

Sr. No. Date of order/proceedings

1

2

Order or other proceedings with signature of Judge or Magistrate

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 922/2015

Date of Institution ... 17.08.2015

Date of Decision ... 05.04.2018

Farhan Adil Belt No.1203, district Police Swabi resident of Yar Hussain Tehsil Razzar Swabi

Appellant

Versus

1. Inspector General of Police (IGP/PPO) Khyber Pakhtunkhwa Police Line Peshawar.
2. Deputy Inspector General, Region-I, Mardan.
3. District Police Officer, Swabi.
4. Mr. Arbaba Shafiullah, DSP Razar Swabi

Respondents

05.04.2018

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned counsel for the appellant and Learned Additional Advocate General for the respondents present.

2. The appellant has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 30.06.2014 whereby he was awarded punishment/order of discharge from service and against the order dated 24.06.2015 whereby the departmental appeal of the appellant for reinstatement in service was filed being badly time barred.

3. FIR 307 dated 10.06.2014 u/s 376 PPC P.S Ghazi Haripur

was chalked out against the appellant on the allegation that he committed rape of the complainant. Consequently the departmental action was initiated against the appellant and vide impugned order dated 30.06.2014 the appellant was awarded punishment/order of discharge from service. After earning acquittal in the above mentioned criminal case the appellant filed departmental appeal for reinstatement in service which departmental appeal was rejected/filed being badly time barred.

4. Learned counsel for the appellant argued that upon the registration of criminal case against the appellant, he went behind the bars, and the departmental proceedings were conducted at the back of the appellant, while he was in lockup. That appellant was not treated in accordance with law. That neither the charge sheet was served upon the appellant nor the statement of complainant was recorded in the presence of appellant nor he was afforded opportunity to cross-examine her.

5. As against that learned Additional Advocate General argued that the appellant committed heinous crime but earned his acquittal on the basis of compromise/concessional statement. That the inquiry officer recorded statement of appellant as well as complainant and found the appellant guilty, hence the impugned orders are not open to any exception.

6. Arguments heard. File perused.

7. The discharge order of appellant was issued after departmental inquiry against him. Admittedly during the

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departmental action against the appellant he was in the lockup. The record does not suggest that any charge sheet was served upon the appellant. Learned Additional Advocate General could not rebut the argument of the learned counsel for the appellant that the statement of complainant was not recorded in the presence of the appellant and he was also not afforded any opportunity to cross-examine the complainant. Consequently the impugned discharge order is not tenable in the eyes of law.

8. As a sequel to above this Tribunal is constrained to set aside the impugned orders. The respondent department is directed to conduct de-novo inquiry against the appellant, by providing him opportunity of defense in accordance with law/rules, within a period of three (03) months of the receipt of this judgment. The issue of reinstatement of appellant shall be subject to the final outcome of de-novo inquiry. The present appeal is decided in the above terms. Parties are left to bear their own costs. File be consigned to the record room after its completion.

ANNOUNCED

05.04.2018



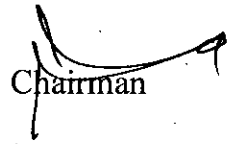
(AHMAD HASSAN)
MEMBER

(MUHAMMAD HAMID MUGHAL)
MEMBER

27.11.2017

Clerk to counsel for the appellant and Addl: AG alongwith Mr. Fazal Subhan, H.C for respondents present. Due to general strike of the Bar arguments could not be heard. Adjourned. To come up for arguments on 06.02.2018 before D.B.

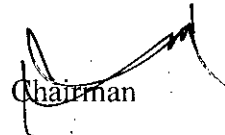

Member


Chairman

06.2.2018

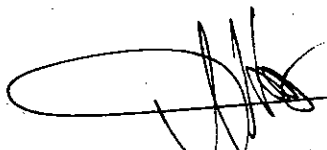
Clerk of the counsel for appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Clerk of the counsel for appellant seeks adjournment. Granted. To come up for arguments on 05.04.2018 before D.B.



Member


Chairman

05.04.2018

Learned counsel for the appellant present. Learned Additional Advocate General for the respondents present. Vide separate judgment of today placed on file, this Tribunal is constrained to set aside the impugned orders. The respondent department is directed to conduct de-novo inquiry against the appellant, by providing him opportunity of defense in accordance with law/rules, within a period of three (03) months of the receipt of this judgment. The issue of reinstatement of appellant shall be subject to the final outcome of de-novo inquiry. The present appeal is decided in the above terms. Parties are left to bear their own costs. File be consigned to the record room after its completion.



(AHMAD HASSAN)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

09.12.2016

None present for the appellant. Mr. Fazl e Subhan, HC alongwith Mr. Ziaullah, GP for respondents present. Notices be issued to the appellant and his counsel. To come up for rejoinder and arguments on 19.4.17.


(MUHAMMAD AAMIR NAZIR)
MEMBER


(ASHFAQUE TAJ)
MEMBER

19.04.2017

Junior to senior counsel for the appellant present. Mr. Fazle Subhan, Head Constable alongwith Mr. Ziaullah, Government Pleader for the respondents also present. Junior to senior counsel for the appellant requested for adjournment on the ground that senior counsel for the appellant is not available. Adjourned. To come up for rejoinder and arguments on 07.08.2017 before D.B.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

07.08.2017


Junior counsel for the appellant present. Mr. Fazle Subhan, Head Constable alongwith Mr. Ziaullah, Deputy District Attorney for the respondents present. Junior counsel for the appellant seeks adjournment on the ground that senior counsel for the appellant is not available today. Adjourned. To come up for rejoinder and arguments on 27.11.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member (J)


(Muhammad Hamid Mughal)
Member (J)

14.01.2016

Appellant with counsel and Mr. Muhammad Ghani, SI alongwith Assistant AG for respondents present. Written reply by respondents submitted, copy whereof handed over to learned Assistant AG. To come up for rejoinder and arguments on 29.4.2016 before D.B.


MEMBER

29.04.2016


Junior to counsel for the appellant and Addl: AG for respondents present. Junior to counsel for the appellant requested for adjournment. To come up for rejoinder and arguments on 11.08.2016.


Member


Member

11.08.2016

Agent to counsel for the appellant and Mr. Muhammad Ghani, SI alongwith Additional AG for respondents present. Rejoinder not submitted and requested for further time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 9-12-16 before D.B.


Member


Member

26.08.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when involved in a case vide FIR No. 207 dated 10.6.2014 registered under section 376 PPC at PS Ghazi Haripur and was confined to judicial lock up and that during trial he was departmentally proceeded against and dismissed from service vide impugned order dated 30.6.2014. That the appellant was acquitted of the charges on 20.4.2015 where-after he preferred departmental appeal on 15.5.2015 which was rejected on 24.6.2015 which came into the notice of appellant on 16.8.2015 where-after the instant service appeal was filed on 17.8.2015.

Appellant Deposited
Security & Process Fee

[Handwritten signature]

That no departmental inquiry was conducted in the prescribed manner and appellant not given any opportunity of hearing.

11-8-15

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 17.11.2015 before S.B at Camp Court A/Abad as the matter pertains to the territorial limits of Hazara Division.

[Handwritten signature]
Chairman

17.11.2015

Appellant in person present. The appeal pertains to the territorial limits of Mardan Division as such the same is to be heard at Peshawar. Let notices be issued for 14.01.2016 before S.B at Peshawar.

[Handwritten signature]
Chairman
Camp Court A/Abad.

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 922/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17.08.2015	<p>The appeal of Mr. Farhanullah Adil presented today by Mr. Shabbir Hussain Gigyani Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR -</p>
2	24-8-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>26-8-15</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

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

Service Appeal No: 922/2015

Farhan **A**dil

Versus

IGP KPK & **O**thers

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5	Copy of Final Show Cause Notice	"B"	14
6	Copy of reply to Final Show Cause	"C"	15
7	Copy of letter & Discharge order	"D"	16-17
8	Copy of statement of PW-2	"E"	18
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12	Wakalatnama		23
Total Pages			(23)

Through

Farhan Adil (appellant)

Shabbir Hussain Gigyani
Advocate

Office# 206, 2nd Floor, City Gate Tower
Opposite City No.1 School, G. T. Road, Peshawar
0300-8912921, 0333-9152592

Dated: 17-08-2015

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

Service Appeal No: 922/2015

K. W. P. Province
Service Tribunal

Diary No. 969

Dated 17-8-2015

Farhan Adil Belt No: 1203, District Police Swabi

R/O Yar Hussain Tehsil Razzar Swabi-----**A**ppellant

Versus

1. Inspector General Police (IGP/PPO) Khyber Pakhtunkhwa
Police line Peshawar.
2. Deputy Inspector General, Region -I, Mardan.
3. District Police Officer, Swabi
4. Mr. Arbaba Shfiullah, DSP, Razzar Swabi-----**R**espondents

APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED
30/06/2014 OF THE DISTRICT POLICE OFFICER, SWABI,
WHEREIN THE APPELLANT WAS DISCHARGE FROM THE
SERVICE AND ORDER DATED 24/06/2015 OF THE
DEPUTY INSPECTOR GENERAL, REGION -I, MARDAN,
WHEREIN APPEAL OF THE APPELLANT WAS DISMISSED.

