advocate
Peshawar High Court

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MAY KINDLY BE SET ASIDE BY DECLARING
BOTH THE IMPUGNED ORDERS NULL AND
VOID ABINITIO AGAINST JUDGMENT OF
THIS HON'BLE TRIBUNAL RANER IN
APPEAL NO. 736/2017 DATED 30/05/2018 AND
THE PUNISHMENT AWARDED VIDE
IMPUGNED ORDERS MAY KINDLY BE SET
ASIDE AND THE APPELLANT MAY KINDLY
BE GRANTED ALL THE BACK BENEFITS
WITH EFFECT FROM 05/05/2017 TILL HIS
REINSTATEMENT ORDER DATED
02/10/2018 WITH ANY OTHER REMEDY DEEM
APPROPRIATE BY THIS HON'BLE TRIBUNAL.

Respectfully Sheweth,

The appellant submits as under:-

1. That the appellant was enlisted as constable in the Police Department and since his appointment the appellant performed his duty with zeal zeast and there was no complaint against the appellant in his whole service.
2. That lastly the appellant was posted at Computer lab/driving license printer operator in the office of Respondent No.3 the appellant was issued a show cause

Nalla Jan Advocate
Peshawar High Court

notice and after through an illegal inquiry the appellant was awarded major punishment of Dismissal from service vide order dated 05/05/2017. (Copy of the show cause notice is annexed as annexure "A")

3. That then after availing departmental remedies the appellant challenged the order of dismissal dated 05/05/2017 before this Hon'ble Tribunal, which was accepted and the department was directed to conduct a denovo inquiry vide order dated 30/05/2018. (Copy of the judgment is annexed as annexure "B")

4. That thereafter the appellant was reinstated into service vide order dated 03/10/2018 a denovo inquiry through DSP investigation Nowshera after conducting a fair and impartial inquiry under the direct supervision of SP investigation Nowshera, the appellant was declared innocent and were exonerated from the charges. (Copy of the reinstatement order and denovo inquiry are annexed as annexure "C & D")

Naila Jinn Advocate
Peshawar High Court

5. That instead of exoneration from the charges on the bases of the denovo inquiry

conducted by the DSP investigation under the direct supervision of Iftikhar Shah SP investigation another denovo inquiry was conducted by the same Iftikhar Shah SP investigation Nowshera at the back of the appellant and even in that inquiry to the inquiry officer admitted that there is no strong evidence of the commission of misconduct against the appellant but despite the absence of cogent evidence the competent Authority exonerated other co-accused Anwar Ul Hassan and the appellant was awarded three punishments as (i) stoppage of three increments with Cumulative effect, ii. Reinstatement and without back benefits, iii. Ban on posting in any office were awarded to the appellant vide order dated 02/10/2018. **(Copy of the 2nd denovo inquiry and impugned order are annexed as annexure "E & F")**

6. That feeling aggrieved from the above impugned order dated 02/10/2018 the appellant filed a departmental appeal before Respondent No.2 which was rejected vide order dated 05/12/2018. **(Copy of the departmental appeal and order are annexed as annexure "G & H")**

*Nabila Jinn Advocate
Peshawar High Court*

7. That feeling aggrieved from both the impugned orders the appellant filing this appeal on the following grounds inter alia:-

GROUND:-

A. That the impugned orders are against law, rules. Principles of Natural justice hence void abinitio not sustainable in the eye of law.

B. That both the impugned order is against the law rules and principle of natural justice.

C. That while remanding the appeal by the service Tribunal in its judgment dated 30/05/2018 the Respondents were directed for issuing of charge sheet statement of allegations and opportunity of defence, cross examination etc. however the Respondents clearly violated the judgment of this Hon'ble Tribunal by not issuing the charge sheet statement of allegation show cause notice before conducting both the denovo inquiries hence the whole proceedings along with the impugned orders are liable to be set aside on this core alone.

Naila Jaffer Advocate
Peshawar High Court

D. That the appellant was subjected to discrimination as co-accused Anwar Ul Hassan a similarly placed person was reinstated with all

b

back benefits. While the appellant was punished vide impugned orders.

E. That the appellant has been condemned unheard as no opportunity of personal hearing/defense was provided to the appellant.'

F. That the appellant was not associated with the inquiry proceedings, no statement of nay witnesses was recorded in the presence of the appellant nor did opportunity of cross examination was provided to the appellant.

G. That the appellant has not been provided opportunity of fair Trial as guaranteed by Article 10-A of the constitution of Islamic Republic of Pakistan 1973.

H. That the appellant has been subjected to double jeopardy, as three punishment has been awarded to the appellant vide impugned order.

I. That the punishment of non grant of back benefits and denovo posting is alien to service law.

J. That the punishment of stoppage of three increment with cumulative effect is illegal and further no time period has been specified which is violation of FR 29.

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K. That in the first denovo inquiry conducted by the DSP under the direct supervision of SP investigation recommended exoneration of the appellant while in other denovo inquiry conducted by the same superintendant of Police recommended the appellant for punishment which proves the malafide on the part of the Respondents.

L. That in both the denovo inquiries the inquiry officer failed to collect strong evidence against the appellant however very strangely and malafidely the impugned orders were passed which is against the law and rules.

M. That even in the impugned order dated 02/10/2018 the competent Authority mentioned lacking of cogent evidence against the appellant, even then the impugned illegal order was passed malafidely which is liable to be set aside.

N. That during the intervening period the appellant was jobless and is entitled for all back benefits.

O. That the appellant seek permission to adduce other grounds during Arguments.

*It is, therefore, most humbly prayed
that on acceptance of the instant appeal the*

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impugned orders dated 02-10-2018, may kindly be set aside by declaring both the impugned orders null and void abinitio against judgment of this Hon'ble tribunal render in appeal no. 736/2017 dated 30/05/2018 and the punishment awarded vide impugned orders may kindly be set aside and the appellant may kindly be granted all the back benefits with effect from 05/05/2017 till his reinstatement order dated 02/10/2018 with any other remedy deem appropriate by this Hon'ble tribunal.

Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.

Appellant

Through

the Sd/- **NAILA JAN**

**Advocate, High Court
Peshawar.**

**Naila Jan Advocate
Peshawar High Court**

Dated: 31/12/2018

NOTE:-

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.

Naila Jan
Advocate

**Naila Jan Advocate
Peshawar High Court**

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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A _____/2018

Tariq Sikandar

VERSUS

Inspector General of Police Khyber Pakhtunkhwa

AFFIDAVIT

I, Tariq Sikandar Ex-Constable No. 1167 R/O Kweshgi Tehsil and District Nowshera, do hereby solemnly affirm and declare that all the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

Tariq Sikandar
DEPONENT

Identified By:

*Naila Jan Advocate
Peshawar High Court*

NAILA JAN

Advocate High Court
Peshawar.

31/12/2018

ATTESTED
IRFAN ULLAH ADVOCATE
NOTARY PUBLIC

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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A _____/2018

Tariq Sikandar

VERSUS

Inspector General of Police Khyber Pakhtunkhwa

ADDRESSES OF PARTIES

APPELLANT.

Tariq Sikandar Ex-Constable No. 1167 R/O
Kweshgi Tehsil and District Nowshera.

RESPONDENTS

1. Inspector General of Police Khyber Pakhtunkhwa.
2. Regional Police officer Bannu Region Bannu.
3. District Police officer Bannu.

Appellant

Through

(Signature)
NAILA JAN

Advocate, High Court
Peshawar.

Dated: 31/12/2018

"A"
A

7

Amir "A"

OFFICE OF THE DISTRICT POLICE OFFICER, NOWSHERA

SHOW CAUSE NOTICE

(Under Rule 5 (3) KPK Police Rules, 1975)

1. That you HC Tariq Sikiingar No. 1167 while posted at Computer Lab, Police Lines, Nowshera have rendered yourself liable to be proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct:-
 After observations of Ex-Constable Tariq No. 1180 Mobile Nos. (0344-4810605) & (0310-9490585), Tahmeed & Ismael having Mobile Nos. (0344-4810605), (0346-9473932), (0301-4814217), (0342-9136145) were in close contact with him for getting Driving Licenses on Rs. 1000/- to 15000/- per license. Tahmeed was called to the office of the undersigned and questioned/interviewed, who disclosed that you were also in close contact with Tahmeed for getting Driving Licenses on Rs. 6000/- per license, which clearly proves holding mala-fide intention on your part, as undeniable evidence & sufficient material available on record.
2. That by reasons of above, it's sufficient material is placed before the undersigned; therefore it is decided to proceed against you in general Police proceeding without aid of enquiry officer.
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force;
4. That your retention in the Police force will amount to encourage inefficiency and unbecoming of good Police officers;
5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules.
6. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
7. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex-parte action shall be taken against you.
8. You are further directed to inform the undersigned that you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.

Received by _____
Dated : _____/_____/2017

(Large circular stamp containing a stylized signature or mark)

(Wahid Wahid) DSP
District Police Officer,
Nowshera.

(Handwritten signature)

(Handwritten notes at the bottom of the page)

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Aunty B

(111)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 736/2017

Date of Institution ... 06.07.2017

Date of Decision ... 30.05.2018

Tariq Sikandar S/o Sikandar (Ex-Head Constable No. 1167) R/o Khweshgi Tehsil
and District Nowshera. ... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 2
officers. ... (Respondents)

IRSHAD AHMAD KHAN,
Advocate

For appellant.

MR. MUHAMMAD RIAZ PAINDAKHEL,
Assistant Advocate General

For respondents

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 734/2017 titled Tariq and no. 680/2017 titled Anwar-ul-Hassan as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The brief facts are that the appellant was serving as Head Constable in Police Computer Lab at Nowshera. That disciplinary proceedings were initiated and upon conclusion major penalty of dismissal from service was imposed on him vide impugned order dated 05.05.2017. Feeling aggrieved he filed departmental appeal on 16.05.2017 which was rejected on 06.06.2017, hence the instant service appeal on 06.07.2017.

Naila Jaleel Advocate
Peshawar High Court



15) Amalika "C"

**OFFICE OF THE
DISTRICT POLICE OFFICER,
NOWSHERA**

Tel No. 0923-9220102 & Fax No. 0923-9220103
Email Dps_nowsherakpk@yahoo.com

2018

ORDER

On Re Instatement in service vide this Office OB No. 1077, dated 02-10-2018. Head Constable Tariq Sikandar No. 1167 is hereby allotted constabulary No.555 and posted to PS Nizampur with immediate effect.

OB No. 1085


Dated 3-10-2018


District Police Officer,
Nowshera

No. 2256 - 60 /OHC, Dated Nowshera the 03/10/2018.

