

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Appeal No. 1274/2015

Date of Institution ... 12.11.2015

Date of Decision ... 15.12.2017

Fazalullah Ex-Constable No. 3231, Police Lines, Mardan. .. (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,  
Advocate

... For appellant

MR. KABEERULLAH KHATTAK,  
Addl. Advocate General

... For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. MUHAMMAD AMIN KHAN KUNDI,

... CHAIRMAN  
... MEMBER

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned  
counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on 11.08.2015 against which he filed departmental appeal on 24.08.2015. The same was decided on 17.09.2015 and the penalty of dismissal was converted into compulsory retirement. According to the appellant the decision of the appellate authority was communicated to him on

30.10.2015 and thereafter he filed the present service appeal on 12.11.2015. The charge against the appellant was his involvement in illegal activities.

### ARGUMENTS.

3. The learned counsel for the appellant argued that only charge sheet was issued without any statement of allegations. That in the charge sheet no specific charge was framed and only a general assertion of illegal activities was mentioned. That on such vague charge no proceedings could be initiated against the appellant. He further argued that by not framing specific charge, the appellant was deprived of his defence. He contended that no right of cross-examination was afforded to the appellant nor any right of defence was afforded to him. That no personal hearing was given to the appellant nor the copy of enquiry report was provided to the appellant.

4. On the other hand, the learned Addl. AG argued that the present appeal is time barred. That the proceedings were initiated on the basis of a complaint of one Muhammad Asif. That the enquiry officer recorded the statement of witnesses and also put some questions on the witnesses including the appellant. That the case is proved against the appellant.

### CONCLUSION.

5. Regarding the objection of the learned AAG that the departmental appeal is time barred, this Tribunal is of the view that there is no record that the decision of the departmental appeal was communicated to the appellant on the same or any day thereafter. It was incumbent upon the department to have proved the communication in order to bring this appeal outside the period of limitation. The application for condonation of delay would be read with para-4 of the memorandum

of appeal. Since the communication has not been proved by the department, there is no need of condonation as the appeal is held to be within time.

6. On merit, the charge is vague as there is no mention of any complaint or even any specific act of the appellant. In such situation, the concerned civil servant would not be in a position to reply or defend that under which charge he was being tried.

7. Admittedly, no final show cause notice was issued nor any personal hearing was afforded. The witnesses were also not cross-examined by the appellant. In such situation, the elements of due processes was not complied with. This Tribunal has already decided many appeals including service appeal No. 1014/2014 decided on 23.11.2017 entitled "*Saqib Gul Vs. District Police Officer, Mansehra and others*" by holding that even under the Khyber Pakhtunkhwa Police Rules, 1975 issuance of final show cause with the enquiry report is must. Non issuance of statement of allegations is also another lacuna.

8. Consequently, this appeal is accepted and the appellant is reinstated in service. The department is however, at liberty to hold denovo proceedings within a period of ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to the final outcome of the denovo proceedings. Parties are left to bear their own costs. File be consigned to the record room.


  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

  
(NIAZ MUHAMMAD KHAN)  
CHAIRMAN

ANNOUNCED  
15.12.2017

17.07.2017

Counsel for the appellant present. Mr. Kabirullah Khattak, Assistant AG for the respondents also present. The Learned Executive Member Mr. Gul Zeb Khan is away for interviews in the office of Khyber Pakhtunkhwa Public Service commission therefore, due to incomplete bench the case is adjourned for further proceedings to 13.11.2017 before D.B.

  
(Muhammad Amin Khan Kundi)  
Member

13.11.2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney, alongwith Attaur Rahman, S.I (Legal) for the respondents present. The learned counsel for the appellant requested for adjournment. Granted. To come up for arguments on 15.12.2017 before the D.B.

  
Member

  
Chairman

15.12.2017

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. Advocate General alongwith Attaur Rahman, S.I (Legal) for respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.

MEMBER

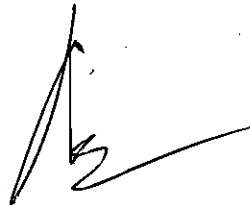
  
CHAIRMAN

ANNOUNCED  
15.12.2017

18.08.2016

Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Submit rejoinder. Case to come for arguments on 10.11.2016.

Member



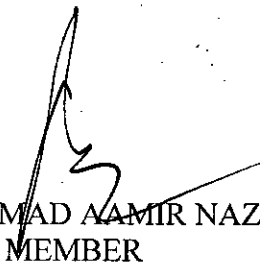
Member



10.11.2016

Clerk to counsel for the appellant and Addl: AG for respondents present. Clerk to counsel for the appellant requested for adjournment as his counsel was busy before the Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 20.03.2017.

(MUHAMMAD AAMIR NAZIR)  
MEMBER



(PIR BAKHISH SHAH)  
MEMBER



20.03.2017

Counsel for the appellant and Mr. Atta Ur Rahman (SI) along with Assistant: AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 17.07.2017 before D.B.