PRAYER-IN-APPEAL:

By accepting this appeal, both the impugned orders of the Respondents may graciously be set-aside and the appellant may kindly be re-instated in service with all back benefits alongwith grant of any other remedy deemed fit by this Hon'ble Bench.

Respectively Sheweth:

Facts leading the institution of the instant appeal are;

- a) That the appellant was appointed as a constable on 03.07.2012 and was performing his duty accordance with Rules, Regulations, procedure and law of land, and to the best satisfaction of his superiors in Swabi, after completion of his training.
- b) That the appellant was charged in a criminal case registered vide F.I.R No 207 dated 10.06.2014 U/S 376 PPC at Police Station Ghazi, District Haripur at the instance of complainant namely, Mst. Aneesha. Copy of F.I.R is annexed-"A".
- c) That the appellant after getting the information of the said groundless charge, on 14.06.2014 volunteer his arrest to the District Police Officer, Swabi (Respondent No.3) for treatment according to law, and was later on sent for trial before the learned Additional Session Judge, Ghazi, Haripur.
- d) That apropos to the registration of the subject FIR No. 207, during his confinement, he appellant was served with a Final Show Cause notice in central Jail Haripur, issued by the District Police Officer (Respondent No.3), the bedrock of the said final show cause notice was the said F.I.R No. 207. Copy of Final show cause notice is annexed-"B".
- e) That appellant after receiving the final show cause notice, made a gentle and supplicating reply, and made request the authorities (Respondent No.3) to postpone the proceeding, till the fate of the case and release of the appellant, being the said matter was sub-judice before the learned competent Court of law, Copy of reply is annexed-"C".
- f) That the District Police Officer (Respondent No.3), without considering the reply of the appellant and without waiting fate of the trial which was pending adjudication before the learned competent Court of law, discharged the appellant from the service vide order dated 30/06/2015 which was served upon the appellant at Central Jail Haripur, copy of which is annexed-"D".

- g) That during the trial of the appellant before Additional Session Judge, Ghazi, Haripur, the said complainant of the case appeared as PW-2 and recorded her evidence on 30/03/2015, copy of which is annexed-"E".
- h) That thereafter the appellant moved an application for his acquittal U/S 265-k Cr.P.C, whereupon he was acquitted from all the charges leveled against him by the complainant, vide order & judgment dated 20/04/2015, copy of which is annexed-"F".
- i) That after acquittal from the learned trial Court, the appellant moved an appeal to the Deputy Inspector General of Police, Mardan Region, Mardan but the authority, without considering the facts & circumstances of the case and without consulting the Rules, Regulations, law & Procedure on the subject issue, thrown the matter into trash. Copy of appeal and order thereon are annexed-"G" & "H" respectively.

Now, the appellant, being aggrieved of the illegal, un-procedural, beyond the rules & regulation act of the Respondents and of both the impugned orders, begs to seek indulgence of this Hon'ble forum for re-instatement in service with all back benefits inter-alia on the following grounds.

GROUND:

1. That act, action and both the impugned orders illegal, without justification, without lawful authority and in utter disregard of law, procedure, rule and regulations, hence, untenable.
2. That the appellant has neither been served with any charge sheet, summary of allegation nor Show Cause Notice, rather, he has been surprised and confronted only with the Final Show Cause Notice, which too; was served upon him at Central Jail, Haripur as admitted by Respondent No.3 in the impugned discharge order.

3. That despite of having the knowledge by the Respondents regarding the detention of the appellant in Central Jail Haripur, astonishingly neither has he been apprised of the constitution of any inquiry committee nor the inquiry officer (Respondent No.4) has bothered to visit the jail for recording plea of the appellant which all alone enough to crumble the whole act & action of the respondents to ground.

4. That he was also deprived by the authority/Respondents from his valuable right of hearing in person, confrontation with the allegation, with the so-called inquiry report and cross-examination, rather, all the proceedings have been conducted ex-parte, which is in utter disregard to the principles of justice and clear provisions of the Constitution especially Article 10-A which says that;

10-A. Right to fair trial:-
For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

5. That the entire act, action and the impugned orders were passed against the principle of natural justice as the appellant has been discharged from service without providing him any opportunity of hearing, which is a clear violation of Principle of Natural Justice and Maxim, "**No one should be condemn unheard**".

6. That due to his detention in the judicial lock-up, the appellant was neither aware of initiation of any inquiry against him, nor he was in position to join the same to defend his cause and explain his position, hence, the law does not compel one to do which cannot possibly be done as the law immune a person, exercising in impossible work.

(Interpretation of Statutes by N.S.Bindra 4th Edition, P-102)

7. That the Respondents were all aware of the fact that the appellant's trial is sub-judice before the learned competent Court of law but without waiting the fate of the trial they discharged the appellant from service which is abuse of the process of law and mockery with the learned trial Courts.

8. That act and action of the Respondents is against the golden principal of criminal dispensation of justice that and accused person is to be presumed as innocent until & unless proved guilty by the Court of law.
9. That the entire enquiry proceedings against the appellant were conducted under Khyber Pakhtunkhwa Police Rules 1975 and the powers conferred upon the Competent Authority (DPO/SSP/SP) for inflicting departmental punishment against a constable under Rules 4 (*supra*) are as under;
- (a) **Minor Punishments.**
- (i) Confinement of Constable and Head Constable for 15 days to Quarter Guards.
 - (ii) Censure.
 - (iii) Forfeiture of approved service up to two years.
 - (iv) Withholding of promotion up to one year.
 - (v) Stoppage of increment for a period not exceeding three years with or without cumulative effect.
 - (vi) Fine up to Rs.15000/- as per schedule -I
- (b) **Major Punishments.**
- (i) Reduction in rank/pay.
 - (ii) Compulsory retirement.
 - (iii) Removal from service.
 - (iv) Dismissal from service.
10. That the appellant as been discharged from service, which is nowhere provided in Rule-4 (*supra*) and discharge of the appellant under Rules 21, Chapter 12 of Police Rules 1934 is against the law, procedure, rules, regulation and natural justice being discriminatory and unjustifiable in nature.
11. That be that as it may, at present the Disciplinary Rules applicable on police department is The Khyber Pakhtunkhwa Police Rules, 1974, amended up to 2014, and as per section 14 of the Rules (*supra*) any other disciplinary rules have been repealed as its reads that;
14. **Repeal:-** Any disciplinary Rules applicable to Police Officers to whom these rules apply are hereby repealed but the repeal thereof shall not affect any action taken or anything done or suffered there under.
12. That as provided in Article 264 of the Constitution, 1973 and section 6 of the General Clauses Act, 1897, any repeal law has no legal effect as its reads that;

264. Effect of repeal of laws:-

Where a law is repealed, or is deemed to have been repealed, by, under, or by virtue of the Constitution, the repeal shall not, except as otherwise provided in the Constitution, -

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
 - (b) affect the previous operation of the law or anything duly done or suffered under the law;
 - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;
 - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or
 - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;
- and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed.

6. Effect of repeal -

Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-
 Revive anything not in force or existing at the time at which the repeal takes effect, or
 Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or
 Affect any right, privilege, obligation or liability acquired, accrued or incurrent under any enactment so repealed, or
 Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or
 Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

13. That the edifice of penalty inflicted upon the appellant nowhere stand in legal parlance being reflecting the colour of **"the doctrine of pick and choose"**.
14. That under Police Rules 1975 a self-explanatory procedure for inflicting of penalty is architected, hence, it exclude the application of any other procedure and penalty for wrong doer and **"The express mention of one thing implies the exclusion of another"** will squarely applies.
 (Interpretation of Statutes by N.S.Bindra 4th Edition, P-108)
15. That the Khyber Pakhtunkhwa Police Rules, 1975 was legislated in pursuance of section 7 of The Police Act, 1861, hence, the present charge/show cause against the appellant does not, in any stretch of imagination, fall within the definition of police under Khyber Pakhtunkhwa police rules, 1975. Section 7 (*supra*) reads as under;

7. Appointment, dismissal, etc, of inferior officers

subject to such rules as the Provincial Government may from time to time make under this act, the Inspector General, Additional Inspector General, Deputy Inspector General, Assistant Inspector General and District superintendents of police, may, at any time dismiss, compulsory retire, suspend, or reduce either in Rank or within time-scale any police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same;

Or

May award any one or more of the following punishments to any police officer of the subordinate ranks who shall discharge his duty in **careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge** thereof:

- a) Fine to any amount not exceeding one month's pay;
- b) Confinement to quarters for a term not exceeding 15 days, with or without punishment, drill, extra guard, fatigue or other duty;
- c) Deprivation of good-conduct pay;
- d) Removal from any office of distinction or special emolument;
- e) Stoppage of increments.