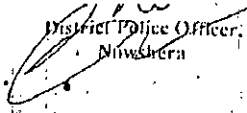
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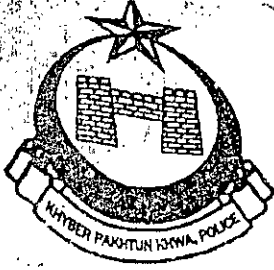
- 1 DAO, Nowshera.
- 2 Accountant Nowshera.
- 3 EC.
- 4 FMC.
- 5 GHC.


Advocate
Peshawar High Court

No. 6699-6709/PA, dated Nowshera, the 06/09/2018.
Copy for information and necessary action to the:

I, DIG Enquiry & Inspection/Internal Accountability, Khyber Pakhtunkhwa w/r to his office Encl: No. 1173/IE&I, dated 06.09.2018.


District Police Officer,
Nowshera



**OFFICE OF THE SUPERINTENDENT OF POLICE INVESTIGATION
NOWSHERA**

Tel: 0923-9220233, Fax: 0923-9220232

No. 3587/G.C, dated Nowshera the 02/08/2018.


To The District Police Officer,
Nowshera.

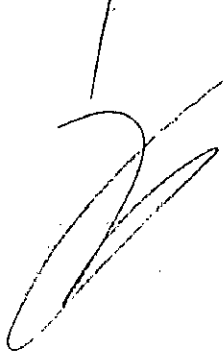
Subject: - **FINDING-DE-NOVO ENQUIRY REPORT**

Memo: Kindly refer to your office letter No. 163/PA, dated
14.04.2018.

The subject enquiry under the direct supervision of the
undersigned conducted by DSP HQrs: investigation is submitted herewith for
further necessary action, please.

By No: 1921
P.A. D.P.O. NSR
dt 02-08-2018
Encls: _____


Superintendent of Police
Investigation Nowshera.

SP,
may forward it to
DIG, Enquiry, (CPO), Peshawar
as desired please.
W-1110 SP Inv to discuss PA


Nails Jan
Nails Jan Advocate
Peshawar High Court

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FINDING-DE-NOVO ENQUIRY REPORT

This is a Finding to De-novo Enquiry conducted against Ex-HC Tariq Sikandar No. 1167, Ex-SC Anwar ul Hassan and Ex-FC Tariq No. 1180, who were dismissed from service by the then DPO Nowshera vide OB. No. 707 dated 05.05.2017, 706, dated 05.05.2017 and OB No. 678 dated 03.05.2017 respectively. The allegations were as under:-

ALLEGATIONS:-

While posted in District Police Office Nowshera, they were issued show cause notices (except Ex-FC Tariq No.1180) regarding the allegation of mobile contact with Tahmeed and Ismail in connection with driving licenses on Rs.11000/- to 13000/- per license. Tahmeed was called by the then DPO Nowshera and questioned/interviewed, who disclosed that they were also in contact with Tahmeed for getting driving licenses on Rs.8000/- per license, which proves holding mollified intention on their part undeniable evidence and sufficient material available on record.

REPLY TO SHOW CAUSE NOTICES

All the above mentioned Ex-officials (except Ex-FC Tariq No.1180) have submitted their replies in response to show cause notices, which are placed on the file. It reveals that all the above Ex-officials have contacts with Tahmeed with regard to the preparation of driving licenses on payment.

On receipt of replies of the above mentioned defaulters, they were issued charge sheets, in response to which they submitted their replies, which reveals that all the above Ex-officials have contacts with Tahmeed with regard to the preparation of driving licenses on payment.

Their Statements were also recorded, which are attached with the Enquiry File. It also reveals that all the above mentioned Ex-officials have contacts with Tahmeed with regard to the preparation of driving licenses on payment.

They were dismissed from service by the then DPO Nowshera vide OB. No. 707 dated 05.05.2017, 706 dated 05.05.2017 and OB No. 678 dated 03.05.2017 respectively.

Later on, they preferred appeals before the DIG of Police, Mardan, Region-1 Mardan, the appeals of Ex-FC Tariq and Ex-HC Tariq Sikandar were rejected, while the punishment of dismissal from service in respects Ex-SC Anwar ul Hassan was converted into compulsory retirement.

After this, they all have knocked the door of Service Tribunal, Peshawar and the learned court issued order that all they were awarded major penalty of dismissal from service without holding any regular enquiry, issuance of charge sheet and statement of allegations, whereas in case of appellants Mr. Tariq Sikandar and Mr. Anwar ul Hassan, the enquiry was conducted and the Enquiry Committee while holding the appellants guilty, relied upon the statement of Mr. Tahmeed. The respondent department has neither annexed the statement of Mr. Tahmeed with written reply nor could produce the same during the course of

Naila Jan
Naila Jan Advocate
Peshawar High Court

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arguments. In these circumstances Learned Assistant Advocate General remained unable to negate the plea taken by learned counsel for the appellant that the statement of Mr. Tahmeed was produced on the back of appellants and the appellants were not granted any opportunity to cross-examination to them. Even otherwise without reading the statement of Mr. Tahmeed how a prudent mind could reach to the conclusion that whether the appellants were rightly condemned or not.

As a sequel to above, the present appeals were accepted in terms that the respondent department is directed to conduct de-novo enquiry against the appellants strictly in accordance with relevant rules. The issue of reinstatement of the appellants shall be subject to the outcome of the de-novo enquiry.

On receipt of Court judgment, vide his office Memo. No.889/E&I, dated 02-07-2018, the DIG of Police, Internal Accountability KP, Peshawar, directed DPO, Nowshera to conduct de-novo departmental Enquiry through Mr.Iftikhar Shah SP, Investigation Nowshera and final outcome be communicated to this office.

De-NOVE DETARTMENTAL INQUIRY

De-Nove departmental Enquiry was initiated. The statements of Tahmeed, Ex-HC Tariq Sikandar No. 1167, Ex-SC Anwar ul Hassan and Ex-FC Tariq No. 1180 were recorded, which are reproduced below:-

STATEMENT OF TAHMEED TRAVEL AGENT.

He stated that he is working with Al-Noor Travel Agency on commission and he has developed relation with Ex-HC Tariq Sikandar and then became familiar with Ex-FC Tariq Kamal. He further stated that he has been arranged Umra Visas for their relatives only. He neither made driving license in Nowshera, nor he give any bribe or money to the above mentioned Ex-officials for driving license. He was put to cross-examination and it was confirmed that he has mobile connectivity with HC Tariq Sikandar and FC-Tariq Kamal regarding arranging Umra Visas for their relatives. He once came to Nowshera for the above mentioned purpose and did not know Ex-Senior Clerk Awar-ul-Hasan.

STATEMENT OF EX-HC TARIQ SIKANDAR NO. 1167

He stated that the allegations levelled against him are totally unfounded which have not yet been proved against him. He stated that he has relation with Tahmeed regarding arranging Umra Visas for his relatives only. He neither made driving license, nor has taken any money from him. He stated that due process of enquiry procedure was not followed. He was given Show Cause Notice on 04.05.2017 and was dismissed from service on the next day which is against the rules. He also stated that he was pressurized and taken his statement on the same day. The statement of Tahmeed was also taken forcibly. During cross-examination he stated that he had the work of printing of DLs only. He did not know Irfan and Asif and have never contacted them on phone. As regard working in the office after 16:00 hrs, it was just due to load of work which could not be completed during office hours and that it was under the orders the then DPO Nowshera.

Naila Jani
Naila Jani Advocate
Peshawar High Court

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STATEMENT OF EX-FC TARIQ KAMAL NO. 1180

He stated that he was dismissed from service on 03.07.2017 on the statement of one Tahmeed Travel Agent. He was served Show Cause Notice on 03.05.2018¹⁷ and was dismissed from service on the same date. Even the statement of Tahmeed was recorded on 04.05.2017. He further stated that he had received the Show Cause Notice on 08.05.2017 by post. He rebutted all the allegations leveled against him. The enquiry was not conducted as per rules/regulations. During cross-examination, he replied that he has the work of printing of DLs only. He did not know Irfan and Asif and have never contacted them on phone. As regard working in the office after 16:00 hrs, it was just due to load of work which could not be completed during office hours and that it was under the orders the then DPO Nowshera.

STATEMENT OF EX-SENIOR CLERK ANWAR-UL-HASAN

He stated that the Enquiry was not conducted as per rules/regulations. He was given Show Cause Notice on 04.05.2017 and his reply was obtained on the same day and on the other day he was dismissed from service which is against the rules. He corroborated his previous version. During his posting in CDL Branch Nowshera, he has maintained clear and clean record of driving licenses. He did not know Tahmeed. He has served the department for 25 years and there was no complaint of any kind against him during his long service. He rebutted the allegation leveled against him.

During cross-examination, he replied that he did not know Tahmeed, Irfan and Asif etc. He had no mobile contacts with all these persons. He had not taken any amount in connection with preparation DLs from any one particularly from the above mentioned persons. As regard working in the office after 16:00 hrs, it was just due to load of work which could not be completed during office hours and that it was under the orders the then DPO Nowshera on routine basis.

During the course of de-novo departmental enquiry, record/history sheets of the following DLs were obtained from District Police Office Nowshera, vide this office memo No. 3226/H dated 10.07.2018:-

1. 110000053123
2. 110000053124
3. 110000053125
4. 110000053126
5. 110000053127
6. 110000053128
7. 110000053129
8. 110000053130
9. 110000053131
10. 110000053132
11. 110000053135
12. 110000053137
13. 110000053139
14. 110000053141
15. 110000053142
16. 110000053143

The Photostat copies of above mentioned history sheets of DLs were provided and were checked. It was found that all the coddle formalities were fulfilled and

Naila Jan
Naila Jan Advocate
Peshawar High Court

these were issued properly. As regard cancellation of DLs, these were cancelled by the then DPO Nowshera for un-authentic reasons.

CONCLUSION

From the above details and de-novo enquiry conducted the under signed has come to the conclusion that:-

1. Show Cause Notices were not issued properly and were not in accordance with the rules.
2. The enquiry was not conducted as per rules/regulations. Neither show cause Notices/Charge Sheets were issued in proper way, nor the replies of all the Ex-officials were obtained within 07 days, rather that, which is contrary to the rules.
3. Final show cause Notices were not issued.
4. The previous statements were recorded by the defaulter officials ,by putting mental stress.
5. They all have rebutted the allegation leveled against them in de-novo inquiry.
6. All the above mentioned Ex-Officials have stated that did not know Irfan and Ismail nor they have any mobile contacts. However, Ex-HC Tariq Sikandar and Ex-FC Tariq No.1180 have shown relations with Tahmeed only for arranging Umra Visas, to their relatives, while Ex-SC Anwar ul Hassan stated that he has no relation with Tehmeed, which was also verified/confirmed from his statement, cross-examination, and also verified from their call data records.
7. They all have denied taking of money in lieu of preparation of DLs it is also verified by the DLS record as all the licences were issued properly.