Chairman



Appellant Deposited  
Security & Process Fee


25.11.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to inquiry on the allegations of professional misconduct and dismissed from service vide impugned order dated 11.8.2015 where against he preferred departmental appeal on 24.8.2015 which was partially allowed and punishment modified and converted into that of compulsory retirement vide order dated 17.9.2015 communicated to the appellant on 30.10.2015 and hence the instant service appeal against the order of appellate authority on 12.11.2015.

That no statement of allegations were ever issued to the appellant nor show cause notice served nor chance of personal hearing was afforded to the appellant and hence the proceedings are nullity in the eyes of law.

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 22.3.2016 before S.B.

22.03.2016

Appellant in person and Mr. Khalid  Mahmood, Constable alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 27.4.2016 before S.B.

  
Chairman

27.4.2016

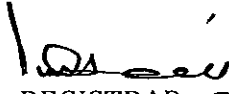

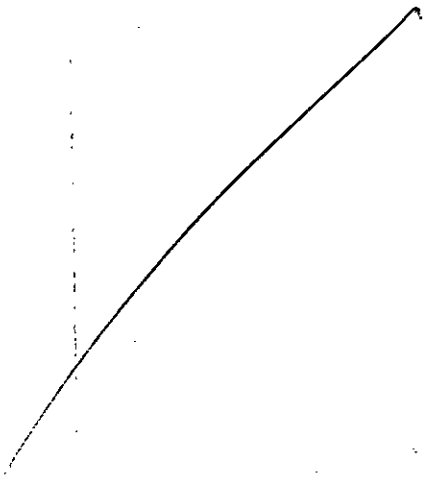
Appellant in person and Mr. Muhammad Ghani, SI alongwith Addl: A.G for respondents present. Written reply by the respondents submitted. The appeal is assigned to D.B for rejoinder and final hearing for 18.08.2016.

  
Chairman

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1274/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12.11.2015	<p>The appeal of Mr. Fazalullah presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>25-11-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> 

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

APPEAL NO 1274 /2015

**FAZLULLAH**

**VS**

**POLICE DEPTT:**

**INDEX**

<b>S.NO.</b>	<b>DOCUMENTS</b>	<b>ANNEXURE</b>	<b>PAGE</b>
<b>1.</b>	Memo of appeal	.....	1- 3.
<b>2.</b>	Condonation application	.....	4.
<b>3.</b>	Charge sheet	<b>A</b>	5.
<b>4.</b>	Reply	<b>B</b>	6- 7.
<b>5.</b>	Impugned order	<b>C</b>	8.
<b>6.</b>	Departmental appeal	<b>D</b>	9- 11.
<b>7.</b>	Appellate order	<b>E</b>	12.
<b>8.</b>	Vakalat nama	.....	13.

**APPELLANT**

**THROUGH:**

  
**NOOR MOAHAMMAD KHATTAK**  
**ADVOCATE**



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

**APPEAL NO. 1274 /2015**

A.W.F. Province  
Service Tribunal  
Diary No 1353  
Dated 12-11-2015

Mr. Fazalullah, Ex. Constable No. 3231,  
Police lines Mardan .....

**Appellant**

**VERSUS**

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

..... **Respondents**

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 11-08-2015 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST THE APPELLATE ORDER DATED 17-09-2015 COMMUNICATE TO THE APPELLANT ON 30.10.2015 WHEREBY THE PUNISHMENT OF DISMISSAL WAS CONVERTED INTO COMPULSORY RETIREMENT FROM SERVICE WITH IMMEDIATE EFFECT**

**PRAYER:**

**That on acceptance of this appeal the impugned orders dated 11-08-2015 and 17-09-2015 may very kindly be set aside and the respondents may please be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.**

**R/SHEWETH:**

**ON FACTS:**

- 1- That appellant was appointed as Constable in the respondent Department vide order dated 01/07/1991. That after appointment the appellant started performing his duty quite efficiently and up to the entire satisfaction of his superiors.
- 2- That appellant while serving as constable at police post casualty Mardan Medical Complex Mardan, the appellant served with charge sheet without statement of allegation vide dated 14-07-2015 on the allegations that appellant has

*Handwritten notes:*  
12/11/15  
R/SHEWETH  
ON FACTS

Wrongly used the rank of Head Constable and was involved in illegal activities. That in response to the said charge sheet the appellant submitted his reply and denied the allegations with proof. Copies of charge sheet and reply are attached as annexure ..... **A & B.**

**3-** That vide impugned order dated 11-08-2015 the major punishment of Dismissal was imposed on the appellant by the respondent No.3 without conducting regular inquiry in the matter and under a wrong law i.e. Police Rules 1975. Copy of the impugned order is attached as annexure ..... **C.**

**4-** That feeling aggrieved from the impugned order dated 11-08-2015 the appellant filed Departmental appeal on dated 24-08-2015. That on the said Departmental appeal the appellate authority converted the punishment of Dismissal to that of another major punishment of Compulsory retirement from service with immediate effect vide order dated 17-09-2015. That it is pertinent to mention that the said appellate order was communicated to appellant on 30.10.2015. Copies of the Departmental appeal and appellate order are attached as annexure ..... **D & E.**

**5-** That appellant having no other remedy prefer the instant appeal on the following grounds amongst the others.

**GROUND:**

**A-** That the impugned orders dated 11-08-2015 and 17.9.2015 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

**B-** That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

**C-** That no show cause notice has been served on the appellant by the respondent No.3 before issuing the impugned order dated 11.8.2015 against the appellant.