16. That the present show cause notice does not fall within the definition of "**misconduct**", hence, the appellant's discharge is not sustainable in legal parlance. The "**misconduct**" has been defined in **Rule 2(iii)** of the Khyber Pakhtunkhwa police Rules, 1975 that;

Rule 2(iii) :- "Misconduct" means conduct prejudicial to good order of discipline in the police force or contrary to the government servant (conduct) rules or unbecoming of a police officer and a gentleman, any commission or omission which violates any of the provisions of law and rules regulating the function and duty of police officer to bring or attempt to bring political or other outside influences directly or indirectly to bear on the government or any government officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other condition of service of a police officer.

17. That Rule of Conduct applicable on the employees of Police department is Khyber Pakhtunkhwa government servants (conduct) Rules, 1987 which has been specified in **Rule 4 A**, in the words that;

Rule 4 A: No Government servant shall.....

- a) Accept or obtain or agree to accept or attempt to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the Pakistan penal code; Or
- b) Do or forbear to do any official act or show or forbear to show, in the exercise of his official function, favour or disfavor to any person or render or attempt to render any service or disservice to any person, in violation or contravention of any provision of any law for the time being enforce, or of rules made under article 119, or 139 of the constitution of Pakistan or Khyber Pakhtunkhwa civil servant Act, 1973 or any other law for the time being enforce including the Khyber Pakhtunkhwa government rules of business 1985 in a manner which may appear to facilitates acceptance or obtaining or agreeing to accept or attempting to obtain from any person for himself or for any other person any gratification whatsoever, other than legal remuneration as a motive or reward; or
- c) Accept or obtain or agree to accept or attempt to obtain for himself or for any other person any valuable thing without consideration or for a consideration which he knows to be inadequate from any person he knows to have been, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official function of himself or any of government servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

- d) Misappropriate, dishonestly or fraudulently, or otherwise convert for his own use or use of other person any property entrusted to him or under his control as a government-servant or willfully allow any other person to do so; or
- e) Obtain by corrupt, dishonest improper or illegal means, or seek for himself or for any other person any property, valuable thing, pecuniary advantage or undue favour; or
- f) Possess directly or through his dependents or benamidars, any moveable or immovable property or pecuniary resources, disproportionate to his known sources of income which he cannot reasonably account for.
- g) Shall attend such function and meetings in which Islamic moral values are not regarded or which are in violation of such values like function of music and dancing by women etc.]

18. That the appellant was vexed twice one in a Court of law and another departmental for a single alleged wrong, which was barred by Article 13 of Constitution of Pakistan, 1973, Section 26 of the General Clauses Act, 1897 and section 403 Cr.P.C. which says that;

13. Protection against double punishment and self incrimination:-

No person—

- (a) shall be prosecuted or punished for the same offence more than once; or
- (b) shall, when accused of an offence, be compelled to be a witness against himself.

26. Provisions as to offences punishable under two or more enactments:-

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

403. Person once convicted or acquitted not to be tried for same offence :

(1) A person who has once been tried by a Court of Competent Jurisdiction for an offence and convicted or acquitted of such offence shall whiles such conviction or acquittal remains in force, not liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might have been convicted under Section 237.

19. That as provided in the Fundamental Rules, (FR-54) any civil servant after his acquittal would be entitled for all benefits and even his period of suspension, abscondence and detention to be treated as spent on duty, as it says that;

F.R. 54:- In case where suspension of Government Servant is held to have been unjustifiable or not wholly justifiable or he is re-instated after being dismissed, removed from service or suspended, the revising or appellate authority may grant him the following pay and allowances for the period of absence:-

- (a) If the Government Servant is honorably acquitted, he may b given the full pay to which he would have been entitled but for his dismissal, removal or suspension. The period of absence in such cases is treated as spent on duty. For this purpose FR-54 should be treated as absolute and unconditional and no question should be raised as to whether there was a post or not against which he could be adjusted for the period of his absence or he had no longer any lien or any other Government Servant was appointed substantively in his place

20. That appellant, as in view of law and *ratio decidendi* of the Hon'ble Apex Court on the subject issue, is entitled for reinstatement in service along with all back benefits to which he is entitled under the law and procedure as held;

1999-SCMR-2870 (M. Iqbal Zaman...Vs...S.E. Irrigation Bannu)

Article 212 Constitution of Pakistan---Civil Service---Suspension---arrears of pay relating to suspension period---Entitlement---Civil Servant who was involved in murder case and was convicted and sentenced by trial Court was acquitted of murder charge by the High Court in appeal---Civil Servant who after his acquittal was re-instated in service, prayed for arrears of pay relating to his suspension period but his prayer was turned down by authority on ground that Civil Servant was not entitled to arrears as he was not honorably acquitted, but was given benefit of doubt---Validity---Acquittal of Civil Servant, even if based on benefit of doubt, was honorable---Acquittal of Civil Servant even based on benefit of doubt, could not become hurdle in payment of arrears of pay to Civil Servant regarding his suspension period provided he had not been found to be gainfully employed during suspension period.

2007-SCMR-537 (S.E. GEPCO...Vs...Muhammad Yousaf)

S. 4 Service Tribunal Act---Article 212(3) Constitution of Pakistan, 1973---Acquittal on benefit of doubt from criminal charge---Honorable acquittal---Back benefits---entitlement---Civil Servant was taken on duty, after his acquittal from criminal charge and his period of suspension was treated as leave on due basis---Grievances of Civil Servant was that the authorities did not pay him salary for the period---Service tribunal allowed the appeal of Civil Servant and directed the authorities to pay him back benefits---Validity---Civil Servant who was acquitted by extending benefit of doubt would be deemed to have been acquitted honorably---Civil Tribunal has rightly directed the authorities to treat him on duty and give him all financial benefit during the period of his confinement in custody on account of his involvement in criminal case---Leave to appeal was refused.

1998-SCMR-1993 (Govt of NWFP...Vs...Dr. Muhammad Islam)

FR-54, Fundamental Rule---Civil Services---Civil Servant was involved in a case U/S. 302/34 PPC for a murder---No evidence could be brought against the accused Civil Servant on charge of murder, thus, proving that allegation leveled against him were baseless---Acquittal of Civil Servant from a criminal case---Accused Civil Servant in case of acquittal was to be considered to have committed no offence because the competent criminal Court had freed/ cleared him from the accusation of charge of crime---Such Civil Servant, therefore, was entitled for grant of arrears of his pay and allowances in respect of the period he remain under suspension on the basis of murder case against him.

21. That, be that as it may, case of the appellant has not been treated in accordance with law which is in utter violation of Article 4 of the Constitution which says that;

4. Right of individuals to be dealt with in accordance with law, etc:-

(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular—

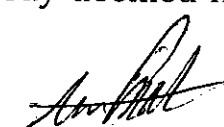
(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not required him to do.

22. That, at any rate, act, action and the impugned orders of the Respondents are illegal, have no legal effect in the eye of law, untenable and the appellant is entitled for the relief sought.

PRAYER:

It therefore most humbly prayed that on acceptance of this appeal, this Hon'ble Bench may graciously be pleased to set-aside both the impugned orders of the Respondents and the appellant may kindly be re-instated in service with all back benefits alongwith grant of any other remedy deemed fit by this Hon'ble Bench.


Farhan Adil (appellant)

Through


1. Snabbir Hussain Gigyani

2. M. Yousaf Khan


Advocates, Peshawar

Dated: 17-08-2015

NOTE:

- Appeal in hand is 1st one on the subject issue before this Hon'ble Bench by or on behalf of the appellant.

List of Books:

1. Constitution of Pakistan 1973.
 2. Interpretation of Statute N.S.Bindra.
 3. Police Act 1861.
 4. Police Rules 1934.
 5. Khyber Pakhtunkhwa Police Rules 1975.
 6. Khyber Pakhtunkhwa Service Tribunal Act 1974.
 7. Khyber Pakhtunkhwa government servants (conduct) Rules, 1987.
 8. The General Clauses Act, 1897.
 9. The Code of Criminal Procedure, 1898.
 10. 1998-SCMR-1993
 11. 1999-SCMR-2870
 12. 2002-SCMR-916
 13. 2007-SCMR-537
 14. Any other book or case law as per need.
- 

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

Service Appeal No: _____/2015

Farhan Adil ----- **A**ppellant

Versus


IGP KPK & others ----- **R**espondents

AFFIDAVIT

I, Farhan Adil Belt No: 1203, District Police Swabi R/O Yar Hussain Tehsil Razzar Swabi do hereby solemnly affirm and declare on oath that contents of the accompanying service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


DEPONENT

Identified by:


Shabbir Hussam Gigyani
Advocate
Access to Justice Law Char. Org.
Shabbir Hussam Gigyani
Advocate High Court/Federal Shariat Court
Office No. 206, 2nd Floor City Gate Tower
Opposite City No. 1 School Main G.T. Road Peshawar
Cell: (300-8912921, 0333-9153392)
E-mail: shabbirgigyani@gmail.com

