

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 10013/2020

Date of Institution 27.08.2020

Date of Decision ... 14.09.2020

Luqman S/o Mehraban Shah R/o Nisata Charsadda,
Ex-F. Constable No. 2739, PS: Tatara Peshawar.

... (Appellant)

VERSUS

Superintendent of Police, Hqrs: Peshawar and two others.

... (Respondents)

Mr. ARBAB SAIF-UL-KAMAL,
Advocate

--- For appellant.

MR. RIAZ AHMED PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN

--- MEMBER (JUDICIAL)

MR. ATIQ-UR-REHMAN WAZIR

--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through this single judgment, we intend to dispose of the instant service appeal as well as connected Service appeal bearing No. 10014/2020 titled "Hamid Khan Versus Superintendent of Police, Hqrs: Peshawar and two others" and Service Appeal bearing No. 10015/2020 titled "Majid Ullah Versus Superintendent of Police, Hqrs: Peshawar and two others", as similar questions of law and facts are involved in all the appeals.

2. The appellants in all the three appeals were proceeded against departmentally on the allegations that they were involved in a criminal case registered vide FIR No. 396 dated

24.02.2020 under section 365-A Police Station Chamkani. On conclusion of inquiry, vide separate orders dated 17.03.2020 passed by the competent Authority, the appellants were dismissed from service. The appellants filed separate departmental appeals, however the same were also dismissed, hence the instant service appeals.

3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the contentions of the appellants.

4. Learned counsel for the appellants has contended that on conclusion of the inquiry proceedings, the inquiry report was sent to the competent Authority, however he was bent upon awarding of penalty to the appellants, therefore, vide order dated 11.03.2020, he while pointing out certain deficiencies in the inquiry proceedings, returned back the matter to the inquiry officer for conducting proper inquiry; that neither during the inquiry nor during the re-inquiry, the appellants were in any way associated with the inquiry proceedings; that admittedly the statement of the complainant or any other witness were not recorded during the inquiry and no incriminating material whatsoever was collected in support of the allegations against the appellants; that in the subsequent inquiry report, the inquiry officer has not at all mentioned that the charges against the appellants stood proved; that on receipt of the inquiry report, no final show-cause notices were issued to the appellants, thereby depriving them of opportunity of defense as well as personal hearing; that the appellants have already been acquitted by the learned Judge Anti-Terrorism Court Peshawar vide order dated 09.02.2021, therefore, the very ground, which formed basis for awarding punishment to the appellants has vanished away. Reliance was placed on PLD 2003 Supreme Court 187, PLD 2010 Supreme Court 695 as well as judgment of this Tribunal rendered in Service Appeal bearing No. 1025/2017 decided on 03.07.2018.

5. On the other hand, learned Assistant Advocate General for the respondents has contended that departmental proceedings different from criminal proceedings, therefore, mere acquittal of the appellants in the criminal case cannot be considered as ground for their exoneration in the departmental proceedings conducted against the appellants; that the complainant of the criminal case was belonging to District Talagang falling in Punjab Province, therefore, it cannot be presumed that the complainant of the criminal case was having any ill-will with the appellants; that regular inquiry was conducted in the matter by complying all legal as well as codal formalities and the appellants were afforded ample opportunities of their defense; that the appellants remained indulged in illegal activities of moral turpitude and the charges against them stood proved in a proper legal inquiry, therefore, they have rightly been dismissed from service. Reliance was placed on 2021 PLC (C.S) 587, 2005 SCMR 1802, 2006 SCMR 554 as well as judgment dated 28.10.2016 of this Tribunal, rendered in Service Appeals bearing No. 1493/2013, 1494/2013 and 1495/2013.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. A perusal of the record would show that Niaz Muhammad, the then Deputy Superintendent of Police (Security) Civil Secretariat Peshawar was appointed as inquiry officer, who submitted his report to the competent Authority on 10.03.2020 and final show-cause notices were also issued to the appellants on the same day. However, the competent Authority instead of proceeding further with the matter, returned back the inquiry to the inquiry officer vide order dated 11.03.2020 with the observations, which are summarized as below:-

- i) *The statement of the complainant/abductee as well as statements of the accused appellants were not recorded during the inquiry.*

ii) *The inquiry officer was supposed to make identification of the accused/appellants from the complainant/abductee.*

iii) *The photograph of the appellants, showing their presence in the motorcar in which the complainant was abducted was not attached with the inquiry report.*

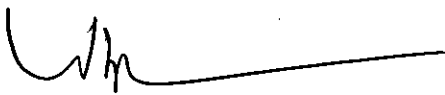
8. The subsequent report dated 16.03.2020, sent by the inquiry officer to the competent Authority would show that the inquiry officer could not record statement of the complainant/abductee as he was not traceable. Moreover, instead of recording statements of any witnesses in support of charges against the appellants, the inquiry officer chose a shortcut and annexed photocopies of statements of some of the witnesses recorded by the investigation officer in the criminal case. Similarly, instead of annexing the alleged photograph of the appellants, showing their presence in the motorcar in which the complainant was abducted, the photographs of the vehicle in which the complainant was allegedly abducted, were attached with the inquiry, without mentioning that the appellants are having any nexus with the vehicle shown in the photographs. Moreover, the appellants have not been provided any opportunity of cross-examination, which has created material dent in the inquiry proceedings.


9. The available record also does not show that the copies of the inquiry reports were provided to the appellants and an opportunity of personal hearing was afforded to them. On receipt of the finding of the inquiry officer on 16.03.2020, the appellants were straight away dismissed by the competent authority vide the impugned order dated 17.03.2020, without issuing of show cause notices to them. This Tribunal has already held in numerous judgments that the issuance of final show cause notice along with the inquiry report is must under Police Rules, 1975. Reliance is also placed on the judgment delivered by august Supreme Court of Pakistan reported as PLD 1981 SC-176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of the final show

cause notices and non-supply of copies of the findings of the inquiry officer to the appellants has caused miscarriage of justice as in such a situation, the appellants were not in a position to properly defend themselves in respect of the allegations leveled against them. Moreover, the appellants have already been acquitted by the learned Judge Anti-Terrorism Court Peshawar vide order dated 09.02.2021, therefore, the very ground, which formed basis for awarding punishment to the appellants has vanished away.

10. In view of the foregoing discussion, the instant service appeal as well as connected Service appeal bearing No. 10014/2020 titled "Hamid Khan Versus Superintendent of Police, Hqrs: Peshawar and two others" and Service Appeal bearing No. 10015/2020 titled "Majid Ullah Versus Superintendent of Police, Hqrs: Peshawar and two others", are accepted and the appellants are reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
14.09.2021


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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
14.09.2021

Appellant alongwith his counsel Mr. Arbab Saif-ul-Kamal, Advocate, present. Mr. Muhammad Raziq, Head Constable alongwith Mr. Riaz Ahmed Painsdakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant service appeal as well as connected Service appeal bearing No. 10014/2020 titled "Hamid Khan Versus Superintendent of Police, Hqrs: Peshawar and two others" and Service Appeal bearing No. 10015/2020 titled "Majid Ullah Versus Superintendent of Police, Hqrs: Peshawar and two others", are accepted and the appellants are reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
14.09.2021


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


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

16.03.2021

Due to tour of Camp Court Abbottabad and shortage of Members at Principal Bench Peshawar, the case is adjourned to 25.05.2021 before S.B.


Reader

25.05.2021

Counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Muhammad Raziq, H.C for the respondents present.

Representative of the respondents seeks further time to submit written reply/comments. Respondents are directed to submit the written reply/comments in office within 10 days. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 14.09.2021 before the D.B.


Chairman

Reply submitted

24.12.2020

Counsel for the appellant present.

It is duly noted in the impugned order dated 17.03.2020 that during departmental proceedings against the appellant the opinion from DSP (Legal) was obtained. In the opinion, it was clearly laid that the enquiry officer had not recorded the statement of complainant of the FIR. That, the statement of accused was also not made part of the record by the enquiry officer. In addition, further shortcomings in the enquiry were pinpointed in the opinion. In view of the legal opinion a fresh enquiry was constituted, however, the enquiry officer could not bring home the allegations against the appellant through convincing evidence. On the other hand, the competent authority went on to penalize the appellant with major penalty of removal from service.