**D-** That no chance of personal hearing/ defense has been given to the appellant which is mandatory under amended E & D rules 2011.

- E- That no regular inquiry has been conducted in the matter of appellant which is as per Supreme Court judgment is necessary in cases of punitive actions against the civil servant.
- F- That the respondent acted in arbitrary and malafide manner while issuing the impugned orders dated 11-08-2015 and 17.9.2015.
- G- That the action has been taken against the appellant by the respondent No.3 under the misconception of law and as such the impugned order is void ab initio in the eyes of law.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that appeal of the appellant may be accepted as prayed for.

Dated: 11.11.2015

**APPELLANT**



**FAZALULLAH**

**THROUGH:**



**NOOR MOHAMMAD KHATTAK  
ADVOCATE**

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

**APPEAL NO \_\_\_\_\_/2015**

**FAZLULLAH**

**VS**

**POLICE DEPTT:**

**APPLICATION FOR CONDONATION OF**  
**DELAY IN FILING THE ABOVE NOTED**  
**APPEAL**

**R.SHEWETH:**

- 1- That the appellant has filed an appeal along with this application in which no date has been fixed so for.
- 2- That the appellant prays for the condonation of delay in filing the above noted appeal inter alia on the following grounds:

**GROUND OF APPLICATION:**

- A- That valuable rights of the appellant are involved in the case hence the appeal deserve to decide on merit.
- B- That it has been the consistent view of the Superior Courts that cases should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is therefore prayed that on acceptance of this application the delay in filing the above noted appeal may please be condoned.

**APPELLANT**

  
**FAZLULLAH**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

A - (5)

CHARGE SHEET UNDER KPK POLICE RULES 1975

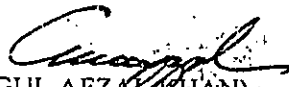
I, Gul Afzal Khan District Police Officer, Mardan as competent authority hereby charge you Constable Fazalullah 3221 as follows.

That you constable, while posted at PP Casualty, Mardan Medical Complex, is recommended for departmental proceeding by using the rank of Head Constable and is involved in illegal activities.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.

1. You are therefore, directed to submit your written defense within seven days of the receipt of this charge sheet to the enquiry officer.
2. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
3. Intimate whether you desired to be heard in person.

  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan.

**ATTESTED**



جائے!

1991

حوالہ چارج شیٹ نمبر 1007/RD-APP1975

2015-14-7

مذاہروں میں خدمت ہوں۔ کہ سائل حورہ کو حکم پڑیں میں غنیمت  
 کابینل بھرتی ہو چکا ہے۔ سائل نے مختلف تعینات میں جنرل ڈپوٹی کے  
 علاوہ خواجہ ڈپوٹی بھی سرانجام دیا ہے۔ سائل تقریباً 17/18 سال سے  
 خدمت گارڈ کمانڈر MMC میں تعینات ہے جبکہ کچھوٹی میں ورائٹوں  
 عمل دخل نہیں ہے۔ سائل کے خلاف الزام عائد کیا گیا ہے۔ رحمن سائل  
 ناجائز طور پر عہدہ کابینل کا عہدہ استعمال کر رہا ہے۔ اور غیر قانونی سرگرمیوں  
 میں ملوث ہے۔

اداریں بارہ جواباً معروض ہوں۔ سائل سال 2004 میں  
 تھا چھوٹا لاہور ضلع ہوا میں تعینات تھا۔ اس وقت تھے اطلاع  
 ملی کہ ایک وٹرسائیکل کوارٹا اور سے ضمانت سمگل کر رہا ہے تاکہ بڑی  
 کے دوران وہی وٹرسائیکل آ کر جس سے ہم نے ضمانت از قسم چرس، بیروین  
 برآمد کر کے جس کی پاداش میں DPo صاحب ہوا باغی جیل صاحب نے سن  
 کولسٹ لاء پر عہدہ عہدہ کابینل تقریباً کرنے کا حکم صادر ہوا ہے۔

علاوہ ازیں سائل روز اول سے تاحال کسی غیر قانونی غیر شرعی  
 اور غیر رسمی سرگرمی میں ملوث نہیں رہ چکا ہے اور رحمن سائل کے  
 خلاف کوئی تحریری زبانی شکایت نہیں ہوئی ہے۔ سائل کا گزشتہ  
 ریکارڈ گواہ ہے۔ اور اٹنڈہ بھی محتاط رہوں گا۔

ATTESTED

ان کے علاوہ عہدہ ملازمت سائل کے افران بالائے جملہ جائز  
 احکامات کی تعمیل کرتے ہوئے کبھی کسی شکایت کا موقع