The allegations leveled against the above named Ex-Officials that they have connection with tahmeed and ismail and recived Rs.11000/- and Rs.13000/- per licence were not proved against them. Therefore they are exonerated from the charges.

M. J. Advocate
M. J. Advocate
Peshawar High Court

[Signature]
Deputy Superintendent of Police,
Investigation, Nowshera

01/08/18

No. 4039 /PA
Dt: 31/8/2018

FINDING-DE-NOVO ENQUIRY REPORT

This is a Finding to De-novo Enquiry conducted against Ex-HC Tariq Sikandar No. 1167, Ex-SC Anwar ul Hassan and Ex-FC Tariq No. 1180, who were dismissed from service by the then DPO Nowshera vide OB. No. 707 dated 05.05.2017, 706, dated 05.05.2017 and OB No. 678 dated 03.05.2017 respectively. The allegations were as under:-

ALLEGATIONS:-

While posted in District Police Office Nowshera, they were issued show cause notices (except Ex-FC Tariq No.1180) regarding the allegation of mobile contact with Tahmeed and Ismail in connection with driving licenses on Rs.11000/- to 13000/- per license. Tahmeed was called by the then DPO Nowshera and questioned/interviewed, who disclosed that they were also in contact with Tahmeed for getting driving licenses on Rs.8000/- per license, which proves holding mala fide intention on their part undeniable evidence and sufficient material available on record.

REPLY TO SHOW CAUSE NOTICES

All the above mentioned Ex-officials (except Ex-FC Tariq No.1180) have submitted their replies in response to show cause notices, which are placed on the file. It reveals that all the above Ex-officials have contacts with Tahmeed in regard to the preparation of driving licenses on payment.

On receipt of replies of the above mentioned defaulters, they were issued charge sheets, in response to which they submitted their replies, which reveals that all the above Ex-officials have contacts with Tahmeed in regard to the preparation of driving licenses on payment. Their Statements were also recorded, which are attached with the Enquiry File. It also reveals that all the above mentioned Ex-officials have contacts with Tahmeed with regard to the preparation of driving licenses on payment.

They were dismissed from service by the then DPO Nowshera vide OB. No. 707 dated 05.05.2017, 706 dated 05.05.2017 and OB No. 678 dated 03.05.2017 respectively.

Later on, they preferred appeals before the DIG of Police, Mardan, Region-I Mardan; the appeals of Ex-FC Tariq and Ex-HC Tariq Sikandar were rejected, while the punishment of dismissal from service in respects Ex-SC Anwar ul Hassan was converted into compulsory retirement.

After this, they all knocked the door of Service Tribunal, Peshawar and the learned court issued order that all they were awarded major penalty of dismissal from service without holding any regular enquiry, issuance of charge sheet and statement of allegations, whereas in case of appellants Mr. Tariq Sikandar and Mr. Anwar ul Hassan, the enquiry was conducted and the Enquiry Committee while holding the appellants guilty, relied upon the statement of Mr. Tahmeed. The respondent department has neither annexed the statement of Mr. Tahmeed with written reply nor could produce the same during the course of arguments. In these circumstances Learned Assistant Advocate General remained unable to negate the plea taken by learned counsel for the appellant that the statement of Mr. Tahmeed

Naila Jan Advocate
Peshawar High Court

was produced on the back of appellants and the appellants were not granted any opportunity to cross-examination to them. Even otherwise without reading the statement of Mr. Tehmeed how a prudent mind could reach to the conclusion that whether the appellants were rightly condemned or not.

As a sequel to above, the present appeals were accepted in terms that the respondent department is directed to conduct de-novo enquiry against the appellants strictly in accordance with relevant rules. The issue of reinstatement of the appellants shall be subject to the outcome of the de-novo enquiry.

On receipt of Court judgment, vide his office Memo. No.889/E&I dated 02-07-2018, the DIG of Police, Internal Accountability KP, Peshawar, directed DPO, Nowshera to conduct de-novo departmental Enquiry through Mr. Ihtikhar Shah SP, Investigation Nowshera and final outcome be communicated accordingly.

DE-NOVO DEPARTMENTAL INQUIRY

De-Novo departmental Enquiry was initiated. The statements of Tahmeed, Ex-HC Tariq Sikandar No. 1167, Ex-SC Anwar ul Hassan and Ex-FC Tariq No. 1180 were recorded, which are reproduced below:-

STATEMENT OF TAHMEED TRAVEL AGENT.

He stated that he is working with Al-Noor Travel Agency on commission and he has developed relation with Ex-HC Tariq Sikandar and then became familiar with Ex-FC Tariq Kamal. He further stated that he had arranged Umra Visas for their relatives only. He neither made driving license in Nowshera, nor he give any bribe or money to the above mentioned Ex-officials for driving license. He was put to cross-examination and it was confirmed that he has mobile connectivity with HC Tariq Sikandar and FC-Tariq Kamal regarding arranging Umra Visas for their relatives. He once came to Nowshera for the above mentioned purpose and did not know Ex-Senior Clerk Anwar-ul-Hasan.

STATEMENT OF EX-HC TARIQ SIKANDAR NO. 1167

He stated that the allegations leveled against him are totally unfounded which have not yet been proved against him. He stated that he has relation with Tahmeed regarding arranging Umra Visas for his relatives only. He neither made driving license, nor has taken any money from him. He stated that due process of enquiry procedure was not followed. He was given Show Cause Notice on 04.05.2017 and was dismissed from service on the next day which is against the rules. He also stated that he was pressurized and taken his statement on the same day. The statement of Tahmeed was also taken forcibly. During cross-examination he stated that he had the work of printing of DLs only. He did not know Irfan and Asif and have never contacted them on phone. As regard working in the office after 16:00 hrs, it was just due to load of work which could not be completed during office hours and that it was under the orders of the then DPO Nowshera.

STATEMENT OF EX-FC TARIQ KAMAL NO. 1180

He stated that he was dismissed from service on 03.07.2017 on the statement of one Tahmeed Travel Agent. He was served Show Cause Notice on 03.05.2017 and was dismissed from service on the same date. Even the statement of Tahmeed was recorded on 04.05.2017. He further stated that he had received the Show Cause Notice on 08.05.2017 by

Naila Jan
Naila Jan Advocate
Peshawar High Court

post. He rebutted all the allegations leveled against him. The enquiry was not conducted as per rules/regulations. During cross-examination, he replied that he has the work of printing of DLs only. He did not know Irfan and Asif and have never contacted them on phone. As regard working in the office after 16:00 hrs, it was just due to load of work which could not be completed during office hours and that it was under the orders the then DPO Nowshera.

STATEMENT OF EX-SENIOR CLERK ANWAR-UL-HASAN

He stated that the Enquiry was not conducted as per rules/regulations. He was given Show Cause Notice on 04.05.2017 and his reply was obtained on the same day and on the other day he was dismissed from service which is against the rules. He corroborated his previous version. During his posting in CDL Branch Nowshera, he has maintained clear and clean record of driving licenses. He did not know Tahmeed. He has served the department for 25 years and there was no complaint of any kind against him during his long service. He rebutted the allegation leveled against him.

During cross-examination, he replied that he did not know Tahmeed, Irfan and Asif etc. He had no mobile contacts with all these persons. He had not taken any amount in connection with preparation DLs from any one particularly from the above mentioned persons. As regard working in the office after 16:00 hrs, it was just due to load of work which could not be completed during office hours and that it was under the orders of the then DPO Nowshera on routine basis.

STATEMENT OF LICENCE HOLDER RAZI KHAN LICENSE NO 110000053141

He belongs to district swat and contacted on his mobile no 03490479454. He stated that I can't come to the office and recorded his statement through mobile. He stated that he has given one lakh rupees to travel agent Tahmeed for visa and driving license. Tahmeed give him visa and driving license. during cross questioning he told that he did not visit police lines Nowshera for the purpose of driving license and only handed over his passport size pic to the travel agent Tahmeed.

During the course of de-novo departmental enquiry, record/history sheets of the following DLs were obtained from District Police Office Nowshera, vide this office memo No. 3226/11 dated 10.07.2018:-

- 1. 110000053123
- 2. 110000053124
- 3. 110000053125
- 4. 110000053126
- 5. 110000053127
- 6. 110000053128
- 7. 110000053129
- 8. 110000053130
- 9. 110000053131
- 10. 110000053132
- 11. 110000053135
- 12. 110000053137
- 13. 110000053139
- 14. 110000053141
- 15. 110000053142
- 16. 110000053143

The Photosat copies of above mentioned history sheets of DLs were provided and were checked. It was found that all the coddle formalities were fulfilled and these

Naila Jan
Naila Jan Advocate
Peshawar High Court

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were issued properly, but most of them not visited license branch police lines Nowshera which shows that travel agent Tahmeed has managed their driving licenses with the help of alleged police officials.

Facts and Findings

From the above details and statements recorded in de-novo enquiry, the under signed has come to the conclusion that:-

✓ DPO Nowshera upon a complaint conducted inquiry against police personnel Anwar ul Hasan License clerk, HC Tariq Sikandar and FC Tariq Kamal of Traffic branch for being involved in preparing illegal driving license on gratifications/money and dismissed them from service.

During the course of De Novo inquiry it is found that license Clerk Anwar ul Hasan with a service of 25 years was a lame duck Incharge/Supervisor. He would collect license fee on Challan and would deposit in bank next day. He kept his record proper. He would send the candidate to operator to snap a picture and operator would print a Driving Learning Permit bearing picture and details of the applicant for six months period.

✓ After completion of 6 month period the permit holder has to appear before the authority and go through a driving test. If a candidate already knows driving, then the authority lies with DPO to condone the 6 month period. In other districts, the driving licenses are get printed from Traffic Head Quarter, Peshawar but in Nowshera, with the intention to provide good service and facilitate common people, printing facility was obtained from CPO and would print driving licenses at their own.

✓ In this inquiry case, the 16 driving licenses which were cancelled by DPO Nowshera were prepared without adopting legal procedure. Even the candidates did not appear before the authority. Their picture were uploaded manually, their Learning Permits were prepared and their period condoned:

The License Branch in charge Anwar ul Hasan was a lame duck while FC Tariq Kamal in charge Computer Unit was all in all because he had won the confidence of the then DPO. He would use to direct/instruct the License Branch officials in the name of DPO. FC Tariq Sikandar, computer operator was assigned the duty of Printing Licenses. The troika was dismissed for allegedly in league with a travelling agent Tahmeed of Charsadda.

