

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 1522/2019

Date of Institution ... 31.10.2019

Date of Decision ... 31.08.2021

Khushnoor Khan Constable No. 189, District Police Chitral.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home,
Khyber Pakhtunkhwa, Peshawar and three others.

... (Respondents)

Mr. YASIR SALEEM,
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

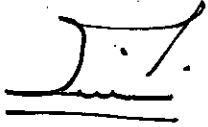
--- For respondents.

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


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

JUDGMENT:

SALAH-UD-DIN, MEMBER:-


Brief facts forming background of the instant appeal are that the appellant was serving as Constable in District Police Chitral. That the appellant was proceeded against departmentally on the allegations that he had received an amount of Rs. 86000/- from one Farid Ullah S/o Yadgar Khan resident of Torkoh District Chitral, who was serving in Frontier Constabulary Peshawar, for appointment of his relatives. On conclusion of the inquiry, vide order dated 13.10.2011, the competent Authority imposed major penalty of dismissal from

service upon the appellant. The departmental appeal of the appellant was also dismissed, therefore, he filed Service Appeal bearing No. 189/2012 before this Tribunal. Vide judgment dated 07.02.2019 passed by this Tribunal, the appeal was allowed by setting-aside the impugned penalty awarded to the appellant and the respondents was directed to conduct de-novo inquiry into the matter. It was also held that the issue of back benefits shall be subject to the outcome of de-novo inquiry. On conclusion of de-novo inquiry, vide order dated 11.06.2019 passed by the competent Authority, the appellant was reinstated into service, however the period of his absence from duty was considered as leave of kind due. The appellant being aggrieved of decision of the competent Authority to the extent of considering the absence period from duty as a leave of kind due, preferred departmental appeal, however the same was also declined vide order dated 30.09.2019. The appellant has now approached this Tribunal through filing of the instant Service Appeal for redressal of his grievance.


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

3. Learned counsel for the appellant has contended that during the de-novo inquiry, the appellant was found innocent and he was reinstated into service; that as the appellant was not found guilty of the allegations leveled against him, therefore the respondents were not justified in treating the period of his absence from duty as leave of kind due for the reasons that the absence of the appellant from duty was not due to any fault of the appellant, rather his wrongful dismissal from service was the reason for his absence from duty; that the appellant has not remained gainfully employed in any service during the intervening period, therefore, there was no valid reasons to consider the period of his absence as leave of the kind due; that upon reinstatement of the appellant, he is entitled to all back benefits, therefore, the impugned order is

liable to be modified and the appellant may be held entitled to all back benefits.

4. Conversely, learned Additional Advocate General for the respondents has contended that as the appellant did not perform any duty during the period of his absence from duty, therefore, on the basis of principle of no work no pay, the said period has rightly been treated as leave of kind due; that the appeal of the appellant has also been rightly dismissed.

5. Arguments heard and record perused.

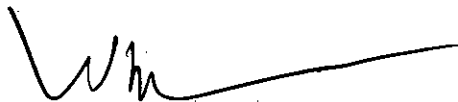
6. A perusal of the inquiry report as available on the record would show that the appellant was not found guilty of the allegations leveled against him. Vide order dated 11.06.2019, the competent Authority ordered re-instatement of the appellant into service, however the period of his absence from duty was ordered to be considered as leave of kind due. There are numerous rulings of august Supreme Court of Pakistan, wherein it has been held that the grant of back benefits to an employee, who was reinstated by a court/tribunal or the department was a rule and denial of such benefits was an exception. Nothing is available on the record that the absence from duty was due to any fault of the appellant, rather the wrongful dismissal of the appellant from service was the sole reason of his absence from duty. The appellant was not found guilty during the de-novo inquiry, therefore, he was entitled to all back benefits and the competent Authority was not justified in holding the intervening period of absence of the appellant as leave of kind due, particularly when nothing is available on the record, which could show that the appellant had remained gainfully employed in any service during the period of his absence from duty.

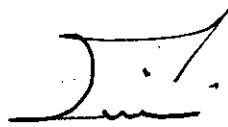
7. While deciding the previous Service Appeal, filed by the appellant, the Tribunal vide its judgment dated 07.02.2019 had set-aside the impugned order of dismissal of the appellant by re-instating the appellant into service and it was directed that de-novo inquiry be conducted strictly in accordance with

law and rules and that the issue of back benefits shall be subject to the outcome of de-novo inquiry. The respondents in their wisdom have interpreted the said judgment in their own way and have mainly alleged in their comments that the de-novo inquiry was ordered by the Tribunal only for determining the back benefits of the appellant; that the appellant has not performed any duty during the period of his dismissal from service, therefore, the Authority has rightly considered the period of his absence from duty as leave of kind due. The stance so taken by the respondents in their comments is totally misconceived, hence not tenable.

8. In view of the above discussion, the appeal in hand is allowed by modifying the impugned order dated 11.06.2019 and the appellant is held entitled to all back benefits. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
31.08.2021


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
31.08.2021

Appellant alongwith his counsel Mr. Yasir Saleem, Advocate, present. Mr. Sher Mohsan-ul-Mulk, Inspector (Legal) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by modifying the impugned order dated 11.06.2019 and the appellant is held entitled to all back benefits. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
31.08.2021

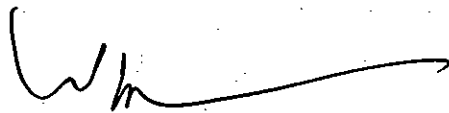

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


08.06.2021

Appellant alongwith his counsel Mr. Yasir Saleem, Advocate, present. Mr. Sher Mohsan-ul-Mulk, Inspector (Legal) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Comments/reply submitted on behalf of the respondents and copy of the same handed over to learned counsel for the appellant. Learned counsel for the appellant sought adjournment on the ground that he want to submit rejoinder. Adjourned. To come up for rejoinder as well as arguments before the D.B on 31.08.2021.




(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

22.09.2020

Appellant in person and Addl. AG alongwith Waseem Abbas, Constable for the respondents present.

Respondents have not furnished the requisite reply/comments despite last opportunity. The matter is, therefore, posted to D.B for arguments on 14.12.2020, before ~~DB~~ 


Chairman

14.12.2020

Counsel for appellant and Mr. Kabirullah Khattak learned Addl. AG for respondents present.

Due to COVID-19 the case is adjourned for the same on 08.03.2021 before D.B.


READER

08.03.2021

Junior to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Sher Muhsin ul Mulk Inspector for respondents present.

Due to non-availability of D.B, case is adjourned to 08.06.2021 for the same as before.


Reader

24.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 16.06.2020 before S.B.


Reader

16.06.2020

Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department is present, therefore, notices be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date. Adjourned to 28.07.2020 for written reply/comments but as a last chance before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

28.07.2020

Junior to counsel for the appellant present. Nemo for the respondents.

Fresh notices be issued to ^{them} for submission of reply/ comments on 22.09.2020 by way of last opportunity.


Chairman

18.12.2019

Counsel for the appellant present.

Contends that while deciding Appeal No. 189/2012 in favour of the appellant this Tribunal had observed that the issue of back benefits shall be subject to outcome of denovo enquiry. On the other hand, through order dated 11.06.2019 the alleged absence period of appellant has been considered as leave of the kind due despite his exoneration in denovo enquiry.

Subject to all just exceptions instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 07.02.2020 before S.B.


Chairman

07.02.2020

Counsel for the appellant present and states that the appellant could not deposit security and process fee within stipulated time due to some domestic problem. He submitted an application for extension of time to deposit the same.

Application is allowed and appellant is directed to deposit the requisite fee within three working days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 24.03.2020 before S.B.


(Ahmad Hassan)
Member

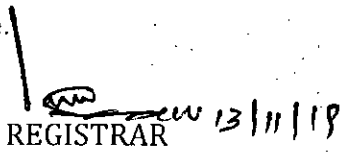

Amount Deposited
Process Fee
13/2/20

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1522/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/11/2019	<p>The appeal of Mr. Khushnoor Khan resubmitted today by Mr. Yasir Saleem Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 13/11/19</p>
2-	14/11/19.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>18/12/19.</u></p> <p> CHAIRMAN</p>

The appeal of Mr. Khushnoor Khan Constable No. 189 District Police Chitral received today i.e. on 31.10.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 2- Page No. 23 of the appeal is missing.

No. 1913 /S.T,

Dt. 1-11- /2019.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Yasir Saleem Adv. Pesh.

Lis

Re Submitted of items supplied

Messe Date 13/11/2019


13/11/2019

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 1522/2019

Khushnoor Khan, Constable No. 189, District Police Chitral.
(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Home, Khyber
Pakhtunhwa, Peshawar and others.


(Respondents)

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4.	Copy of the Order dated 13-10-2011	D	9
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Appellant

Through


YASIR SALEEM
Advocate High Court
Office FR, 4 Forth Floor
Bilour Plaza Peshawar Cantt.
Cell: 0331-8892589
Email: yasirsaleemadvocate@gmail.com

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1531

Dated 31/10/2019

Appeal No. 1522/2019

Khushnoor Khan Constable No. 189, District Police Chitral.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunhwa, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
4. District Police Officer, Chitral.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the Order dated 11.06.2019, whereby the intervening period of the appellant has been treated a kind of leave due (after the de-novo inquiry), against which the departmental appeal has been rejected vide order dated 30.09.2019, communicated to the appellant on 02.10.2019.

Prayer in Appeal: -

On acceptance of this appeal the original order dated 11.06.2019 to the extent of treating absence period (intervening period) as leave of kind due, and the appellate order dated 30.09.2019 may please be set-aside and the appellant may be re-instated in service along-with all back benefits and he may also be allowed full pay for the whole period he was kept out of service.

Respectfully Submitted:

That the appellant was enlisted as Constable in the District Police Chitral in the year 2007, ever since his appointment the appellant was performing his duties with full devotion and there was no complaint whatsoever regarding his performance.

2. That while serving in District Police Chitral, one Farid Ullah who was a Sepoy in Frontier Constabulary and with whom the appellant was having private dispute, lodged a false and baseless complaint that the appellant took money from him.

Filed to-day

Registrar

31/10/19

**Re-submitted to -day
and filed.**

Registrar

13/11/19

for recruiting his 02 relatives in Police Department and that he never recruited his relatives nor returned the money.