Handwritten signature

(7)

نہیں دیا ہے۔ اور یہی پہلک تھا میں نے سائل کے خلاف  
کئی کوئی شکایت کی ہے۔ جو سائل کی نیک نامی اور شہرت  
کا باعث ہے۔ اور آئندہ بھی حوالہ پولیس کے افسران بالا اور خواتین  
عزت کا خیال رکھوں گا۔ قرراً جواب گزارش ہے۔

فقیر اللہ 3231  
HC  
پولیس انسپکشن  
29.7.2015

ATTESTED

19  
9

**ORDER**

My this order will dispose of the departmental inquiry, which is conducted against Constable Fazlullah No. 3231, it has been reported against Constable : Fazlullah No. 3231, while posted at PP Casualty Mardan Medical Complex, is recommended for departmental proceeding by using the rank of Head Constable and also involved in illegal activities. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.


In this connection, Constable Fazlullah No. 3231, were issued charge sheets vide this office Nos. 1007/R, dated 14.07.2015 and also proceeded against departmentally through the Mian Imtiaz Gul DSP/Lega Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsements Nos. 826/LB dated 07.08.2015 as the allegations have been established against him and recommended him for suitable punishment.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Fazlullah No. 3231, is hereby dismissed from service, in exercise of the power vested in me under the above quoted rules.

*Order announced*

O.B No. 1942

Dated 7/8 /2015

  
(Gul Afzal Afzidi)  
District Police Officer,  
Mardan.

No. 7018-23/R dated Mardan the 11/8 - /2015

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan.

**ATTESTED**





D - 9

To

The Honourable,  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan.

Subject: APPEAL FOR RE-INSTATEMENT IN SERVICE.

Respected Sir,

It is humbly submitted as under:-

FACTS.

The petitioner was proceeded against departmentally on the allegations that while posted at Police Post Casualty Mardan Medical complex used the rank of Head Constable and also involved in illegal activities. After departmental enquiry the petitioner was dismissed vide OB NO. 1342 dated 07.08.2015 from Service by worthy District Police Officer, Mardan.

Hence aggrieved this appeal for re-instatement in Service.

**ATTESTED**



GROUND FOR APPEAL.

1. That the order of learned District Police officer is severe and harsh .
2. That the order is in contrary to the law and facts on record.
3. That the petitioner has neither used the rank of Head Constable as a false nor has been involved

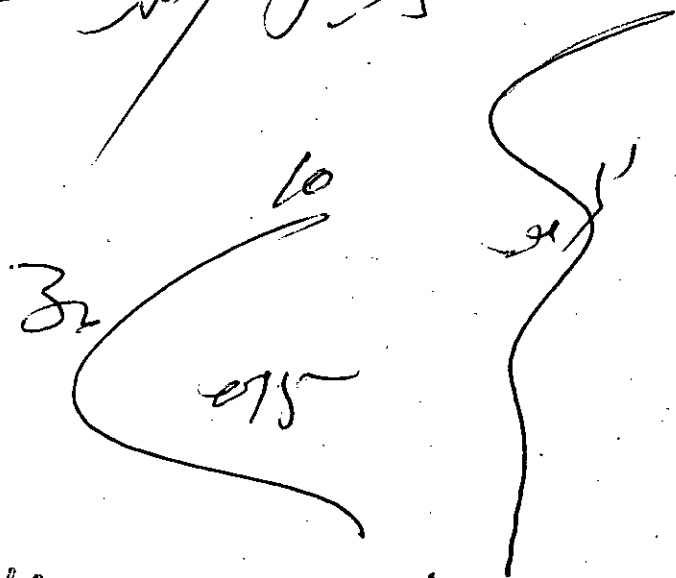
جناب عالی

تردد متناهی در این باره است و امیدوارم که کمی در این باره  
ملاحظه صادر فرمایید -

تبدیل دستور کار جدید و تغییراتی که در این باره صورت گرفته  
کاملاً در نظر گرفته شده و در دسترس قرار خواهد گرفت -

عیناً کتبی است

با این شماره در دفتر حضور است  
3231



Per n.l.g  
M  
30/10/15

Sr.

The applicant rec'd  
Photo Copy of the order pl.

Ur. 30/10/15?

0157 <sup>6</sup> / 100 Hc

0157 87

before the  
outlets

in illegal activities.

4. That the petitioner while performing duties in 2004 in District Swabi was promoted in the list of C-II Head Constable by Mr. Qasi Jameel Khan the then District Police Officer Swabi in good performance in a Narcotic case.
5. That the petitioner was then transferred from F.R.P to Police Lines Swabi as Head Constable vide the attached daily diary report NO.35 dated 22.04.2004.
6. That the petitioner was also transferred from Police Lines, Mardan to MMC as Head Constable vide the attached daily diary report NO.14 dated 12.08.2015.
7. That if the petitioner was not Head Constable then it should have been rectified by the concerned authority in my posting and transfer order.
8. That the whole departmental enquiry has been conducted expert. Neither any evidence has been recorded neither the petitioner has been given opportunity to cross-examine witness.
9. That the petitioner has been neither heard

ATTESTED



...3...

