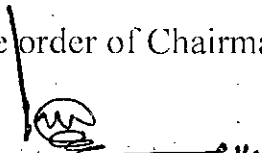


FORM OF ORDER SHEET

Court of _____

Case No.- _____ **516/2023**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08/03/2023	<p>The appeal of Mr. Gulzar presented today by Mr. Khaled Rehman Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;"> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 516 /2023

Gulzar..... Appellant

Versus

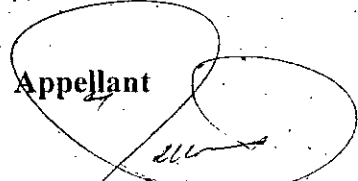
The DIG Police and others..... Respondents

INDEX

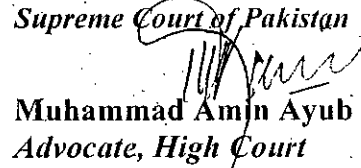
S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-6
2.	F.I.R No.51	07.12.2021	A	8-9
3.	Statement under 161 Cr.P.C		B	10-13
4.	Order of Hon'ble High Court allowing Post-Arrest Bail	15.09.2022	C	14-15
5.	Charge Sheet and Statement of Allegations	27.09.2022	D	16-17
6.	Reply to Charge Sheet		E	18
7.	Show Cause Notice	14.10.2022	F	19
8.	Reply to Show Cause Notice	20.10.2022	G	20
9.	Impugned office order	21.11.2022	H	21
10.	Departmental Appeal	28.11.2022	I	22-23
11.	Judgment in Writ Petition No.1610/2017	14.02.2018	J	24-35
12.	Judgment in Service Appeal No.		K	36-41
13.	Wakalat Nama			42

Through

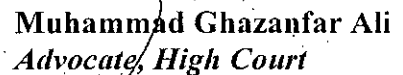
Appellant


Khaled Rahman
Advocate,
Supreme Court of Pakistan

&


Muhammad Amin Ayub
Advocate, High Court

&


Muhammad Ghazanfar Ali
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: 27 /03/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 516 /2023

Mr. Gulzar

Ex-Subedar Major/Inspector,

Bajaur Levy/Acting SDPO Khar.....

Appellant

VERSUS

1. The Deputy Inspector General of Police
at Saidu Sharif, Swat.
2. The District Police Officer/Commandant,
Bajaur Levy Force
3. The Regional Police Officer,
Malakand Division..... Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 21.11.2022 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT AGAINST WHICH HE PREFERRED DEPARTMENTAL APPEAL TO RESPONDENT NO.1 ON 28.11.2022 BUT THE SAME WAS NOT RESPONDED WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, the impugned order dated 21.11.2022 passed by Respondent No.2 may graciously be set aside and appellant may kindly be re-instated into service with effect from due date with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant was a senior most officer of the Bajaur Levy Force and was performing his duties against the rank of Subedar Major/Inspector. It is pertinent to aver here that the appellant has never been proceeded against departmentally and rendered unblemished service to the Levy Force.

2. **That** an F.I.R No.51 (*Annex:-A*) dated 07.12.2021 U/S 302, 324, 427 & 7ATA was chalked out by the Complainant namely Gul Badshah S/o Habib Muhammad against unknown culprits. It is averred that later on, Section-7ATA was removed from the offences by the ATC and 02 accused namely Niamatullah S/o Habib Badshah and Anwar Khan S/o Sultan Muhammad were also arrested. Upon 161 Cr.P.C statement (*Annex:-B*) of accused Niamatullah S/o Habib Badshah, appellant was charged and consequently arrested. Later on, appellant applied for his Post-Arrest Bail before the competent Court of law, which was allowed on 15.09.2022 (*Annex:-C*) and appellant accordingly furnished the attested copy of the judgment to the Respondent Department.
3. **That** on the basis of alleged involvement in criminal case, appellant was suspended from service and thereon his salary was also unlawfully stopped vide order dated 31.08.2022. It is submitted that in such circumstances, Department may suspend a civil servant but during suspension period he remains on the roll of the Department and is entitled for the remuneration as if he had not been suspended from service.
4. **That** later on, appellant was issued Charge Sheet and Statement of Allegations dated 27.09.2022 (*Annex:-D*) based on ill-founded allegations. Since the charges were baseless and ill-founded, appellant submitted a detailed Reply (*Annex:-E*) on 04.10.2022 wherein he explained his position and each and every aspect of the matter but the same was not taken into consideration.
5. **That** under the law, Authorities were supposed to comply with the requirements as embodied in Rule-6 of the Khyber Pakhtunkhwa Police Rules-1975 by conducting a regular inquiry but at the back of the appellant a Fact Finding Inquiry was conducted. The Committee jumped to the wrong conclusion and appellant was illegally found to be guilty of the charges and recommended for major punishment. It is further elucidated that the Fact Finding Inquiry Report was not provided to appellant rather appellant moved an application under the Right to Information Act, but to no avail.

6. **That** Respondent Department without conducting a detail regular inquiry as envisaged in the Khyber Pakhtunkhwa Police Rules, 1975, issued a Final Show Cause Notice dated 14.10.2022 (*Annex:-F*) which too was instantly replied on 20.10.2022 (*Annex:-G*) but the very averments as incorporated in the same were not taken into consideration and appellant was handed down the impugned office order dated 21.11.2022 (*Annex:-H*) whereby he was inflicted upon the major penalty of dismissal from service.
7. **That** appellant being aggrieved of the impugned order dated 21.11.2022, preferred Departmental Appeal under Rule-3 of the Khyber Pakhtunkhwa Appeal Rules, 1986 on 28.11.2022 (*Annex:-I*) but no response has been given thereto till date.
8. **That** appellant, being aggrieved of the impugned office order dated 21.11.2022, files this appeal, inter-alia, on the following grounds:-

Grounds:

- A. **That** Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 & 10A of the Constitution of Islamic Republic of Pakistan, 1973 and the Authorities unlawfully issued the impugned order dated 21.11.2022, which is unjust, unfair and hence not sustainable in the eye of law.
- B. **That** admittedly appellant was awarded major penalty on the basis of his false implication in case FIR No.51 dated 08.12.2021 U/S 302,324,427,7ATA upon the 161 Cr.P.C Statement of co-accused Nematullah. It is further asserted that appellant was bailed out by the competent Court of law on 15.09.2022. It is further submitted that complainant having no enmity with appellant. Moreover, an identical matter has been decided by the Hon'ble Peshawar High Court, Peshawar in Writ Petition No.1610/2017 vide Judgment dated 14.02.2018 (*Annex:-J*) wherein it was held that under Article-194 of C.S.R whenever a civil servant is charged in a criminal case the department was supposed to suspend him from service. The Article-194 CSR is reproduced herein below for ready reference:-

"A government servant who has been charged for a criminal offence or debt and is committed to prison shall be considered as under suspension from the date of his arrest. In case such a

Government Servant is not arrested is released on bail, the competent authority may suspend him, by specific order, if the charge against him is connected with his position as Government Servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude, during suspension period the Government Servant shall be entitled to the subsistence grant as admissible under FR 53."

And consequently, the Writ Petition was allowed on the following terms:-

"Thus what has been discussed above, we allow this petition, set aside the dismissal order dated 30.09.2016 and restore his service with all back benefits."

Likewise, this Hon'ble Tribunal has also taken a similar view in Service Appeal No. 15181/20 titled "*Ismail .VS. Police*", therefore, appellant is also entitled to the similar relief vide judgment dated 17-01-2022 (Annex:- K).