3. That on the basis of the said baseless complaint, on 07-06-2011, the appellant was served with charge sheet and statement of allegations containing false and baseless allegations of receiving Rs. 86,000/- from one Farid Ullah S/O Yadgar Khan R/O Torkoh, Chitral, as bribe money for the appointment of his relatives. The appellant duly replied the charge sheet and rejected the allegations leveled against him. *(Copy of Charge Sheet and Statement of Allegations is attached as Annexure 'A')*
4. That thereafter a partial enquiry was conducted and the enquiry officer without taking into consideration, the appellant's defence quite illegally recommended the appellant for major penalty. Thereafter the appellant was served with show cause notice, which he duly replied and refuted the false and baseless allegation. *(Copies of the Enquiry Report and Show Cause Notice dated 02-08-2011 is attached as Annexure 'B' and 'C').*
5. That on the recommendation of the enquiry committee, the competent authority without applying his prudent mind, vide order dated 13-10-2011 awarded the appellant the major penalty of dismissal from service. *(Copy of the Order dated 13-10-2011 is attached as Annexure 'D').*
6. That on 23-11-2011 the appellant filed Departmental Appeal, against his dismissal order which was rejected vide order dated 31-12-2011, however, it was never communicated to the appellant. *(Copies of the Departmental Appeal dated 23-11-2011 and rejection order dated 31-12-2011 are attached as Annexure 'E' & 'F')*
7. That the Appellant also filed Service Appeal No. 189/-P/2012 before this Honorable Tribunal which was allowed vide Order and Judgment dated 07.02.2019 and the appellant was re-instated in service and the department was directed to conduct de-novo inquiry. *(Copies of the service appeal No. 189/2012 and Order and Judgment dated 07.02.2019 are attached as Annexure 'G' & 'H')*
8. That in compliance of the order and judgment of this Honorable Tribunal dated 07.02.2019 the appellant was re-instated in service for the purpose of de-novo inquiry vide order dated 03.04.2019. *(Copy of Order dated 03.04.2019 is attached as Annexure 'I').*

9. That thereafter de-novo inquiry was conducted and in the light of recommendations of inquiry officer, the appellant is re-instated in service, however, the intervening period (which has been termed as "absence period") was treated and a kind of leave due vide order dated 11.06.2019. (*Copies of the inquiry report and order dated 11.06.2019 are attached as Annexure 'J' & 'k'*)
10. That keeping aggrieved from the order dated 11.06.2019 the appellant submitted his departmental appeal, however the same was also rejected vide appellate order dated 30.09.2019 communicated to the appellant on 02.10.2019. (*Copy of the rejection order dated 30.09.2019 is attached as Annexure 'L'*)
11. That the impugned order dated 11.06.2019 and 30.10.2019 are illegal, unlawful against law and facts hence liable to be set aside inter alia on the following grounds:-

Grounds of Appeal:

- A. That the appellant has not been treated in accordance with law thus his right secured and guaranteed by law are badly violated.
- B. That the appellant has been re-instated upon the recommendation of inquiry officer who shows the innocence of the appellant.
- C. That since it has been established during the de-novo proceedings that the appellant had not committed any misconduct then it means that he was quite illegally kept out of service for no fault on his part. Thus keeping in view the facts the appellant is entitled full pay for the intervening period i.e, from the dated of his dismissal till his re-instatement.
- D. That the Respondent while agreeing with the findings of the inquiry officer in the re-instatement order of the appellant termed the intervening period as "absence period" which is wrong for the reason that the appellant due to his dismissal from service was kept out of service. Had the appellant been remain absent from duties during service then the word "absence period" would have been appropriate.
- E. That the appellant had not committed any act or omission during his past service which could have been termed as misconduct and same has also been

established in the de-novo proceedings and quite evident from the inquiry report. Thus it is the fundamental right of the appellant to be paid fully for the period he was kept out of service.

F. That the appellant belongs to a poor family and during the intervening period he was jobless and not in any sort of gainful employment, so on this ground too the appellant is entitled for full pay.

G. That the appellant seeks the permission of this Honorable Tribunal to rely on additional grounds at the hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the original order dated 11.06.2019 to the extent of treating absence period (intervening period) as leave of kind due, and the appellate order dated 30.09.2019 may please be set-aside and the appellant may be re-instated in service along-with all back benefit and he may also be allowed full pay for the whole period he was kept out of service.

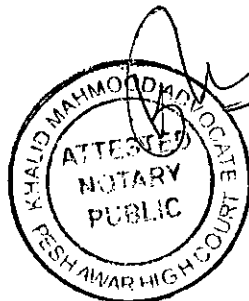

Appellant

Through


YASIR SALEEM
Advocate Peshawar

AFFIDAVIT

It is hereby solemnly affirm and declare on oath that the contents of the above appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.




Deponent

10

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ANNEX: (A)

CHARGE SHEET

I, Abdur Rashid, District Police Officer Chitral, as competent authority, hereby charge you Constable Khush Noor No. 67 posted Police Line, Chitral as follow:-

(i) That you being in Police service as Constable have received Rs. 86000/- from one Faridullah s/o Yadgar Khan r/o Torkoh, Chitral serving Frontier Constabulary, Peshawar as bribe for the appointment of his relatives.

(ii) By reason of the above, you appear to be guilty of misconduct under section 3 of Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance 2000 and have rendered yourself liable to all or any of the penalties specified in the said ordinance.

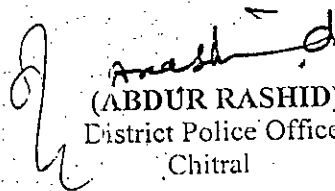
You are, therefore, required to submit your written defence within 7 days of the receipt of this Charge Sheet to the Enquiry Officer.

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

Intimate whether you desire to be heard in person or otherwise.

A statement of allegations is enclosed.

Constable Khush Noor No. 67
Police Line, Chitral C/O L.O Police Line, Chitral


(ABDUR RASHID)
District Police Officer,
Chitral

No. 7221-24 / S.P. Dated Chitral the 7/6 /2011
Copy to:

1. DSP/SDPO/Chitral.
2. DSP/Hqrs, Chitral
3. Inspector Legal Chitral.
4. R.I/ L.O Police Line, Chitral

Attested

(17) (6)

DISCIPLINARY ACTION

I, Abdur Rashid District Police Officer, Chitral being a competent authority, vide NWFP Removal from Service (Special Power) Ordinance 2000, am of the opinion that Constable Khush Noor No.67 posted Police Line Chitral has rendered himself liable to be proceeded against departmentally as he committed the following acts of omission within the meaning of Section 3 of NWFP Removal from Service (Special Power) Ordinance, 2000.

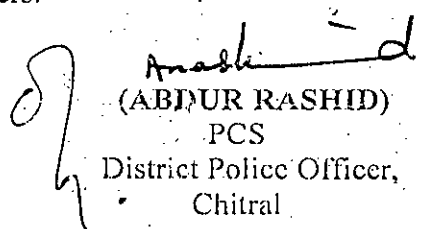
STATEMENT OF ALLEGATIONS:

That he being in Police service as Constable have received Rs. 86000/- from one Faridullah s/o Yadgar Khan r/o Torkoh, Chitral serving in Frontier Constabulary, Peshawar as bribe for the appointment of the relatives of the above named Sepoy of Frontier Constabulary.

For the purpose scrutinizing the conduct of the said delinquent officer with the reference of above allegations, Mr. Abdul Hamid SDPO Chitral & Mr. Sher Ahmad Inspector Legal Chitral, are appointed as Enquiry Officers to conduct proper departmental enquiry against him under relevant rules and laws.

The Enquiry Officer shall, in accordance with the provisions of the relevant rules and laws, provide reasonable opportunity of hearing to the delinquent officer, record his findings and make within stipulated period of the receipt of this order, recommendations as to punishment or other appropriate action against the delinquent officer.

The delinquent officer and a well conversant representative of department (Mr. Muhseenul Mulk SI Legal, Chitral) shall join the proceeding on the date, time and place fixed by the Enquiry Officers.


(ABDUR RASHID)

PCS

District Police Officer,
Chitral

No. 7221-24 /E-II, Dated Chitral the 7 /6 /2011.

Copy of above alongwith relevant paper is forwarded for information and necessary action to:-

1. Mr. Abdul Hamid SDPO Chitral and Mr. Sher Ahmad Inspector Legal Chitral with the direction to initiate departmental proceeding against the delinquent officer under the provision of NWFP Removal from Service (Special Power) Ordinance, 2000.
2. Mr. Muhseenul Mulk SI Legal, Chitral (Departmental representative).
3. DSP/Hqrs: Chitral
4. RI/LO Police Line Chitral


Attested

7

ANNEX: (B)

ENQUIRY FINDING

This is a departmental enquiry against constable Khosh Noor No. 67 under Section 3 of NWFP, Removal from Service (Special Power) Ordinance 2000. Brief facts leading to the initiation of this enquiry are that on 04.05.2011 one Farid Ullah s/o Yadgar Khan r/o Forkoh a sepoy in frontier Constabulary in his application Exp w/11 to DPO Chitral lodged complain against Police Constable Khosh Noor No. 67, that to recruit his two relatives in Police Force he had obtained Rs. 86,000/- and that neither he recruited his relatives and nor returned the amount.

On this complaint the DPO Chitral ordered a fact finding enquiry by DSP/Hqrs Chitral vide his report Exp w/2 dated 01.06.2011 found the complaint as true.

On this report the DPO Chitral as competent authority issued Charge Sheet and summary of allegation and appointed the undersigns as enquiry Committee. The delinquent official in reply to charge sheet denied the allegation and claimed innocence.

Initiating the enquiry the delinquent official as well the complainant were summoned. The Statement of complainant Farid Ullah and his witness Habib Ullah were recorded in presence of the accused official. The complainant in his statement reiterated and corroborated the contents of this application, while his witness supported his statement. Both were cross examined by the accused official. At the end of the departmental evidence the accused in his defense written statement Ex DW-1/F denied the allegation and stated the charge as malafide and based on private dispute with the applicant. He further stated that the applicant had given him warning of dire consequence. He however failed to produce any defense witness.

Not allowed to produce

From the fact and circumstances it is proved that the accused official has defrauded the applicant and obtained amount to recruit his relatives in Police and accordingly he is recommended for Major punishment.

At the same time the committee is of the view that the applicant himself being in frontier Constabulary more educated a senior Govt servant than the accused official should have to take it in mind that what he is doing is illegal act and offence under the Law and he had to know that how can a junior most Police Constable can recruit his relatives in Police and understanding all these facts he has fall pray in the hands of the accused and it is the principle of Law that one seeks relief should be clean hands. Which mitigate the heinousness of the conduct of the accused.

By this way he himself suffered and caused the suffering of the accused. In light of these facts this committee suggest that the higher competent authority of the applicant may be addressed to take necessary legal action against him.

No action taken against him

Enquiry Committee.