In view of the available record and arguments of learned counsel, instant appeal is admitted to regular hearing subject to all just exceptions. 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 16.03.2021 before S.B.

Appellant Deposited
Security & Process Fee

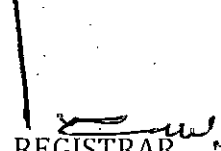

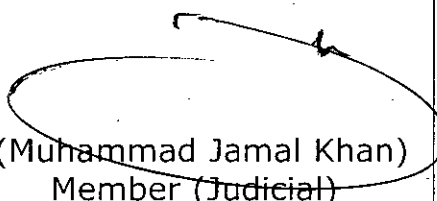
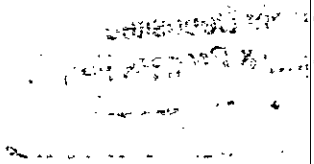

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 10013 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/09/2020	<p>The appeal of Mr. Luqman resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/10/20</u></p> <p style="text-align: right;"> CHAIRMAN</p>
19.10.2020		<p>The legal fraternity is observing strike today, therefore, the case is adjourned to 24.12.2020 on which date to come up for preliminary hearing before S.B.</p> <p style="text-align: right;"> (Muhammad Jamal Khan) Member (Judicial)</p> <p style="text-align: right;"></p>

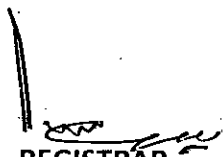
P-19

The appeal of Mr. Luqman son of Mehraban Shah Ex-F. Constable No. 2739 PS Tatara Peshawar received today i.e. on 27.08.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures-I and K of the appeal are illegible which may be replaced by legible/better one.

No. 2581 /S.T,

Dt. 02/09 /2020


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Adv. Pesh.

Mr
Re-submitted after
removing the objections



03-09-20

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 10013/2020

Luqman

versus

SP & Others

I N D E X

S. No	Documents	Annex	P. No.
1.	Memo of Appeal		1-4
2.	FIR dated 24-02-2020	"A"	5
3.	Suspension order dated 26-02-2020	"B"	6
4.	Charge Sheet / Allegations, 26-02-20	"C"	7-8
5.	Bail Application dated 04-03-2020	"D"	9-10
6.	Enquiry Report dated 10-03-2020	"E"	11-12
7.	Final Show Cause Notice dated 10-03-20	"F"	13
8.	Reply to FSCN dated 10-03-2020	"G"	14
9.	Letter dated 11-03-2020	"H"	15
10.	Released on Bail order dated 13-03-20	"I"	16-17
11.	Rectification order dated 16-03-2020	"J"	18
12.	Dismissal order dated 17-03-2020	"K"	19
13.	Representation dated 16-04-2020	"L"	20
14.	Rejection order dated 10-07-2020	"M"	21

Through

Appellant

Saadullah Khan

Saadullah Khan Marwat
Advocate.

21-A Nasir Mansion,
Shoba Bazaar, Peshawar.
Ph: 0300-5872676

Dated 25-08-2020

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. _____/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9383

Dated 27-8-2020

Luqman S/O Mehraban Shah

R/o Nisata Charsadda,

Ex. F. Constable No. 2739,

PS; Tatara Peshawar. Appellant

Versus

1. Superintendent of Police,
Hqrs: Peshawar.
2. Capital City Police Officer,
Peshawar.
3. Provincial Police Officer,
KP, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OB. NO. 892 DATED 17-03-2020 OF R. NO.
01, WHEREBY APPELLANT WAS DISMISSED FROM
SERVICE OR OFFICE ORDER NO. 812-17 / PA DATED
10-07-2020 OF R. NO. 02 WHEREBY
REPRESENTATION OF APPELLANT WAS REJECTED
FOR NO LEGAL REASON:

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Filed to-day

[Signature]
Registrar
Respectfully Sheweth;

27/8/2020

1. That appellant was enlisted in service as Foot Constable in the year 2013 and served the department till the date of dismissal from service.

Re-submitted to-day
and filed.

[Signature]
Registrar
3/9/2020

2. That on 24-02-2020 complainant Muhammad Sharif S/O Ghulam Rasool R/O Talagung District Chakwal presently Khazana Sugar Mill Peshawar lodged report in PS: Chamkani against unknown persons u/s 365A PPC by snatching huge amount from him. (Copy as annex "A")
3. That on 26-02-2020, appellant was suspended from service by R. No. 01. (Copy as annex "B")
4. That on 26-02-2020, appellant was served with Charge Sheet along with Statement of Allegation to the affect:-

"That you FC Luqman No. 2739, FC Majid No. 5668 and FC Hamid No. 5193 were involved in a criminal case mentioned above which amounts to gross misconduct on his part and is against the discipline of the force. The said Charge Sheet was not served upon him, so did not reply the same. (Copy as annex "C")
5. That in-fact the occurrence was of 22-02-2020 which was altered into 24-02-2020 (cutting seems quite evident) by the local police, yet appellant etc, were taken into custody on 22-02-2020 and not on 24-02-2020, so after rejection of Bail Application from the court of law, approached to Peshawar High Court, Peshawar for release on bail on 04-03-2020. (Copy as annex "D")
6. That enquiry report was finalized by Deputy Superintendent of Police (Security) Civil Secretariat Peshawar who submitted the same before the authority on 10-03-2020 for onward action. The enquiry was not conducted as per the mandate of law. (Copy as annex "E")
7. That on 10-03-2020, appellant was served with Final Show Cause Notice which was not replied as at the same time he was in Jail. (Copies as annex "F" & "G")
8. That on 11-03-2020, R. No. 01 wrote letter to Inquiry Officer that enquiry was conducted in haphazard manner which would give benefit to the accused in appeal for reinstatement in service. (Copy as annex "H")
9. That on 13-03-2020, appellant was released on bail by the hon'ble Peshawar High Court Peshawar. (Copy as annex "I")

10. That on 16-03-2020, Inquiry Officer did try to rectify the deficiency in enquiry. (Copy as annex "J")
11. That on 17-03-2020, appellant was dismissed from service under Police Rules 1975 by R. No. 01. (Copy as annex "K")
12. That on 16-04-2020, appellant submitted representation before R. No. 02 for reinstatement in service which was rejected on 10-07-2020. Copy of the same was received from the office on 24-08-2020. (Copies as annex "L" & "M")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That the story narrated by the complainant as well as by the department is totally against the fact. The complainant as well as the respondents relied upon video regarding abduction of the complainant clearly shows that he in presence of another police officials sit in the vehicle at his own discretion and was never abducted by the appellant.
- b. That complainant seems to be highly player as he himself is involved in such like cases.
- c. That enquiry was not conducted as per the mandate of law because when the enquiry report was submitted to the authority for onward action against the appellant, he pointed out numerous deficiencies in the same.
- d. That appellant was arrested on 22-02-2020. He was at the same time being the bar but no Charge Sheet or Statement of Allegations was served upon him in the Jail.
- e. That as and when Final Show Cause Notice is served upon the defaulter, it is mandatory for the authority to supply him whole proceedings of the enquiry but in the case in hand the same lacks despite the fact that at the same time appellant was in Jail, so he was unable to submit comprehensive reply to the Final Show Cause Notice.
- f. That no statement of any witnesses was recorded in the presence of appellant nor he was afforded opportunity of cross examination, being mandatory.

- g. That the matter was not dealt with as per the mandate of law, so is of no legal effect.
- h. That complainant is habitual in adverse activities and makes complaints to mint money. From his appearance in the video he does not seem to be Painter.
- i. That whole of the story narrated in the FIR is manipulated, concocted and based on malafide.

It is, therefore, most humbly prayed that on acceptance of appeal, order dated 17-03-2020 and 10-07-2020 of the respondents be set aside and appellant be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.



Appellant

Through



Saadullah Khan Marwat



Arbab Saiful Kamal



Amjad Nawaz
Advocates.