- C. **That** as a matter of fact, it is contended that implication of the appellant in criminal case is upon the statement of well-known offender Niamatullah who had been arrested by the appellant in numerous criminal cases and thereafter he became revengeful towards the appellant and then charged him in the criminal case. It is further elucidated that the said accused is still behind the bar while the appellant has been released on bail by the competent court of law. Furthermore, the averments of the accused namely Niamatullah were not affirmed by the Levies officials which clearly suggests the false implication of the appellant in the criminal case.
- D. **That** it is steadfast scheme of service law that whenever an accused is subjected to departmental proceedings, a charge is framed in the shape of Charge Sheet and Statement of Allegations. The basic aim of the same is to inform the delinquent civil servant of the charges without any ambiguity and he has to be informed that what kind of misconduct has been committed by him. The charges as inflected upon the appellant are very serious in nature, therefore, the Authorities were supposed to clearly mention the charges without any doubt because mentioning mere *appellant implication in the criminal case* does not exempt the authority from his legal duties. Thus the charges are not covered under Rule-3 of the Khyber Pakhtunkhwa Police Rules-1975 and thereon the impugned order are liable to be set aside.

- E. **That** the edifice of the departmental proceedings against the appellant is of the criminal case and admittedly he has been granted bail by the competent court of law. Now the question arises whether appellant could be awarded major punishment of dismissal from service when he has not been awarded imprisonment in the criminal case? It has been enunciated in Article-10A of the Constitution of Islamic Republic of Pakistan that right to fair trial and due process is a fundamental right, however, appellant has been inflicted upon major punishment of dismissal from service without fair trial and due process, which is liable to be set aside.
- F. **That** neither regular inquiry was conducted into the case in hand nor any documentary or oral evidence was recorded in presence of the appellant nor was he provided opportunity of cross-examination. The entire action was taken at the back of the appellant and thus he was condemned unheard. It is a settled law that where a major penalty is to be imposed then regular inquiry is necessary which has not been done in the case in hand. Even the copy of the second Enquiry Report was not provided to appellant, which was mandatory in law.
- G. **That** Article-10A of the Constitution of the Islamic Republic of Pakistan, 1973 read with Section-16 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 provides for the right of fair trial as per prescribed law and Rules. Even the second Enquiry Report was not provided to the appellant which was the mandatory requirement of law and also appellant was condemned unheard, thus the impugned orders are void, ab-initio as well as against the principle of natural justice.
- H. **That** it is a settled law that mere registration of an F.I.R cannot be taken as a Gospel truth inas much as the allegations have to be established in the competent court of law and until then the accused is presumed innocent. In this view of the matter C.S.R 194 mandates that a civil servant who is charged for a criminal case and is arrested is to be deemed as suspended and until finally convicted by the competent court of law, mere on the basis of F.I.R he cannot be dismissed from service. The appellant has already been granted Bail by the competent Court and has not been convicted for the offence. In this view of the matter, the impugned order is highly arbitrary inas much as the appellant was kicked out of service on the basis

of unconfirmed and unproved allegations.

- I. That no opportunity of personal hearing was afforded to the appellant neither by the competent authority, nor by the Enquiry Officer nor even by the appellate authority which are the mandatory requirements of law. Reliance is placed on 2003 SCMR 1126 which states that:-

“where the civil servant was not afforded a chance of personal hearing before passing of termination order, such order would be void ab-initio.”

Further reliance is placed on PLD 2008 SC 412 which states as under:-

*“Natural Justice, principles of --- Opportunity of hearing --
- Scope --- order adverse to interest of a person cannot be
passed without providing him an opportunity of hearing ---
Departure from such rule may render such order illegal.”*

Thus appellant was condemned unheard as the action has been taken at the back of the appellant which is against the principle of natural justice.

- J. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

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

Through

Appellant

Khaled Rahman,
Advocate,
Supreme Court of Pakistan

&

Muhammad Amin Ayub
Advocate, High Court

&

Muhammad Ghazanfar Ali
Advocate, High Court

Dated: 27/03/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2023

Gulzar..... Appellant

Versus

The DIG Police and others..... Respondents

AFFIDAVIT

I, Mr. Gulzar, Ex-Subedar Major/Inspector, Bajaur Levy/Acting SDPO Khar, do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

Deponent

8 Annex A

گورنمنٹ پبلس ٹارگیٹ نمبر 132286/13 نام نمبر تعداد ایک ہزار ہزار مورخہ 20.06.2011 بی (فارم سٹور جائز) جی فارم (پولیس)

دیہی فارم نمبر 13

فارم نمبر ۲۲-۵ (۱)

745-17107-1103-2011
9789-2504-1103

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۲ مجموعہ ضابطہ فوجداری

ضلع 35 تاریخ 7¹² دسمبر 2011 وقت 17:00 بجے

تاریخ وقت رپورٹ	7 ¹² دسمبر 2011 وقت 17:35 بجے
مقام و صورت اطلاع دہندہ مستغیث	سٹی باغ بازار 1505 جیب شہر لاہور
ظہیر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو	109-34-15AA
بائے وقوعہ فاصلہ تھا نہ سے اور سمت	111/115/113 شارع سائبر ٹاؤن لاہور
تاریخ وقت ملزم	
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	سے ملزم کو گرفتار کیا گیا
تھانہ سے رواگی کی تاریخ و وقت	لاہور سٹیٹ پولیس

ابتدائی اطلاع نیچے درج کر کے وقت 7¹² دسمبر 2011 کو سٹیٹ پولیس لاہور میں درج کیا گیا۔ اطلاع دہندہ نے بتایا کہ وہ اپنے گھر پر 1505 جیب شہر لاہور میں ایک گاڑی پارک کر رہے تھے۔ اس وقت وہ اپنے گھر پر موجود تھے۔ اچانک وہ نے گاڑی کے پاس سے ایک شخص کو گزرنا دیکھا۔ وہ شخص گاڑی کے پاس سے گزر کر گاڑی کے اندر کود گیا۔ اطلاع دہندہ نے اس شخص کو روکنا چاہا مگر وہ فرار ہو گیا۔ اطلاع دہندہ نے اس واقعہ کو پولیس کو اطلاع دیا۔ پولیس نے موقع پر پہنچ کر گاڑی کو کھینچ کر تفتیش کی۔ گاڑی کے اندر سے ایک گاڑی کی کلیدیں نکالی گئیں۔ پولیس نے اطلاع دہندہ سے یہ کلیدیں منگوائیں۔ اطلاع دہندہ نے کلیدیں دکھائیں۔ پولیس نے گاڑی کے اندر سے گاڑی کی کلیدیں نکالیں۔ پولیس نے اطلاع دہندہ سے یہ کلیدیں منگوائیں۔ اطلاع دہندہ نے کلیدیں دکھائیں۔ پولیس نے گاڑی کے اندر سے گاڑی کی کلیدیں نکالیں۔

ATTESTED

A

کاؤنٹر فائل ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری فارم نمبر ۲۳-۵ (۱)

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

ضلع :- ملاکنڈ ریجن

تھانہ :- CTD

تاریخ وقت وقوعہ 021-12-7 وقت 17:00 بجے

علت نمبر :- 51

1	تاریخ وقت رپورٹ :- 021-12-7 وقت 17:35 بجے	چاکیڈگی پرچہ 021-12-8 وقت 02-10 بجے
2	نام و سکونت اطلاع دہندہ مستغنیث	گل بادشاہ ولد حبیب محمد قوم عمر خیل بھر 62/63 سال
3	مختصر کیفیت جرم (معد دفعہ) حال اگر کچھ لیا گیا ہو۔	302-324-427-7ATA-109-34-15AA تپ
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت :-	گل بادشاہ ولد حبیب محمد قوم عمر خیل بھر عمر قریب 62/63 سال ساکن اتمان خیل
5	نام و سکونت ملزم	
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	رسیدگی تحریری مراسلہ پر چرچا دیا جاتا ہے
7	تھانہ سے رواگلی کی تاریخ وقت	بطور سپیشل رپورٹ