(SHER AHMAD)
Inspector Legal Chitral

(ABDUL HAMID)
Sub Divisional Police Officer

Amended

*revised - issue final
show cause notice*

at Chitral

70-18
ANNEX C

FINAL SHOW CAUSE NOTICE

I, Abdur Rashid, DPO, Chitral as a competent authority do hereby finally charge you Constable Khosh Noor No. 67 on the following grounds:

That on 04-05-2011 one Faridullah s/o Yagdar Khan n/o Torkoh a Sepoy in Frontier Corps in his application lodged complaint against you that to recruit his two relatives in Police Force, you had obtained Rs. 85000/- and neither you recruited his relatives and nor returned the amount. On this application preliminary enquiry was conducted by DSP/HQs, Chitral and found the complaint true. Therefore he was charge sheeted alongwith summary of allegation and an Enquiry Committee comprising Abdul Hamid SPO Chitral & Mr. Ahmed Inspector Legal Chitral was constituted.

The Enquiry Committee, after proper enquiry has found you guilty of misconduct and in its findings have recommended you major punishment.

By reason of the above you are hereby served with Final Show Cause Notice as to why you should not be imposed the aforesaid punishment. Your written reply should reach to the undersigned within 07 days of the receipt of this notice, otherwise it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

A. Rashid
District Police Officer,

No. 9673 /E-11, dated Chitral the 21/8 /2011.
Copy to Constable Khosh Noor No. 67 c/o Line Officer Chitral.

J. Q. / 2

ORDER

9

ANNEX (D)

My this order will dispose off an enquiry under Removal from Service (Special Power) Ordinance 2000, against delinquent constable Khosh Noor Khan No. 67 of district Police Chitral, under Section 3 of Removal from Service (Special Power) Ordinance 2000.

Brief facts regarding the initiation of the enquiry are that on 04.05.2011 one Farid Ullah S/O yangar Khan R/O Torkhow a sepoy in Frontier constabulary in his application to the under signed lodged complaint against the delinquent Constable that to recruit his two relatives in Police Force he had obtained Rs. 86000/- and that neither he recruited his relative and nor returned the amount. On this application preliminary enquiry was conducted by DSP/Hqrs Chitral with found the application true justifying for proper Departmental action. Therefore he was Charge Sheeted along with Summary of Allegation and an Enquiry Committee comprising Abdul Hamid Khan SDPO Chitral and Inspector Legal Mr. Sher Ahmad was constituted. The Enquiry Committee, after proper Enquiry found him guilty of misconduct and its detailed finding recommended him for major punishment He was produced before the under signed. He was issued final Show Cause Notice but his reply was not satisfactory. He was again produced in orderly room held on 10.10.2011. The under signed perused the enquiry file and his service record. Heard the delinquent FC in detail. He again failed to convince the under signed regarding the enquiry proceeding and about his innocence. After pursuing his facts and proofs on record, I have come to the conclusion that the charges against the accused Constable have proved beyond any reasonable doubt. The act and charge against the accused Official being serious which course a bad name to the Force. The official has got a bad reputation and charge against him being proved therefore upholding the enquiry Committee I order his dismissal from service with effect from 10.10.2011. Copy of this order and enquiry report be issued to him.

Order announced.

[Signature]
District Police Officer,
Chitral

*Na the order not
in my Report
provide to
the Mulla*

No: 19568-72 /E-II, dated Chitral the 13/10 /2011

- Copies to:
- 1. DSP/Hqrs Chitral.
 - 2. SDPO Chitral.
 - 3. RI/LO.
 - 4. Pay Officer.
 - 5. Reader for OB.

[Signature]

محضور عزت مآب جناب ڈپٹی انسپکٹر جنرل آف پولیس ریجن-3 ملاکنڈ سوات

ANNEX (E)

محکمانہ اپیل برخلاف حکم ضلعی پولیس آفیسر چترال مصدرہ 13/10/2011 جس کی رو سے
من فدوی کو ملازمت سے برخاست کیا گیا۔

جناب عالی! من فدوی بذریعہ اپیل ہذا حسب ذیل عرض گزار ہوں۔

یہ کہ من فدوی محکمہ پولیس چترال میں بحیثیت کانسٹیبل بھرتی ہو کر تاتاریخ برخاستگی اپنی ڈیوٹی احسن طریقے سے انجام
دیتا آیا ہوں۔

یہ کہ من فدوی کے خلاف ورزہ 04/05/2011 مسمی فرید اللہ سپاہی فرنٹیئر کانسٹیبل کی بے بنیاد درخواست پر
جناب DPO چترال نے محکمانہ کارروائی کر کے انکواری کمیٹی کی سفارش پر مورخہ 13/10/2011 کو ملازمت سے
برخاست کی۔ بدین وجہ اپیل ہذا کی ضرورت لاحق ہوئی۔

وجوہات اپیل:

۱۔ یہ کہ من فدوی کے خلاف محکمانہ کارروائی اور حکم برخاستگی قانون اور انصاف کے اصولوں کے منافی ہونے کے
باعث قابل منسوخی ہے۔

۲۔ یہ کہ بدوران انکواری من فدوی کو اپنی صفائی میں گواہ پیش کرنے کا موقع تک نہیں دیا گیا۔

۳۔ یہ کہ انکواری کمیٹی کی سفارش دباؤ کا نتیجہ اور غیر منصفانہ ہے۔

۴۔ یہ کہ انکواری کمیٹی کے سامنے ماسوائے درخواستی فریق کے الزام کے ایک بھی شہادت اور ثبوت من فدوی
کے خلاف ریکارڈ پر آئی ہے۔

۵۔ یہ کہ من فدوی اپنی بے گناہی کے ثبوت میں گواہان صفائی جب انکواری کمیٹی کے سامنے پیش کیا تو ان کا
بیان قلمبند نہیں کیا گیا اور یکطرفہ سفارش پیش کیا گیا۔

۶۔ یہ کہ انکواری کمیٹی نے یہ تک نہیں دیکھا کہ میں پولیس میں ایک جوئی سپاہی ہوں جبکہ میرے خلاف
درخواستی F.C میں ایک سٹی سپاہی ہیں اور میں اس حیثیت میں اس سے کس طرح رقم وصول کر سکتا ہوں
جس کو کوئی شخص نہیں مان سکتا۔

۷۔ یہ کہ انکواری کمیٹی نے خود بھی یہ تسلیم کیا ہے کہ درخواستی نے خود بھی خلاف قانون کام کیا ہے اور اس کے
خلاف بھی کارروائی ہونی چاہیے۔

بقیہ صفحہ نمبر 2 پر

Attested

۸- یہ کہ میرے خلاف درخواستی نے ذاتی عناد اور رنجش کی بنیاد پر مجھے دھمکی دی تھی کہ وہ مجھے ملازمت سے برخاست کرے گا اور میں اس عناد کے ثبوت میں گواہ بھی لایا تھا جن کے بیانات کو قلمبند نہیں کیا گیا۔

۹- یہ کہ میرے خلاف محکمانہ کارروائی سے پہلے مجھے کم از کم ایک مہینہ 10 دن بغیر کسی قانونی کارروائی کے حوالات میں رکھا گیا۔

۱۰- یہ کہ اگر میں نے کسی کے خلاف دھوکہ دہی اور فراڈ کا ارتکاب کیا تھا تو درخواست میرے خلاف تھانے میں فوجداری مقدمہ قائم کر سکتا تھا لیکن اُس نے صحیح قانونی راستہ استعمال کرنے کی بجائے محکمہ کے ذریعے مجھے نشانہ بنایا کیونکہ ایسا کرنا اس کے لئے آسان تھا اور عدالت میں اس کی من گھڑت اور جھوٹی الزام کے سلسلے میں کوئی شہادت اور ثبوت نہیں تھا اور اس کا یہ الزام خود اس کے خلاف قانونی کارروائی کا موجب بن سکتا تھا۔ لیکن اس قانونی حقیقت اور پوزیشن کو نہ انکو اٹری کمیٹی اور نہ DPO صاحب نے زیر غور رکھا۔

ان حقائق کی بناء پر استدعا ہے کہ عالی جناب قانون اور انصاف کے اصولوں اور اپنی حیثیت کو مد نظر رکھتے ہوئے من سائل کے ساتھ انصاف کریں گے اور DPO کے حکم منسوخ فرما کر مجھے اپنی ملازمت پر بحالی کا حکم صادر فرمائیں گے۔

المرقوم مورخہ -----

البارض

سابق کانٹریبل خوش نور نمبر 67
چترال پولیس
ساکن بیلپھوک تحصیل ضلع چترال

Accepted

ORDER:


This order will dispose of the application of Ex-Constable Khosh Noor No. 67 of Chitral District for reinstatement in service.

Brief fact is that the above named Ex-Constable was proceeded against departmentally on a serious allegation of malpractice and fraudulently receiving an amount of Rs: 80,000/- from one FC Sepoye Faridullah to recruit his two relatives in Police Department during Police recruitment in District Police. To scrutinize and verify the veracity of the allegations a proper departmental enquiry through departmental committee was conducted. The committee after fulfilling and comply all legal and codal formalities found the appellant guilty and recommended for major punishment. So the District Police Officer, Chitral after perusal of all the relevant record dismissed him from service vide order No. 19568-72/E-II, dated 13/10/2011.

The perusal of appeal shows that since the charge against the appellant was grave in nature, causing a bad name for Police Department, therefore, his further retention in the Police Force is not feasible.

Therefore considering the foregoing, I do not see any reason to accept his appeal. The appeal is therefore dismissed, thus upholding the order of his dismissal from service made by the District Police Officer, Chitral.

Order announced.


(AKHTAR HAYAT KHAN)
Deputy Inspector General of Police,
Malakand Region, Saidu Sharif, Swat.
Taqi

No. 7331 /E,
Dated 31/12 2011.

Copy to District Police Officer, Chitral, for information with reference to his office Memo. No. 21832/E-II, dated 12/12/2011. His service records and departmental file are returned herewith. The appellant may be informed accordingly.

File
S. Roll.
E. with
E. file



Atendant ~~.....~~ *Phon operators*
TO *1.83.566*

13

ANNEX: 67

9

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. _____/2012

Khushnoor Khan Ex-Constable No. 67, District Police Chitral.
(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Home, Khyber
Pakhtunhwa, Peshawar and others.

(Respondents)

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Appellant

Through



(IJAZ ANWAR)

Advocate Peshawar
FR-3 fourth floor Bilour Plaza
Saddar road Peshawar Cantt
03339107225(091) 5272054


Attested

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. _____/2012

Khushnoor Khan Ex-Constable No. 67, District Police Chitral.
(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunhwa, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
4. District Police Officer, Chitral.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, read with Section 10 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 against the Order dated 13-10-2011, whereby the appellant was awarded major penalty of "dismissal from service" against which his Departmental Appeal dated 23-11-2011 was rejected vide order dated 31-12-2011, communicated to the appellant on 01-02-2012.

Prayer in Appeal: -

On acceptance of this appeal the original order, dated 13-10-2011, and the appellate order dated 31-12-2011, may please be set-aside and the appellant may be re-instated in service with all back benefits.