(11) (scribble)

personally nor given final Show Cause Notice  
while passing the dismissal order.

10. That the petitioner has got un-blamished  
service record of 24 years and has performed  
all his duties to the satisfaction of superior  
and there is no complaint during the whole career.  
In view of the above it is requested that the  
petitioner may kindly be re-instated in Service to  
meet the end of justice and obliged.

Dated: 24.08.2015

Yours Obediently

( FAZAL ULLAH )  
Ex.Head Constable NO. 3231  
Police Lines, Mardan.

ATTESTED

17  
q

E-(12) 1

ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Fazalullah No. 3231 of Mardan District Police against the order of his dismissal from service issued by the District Police Officer, Mardan vide OB: No. 1342 dated 07.08.2015.

Brief facts of the case are that he while posted at Police Post Casualty Mardan Medical Complex was recommended for departmental proceeding by using the rank of Head Constable and also involved in illegal activities. His this attitude adversely reflected on his performance, while discharging his official duty which is an indiscipline act and gross misconduct on his part. In this connection he was issued charge sheet and also proceeded against departmentally through Deputy Superintendent of Police Legal, Mardan, who after fulfilling necessary process, submitted his findings to District Police Officer, Mardan and the allegation were established against him for suitable punishment, the District Police, Mardan agreed with the findings of enquiry Officer and the alleged Constable was dismissed from service.

I have perused the record and also heard the appellant in person in orderly room held in this office on 09.09.2015 & his case was also secretly verified from I/C District Security Branch, Mardan, and in his report the defaulter official was found guilty of the misconduct and also reported that he is not fit for further service as he earned bad name for the Police department. Having examined the case carefully, the punishment is too harsh, keeping in view his prolong service, poor family circumstances, the order of District Police Officer, Mardan issued vide his office OB: No. 1342 dated 07.08.2015 is hereby converted into compulsory retirement from service with immediate effect.


ORDER ANNOUNCED.

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

No. 5621 /ES, Dated Mardan the 17-9- /2015.

Copy to District Police Officer, Mardan for information & necessary action w/r to his office Memo: No. 982/LB dated 31.08.2015. His Service record is returned herewith.

(\*\*\*\*\*)

ATTESTED  


**VAKALATNAMA**

IN THE COURT OF KPK Service Tribunal Peshawar  
OF 2015

Fazlullah

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Police Department

(RESPONDENT)  
(DEFENDANT)

I/We Fazlullah

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. \_\_\_\_/\_\_\_\_/2015

[Signature]  
CLIENT

[Signature]  
**ACCEPTED**  
**NOOR MOHAMMAD KHATTAK**  
**(ADVOCATE)**

OFFICE:  
Room No.1, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.  
Phone: 091-2211391  
Mobile No.0345-9383141

C

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

Service Appeal No. 1274/2015.

Fazalullah Ex-Constable No. 3231.....Appellant.

**VERSUS.**

District Police Officer, Mardan

& others.....Respondents.

**Parawise comments on behalf of respondents are submitted as under:-.**

**Respectfully Sheweth:**

**PRELIMINARY OBJECTIONS:-**

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.
7. That the instant appeal is barred by law & limitation.

**REPLY ON FACTS.**

1. Pertains to record, hence no comments.
2. Correct, hence, no comments.
3. Part 1<sup>st</sup> of this para is correct, however, the later part is totally incorrect, as proper departmental enquiry was conducted through Mian Imtiaz Gul the then DSP/Legal of District Mardan. The appellant was found guilty of the allegations & punished, as deserved, under the relevant rules/law.
4. Correct to the extent of dismissal from service & then conversion of his punishment of dismissal to compulsory retirement by the appellate authority. However, the later part of this para regarding late communication of the subsequent punishment is incorrect. The appellant, was infact informed in time & provided all that he requested for.
5. Incorrect. The appellant's this appeal holds no legal grounds to standon as he has committed misconduct under the relevant rules/law.

**REPLY ON GROUNDS:-**

- A. Incorrect. The impugned orders are just & in accordance with law, facts & norms of natural justice with material on record. Hence, tenable in the eyes of law.
- B. Incorrect. The appellant has been treated as per rules/law & there is no violation of any article of the Constitution of Pakistan, 1973.
- C. Incorrect. The appellant has been dealt under rules/law, hence, denied.
- D. Incorrect the appellant was provided all opportunities of self-defence including personal hearing during departmental proceedings.
- E. Incorrect. Proper departmental enquiry was conducted as per rules/law.
- F. Incorrect & baseless. The respondents have acted under the relevant rules/law & the impugned orders are, therefore, tenable in the eyes of law.
- G. Incorrect. There is no misconception of law by the respondent No. 3 & his action was under the proper rules/law, hence, tenable in the eyes of law.
- H. The respondents also seek permission of this Honourable Tribunal to present further/additional, if any, grounds etc. at the time of arguments.