ابتدائی اطلاع نیچے درج کرو۔

اس وقت ایک تحریری مراسلہ منجانب رشید احمد SI خاں باجوڑ بدست کنسٹیبل امیر نواز 62799 موصول ہو کر ذیل ہے بخدمت ایف سرائی پانچارج تھانہ CTD ملاکنڈ ڈویژن کبل اطلاع دی کہ سعید گل خان انسپیکٹر صاحب پر کسی نامعلوم ملزمان نے فائرنگ کر کے سول ہسپتال خار لایا گیا ہے فوری طور پر سول ہسپتال خار آ کر نعش منقول آپریشن تھیٹر میں پاکر نعش کے ساتھ موجود مدلل بالا یوں رپورٹ کرتا ہے کہ امر دوز میں دختر ام کے گھر واقع دار شاہ آ کر واپسی پر بازار خار سے گھر خود جا رہا تھا کہ اسی اثناء میں بھتیجا ام منقول سعید گل خان ایک پرائیویٹ گاڑی فلڈر میں مجھے اپنے ساتھ سینڈ سیٹ پر بٹھا کر خود فرنٹ سیٹ پر موجود تھا روانہ ہوئے جب بوقت بالا بمقام بالا پہنچے تو وہاں پر پہلے سے ایک سفید موٹر کار کھڑا تھا جو نمبی ہم اسکے نزدیک پہنچے تو موجود موٹر کار میں پیچھے سیٹ سے ملزمان نامعلوم نے مذکورہ سید گل کو نارگٹ کر کے ہم پر بہ ارادہ قتل فائرنگ کر کے نتیجہ کے طور پر مذکورہ بائیں طرف چھاتی پر لگ کر شدید زخمی ہوا جو زخمی کی تاب نہ لا کر موقع پر جاں بحق ہوا جبکہ میں معہ ڈرائیور موٹر کار فلڈر محمد شعیب ولد گل حمید ساکن چارڈاگ مجرانہ طور پر چلے گئے موٹر کار فلڈر کا بائیں طرف گیٹ کا شیشہ، باڈی، نقصان رسیدہ ہو چکا ہے نعش کو فوری طور پر اس گاڑی میں سول ہسپتال خار لے آئے ہمارا کسی کے ساتھ کوئی دشمنی وغیرہ موجود نہیں مذکورہ کو..... ہونے کی باعث نامعلوم دہشت گرد نارگٹ کر کے قتل کیا ہے وقوعہ ہذا میرے علاوہ ڈرائیور موٹر کار فلڈر محمد شعیب کا چشم دید ہے دیگر کسان نے کچھ خود دیکھا ہے سریدست میں بھتیجا ام سید گل جان کے قتل اور اپنے ڈرائیور پر بہ ارادہ قتل فائرنگ کر کے برخلاف ملزمان نامعلوم دہشت گرد دعویٰ ہوں رپورٹ کرتا ہوں البتہ میں مسی سلمان خان رپورٹ بالا کی تائید کرتا ہوں دستخط کارروائی پولیس حرف بحرف درج بالا ہو کر پڑھ کر سنایا گیا درست تسلیم کرتے ہوئے پرچہ گزارش ہے۔

دستخط انگریزی

ATTESTED

اور اجرتی قاتل نعمت اللہ کے ساتھ رابطے اس بات کی غمازی ہے کہ دال میں کچھ کالا ہے اندریں سلسلہ مزید معلومات حاصل کرنے اور تصدیق کیلئے مدعی کیساتھ گفت و شنید کرنا ضروری ہے جسکے ساتھ موبائل فون رابطہ کر کے دفتر CTD باجوڑ جاتا ہے۔

اس وقت تک مدعی فریق سلمان بردار مقتول انسپٹر صاحب دفتر CTD باجوڑ آیا اب تک کئے گئے تفتیش اور معلومات سے آگاہ کیا گیا جس نے خود بھی انکشاف کیا کہ برادر ام سعید گل اور DSP گل زر کا حکمانہ فائل پر عدالت سروس ٹریبونل کیس زیر سماعت تھا گل زر کے خلاف برادر ام کی کوشش پر ہوم ڈیپارٹمنٹ سے فیصلہ جاری ہوا تھا گل زر نے اسی فیصلہ کے خلاف سروس ٹریبونل کو روک کیا تو مقتول سعید گل نے سروس ٹریبونل میں ہوم ڈیپارٹمنٹ کا صادر شدہ فیصلہ پیش کیا جا کر مورخہ 13-12-021 پر آئندہ پیشی مقرر تھی اور غالب گمان تھا کہ عدالت سے گل زر اور اسکے ساتھیوں کے خلاف فیصلہ سنایا جاتا ہے یہ بھی انکشاف کیا کہ علاقہ باجوڑ میں نعمت اللہ، نور خان اور عثمان علی ہلاک شدہ اور انکے دیگر برادران ساتھی اجرت پر قتل غارت کیلئے مشمولہ ہیں گل زر کا نعمت کیساتھ فون پر مفصل رابطہ کسی مجرمانہ فعل کیلئے ہوگا سلمان مذکورہ نے مزید وضاحت کی کہ سعید گل نے گل زر اور دیگر پولیس افسران کے خلاف باقاعدہ سوشل میڈیا پروڈیووائز کی تھی جس میں گل زر کی غیر قانونی نقصان پر سخت تنقید کی تھی اور حکومت وقت سے رد عمل نے ایک اپیل کی تھی جس پر لازماً گل زر اور انکے ساتھیوں کو صدمہ پہنچا ہوگا جو راست اقدام اٹھانے پر مجبور ہوئے۔

درج بالا حقائق حسب گفتہ سلیمان سبکدر جس کو اس نسبت دستاویزات اور دیگر ضروری ثبوت فراہم کرنے کی ہدایت کی گئی جس۔

ATTESTED

- 12 -

تاریخ و مقام آئینہ ۲۶ نومبر ۲۰۲۰ء منبر انصاف کا خطاب کیا گیا۔
 قلمی طور پر موصول ہو گا اور تاریخ و مقام آئینہ
 3۰/10/2020-927-7A1A-3۵2-3۵۲ قلمی طور پر موصول ہو گا اور تاریخ

تاریخ و مقام آئینہ جس پر کارروائی کی گئی	رپورٹ کا نمبر شمار ملدوار	آرٹیکل / عنوان حالات تفتیش ختم ہوئے ہیں۔
<p>30/10/2020</p>	<p>①</p>	<p>مقدمہ: تین ماہ پہلے درج ذیل کے نوٹس جاری کیا گیا تھا جس کے تحت درخواست گزار کے خلاف کارروائی کی جا رہی ہے۔</p> <p>نوٹس: درخواست گزار نے 2020ء کے فیس کی ایک حقیقت پر مبنی درخواست دائر کی ہے۔</p> <p>مذکورہ: درخواست گزار نے 2020ء کے فیس کی ایک حقیقت پر مبنی درخواست دائر کی ہے۔</p> <p>نتیجہ: درخواست گزار نے 2020ء کے فیس کی ایک حقیقت پر مبنی درخواست دائر کی ہے۔</p> <p>دعا: درخواست گزار نے 2020ء کے فیس کی ایک حقیقت پر مبنی درخواست دائر کی ہے۔</p> <p>مذکورہ: درخواست گزار نے 2020ء کے فیس کی ایک حقیقت پر مبنی درخواست دائر کی ہے۔</p> <p>نتیجہ: درخواست گزار نے 2020ء کے فیس کی ایک حقیقت پر مبنی درخواست دائر کی ہے۔</p> <p>دعا: درخواست گزار نے 2020ء کے فیس کی ایک حقیقت پر مبنی درخواست دائر کی ہے۔</p>