Respectfully Submitted:

1. That the appellant was enlisted as Constable in the District Police Chitral in the year 2007, ever since his appointment the appellant was performing his duties with full devotion and there was no complaint whatsoever regarding his performance.
2. That while serving in District Police Chitral, one Farid Ullah who was a Sepoy in Frontier Constabulary and with whom the appellant was having private dispute, lodged a false and baseless complaint that the appellant took money from him

Attested

for recruiting his 02 relatives in Police Department and that he never recruited his relatives nor returned the money.

3. That on the basis of the said baseless complaint, on 07-06-2011, the appellant was served with charge sheet and statement of allegations containing false and baseless allegations of receiving Rs. 86,900/- from one Farid Ullah S/O Yadgar Khan R/O Torkoh, Chitral, as bribe money for the appointment of his relatives. The appellant duly replied the charge sheet and rejected the allegations leveled against him. (Copy of Charge Sheet and Statement of Allegations is attached as Annexure 'A')
4. That thereafter a partial enquiry was conducted and the enquiry officer without taking into consideration, the appellant's defence quite illegally recommended the appellant for major penalty. Thereafter the appellant was served with show cause notice, which he duly replied and refuted the false and baseless allegation. (Copies of the Enquiry Report and Show Cause Notice dated 02-03-2011 is attached as Annexure 'B' and 'C').
5. That on the recommendation of the enquiry committee, the competent authority without applying his prudent mind, vide order dated 13-10-2011 awarded the appellant the major penalty of dismissal from service. (Copy of the Order dated 13-10-2011 is attached as Annexure 'D').
6. That on 23-11-2011 the appellant filed Departmental Appeal, against his dismissal order which was rejected vide order dated 31-12-2011; however, it was never communicated to the appellant. The appellant time and again enquired about his appeal however, he was given no information lastly on 28th January, 2012 he came to know that his appeal is rejected vide order dated 31-12-2011, the appellant again approached the Department that his rejection order be conveyed to him, however, he was told that it will be conveyed to Service Tribunal when you will file service appeal, lastly, the appellant managed to get a copy of the rejection order on 01-02-2012. (Copies of the Departmental Appeal dated 23-11-2011 and rejection order dated 31-12-2011 are attached as Annexure 'E' & 'F').
7. That the impugned order dated 13-10-2011 and 31-12-2011 are illegal, unlawful against law and facts hence liable to be set aside inter alia on the following grounds:-

Attested

Grounds of Appeal:

- A. That the appellant has not been treated in accordance with law thus his right secured and guaranteed by law are badly violated.
- B. That the appellant never received any amount from the said person in fact it was concocted story which was prepared just to take revenge from the appellant as the appellant was having a private dispute with the complainant. Thus awarding major punishment based on false complaint is illegally and void.
- C. That during the enquiry proceeding Enquiry Committee acted in arbitrary manner. The appellant has not been provided proper opportunity to defend himself. It is pertinent to mention that the appellant has brought this fact before the Enquiry Committee that he is having a private dispute with the complainant and that he (complainant) has given him warning of dire consequences. Thus the enquiry Committee was required by law to probe into this matter also, however, the enquiry officer never bother to inquire about this very important fact and gave his findings on surmises and conjectures. Thus the whole enquiry proceedings are defective in the eye of law.
- D. That the competent authority before awarding punishment to the appellant was required by law to provide findings of enquiry to the appellant along with show cause notice, however, the appellant was only served with show cause notice and the enquiry findings were never communicated to the appellant. It is also pertinent to mention that the competent authority quite illegally mentioned in the dismissal order that copy of the enquiry report be issued to him. Thus not providing findings of enquiry before awarding punishment is illegal, unlawful and has denied the appellant opportunity to defend himself properly.
- E. That the Enquiry Committee had himself stated in findings that the complainant was a senior Govt servant, more educated than the appellant while the appellant was a junior most constable and how could a junior most constable recruit someone in police Department, however, they never considered this fact before recommending him for major punishment nor the competent authority applied his prudent mind before awarding the appellant major penalty and illegally dismissed the appellant from service.


Sd/-

- F. That it is also pertinent to mentioned that the enquiry Committee also suggested that the competent authority of the complainant may be addressed to take necessary action against him. However, no further action was taken thereof against the complainant that shows malafidely on their part.
- G. That the appellant was not allowed to cross examine the witnesses those may have deposed against him.
- H. That the appellant has not been given proper opportunity of personal hearing, thus condemned unheard.
- I. That the appellant has more than four years spotless career at his credit however his service record has not been considered while awarding him such a harsh penalty of dismissal from service.
- J. That the appellant is jobless since his illegal dismissal from service.
- K. That the appellant seeks the permission of this Honorable Tribunal to rely on additional grounds at the hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the original order, dated 13-10-2011, and the appellate order dated 31-12-2011, may please be set-aside and the appellant may be re-instated in service with all back benefits of service.

Appellant

Through



IJAZ ANWAR KHAN
Advocate Peshawar

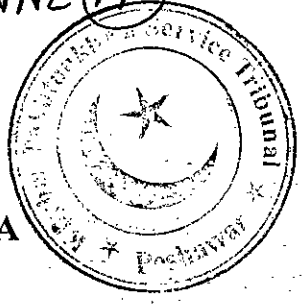
AFFIDAVIT

I, Khushnoor Khan, Ex-Constable No. 67, District Police Chitral, do hereby solemnly affirm and declare that the contents of the above appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent

~~Requested~~

18 ANI H (H)



**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 189 /2012

188
07/2/12

Khushnoor Khan Ex-Constable No. 67, District Police Chitral.
(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunhwa, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
4. District Police Officer, Chitral.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, read with Section 10 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 against the Order dated 13-10-2011, whereby the appellant was awarded major penalty of "dismissal from service" against which his Departmental Appeal dated 23-11-2011 was rejected vide order dated 31-12-2011, communicated to the appellant on 01-02-2012.

Prayer in Appeal: -

13-10-11
7/2/12

On acceptance of this appeal the original order, dated 13-10-2011, and the appellate order dated 31-12-2011, may please be set-aside and the appellant may be re-instated in service with all back benefits.

Respectfully Submitted:

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

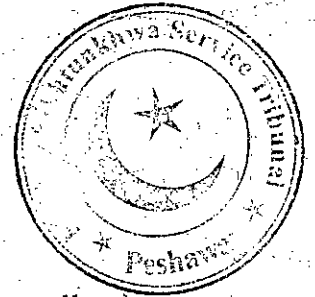
1. That the appellant was enlisted as Constable in the District Police Chitral in the year 2007, ever since his appointment the appellant was performing his duties with full devotion and there was no complaint whatsoever regarding his performance.
2. That while serving in District Police Chitral, one Farid Ullah who was a Sepoy in Frontier Constabulary and with whom the appellant was having private dispute, lodged a false and baseless complaint that the appellant took money from him

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 189/2012

Date of Institution ... 07.02.2012

Date of Decision ... 07.02.2019



Khushnoor Khan, Ex-Constable No. 67, District Police Chitral.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunkhwa, Peshawar and three others. ... (Respondents)

Mr. Yasir Saleem,
Advocate

--- For appellant.

Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI--- MEMBER (Executive)
--- MEMBER (Judicial)

ATTESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

JUDGMENT

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

ARGUMENTS

2. Learned counsel for the appellant argued that he was appointed as Constable in District Police, Chitral in 2007. On the allegations of taking illegal gratification disciplinary proceedings were conducted against him and thereafter major penalty of dismissal from service was imposed on him vide impugned order dated 13.10.2011. He preferred departmental appeal on 23.11.2011, which was rejected on 31.12.2011 but the order was never communicated to the appellant. He got the copy of the rejection order of his departmental appeal on 01.02.2012 followed by present service appeal. Enquiry was not conducted in mode and manner prescribed in the rules. Though statements of the complainant and other

(5)

connected official were recorded but no date was mentioned on those statements. It was also not clear whether those statements were recorded in the presence of the appellant or otherwise. Moreover, the enquiry officer instead of providing opportunity of cross examination to the appellant resorted to a novel way of cross examination himself after framing questions. It was a serious departure from the rules and contrary to the eyes of law. Though show cause notice was served on the appellant but copy of enquiry report was not annexed with the show cause notice. Reference was placed on case law reported as 1993 P.L.C. 2.10.

3. On the other hand learned Assistant Advocate General argued that departmental proceedings were initiated against the appellant and after observance of all legal formalities major punishment was awarded to him.

CONCLUSION

4. Upon scrutiny of record, it transpired that though disciplinary proceedings were instituted against the appellant but major penalty of dismissal from service was awarded without fulfillment of legal formalities. We have examined the statements annexed with the enquiry report but it is not clear whether these statements were recorded in the presence of the appellant or not? Moreover, instead of providing of cross examination to the appellant, the enquiry officer framed questions with regard to the process of cross examination. However, this action on the part of the enquiry officer was clear deviation from the procedure laid down in the rules. Though show cause notice was served on the appellant but copy of enquiry report was not annexed with the same which is the basic right of the accused to enable him to offer proper defense. Attention is invited to 1993

ATTORNEY GENERAL

concerned official were recorded but no date was mentioned on those statements.

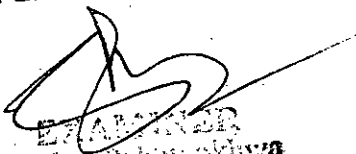
It was also not clear whether those statements were recorded in the presence of the appellant or otherwise. Moreover, the enquiry officer instead of providing opportunity of cross examination to the appellant resorted to a novel way of cross examination himself after framing questions. It was a serious departure from the rules and not tenable in the eyes of law. Though show cause notice was served on the appellant but copy of enquiry report was not annexed with the show cause notice. Reliance was placed on case law reported as 1993 PLC C.S 10.

3. On the other hand learned Assistant Advocate General argued that departmental proceedings were initiated against the appellant and after observance of all codal formalities major punishment was awarded to him.

CONCLUSION

4. Upon scrutiny of record, it transpired that though disciplinary proceedings were instituted against the appellant but major penalty of dismissal from service was awarded without fulfillment of codal formalities. We have examined the statements annexed with the enquiry report but it is not clear whether these statements were recorded in the presence of the appellant or not? Moreover, instead of providing of cross examination to the appellant, the enquiry officer framed questions with regard to the process of cross examination. However, this action on the part of the enquiry officer was clear deviation from the procedure laid down in the rules. Though show cause notice was served on the appellant but copy of enquiry report was not annexed with the same which is the basic right of the accused to enable him to offer proper defense. Attention is invited to 1993

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

PLC C:S 10 that non-supply of enquiry report to the accused amounts to denial of providing him reasonable opportunity of defense.