Travelling agent Tahmeed of ALnore Travelling agency was in contact with both the Tariqs (Tariq Kamal and Tariq Sikandar) of Nowshera License Branch.

FC Tariq Sikandar stated that he got acquainted with Tahmeed in 2012 through his uncle Wajid of Tangi Charsadda and have managed Umra Visas through Tahmeed for his next of kin's. Later on Mr Tahmeed got familiar with Tariq Kamal also. Tariq Kamal has also availed the services of Mr. Tahmeed in getting Umra visas for his relatives.

Analysis of CDRs shows that both the Tariqs have contacts with Tahmeed while Anwar ul Hasan has no contacts and no acquaintance with Tahmeed. Both Tariqs claim their contacts in regard to personal relation and visa business and not for the preparation of licenses. They claim that the cancelled licenses were also issued and condoned with the signature of the then DPO.

Naila Jan Advocate
Peshawar High Court

It is also worth to mention here that the then DPO improved unprecedentedly Traffic Branch and facilitated general public in getting their licenses at their door steps. He never refused to any police officer who went to him for condonation of 6 months period. He also kept his staff in high esteem specially In-charge Computer Lab Tariq Kamal. In this case the trust of DPO has been breached and the Learner permits have been got signed by the then DPO unknowingly, which both Tariqs have claimed in court proceedings that all licenses have properly been issued.

Travelling Agent, Tahmeed is an illiterate person and cannot even write his name has deflected from his previous statement in which he had admitted license related relation with both Tariqs, enabling the then DPO for dismissing them from service. Both Tariqs claimed that statement of Tahmeed had been taken /obtained by coercion. In De novo inquiry Tahmeed denies any payment or deal with Tariqs while he admits that he does not know Anwar ul Hasan.

Anwar ul Hasan, License Clerk claimed that he has gone through liver transplant in India after his dismissal. During the time of being License Clerk he was sick but was not yet diagnosed liver cancer and that might have affected his ability and efficiency otherwise during his previous 25 years service nothing adverse is there on his record. He also claims, he was dismissed only for being the supervisor otherwise he was a nominal/de-facto in charge.

Recommendations

Despite lacking cogent evidence, it is evident that illegal licenses have been prepared which were cancelled by the then DPO, the whole episode revolves around FC Tariq Kamal and FC Tariq Sikandar with more weight on the part of Tariq Kamal. The only strong evidence is the phone contacts between Tariqs and Tahmeed which they claim as their acquaintance of the past and for Umra arrangements. The punishment of dismissal from service on the basis of telephone contacts looks a bit harsh and recommended both Tariqs for minor punishment of forfeiture of service after restoring into service, while Anwar ul Hasan is not guilty except poor supervision.

Submitted please

(IFTIKHAR SILANI)
Superintendent of Police,
Investigation, Nowshera

Anwar ul Hasan is warned to be careful in future & reinstated in service with back benefits as per rules.
Tariq Sikandar is reinstated in service. He is awarded minor punishment of for stoppage of increments for 3) three years with cumulative effect. He is posted to P.S Nizamganj. He shall not be posted at any staff appointment in future.
P.T.D

Naila Jan Advocate
Peshawar High Court

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POLICE DEPARTMENT

NOWSHERA DISTRICT

ORDER

This order will dispose off a de-novo enquiry initiated under Khyber Pakhtunkhwa Police Rules, 1975 against Ex-Head Constable Tariq Sikandar No. 1167, while posted at Computer Lab driving license printer operator, DPO Nowshera. The then DPO Nowshera received information regarding illegality during the process of issuance of driving licenses to ascertain facts, Mr. Muhammad Usman Tipu, ASP (UT) was appointed to conduct Preliminary enquiry into the matter, who after conducting enquiry, submitted his report to the then DPO Nowshera, suggested therein that though all the staff deputed in license branch negated the allegations. But in order to dig out the same, the services of computer expert from Peshawar were called, who after thorough checking pointed out the exact time of issuance of learner permits, which transpired that those license permits have been issued after office timings i.e 16:00 hours. The licenses in question became dubious in nature and recommended that the same be cancelled. Since evidence was deficient for which subsequent efforts were done to reach the truth.

Consequent upon the above enquiry, several driving licenses have been cancelled vide OB No. 629 dated 24.04.2017 and Endst: No. 3549-51/PA, dated 24.04.2017.

On 26.04.2017, the statement of Irfan Khan s/o Ashraf Khan r/o Sector# 3, Moh: new Garden Colony, district Kohat was recorded wherein he categorically stated that in order to prepare driving licenses, he paid Rs. 30,000/- to a person namely Asif employee of Shareefain Travel Agency at Peshawar and also handed over a photograph to him for the purpose. He further stated that neither he visited Police Lines Nowshera for the same nor received his license bearing No. 110000053126 rather paid/handed over only Rs. 30,000/- & a photograph. He (Ex-HC Tariq Sikandar) totally negated the involvement in any money making illegal activity.

After observation of Ex-Constable Tariq Kamal No. 1180 Mobile Nos: (0344-4810605) & (0310-9490885), Tahmeed and Ismael having Mobile Nos.(0344-4810605), (0346-9473932), (0301-4814217), (0342-9136145) were found in close contact with Ex-Constable Tariq Kamal for getting Driving Licenses on Rs.1000 to 13000 per license. Tahmeed was called by the then DPO and questioned/interviewed, who disclosed that he (HC Tariq Sikandar No. 1167) was also in league with him (Tahmeed) for getting Driving Licenses on Rs. 8000/- per license, which clearly proved mala-fide intention on his part, as undeniable evidence & sufficient material available on record. In this connection, H.C Tariq Sikandar No. 1167 was served with Show Cause Notice, to which, his reply was received. He was heard in person in Orderly Room, but failed to produce any cogent reason in his defense. Therefore, he was proceeded against departmentally through enquiry committee comprising of Mr. Shahenshah Gohar, DSP, Hqs Nowshera & Inspector Taj Muhammad, I/C Complaint Cell, who after fulfillment of legal formalities submitted his report, suggested therein that he may be awarded major punishment.

He was heard in Orderly Room, wherein he failed to satisfy the then DPO Nowshera. Therefore, Head Constable Tariq Sikandar No. 1167 was awarded major punishment of dismissal from service by the then DPO Nowshera vide OB No. 707 dated 05.05.2017.

He preferred appeal to the then RPO Mardan, but the same was rejected and later on knocked the door of Honorable Services Tribunal, Khyber Pakhtunkhwa. His application was accepted by the Service Tribunal by issuing directions to conduct de-novo enquiry against him and that the issue of his re-instatement shall be subjected to the outcome of the de-novo enquiry. In compliance of the order of Honorable Service Tribunal, the Worthy DIG Internal Accountability, Khyber Pakhtunkhwa appointed Mr. Iftikhar Shah, SP Investigation, Nowshera for conducting de-novo enquiry. Who conducted de-novo enquiry and submitted his finding report vide his office No. 4039/PA, dated 31.08.2018, suggesting therein that despite lacking cogent evidence, it is evident that illegal license have been prepared which were cancelled by the then DPO Nowshera, the whole episode revolves around him & Ex Constable Tariq Kamal No. 1180 with more weight on the part of Tariq Kamal and recommended him for minor punishment.

He was heard in orderly room by the undersigned on 01.10.2018, wherein he failed to satisfy the undersigned, therefore, he is hereby awarded minor punishment of stoppage of (03) increments with cumulative effect and re-instated in service with immediate effect in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules-1975. No back benefit granted to him, being corruption case. However, he shall not be posted in any office in future.

OB No. 1677
Dated 2/10/2018

No. 6699-6704/PA, dated Nowshera, the _____/2018.
Copy for information and necessary action to the;

1. DIG Enquiry & Inspection/Internal Accountability, Khyber Pakhtunkhwa w/r to his office Endst: No. 1173-PWT, dated 06.09.2018.
2. Regional Police Officer, Mardan.
3. P.O/EC/OHC/PMC.

[Signature]
District Police Officer,
Nowshera

[Signature]
Vaid Jan Advocate
Peshawar High Court

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Satisfy undersigned
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BETTER COPY No.

Order,

This order will dispose off a denovo enquiry initiated under Khyber Pakhtunkhwa Rules 1975 against Ex-Head Constable Tariq Sikandar No. 1167. While posted at Computer Lab Driving license printer operator, DPO Officer Nowshera. The then DPO Nowshera received information regarding illegality during the process of issuance of driving licenses to ascertain facts, Mr. Muhammad Usman Tipu, ASP (UT) was appointed to conduct preliminary enquiry into the matter who after conducting enquiry, submitted his report to the then DPO Nowshera. Suggested therein that though all the staff deputed in license branch negated the allegations but in order to dig out the same, the service of Computer expert from Peshawar were availed who after thorough checking pointed out the exact time of issuance of learner permits which transpired that these license permits have been issued after office timings i.e. 16:00 hours. The license in question became dubious in nature and recommended that the same be cancelled. Since evidence was deficient for which subsequent efforts were done to reach the truth.

Consequent upon the above enquiry, several diving license have been cancelled vide OB No.629 dated 24/04/2017 and ENDST No. 3549-51/PA, dated 24/04/2017

On 26/04/2017, the statement of Irfan Khan S/O Ashraf Khan R/O Sector 3, Mohallah New Garden Colony, District Kohat was recorded wherein he categorically stated that in order to prepare driving licenses he paid Rs30,000 to a person namely Asif employee of Shareefain Travel Agency at Peshawar and also handed over a photograph to him for the purpose. He further stated that neither he visited Police lines Nowshera for the same nor received his licensed bearing No.110000053126 rather paid/handed over only Rs.30,000/- and a photograph. He (Ex-Hc Tariq Sikandar) totally negated the involvement in any money making illegal activity.

After observation of Ex-Constable Tariq Kamal No. 1180 Mobile No.(0344-4810605) & (0310-9490585) Tahmeed and Ismail having Mobile NOs. (0344-4810605), (0346-9473932) (0310-4814217), (0342-9136145) were found in close contact with Ex-Constable Tariq Kamal for getting. Driving License on Rs.11000 to 13000 per license. Fahmeed was called by the then DPO and questioned/interviewed, who disclosed that he (HC) Tariq Sikandar No. 1167 was also in league with him (Fahmeed) for getting Driving License on Rs.8000/- per license, which clearly proved malafide intention on his part, as undeniable evidence and sufficient material available on record in this connection, H.C Tariq Sikandar No. 1167 was served with show Cause Notice to which, his reply was received. He was heard in person in orderly room, but failed to produce any cogent reason in his defense therefore, he was proceeded against departmentally through enquiry committee comprising of Mr. Shahenshah Gohar. DSP HQTs Nowshera and Inspector Taj Muhammad, I/C Complaint Cell, who after fulfilling of legal formalities submitted his report, suggested therein that he may be awarded major punishment.