ATTESTED

IN THE COURT OF JUDGE JUSTICE (MUSLIM SECTION) III
SUAUD AT LAMB KURAKA, DISTRICT DIR

BA 51/2022

Gul Zer vs

the State

14

Amir & Co

CASE FILE NO. SUDN11D00012/2021

LESS 002324 12/21/09/11/PP/17 - AMU Terrorism Act 1997
PS4 TD Malakand Region

BA
18 Sep 2022

Arشد باز Warday advocate, learned counsel for the accused
Arشد باز Khan for Public Prosecutor for the state
Complainant Gul Badshah and legal heirs / sons of the deceased Said
Gul Inspector namely Hazrat Gul Ziaullah and Islam Gul

Accused / petitioner Gul Zer Khan s/o Muhibullah r/o
Antramband, Traq, at Yalay, Maniwand, District Bajuar is seeking his
release on bail in the subject case

Brief facts of the case according to the contents of FIR are
that on 07/12/2021, Complainant Gul Badshah reported to the police
that he was going back from his sisters' home and his cousin deceased
Said Gul Khan took him with himself in the private fielder motorcar
being seated in the front seat, while he (complainant) was at the back
seat. That at 17:00 hours, when they reached at Ronda road, leading
from Khar to Munda, where a white motorcar already parked, from
which unknown accused opened indiscriminate firing at Said Gul Khan,
as a result of which Said Gul Khan was hit and died, while, he
(complainant) and driver Muhammad Shuaib luckily escaped unhurt.
Hence, the instant FIR was lodged against unknown the accused for
the commission of offence.

Arguments heard and file perused.

After hearing arguments of learned counsel for the accused /
petitioner and learned PP for the state this court is of the opinion
that the accused / petitioner is not directly charged in the FIR for
the commission of the offence. Tentative assessment of the record
available on file reveals that the accused / petitioner has been

Handwritten signature and stamp of the court. The stamp is circular and contains the text "ATTESTED" and "COURT OF JUDGE JUSTICE (MUSLIM SECTION) III, SUAUD AT LAMB KURAKA, DISTRICT DIR".

ATTESTED

Implicated in the present case on the statement of co-accused Niamat Ullah recorded u/s 161 Cr.PC on 25.08.2022 after in unexplained delay of ___ & half months of the occurrence with the fact that no specific role has been attributed to the accused/petitioner Moreover, neither any blood stained earth no empties have been recovered either from the motorcar or spot no identification of the accused/petitioner has been made either from the complainant or driver of the motorcar More so the accused/petitioner has remained in police custody but he has not made any judicial confession nor any incriminating article is shown to be recovered from him or on his pointation. So, in the peculiar fact and circumstances case of the accused/petitioner falls within the ambit of further enquiry and as such is arguable for the purpose of bail, apart from the investigation has been completed and the accused/petitioner is no more required to the local police for further investigation. Therefore, in these circumstances no useful purpose would be served by keeping the accused/petitioner behind the bar and as such the accused/petitioner is held entitled to the concession of bail.

Resultantly the instant regular bai petition i.e BA No.125/4 of 2022 is accepted and the accused/petitioner admitted to bail subject to his furnishing bail bonds in the sum of Rs.2,00,000/- (Two Lac) with two sureties each in the like amount to the satisfaction of concerned Magistrate/MOD. The sureties must be local, reliable and resourceful.

Record shall be sent back to the quarters concerned, while file of this Court be consigned to the record room after completion and compilation.

(Riaz Ahmad)
JUDGE, ATC-III SWAT
At TIMERGARA

ORDER ANNOUNCED

15.09.2022

ATTESTED

116 *Hint D* *16*
CHARGE SHEET

1. I Abdus Samad District Police Officer as competent authority hereby charge you Subedar Major/Inspector Bajaur Levy/Acting SDPO Khar of Bajaur Police as follows:

That you while posted as acting SDPO Khar remained in close contact with high profile criminals/hire killer wanted in case FIR No.51 dated 08.12.2021 u/s 302/324/427/7ATA, 109/34-PPC PS CTD Kabal Swat before and after the murder of deceased Sub Inspector Said Gul and whereas, the report of preliminary enquiry conducted by the DSP(inv) Rahman Yousaf revealed that you were found involved in the criminal case FIR No.51 dated 08.12.2021 u/s 302/324/427/7ATA, 109/34-PPC PS CTD Kabal Swat, hence, committed the following:

- i. You are guilty of misconduct.
 - ii. You are guilty of violation of duty.
 - iii. You are convicted of a criminal offence.
 - iv. You are guilty of omission and commission under the law and rules.
2. By reason of the above, you appear to be guilty of the above allegations under the Federal Levy Force (Amended) Service Rules 2013 Rule 10 (Schedule ii).
 3. You are therefore required to submit your written reply/defense within 07-days of the receipt of this charge sheet to the inquiry officer failing which shall be presumed that you have no defense to put in and that case ex-parte action shall be taken against you.
 4. Intimate whether you desire to be heard in person.
 5. The statement of allegation is enclosed.

No 3397/B.P dated 27/09/2022


DISTRICT POLICE OFFICER/
COMMANDANT BAJAUR LEVIES.


ATTESTED

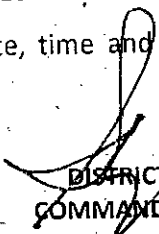
D

DISCIPLINARY ACTION

1. I Abdus Samad, District Police Officer, Bajaur as competent authority of the opinion that you Subedar Major/Inspector Bajaur Levy/Acting SDPO Khar has rendered yourself liable to be proceeded against you, as you committed the following acts/omission, within the meaning rule-10 schedule-II (b),(d),(g) & (l) of Federal Levy Force (Amended) Service rules 2013.

STATEMENT OF ALLEGATION.

- i. You are guilty of misconduct.
 - ii. You are guilty of violation of duty.
 - iii. You are convicted of a criminal offence.
 - iv. You are guilty of omission and commission under the law and rules.
2. For the purpose of inquiry against the said accused with reference to the above allegations, SP/ins Farmanullah Khan is hereby nominated as an inquiry officer under rules 06 of the rules ibid.
3. The enquiry officer shall, in accordance with the provisions of the ibid rules provide reasonable opportunity of hearing to the accused, record its findings and make, within seven (07) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.
4. The accused shall join the proceeding on the date, time and place fixed by the inquiry officer.


DISTRICT POLICE OFFICER/
COMMANDANT BAJAUR LEVIES.


ATTESTED

To

18
Anwar K

The District Police Officer/ Levy commandant,
Bajaur at Civil Colony Khar.

Subject: CHARGE SHEET.

Respected Sir,

Kindly refer to your letter No. 3397/B.P dated 27/09/2022, I submit Para wise replies of the above mentioned subject.