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

Service Appeal No: _____/2015

Farhan Adil -----Appellant

Versus

IGP KPK & others-----Respondents

ADDRESSES OF THE PARTIES

Address of the appellant:

Farhan Adil Belt No: 1203, District Police Swabi

R/O Yar Hussain Tehsil Razzar District Swabi

Addresses of the Respondents:

1. Inspector General Police, KPK, CPO, Peshawar.
2. Deputy Inspector General, Region -I, Mardan.
3. District Police Officer, Swabi
4. Mr. Arbaba Shfiullah, DSP, Razzar Distrcet Swabi

Farhan Adil (appellant)

Through


Shabbir Hussain Gigyani

Advocate, Peshawar

Dated: 17-08-2015

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ

ضلع غازی پور

غازی

تاریخ 10/6/15 وقت 12:00 ص

28 علت نمبر 207

1-	تاریخ و وقت رپورٹ 10/6/15 وقت 15:30 بجے	خانہ نمبر 17/10
2-	نام و سکونت اطلاع دہندہ مستغیث انیسٹیم دختر فاضل حکیم بھٹی	مقام انیسٹیم دختر فاضل حکیم بھٹی
3-	مختصر کیفیت جرم (ممد و نقد) حال اگر کچھ لیا گیا ہو۔	زیر پرہیز 3000 روپے
4-	جائے وقوعہ فاصلہ قحانہ سے اور سمت	ڈھاکہ پورہ منہم کھوجیج جانب شرقا بقاہلم 300/32 کوٹہ منہم از قحانہ
5-	نام و سکونت ملزم	سر اسلم پیر معتمد 3000 روپے
6-	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو اور وہ وجہ بیان کرے	روشنی ڈاک
7-	قحانہ سے روانگی کی تاریخ و وقت	

ابتدائی اطلاع تھے درج کرو۔

مختصر کیفیت جرم (ممد و نقد) حال اگر کچھ لیا گیا ہو۔

جائے وقوعہ فاصلہ قحانہ سے اور سمت

نام و سکونت ملزم

کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو اور وہ وجہ بیان کرے

قحانہ سے روانگی کی تاریخ و وقت

ابتدائی اطلاع تھے درج کرو۔

مختصر کیفیت جرم (ممد و نقد) حال اگر کچھ لیا گیا ہو۔

جائے وقوعہ فاصلہ قحانہ سے اور سمت

نام و سکونت ملزم

کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو اور وہ وجہ بیان کرے

قحانہ سے روانگی کی تاریخ و وقت

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Handwritten signature

10 - 6 - 15

FACE NO

(4)

ANNEXURE-" B "

FINAL SHOW CAUSE NOTICE.

Whereas, you Constable Farhan Adil No.1203, while posted to Police Station IDS involved yourself in case FIR No.207 u/s 10.06.2014 u/s 376 PPC Police Station Ghazi District Haripur for the reasons best known to you, which is highly against the good orders of discipline and amounts to gross mis-conduct.

In this connection you were charge sheeted and served with summary of allegation and Mr. Arbab Shafiqullah, DSP, Razzar was appointed to conduct proper departmental enquiry. The enquiry officer held you responsible for the above misconduct.

Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence I Sajjad Khan, PSP District Police Officer, Swabi in exercise of power vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you to show cause finally as to why the proposed punishment should not be awarded to you.

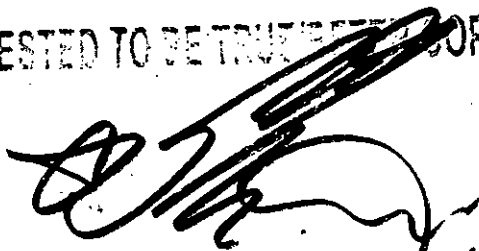
Your reply should reach to the office of the undersigned within seven days of the receipt of this notice failing which it will be presumed that you have no explanation to make.

You can also appear for personal hearing before the undersigned if you wish.

Date: 20.06.2014

District Police Officer,
Swabi.

ATTESTED TO BE TRUE COPY


Access to Justice Law Chamber
Shabbir Hussain Gigyani
Advocate High Court/Federal Shariat Court
Office No.206, 2nd Floor, City Gate Tower
Opposite City No.1 School Main G.T. Road, Swabi
Cell: 0300-8912921, 0333-3333333
E-mail: shabbirgigyani@gmail.com

محرمیت جناب سجاد خان ڈسٹرکٹ پولیس آفسر ہروائی

جواب شوقار نوٹس اجراء 20/6/14

حسب ذیل عرفیا ہے۔

جناب عالی!

سائل ایک ناکروہ جرم کے الزام میں پوری پور جیل

میں بند ہے۔ سائل کو اپنے محلے کی طرف سے شوقار نوٹس وصول

ہوا ہے۔ جو کہ تحریر عرفیا ہے۔

سائل بطور حوالاتی پوری پور جیل میں بند ہے۔

سائل کا مقدمہ عدالت میں زیر سماعت ہے۔

جب تک سائل بند جیل ہے۔

سائل بچپن سے ہی جیل میں رہا ہے اور اس میں پابند

سال سے جلی وجہ سے سائل اپنی بے گناہی کی

تسلی نہیں دے سکتا۔

لہذا استدعا کی جاتی ہے کہ سائل کا پولیس

عدالت میں چل رہا ہے۔ لہذا عدالت کے فیصلے

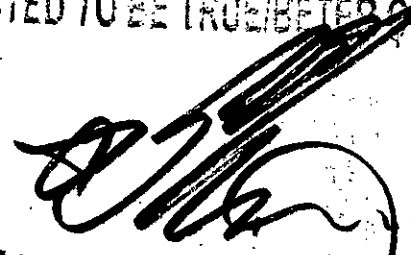
آنے تک شوقار نوٹس اور دیگر قسم کی کارروائی

کو Pending رکھا جائے۔ تاکہ سائل فیصلے

آنے کے بعد جناب کو تسلی بخش جواب

عرفیا کر سکیں۔ TESTED TO BE TRUE BETTER COPY

عین نوازش ہوگی۔



آپ کا ایڈریس: جیل پوری پور
عنوان: عازمی خال خوالائی سنٹرل جیل پوری پور
1203


Confidential


Government of Khyber Pukhtunkhawa.

Office of the District Police Officer, Swabi
Phone No. 0938-221399, Fax No. 0938-222434

From: The District Police Officer, Swabi.
To: The Superintendent,
Central Jail Haripur.
No. 1020 /PA, dated Swabi, the 30-06-2014.
Subject: Discharge Order
Memo:

Enclosed please find herewith Discharge Order, in r/o Constable Farhan Adil No.1203, now confined in Central Jail Haripur, for service upon him under intimation to this office, please.


District Police Officer,
Swabi.


DS/ASW/ASH

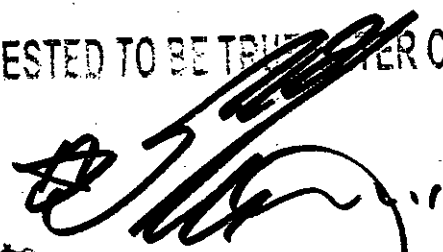

Supdt
7-7-14

2530
67-7-14


صدا علی
سید ڈسپاچ آرڈر
آج صبح 08/7/2014 کو نزلے
سینٹرل جیل میں رہا ہو گیا
فائل نمبر -



ATTESTED TO BE TRUE COPY



السید فرحان عادل
سینٹرل جیل
فائل نمبر -

 Access to Justice Law Chamber.
Shabbir Hussain Ginyani
Advocate High Court/Federal Shariat Court
Office No.206, 2nd Floor City Gate Tower
Opposite City No.1 School Main G.T. Road, Peshawar.
Cell: 0300-8912921, 0300-9152592
E-mail: shabbirginyani@psead.com

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

ORDER.

Constable Farhan Adil No.1203, while posted to Police Station IDS involved himself vide case FIR No.207 dated 10.06.2014 u/s 376 PPC Police Station Ghazi District Haripur, which is highly against the discipline and amounts to gross misconduct.

Therefore, he was placed under suspension and was served with Charge Sheet and Summary of allegations. Mr. Arbab Shafiullah, DSP, Razzar was appointed as Enquiry Officer. The Officer conducted proper departmental enquiry, collected evidence and recorded statements of all concerned. He submitted his findings wherein he found Constable Farhan Adil No.1203, guilty for the mis-conduct and recommended him for Major punishment. The undersigned perused the enquiry papers and findings and by agreeing with the Enquiry Officer served him with Final Show Cause Notice through Superintendent, Central Jail, Haripur on 20.06.2014. His reply to the Final Show Cause Notice was received, perused and found un-satisfactory.

Therefore, I, Sajjad Khan, PSP, District Police Officer, Swabi, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 1975, hereby award Constable Farhan Adil No.1203, Major Punishment of discharge from service under Rules 12-21 with immediate effect.

O.E No. 884
Dated 21.06 2014.