He was heard in orderly room, wherein he failed to satisfy the then DPO Nowshera. Therefore. Head Constable Tariq Sikandar No. 1167. Was awarded major punishment of dismissal from service by the then DPO Nowshera vide OB No. 707 dated 05/05/2017.

He preferred appeal to the then RPO Mardan, but the same was rejected and later on knocked the door of Hon'ble Services Tribunal. Khyber Pakhtunkhwa. His application was accepted by the service Tribunal by issuing directions to conduct denovo enquiry against him and that the issue to his re-instatement shall be subjected to the outcome of the denovo enquiry in compliance of the order of Hon'ble Service Tribunal, the worthy DIG internal Accountability, Khyber Pakhtunkhwa appointed Mr. Iftikhar Shah, SP investigations, Nowshera for conducting denovo enquiry. Who conducted denovo enquiry and submitted his finding report vide his office No. 4039/PA, dated 31/08/2018, suggested therein that despite lacking cogent evidence. It is evident that illegal license have been prepared which were cancelled by the then DPO Nowshera. The whole episode revolves around him and Ex-Constable Tariq Kamal No.1180 with more weight on the part of Tariq Kamal and recommended him for minor punishment.

He was heard in orderly room by the undersigned on 01/10/2018, wherein he failed to satisfy the undersigned therefore, he is hereby awarded minor punishment of stoppage of (03) increments with cumulative effect and reinstated in service with immediate effect in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules-1975. No back benefits granted to him, being corruption case. However he shall not be posted in any office in future.

OB No. 1077

Dated 2/10/2018

NO. 6699-6704/PA dated Nowshera, the _____/2018

DPO Nowshera.

Copy for information and necessary action to the

1. DIG Enquiry and Inspection/Internal Accountability, Khyber Pakhtunkhwa w/r to his office Endst: NO. 1173 dated 06/09/2018
2. Regional Police Officer, Mardan.
3. P.O/EC/OHC/FMC.

(Signature)

27
Accepted
G
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To: - Deputy Inspector General of Police,
Mardan Region-I Mardan.

Through: - Proper Channel

Subject: - APPEAL.

Sir,

With profound respect and humble submission I beg to submit that I along with Constable Tariq Kamal No.1180 was dismissed from service with effect from 05-05-2017 and after conducting de-novo enquiry, on the direction of Service Tribunal Peshawar, I have been re-instated in service with immediate effect vide OB No.1077 dated 02-10-2018 by the DPO Nowshera and awarded the following punishments:-

- i. Minor punishment of stoppage of 3 increments, with cumulative effect.
- ii. No back benefit was granted.
- iii. Banning of posting in any office.

2. ALLEGATIONS:-

While posted at Computer Lab/driving license printer operator, illegality during the process of issuance of driving licenses and Mr. Muhammad Usman Tipu, ASP (UT) was appointed to conduct Preliminary enquiry into the matter, who after conducting enquiry, submitted his report to the then DPO Nowshera, suggested therein that though all the staff deputed in license branch negated the allegations. But in order to dig out the same, the services of computer experts from Peshawar were availed, who after thorough checking pointed out the exact time of issuance of learner permits, which transpired that those license permits have been issued after office timing i.e. 16:00 hours. The license in question became dubious in nature and recommended that the same be cancelled. Since evidence was deficient for which subsequent efforts were done to reach the truth.

Consequent upon the above enquiry, several driving licenses have been cancelled vide OB No.629 dated 24-04-2017 and Endst. No.3546-51/PA dated 24-04-2017.

On 26-04-2017, the statement of Irfan Khan s/o Ashraf Khan r/o Sector 3 Moh: New Garden Colony District Kohat was recorded, wherein he categorically stated that in order to prepare driving licenses he paid Rs.3000/- to a person namely Asif employee of Shareefain Travel Agency at Peshawar and also handed over a photograph to him for the purpose. He further stated that neither he visited Police Lines Nowshera for the same nor received his license bearing No.11000053126 rather paid/handed over on Rs.30000/- & a photograph. He (Ex-FC Tariq Kamal) totally negated the involvement in any money making illegal activity.

After observation of his Mobile Nos:(0344-4810605) & (0310-9490585). Tehmeed and Ismail having Mobile Nos.(0344-4810605), (0346-9473932), (0301-4814217), (0342-9136145) were found in close contact with him for getting Driving Licenses on Rs.11000/- to 13000/- per license. Tehmeed was called by the then DPO and questioned/interviewed, who

Waila Jan Advocate
Peshawar High Court

disclosed that he was in league with him (FC Tariq Kamal No.1180) for getting Driving License on Rs.8000/- per license which clearly proved mala-fide intention on his part, as undeniable evidence & sufficient material available on record.

3. REPLY TO SHOW CAUSE NOTICE.

I was issued show cause notice and reply was obtained from me on the same day/time in the office PA to DPO Nowshera, which is on the file. It reveals that I have no contacts with Tahmeed and Ismail with regard to the preparation of driving licenses on payment. I have categorically rebutted the above mentioned allegations.

5. ORDER. I was dismissed from service by the then DPO Nowshera vide OB. No. 707 dated 5.5.17, without observing proper procedure as is required under the rules.

6. APPEAL. Later on, I preferred appeal before the DIG of Police, Mardan, Region-1 Mardan, which was rejected.

7. APPEAL/JUDGMENT.

IN SERVICE TRIBUNAL. After this, I have knocked the door of Service Tribunal, Peshawar and the learned court issued order that I was awarded major penalty of dismissal from service without holding any regular enquiry, issuance of charge sheet and statement of allegations. The respondent department has neither annexed the statement of Mr. Tehmeed with written reply nor could produce the same during the course of arguments. In these circumstances Learned Assistant Advocate General remained unable to negate the plea taken by learned counsel for the appellant that the statement of Mr. Tehmeed was produced on the back of appellant and the appellant were not granted any opportunity to cross-examination to them. Even otherwise without reading the statement of Mr. Tehmeed how a prudent mind could reach to the conclusion that whether the appellants were rightly condemned or not.

As a sequel to above, the present appeals were accepted in terms that the respondent department is directed to conduct de-novo enquiry against the appellants strictly in accordance with relevant rules. The issue of reinstatement of the appellants shall be subject to the outcome of the de-novo enquiry.

8. DE-NOVO ENQUIRY.

On receipt of Court judgment, vide his office Memo. No.889/E&I, dated 02-07-2018, the DIG of Police, Internal Accountability KP, Peshawar, directed DPO, Nowshera to conduct de-novo departmental Enquiry through Mr. Iftikhar Shah SP, Investigation Nowshera.

De-Novo departmental Enquiry was initiated. My statement and statement of Tahmeed, were recorded, which are reproduced below:-

9. STATEMENT OF TAHMEED TRAVEL AGENT.

He stated that he is working with Al-Noor Travel Agency on commission and he has developed relation with Ex-IIC Tariq Sikandar and then became familiar with Ex-FC Tariq Kamal. He further stated that he has been arranged Umra Visas for their relatives only. He neither made driving license in Nowshera, nor he give any bribe or money to the above mentioned Ex-officials for driving license. He was put to cross-examination and it was confirmed that he has

Naila Jan
Advocate
Peshawar High Court

mobile connectivity with HC Tariq Sikandar and FC-Tariq Kamal regarding arranging Umra Visas for their relatives. He once came to Nowshera for the above mentioned purpose and did not know Ex-Senior Clerk Awar-ul-Hasan.

10. STATEMENT OF EX-HC TARIQ SIKANDAR NO. 1167 (APPELLANT).

I stated that the allegations levelled against me are totally unfounded which have not yet been proved against me. I stated that I have relation with Tahmeed regarding arranging Umra Visas for his relatives only. I neither made driving license, nor has taken any money from him. I stated that due process of enquiry procedure was not followed. I was given Show Cause Notice on 04.05.2017 and was dismissed from service on the next day which is against the rules. I also stated that he was pressurized and taken my statement on the same day. The statement of Tahmeed was also taken forcibly. During cross-examination I stated that I have the work of printing of DLs only. I did not know Irfan and Asif and have never contacted them on phone. As regard working in the office after 16:00 hrs, it was just due to load of work which could not be completed during office hours and that it was under the orders the then DPO Nowshera.

11. During the course of de-novo departmental enquiry, record/history sheets of the following DLs were obtained from District Police Office Nowshera by the EO:-

- 1. 110000053123
- 2. 110000053124
- 3. 110000053125
- 4. 110000053126
- 4. 110000053127
- 5. 110000053128
- 6. 110000053129
- 7. 110000053130
- 8. 110000053131
- 9. 110000053132
- 10. 110000053135
- 11. 110000053137
- 12. 110000053139
- 13. 110000053141
- 14. 110000053142
- 15. 110000053143

The Photostat copies of above mentioned history sheets of DLs were provided and were checked. It was found that all the codal formalities were fulfilled and these were issued properly. As regard cancellation of DLs, these were cancelled by the then DPO Nowshera for unknown reason.

Naila Jan
Naila Jan Advocate
Peshawar High Court

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The EO submitted the following remarks:-

1. Show Cause Notice was not issued properly and was not in accordance with the rules.
2. The enquiry was not conducted as per rules/regulations. Nither show cause Notices/Charge Sheets were issued in proper way, nor replies all the Ex-officials were obtained within 07 days, rather that, which is contrary to the rules.
3. Final show cause Notices were not issued.
4. Opportunity of personal hearing was not given.
5. I have rebutted all the allegation leveled against them.
6. I have stated that I did not know Irfan and Ismail. However, I have shown relations with Tahmeed only for arranging Umra Visas, to their relatives, which was also verified/confirmed from his statement as well as cross-examination.
7. I have denied taking of money in lieu of preparation of DLs.
The allegations leveled against the above named Ex-Official was not proved against him.

13. It is worth to be mentioned here that the allegations levelled against me were also not proved during the course of De-novo enquiry.

14. It is bring into your kind notice that I am serving in the department for the last 11 years and have earned 11 CCs + cash reward (including CC Class-II) for my best performance. It is pertinent to mention here that my performance were appreciated by my officers at all the times and that there is no such complaint against me during my whole service, but it was not taken into consideration at the time of issuance of above cited punishment order.