Dated 25-08-2020

ایگزیرول پولیس برسرحدہ قائم نمبر ۲۷

گورنمنٹ پبلک اسکول، راج پور، ایف ڈی، ۲۲۸۵/۱۳، پورٹ ٹھکانہ، برسرحدہ، ۲۰.۰۸.۲۰۱۱، (۲۰۰۸) (۲۰۰۸) (۲۰۰۸) (۲۰۰۸)

قائم نمبر ۲۵-۱۵ (۱)

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردفعہ ۱۵۴ مجموعہ ضابطہ فریڈمان

نمبر	تاریخ	محل وقوع
۱۔	تاریخ وقت رپورٹ	علاقے 396
۲۔	نام و سکونت اطلاع دہندہ مستوف	37803-4431980-7 63120188283
۳۔	مختصر کیفیت جرم (مصدقہ) حال اگر کوئی کیا ہو۔	مختصر کیفیت جرم (مصدقہ) حال اگر کوئی کیا ہو۔
۴۔	جائے وقوعہ فاصلہ تقاب سے اور سمت	365A
۵۔	نام و سکونت ملزم	ممنوعہ نواح پلازہ
۶۔	کارروائی جو تفتیش کے مطابق کی گئی یا اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو	
۷۔	تھانہ سے روانگی کی تاریخ و وقت	

مختصر کیفیت جرم (مصدقہ) حال اگر کوئی کیا ہو۔
جائے وقوعہ فاصلہ تقاب سے اور سمت
نام و سکونت ملزم
کارروائی جو تفتیش کے مطابق کی گئی یا اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو
تھانہ سے روانگی کی تاریخ و وقت

ابتدائی اطلاع نیچے درج کر لیا گیا ہے

جو وقت ملکہ راج پور پولیس ایف ڈی، ۲۲۸۵/۱۳، پورٹ ٹھکانہ، برسرحدہ، ۲۰.۰۸.۲۰۱۱، (۲۰۰۸) (۲۰۰۸) (۲۰۰۸) (۲۰۰۸)

مختصر کیفیت جرم (مصدقہ) حال اگر کوئی کیا ہو۔
جائے وقوعہ فاصلہ تقاب سے اور سمت
نام و سکونت ملزم
کارروائی جو تفتیش کے مطابق کی گئی یا اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو
تھانہ سے روانگی کی تاریخ و وقت

مختصر کیفیت جرم (مصدقہ) حال اگر کوئی کیا ہو۔
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تھانہ سے روانگی کی تاریخ و وقت

Adina
[Handwritten Signature]

B

6

ORDER

The following officials are hereby placed under suspension and closed to Police Lines with immediate effect due to involvement in a criminal case vide FIR No.396 dated 24.02.2020 u/s 365-A PS Chamkani.

S #	Name & No.	Place of posting
01	FC Lugman No.2739	PS Tatara
02	FC Majid Ullah No.5668	PS Tatara
03	FC Hamid No.5193	Police Lines

Charge sheet & summary of allegation are being issued to them separately. The E.O is directed to complete enquiry within stipulated period as desired by the W/CCPO.


**SUPERINTENDENT OF POLICE
HEADQUARTERS PESHAWAR**

O.B No 663
Dated 26/2/2020

No. 525-36 /PA/SP/H.Qrs: dated Peshawar, the 26-2- /2020

Copy forwarded to:

1. The Capital City Police Officer, Peshawar.
2. The SSP Operations Peshawar.
3. DSP Civil Secretariat & DSP H.Qrs: Peshawar
4. Pay Officer
5. CRC/OASI /FMC



C

7

26-2

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that FC Lugman No.2739, FC Majid No.5668 & FC Hamid No.5193 of Capital City Police Peshawar with the following irregularities.

"That you FC Lugman No.2739, FC Majid No.5668 & FC Hamid No.5193 were involved in a criminal case vide FIR No.396 dated 24.02.2020 u/s 365-A PS Chamkani. This amounts to gross misconduct on your part and is against the discipline of the force."

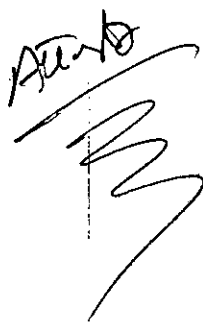
You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

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

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR



8

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that FC Luqman No.2739, FC Majid No.5668 & FC Hamid No.5193 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

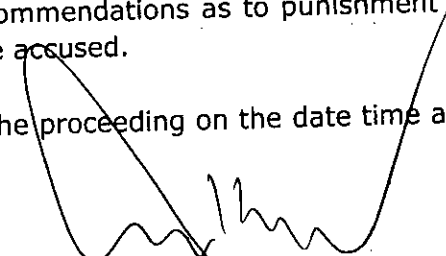
STATEMENT OF ALLEGATION

"That FC Luqman No.2739, FC Majid No.5668 & FC Hamid No.5193 was involved in a criminal case vide FIR No.396 dated 24.02.2020 u/s 365-A PS Chamkani. This amounts to gross misconduct on his part and is against the discipline of the force."

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

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

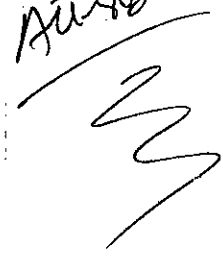
3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.



SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 45 /E/PA, dated Peshawar the 26/2 2020

1. DSP Civil Sect is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

Auro




D 9
BEFORE THE PESHAWAR HIGH COURT PESHAWAR

CrM BA NO 628/P/2020



- 1) Majid
- 2) Hamid sons of Niaz Khan
R/o Shabqadar Sarwani Distt: Charsadda Presently.
Residing at Pakha Gulam Peshawar.
3. Luqman Khan s/o Meharban Shah
R/o Nisata Distt: Charsadda Presently
Residing at Ring Road Peshawar..... Petitioners

VERSUS

1. The State.
2. Muhammad Sharif s/o Ghulam Rasool
R/o Talagang Distt: Checkwal presently
Residing at Khazana
Sugar Mills Peshawar;..... Respondents.

Case FIR NO 396 Dated 25/2/2020
U/S 365-A. P.S. Chamkani (Peshawar)
=====

Application for the released of the accused
/petitioners on bail till the final disposal of the
case.
=====

FILED TODAY
Deputy Registrar
04 MAR 2020

Respectfully Sheweth:-

1. That the accused/ petitioners stand charged in the instant case by the complainant and since their arrest they are in judicial lock up in Central Prison Peshawar. (Copy of FIR is annex "A")
2. That the accused /petitioners submitted bail application for their release in the court of ATC, Peshawar, but the same was dismissed on 3/3/2020. (Order is annex B & C)
3. That now the accused/ petitioners seeks their released on bail on the following ground amongst other:-

GROUNDS.

- A. That the accused/ petitioners are innocent in the instant case and have been implicated falsely and maliciously for ulterior motive by the complainant
- B. That the accused/ petitioners have not been charged in the FIR.

ATTESTED
EXAMINER
Peshawar High Court

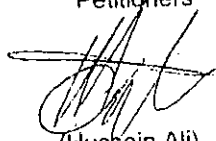
Sub

10

- C. That there is no identification parade of the accused/ petitioners to connect the accused/ petitioners with the commission of offence.
- D. That there is no confession of the accused/ petitioners in the instant case.
- E. That there is no direct or indirect evidence against the accused/ petitioners on the file.
- F. That the recovery of cash amount planted against some of the accused/ petitioners, are the cash money taken from the House of the accused/ petitioners and the same are the personal belonging of the petitioners and are not the case property at all.
- G. That the complainant after his satisfaction also exonerated the accused/ petitioners from the case in hand and has got no objection on the grant of bail.
- H. The charged against the accused/ petitioners requires further probe in the case and such, the case of the accused/ petitioners requires inquiry.
- I. That the accused/ petitioners ready to furnish reliable sureties for the entire satisfaction of this Hon:ble Court.

It is therefore, most humbly prayed that on acceptance of this bail application, the accused/ petitioners may graciously be released on bail till the final disposal of the case.

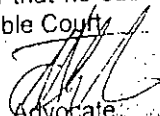
FILED TODAY
Deputy Registrar
04 MAR 2020

Petitioners
Through 
(Hussain Ali)
Advocate, Peshawar.

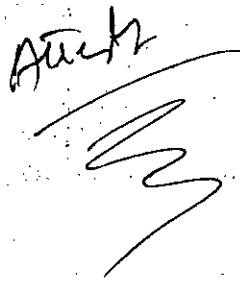
NOTE:-

As per instruction of our client certified that no such bail application has been filed by the petitioner, before this Hon:ble Court.


CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Appointed Under Article 87 of
1973 Constitution of Pakistan Order 1984
14 MAR 2020


Advocate

ATTESTED
EXAMINER
Peshawar High Court



E

11

Subject: INQUIRY AGAINST FC LUQMAN KHAN NO. 2739, FC MAJIDULLAH NO.5668, HAMID KHAN NO.5193 CCP PESHAWAR

Memo:

Please refer to your office letter No.45/E/PA, dated 26/02/2020 on the subject cited above.

ALLEGATIONS:-

That Constable Luqman No.2739, FC majidullah5668, and FC Hamid khan 5193 was involved in a criminal case vide FIR No.396 dated 24.02.2020 u/s 365 A PS Chamkani.

PROCEEDINGS:-

To dig out the real fact the alleged officials was behind the bar therefore the undersigned visits the Central Jail Peshawar where the Jail authority produces the alleged official. Charge sheet and summary of allegation was served upon them. They were personally heard one by one. They were also cross examined however their statement were not recorded as they demand time for reply.

To further verify the inquiry posting record of the all alleged officials were obtained from OSI Branch. Which reveals that Constable Hamid has been remain posted in different Police Station and suspended on 26.06.2019. While reinstated in service on 17.01.2020. His service record also examined which reveals, that another inquiry vide Senior Superintendent of Police Operation, Peshawar letter No.108-12/PA dated 10.01.2020 was awarded the punishment of forfeiture of 01 year approved service. His service record is full of bad entries.

The posting record of FC Luqman was examined which shows that he has remained posted is different Police Station. His posting record also examined by undersigned which reveals that he has a bad entries and has awarded minor punishment vide OB No.1006 dated 29.08.2017. Posting record of FC Majid Ullah was examined which shows that he is also remain posted at best Police Stations of the District Peshawar like Pharipura, Chamkani, Hayatabad, His service record examined which reveals that's there is fourteen bad entries (L.w.o Pay E/drill & warning). While one minor punishment vide OB No.1476 dated 20.06.2019.

The OII of PS Chamkani Inspector Mukhtiyar Khan was summoned appear before the undersigned and his statement recorded. He stated that he is the CO Rural Circle Peshawar Investigation. FIR No.396 dated 25.02.2020 u/s 365-A was handed over to him for investigation. In which the SHO of PS Chamkani arrested the three alleged officials. Who were produce by the CO to the concerned Court but the custody was refused by the Judge and they was sent to judicial lockup. He also produces two photographs of the vehicles in which the abducty was kidnapped for ransom. Attached with enquiry file.

Similarly he also produced the photographs near Peshawar Motorway toll plaza in which the all the accused has been shown and they are sitting the abductees namely Muhammad shareef.

The SHO of Police Station Insp: Hafeez -Ur- Rahman who submitted his reply and stated that he has lodge a FIR No.396 dated 25.02.2020 u/s 365-A PS Chamkani and have arrested the accused Namely Hamid, Majid s/o Maj Ali r/o Sarwarni Charsadda and Luqman s/o Mahraban Shah village of Nisata Charsadda and has recovered Rs: 8000/- Rupees from the possession of Luqman and Rs: 10,550/- from the possession of Majid Khan.

Atul


The witness of the recovery of the recovery memo FC Muhammad Zubair No.173 was also examined and his statement recorded he verify the statement of SHO.

To further verify the allegations the ex-SHO PS Tatara Hamayun khan was summoned who stated that he transfer Luqman and Majid FCs from PS Pharipura to PS Tatara on 23/1/2020.on general duty. While on 23/2/2020 above name constables were absented.

The Moharrar of PS Tatara MASI Gulzar was summoned appear before the undersigned and his statement recorded. He stated that constable Majid, and Luqman were deputed for duty in plain clothes on the direction of SHO and their proceeding /return was attached with SHO. In this connection he produces some DD reports which are also attached.

The MASI of the police line was summoned who appear before the undersigned and recorded his statement. He stated that constable Hamid No.5193 has absented on 07/01/2020.valid DD no 104 and still absent.

To further verify the allegations the complaint of the case namely Sharif-Ud-Din s/o Gulam Rasool r/o talagang District Chakwal present khazana sugar mill was summoned through SHO PS/Khazana. But he could not appear before the undersigned to record his statement.

The replies of the alleged officials was received which is un satisfactory.

FINDING:-

After going through the inquiry papers statements of the witness and statements of the alleged officials and cross examinations the undersigned came to the conclusion that there is sufficient evidence on case file which connect the alleged officials with the allegations. All allegations has been proved and the alleged found guilty of gross misconduct. They are not deserved to be remain in Police department.

Keeping in view the above mentioned factors under Police 1975 Rule 4(1), (b) they are recommended for major penalty.

(Signature)
(Niaz Muhammad)
Deputy Superintendent of Police
(Security), Civil Secretariat,
Peshawar.

No. 56 /R, Dated 10 / 03 / 2020

Encl (01)

*issue fined
show cause
notice*

W/SP/HQrs

AKS
(Signature)

(Signature)
SP tal
10/3/20

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FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, FC Lughman No.2739, FC Majid No.5668 & FC Hamid No.5193 the final show cause notice.

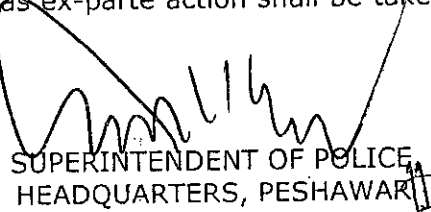
The Enquiry Officer, DSP Civil Secretariat, after completion of departmental proceedings, has recommended you for major punishment for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you FC Lughman No.2739, FC Majid No.5668 & FC Hamid No.5193 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975:

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.


SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

No. 4519/PA, SP/HQrs: dated Peshawar the 15/3/2020. ^{15/3}

Copy to official concerned

خدا - سرری نوم دنی مسکن لغان 2739
FC
نہ شوکار نوشہ کا ایک نذر وصول ہو گیا

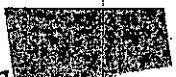
تھے شوکار نوشہ کا ایک نذر
وصول ہو گیا

ایف سی 2739
9/3/20
دفعہ 13

د. لغمان 2739 دہ سرری ہائی کورٹ کے لئے



G



شماره پرونده: 2737/2020/PA/US/14

موضوع: درخواست اجراء

مطلب: درخواست اجراء

تاریخ: 10/3/2020

69

تعداد کاپی: 1

[Signature]

10/3/2020

Atul



H 15
OFFICE OF THE
SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

Phone No. 091-9210737

No. 258 /PA, Dt: 11/3/2020

TO: The DSP Security (E.O),
Civil Secretariat, CCP Peshawar

Subject: DEPARTMENTAL ENQUIRY AGAINST FC LUOMAN NO.2739, FC
MAJID NO.5668 & FC HAMID NO.5193

Memo:

The said inquiry is returned herewith with the remarks that Enquiry Officer has not recorded statement of the complainant (Abductees) who is star witness to the case. Enquiry Officer was supposed to record his statement and ensure identification of the alleged constables charged for the said misconduct. Apart from it, statement of accused constables has also been not incorporated in the inquiry report. More-so, the E.O in his report has admitted presence of accused constables, inside Motor Car through photographs but no photo has been attached which can show presence of the alleged constables inside the car while abducting the complainant which cast shadow on proving their guilty.

Therefore, E.O is directed to collect incriminating evidence to connect the accused with the commission of their misconduct which is heinous in nature but instead of doing so, he completed the instant inquiry in haphazard manner, which will definitely give benefit to accused in their subsequent appeal for re-instatement. It is further directed that the enquiry may be completed in all respect and then forwarded to the undersigned for final decision, Please.

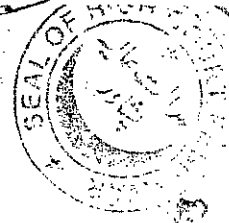
Encl: (complete enquiry file)


SUPERINTENDENT OF POLICE
HQRS: PESHAWAR





16
JUDGMENT SHEET
HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT



Cr. Misc. (BA) No. 628-P/2020.

Majid and two others
Vs
The State and another

Date of hearing 13.03.2020

Petitioner (by) Mr. Hussain Ali Advocate

State (by) Mr. Moiz-ul-Din AACy

Complainant (by) Mr. Muhammad Sharif in person

JUDGMENT

MUHAMMAD NASIR MAHFOOZ, J.- Through the instant petition, accused-petitioners, Majid, Hamid and Luqman, seek their release on bail in case FIR No.396, dated 25.02.2020 under section 365-A PPC registered at Police Chamkani, Peshawar.