1. Being an employee of the security force, I believe on discipline and obey the orders of my superiors in toto and never fined guilty of such charge of my career.
2. As evident, from my service record, I performed my services to the best satisfactions of my bosses. During the entire record, never shown any negligence of duties, as duty is the sacred responsibility of armed forces, I have never charged for in violation of duty in the past.
3. A person recruited to the post for control of crime will never dare to commit a crime as it is against the mental approach and conscious. It is pertinent to note that someone consider himself to be evaluated to next higher post depends upon his personal performance, capabilities and previous service record. Moreover, I believe on merit and seniority within our ranks. As assumed by some ill wishers, that I was involved in a criminal activity may be a professional jealousy and not a fact for a heinous offence, moreover I have never been convicted by any competent court.
4. Dear Sir, I will totally deny of this charge, as it is against of service rules. The standard of life speaks of a person living beyond his own resources.

I am the only bread winner of my family and for my livelihood, the only source is my salary and benefits granted by the government. I have never been warned or directed by high ups for any commissions or omission in this regard.

In the light of the above facts your good honor will sympathetically consider my case and may be exempted of the above charges for the future of my career. It will be pleasure for me to be heard personally even on oath.

Comments to the charges against me are submitted please.

ATTESTED

(GUL ZAR)
Subidar Major/Inspector Bajaur Levy/
Acting SDPO Khar.

4/10/22



19

H. F.

OFFICE OF THE
DISTRICT POLICE OFFICER
BAJAUR AT KHAR.

No. 3651/B.P

Dated 14/10/2022.

FINAL SHOW CAUSE NOTICE.

Under Rule (14) KP Government Servants (Efficiency & Discipline) Rules 2011

1. Whereas you Subedar Major Gul Zar Khan while serving as the acting Sub Divisional Police Officer Khar allegedly committed an act of gross misconduct and were proceeded against under rule 10 Schedule II(b)(d)(g) and (i) of Federal Levy Force (Amended) Service Rules 2013 vide charge sheet/Statement of allegation No. 3397/B.P dated 27.09.2022 and Mr. Farman Ullah Khan SP Investigation Bajaur was appointed as Enquiry Officer to conduct proper departmental enquiry.
2. Whereas, the enquiry officer finalized enquiry proceedings given you full opportunities of defense and held you guilty of the charges leveled against you as per charge sheet.
3. And whereas the undersigned in his capacity as the authorized officer on considering the findings of enquiry officer has reached the conclusion that the charge/allegations contained in aforesaid charge sheet has been established.
4. Now therefore you accused Gul Zar Khan are called to show cause in written within seven days of the date of receipt of this notice as to why a penalty including major punishment provided in rules may not imposed upon you. You are also required to indicate in your reply if you want to be heard in person.
5. In case no reply is received within the specified period, it would be presumed that you have no defense to offer or you have declined to offer the same, accept the charges and ex-parte action shall be taken against you.


District Police Officer/Commandant,
Bajaur Levy Force.

Received by _____


ATTESTED

F

To

- 20
H. a. G.
The District Police Officer/ Levy commandant,
Bajaur at Civil Colony Khar.

Subject: FINAL SHOWCAUSE NOTICE.

Respected Sir,

Kindly refer to your letter No. 3651/B.P dated 14/10/2022, I beg to submit the following few lines for your sympathetic consideration.

1. I always served with zeal and spirit to the best of my capacity and never provided any opportunity to my superior as per service record.
2. As for as allegations are concerned, innocence may please be granted to the trial of court and was bailout as prima fascia no offence is made out against me.
3. I submit and say that being not involved in any criminal activity, being custodian of law implementation.
4. In case of major penalty, my carrier will certainly be ceased up and will face personal enmity, which may cause the threat and danger to all my family members, still say to deny the charges leveled against me.

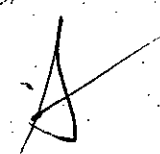
Keeping in view the above facts, if not exempted with your kind orders, I reserve the right of personal hearing.

With regards
Yours obediently



(GUL ZAR)

Subidar Major/Inspector Bajaur Levy/
Acting SDPO Khar.

Received
to day.  12.00 P.M.

20/10/2022


ATTESTED

G



- 21

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OFFICE OF THE
DISTRICT POLICE OFFICER/COMMANDANT
BAJAUR LEVIES FORCE.
Dated 21/11/2022

No. 4152 /B.P

OFFICE ORDER.

As per report of SP Investigation District Bajaur vide No. 783/PA/Inv dated 31.08.2022 endorsed therein report of OI PS Khar that Subedar Major/Inspector Gulzar Khan was charged accused in case FIR No. 51 dated 08.12.2021 under sections 302-324-427-7 ATA-109-34 PPC PS CTD Malakand Region and intimated that departmental proceedings may be initiated.

Pursuance to the above report; the delinquent officer was placed under preliminary enquiry vide order No. 3064/B.P dated 01.09.2022 and DSP Investigation Rehan Yousaf was nominated as enquiry officer who vide report dated 27.09.2022 submitted that the said officer is found guilty of the charges and recommended for proper departmental enquiry.

Pursuance to the above SM/Inspector Gulzar Khan was subjected to departmental action; suspended from his service and his salary was stopped vide order No. 3030/B.P dated 31.08.2022 and charge sheeted vide No. 3397/B.P dated 27.09.2022 wherein SP Investigation Farman Ullah Khan of this district was nominated as enquiry officer.

He enquiry officer after through probe into the matter and after affording proper opportunity of personal hearing recommended Subedar Major/Inspector/SDPO Khar (Acting) Gulzar Khan for major punishment i.e. dismissal from service on the basis of available record/evidence; therefore, he was issued with final show cause notice vide No. 3651/B.P dated 14.10.2022 however did not defend his involvement in the said case.

Therefore, I **Abdus Samad**, District Police Officer/Commandant Bajaur Levy Force in exercise of power vested under section 9 rule-10 Schedule II & III of Federal Levies Force (Amended) Service Rules 2013 and consequent upon recommendations of Enquiry Officer awarded Subedar Major/Inspector/Acting SDPO Khar major penalty of dismissal from service with immediate effect.

No. 4153-60 /B.P
OB NO = 411
21/11/2022

District Police Officer/Commandant,
Bajaur Levy Force.

- Copy forwarded to the:
1. Regional Police Officer, Malakand Division.
 2. District Accounts Officer, Bajaur.
 3. SP Investigation, Bajaur.
 4. Sub Divisional Police Officer Nawagai.
 5. Lines Officer, Police Lines Bajaur.
 6. Accountant/Pay Officer, District Police Office, Bajaur.
 7. Personnel Concern.
 8. Service Book Clerk.

ATTESTED

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بخدمت جناب ڈپٹی انسپکٹر جنرل صاحب بمقام سید و شریف

عنوان: درخواست کے سائل جو کہ عرصہ تقریباً 40 سال قبل محکمہ ریگولریوینز/پولیس میں بھرتی ہوا کی
دوران ملازمت سائل پر FIR درج ہوا جس کے بعد سائل کو محکمہ ہذا سے برخاست کیا گیا اب سائل
دوبارہ اپنے ہی پوسٹ پر بحال ہونا چاہتا ہے بدوجہ سائل کو دوبارہ اپنے ہی پوسٹ پر بحال کرنے کا