15. I also appeared before the DPO Nowshera in OR and explained my position but it was not given due consideration.

16. It would not be out of place to mention here that this impugned order has put me in great tension and financial loss which is permanent and forever.

Therefore, I approach your good self to kindly accept my Appeal, the order of above mentioned punishments awarded by the District Police Officer Nowshera vide OB No.1077 dated 02/10/2018 may kindly be withdrawn, so that my service career may not be damaged.

I shall be highly obliged and will pray for your long life and prosperity.

Sir
FORWARDED
11-10-2018

Yours Obediently,
(Tariq Sikandar)
Head Constable No. 555
PS Nizampur
11-10-2018

Naila Jan Advocate
Peshawar High Court

555

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Amir H

ORDER.

This order will dispose-off the departmental appeal preferred by Head Constable Tariq Sikandar No. 555 of Nowshera District Police against the order of District Police Officer, Nowshera, wherein he was awarded Minor Punishment of Stoppage of three increments with cumulative effect vide District Police Officer, Nowshera OB: No. 1077 dated 02.10.2018.

Brief facts of the case are that, a de-novo enquiry initiated under Khyber Pakhtunkhwa Police Rules, 1975 against Ex-Head Constable Tariq Sikandar No. 1167, while posted at Computer Lab/driving license printer operator, DPO Office Nowshera. The then DPO Nowshera received information regarding illegality during the process of issuance of driving licenses. To ascertain facts, Mr. Muhammad Usman Tipu, ASP (UT) was appointed to conduct Preliminary enquiry into the matter, who after conducting enquiry, submitted his report to the then DPO Nowshera, suggested therein that though all the staff deputed in license branch negated the allegations. But in order to dig out the same, the services of computer expert from Peshawar were availed, who after thorough checking pointed out the exact time of issuance of learner permits, which transpired that those license permits have been issued after office timings i.e 16:00 hours. The licenses in question became dubious in nature and recommended that the same be cancelled. Since evidence was deficient for which subsequent efforts were done to reach the truth.

Consequent upon the above enquiry, several driving licenses have been cancelled vide OB No. 629 dated 24.04.2017 and Endst: No. 3540-51/PA, dated 24.04.2017.

On 26.04.2017, the statement of Irfan Khan s/o Ashraf Khan r/o Sector# 3, Moh: new Garden Colony, district Kohat was recorded wherein he categorically stated that in order to prepare driving licenses, he paid Rs. 30,000/- to a person namely Asif employee of Shareefain Travel Agency at Peshawar and also handed over a photograph to him for the purpose. He further stated that neither he visited Police Lines Nowshera for the same nor received his license bearing No. 110000053126 rather paid/handed over only Rs. 30,000/- & a photograph. He (Ex-HC Tariq Sikandar) totally negated the involvement in any money making illegal activity.

After observation of Ex-Constable Tariq Kamal No. 1180 Mobile Nos: (0344-4810605) & (0310-9490585), Tahmeed and Ismael having Mobile Nos.(0344-4810605), (0346-9473932), (0301-4814217), (0342-9136145) were found in close contact with Ex-Constable Tariq Kamal for getting Driving Licenses on Rs.11000 to 13000 per license. Tahmeed was called by the then DPO and questioned/interviewed, who disclosed that he (HC Tariq Sikandar No. 1167) was also in league with him (Tahmeed) for getting Driving Licenses on Rs. 8000/- per license, which clearly proved mala-fide intention on his part, as undeniable evidence & sufficient material available on record. In this connection, H.C Tariq Sikandar No. 1167 was served with Show Cause Notice, to which, his reply was received. He was heard in person in Orderly Room, but failed to produce any cogent reason in his defense. Therefore, he was proceeded against departmentally through enquiry committee comprising of Mr. Shahenshah Gohar, DSP Hqs: Nowshera & Inspector

Waila Jan Advocate
Peshawar High Court

En. senior clerk Amwar M. Nasser, license holder
Raghi Khan license No. 4000053141 revealed no inclin-
ing evidence that the ~~judge~~ officers did receive
any bribe or illegal gratifications from the
license holder. Although certain amounting were
noticed, however the they DPO had brushed them
license aside.

After concluding the inquiry
the inquiry officer has unequivocally ^{proceedings} affirmed
of having no cogent or tangible evidence, the
only evidence which was declared strong is refer-
phone contacts between Faruq and Tahmed.

✓ Telephone contacts alone cannot be made the
basis for awarding the subject penalty.
Serious efforts have not been made to gather
or collect evidence to delving deep into the core
of the matter categorically implicating the officers
that ~~they did receive~~ their partners have been grossed
whole involving ~~During~~ licenses. Awarding of
penalty on defendant evidence is unwarranted
when passed on the basis of evidence of dubious
nature & therefore not sustainable in the eyes
of law so such an order should be set at
naught.

While inquiring the officer and witnesses available
must have been searched per protocol which required
serious endeavoring which have not been made.

2-2021

The law prohibits conducting of قسم proceedings in haste which nullify the whole episode by repeating proceedings rendering it without legal sanction to which no legal sanction could be attached.

While looking at the background of the instant case the departmental proceedings formally resulted in to dismissal from service, in appeal the pleas of appellants were accepted and order for de novo inquiry was made upon the receipt of judgment the competent authority directed the DPO to conduct de novo inquiry who entrusted the task to the DSP who conducted the aforesaid inquiry by recording his finding to the effect that the allegations levelled against the ex-officials that they have connection with Handal and Qasbi and Abul Kalam and Rs. 12000/- per month were not proved against them.

On legal point where the task of conducting de novo inquiry could have been assigned to an officer working under the auspices of DPO. A delegatee cannot further delegate his powers to any officer working under his regis such an act is without legal sanction against the legal effects. The case would have been otherwise if the appellant was working under the direct supervision of DPO. Nothing of the sort was done.

The deeper introspection of the statement of Tahneed Taher agent, En. Dr. Taher Soomro and En. Faiz Ahmad

The Enquiry Officers after fulfillment of legal formalities submitted his report, suggested therein that he may be awarded major punishment.

He was heard in Orderly Room, wherein he failed to satisfy the then DPO Nowshera. Therefore, Head Constable Tariq Sikandar No. 1167 was awarded major punishment of dismissal from service by the then DPO Nowshera vide OB No. 207 dated 05.05.2017.

He preferred appeal to the then RPO Mardan, but the same was rejected and later on knocked the door of Honorable Services Tribunal, Khyber Pakhtunkhwa. His application was accepted by the Service Tribunal by issuing directions to conduct de-novo enquiry against him and that the issue of his re-instatement shall be subjected to the outcome of the de-novo enquiry. In compliance of the order of Honorable Service Tribunal, the Worthy DIG Internal Accountability, Khyber Pakhtunkhwa appointed Mr. Iflikhar Shah, SP Investigation, Nowshera for conducting de-novo enquiry. The Enquiry Officer conducted de-novo enquiry and submitted his finding report vide his office No. 4039/PA, dated 31.08.2018, suggesting therein that despite lacking cogent evidence, it is evident that illegal license have been prepared which were cancelled by the then DPO Nowshera, the whole episode revolves around him & Ex-Constable Tariq Kamal No. 1180 with more weight on the part of Tariq Kamal and recommended him for minor punishment.

He was heard in orderly room by the DPO/Nowshera on 01.10.2018, wherein he failed to satisfy the DPO/Nowshera, therefore, he was awarded minor punishment of stoppage of (03) increments with cumulative effect and re-instated in service with immediate effect. No back benefit is granted to him, being corruption case. However, he shall not be posted in any office in future.

He was called in orderly room held in this office on 28.11.2018 and heard in person. The appellant did not produce any cogent reason for his innocence. Therefore, I find no grounds to intervene into the order passed by the then District Police Officer, Nowshera. Appeal is rejected.

2903
6/12/18
ORDER ANNOUNCED

Muhammad

(MUHAMMAD ALI KHAN)PSP
Regional Police Officer,
Mardan.

No. 7793/ES,

Dated Mardan-the 05/12 /2018.

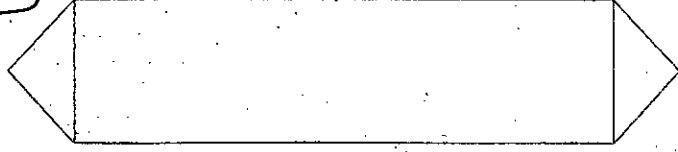
Copy to District Police Officer, Nowshera for information and necessary action w/r to his office Memo: No. 8093/PA dated 06.11.2018. The Service Record is returned herewith.

(*****)

EC/PMC
Per...
...

Naila Jinn
Peshawar High C...

بعدالت خدا۔ کہوں ٹریبونل سفار



Appellant
موسس

2018ء پنجاب
حلف سندر بنام

مورخہ

مقدمہ

دعویٰ اپیل

جرم

Appeal No. 23/2019

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام Peshawar کے لیے Hina Gul Naila Jan

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک رو پیہا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے 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 سندر ہے۔

2018ء

ماہ دسمبر

31

المرقوم

العبد گواہ العبد گ

کے لئے منظور ہے۔

Hina Gul

Attested

Accepted

Naila Jan Advocate
Peshawar High Court

Tariq Sikandari vs Police

Application for Correction of addresses of
respondents No 2.3

Respectfully sheweth:

Applicant submits as under.

I That the above title appeal is pending before this honorable tribunal and today the date is fixed for reply.

) That addresses of the respondents No 2.3 inadvertently mention as District Bannu while correct addresses of respondent No 2.3 are as under

) Respondant No 2.3 Regional police officer mardan

) Respondant No 2.3 District police office Nowshera

It is therefore requested that the addresses of the respondents may kindly be corrected

Applicant

Through Council

Maita Jan Advocate

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A _____/2018

Tariq Sikandar

VERSUS

Inspector General of Police Khyber Pakhtunkhwa

ADDRESSES OF PARTIES

APPELLANT.

Tariq Sikandar Ex-Constable No. 1167 R/O
Kweshgi Tehsil and District Nowshera.

RESPONDENTS

1. Inspector General of Police Khyber
Pakhtunkhwa.
2. Regional Police officer Mardan Region Mardan.
3. District Police officer Nowshera.

Through

Appellant
Naila Jan
NAILA JAN

Advocate, High Court
Peshawar.

Dated: 31/12/2018

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A _____/2018

Tariq Ex-Constable No. 1180 R/O Kweshgi
Tehsil and District Nowshera.

-----(*Appellant*)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa.
2. Regional Police officer Mardan Region Mardan.
3. District Police officer Nowshera.