5. Learned counsel for the appellant further argued that he was kept in the quarterguard for forty days and enquiry proceedings were conducted at the back of the appellant. It is evident from an application addressed to the Chief Minister, Khyber Pakhtunkhwa and annexed with the parawise comments of the respondents. On the previous date of hearing, the respondents were directed to produce complete record of enquiry and further clarification whether he was associated with the enquiry proceedings or otherwise? No such record was made available by the respondents on the date of hearing. In view of glaring discrepancies, lapses and illegalities committed by the respondents, there is sufficient justification to conduct de-novo enquiry in this case.

6. As a sequel to above, the appeal is accepted, impugned order dated 13.10.2011 is set aside and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry within a period of ninety days strictly in accordance with law and rules after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(AHMAD HASSAN)
MEMBER

Muhammad Amin

(MUHAMMAD AMIN KHAN KUNDI) of Application
MEMBER

18-2-19

ANNOUNCED
07.02.2019

Number of Words	1600
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Total	12
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Date of Completion of Copy	18-2-19
Date of Delivery of Copy	18-2-19

بہتر وقت جناب ڈسٹرکٹ پولیس افسر صاحب چٹہال

معنون: درخواست بھجوت خوش نور خان ولد امان دول خان
میراٹ بجالی ملازمت

جناب عالی:

گزارش سے کہ سائل محکمے پولیس میں بکھریے خدمات انجام دے گا
صرف 10/13 کو ایسے بنیاد الزام کی بنیاد پر سائل کو
سزا ہو کر ملازمت سے برخواست کی گئی تھی۔ مذکورہ برخواستی
کے خلاف سائل نے ڈیپارٹمنٹ اپیل دائر کر دی تاہم مذکورہ
اپیل میں بھی سائل کے خلاف فیصلہ آئے ہے سائل نے مذکورہ فیصلے
کے خلاف سروس ٹریبونل رجوع کیا۔ سروس ٹریبونل
میں صرف 2/2 کو سائل کے حق میں فیصلہ آئے سائل
کو ملازمت میں دوبارہ بحال کیا گیا ہے۔

لہذا اندر میں حالت استدعا ہے کہ
مذکورہ بالا سروس ٹریبونل کے فیصلے
کی روشنی میں سائل کو اپنی سابقہ آسانی
میں بحال فرمایا جائے

ولنگار علی
خوش نور خان
ولد امان دول خان
سابقہ پلٹ نمبر 67
چٹہال ڈسٹرکٹ پولیس

1 ہفتہ 6 مارچ 2019ء

Accepted

ORDER.

In compliance of the order of honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar dated 07.02.2019 in Service Appeal No.189/2012 titled Ex-Constable Khosh Noor Khan No.57 V/S Govt. of Khyber Pakhtunkhwa etc and letter of the office of worthy Inspector General of Police, Khyber Pakhtunkhwa Peshawar vide No.1138/Legal dated 08.03.2019 Ex-Constable Khosh Noor Khan is hereby re-instated in service for the purpose of denovo enquiry, allotted constabulary No.189 and posted to Police Lines Chitral.

District Police officer,
Chitral

No. 342-50/E-II dated Chitral the 03/04/2019.

Copy of above is submitted for information to:-

1. The Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa Peshawar.
2. The Assistant Inspector General of Police, Establishment, Khyber Pakhtunkhwa Peshawar.
3. DSP/HQ
4. RI/LO
5. Pay Officer
6. Pay Officer
7. OHC for OB
8. C.O Security Clarence

District Police Officer,
Chitral

Attested

بگم جناب AIG/C & E صاحب خیر پختونخوا، پشاور۔ پتہ: C & E 1449-51 ٹوبہ ٹیکسٹائل ملز، پشاور۔
پختونخوا، انکوائری بذریعہ خلاف کنسٹیبل خوش نور بنت نمبر 189 پتھیس سروس میں انکوائری نمبر 07.02.2019 نمبر 1۔

الزام۔

الزام علیہ سخی خوش نور کنسٹیبل پر الزام ہے کہ اس نے سخی فریڈیسٹ اٹھتے آیت ریڈیو، ڈیڑھ گھنٹے میں سخی کے پاس
بلیٹ 80/85 ہزار روپے لیا تھا۔

دوران انکوائری درخواستی سخی فریڈیسٹ کا بیان، الزام علیہ سخی خوش نور کی موجودگی میں ریڈیو میں لیا گیا، پتھیس سروس میں سخی کے پاس
خوش نور کی موجودگی میں ریکارڈ کئے گئے اور الزام علیہ سخی خوش نور کا بیان بھی قلمبند کیا گیا۔

دوران انکوائری فریڈیسٹ کو ایک دوسرے پر جرح کرنے کا عمل دہرایا گیا۔ تمام ذوقی دستاویزوں کو اس وقت تک نہیں دیا گیا کہ
گئی، دوران انکوائری درخواستی سخی فریڈیسٹ نے بیان دیا کہ چونکہ اس نے ٹیک نیٹی سے الزام علیہ کے خلاف پورٹ کی تھی جب اسے
چاہتا، جرح میں واضح کی کہ اسے نہ الزام علیہ نے اور نہ ہی کسی اور شخص نے یہ بیان دینے پر مجبور کیا ہے بلکہ یہ بیان اس نے اپنے
الزام علیہ نے اپنے خلاف لگائے گئے الزام کے حوالے سے موقف اختیار کیا کہ چونکہ درخواستی سخی فریڈیسٹ نے اپنے
بھگا کر شادی کی تھی جس کا بدلہ لینے کے لئے درخواستی نے اس کے خلاف بے بنیاد درخواست دیکر موجودگی سے نہایت سزا دی۔

گواہ سخی حبیب اللہ خان جو کہ ڈونر کا Star witness ہے نے اپنے بیان میں الزام کی تائید کی تھی یہ نہایت ہی اہمیت رکھتی ہے
سے کتنی رقم لی تھی، نہ ہی الزام علیہ کو وہ پہلے سے جانتا تھا اور نہ ہی اسے شناخت کر سکتا ہے اپنے بیان میں جرح پر مقدمہ لگانا سخی فریڈیسٹ کی
ہیئتے تھے اور وہ وہاں سے چلا گیا تھا اسکے بعد اسے کوئی نام نہیں۔

انکوائری کے دوران حاصل شدہ درخواستی کے الزامات، الزام علیہ کے جوابات اور گواہوں کی شہادتوں کو متعلقہ ذوقی دستاویزوں سے مطابقت
پرکھنے کے بعد ذیل نکات سامنے آئے۔

فائنڈنگ۔

- 1- عائد شدہ الزام کے حوالے سے نہ ہی الزام علیہ اور نہ درخواستی کے خلاف تحریرات پاکستان کے تحت ذوقی نوچہ جاری کارروائی میں ملتی تھی ہے
- 2- گواہوں استغاثہ کا الزام علیہ کا درخواستی سے رقم لینے کے حوالے سے شہادت واضح ہے لیکن شہادت یہ واضح کرنے سے کہ وہ اپنے
علیہ سے بطور رشوت کتنی رقم وصول کی تھی۔

یہ شہادت استغاثہ (گواہوں) الزام علیہ کی حیثیت (ملاحیت) اسکے کس بااثر بارشخصیت سے تعلق تھی میں متعلقہ دستاویزوں سے بھی
رہے۔

یکہ درخواستی الزام علیہ کے خلاف مزید کوئی کارروائی کرنا بھی نہیں چاہتا
ذکورہ بالا حقائق سے واضح ہے کہ گواہوں استغاثہ الزام علیہ کے خلاف واضح اور غیر جزئی شہادت پیش کرنے سے قاصر ہے۔

یکہ الزام علیہ گزشتہ تقریباً آٹھ سالوں سے انسران بالا کے دفتر اور عدالتوں کے چکر کاٹتے ہوئے سروس سے برخواستہ کی حالت میں
ہے۔

یکہ سروس فراہم خیر پختونخوا نے الزام علیہ کو دوبارہ نوکری پر بحال کرنے کا حکم صادر کرنے پر اصرار کیا ہے اور وہ بحال ہو چکا ہے۔
لیڈ الزام علیہ کنسٹیبل خوش نور کو ایسور Leave due نوکری پر بحال رکھنا قرین منصفانہ ہوگا۔

فائنڈنگ رپورٹ عرض ہے۔

EO
DSP Head Quarter

ORDER.

In compliance of the order of Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar, dated 07.02.2019, in service appeal No.189/2012 titled Ex- Constable Khosh Noor Khan VS Government of Khyber Pakhtunkhwa Peshawar etc and letter of the office of the worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar vide No.1138/Legal dated 08.03.2019 Ex- Constable Khosh Noor Khan was re-instated in service for the purpose of Denovo enquiry vide this office order No.2342-50/E-II dated 03.04.2019 and Denove enquiry was initiated in compliance of the above mentioned court order and letter of Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar vide No.1448/CPO/IAB/C &E, dated 15.04.2019.

After completion of the Denove enquiry in light of the recommendation of the Denove Enquiry Officer and letter of worthy IGP Khyber Pakhtunkhwa, Peshawar vide No. 1959/CPO/IAB dated 20.05.2019 Constable Khosh Noor Khan No.189 is re-instated in service and his absence period is considered as a kind of leave due.

**District Police officer,
Chitral**

No. 3978-32/E-II dated Chitral the 11/06/2019.

Copy of above is submitted for information to:-

1. Assistant Inspector General of Police, Internal Accountability Branch, Khyber Pakhtunkhwa Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif Swat.
3. DAO Chitral
4. DSP/HQ
5. Pay Officer
6. RI/LO
7. EC
8. OHC for OB

[Signature]
Attested

**District Police Officer,
Chitral**

ANNEX: (L4)

26



OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND

SAIDU SHARIF SWAT.

Ph: 0946-9240381-88 & Fax No. 0946-9240390

Email: digmalakand@yahoo.com

ORDER:

This order will dispose off appeal of Constable Khosh Noor No. 189 of Chitral District for back benefit.

Brief facts of the case are that Constable Khosh Noor No. 189 of Chitral District was proceeded against departmentally on a serious allegation of malpractice and fraudulently received Rs. 80000/- from one FC Sepoy Faridullah to recruit his two relatives in Police Department in Chitral District. Proper departmental enquiry was conducted by the enquiry team and submitted finding report / recommended that allegation levelled against the Constable Khosh Noor has been proved and found guilty. Hence, recommended for major punishment. The District Police Officer, Chitral issued him Final Show Cause Notice and heard him in person, but his reply was not satisfactory. Therefore, he was dismissed from service by District Police Officer, Chitral with effect from 10/10/2011. His appeal was rejected by this office previously. Hence, he moved appeal in Service Tribunal Khyber Pakhtunkhwa Peshawar vide Service Appeal No. 189/2012. The Service Tribunal vide Judgment dated 07/02/2019 decided that "the impugned order dated 13/10/2011 is set aside and the appellant is reinstated in service. The respondents are directed to conduct denovo enquiry with a period of ninety days strictly in accordance with law and rules after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the denovo enquiry". After proceedings of denovo enquiry the DPO, Chitral vide Order No. 3976-82/E-II, dated 11/06/2019 reinstated him into service and the period he spent out of service was treated as leave due to him, 120 days on full pay, 60 days on half pay and the remaining 2576 days as leave without pay vide his office order No. 4084-97/EB, dated 14/06/2019.