**PRAYER:-**

It is therefore, prayed that the appellant's plea holds no legal grounds and he does not deserve to be retained more in service as prayed for. His appeal may please be dismissed with costs.



**Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.**  
(Respondent No. 01)



**Dy: Inspector General of Police,  
Mardan Region-I, Mardan.**  
(Respondent No. 02)



**District Police Officer,  
Mardan.**  
(Respondent No. 03)

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

No. 1007 /R/D.A-P.R-1975.

Dated 14-7- /2015

**DISCIPLINARY ACTION UNDER KPK POLICE RULES - 1975**

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority am of the opinion that Constable **Fazalullah No. 3231**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.


**STATEMENT OF ALLEGATIONS**

That Constable **Fazalullah No. 3231**, while posted at PP Casualty Mardan Medical Complex, is recommended for departmental proceeding by using the rank of Head Constable and also involved in illegal activities.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Mr: Mian Imtaiz Gul DSP/Legal Mardan** is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the Enquiry Officer.

  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan


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

No. 1007 /R, dated Mardan the 14-7- /2015.

Copy of above is forwarded to the:

1. DSP/Legal Mardan for initiating proceedings against the accused official / Officer namely Constable **Fazalullah No. 3231**, under Police Rules, 1975.
2. Constable **Fazalullah No. 3231**, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

\*\*\*\*\* !!! \*\*\*\*\*

  
23/07/015

No 176 - LB INQ  
11-7-15

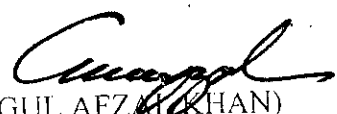
## CHARGE SHEET UNDER KPK POLICE RULES 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority hereby charge you Constable **Fazalullah 3231** as follows.

That you constable, while posted at PP Casualty Mardan Medical Complex, is recommended for departmental proceeding by using the rank of Head Constable and also involved in illegal activities.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.

  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan.

بنا علی!

جوارج سٹیٹ نمبر 1975-APP-RD-1007/1007 حثولہ

2015-7-14

بذبحہ میں خدمت ہوں۔ کہ سائل جوڑا 17/18 کو حکم پور میں حثیت  
کانٹیل جوتی ہو چکا ہے۔ سائل نے مختلف مقامات میں جنرل ڈپوٹی کے  
علاوہ خواندہ ڈپوٹی بھی سرانجام دی ہے۔ سائل تقریباً 17/18 سال سے  
حثیت گارڈ کمانڈر MME میں تعینات ہے۔ جبکہ کچھٹی میں فراہمی  
عمل دخل نہیں ہے۔ سائل کے خلاف الزام عائد کیا گیا ہے۔ کہ جن سائل  
ناجائز طور پر عہدہ کانٹیل کا عہدہ استعمال کر رہا ہے۔ اور غیر قانونی سرگرمیوں  
میں ملوث ہے۔

اداریں بارہ جواباً دعویٰ ہوں۔ کہ سائل سال 2004 میں  
تھا چھوٹا لاپور ضلع ہولہ میں تعینات تھا۔ کہ اس وقت تھے اطلاع  
علیٰ کہ ایک ووٹر سائیکل کواریٹا اور سے حثیت سمگل کر رہا ہے۔ بنا کہ بندی  
کے دوران وہی ووٹر سائیکل آ کر جن سے ہم نے حثیت از قسم چرسا، بیروں  
پر آمد کے جن کی پاداش میں DPo صاحب ہولہ قاضی جیل صاحب نے جن سائل  
کو سمٹ لایا ہے پرہ عہدہ حثیت کانٹیل تقریباً۔ کرنے کا حکم صادر ہوا ہے۔

علاوہ ازیں سائل روز اول سے تاحال کسی غیر قانونی غیر شرعی  
اور غیر رسمی سرگرمی میں ملوث نہیں رہ چکا ہے۔ اور جن سائل کے  
خلاف کوئی تحریری زبانی شکایت نہیں ہوئی ہے۔ سائل کا گزشتہ  
ریکارڈ گواہ ہے۔ اور اٹنڈہ بھی محتاط رہوں گا۔

ان کے علاوہ عہدہ ملازمت سائل نے اور ان کے حملہ جائز  
احکامات کی تعمیل کرتے ہوئے دیکھ کر، شکایت، کا وقت

نہیں دیا ہے۔ اور ہی بیلک آٹھ ماہ کے مسائل کے خلاف  
 کبھی کوئی شکایت کی ہے۔ جو مسائل کی ننگ نالی اور شہرت  
 کا باعث ہے۔ اور اترندہ بھی محمد یونس کے اوزار بالا اور خزان  
 عزت کا خیال رکھوں گا۔ ضرراً جواب گزارش ہے۔