-----(*Respondents*).

**APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL
ACT, 1974 AGAINST THE ORDER DATED
02/10/2018 WHEREBY THREE
PUNISHMENTS E.G 1. MINOR
PUNISHMENT OF STOPPAGE OF THREE
INCREMENT WITH ACCOMMODATIVE
EFFECT II, REINSTATEMENT WITHOUT
BACK BENEFITS III, BAN ON APPELLANT
POSTING IN ANY OFFICE AND AGAINST
THE APPELLATE ORDER DATED 05/12/2018
WHEREBY DEPARTMENTAL APPEAL OF
THE APPELLANT WAS REJECTED BY THE
RESPONDENT NO. 2 WITHOUT ANY
JUSTIFICATION IN A CURSORY MANNER**

PRAYERS:-

**ON ACCEPTANCE OF THE INSTANT APPEAL
THE IMPUGNED ORDERS DATED 02-10-2018,**

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

Service Appeal No. 23/2019

Tariq Sikandar (Ex-Constable No. 1167),
R/O Khweshgi Tehsil and District Nowshera.

.....Appellant

V E R S U S

1. Inspector General of Police, Khuyber Pakhtunkhwa, Peshawar..
2. Regional Police Officer, Mardan Region-I, Mardan.
3. District Police Officer, Nowshera.

.....Respondents

REPLY ON BEHALF OF RESPONDENTS No.1,2&3

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action.
2. That the appeal is badly time-barred.
3. That the appellant has been estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Honourable Tribunal with clean hands.

On Facts

1. Para to the extent of enlistment as Constable in Police Department, pertains to record needs no comments while rest of the para is not plausible because every Police Officer/Official is under obligation to perform his duty with zeal, zest and upto the entire satisfaction of high-ups.
2. Correct to the extent that the appellant while posted at Computer Lab/Driving License Printer Operator was awarded appropriate punishment of dismissal from service as the appellant had committed illegality during the process of issuance of driving licenses, in this respect a proper enquiry was conducted wherein the appellant was found guilty.
3. Correct to the extent that the appellant after exhausting departmental remedy filed service appeal before this Honourable Tribunal which was accepted vide order dated 30-05-2018 with the direction to the department to conduct denovo enquiry against the appellant.

4. Correct to the extent that in compliance with the order of this Honourable Tribunal denovo enquiry was initiated against the appellant.
5. That the enquiry officer conducted denovo enquiry during the course of which all legal and codal formalities were fulfilled including recording of statement of one Razi Khan r/o Swat through his mobile wherein he categorically stated that he has given Rs. 100,000/- to travel agent Tahmeed for visa and driving license. Tahmeed give him visa and driving license. When the above named person was subjected to cross examination, he told that he did not visit Police Lines, Nowshera for the purpose of driving license rather handed only his photographs to the said travel agent, the appellant was also provided right of self defense by the competent authority through Orderly Room but he bitterly failed to produce any sort of evidence in his defense. Hence, by taking lenient view, the appellant was awarded minor punishment of stoppage of 03 annual increments with cumulative effect. (Copy of enquiry report alongwith punishment order are annexed as Annexure "A" & "B").
6. Correct to the extent that the appellant filed departmental appeal and the appellate authority provided full-fledged opportunity to the appellant through Orderly Room but he failed to prove his innocence. Hence, his appeal was rejected.
7. That the appeal of the appellant is liable to be dismissed on the following grounds: -

GROUNDS


- A. Incorrect. Orders passed by the respondents are in accordance with law, facts and principles of the natural justice, hence, sustainable in the eye of law.
- B. Incorrect. That orders passed by the competent authority as well as appellate authority are in accordance with law, rules and principle of natural justice.
- C. Incorrect. The Honourable Tribunal vide order dated 30-05-2018, accepted the appeal of appellant in terms "that the respondent department is directed to conduct denovo enquiry against the appellants strictly in accordance with relevant rules". Hence, in compliance with the directions of the Honourable Tribunal, denovo enquiry was conducted and the enquiry officer after fulfillment of all legal and codal formalities submitted his report. On receipt of

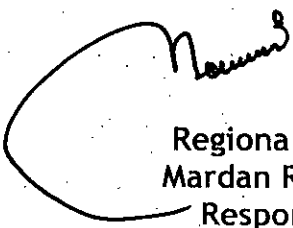
findings of the enquiry officer, the competent authority awarded appropriate punishment to the appellant.


- D. Plea of the appellant is not plausible, because, respondent department had not grudges/ill-will against the appellant.
- E. Incorrect. During the course of enquiry, the appellant was provided full-fledged opportunity of defending himself and the competent authority had also provided right of self defense to the appellant through Orderly Room but he failed to produce any cogent reason in his defense.
- F. Incorrect. The appellant was associated with the enquiry proceedings during the course of which all legal and codal formalities were fulfilled.
- G. Para already explained hence, no comments.
- H. Incorrect. As per Police rules, 1975, amended 2017, rule 05 sub rule 05, the competent authority is empowered to award one or more of major or minor punishments.
- I. Para already explained hence, no comments.
- J. Para explained in preceding paras hence, no comments.
- K. As discussed in para 05 of the facts, that the enquiry officer conducted denovo enquiry during the course of which all legal and codal formalities were fulfilled including recording of statement of one Razi Khan r/o Swat through his mobile wherein he categorically stated that he has given Rs. 100,000/- to travel agent Tahmeed for visa and driving license. Tahmeed give him visa and driving license. When the above named person was subjected to cross examination, he told that he did not visit Police Lines, Nowshera for the purpose of driving license rather handed only his photographs to the said travel agent, the appellant was also provided right of self defense by the competent authority through Orderly Room but he bitterly failed to produce any sort of evidence in his defense. Hence, by taking lenient view, the appellant was awarded minor punishment of stoppage of 03 annual increments with cumulative effect.
- L. Para already explained hence, no comments.
- M. Para explained earlier needs no comments.

- N. Plea taken by the appellant is not plausible because due to his own conduct, he remained out of service.
- O. That the respondents also seek permission of this Honourable Tribunal to advance additional grounds at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of above submissions the appeal of the appellant may very kindly be dismissed with cost.


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


Regional Police Officer,
Mardan Region-I, Mardan.
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No. 3

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

Service Appeal No. 23/2019

Tariq Sikandar (Ex-Constable No. 1167),
R/O Khweshgi Tehsil and District Nowshera.

.....Appellant

V E R S U S

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar..
2. Regional Police Officer, Mardan Region-I, Mardan.
3. District Police Officer, Nowshera.

.....Respondents

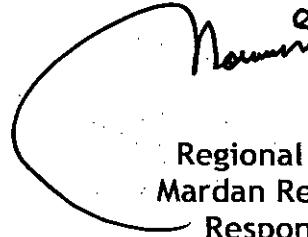
AFFIDAVIT

We the respondents No. 1,2 &3 do hereby solemnly affirm and declare on Oath that the contents of reply to the appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the Honourable tribunal.



Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

Respondent No.1



Regional Police Officer,
Mardan Region-I, Mardan.

Respondent No. 02



District Police Officer,
Nowshera.

Respondent No. 3

FINDING-DE-NOVO ENQUIRY REPORT

This is a Finding to De-novo Enquiry conducted against Ex-HC Tariq Sikandar No. 1167, Ex-SC Anwar ul Hassan and Ex-FC Tariq No. 1180, who were dismissed from service by the then DPO Nowshera vide OB. No. 707 dated 05.05.2017, 706, dated 05.05.2017 and OB No. 678 dated 03.05.2017 respectively. The allegations were as under:-

ALLEGATIONS:-

While posted in District Police Office Nowshera, they were issued show cause notices (except Ex-FC Tariq No.1180) regarding the allegation of mobile contact with Tahmeed and Ismail in connection with driving licenses on Rs.11000/- to 13000/- per license. Tahmeed was called by the then DPO Nowshera and questioned/interviewed, who disclosed that they were also in contact with Tahmeed for getting driving licenses on Rs.8000/- per license, which proves holding mala fide intention on their part undeniable evidence and sufficient material available on record.

REPLY TO SHOW CAUSE NOTICES

All the above mentioned Ex-officials (except Ex-FC Tariq No.1180) have submitted their replies in response to show cause notices, which are placed on the file. It reveals that all the above Ex-officials have contacts with Tahmeed in regard to the preparation of driving licenses on payment.

On receipt of replies of the above mentioned defaulters, they were issued charge sheets, in response to which they submitted their replies, which reveals that all the above Ex-officials have contacts with Tahmeed in regard to the preparation of driving licenses on payment. Their Statements were also recorded, which are attached with the Enquiry File. It also reveals that all the above mentioned Ex-officials have contacts with Tahmeed with regard to the preparation of driving licenses on payment.

They were dismissed from service by the then DPO Nowshera vide OB. No. 707 dated 05.05.2017, 706. dated 05.05.2017 and OB No. 678 dated 03.05.2017 respectively.

Later on, they preferred appeals before the DIG of Police, Mardan, Region-1 Mardan; the appeals of Ex-FC Tariq and Ex-HC Tariq Sikandar were rejected, while the punishment of dismissal from service in respects Ex-SC Anwar ul Hassan was converted into compulsory retirement.

After this, they all knocked the door of Service Tribunal, Peshawar and the learned court issued order that all they were awarded major penalty of dismissal from service without holding any regular enquiry, issuance of charge sheet and statement of allegations, whereas in case of appellants Mr. Tariq Sikandar and Mr. Anwar ul Hassan, the enquiry was conducted and the Enquiry Committee while holding the appellants guilty, relied upon the statement of Mr. Tahmeed. The respondent department has neither annexed the statement of Mr. Tehmeed with written reply nor could produce the same during the course of arguments. In these circumstances Learned Assistant Advocate General remained unable to negate the plea taken by learned counsel for the appellant that the statement of Mr. Tehmeed

was produced on the back of appellants and the appellants were not granted any opportunity to cross-examination to them. Even otherwise without reading the statement of Mr. Tehmeed how a prudent mind could reach to the conclusion that whether the appellants were rightly condemned or not.

As a sequel to above, the present appeals were accepted in terms that the respondent department is directed to conduct de-novo enquiry against the appellants strictly in accordance with relevant rules. The issue of reinstatement of the appellants shall be subject to the outcome of the de-novo enquiry.

On receipt of Court judgment, vide his office Memo. No.889/E&I, dated 02-07-2018, the DIG of Police, Internal Accountability KP, Peshawar, directed DPO, Nowshera to conduct de-novo departmental Enquiry through Mr. Iftikhar Shah SP, Investigation Nowshera and final outcome be communicated accordingly.