He was called in Orderly Room on 17/09/2019 and heard him in person. His case has been perused and found that the appellant duty period / service before dismissal from service was 3 years, 9 months and 2 days according to which as per leave rules, leave due (184-days) at his credit as order passed by the District Police Officer, Chitral No. 4084-97/EB, dated 14/06/19. Salary of which has already been paid, hence filed.

Order announced.

(MUHAMMAD IMZ KHAN), PSP
Regional Police Officer,
Malakand Region, Saidu Sharif Swat

No. 10579 /E,

Dated 30-09 /2019.

Copy of above for information and necessary action to District Police Officer, Chitral with reference to his office Memo: No. 5362/E-II, dated 01/08/2019. Enquiry file of the above named Constable is returned herewith for record in your office. Complete Enquiry file.

بخدمت جناب عزت معاف ڈی۔ آئی۔ جی ملاکنڈ ڈویژن سید و شریف سوات

27

اپیل محکمانہ بغرض عدائیگی BACK BENIFITS بمطابق فیصلہ سروس ٹریبونل و سفارشات کمیٹی قائم کردہ فیصلہ مورخہ 07/02/2019 و فیصلہ ڈی۔ پی۔ او صاحب مورخہ 11/06/2019 جس میں سائل کو RE.INSTATE کیا گیا ہے جبکہ سابقہ مراعات ^{نہیں} پہنچادی گئی ہے۔

جناب عالی!

سائیل ذیل عرض کرتا ہے

- (1) یہ کہ سائیل محکمہ پولیس میں بحیثیت کانٹریبل سال 2007 میں تعینات ہوا تھا۔
- (2) یہ کہ بعدہ سائیل کو ایک سازش کے تحت ایک جعلی و فرضی درخواست پر نوکری سے برخاست کیا گیا۔ اور ادلا انکواری بھی سازشی و فرضی طور پر کی گئی تھی۔
- (3) یہ کہ فیصلہ سے رنجیدہ ہو کر من سائیل نے سروس ٹریبونل میں مقدمہ اپیل دائر کی تو فیصلہ میرے حق میں ہوا۔
- (4) یہ کہ سروس ٹریبونل Deneve 2 انکواری کا حکم صادر کر کے جدید Deneve انکواری میں سائیل کو بے گناہ قرار دیا گیا ہے اور یوں سائیل کا مورخہ 3/4/2019 کو بحال کیا جا کر انکواری مکمل ہوئی اور مورخہ 11/06/2019 کو Re.instate کا باقائدہ حکم جاری ہوا۔
- (5) یہ کہ حکم مذکورہ میں سائیل کو سابقہ مراعات نہیں دی گئی ہیں جو کہ سائیل کا قانونی ائین حق ہے۔
- (6) یہ کہ سائیل انکواری میں بہال ہو گئی ہے تو مراعات بلاوجہ نہیں دینا قانون و آئین سے متصادم ہے
- (7) یہ کہ سائیل ہر طرح سے سابقہ مراعات کا حقدار ہے۔

لہذا عرض ہے کہ سائیل کا سابقہ مراعات عطاء فرما کر قانون و آئین کے حکمرانی قائم کر کے میرے ساتھ انصاف کیا جائے۔


Attested

العرض



خوشنور خان کنٹریبل پبلٹ نمبر 189

ڈسٹرکٹ پولیس چترال مورخہ 18/07/2019

 - 7 - 2019

POWER OF ATTORNEY

27

In the Court of Service Tribunal Peshawar

Khushnood Khan

} For
} Plaintiff
} Appellant
} Petitioner

VERSUS

Govt of KPR

} Defendant
} Respondent
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____

Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

YASIR SALEEM,

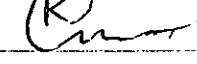
Jawad Ur Rahman & Pirzada Muhammad Tayab Amin Advocates

as my true and lawful attorney, for me in my name and on my behalf to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions, An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at 
the _____ day to _____ the year _____

Executant/Executants _____

Accepted subject to the terms regarding fee _____

Jawad Ur Rehman
Jawad Ur Rehman

M. Tayyab

Pirzada Muhammad Tayab Amin

Yasir Saleem
YASIR SALEEM
Advocate; High Court, Peshawar

BEFORE THE KHYBER PUKHTUNKHWA, SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1522/2019

Khushnoor Khan Constable No.189, District Police Chitral.

(Appellant)

VERSUS

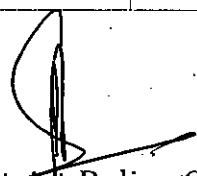
1. Govt: of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunkhwa, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
4. District Police Officer, Chitral.

(Respondents)

Index

08/06/21

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5	Service record	A	7
6	Dismissal order no.19568-72/E-II, dated 13.10.20211	B	8
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District Police Officer,
Chitral

(1)

**BEFORE THE KHYBER PUKHTUN KHWA, SERVICE TRIBUNAL,
PESHAWAR.**

Appeal No. 1522/2019

Khushnoor Khan Constable No.189, District Police Chitral.

(Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunkhwa, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
4. District Police Officer, Chitral.

(Respondents)

Parawise Comments.

Preliminary objection.

1. That the instant appeal is not maintainable in the eyes of law.
2. That the appellant has not come to the Court with clean hands.
3. That the appellant has got no locus standi to file the instant appeal.

On facts.

1. That Para No.1 is admitted as correct to the extent of the appointment of the appellant in district Police Chitral in the year 2007. The appellant has been proceeded against departmentally and dismissed on the charge of fraud/corruption (gross misconduct) which is evident from his service record. (Copy attached as annexure..... "A")
2. That Para NO.2 is admitted as correct to the extent of charging the appellant by one Farid Ullah on the ground that the appellant has taken money from him for recruiting his two relatives in police department and that he never recruited his relatives nor returned the money, but the appellant failed to establish the alleged private dispute between him and the complainant.
3. That Para No.3 is admitted as correct to the extent of initiation of departmental proceeding against the appellant on the basis of the allegations mentioned therein.
4. That Para No.4 is not admitted as correct, the appellant had been proceeded against impartially on the basis of solid and cogent evidences, following all the legal and codal formalities the Enquiry Officer recommended the appellant for major punishment. Thus the departmental proceeding ended with a logical result.
5. That Para No.5 is incorrect, the competent authority after considering the relevant documents and other collected evidence and hearing the appellant personally with full chance of defence, found him guilty without any shadow of doubt, issued order of dismissal of the appellant, which is evident from the dismissal order No.19568-72/E-II dated 13.10.2011.... (Copy attached as annexure..... "B").
6. That Para No.6 is admitted as correct to the extent of rejection of the departmental appeal of the appellant, all the orders have been duly conveyed to the appellant well in time.
7. That Para No.7 is admitted as correct to the extent that the appellant has been re-instated on the order of the honorable Service Tribunal and de-novo enquiry was

conducted on the direction of the honorable Service Tribunal to determine only back benefits of the appellant (Copy of Court Order attached as annexure "C").

8. That Para No.8 is incorrect, the appellant has been re-instated on the order of the honorable Service Tribunal, while the de-novo enquiry was initiated only for the purpose of determining the back benefits of the appellant, which was clear direction of the honorable Service Tribunal.
9. That Para No.9 is incorrect, the appellant was re-instated on the order of the honorable Service Tribunal vide order No2342-50/E-II dated 03.04.2019 of the office of Respondent No.4, (Copy attached as annexure..... "D"), while the de-novo enquiry was initiated on the direction of the honorable Service Tribunal for the only purpose of determining the back benefits. that on the recommendation of the Enquiry Officer, the period during which the appellant remained out of service has rightly been treated as a kind of leave due vide order No.3976-82/E-II dated 11.06.2019 of the office of Respondent No.4 (Copy attached as annexure..... "E").
10. That Para No.10 is admitted as correct to the extent of rejection of his departmental appeal, however the order has been communicated to the appellant well in time.
11. That both the Orders dated 11.06.2019 and 30.10.2019 being lawful and legal are binding on the appellant.

On Grounds.

- A. Incorrect. No right of the appellant has been infringed, rather the appellant has been treated well in accordance with law.
- B. Incorrect. The appellant has not been reinstated on the basis of any recommendation of Enquiry Officer or on the basis of his innocence, rather the appellant has been re-instated in compliance of the order of the honorable Service Tribunal dated 07.02.2019 vide Order No.2342-50/E-II, dated 03.04.2019. Pertinent to mention here that as per order of the honorable Service Tribunal the de-novo enquiry was conducted only for the purpose of back benefits. Operational part of the Order of the honorable Service Tribunal is reproduced as under:
 "The Respondents are directed to conduct de-novo enquiry within a period of ninety days strictly in accordance with law and rules after the date of receipt of this judgment, the issue of back benefits shall be subject to the outcome of the de-novo enquiry"
 It is crystal clear that the de-novo enquiry was conducted only for the determination of back benefits.
- C. Incorrect. The issue of dismissal of the appellant has already been decided by the honorable Service Tribunal and duly implemented by the respondents, while the de-novo enquiry was initiated on the direction of the honorable Service Tribunal only to determine the back benefits of the appellant. As the appellant being out of service (dismissed) has not served the state as Govt: Servent. Therefore he is not entitled for full pay.
- D. That the appellant has not been re-instated on the basis of any recommendation of Enquiry Officer, rather he has been re-instated directly on the direction of the honorable Service Tribunal. The period during which the appellant remained



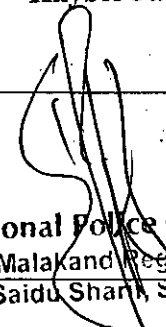
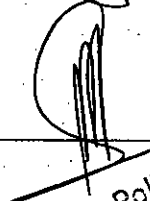
(3)

dismissed from Service has rightly been termed as "absence period" as the appellant had been dismissed on well established grounds after completion of all codal and legal formalities and during that period (being dismissed) the appellant has not served the state.

- E. That the misconduct committed by the appellant has already been proved without any shadow of doubt and the honorable Service Tribunal after considering all the facts and evidences has decided the case and has also been implemented by the Respondents, therefore the point can't be re-agitated. The de-novo enquiry was only for the purpose of back benefits which is clear from the order of the honorable Service Tribunal dated 07.02.2019.
- F. That everyone is equal in the eyes of law, the appellant has rightly been treated in accordance with law and rule of justice. Therefore on no ground the appellant is entitled for full pay.
- G. That the Defendant seeks the permission of the honorable Tribunal to rely on additional grounds during the proceeding.