(SAJJAD KHAN) PSP
District Police Officer, Swabi.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

No. 1014-17 /PA, dated Swabi, the 27/06 2014.

- Copies to the: -
- 1. Pay Officer.
 - 2. Establishment Clerk,
 - 3. Fauji Missal Clerk.
 - 4. Official concerned.

کاپیاں

سید سجاد آرڈر

اج فیف 7/14 کو بزرگ سیشن میں پیش کر کے
مہل کو



ATTESTED TO BE TRUE COPY

سنیٹل فرمان عادل سے اسرار کے 1203
والد کو منی سٹریٹ کے 1/7

TO

PW-2

Statement of Mst. Aneesha d/o Fazal Hakim aged about 20/21 years r/o Village Sikandrey, District Swabi (complainant) on oath

30.03.2015

Stated that since 15/20 days from the present occurrence, one person namely Farhan, whose father name is not known to me used to call me on my mobile phone and always asked me to contract marriage with him. On the day of occurrence, at about 09:00 AM, while I was present in my house, the above named person called me and asked me to go with him. I came out from my house and a person, who introduced himself as Farhan boarded me on his motorcycle and took me to village Kheroch cum Sirrikot side. At that time, I was having golden rings, fingerings weighing 2 1/2 tolas. There he parked his motorcycle at a deserted area and took me to a hill, where at about 12:00 noon, he committed Zina bil Jabr with me and took my golden ornaments. I told him that he had promised me that he will marry me on which he dragged me and threw me due to which I sustained injuries on my left wrist, right foot and on my left leg. On arrival of police, I made report and charged that person as an accused. I have seen my report Ex.PB, which bears my thumb impression correctly.

XX

Prior to the occurrence, the accused was not personally known to me. The person disclosed himself as Farhan constable on mobile phone and his father name and his residence is still not known to me. The person who had committed the offence had met with me first time on the day of occurrence. During investigation, the accused was not put before me for identification. Today, I can identify the accused, who had committed the offence if brought before me. The person present before the Court is not my accused. As the person present in the Court as an accused is not real culprit, therefore, I do not want to proceed further against the present accused and have got no objection, if the accused be acquitted from the present case.

ATTESTED TO BE TRUE/BETER COPY

Access to Justice Law Chambers
Shabbir Hussain Qiyani
Advocate High Court/Federal Shariat Court
Office No. 206, 2nd Floor City Gate Tower
Opposite City No.1 School Main G.T. Road, Faisalabad
Cell: 0300-8912921, 0333-9152592
E-mail: shabbirqiyani@gmail.com

R.O & A.C
30.03.2015

ASJ, Ghazi,
Haripur
20/3/15

FORM "A"
FORM OF ORDER SHEET

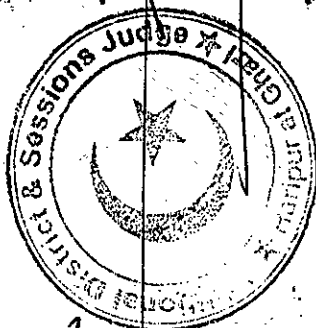
ANNEXURE-"F"

Court of FAKHAR ZAMAN, ADDITIONAL SESSIONS JUDGE-GHAZI,
HARIPURCase No. 21/7 of 2014The State...vs....Farhan Aadil

Serial No. of Order or Proceeding	Date of Order or Proceeding	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
O.....17	20.04.2015	<p>Accused Farhan Aadil is present in custody alongwith counsel. Learned SPP is appearing on behalf of the State. Counsel for the complainant also present. Arguments on application for acquittal of accused u/s 265-K of CrPC heard and record perused.</p> <p>Accused Farhan Aadil s/o Ibrar Khan stands charged vide case FIR No. 207 dated 10.06.2014 u/s 376/379/337-F(v)/411 of PPC registered at police station Ghazi of district Haripur. Report in the instant case was made by complainant Mst. Aneesha, who charged accused for rape followed by injuries to her person and snatching of gold ornaments.</p> <p>Accused was formally charged for the commission of offence on 30.10.2014, to which he pleaded not guilty and claimed trial. The star prosecution witness was complainant, who entered the witness box as PW-2 and owned her initial report. In cross-examination, however, she categorically deposed that accused facing trial is not the one who had committed the offence on her. She also confirmed that she can identify the actual accused, if brought before her and that she knows his name only, with no clue about his parentage and address. It was also confirmed that since the accused present in the Court is not the real culprit, therefore, she does not want to prosecute him anymore. With this statement, the whole prosecution story got shattered and the chances of</p>

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Access to Justice Law Clinic
Shabbir Hussain Gignani
 Advocate High Court/Federal Shariat Court
 Office No. 206, 2nd Floor City Gate Tower
 Opposite City No. 1 School Main G.T. Road, Peshawar
 Cell: 0300-8912921, 0333-912592
 E-mail: shabbir@access-to-justice.com



20/4/15
 Fakhar Zaman
 For (A)

Order or Proceeding	Date of Order or Proceeding	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
<p>whereby che</p> <p>20/4/15</p> <p>20/4/15</p> <p>AC</p>		<p>conviction of the accused almost vanished. Needless to say that when the only eyewitness has not supported the prosecution case, further proceeding in the case and recording further evidence would serve no purpose. Though, some recoveries are shown to have been made from the accused facing trial, but such corroborative piece of evidence would be of no use to the prosecution once it has lost its foundation.</p> <p>In the circumstances, to proceed with the trial would amount to pre-trial incarceration of accused and is likely to cause miscarriage of justice. Resultantly, I would invoke my jurisdiction conferred vide Section 265-K of CrPC and would order acquittal of accused Farhan Aadil in this case. He is in custody; he be released forthwith if not required in any other case. Case property, if any, be kept intact till the expiry of period fixed for appeal/revision, where after it be disposed of in accordance with law. File be consigned to RR after its completion.</p> <p>Announced 20.04.2015</p> <p>(FAKHAR ZAMANY) ASJ-GHAZI, HARIPUR</p> <p>20/4/15</p> <p>ATTESTED TO BE TRUE COPY</p> <p>Access to Justice Law Channel Shabbir Hussain Gigyani Advocate High Court/Federal Shariat Court Office No. 206, 2nd Floor City Gate Tower Opposite City No. 1 School Main O.T. Road, Peshawar Cell: 0300-8912921, 0333-9132592 E-mail: shabbirgigyani@gmail.com</p>

بخدمت جناب ڈی۔ آئی۔ جی صاحب سردان ڈویژن

جناب عالی!

مودبانہ گزارش کی جاتی ہے کہ سائل عنبریت کی وجہ سے آپ کے زیر سایہ محکمہ پولیس ڈسٹرکٹ صوابی میں بھرتی ہوا تھا۔ گاؤں کے کچھ لوگوں کو میرا پولیس میں بھرتی ہونا اس نہ آیا اس لیے سائل کو مقدمہ علت نمبر 207 مورخہ 2014-6-10 کو تھانہ غازی ضلع ہری پور میں منرضی اور جعلی مقدمہ میں ملوث کیا گیا۔ جسکی وجہ سے سائل کو بحوالہ آرڈر بک نمبر 824 مورخہ 27 جون 2014 کو افسران بالانے نوکری سے ڈسپارچ کیا۔ لیکن عدالت میں سائل کے خلاف کسی قسم کا حبرم ثابت نہیں ہوا اور عدالت نے انصاف کے تقاضوں کو پورا کرتے ہوئے سائل کو مذکورہ مقدمے میں بری کیا۔ اسلئے آپ صاحبان سے استدعا ہے کہ سائل کے بوڑھے ماں باپ کی خدمت اور سائل کی عنبریت کو مد نظر رکھ کر سائل کو اپنے عہدے پر ڈسپارچ کے دن سے بمعہ تنخواہ وغیرہ بحال کر کے مشکور فرمائیں گا۔

سائل اور اسکے والدین نے آپ سے اپنے لیے دُعا گورہیں گے۔

کاغذات عدالت بہرہ لاف ہیں۔

عسین نواز شش ہوگی۔

TESTED TO BE TRUE & CORRECT COPY

العارض

آپ کا تابعدار کانٹیلین فرہان عادل بیلڈ نمبر 1203 ڈسٹرکٹ پولیس

Access to Justice Law
Abbir Hussain Ghyani

Advocate High Court, Federal Shariat Court
Office No. 206, 2nd Floor City Gate Tower
City No. 1 School Main G.T. Road, Faisalabad
Cell: 0300-891293, 0333-9152592
Email: shahidgirgani@gmail.com

Government of Khyber Pakhtunkhwa
Office of the Deputy Inspector General of Police
Mardan Region-I, Mardan
Phone No. 0937-9230113, Fax No. 0937-9230115

To: The District Police Officer,
Swabi.

No. 3788 /ES.

24, June, 2015.

Subject: DEPARTMENTAL APPEAL FOR RE-INSTATEMENT IN SERVICE FILED
BY EX-CONSTABLE FARHAN ADIL NO. 12.03.