تفضل اللہ 3231  
 HC  
 29-7-2015

آصف خان ولد ممتاز خان سکندریان آباد کھنڈی محلہ  
نستروڈ مردان -

حقیقاً بیان کیا کہ میرا مردان میں ٹیکل کیپٹل کے ساتھ ہشتہریلڈرہ سے  
"اکبر" نام سے لپیاد شری تھا۔ عقل اللہ کنٹین جیکی مردان  
میں ٹیکل کیپٹل سے ڈیوٹی تھی، ہفتہ وار منجھو سے 200 روپے لیتا تھا  
کرتا تھا۔ اور اس کے علاوہ وہ شہر وار منجھو سے روٹ گوشت کرائی  
و پیلو کو کھلانے لیتے تھے آنا تھا جب سے وہ ہسپتال میں

تفصیلات ہوا تھا تقریباً 6 ماہ کے بعد اس نے بہ سلسلہ شروع  
کرائی تھا۔ میں اور منجھو سا لہو دیگر کمانڈ (میں ٹیکل سکون)  
واکے اس سے دست کش ہونے لگے۔ منجھو مجھ پر تو  
جب کوئی اسکو تفریح یا اسکی اور ضرورت نہیں کرنا تھا  
یوٹی کے اندر میں ہسپتال میں جانا تھا اور وہاں کمرہ کے اندر  
بندر کرایا تھا اسکی مرہاش پوریا سے جانی تھی تو اس  
کے دس کو چھوڑ دیا جاتا۔

اس کے خلاف شکایت کیلئے مجھے اور دیگر سکون  
یوٹی کو دست بردار نہیں تھا کہ اس کے پاس شکایت  
کی جائے کہو نڈر اکثر بنا کر تھا کہ اسکو کوئی بھی بدل  
نہیں کر سکتا ہے۔ اس کے علاوہ اس نے منجھو  
پر سیکل واک سے کھانا کھایا تھا جس کا بدلہ منجھو  
نے دیا ہے جو کہ اسکی سیکل واک سے منجھو سے ہوا ہے

نہ لے لیں و باج

مکرمہ - سہیل

دوبستان

Cell No: 0333-9500008

31/7/2015

(5)





بیان تفصیل الرحمن ولد فضل عمر مکہ علیہ وسلم  
رہنما مائتہ محلہ بوائزان نو شہرہ۔

حلفاً بیان کیا کہ میں اذان میں داخل سکھو وکے سالہ  
کام کرتا ہوں۔ فضل اللہ کنڈیل کو میں جانتا ہوں کہ وہ  
MNC میں ڈپٹی کرتا ہے۔ وہ بھی سے ہم بیٹے ۱۰۵/۱۰  
والہ مولیٰ کارڈ بنا کر باقی۔ جب سے اسٹیشن فوٹویشن  
کارڈ سے بیٹے نہ دیا کرتا تھا تو مجھے ہسپتال کے اندر  
پورے گھر سے بند کرنا تھا اور تاکا کہہ دیتے ہیں  
چھوڑنا تھا۔ میں غریب آدمی ہوں۔ اس نے اس علاقہ  
سے کسی آدمی کو نہیں چھوڑا ہے۔ اس سے کہہ دوں  
میں باقی۔ میں اذان میں داخل سکھو وکے سالہ  
کمیشن ہر تاکا کرتا ہوں۔

شکر درست رکھو

شیخ الاسلام

CNIC No: 17201-1122350-

Cell No: 0304-5787614

یا مہر بازار میں سوار سٹیڈ سٹیڈ سٹیڈ سٹیڈ سٹیڈ سٹیڈ  
M.M.C

میں الکر ۱۱۱۱ سے ہیں

۱۱۱۱ ۱۲۳ ۱۲۳ ۱۲۳ ۱۲۳ ۱۲۳  
M.M.C لکھنؤ سوار سٹیڈ  
۱۱۱۱ ۱۲۳ ۱۲۳ ۱۲۳ ۱۲۳ ۱۲۳

بیان پیدائش کنسٹیبل فضل الدین 3231 ایمان مارڈی 10/11/1957  
مردانہ حال پورس لدرن مردانہ -

بیان کیا کہ میں نے چنانچہ ٹیکٹ کے جواب میں  
جو بیان دیا ہے وہی سراسر بیان ہے۔

ان کے علاوہ میں دو استفسارات زیر دفعہ 107/18/1957  
بھی پیش کرنا سول جرنل کے ذریعے سے میں شکایت

کے لئے تھے۔ میں نے تباہ سول میں چل کر  
داخل دفتر فرمائی جا کر کاروائی فرم کے نام سے  
صفحات انکو لیں اور

XXXX  
س 1 - آپ تک سے M M C میں بطور مارڈی ایمان د

میں 9 ماہ سے تصانیف سے  
س آپ سیکورٹی والوں کے پاس تھے گروہ حالت زیر استعمال

میں 7 صفحہ سائو و گروہ حالت قوی آپ سے  
دیکھ کر پتہ چلتا ہے اور آپ کو گروہ کے بارے میں

میں 1 - آپ کے خلاف شکایت ہے کہ آپ نے  
پورے لوگوں کو Hand کر کے گروہ سے  
کرتے تھے