Prayer!

In light of the facts stated above it is humbly prayed that the appeal in hand may be dismissed.

1. Govt: of Khyber Pakhtunkhwa through
Secretary Home, Khyber Pakhtunkhwa, Peshawar. 
Home Secretary/
Khyber Pakhtunkhwa
2. Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar. 
3. Deputy Inspector General of Police,
Malakand Region, Saidu Sharif Swat. 
Regional Police Officer,
Malakand Region,
Saidu Sharif Swat.
4. District Police Officer, Chitral. 
District Police Officer
Chitral
(Respondents)

BEFORE THE KHYBER PUKHTUN KHWA, SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1522/2019

Khushnoor Khan Constable No.189, District Police Chitral.

(Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunkhwa, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
4. District Police Officer, Chitral.

(Respondents)

Authority Letter.


Wasim Abbas No.1049 Focal Person, legal Branch of District Police Chitral is hereby authorized/deputed to proceed to the office of Govt: Pleader, Service Tribunal, KPK, Peshawar in connection with the vetting of Execution Petition No.1522/2019 titled Khushnoor Khan Constable No.189,, District Police Chitral Vs Govt: Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunkhwa and others.

1. Govt: of Khyber Pakhtunkhwa through
Secretary Home, Khyber Pakhtunkhwa, Peshawar.



 Home Secretary
 Khyber Pakhtunkhwa

2. Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

3. Deputy Inspector General of Police,
Malakand Region, Saidu Sharif Swat.


 Regional Police Officer,
 Malakand Region,
 Saidu Sharif, Swat.

4. District Police Officer, Chitral.


 (Respondents)

BEFORE THE KHYBER PUKHTUN KHWA, SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1522/2019

Khushnoor Khan Constable No.189, District Police Chitral.

(Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunkhwa, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
4. District Police Officer, Chitral.

(Respondents)

Affidavit

I, Sher Muhsin ul Mulk, Inspector Legal, District Police Chitral, do here by solemnly affirm & state on oath that the whole contents of these comments are true and correct to the best of my knowledge and belief and nothing has been concealed from the August Court.

Sher Muhsin ul Mulk
Inspector Legal Chitral
Cell No.03450990054

Identified by

Additional Advocate General,
Khyber Pakhtunkhwa, Service Tribunal
Peshawar

ATTESTED



08-06-2021

(6)

BEFORE THE KHYBER PUKHTUN KHWA, SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1522/2019

Khushnoor Khan Constable No.189, District Police Chitral.

(Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunkhwa, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
4. District Police Officer, Chitral.

(Respondents)

Counter Affidavit.

Verified that the contents of Parawise comments/ reply are true and correct and noting have been concealed from the tribunal.

1. Govt: of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunkhwa, Peshawar. _____
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar. _____
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat. _____
4. District Police Officer, Chitral. _____

Regional Police Officer,
Malakand Region,
Saidu Sharif Swat.

(Respondents)

CHARACTER AND SERVICE ROLL OF

CONSTABULARY No. (67) in

Ditto () in

Ditto () in

DISTRICT.

DISTRICT.

DISTRICT.

Amperuse
A²

1	Name KHOSH NOOR KHAN	Father's Name AMAM DULLAH KHAN.	Tribe or Caste	Village or Town	Post and Telegraph Office	Police Station	District	Province	Date of Birth 17-1-1979	Height 5' 9"	Chest Measurement 34 1/2 x 37"	Date of Enrolment 18-12-2007 F.V.	Age on Enrolment 28	Distinctive Marks Black Mark on R.T. side of face
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2 Verification Roll No. _____ dated _____ received back and attached to the file in serial _____

3 Government Service: prior to present employment, which is approved, for pension service.

Service or department	Rank or Grade	Pay of last Appointment	From	To	PERIOD		
					Year	Months	Days
_____	_____	_____	_____	_____	_____	_____	_____
Cause of and character on discharge from above service.	_____	_____	_____	_____	_____	_____	_____
Reference to orders approving above service for pension service in the Police Department.					_____	_____	_____

Agreement—I understand that I have been appointed under section 7 of the Police Act (V of 1861), and the provisions of that section and the provisions of the Act and of the Rules issued under it and now in force, by which my discipline and conduct are governed, have been explained to me. I agree to serve faithfully under the provisions of the said Police Act and to obey all lawful orders issued to me by my Superior Officers and I undertake not to resign my appointment within three years from the date of my enrolment. I have received a certificate of appointment issued under section 8 of the Police Act (V of 1861).

Date.....
Signature.

5. Rolled impression of fingers and thumb of left hand.

Left little	Left ring	Left middle	Left index	Left thumb

[Signature]
Inspector
Chitral

CHARACTER ROLL OF

6. APPOINTMENTS, PROMOTIONS, REDUCTIONS, DISCHARGES, ETC.

contd.

1	2	3	4	5
Appointed, promoted, suspended, reduced, discharged, dismissed, resigned or died	To what grade and pay, appointed, promoted or reduced	Date	No. of District Order	Full Signature of Superintendent of Police
<p>Appointed as Temp. Constable in B.P.S. 5 (2780-135-6830) Wef 18-12-2007 F.V. U. U. U. O B No 713 dated 27-12-2007. & Pay fixed @ B 2780/- P.M. Wef 18-12-2007 F.V.</p>				

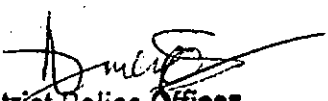
[Signature]
 District Police Officer
 Chitral

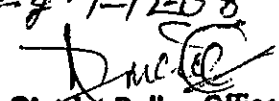
7. TRANSFERS BEYOND THE DISTRICT.


1	2	3	4
Date	From	To	Authority for transfer
<p><i>[Signature]</i> Inspector Legal Chitral</p>			


1	2	3	4
Name	Relationship	Nature of employ	District

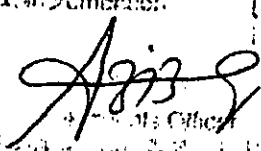
9. NAME, RESIDENCE AND OTHER PARTICULARS OF HEIRS.

Wife. X Pay provisionally fixed in the revised pay scale of 2008, in BPS 5 @ Rs 3340-160-8140
 Rs 3340/- pm w.e.f. 1-7-2008. 
 District Police Officer
 Chitral

Father. ✓ P. as FC @ Rs 160/- pm Rs 3500/- w.e.f. 1-12-08

 District Police Officer
 Chitral

Mother. ✓ P. as FC @ Rs 160/- pm Rs 3660/- w.e.f. 1-12-2009

 District Police Officer
 Chitral

Brother. 2 3 31/4/08 ✓

 Inspector
 Legal Chitral

Sister. 2 P. as FC @ Rs 160/- pm Rs 3820/- w.e.f. 1-12-2010.

 District Police Officer
 Chitral

Note.—Under line in red ink their nominated (with not more than two alternatives) and fill in name and particulars necessary to trace.

10. EDUCATIONAL QUALIFICATIONS.

Educational qualification.

10/12

Knowledge of languages.

Uneducated.

English.

Sightly educated.

Persian.

Matriculation.

✓
yes

Urdu.

First Arts.

Punjabi.

Degree

Pushto.

Note.—Under line the qualifications possessed, and particulars where necessary and give date of entry.

11. PROFESSIONAL ATTAINMENTS AND SPECIAL QUALIFICATIONS.

Professional attainments.

Special qualifications.

Passed Training School Upper Class:

Clerical duties.

.. Intermediate Class.

Accountant's duties

.. Lower Course.

Orderly Head Constable's duties

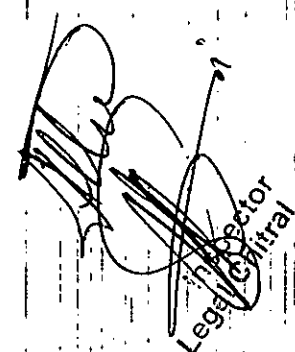
.. Finger Print Course.

Moharris's duties.

.. Drill Instructor's Course.

Detective duties.

Traffic duties.


Legal Inspector
Central

TER ROLL OF

12. MISCELLANEOUS PARTICULARS

12. Miscellaneous particulars.

War Medals and Decorations.—

(NOTE—Enter designation of award and date only—Gazette Notification in case of Quaid-i-Azam Police Medal and the Pakistan Police Medal. Other special decoration to be entered in full under commendatory entries.)

Passed Recruit course from P.T. Hangu order No 2384/S dated 28-11-08, This office order No 10694-96/Eii dated 16-12-08, vide O B No 33 dt 22-1-09

[Signature]
District Police Officer
Central

13. Miscellaneous particulars, including awards other than those accompanied by commendation certificates, admission removal from promotion lists.

ORDER:-

Dismissed from service for the purpose of "illegal gratification" from one Faridulla s/o Yungar Khan s/o Turkh, vide DPO Chitral office order endst No. 19568-72 dt: 13/10/2011. Copy of dismissal order is attached

[Signature]

ORDER

In compliance of the order of Honorable Service Tribunal dt: 07-12-2018, in Service appeal no. 189/202 titled Ex-Constable Khosh Norichan vs Govt. of KPK etc and letter of the office of Inspector General of Police KPK Peshawar vide no. 38/legal dt: 08-03 Ex-Constable Khosh Norichan is hereby Re-instated in service purpose of demotion enquiry, vide this office order endst: no. 234 dt: 03-4-2019 (copy enclosed)

[Signature]
Inspector
Legal Chitral

District

14. COMMENDATORY ENTRIES

Serial No.

ORDER

Re. Instated in Service and absence period is considered as a kind of leave due vide the office order Enst: No. 3976-82/E-II, dt: 11/20/19 (Copy enclosed)

District Police Officer
Chitral

FIXATION OF PAY.

Pay fixed in the light of order of H. Court of KPK Sorn Tribunal Peshawar vide order no. dt: 07-2-2019, W/16/19 letter no. 1959/efo/IAB dated 20-5-19 and office order no. 3976-82/E-II dt: 11-06-2019. (Copy enclosed)

Pay on	01-12-	2010	=	Rs. 3820/-	Per
"	01-07-	2011	=	Rs. 6180/-	(5400-260-1)
"	01-12-	2011	=	Rs. 6440/-	"
"	01-12-	2012	=	Rs. 6440/-	"
"	01-12-	2013	=	Rs. 6440/-	"
"	01-12-	2014	=	Rs. 6440/-	"
"	01-07-	2015	=	Rs. 8345/-	(6985-340)
"	01-12-	2015	=	Rs. 8345/-	"
"	01-07-	2016	=	Rs. 10870/-	(8596-420)
"	01-12-	2016	=	Rs. 10270/-	"
"	01-07-	2017	=	Rs. 12260/-	(10260-500)
"	01-12-	2017	=	Rs. 12260/-	"
"	03-01-	2018	=	Rs. 12820/-	(Post up gradation Pkt. 05 To 10)
"	01-12-	2018	=	Rs. 12820/-	"

Inspector
Legal Chitral

Pay arrears vide Sorn Tribunal KPK No. dt: 7.2.2019 vide DPO No. 4084-87 dt: 19/6/2019.