Memo:

Please refer to your office Memo: No. 62/Insp: Legal dated 15.05.2015 on the subject noted above.

The appeal of Ex-Constable Farhan Adil No. 1203 of your District has been examined and filed being badly time barred.

His service record as well as enquiry file is returned herewith for record in your office.

etc
(MUHAMMAD SAEED) PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan

ATTESTED TO BE TRUE FOR COPY

Shabbir Hussain Gigyani
Access to Justice Law Chambers
Shabbir Hussain Gigyani
Advocate High Court/Federal Shariat Court
Office No. 206, 2nd Floor City Gate Tower
Opposite City No. 1 School Main G.T. Road, Peshawar
Cell: 0300-891298, 0333-9152592
E-mail: shabbirgigyani@gmail.com



ACCESS TO JUSTICE LAW CHAMBER

POWER OF ATTORNEY

Before The KPK, Service Tribunal, Peshawar
Farhan Adil VERSUS IGP etc

Nature of Case Appeal On behalf of Appellant

FIR # 207 Dated 10/6/14 U/Ss 376 PK PS Gilgati

I do here by appoint **Shabbir Hussain Gigyani Farman Ullah Sailab & M. Yousaf Khan**
Advocates (hereinafter called as Advocates), as my counsel in this case with the following terms & conditions:-

- 1- That to sign and verify, pleading and all kind of application including those for notices, appeal, review, execution etc;
- 2- To withdraw, compromise, refer to arbitration, bind me by oath, receive documents & money and give discharge;
- 3- To appoint with him another lawyer and Generally for me & in my name and on my behalf to do all acts, deeds, matters & things relating to the case in all its stages that I personally could do if this instrument had not been executed.
- 4- If at any time, the said counsel is unable to attend the court through illness or absence from station, he will make arrangement with some lawyer to appear for him, but he shall not be responsible for any lose caused to me, if his arrangement fails.
- 5- I will make my own arrangement for attending the court on every hearing, to inform my said counsel, when the case is called. The counsel shall in no way be responsible for any loss caused to me through my failure to so inform him.
- 6- The fee paid, or agreed to be paid, to the said counsel is for his work in this court alone, the retainer, however shall continue and remain in the court though I will make separate arrangement as to his fees in respect of appeal, revision, review, transfer proceeding and execution of decree or orders.
- 7- Unless the whole amount of fee is paid the said counsel is no bound to prosecute my case, nor is he bound to do so (unless specially paid in separate arrangement) at any place other than the court house beyond the usual court hours, on a public holiday or in any other court.
- 8- Not part of the said counsel's fee is returnable under any circumstances and cost of adjournments payable by the opposite party will be received and retained by him in addition to his fee payable by me.

I have read the above terms & conditions & the same have been explained to me and I accept them as binding in witness whereof I have set my hand this 17th day of August 2015 at Peshawar

Executants:

FC-203
Farhan Adil
Farhan Adil

Accepted & Attested

Subject to the terms mentioned above

Shabbir Hussain Gigyani

Farman Ullah Sailab

M. Yousaf Khan

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR.

Service Appeal No. 922/2015.

Farhan Adil Ex-Constable..... Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. District Police Officer, Swabi
& Others..... Respondents.

WRITTEN REPLY ON BEHALF OF RESPONDENTS.

1. **Preliminary Objections.**

1. That the appellant has got no Cause of action and locus standi to file the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come to the Tribunal with clean hands.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant concealed the material facts from this Hon'ble Tribunal.
8. That the appellant has been estopped by his own conduct to file the appeal.

2. **REPLY ON FACTS.**

- A. Para No. a of appeal is correct to the extent of appointment, however appellant during initial stage of service proved himself an inefficient police official.
- B. Para No. b of appeal is correct to the extent of registration of FIR, however appellant while posted to PS IDS absented himself from duty and involved himself in a criminal case of immoral act.
- C. Para No. c of appeal is incorrect. Appellant absented himself from duty on the day of occurrence and involved himself in the above case. During investigation of the case, appellant was arrested by the local police of PS Ghazi and after completion of investigation remanded to Central Prison Haripur.
- D. Para No. d of appeal is incorrect. After involvement of appellant in above case, he was Charge Sheeted, while Enquiry Officer recorded his statement during his confinement in PS Ghazi and after receipt of recommendation from Enquiry Officer he was issued Final Show Cause Notice through Jail authorities (copies are attach as annexure A to C/1).

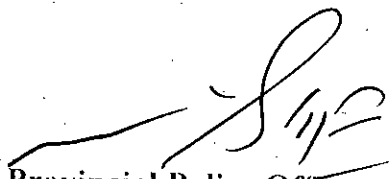
- E. Para No. e of appeal is incorrect. Appellant was found guilty during departmental enquiry, hence he was discharge from service in accordance with rules.
- F. Para No. f of appeal is incorrect. Appellant during initial stage of service involved himself in an immoral act and proved himself an inefficient Police official. hence discharge from service being on probation.
- G. Para No. g of appeal is incorrect. Complainant during departmental enquiry recorded statement from which appellant was found to be involved, however lady (PW-2) recorded favourable statement during her cross examination before the trial Court on 30.03.2015 on the basis of which appellant moved application u/s 265-K CrPc.
- H. Para No. h of appeal is incorrect. Appellant was acquitted on technical ground.
- I. Para No. i of appeal is correct to the extent of filling of departmental appeal however the same was examined and rejected being time barred. The orders of respondents are quite legal in accordance with law & rules.

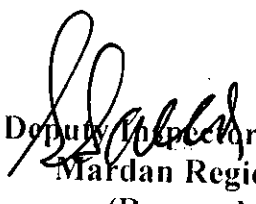
GROUND.

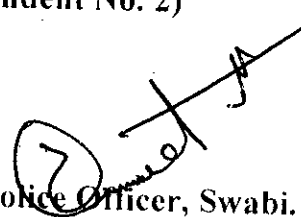
1. Incorrect. The action of respondents are quite legal and speaking in nature.
2. Incorrect. Charge Sheet and Summary of allegation were served upon appellant, while Enquiry Officer personally visited PS Ghazi and recorded the statement of appellant. After proper departmental enquiry appellant was discharge from service.
3. Incorrect. Reply already given vide para above.
4. Incorrect. Appellant was awarded punishment in accordance with rules. after proper departmental proceedings.
5. Incorrect. Appellant on initial stage of his service, while on probation involved himself in an immoral act, which was proved during enquiry, hence discharge from service.
6. Incorrect. Appellant was associated with inquiry proceedings, but he has failed to prove himself innocent.
7. Incorrect. The appellant was found involved in the criminal case. however departmental and criminal proceedings can run side by side which has no effect upon each other.
8. Incorrect. Appellant has been treated in accordance with law & rules. however during departmental enquiry the charges against him were proved.
9. Correct to the extent of major & minor punishment, however under rule 4 of the Khyber Pakhtunkhwa Police Rules 1975, probation rules are also applicable on appellant.


10. Incorrect. The appellant was on probation during involvement in a criminal case and under above rule probation rules are also applicable upon appellant, hence rightly discharge from service.
11. Correct to the extent of disciplinary rules, however appellant has been discharge from service in accordance with rules.
12. Incorrect. Appellant has been treated in accordance with the rules.
13. Incorrect. Reply already given vide para above.
14. Incorrect. Appellant was treated in accordance with law.
15. Incorrect, being wrong interpretation of statutes.
16. Incorrect, being wrong interpretation of statutes.
17. Incorrect, being wrong interpretation of statutes.
18. Incorrect. Reply already given vide para above.
19. Incorrect. Reply already given vide para above.
20. Incorrect. Appellant prove himself an inefficient, hence not entitle for reinstatement in service.
21. Incorrect. Appellant has been treated in accordance with law & rules.
22. Incorrect. The orders of respondents are quite legal and speaking in nature which commensurate with the guilt of appellant.

It is therefore prayed that the appeal of appellant may kindly be dismissed with cost being devoid of merits and without any legal substance.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)


Deputy Inspector General of Police,
Mardan Region-I Mardan.
(Respondent No. 2)


District Police Officer, Swabi.
(Respondent No. 3)


Arbab Shafi Ullah,
Deputy Supdt: of Police, Razzar.
(Respondent No. 4)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR.

Service Appeal No. 922/2015.

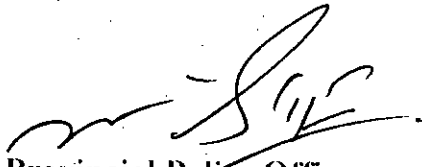
Farhan Adil Ex-Constable..... Appellant


VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
& Others..... Respondents.


AFFIDAVIT

We, the respondents No. 1 to 4 do hereby solemnly affirm and declare on oath that the parawise comments to the above service appeal are true and correct to the best of our knowledge and belief and the nothing has been concealed from this Honorable Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)


Deputy Inspector General of Police,
Mardan Region-I Mardan.
(Respondent No. 2)


District Police Officer, Swabi.
(Respondent No. 3)


Arbab Shah Ullah,
Deputy Supdt: of Police, Razzar.
(Respondent No. 4)

Annexure - "A"


CHARGE SHEET

Whereas I am satisfied that formal enquiry as contemplated by Khyber Pakhtunkhwa Police Rules 1975 is necessary and expedient.