DE-NOVO DEPARTMENTAL INQUIRY

De-Novo departmental Enquiry was initiated. The statements of Tahmeed, Ex-HC Tariq Sikandar No. 1167, Ex-SC Anwar ul Hassan and Ex-FC Tariq No. 1180 were recorded, which are reproduced below:-

STATEMENT OF TAHMEED TRAVEL AGENT.

He stated that he is working with Al-Noor Travel Agency on commission and he has developed relation with Ex-HC Tariq Sikandar and then became familiar with Ex-FC Tariq Kamal. He further stated that he had arranged Umra Visas for their relatives only. He neither made driving license in Nowshera, nor he give any bribe or money to the above mentioned Ex-officials for driving license. He was put to cross-examination and it was confirmed that he has mobile connectivity with HC Tariq Sikandar and FC-Tariq Kamal regarding arranging Umra Visas for their relatives. He once came to Nowshera for the above mentioned purpose and did not know Ex-Senior Clerk Anwar-ul-Hasan.

STATEMENT OF EX-HC TARIQ SIKANDAR NO. 1167

He stated that the allegations leveled against him are totally unfounded which have not yet been proved against him. He stated that he has relation with Tahmeed regarding arranging Umra Visas for his relatives only. He neither made driving license, nor has taken any money from him. He stated that due process of enquiry procedure was not followed. He was given Show Cause Notice on 04.05.2017 and was dismissed from service on the next day which is against the rules. He also stated that he was pressurized and taken his statement on the same day. The statement of Tahmeed was also taken forcibly. During cross-examination he stated that he had the work of printing of DLs only. He did not know Irfan and Asif and have never contacted them on phone. As regard working in the office after 16:00 hrs, it was just due to load of work which could not be completed during office hours and that it was under the orders of the then DPO Nowshera.

STATEMENT OF EX-FC TARIQ KAMAL NO. 1180

He stated that he was dismissed from service on 03.07.2017 on the statement of one Tahmeed Travel Agent. He was served Show Cause Notice on 03.05.2017 and was dismissed from service on the same date. Even the statement of Tahmeed was recorded on 04.05.2017. He further stated that he had received the Show Cause Notice on 08.05.2017 by

post. He rebutted all the allegations leveled against him. The enquiry was not conducted as per rules/regulations. During cross-examination, he replied that he has the work of printing of DLs only. He did not know Irfan and Asif and have never contacted them on phone. As regard working in the office after 16:00 hrs, it was just due to load of work which could not be completed during office hours and that it was under the orders the then DPO Nowshera.

STATEMENT OF EX-SENIOR CLERK ANWAR-UL-HASAN

He stated that the Enquiry was not conducted as per rules/regulations. He was given Show Cause Notice on 04.05.2017 and his reply was obtained on the same day and on the other day he was dismissed from service which is against the rules. He corroborated his previous version. During his posting in CDL Branch Nowshera, he has maintained clear and clean record of driving licenses. He did not know Tahmeed. He has served the department for 25 years and there was no complaint of any kind against him during his long service. He rebutted the allegation leveled against him.

During cross-examination, he replied that he did not know Tahmeed, Irfan and Asif etc. He had no mobile contacts with all these persons. He had not taken any amount in connection with preparation DLs from any one particularly from the above mentioned persons. As regard working in the office after 16:00 hrs, it was just due to load of work which could not be completed during office hours and that it was under the orders of the then DPO Nowshera on routine basis.

STATEMENT OF LICENCE HOLDER RAZI KHAN LICENSE NO 110000053141

He belongs to district swat and contacted on his mobile no 03490479454. He stated that I can't come to the office and recorded his statement through mobile .he stated that he has given one lake rupees to travel agent Tahmeed for visa and driving license .Tahmeed give him visa and driving license . during cross questioning he told that he did not visit police lines Nowshera for the purpose of driving license and only handed over his passport size pic to the travel agent Tahmeed.

During the course of de-novo departmental enquiry, record/history sheets of the following DLs were obtained from District Police Office Nowshera, vide this office memo No. 3226/H dated 10.07.2018:-

- | | |
|-----|--------------|
| 1. | 110000053123 |
| 2. | 110000053124 |
| 3. | 110000053125 |
| 4. | 110000053126 |
| 5. | 110000053127 |
| 6. | 110000053128 |
| 7. | 110000053129 |
| 8. | 110000053130 |
| 9. | 110000053131 |
| 10. | 110000053132 |
| 11. | 110000053135 |
| 12. | 110000053137 |
| 13. | 110000053139 |
| 14. | 110000053141 |
| 15. | 110000053142 |
| 16. | 110000053143 |

The Photostat copies of above mentioned history sheets of DLs were provided and were checked. It was found that all the coddle formalities were fulfilled and these

were issued properly, but most of them not visited license branch police lines Nowshera which shows that travel agent Tahmeed has managed their driving licenses with the help of alleged police officials.

Facts and Findings

From the above details and statements recorded in de-novo enquiry, the under signed has come to the conclusion that:-

DPO Nowshera upon a complaint conducted inquiry against police personnel Anwar ul Hasan License clerk, HC Tariq Sikandar and FC Tariq Kamal of Traffic branch for being involved in preparing illegal driving license on gratifications/money and dismissed them from service.

During the course of De Novo inquiry it is found that license Clerk Anwar ul Hasan with a service of 25 years was a lame duck Incharge/Supervisor. He would collect license fee on Challan and would deposit in bank next day. He kept his record proper. He would send the candidate to operator to snap a picture and operator would print a Driving Learning Permit bearing picture and details of the applicant for six months period.

After completion of 6 month period the permit holder has to appear before the authority and go through a driving test. If a candidate already knows driving, then the authority lies with DPO to condone the 6 month period. In other districts, the driving licenses are get printed from Traffic Head Quarter, Peshawar but in Nowshera, with the intention to provide good service and facilitate common people, printing facility was obtained from CPO and would print driving licenses at their own.

In this inquiry case, the 16 driving licenses which were cancelled by DPO Nowshera were prepared without adopting legal procedure. Even the candidates did not appear before the authority. Their picture were uploaded manually, their Learning Permits were prepared and their period condoned.

The License Branch in charge Anwar ul Hasan was a lame duck while FC Tariq Kamal in charge Computer Unit was all in all because he had won the confidence of the then DPO. He would use to direct/instruct the License Branch officials in the name of DPO. FC Tariq Sikandar, computer operator was assigned the duty of Printing Licenses. The troika was dismissed for allegedly in league with a travelling agent Tahmeed of Charsadda.

Travelling agent Tahmeed of ALnore Travelling agency was in contact with both the Tariqs (Tariq Kamal and Tariq Sikandar) of Nowshera License Branch.

FC Tariq Sikandar stated that he got acquainted with Tahmeed in 2012 through his uncle Wajid of Tangi Charsadda and have managed Umra Visas through Tahmeed for his next of kin's. Later on Mr Tahmeed got familiar with Tariq Kamal also. Tariq Kamal has also availed the services of Mr. Tahmeed in getting Umra visas for his relatives.

Analysis of CDRs shows that both the Tariqs have contacts with Tahmeed while Anwar ul Hasan has no contacts and no acquaintance with Tahmeed. Both Tariqs claim their contacts in regard to personal relation and visa business and not for the preparation of licenses. They claim that the cancelled licenses were also issued and condoned with the signature of the then DPO.

It is also worth to mention here that the then DPO improved unprecedentedly Traffic Branch and facilitated general public in getting their licenses at their door steps. He never refused to any police officer who went to him for condonation of 6 months period. He also kept his staff in high esteem specially In-charge Computer Lab Tariq Kamal. In this case the trust of DPO has been breached and the Learner permits have been got signed by the then DPO unknowingly, which both Tariqs have claimed in court proceedings that all licenses have properly been issued.

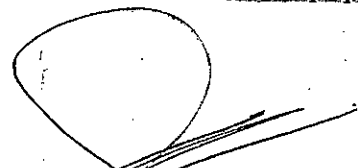
Travelling Agent, Tahmeed is an illiterate person and cannot even write his name has deflected from his previous statement in which he had admitted license related relation with both Tariqs, enabling the then DPO for dismissing them from service. Both Tariqs claimed that statement of Tahmeed had been taken /obtained by coercion. In De novo inquiry Tahmeed denies any payment or deal with Tariqs while he admits that he does not know Anwar ul Hasan.

Anwar ul Hasan, License Clerk claimed that he has gone through liver transplant in India after his dismissal. During the time of being License Clerk he was sick but was not yet diagnosed liver cancer and that might have affected his ability and efficiency otherwise during his previous 25 years service nothing adverse is there on his record. He also claims, he was dismissed only for being the supervisor otherwise he was a nominal/de-facto in charge.

Recommendations

✓ Despite lacking cogent evidence, it is evident that illegal licenses have been prepared which were cancelled by the then DPO, the whole episode revolves around FC Tariq Kamal and FC Tariq Sikandar with more weight on the part of Tariq Kamal. The only strong evidence is the phone contacts between Tariqs and Tahmeed which they claim as their acquaintance of the past and for Umra arrangements. The punishment of dismissal from service on the basis of telephone contacts looks a bit harsh and recommended both Tariqs for minor punishment of forfeiture of service after restoring into service while Anwar ul Hasan is not guilty except poor supervision.

Submitted please

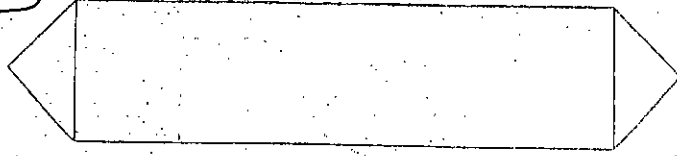

(IFTIKHAR SHAH)
Superintendent of Police,
Investigation, Nowshera

Anwar ul Hasan is warned to be careful in future & reinstated in service with back benefits as per rules.

Tariq Sikandar is reinstated in service. He is awarded minor punishment of ~~for~~ stoppage of increments for 3) three years with cumulative effect. He is posted to P.S Nizampur. He shall not be posted at any staff appointment in future.

P.T.O

بعدالت ضد KP کوکون ٹریبونل منسٹر



Appellant
موسس

2018ء منجانب
ملفوظ مسند بنام

مورخہ

مقدمہ

دعویٰ اپیل

جرم

Appeal No. 23/2019

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام Peshawar کیلئے Hina Gul
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرا میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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 مسند ہے۔

2018ء

ماہ دسمبر

31

الرقوم

کے لئے منظور ہے۔

Hina Gul

Attested

Accepted

Naila Jan Advocate
Peshawar High Court