Paid amount of Pay & Ar. Rs. 24490/-

District Police Officer
Chitral

TQ-36
26/9/19

Signature and Stamp

ORDER

My this order will dispose off an enquiry under Removal from Service (Special Power) Ordinance 2000, against delinquent constable Khosh Noor Khan No. 67 of district Police Chitral, under Section 3 of Removal from Service (Special Power) Ordinance 2000.

Brief facts regarding the initiation of the enquiry are that on 04.05.2011 one Farid Ullah S/O yangar Khan R/O Torkhow a sepoy in Frontier constabulary in his application to the under signed lodged complaint against the delinquent Constable that to recruit his two relatives in Police Force he had obtained Rs. 86000/- and that neither he recruited his relative and nor returned the amount. On this application preliminary enquiry was conducted by DSP/Hqrs Chitral with found the application true justifying for proper Departmental action. Therefore he was Charge Sheeted along with Summary of Allegation and an Enquiry Committee comprising Abdul Hamid Khan SDPO, Chitral and Inspector Legal Mr. Sher Ahmad was constituted. The Enquiry Committee, after proper Enquiry found him guilty of misconduct and its detailed finding recommended him for major punishment He was produced before the under signed. He was issued final Show Cause Notice but his reply was not satisfactory. He was again produced in orderly room held on 10.10.2011. The under signed perused the enquiry file and his service record. Heard the delinquent FC in detail. He again failed to convince the under signed regarding the enquiry proceeding and about his innocence. After pursuing his facts and proofs on record, I have come to the conclusion that the charges against the accused Constable have proved beyond any reasonable doubt. The act and charge against the accused Official being serious which course a bad name to the Force. The official has got a bad reputation and charge against him being proved therefore upholding the enquiry Committee I order his dismissal from service with effect from 10.10.2011. Copy of this order and enquiry report be issued to him.

ANNOUNCED Order announced.

[Signature]
**Inspector Legal
CHITRAL**

[Signature]
District Police Officer,
Chitral

No. 19568-72 /E-II, dated Chitral the 13/10 /2011

Copies to:-

1. DSP / Hqrs Chitral / DSP Investigation.
2. SDPO Chitral.
3. R/WO.
4. Pay Officer.
5. Reader for OB.

67 / 13 / 10 / 2011

[Signature]
15/10/11

2
1
4
2
1
1



**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 189 /2012

188
07/2/12

Khushnoor Khan Ex-Constable No. 67, District Police Chitral.
(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunkhwa, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.
4. District Police Officer, Chitral.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, read with Section 10 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 against the Order dated 13-10-2011, whereby the appellant was awarded major penalty of "dismissal from service" against which his Departmental Appeal dated 23-11-2011 was rejected vide order dated 31-12-2011, communicated to the appellant on 01-02-2012.

Prayer in Appeal: -

10-12
7/2/2012

On acceptance of this appeal the original order, dated 13-10-2011, and the appellate order dated 31-12-2011, may please be set-aside and the appellant may be re-instated in service with all back benefits.

Respectfully Submitted:

1. That the appellant was enlisted as Constable in the District Police Chitral in the year 2007, ever since his appointment the appellant was performing his duties with full devotion and there was no complaint whatsoever regarding his performance.
2. That while serving in District Police Chitral, one Farid Ullah who was a Sepoy in Frontier Constabulary and with whom the appellant was having private dispute, lodged a false and baseless complaint that the appellant took money from him.

Inspector
Legal Chitral

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 189/2012

Date of Institution ... 07.02.2012

Date of Decision ... 07.02.2019



Khushnoor Khan, Ex-Constable No. 67, District Police Chitral.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home, Khyber Pakhtunkhwa, Peshawar and three others. ... (Respondents)

Mr. Yasir Saleem,
Advocate

--- For appellant.

Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER (Executive)

--- MEMBER (Judicial)

ATTESTE

[Signature]

EXAMINED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

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

ARGUMENTS

2. Learned counsel for the appellant argued that he was appointed as Constable in District Police, Chitral in 2007. On the allegations of taking illegal gratification disciplinary proceedings were conducted against him and thereafter major penalty of dismissal from service was imposed on him vide impugned order dated 13.10.2011. He preferred departmental appeal on 23.11.2011, which was rejected on 31.12.2011 but the order was never communicated to the appellant. He got the copy of the rejection order of his departmental appeal on 01.02.2012 followed by present service appeal. Enquiry was not conducted in mode and manner prescribed in the rules. Though statements of the complainant and other

[Signature]

Inspector
Legal Chitral

concerned official were recorded but no date was mentioned on those statements.

It was also not clear whether those statements were recorded in the presence of the appellant or otherwise. Moreover, the enquiry officer instead of providing opportunity of cross examination to the appellant resorted to a novel way of cross examination himself after framing questions. It was a serious departure from the rules and not tenable in the eyes of law. Though show cause notice was served on the appellant but copy of enquiry report was not annexed with the show cause notice. Reliance was placed on case law reported as 1993 PLC C.S 10.

3. On the other hand learned Assistant Advocate General argued that departmental proceedings were initiated against the appellant and after observance of all codal formalities major punishment was awarded to him.

CONCLUSION

4. Upon scrutiny of record, it transpired that though disciplinary proceedings were instituted against the appellant but major penalty of dismissal from service was awarded without fulfillment of codal formalities. We have examined the statements annexed with the enquiry report but it is not clear whether these statements were recorded in the presence of the appellant or not? Moreover, instead of providing of cross examination to the appellant, the enquiry officer framed questions with regard to the process of cross examination. However, this action on the part of the enquiry officer was clear deviation from the procedure laid down in the rules. Though show cause notice was served on the appellant but copy of enquiry report was not annexed with the same which is the basic right of the accused to enable him to offer proper defense. Attention is invited to 1993

Inspector
Legal Chitral

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.

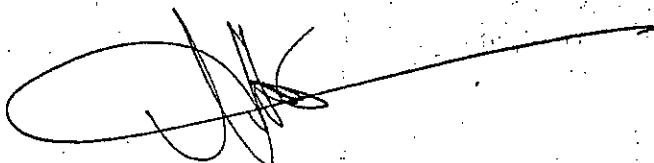
PLC C.S 10 that non-supply of enquiry report to the accused amounts to denial of providing him reasonable opportunity of defense.

5. Learned counsel for the appellant further argued that he was kept in the quarterguard for forty days and enquiry proceedings were conducted at the back of the appellant. It is evident from an application addressed to the Chief Minister, Khyber Pakhtunkhwa and annexed with the parawise comments of the respondents. On the previous date of hearing, the respondents were directed to produce complete record of enquiry and further clarification whether he was associated with the enquiry proceedings or otherwise? No such record was made available by the respondents on the date of hearing. In view of glaring discrepancies, lapses and illegalities committed by the respondents, there is sufficient justification to conduct de-novo enquiry in this case.

6. As a sequel to above, the appeal is accepted, impugned order dated 13.10.2011 is set aside and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry within a period of ninety days strictly in accordance with law and rules after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

Certified to be true copy

Chief Justice
Khyber Pakhtunkhwa
Services Tribunal,
Peshawar



(AHMAD HASSAN)
MEMBER

Muhammad Amin
(MUHAMMAD AMIN KHAN KIRDI) of Appellate
MEMBER

ANNOUNCED
07.02.2019

Inspector
Legal Cell

Date 18-2-19
Number of Words 1600
Copying Fee 10
Urgent 2
Total 12
Name of Copyist

18-2-19

ORDER.

In compliance of the order of honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar dated 07.02.2019 in Service Appeal No.189/2012 titled Ex-Constable Khosh Noor Khan No.67 V/S Govt. of Khyber Pakhtunkhwa etc and letter of the office of worthy Inspector General of Police, Khyber Pakhtunkhwa Peshawar vide No.1138/Legal dated 08.03.2019 Ex-Constable Khosh Noor Khan is hereby re-instated in service for the purpose of denovo enquiry. allotted constabulary No.189 and posted to Police Lines Chitral.

District Police officer,
Chitral

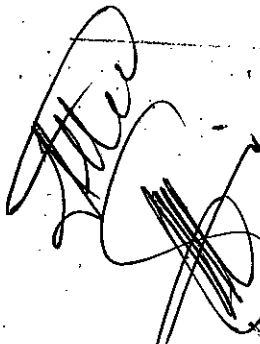
No. 2342-80/E-II dated Chitral the 03/04/2019.

Copy of above is submitted for information to:-

1. The Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa Peshawar.
2. The Assistant Inspector General of Police, Establishment, Khyber Pakhtunkhwa Peshawar.
3. DSP/HQ
4. RI/LO
5. Pay Officer
6. Pay Officer
7. OHC for OB
8. C.O Security Clearance

District Police Officer,
Chitral

Arrested


Inspector
Legal Chitral

ORDER.

In compliance of the order of Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar, dated 07.02.2019, in service appeal No.159/2012 titled Ex- Constable Khosh Noor Khan VS Government of Khyber Pakhtunkhwa Peshawar etc and letter of the office of the worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar vide No.1138/Legal dated 08.03.2019 Ex- Constable Khosh Noor Khan was re-instated in service for the purpose of Denovo enquiry vide this office order No.2342-50/E-II dated 03.04.2019 and Denovo enquiry was initiated in compliance of the above mentioned court order and letter of Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar vide No.1448/CPO/IAB/C &E, dated 15.04.2019.

After completion of the Denovo enquiry in light of the recommendation of the Denovo Enquiry Officer and letter of worthy IGP Khyber Pakhtunkhwa, Peshawar vide No. 1959/CPO/IAB dated 20.05.2019 Constable Khosh Noor Khan No.189 is re-instated in service and his absence period is considered as a kind of leave due.

District Police Officer,
Chitral

No. 3976-82/E-II dated Chitral the 11/06/2019.

Copy of above is submitted for information to:-

1. Assistant Inspector General of Police, Internal Accountability Branch, Khyber Pakhtunkhwa Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif Swat.
3. DAO Chitral
4. DSP/HQ
5. Pay Officer
6. RI/LO
7. EC
8. OHC for OB

District Police Officer,
Chitral

Accepted

Inspector
Legal Chitral