احکامات صادر فرمایا جائے

جناب عالی! سائل حسب ذیل عرض ارساں ہے۔

- ۱۔ یہ کہ گل زر خان ولد محیب اللہ ساکن مینہ اینسٹروڈاک خانہ عنایت کالے تحصیل ناموند ضلع باجوڑ کا مقامی رہائش باشندہ ہے سائل کے جاب کے علاوہ دوسری ذریعہ معاش یا آمدنی نہیں ہے اس لئے سائل گزشتہ کئی عرصہ سے بے روزگار کسمپری کا شکار ہوں۔
- ۲۔ یہ کہ من سائل محکمہ لیویز پولیس میں زیر پلیٹ نمبر 2208 آج سے تقریباً 40 سال قبل بھرتی ہوا اور اسی دوران سائل اپنے ڈیوٹی باخوبی احسن طریقہ سے مورخہ 21/11/2022 تک ہر جسی حالت میں اپنے ڈیوٹی سرانجام دیتا رہا بوقت اپریش بھی سائل نے کئی بار اپنے جان ہتلی پر رکھ کر اپنے جملہ فرائض ادا کرنے میں کسی قسم کی کوتاہی نہیں کی کیونکہ سائل محکمہ لیویز پولیس سے پیشل لگا رکھتا ہوں بوجہ ایمانداری و دیانت داری اپنے سینر افسران نے کئی اعزازات / سرٹیفکٹ سے نوازہ ہے بدوجہ دوبارہ اپنے ہی محکمہ میں انا چاہتا ہوں لیکن اس دوران سائل پر برخاستگی اڈر نمبر 4152/BP مورخہ 21/11/2022 کو ایک FIR نمبر 51 مورخہ 8/12/021 جرم 302/324/427/7ATA/109/34

date 28/11/2022

ATTESTED

PPC

۱۶

تھانہ CTD سوات ملاکنڈ ریجن سائل پرسکشن 109 شک کے بنا پر درج ہوئے جس کے ساتھ سائل کا کوئی تعلق نہیں ہے لیکن پر بھی سائل نے جیل کاٹی ہے۔

۳۔ یہ کہ من سائل ایک عریب شخص ہے اور عریب گھرائی سے تعلق رکھتا ہے اور سائل ایک شادی شدہ انسان ہے جس کے ہزاروں جمعہ اخراجات ہے اس لئے سائل برخواست ہونے کے بعد دوبارہ اپنے ہی فوسٹ جو اینٹ کرنا چاہتا ہے۔

۴۔ یہ کہ سائل کو دوبارہ محکمہ ہذا میں بطور انسپکٹر قبول و منظور کرنے کا احکامات صادر فرمایا جائے۔

سائل و سائل کی اہل عیال دعا گور ہے گی

لہذا حسب عنوان و حسب درخواست ہذا من سائل کو دوبارہ اپنے ڈیوٹی بطور انسپکٹر بحال کرنے کا احکامات صادر فرمائیں۔

العراض
سائل گل زار خان ولد محیب اللہ

بلیٹ نمبر 2208

نوٹ: نقل برخواست اڈر کا پی لف ہے۔

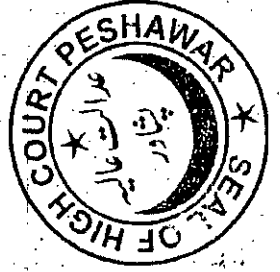
Date: 28/11/2022

ATTESTED

24
H. J. 1

IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 1620 P /2017



Saeedullah Khan

Ex-Constable/SPO No.92/SPF

S/o Shad Muhammad Khan.

R/o Haji Khel, Maieney,

Tehsil Topi, District Swabi..... Petitioner

Versus

1. **The Deputy Inspector General of Police**
Mardan Region, Mardan

2. **The District Police Officer**
District Swabi..... Respondents

**WRIT PETITION UNDER ARTICLE, 199 OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.**

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That petitioner is the permanent resident of District Swabi. Vacancies of Constables/SPOs were advertised on temporary/contract basis by Respondent No.2 way back in 2014 for which petitioner applied and underwent the selection process successfully and on the recommendation of the Selection Committee, he was enlisted as Constable/SPO and allotted Constabulary No.92/SPF vide order dated 14.07.2014 (*Annex:-A*).
2. That after his appointment, petitioner was satisfactorily performing his duties to the entire satisfaction of the high-ups and served as such till 30.09.2016 for a period of more than 02 years with unblemished service record at his credit.
3. That petitioner was falsely implicated in case F.I.R. (*Annex:-B*) No.487 dated 16.07.2016 U/S 336/337A(iv) PPC, Police Station Topi. In pursuance of the F.I.R. petitioner was arrested. The bail petition of the petitioner was declined by the Lower Courts mainly on the basis of Medico-Legal Report (*Annex:-C*) wherein the injury was shown as *Iltaf-i-Salahyat-e-udu*. On application of the petitioner,

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Peshawar High Court
24 FEB 2018

the Medical Board was then constituted and as per the Report (*Annex:-D*) of the Medical Board, the earlier Medico-legal report was found to be incorrect and false.

- 4. That later on, petitioner applied (*Annex:-E*) to this Hon'ble Court on 02.12.2016 for Post Arrest Bail which was allowed vide order dated 23.01.2017 (*Annex:-F*). However, in the meanwhile vide impugned order dated 30.09.2016 (*Annex:-G*), petitioner was summarily dismissed from service by Respondent No.2 without fulfilling the legal requirements.
- 5. That against the order *ibid*, petitioner filed a Representation (*Annex:-H*) before Respondent No.1 but the same has not yet been decided.
- 6. That petitioner, being aggrieved of the acts and actions of Respondents and the impugned order dated 30.09.2016 and having no other adequate and efficacious remedy, files this constitutional petition inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated petitioner in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned order, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That the petitioner has served for more than 02 years with full dedication without any complaint whatsoever but was unlawfully dismissed from service on the basis of mere registration of the F.I.R. which is against the law because it is a settled legal principle that an accused person is presumed innocent unless convicted by the competent court of law. In this view of the matter the impugned order is highly arbitrary, without lawful authority, premature and therefore not sustainable under the law.
- C. That no codal formalities as provided under the law were fulfilled before issuance of the impugned order which were mandatory before such order. No Show Cause Notice has been issued to the petitioner nor he has been afforded an opportunity of hearing before issuing the impugned order and thus petitioner has been condemned unheard which is against the principle of natural justice and thus impugned order is void ab-initio and liable to be struck down.

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Muzaffargarh High Court

24 FEB 2018

- D. That it is a settled law that no major penalty can be imposed without holding a regular enquiry if any stigma is alleged against the employee. In the case in hand the impugned order was issued in a hurried manner in utter disregard of the law which has occasioned serious miscarriage of justice.
- E. That petitioner was falsely and unlawfully involved in the criminal case alongwith his brother on the basis of family dispute. The object of involvement of the petitioner was to deprive him of his livelihood. The Respondents were legally bound to have enquired into the correctness or for that matter the falsity of the charge through a proper enquiry but no such exercise was done which is the negation of legal guaranteed rights of the petitioner rendering the impugned order as nullity in the eye of law.
- F. That the petitioner has also brought his grievances into the notice of Respondent No.1 through a proper Representation but the same was neither positively considered nor responded which is also illegal and against Section-24A of the General Clauses Act, 1897.

For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the impugned order dated 30.09.2016, as without lawful authority and hence of no legal effect and this august Court may further be pleased to set aside the same and direct the Respondents to act in the matter in accordance with law and to reinstate the petitioner into service w.e.f. 30.09.2016 with all back benefits.

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

Interim Relief:

By way of Interim Relief, the operation of the impugned order dated 30.09.2016 may graciously be suspended till the final disposal of the instant writ petition

FILED
 13/04/2017
 COURT

Through

Petitioner
Khaled Rahman
 Advocate,
 Supreme Court of Pakistan

Dated: 13/04/2017

ATTESTED

FILED
 13/04/2017
 COURT

CERTIFICATE

Certified on instruction that petitioner(s) has/have not previously moved this Hon'ble Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 regarding present matter.