2. Arguments heard and record perused.
3. As per contents of FIR, complainant has not directly charged any one for the commission of offence but later on, petitioners were charged on suspicion for the commission of offence which does not find any corroboration from the record available on file till this

ATTESTED
EXAMINER
Peshawar High Court

Handwritten signature

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day of investigation. It appears, that the petitioners are not directly involved in the commission of offence and thus, entitled to be released on bail being a case of further inquiry, though the complainant has submitted an affidavit, whereby the petitioners have been absolved from any liability in the commission of offence but being non-compoundable offence, it could not be considered for grant of bail.

4. In view of the above, the instant bail application is allowed and the accused-petitioners are admitted to bail, provided each one of them furnishes bail bonds in the sum of Rs.2,00,000/- with two local sureties each in the like amount to the satisfaction of learned trial Court. The sureties shall be reliable and men of means.

Announced
13.03.2020

[Signature]
JUDGE

(S.B) Hon'ble Mr. Justice Muhammad Nasir Mahfooz
Noor Shah

No. 31409
 Date of Presentation of Application 13/3/20
 No of Pages 4-7
 Copying fee _____
 Total 16
 Date of Preparation of Copy 14/3/20
 Date of Delivery of Copy 14/3/20
 Received By [Signature]

[Signature]
 CERTIFIED TO BE TRUE COPY
 EXAMINER
 Peshwar High Court, Peshwar
 Authorized Under Article 232 of
 The Constitution of Pakistan
 14 MAR 2020

[Signature]

Reference Attached

Subject: **INQUIRY AGAINST FC LUQMAN KHAN NO. 2739, FC M
NO.5668, HAMID KHAN NO.5193 CCP PESHAWAR**

Memo:

In continuation to this office letter No. 45/E/PA dated 10.03.2020 on the subject cited above.

The inquiry was sent to the high-ups for further proceedings but it was back sent to the undersigned with the following deficiencies.

1. That the statement of the complainant/abducted namely Muhammad Sharif r/o Talagang Punjab has not been recorded.
2. That the statement of the alleged official has not been recorded.
3. That the Photographs of the vehicles in which the complainant was kidnapped is also not available.

To complete the inquiry report the complainant was summoned through SHO Khazana, on 11.03.2020 to produce the complainant but he reported back that he searched the complainant but he does not know by anybody and his report was attested by village councillor namely Nazim Haji Basharat Khan.

The case file FIR No.396 dated 24.02.2020 was examined in which the CO Investigation Circle/Rural Inspector Mukhtiyar Khan has recorded the statement of the complainant before the Judicial Magistrate. Copy of 164 Cr.PC is attached on flag (N).

Similarly the statement of the witness of the recovery memo has also been recovered shown with flag (P).

The photographs of the vehicle is attached with flag (I, M).

The statements of the alleged officials has been shown with flags (C, D, E).

All the deficiencies has been completed. The report is submitted.

(Niaz Muhammad)
Deputy Superintendent of Police
(Security), Civil Secretariat,
Peshawar.

No. 63 /R, Dated 16 / 03 / 2020
E-2 (89)

W/SP/HQrs

PA
For legal procedure
17/03/2020

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ORDER

This office order relates to the disposal of formal departmental enquiry against FC Lugman Khan No.2739, FC Majid Ullah No.5668 & FC Hamid Khan No.5193 involved in criminal case vide FIR No:396 dated ~~24.02.2020~~ u/s 365-A PS Chamkani.

In this regard, they were placed under suspension & issued charge sheet and summary of allegations. DSP Civil Secretariat was appointed as Enquiry Officer. He conducted the enquiry & submitted his report/finding that there is sufficient evidence is available in case file to connect the alleged officials with the allegations leveled against them & found them guilty. The E.O further recommended major punishment for the defaulter officials vide No.56/R, dated 10.03.2020.

Upon the finding of E.O, they issued final show cause notice to which they received in Central Jail Peshawar & replied but their replies found unsatisfactory.

Upon which, opinion of DSP Legal was sought. He opined that "the E.O has not recorded statement of the complainant (abductees) who is star witness to the case. Enquiry Officer was supposed to record his statement and ensure identification of the alleged constables charged for the said misconduct. Apart from it, statement of accused constables has also been not incorporated in the inquiry report. More-so, the E.O in his report has admitted presence of accused constables, inside Motor Car through photographs but no photo has been attached which can show presence of the alleged constables inside the car while abducting the complainant which cast shadow on proving their guilty. The E.O may collect incriminating evidence to connect the accused with the commission of their misconduct which is heinous in nature."

In light of DSP Legal opinion, the enquiry papers were again referred to E.O with direction to collect evidence vide letter No.758/PA dated 11.03.2020. He conducted re-enquiry and submitted his report that complainant was called through SHO but he reported that he could not trace out the complainant. The case file was again examined and statement of Inspector Mukhtiar Khan CO Investigation Rural was recorded. Moreover, statement of the defaulter officials, witness of recovery memo: and photograph of vehicle has already been shown & attached.

In the light of the above discussion, recommendations of E.O & other material available on record it is proved beyond any shadow of doubt that they are guilty of this misconduct and not deserve an iota of leniency as such black sheep bring bad name for Police department. Therefore, they are hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect.

**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

OB. NO. 892 / Dated 17/3 /2020
No. 860-66 /PA/SP/dated Peshawar the 17/3 /2020

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

- ✓ Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office, OASI,
- ✓ -CRC & FMC along-with complete departmental file.

No 48 - CB
7-4-2020

Dy: No. 417 PA-CCPO
No. 30-4-2020
Encl:

بعضو جناب (سی سی پی / او) صاحب پشاور

اپیل برائے بحالی ملازمت برخلاف فیصلہ ایس بی ہیڈ

کوآرڈر مورخہ 17.03.2020

جناب عالی!

ساکنان حسب ذیل عرض رساں ہیں۔

۱۔ یہ کہ ساکنان کو بروئے حکم بالا ایس بی ہیڈ کوآرڈر صاحب نے ملازمت سے برطرف کیا ہے۔ (نقل فیصلہ لف ہے)۔

۲۔ یہ کہ ساکنان کخلاف جو جھوٹی دعوی داری زیر دفعہ 365-A ہوئی تھی، اس میں ساکنان برضمانت رہا ہو چکے ہیں اور تاخلاف ٹرائیل ہو تاہی ہے۔

۳۔ یہ کہ جب تک ساکنان ٹرائیل میں بجرمان نہ گردانے جائیں، تب تک ساکنان کو ملازمت سے برخاست کرنا قانون وانصاف سے ماوراء ہے۔

۴۔ یہ کہ ساکنان نے اپنے فرائض کی بجا آوری میں کبھی کوئی کوتاہی نہیں کی ہے اور کبھی بھی اپنے مجاز افسران کو شکایت کاموقع نہیں دیا ہے۔

۵۔ یہ کہ ساکنان بال باچہ دار لوگ ہیں اور ساکنان کو ملازمت سے برخاست کرنا ساکنان کے بال بچوں کے منہ سے نوالہ چھیننے کے مترادف ہے۔

لہذا آپ صاحبان سے عاجزانہ اپیل ہے کہ بمظاہوری اپیل ہذا ساکنان کو

ملازمت پر بحال کرنا حکم صادر فرمائیں۔

الرقوم: 16.04.2020

DSP SB
Legal

Per comments
Pl.

My PA
also
30/4

سیٹلنگ

لقمان خان (سیٹلنگ نمبر 2739)

0344-8156615

0344-9219274

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سنائیل

F.M.C

put in record

Dy. Sndt: Police
Legal: CCR/Peshawar



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**OFFICE OF THE
CAPITAL CITY POLICE OFFICER
PESHAWAR**

Phone No. 091-9210989
Fax No. 091-9212597

ORDER

This order will dispose of departmental appeal preferred by Ex- Cosntable Luqman No.2739 of PS Tatara who was awarded the major punishment of "dismissal from service" under Police Rules-1975 by SP/HQrs Peshawar vide OB No.892, dated 17-03-2020.