And whereas I am of the view that the allegations if established would call for Major/Minor penalty as defined in Rules 4(b) a & b of the aforesaid Rules.

Now therefore as required by Rules 6(1) of the aforesaid Rules I **Sajjad Khan, PSP, District Police Officer, Swabi** charge you **Constable Farhan Adil No.1203** on the basis of statement of allegations attached to this charge sheet.

In case your reply is not received within seven days without sufficient cause it will be presumed that you have no defence to offer and ex parte action will be taken against you.


District Police Officer,
Swabi.


Annexure = A/1

SUMMARY OF ALLEGATION.

It is alleged that Constable Farhan Adil No.1203, while posted to Police Station IDS involved himself in case FIR No.207 dated 10.06.2014 u/s 376 PPC Police Station Ghazi District Haripur for the reasons best known to him.

This act of Constable Farhan Adil No.1203 is highly against the good orders of discipline and amounts to gross misconduct, hence statement of allegations.

Mr. Arbab Shafiullah, DSP, Razzar is appointed to conduct proper departmental enquiry against him.


District Police Officer,
Swabi.


No. 122 /CC/PA,
Dated. 16/06 /2014

Amendment - A/2

ORDER

Constable Farhan Adil No.1203, while posted to Police Station IDS involved himself vide case FIR No.207 dated 10.06.2014 u/s 376 PPC Police Station Ghazi District Haripur. Therefore, I, **Sajjad Khan, PSP**, District Police Officer, Swabi in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 197 hereby place Constable Farhan Adil No.1203, under suspension and stop his pay with immediate effect. He is being proceeded against departmentally.

O.B No. 765
Dated 16/06/2014.

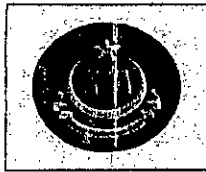

(SAJJAD KHAN) PSP
District Police Officer, Swabi.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

No. 958-57/PA, dated Swabi, the 16/06 /2014.

Copies to the: -

1. DSP, H.Qrs, Swabi.
2. Establishment Clerk.
3. FMC.



Annexure - B

OFFICE OF THE SUB DIVISIONAL POLICE OFFICER, RAZZAR CIRCLE
KERNAL SHER KELLI, SWABI (TEL PHONE NO. 0938 312-777)

To:

The District Police Officer,
Swabi.

No.

282

Is,

dated Razzar the 20/06/2014.

Subject:

DEPARTMENTAL ENQUIRY AGAINST FARHAN ADIL NO.1203.

Memo:

In compliance with your office letter No. 122/CC/PA, dated 16.06.2014 on the subject noted above.

SUMMARY OF ALLEGATION:

The allegations against defaulter Constable are that while posted at PS IDS involved himself in a criminal case bearing FIR No.207 dated: 10.06.2014 U/s 376 PPC registered at PS Ghazi District Haripur.

Brief facts of the case are that constable under enquiry was posted at PS IDS, as per record of PS on 09.06.2014 he alongwith other officials were relieved on Shabashi (23 hours leave). His arrival was due on 10.06.2014, but other officials got their arrival back vide DD No.30 dated: 10.06.2014, but the defaulter constable Farhan Adil did not arrived back and he was got absented, later on the local police of PS Ghazi telephonically informed the Moharrar PS IDS that constable Farhan Adil has been arrested in case FIR No.207 dated: 10.06.2014 U/s 376 PPC PS Ghazi. In this regard, a detail report was incorporated vide DD No.32 dated: 10.06.2014 Upon receipt to the competent authority, he was suspended and charge sheeted hence the instant enquiry was entrusted for scrutinizing the conduct of defaulter to the undersigned vide DPO, Memo No.122/CC/PA dated: 16.06.2014.

In order to scrutinize the conduct of defaulter police official, the undersigned personnel's visited PS Ghazi for recording the statement of defaulter constable who was in Police custody. In his statement he totally negated the assertion made by the complainant in her FIR against him and stated that he has been falsely charged in the said FIR due to some ulterior motives. He further added that she has some relations with his younger brother and I have only called one time for only giving advice to her.

During the process of enquiry, I the case provided a copy of FIR alongwith medical report of victim Mst: Aneesha and medical examination report of accused Constable Farhan Adil which are attached herewith. Statement of victim namely Mst: Aneesha was also recorded. In order to save the modesty and honor of a victim, the undersigned personally visited the house of complainant and recorded her statement in

presence of her family members. He stated in her statement that, she is relying on her previous report recorded by the Ghazi Police in case FIR mentioned in Para one above, and supported the contents of FIR, which is attached here with.

FINDINGS:-

From the perusal of available record and statements, the undersigned came to the conclusion that the defaulter Constable is fully connected with the commission of offence due to the following reasons.

1. In a criminal case it is a famous saying that "Challan Mah Qabal and Challan Mah bad" for connecting the accused with crime, so in this regard the defaulter constable was on leave from PS IDS i.e. day prior to the occurrence and did not report back on next date i.e. 10.06.2014 hence his involvement in the above case could not be ruled out in the circumstances.
2. The allegation of rape with a girl has been proved through circumstanced as well as medical evidence. In this regard, the medical legal report of woman medical officer THQ Ghazi is worth perusal.
3. The medical examination of accused constable also corroborate the allegations i.e. he is capable of sexual act, which also support the vision of complainant.


RECOMMENDATION:

From the nut shell of above discussion, through the allegations against the defaulter constable is commission of an immoral act of rape which will be tried by the competent court of law. But it is settled principle of law that both criminal proceedings can run side by side and each on has no effect on each other, therefore the allegation against defaulter/accused Police official has been proved through reliable evidence.

The accused official is a member of discipline Force and was suppose to observe code of conduct. Due to his immoral act, he has bearing a bad name not only for the Police but also for the state, as the Police represent the state. He is a Shame on the face of department. He has proved himself that, he could never be a good Police officer/efficient in future, If retain in the force. His punishment should be an example for the other like minded officials. Therefore, the undersigned **strongly recommended** the defaulter for **major punishment** please.

Enclosed:

(13-P)


Sub Divisional Police Officer,
Razzar Circle, Kernal Sher Kelli.

فرمان عدالت 1203 متضمنہ نمٹانہ DS اکڈون آل ٹرفنڈیشن

ذمہ حراست پولیس نمٹانہ عادی مقدمہ عدالت فیمبر 2017 مورخہ 19

حرم 376 PPC نمٹانہ عادی ڈسٹریکٹ پری ایوڈ میں یہ دعویٰ کی

مجیدہ پہ جھوٹی ہوئی ہے۔ یہ صرف انادی ہو دعویٰ کیا ہے۔

میں نے نہ ڈسٹریکٹ کیا ہے نہ کیا ہے اور نہ ہی میں اسکو لیٹر کیا ہوں

اور نہ ہی مجھے علم ہے کہ وہ کس طرح زخمی ہوئی ہے۔

میں اس لٹری کو شکل سے بھی نہیں جانتا۔ مجھے مجبور نہ جانے لیون

لٹری نے دعویٰ کی ہے۔ اتنا پتہ ہے کہ لٹری سماہ البتہ میرے

چھوٹے بھائی بل اول کو پانچہ محبت کا کرتی تھی میرے بھائی نے اس

وجہ سے اپنا موبائل فون بند کر لیا تھا۔ مجھے یہ بات میرے بھائی

بل اول سے بتائی تو میں نے اسے گھٹا اسلی حالہ زاد بھائی دانش اور

دوسرا لٹری اچھی جود دانش قادوس نے لیٹر کیا اور اس لٹری

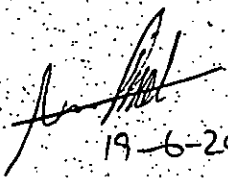
کو دانش نے فون پر منع کیا تھا کہ تم میرے بھائی بل اول کو لیون فون