Khaled Rahman
Advocate, Peshawar
[Signature]

List of Books

- 1. The Constitution of the Islamic Republic of Pakistan, 1973.
- 2. Services Law.

NOTE

- 1. Three spare copies of the Writ Petition are enclosed in a separate file cover.
- 2. Memo of addresses is also attached.

Khaled Rahman
Advocate, Peshawar
[Signature]

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EXAMINER
Peshawar High Court
24 FEB 2018

FILED TODAY
Deputy Registrar
17 APR 2017

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[Signature]

IN THE PESHAWAR HIGH COURT PESHAWAR

W.P. No. 1620 /2017.

Saeedullah Khan.....Petitioner

Versus

The Govt. of KPK and others.....Respondents

Affidavit

I, Saeedullah Khan, Ex-Constable/SPO No.92/SPF, S/o Shad Muhammad Khan. R/o Haji Khel, Maiency, Tehsil Topi, District Swabi, do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge; and nothing has been concealed from this Hon'ble Court.

[Signature]
Deponent

16202-0724711-5

Identified by
[Signature]
Khaled Rahman
Advocate, Peshawar

No. <u>21961</u>	Subscribed on solemnly
Verified that	affirmation before
day of <u>April</u> 17	at <u>14</u>
of <u>Shad Khel</u>	<u>Saeedullah</u>
who was known to	<u>Swabi</u>
Who is personally	<u>Khaled Rahman</u>
	<u>14/4/17</u>
	Oath Commissioner
	Peshawar High Court, Pesh.

Nadra Verified

ATTESTED
EXAMINER
Peshawar High Court
24 FEB 2018

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IN THE PESHAWAR HIGH COURT PESHAWAR

W.P. No. _____/2017

Saeedullah Khan.....Petitioner

Versus

The Govt. of KPK and others.....Respondents

Addresses of Parties

Saeedullah Khan
Ex-Constable/SPO No.92/SPF
S/o Shad Muhammad Khan.
R/o Haji Khel, Maieney,
Tehsil Topi, District Swabi..... Petitioner

Versus

1. The Deputy Inspector General of Police
Mardan Region, Mardan
2. The District Police Officer
District Swabi..... Respondents

Through

Petitioner

Khaled Rahman
Advocate,
Supreme Court of Pakistan

Dated: 13/04/2017

ATTESTED
EXAMINER
Peshawar High Court
24 FEB 2018

FILED TODAY
Deputy Registrar
17 APR 2017

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CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized under Article 8.7 of
The Gandhara-Shaligram Order 1984
24 FEB 2018

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1 - 30
Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

Judicial department

J U D G M E N T

Writ Petition No.1620-P-2017

Date of hearing.....14.02.2018

Saeedullah Khan



Vs

The Deputy Inspector General of Police, Mardan & another

Petitioner(s) by: *Mr. Khalid Rehman Advocate*

Respondent(s) by: *Mr. Rabnawaz Khan AAG.*

MUHAMMAD YOUNIS THAHEEM, J:-

Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking following relief:-

"On acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the impugned order dated 30.09.2016, as without lawful authority and hence of no legal effect and this august Court may further be pleased to set aside the same and direct the respondents to act in the matter in accordance with law and to reinstate the petitioner into

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**EXAMINER
Peshawar High Court**

24 FEB 2018

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*service w.e.f 30.09.2016 with all
back benefits."*

2. Brief facts of the petition are that petitioner was appointed as Constable/SPO vide appointment order bearing endorsement OB No.911 dated 14.07.2014 by District Police Officer, Swabi and was allotted constabulary No.92/SPF (Special Police Force). After appointment petitioner performed his duty to the satisfaction of his superior officer till 30.09.2006 for more than 02 years. Thereafter according to the averments of petition he was implicated in criminal case vide FIR No.488 dated 16.07.2016 u/s 336/337 A(iv) PPC P.S Topi and in pursuance of said criminal case petitioner was arrested. Petitioner moved an application for the grant of bail but it was declined, thereafter on application of petitioner Medical Board was constituted to determine the nature of injury of injured complainant. According to the Medico-legal Report of Board the earlier Medico-legal Report was found incorrect and petitioner was allowed bail by this Court vide order dated 23.01.2017. As petitioner was implicated and

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EXAMINER
Peshawar High Court
24 FEB 2018

arrested in the aforesaid criminal case, so he was dismissed from service vide dismissal order bearing endorsement No.3354-57/PA dated 30.09.2016, passed by the District Police Officer, Swabi. The petitioner feeling aggrieved from his dismissal from service approached this Court for constitutional interference on the ground that his service was dismissed in violation of law and has not been treated according to the law of the land.

3. Comments were called from respondents among them respondents No.1 & 2 submitted their comments and supported the dismissal order dated 30.09.2016 with further assertion that they have not violated the provision of the constitution particularly Article 4 & 25 of the Constitution of the Islamic Republic of Pakistan as petitioner was involved in criminal case vide FIR No.487 of 2016 mentioned above, so he was dismissed from service according to the Service Rules.

4. Arguments heard and record perused.

5. According to the record it is admitted position that petitioner was appointed as

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EXAMINER
PUNJAB HIGH COURT
27 FEB 2015

Constable bearing FC No.92 in Special Police Force, Swabi vide appointment order dated 14.07.2014. It is further admitted position that after the registration of aforementioned criminal case the services of petitioner as Constable in SPF, Swabi were dismissed vide impugned order dated 30.09.2016. the arguments of learned counsel for petitioner that mere allegations of commission of an offence and registration of FIR against a person would not apso-facto declare him guilty and would be presumed to be innocent unless and until is convicted by competent Court of law and the employee/civil servant can only be suspended and could not be dismissed from service. In this respect learned counsel-referred judgment of Hon'ble Supreme Court of Pakistan titled as "**Habib Bank Ltd Vs Ghulam Mustafa Khairati**" cited as 2007 PLC (C.S) 997 and referred **Civil Service Regulations (C.S.R)** Article 194. The Provisions of Article 194 of C.S.R is reproduced as below:-

"A Government Servant who has been charged for a criminal offence or debt and is committed to prison shall be considered as under suspension from the date of his

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arrest. In case such a Government servant is not arrested or is released on bail, the competent authority may suspend him, by specific order, if the charge against him is connected with his position as government Servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. During suspension period the Government Servant shall be entitled to the subsistence grant as admissible under F.R-53.

6. According to the aforesaid article, if civil servant or employee has been charged for a criminal offence, he is considered under suspension from the date of his arrest and cannot be dismissed from service. So, deriving wisdom from the judgment of Hon'ble Supreme Court referred above and in the light of above reproduced Article 194 of C.S.R, we hold that if criminal case is registered against the civil servant or employee the employer is suppose to suspend that civil servant/employee instead dismissing him from his service/employment.

7. In the instant case the decision of FIR/trial is pending and petitioner is on bail, therefore, it was better and lawful for the employer to had suspended him till the decision

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 EXAMINER
 Peshawar High Court
 24 FEB 2018

of criminal case registered against him in view of Article 194 of C.S.R and above referred judgment of Hon'ble Supreme Court, but the law has not been followed as under no law they can straightaway award penalty of dismissal from service and it can only be imposed unless and until delinquent is served with show cause notice as well as after inquiry.

8. Thus what has been discussed above, we allow this petition, set aside the dismissal order dated 30.09.2016 and restore his service with all back benefits.

*affirmative order with 5
no of years back*

Announced
14.02.2018.