2- The allegations leveled against him were that he alongwith FC Majid Ullah No.5668 of PS Tatara and FC Hamid Khan No.5193 of Police Lines Peshawar was placed under suspension vide OB No.663, dated 26-02-2020 and proceeded against departmentally for involvement in criminal case vide FIR No. 396, dated 24-02-2020 u/s 365-A Police Station Chamkani.

3. The SP/HQrs Peshawar issued him proper Charge Sheet and Summary of Allegations. DSP/ Civil Secretariat Peshawar was appointed as enquiry officer to scrutinize the conduct of the delinquent official. The enquiry officer after conducting proper departmental enquiry into the matter, submitted his finding vide which he recommended the appellatant for major punishment. The competent authority after perusal of the finding of the enquiry officer issued him Final Show Cause Notice to which his reply was received and found unsatisfactory. Hence he was awarded the above major punishment of dismissal from service.

4- He was heard in person in OR. During personal hearing the appellatant failed to submit any plausible explanation in his defence. Therefore, his appeal for setting aside the punishment awarded to him by SP/HQrs Peshawar vide OB No. 892, dated 17-03-2020 is hereby dismissed/rejected.

Muhammad Ali Khan
(MUHAMMAD ALI KHAN) PSP
CAPITAL CITY POLICE OFFICER
PESHAWAR.

No. 812-17 /PA dated Peshawar the 10/07/2020.

Copies for Information and n/a to the:-

1. SP/HQrs Peshawar.
2. OSI/CRC.
3. Accountant CCP.
- ✓ 4. FMC along with FM
5. Official concerned.

Attest

کیورٹ جج صاحب سر جسٹس ٹیڑھو محل صوبہ سندھ پشاور

مخواب ایڈوائس
 نام محمد نويس وغیرہ
 دعویٰ اپیل

پاکستان ٹریڈنگ اینڈ ایکسچینج

مختارہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹم انسٹانڈ انسٹانڈ حضانہ سرور سے ایڈوائس ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحبہ موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے یعنی نامہ و آفیشز ثالثہ و فیصلہ برطرف دینے جواب دہی اور اقبال دعویٰ اور ہمیشہ ڈگری کرنے اجراء اور وصولی چیک و در پیہ اور مرضی دعویٰ اور درخواست ہر قسم کی تقدیر اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور مستثنیٰ نیز دائر کرنے اپیل نگرانہ نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ منسوخ کرنے کی یا بیرونی کاروائی سے واسطے اور وکیل یا افسار قانونی کو اپنے ہمراہ یا اپنی بجائے تفریح کا اختیار ہوگا اور اس پر مقرر شدہ کو بھی وہی جگہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پروا ختم منقولہ قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحبہ موصوف ہوں گے نیز بقایا دفعہ چہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام درجہ پر ہو یا مد سے باہر ہو تو وکیل صاحبہ یا ہمد نہ ہوں گے کہ پیروی مذکور کریں۔

الرقوم 25-26

التسديد التسديد التسديد
 درباب سید اسما
 ایڈوائس
 سیدہ الشہدائیں مرثیت
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 محمد نواز
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 غلامی ایڈوائس

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.10013/2020.

Luqman Ex- Constable No.2739 of CCP, Peshawar.....Appellant.

VERSUS.

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. Respondents.

REPLY BY RESPONDENTS NO. 1, 2, &3.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

FACTS:-

- (1) Correct to the extent that the appellant was appointed as constable in the year 2013 in the respondent department. It is worth to mention here that he has not a clean service record on his credit as he contains 10 bad entries and 01 minor punishment in his service. (copy of bad entries list annexure as "A")
- (2) Incorrect. The appellant along with two others constable (Majid Ullah No.5668 and constable Hamid khan No.5193) involved himself in a criminal case vide FIR No.396 dated 24.02.2020 u/s 365-A PS Chamkani. In this regard he was issued charge sheet with statement of allegations. DSP Secretariat was appointed as Enquiry Officer, who after conducting a thorough probe into the matter submitted his findings report, wherein he held the appellant guilty of gross misconduct. Upon the findings of enquiry officer he was issued final show cause notice, which he received and replied, but his reply was found unsatisfactory. After fulfilling all codal formalities, he was awarded major punishment of dismissal from service. (Copy of charge sheet, statement of allegations, enquiry report, and final show cause notice are annexed as annexure "B" "C" "D" "E").
- (3) Correct to the extent that the appellant along with two others constable were placed under suspension and issued them charge sheet with statement of allegations. Proper departmental enquiry was conducted against him, wherein the allegations leveled against him were proved beyond any shadow of doubt. The appellant committed a



gross misconduct by involving himself in heinous case of kidnapping which has defamed the image of police department in the eyes of general public.

- (4) Incorrect. Charge sheet with statement of allegations was served upon him. Regular inquiry was conducted and thereafter he was issued a final show cause notice hence after fulfilling all the codal formalities he was awarded the major punishment of dismissal from service.
- (5) Incorrect. Besides booking down in criminal case a proper departmental enquiry into the charges was also initiated by the competent authority, wherein he was found guilty of the charges as such he was awarded punishment as per gravity of his misconduct. Furthermore, criminal and departmental proceedings are two different entities which can run side by side.
- (6) Incorrect. Proper departmental enquiry was conducted as per law/rules and the enquiry officer reported that charges leveled against the appellant were proved. The whole enquiry was conducted purely on merit. The appellant was provided full opportunity of defense, but the appellant failed to defend himself. After fulfilling all the codal formalities he was awarded the major punishment.
- (7) Incorrect. The appellant was issued final show cause notice to which he received and also submitted his written reply, but his reply was found unsatisfactory.
- (8) Para is totally incorrect and misleading. Infact before finalization of enquiry the competent authority remanded the enquiry back to the enquiry officer for completion of lacuna left therein. After fulfilling all the codal formalities he was awarded the major punishment.
- (9) Para pertains to record of the court, hence needs no comments.
- (10) Incorrect. Para already explained in detailed in the above para.
- (11) Correct to the extent that the competent authority before imposing the major punishment had completed all codal formalities and an ample opportunity of self defense was provided, but the appellant failed to prove himself innocent.
- (12) Incorrect. The appellant filed departmental appeal which after due consideration was filed rejected because the allegations leveled against him were proved.
That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

GROUND:-


- a. Incorrect. Proper departmental enquiry was conducted against him. During the course of enquiry, the appellant failed to rebut the charges and the enquiry officer conducted thorough probe into the matter and found the appellant guilty of the charges. After fulfilling of all codal formalities, he was awarded major punishment of dismissal from service by the competent authority.
- b. Para not related. Furthermore, the duty of police is to protect life, property and liberty of citizens, preserve and promote public peace but he despite being a

member of disciplined force deviated himself from his lawful duty and indulged himself in misconduct.

- c. Incorrect. Para already explained in the above paras.
- d. Incorrect. The appellant was issued charge sheet with statement of allegations to which he received. Proper opportunity of defense was provided to appellant. He failed to defend the charges leveled against him. The enquiry officer after detail probe reported that the charges were proved. Proper opportunity of defense was provided to the appellant, but he failed to defend himself.
- e. Incorrect. After completion of the enquiry proceedings, the appellant was issued final show cause notice to which he replied, but his reply was also found unsatisfactory.
- f. Incorrect. Detail departmental enquiry was conducted against him in accordance with law/rules. Enquiry officer after detailed probe into the matter reported that the charges against the appellant were proved. The appellant was provided full opportunity of defense to prove himself innocent, but he failed to prove himself innocent.
- g. Incorrect. The appellant was treated as per law/rules. The charges leveled against him were proved. Presence of such black sheep in police force and any kind of leniency will encourage the misuse of authority. The appellant was found guilty of misconduct.
- h. Incorrect. The appellant being a member of a disciplined force committed gross misconduct. The charges leveled against him were stand proved, hence he was awarded the major punishment.
- i. Incorrect and based on misleading. Infact the appellant failed to rebut the charges during the course of enquiry and the inquiry officer conducted thorough probe into the matter and found the appellant guilty of the charges.

PRAYER.

In view of the above, and keeping in view the gravity of slackness, willful negligence and misconduct of appellant, it is prayed that appeal being devoid of merit may kindly be dismissed with cost please.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.10013/2020.