پر ٹنگ کرتی ہو میں نے اسکو ڈانٹا اور پھر واپس اپنے گھر آ گیا

علاوہ ازیں مجھے کوئی علم نہیں ہے میں نے بناہ فون پس میرا یہ

بیان ہے۔ حال ازلہ میری شادی 7/8 ماہ قبل میرے ہوایشن کے مقلات

ہوئی ہے۔ یہی میرا بیان ہے جو کہ سچ ہے جیسی ہے



19-6-2014

لینڈا میری انلوائری بصیرت سی فارروالی نے

داخل دفتر کرائی جائے۔

بیان ارات ایسٹم دفتر منگل حکم نمبر 18/19 سال سنہ 1327ھ

نے بدووات دریا منے بیان کیا کہ میرا مسمی فریات سنہ 1327ھ
 جو علم یو لیس سے پہلے لیا کہ جو اس کے نوٹ پر عمر 15/20 یوم
 سے بات چیت ہوتی رہتی تھی اور اپنی باتوں سے سادی
 کا بازار ذکر کرتا ہوا روڑے وقوع گھر سے نکلنے اور اپنے ساتھ
 طلائے زیورات لائے گا کہاں۔ میں روز وقوع اپنے انتظار
 میں کھڑی تھی۔ جو کہ اپنے نوٹ سائل سے کھٹا کھٹا یاد ہے
 آ کر مجھے اپنے ساتھ بٹھا کر ٹوکے کے طرف روانہ ہوا۔ ٹوپی
 پہن کر مذکورہ فریات نے غزنی کے طرف روانہ ہوا اور جب
 میں نے اُن سے دریافت کیا تو مذکورہ اپنے لگا کہ ہم نجاج
 کروانے جا رہے ہیں۔ اور یہ بھی کہا کہ میں نے وہاں پر کھٹا
 لے کر واپس رکھے ہوئے ہیں۔ اسے بعد وہ پہاڑوں کے دامن کے
 طرف جاتا ہوا ویران اور سناٹے مگم میں روک کر مجھے
 اُتاری۔ قریب واقع پہاڑ کے جانب لے جا کر زیورات حرام کا مرتبہ
 ہوا اور میرے اندر ڈسپانچ ہوا جب میں نے اپنے کہا
 کہ تم نے تو مجھے سادی نجاج کا کہا تھا۔ جب پر مذکورہ فریات عادل
 آگے بگولا ہو کر پہاڑ سے دھکا دے کر نیچے ہوا دیا اور مارا بیٹھا
 شروع کیا۔ جس میں مدافوسس ہوئے اور مذکورہ فریات عادل
 جلم سامان طلائے زیورات لے کر کھٹا نکلے اور جب میرے خوش
 آئے تو میں نے اپنے آپ کو کسی کے گھر میں پالیا جھوٹے مقام
 یو لیس مقام عادی کو اطلاع دیا کہ جلم قسم سنایا قریب ہیناکے پٹا یا
 جا کر علاج معالجہ کروائی اور میری روڑے مقام میں باقاعدہ دن کے
 میں بھی میرا بیان ہے جو حقیقت پر مسمی ہے



ایسٹم دفتر منگل حکم نمبر 18/19

0342-9200193

BEFORE THE HON'BLE SERVICE TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 922 /2015

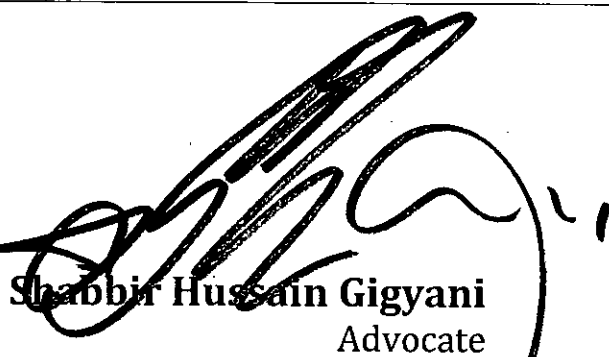
Farhan Adil---Vs---I. G. P. etc

Case Law on behalf of the appellant

POINT	CITATION	PROPOSITION
No show cause notice + No opportunity of defence + Probationers being Civil Servant is to be governed by Civil Service Act, 1973 + Have right of appeal and Police Rules, 1934 have no overriding effect over Civil Service Act, 1973	2000 SCMR 75	<p>Head Note (a): Police Rules, 1934, Rule 128 Civil Servant Act 1973, section 11 Discharge of probationer police officer from service before completion of their probation period Reports sent by superintendent of Police to the DIG of Police indicated that serious allegations of inefficiency attributed to the probationers Effect if such allegation entailed removal of services of probationers, they were entitled to a show cause notice and an opportunity to defend themselves against the proposed action probationers being civil servants governed by Civil Servant Act 1973 and the right of appeal being provided to them under the relevant rules, the provision of rules 12-8, Police Rules 1934 could not prevail over the same.</p> <p>Rules 12-8, Police Rules 1934, no doubts indicates that officers referred to in the said rules are to be considered as probationers during the first three years of their appointment and they can be discharged from service during such period for any of reason mentioned in the said rules and no appeal would lie against an order of discharge, but evidently the present case was not a case of simpliciter discharge. Report sent by SP to DIG indicates the serious allegations of inefficiencies attributed to the probationers. If such allegations entailed their removal from service, they were entitled to a show cause notice and an opportunity to defend themselves against the proposed action. Furthermore, no doubt rules 12-8, Police Rules 1934 lays down that the officer against whom action is taken under the said rules shall not have any right of appeal, but the probationers being civil servants, they are governed by provisions of Civil Servant Act 1973. The right of departmental appeal being provided to civil servant, under the relevant rules, the provision of Rules 12-8, Police Rules 1934 cannot prevail over the same.</p>

<p>Involvement in criminal case and subsequent acquittal + Discharged from service + Appeal accepted by Service Tribunal and maintained by the Hon'ble Supreme Court.</p>	<p>2002 SCMR 916</p>	<p>Section 4.... Police rules, 1934, chapter 12 Rules 21.... Constitution of Pakistan (1973), Article 212(3)..... Discharge from service..... Involvement of civil servant in a criminal case..... Civil servant was discharged from service on such ground..... during pendency of departmental appeal, civil servant was acquitted by trial court, but departmental authority dismissed his appeal..... civil servant filed appeal before service tribunal and submitted that he would not claim back benefits, if his appeal was allowed to the extent of reinstatement in service..... Additional Advocate - General representing department stated no objection to suggested course, whereupon service tribunal accepted the appeal in said terms..... contention of department was that instead of allowing the appeal on the basis of concession made by Additional Advocate General, the Service Tribunal should have applied its independent mind to the law on the subject and facts of the case and noted that appeal was barred by time validity Concession made by AAG on behalf of department for reinstatement of civil servant without back benefit was binding upon department Supreme Court declined to interfere with such concession petition for leave to appeal was dismissed.</p>
<p>Involvement in criminal case and subsequent acquittal will amount that he committed no offence + Entitled for reinstatement alongwith back benefit</p>	<p>1998 SCMR 1993</p>	<p>Head Note (a): Fundamental rules FR54..... civil service Civil servant was involved in a case u/s 302/34 PPC for a murder No evidence could be brought against civil servant on charge of murder, thus, proving that allegation leveled against him were baseless acquittal of civil servant from a criminal case accused civil servant in case of acquittal was to be considered to have been committed no offence because the competent criminal court freed/cleared him from an accusation or charge of crime such civil servant therefore, was entitled to grant of arrears of his pay and allowances in respect of the period remained under the suspension on the basis of murder case against him.</p>

<p>Even acquittal on benefit of doubt is Honorable acquittal + Entitled for re-instatement alongwith back benefit</p>	<p>2007 SCMR 537</p>	<p>Section 4.... Constitution of Pakistan(1973), Article 212(3) Acquittal on benefit of doubt from criminal charge honorable acquittal..... Back-benefit..... entitlement civil servant was taken on duty, after his acquittal from criminal charge and his period of suspension was treated as leave on due basis.....grievance of civil servant was that the authority did not pay him salary for the period.....service tribunal allowed the appeal of civil servant and directed the authorities to pay him back benefits.... Validity..... civil servant who was acquitted by extending benefit of doubt would be deemed to have been acquitted honorably..... service tribunal had rightly directed the authorities to treat him on duty and give him all financial benefit during the period of his confinement in custody on account of his involvement in criminal case.... Leave to appeal was refused.</p>
<p>Termination without any notice or show cause + Re-instated by the Hon'ble Service tribunal</p>	<p>2000 SCMR 643</p>	<p>Section 4 Constitution of Pakistan 1973 Article 212(3) Termination of service service of civil servant terminated without issuing him any show cause notice and assigning any reason for such termination civil servant whose services being governed by civil service rules had completed probation period of four years service tribunal, in circumstance, had rightly found that termination of service of civil servant without issuing him any show cause notice and without holding any inquiry against him was illegal and thus, had rightly directed re-instatement of civil servant treating intervening period from date of termination to his reinstatement as extra ordinary leave without pay in absence of any action of public importance, leave to appeal against order of Service Tribunal was refused.</p>



Shabbir Hussain Gigyani
Advocate

Access to Justice Law Chamber
Office No.206, 2nd Floor
City Gate Tower, Main G. T. Road,
Opposite City No.1 School, Peshawar
0300-8912921, 0333-9152592

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 844 /ST

Dated 20 /04/2018

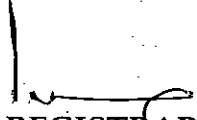
To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Swabi.

Subject: **ORDER/JUDGEMENT IN APPEAL NO. 922/2015, MR. FARHAN ADIL.**

I am directed to forward herewith a certified copy of Judgment/Order dated 05/04/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR,
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

OK