JUDGE

JUDGE

(08) Hon'ble Mr. Justice Waqar Ahmad Seth & Hon'ble Mr. Justice Muhammad Younis Thaboon

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Examiner
Peshawar High Court, Peshawar
Authorized Under Article 8.7 of
The Qanun-e-Shahadat Order 1984

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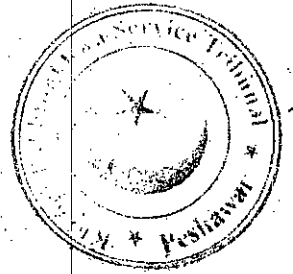
36 Amir K

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15181/2020

Date of Institution ... 09.11.2020

Date of Decision ... 17.01.2022



Mr. Ismail Ex-LHC District Police Mardan.

(Appellant)

VERSUS

Inspector-General of Police Khyber Pakhtunkhwa Peshawar and others.

(Respondents)

Taimur Ali Khan,
Advocate

For Appellant

Muhammad Rasheed,
Deputy District Attorney

For respondents

AHMAD SULTAN TAREEN
ATIQ-UR-REHMAN WAZIR

CHAIRMAN
MEMBER (EXECUTIVE)

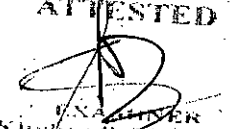
JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant while serving as Constable in Police Department was charged in FIR U/Ss 365/302/419/420/468/470/471PPC & 15AA Dated 06-04-2020. The appellant was arrested by local police and was confined in judicial lockup. The appellant was also suspended from service and departmental proceedings conducted against him and ultimately the appellant, while in jail was dismissed from service vide order dated 17-09-2020. The appellant was released on bail vide judgment dated 07-08-2020. Feeling aggrieved of his dismissal, the appellant filed departmental appeal, which was rejected vide order dated 12-10-2020, hence the instant service appeal with prayers that the impugned orders

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

dated 17-09-2020 and 12-10-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, rule and policy on subject and acted in violation of Article-4 of the Constitution and unlawfully issued the impugned order, which is unjust, unfair and hence not sustainable in the eye of law; that the appellant was not directly involved in criminal case but he was charged U/S 164 Cr.Pc and that too, with inordinate delay which by itself is the proof that the charge against the appellant is false and concocted and he was made a scapegoat on the basis of his family relations and because of the fact that he was serving in police department to damage his service career; that under police rules, the respondents were required to issue charge sheet/statement of allegation, which are requirement of law but they failed in utter disregard of set procedure and law, thus the impugned orders are unlawful and hence not tenable; that mere registration of FIR against the appellant cannot be taken as a Gospel truth in as much as the allegation have to be established in the competent court of law and until then the accused would be presumed to be innocent; that in view of this matter CSR 194 mandates that a civil servant who is charged for a criminal case and is arrested is to be deemed as suspended and until finally convicted by the competent court of law, mere on the basis of FIR cannot be dismissed from service; that the appellant was granted bail by the competent court of law and has not yet been convicted for the offense, hence the impugned orders are highly arbitrary in as much as the appellant was kicked out of service in the basis of unconfirmed and unproved allegations; that neither any inquiry was conducted into the case nor any documentary proof or oral evidence was recorded in presence of the appellant nor he was afforded opportunity to cross-examine such witnesses; that entire action was taken at the back of the appellant, thus the appellant was condemned unheard; that it is a well settled legal proposition that

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regular inquiry is must before imposition of major penalty of dismissal from service; that Article-10A of the Constitution read with section-16 of Civil Servant Act, 1973 provides for right of fair trial and that too as per prescribed law and rules for the determination of every civil right and obligation or any criminal charge against a person, thus the impugned orders are void ab initio as well as against the principle of natural justice; that no meaningful opportunity of personal hearing was afforded to the appellant, which is mandatory requirement of law, thus the appellant was condemned unheard, as the action has been taken at the back of the appellant, which is against the principle of natural justice; that the appellant served the department for 11 long years and during the period, he has never been departmentally proceeded against, rather he has been awarded with commendation certificates.

lwh

03. Learned Deputy District Attorney for the respondent has contended that the appellant was placed under suspension on account of registration of FIR U/Ss 365/302/419/420/468/470/471PPC & 15AA Dated 06-04-2020; that the appellant was proceeded against departmentally and was afforded every opportunity of defense; that the appellant was served with charge sheet/statement of allegations as well as show cause notice; that during the course of inquiry, the appellant was afforded full opportunity of defense, but the appellant failed to prove his innocence; that after conclusion of the inquiry proceedings, the inquiry officer recommended the appellant for award of major punishment of dismissal from service, which does commensurate with gravity of the misconduct of the appellant; that departmental appeal of the appellant was considered but was rejected being devoid of merit.

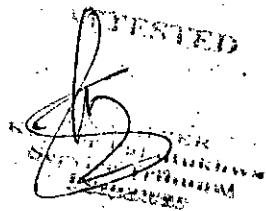
04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant was proceed against, while he was behind the bars. The inquiry report to this effect would reveal that it was not a

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regular inquiry, as the inquiry officer admitted to the fact that the official is behind the bar, but is involved in a criminal case, hence he should be dismissed from service, hence it was a summary procedure without ascertaining facts and without adhering to the method prescribed in law. Allegation of his involvement in criminal case would need a bigger inquiry as it would involve strong evidences for proving his guilt, but the respondents adopted easy way. The correct course would have been to suspend the appellant from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature and to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellants in absentia and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

06. Placed on record is charge sheet/statement of allegations dated 12-05-2020 containing the charges of his involvement in criminal case with no specific charges, thus the authorized officer failed to frame the proper charge and communicate it to the appellant's alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken into consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was a mandatory pre-requisite, which was to be followed. Reliance is placed on 2000 SCMR 1743. In addition, it is also not clear as to whether such charge sheet was actually served upon the appellant or it was only eyewash.


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07. In absence of any solid proof, the inquiry officer only relied on his own wisdom. In a manner, the appellant was deprived of the right to defend his cause and which smacks malafide on part of the respondents. It is a cardinal principle of natural justice of universal application that no one should be condemned unheard and where there was likelihood of any adverse action against anyone, the principle of Audi Alteram Partem would require to be followed by providing the person concerned an opportunity of being heard. The inquiry officer recommended the appellant merely upon his involvement in FIR and with no solid evidence against the appellant. Mere reliance on FIR and that too without confronting the appellant with the same had no legal value and mere presumption does not form basis for imposition of major penalty, which is not allowable under the law.

08. In circumstances, the instant appeal is accepted. The impugned orders dated 17-09-2020 and 12-10-2020 are set aside and the appellant is re-instated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the provisions contained in Rule 16:2(2) of Police Rules, 1934, if decision in the criminal case was found adverse. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
17.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy
Ex. No. 100/2022
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

Date of Presentation of Application 07-3-23
 Number of copies Page 5
 Copying Fee 35/-
 Urgent 35/-
 Total 35/-
 Name of Officer
 Date of Completion 07-3-23
 Date of Delivery of Copy 07-3-23

WAKALAT NAMA

IN THE COURT OF 48th Justice Tribunal Peshawar

Gulzar

Appellant(s)/Petitioner(s)

-VERSUS

Police and others

Respondent(s)

I/We Applicant do hereby appoint
Mr. Khaled Rehman, Advocate, Supreme Court, **Mr. Muhammad Amin Ayub & Muhammad Ghazanfar Ali**, Advocates in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

[Signature]
Signature of Executants

[Signature]
Khaled Rahman,
Advocate,
Supreme Court of Pakistan

&

[Signature]
Muhammad Amin Ayub,
Advocate, High Court

&

[Signature]
Muhammad Ghazanfar Ali
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458