Luqman Ex- Constable No.2739 of CCP, Peshawar.....Appellant.

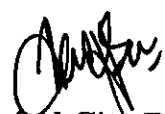
VERSUS.

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. Respondents.

AFFIDAVIT.

We respondents 1, 2 and 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs, Peshawar.

1. Name of Official LUQMAN NO. 2739 S/O MEHRABAN SHAH

Chrasadda. R/O Moh: Aziz Abad Serdahri PS Sardahri, District

2. Date of Birth 06.05.1994
3. Date of enlistment 28.10.2013
4. Education 10th
5. Courses Passed Recruit
6. Total qualifying service 06 years, 04 Months & 19 days.
7. Good Entries Nil

Bad Entries (L.W.O Pay, E/Drill & Warning)

1. 05 days leave without pay vide OB No.1431 dt: 28.11.2017
2. 30 days leave without pay vide OB No. 1006 dt: 29.08.2017
3. 02 days leave without pay vide OB No. 199 dt: 01.02.2019
4. 02 days leave without & 02 days Extra Drill pay vide OB No. 203 dt: 04.02.2019.
5. 31 days leave without pay & strict want to be carful in future vide OB No. 214 dt: 07.02.2019.
6. 03 days leave without pay vide OB No. 250 dt: 12.02.2019.
7. 02 days leave without pay vide OB No. 494 dt: 02.04.2019.
8. Awarded 01 day Extra Drill vide OB No. 640 dt: 03.05.2019.
9. 03 days leave without pay vide OB No. 701 dt: 21.05.2019.
10. 02 days leave without pay vide OB No. 752 dt: Nil

Minor Punishment

1. Forfeited his two annual increments without cumulative effect vide OB No.1006/EB dated 29/08/2017.

Major Punishment

8. Punishment (previous) Nil
09. Punishment (Current)
- Awarded the major punishment of dismissal from service under Police and disciplinary Rules- 1975 vide OB No. 892 dt: 17.03.2020 by SP HQrs CCP Peshawar.
10. Leave Account

<u>Total leave at his credit</u>	<u>Availed leaves</u>	<u>Balance</u>
308 days	120	188 Days

W/CCPO

CRC 23/6/20

Annex. 1

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that FC Lugman No.2739, FC Majid No.5668 & FC Hamid No.5193 of Capital City Police Peshawar with the following irregularities.

"That you FC Lugman No.2739, FC Majid No.5668 & FC Hamid No.5193 were involved in a criminal case vide FIR No.396 dated 24.02.2020 u/s 365-A PS Chamkani. This amounts to gross misconduct on your part and is against the discipline of the force."

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

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

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

"C"

3

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that FC Luqman No.2739, FC Majid No.5668 & FC Hamid No.5193 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

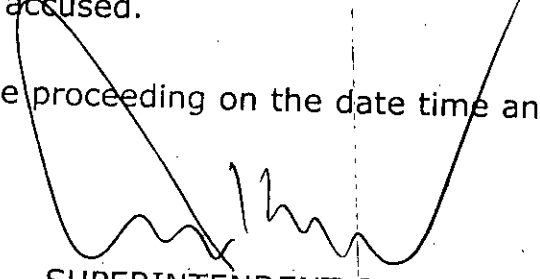
STATEMENT OF ALLEGATION

"That FC Luqman No.2739, FC Majid No.5668 & FC Hamid No.5193 was involved in a criminal case vide FIR No.396 dated 24.02.2020 u/s 365-A PS Chamkani. This amounts to gross misconduct on his part and is against the discipline of the force."

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

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 45 /E/PA, dated Peshawar the 26/2 2020

1. DSP Civil Sect is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

Subject:

25.02.2020
INQUIRY AGAINST FC LUQMAN KHAN NO. 2739, FC MAJIDULLAH NO.5668, HAMID KHAN NO.5193 CCP PESHAWAR

Memo:

Please refer to your office letter No.45/E/PA, dated 26/02/2020 on the subject cited above.

ALLEGATIONS:-

That Constable Luqman No.2739, FC majidullah5668, and FC Hamid khan 5193 was involved in a criminal case vide FIR No.396 dated 24.02.2020 u/s 365 A PS Chamkani.

PROCEEDINGS:-

To dig out the real fact the alleged officials was behind the bar therefore the undersigned visits the Central Jail Peshawar where the Jail authority produces the alleged official. Charge sheet and summary of allegation was served upon them. They were personally heard one by one. They were also cross examined however their statement were not recorded as they demand time for reply.

To further verify the inquiry posting record of the all alleged officials were obtained from OSI Branch. Which reveals that Constable Hamid has been remain posted in different Police Station and suspended on 26.06.2019. While reinstated in service on 17.01.2020. His service record also examined which reveals, that another inquiry vide Senior Superintendent of Police Operation, Peshawar letter No.108-12/PA dated 10.01.2020 was awarded the punishment of forfeiture of 01 year approved service. His service record is full of bad entries.

The posting record of FC Luqman was examined which shows that he has remained posted is different Police Station. His posting record also examined by undersigned which reveals that he has a bad entries and has awarded minor punishment vide OB No.1006 dated 29.08.2017. Posting record of FC Majid Ullah was examined which shows that he is also remain posted at best Police Stations of the District Peshawar like Pharipura, Chamkani, Hayatabad, His service record examined which reveals that's there is fourteen bad entries (L.w.o Pay E/drill & warning). While one minor punishment vide OB No.1476 dated 20.06.2019.

The OII of PS Chamkani Inspector Mukhtiyar Khan was summoned appear before the undersigned and his statement recorded. He stated that he is the CO Rural Circle Peshawar Investigation. FIR No.396 dated 25.02.2020 u/s 365-A was handed over to him for investigation. In which the SHO of PS Chamkani arrested the three alleged officials. Who were produce by the CO to the concerned Court but the custody was refused by the Judge and they was sent to judicial lockup. He also produces two photographs of the vehicles in which the abducty was kidnapped for ransom. Attached with enquiry file.

Similarly he also produced the photographs near Peshawar Motorway toll plaza in which the all the accused has been shown and they are sitting the abductees namely Muhammad shareef.

The SHO of Police Station Insp: Hafeez -Ur- Rahman who submitted his reply and stated that he has lodge a FIR No.396 dated 25.02.2020 u/s 365-A PS Chamkani and have arrested the accused Namely Hamid, Majid s/o Maj Ali r/o Sarwarni Charsadda and Luqman s/o Mahraban Shah village of Nisata Charsadda and has recovered Rs: 8000/- Rupees from the possession of Luqman and Rs: 10,550/- from the possession of Majid Khan.

The witness of the recovery of the recovery memo FC Muhammad Zubair No.173 was also examined and his statement recorded he verify the statement of SHO.

To further verify the allegations the ex-SHO PS Tatara Hamayun khan was summoned who stated that he transfer Luqman and Majid FCs from PS Pharipura to PS Tatara on 23/1/2020.on general duty. While on 23/2/2020 above name constables were absented.

The Moharrar of PS Tatara MASI Guizar was summoned appear before the undersigned and his statement recorded. He stated that constable Majid and Luqman were deputed for duty in plain clothes on the direction of SHO and their proceeding /return was attached with SHO. In this connection he produces some DD reports which are also attached.

The MASI of the police line was summoned who appear before the undersigned and recorded his statement. He stated that constable Hamid No.5193 has absented on 07/01/2020.valid DD no 104 and still absent.

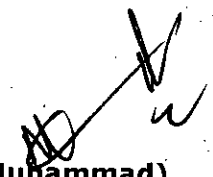
To further verify the allegations the complaint of the case namely Sharif-Ud-Din s/o Gulam Rasool r/o talagang District Chakwal present khazana sugar mill was summoned through SHO PS/Khazana. But he could not appear before the undersigned to record his statement.

The replies of the alleged officials was received which is un satisfactory.

FINDING:-

After going through the inquiry papers statements of the witness and statements of the alleged officials and cross examinations the undersigned came to the conclusion that there is sufficient evidence on case file which connect the alleged officials with the allegations. All allegations has been proved and the alleged found guilty of gross misconduct. They are not deserved to be remain in Police department.


Keeping in view the above mentioned factors under Police 1975 Rule 4(1), (b) they are recommended for major penalty.


(Niaz Muhammad)
Deputy Superintendent of Police
(Security), Civil Secretariat,
Peshawar.

No. 56 /R, Dated 10 / 03 / 2020
Encl (61)

issue fined
show cause
malice

W/SP/HQrs


SP Tal
10/3/20

Reference Attached

2nd copy of

Subject: **INQUIRY AGAINST FC LUOMAN KHAN NO. 2739, FC MAJIDULLAH NO.5668, HAMID KHANS NO.5193 CCP PESHAWAR**

Memo:

In continuation to this office letter No. 45/E/PA dated 10.03.2020 on the subject cited above.

The inquiry was sent to the high-ups for further proceedings but it was back sent to the undersigned with the following deficiencies.

1. That the statement of the complainant/abducted namely Muhammad Sharif r/o Talagang Punjab has not been recorded.
2. That the statement of the alleged official has not been recorded.
3. That the Photographs of the vehicles in which the complainant was kidnapped is also not available.

To complete the inquiry report the complainant was summoned through SHO Khazana, on 11.03.2020 to produce the complainant but he reported back that he searched the complainant but he does not know by anybody and his report was attested by village councillor Namely Nazim Haji Basharat Khan.

The case file FIR No.396 dated 24.02.2020 was examined in which the CO Investigation Circle/Rural Inspector Mukhtiyar Khan has recorded the statement of the complainant before the Judicial Magistrate. Copy of 164 Cr.PC is attached on flag (N).

Similarly the statement of the witness of the recovery memo has also been recovered shown with flag (P).

The photographs of the vehicle is attached with flag (I, M).

The statements of the alleged officials has been shown with flags (C, D, E).

All the deficiencies has been completed. The report is submitted.

(Niaz Muhammad)
Deputy Superintendent of Police
(Security), Civil Secretariat,
Peshawar.

No. 63 /R, Dated 16 / 03 / 2020

Encl (89)

W/SP/Hors

PA
For legal procedure.

[Signature]
SP/HA
17 / 03 / 2020

FINAL SHOW CAUSE NOTICE

"E" (3)
72

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, ✓ FC Luqman No.2739, FC Majid No.5668 & FC Hamid No.5193 the final show cause notice.

The Enquiry Officer, DSP Civil Secretariat, after completion of departmental proceedings, has recommended you for major punishment for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you FC Luqman No.2739, FC Majid No.5668 & FC Hamid No.5193 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

[Handwritten signature]
SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

No. 4574 /PA, SP/HQrs: dated Peshawar the 15/3 /2020. *15/3*

Copy to official concerned

*خدا - صریح و صحت سے
نے شوکار نوٹس کا ایک نمونہ
2339 FC*

*تھے شوکار نوٹس کا ایک نمونہ
پر دستخط
15/3*

*15/3/20
دفعہ 1975*

*لعمان 2739
دفعہ 1975*



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No: 1951 /ST

Dated: 30/09 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262


To:

The Superintendent of Police Headquarters,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 10013/2020, MR. LUQMAN & 2 OTHERS.

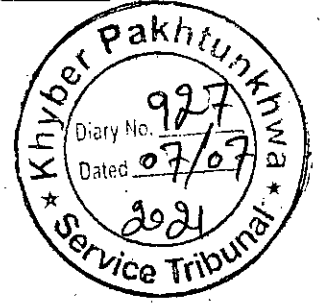
I am directed to forward herewith a certified copy of
Judgement dated 14.09.2021 passed by this Tribunal on the above subject for
strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

BEFORE THE KHYBER PAKHTUNKWHA SERVICE TRIBUNAL
PESHAWAR

Put up to the worthy chair-man
with relevant appals.



CM No. _____/2021
IN
SA No. 10013/2020

7/7/21. LuqmanAppellant

VERSUS

Superintendent & others..... Respondents

Render

NFA
08/07/2021

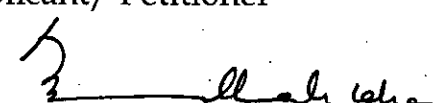
APPLICATION FOR FIXATION OF EARLY DATE OF HEARING

Respectfully Sheweth

- 1) That the subject appeal alongwith two identical/ connected appeals Service Appeal No.10014/2020 titled Hamid Khan.VS.. SP and others and SA No. 10015/2020 titled as Majidullah.VS.. SP and others are pending disposal before this Hon'ble Tribunal and are fixed for arguments on 14.09.2021.
- 2) That comments and replication has already been submitted and are mature for final disposal.
- 3) That applicants are facing hardship in family expenses.

It is, therefore, most humbly requested that the application be accepted as prayed for.

Applicant/ Petitioner
Through


Saadullah Khan Marwat
Advocate Peshawar

Dated 06-07-21

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 10013/2020

Lugman versus Superintendent & Others

REJOINDER

Respectfully Sheweth,

PRELIMINARY OBJECTION

All the 07 Preliminary Objections are illegal and incorrect. No reason in support of the same is ever given as to why the appeal is barred by law and limitation, bad for mis and non-joinder of parties, , has not come to the hon'ble court with clean hands, has no cause of action, estopped by his own conduct, concealment of material facts and not maintainable.

ON FACTS

1. Admitted correct to the extent of appointment, while rest of the para is not correct. Previous laxities, if any, cannot form basis for further punishment.
2. Not correct. Appellant never involved himself in any adverse activity. Rest of the para is not correct. At the same time, he was not on duty and in such like cases identification parade is must which was not done in the case in hand.
3. Admitted correct to the extent of suspension, yet no proper enquiry was held as per the mandate of law. No Charge Sheet was ever served upon appellant. In fact it was a private transaction regarding sale of vehicle between two private persons on purchase of vehicle and remaining amount. No terms and conditions of service was ever violated.
4. Not correct. Neither appellant was served with Charge Sheet nor proper enquiry was conducted in the matter as is evident from the same.



5. Not correct. The para of the appeal is correct regarding custody of appellant on 22-02-2020 and not on 24-02-2020.
6. Not correct. The para of the appeal is correct regarding non conduct of regular enquiry.
7. Not correct. No Final Show Cause Notice was ever served upon appellant as at the same time, he was behind the bar, which fact was well within the knowledge of respondents. The authority after scrutinizing the record regarding conduct of enquiry himself admitted the fact that enquiry was not conducted in accordance with law.
8. Not correct. Remand of the enquiry back to the Inquiry Officer itself speaks that the same was not conducted as per the mandate of law.
9. Admitted correct by the respondents regarding release on bail in the matter.
10. Not correct and as stated earlier, when the authority himself admitted that enquiry was not conducted as per the mandate of law, so no opportunity of rectification under the law exists.
11. Admitted correct to the extent of dismissal from service.
12. Not correct. The para of the appeal is correct regarding submission of appeal, its rejection and receipt of the copy of order on 24-08-2020.

G R O U N D S:

- a. Not correct. Complainant was sitting with other police officials in the police vehicle which were not brought on surface.
- b. Not correct. Complainant himself is involved in many adverse activities.
- c. Not correct. The ground of the appeal is correct regarding conduct of enquiry not per the mandate of law.
- d. Not correct. During the enquiry proceeding, appellant was behind the bar and in such like situation, issuing of Show Cause Notice


and Charge Sheet becomes meaningless not served upon appellant.

- e. Not correct. Perhaps the Inquiry Officer has completed the so called enquiry report in his room and not in accordance with law as at the same time, appellant was behind the bar. The Inquiry Officer was legally bound to go to Jail for the purpose.
- f. Not correct and as above in ground "C". The ground of appeal is correct regarding non opportunity of cross examination.
- g. Not correct. The matter was not dealt with as per the mandate of law. Of course, police is full of back sheep's, yet not the appellant.
- h. Not correct. Appellant has no concern with the subject matter.
- i. Not correct. When Inquiry Officer never met with appellant for enquiry, then how the charges become proved.

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


Appellant

Through

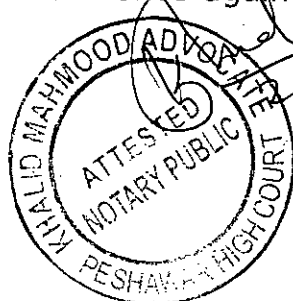

Saadullah Khan Marwat
Advocate,

Dated: 30-06-2021

AFFIDAVIT

I, Luqman appellant do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.




DEPONENT