5

نہایت سے صحت پر بھی شکایت ہے کہ آپ

ہستال ٹکٹ سے باہر سفر کی سکوڑز والوں اور لیبارٹری  
والوں سے کتدرہ اور دیگر اشتباہ کرنے سے اور  
کبھی کبھی رن سے کھانا بھی کھا مارا  
۶۔ یہ الزامات بالکل مفروضہ ہے۔

۷۔ کیا درخت سے کہ تریب سے شہ ملتوں ٹاؤن سے  
کریہ لہر نکلے لکیر دھالیں رکھتے ہیں؟

۸۔ میں کتنے ملتوں ٹاؤن میں ایک ہنگامہ آفرین  
اور بولڈ فکد مبلغ 8000 روپے لکھا ہے اور  
بجوں کے ساتھ دھالیں بن رہی ہیں۔ چونکہ میں

۹۔ آپ کہاں کے رہتے ہیں؟  
۱۰۔ میں ناخوشیوں کا رشتہ دار ہوں اور اس سے  
بچنے کو میری ناعدلیر واقع ہے

۱۱۔ آپ کتنے بجے ہیں؟  
۱۲۔ میں کون سا

۱۳۔ میرا ایک بیٹی اور جا  
کرتے ہیں۔ میرا ایک بیٹا ہے  
۱۴۔ آپ پاپر بار ہی دیکھو  
۱۵۔ میں اس کو نہیں جانتا ہوں

۱۶۔ میں نے اپنے نفساں کے دوران اپنے Hand Cert  
والوں کو پتہ لگا کر صفائی کیوں کر حوالہ دے  
۱۷۔ میں نے کبھی کبھی کو بندہ کہ لیا ہے جو بالکل حوالہ دے لے

لہذا میں ان کے حشران سے ۸۷۶ روپے کو کٹ کر رہا ہوں  
وہیں سے ہم لوگ ہسپتال کے ایمران میں رہ رہے  
ہیں۔

سے کیا بددست ہے کہ صرف Hand اور کئی  
بددست ہسپتال کے ایمران میں موجود ہے  
کئی بددست کے ایمران میں کئی کئی  
کئی کئی کئی کئی کئی کئی کئی کئی  
کئی کئی کئی کئی کئی کئی کئی کئی

شکر و درت

۰۴/۰۸/۱۵

54  
PS/SMI

# بندیت و حجابی

1) اصف و ارجمند بکنی بچہ جلال آباد

2) ملک ولد یا محمد حصار

3) بدلی ولد فضل ارجمند ریلوے سٹیشن حیدرآباد

نورانی اہل

1) حضرت علی ولد سردار علی سندھ بخت برمانی / نوٹس دہلی

استغاثہ سرحدیہ  
107/151

حجاب عالی

نوٹس بالذات اہل سرحدیہ درویش درجہ اولیٰ  
حدود 15/21 تقابلی حیدرآباد میں رہتے ہیں جو حصار و نسائی برمانی  
نکاح برمانی کے ساتھ نوٹس اہل سرحدیہ کے فضل سے درجہ اولیٰ میں  
نسب سے برسرِ اہل سرحدیہ ہیں اور ان کے نوٹس بالذات  
نوٹس بالذات کو درجہ اولیٰ 107/151 میں زبانی حیدرآباد  
استغاثہ سرحدیہ میں نوٹس بالذات حصار

#12  
AS/PS/SMI  
21-6-11

شعبہ  
1) نوٹس اہل سرحدیہ  
2) بندیت ارجمند  
SMI

تفہیم منگوان

لہذا ضروری

(55)  
69112

صلح در آن

شہداء (1) اور ان کے رشتہ داروں کی شہادت

شہداء (2) اور ان کے رشتہ داروں کی شہادت

(3) اور ان کے رشتہ داروں کی شہادت

ان کے رشتہ داروں کی شہادت

صدا عالی

ان کے رشتہ داروں کی شہادت

ان کے رشتہ داروں کی شہادت

ان کے رشتہ داروں کی شہادت

ان کے رشتہ داروں کی شہادت

ASi-PS. Smt

15-6-15

ان کے رشتہ داروں کی شہادت

## **FINDING:-**

This Departmental Enquiry has been conducted against Constable Fazlullah No. 3231, in accordance with provisions of Khyber Pakhtunkhwa Police Disciplinary Rules 1975 on below mentioned charges:-

“ That you Constable , while posted at PP Casualty Mardan Medical Complex, is recommended for departmental proceeding by using the rank of Head Constable and also involved in illegal activities.

1. On the basis of said allegation, he was issued charge sheet and I was appointed as Enquiry Officer vide office-Endst: No. 1007/R dated 14.07.2015.
2. On receipt of enquiry papers, I summoned defaulter official and on his attendance, I handed over charge sheet with summary of allegation to him who submitted reply to it.
3. In order to prove the allegation against defaulter official, I recorded statement of Asif and Shamsur Rehman which were placed on file. Thereafter I recorded statement of defaulter official who denied all the allegation rather he stated that he was performing duty as Guard Commander for the last 17/18 months. He further stated that on account of his good performance in PS Choota Lahore District Swabi, he was promoted as Head Constable C-II by DPO Swabi in the year 2004. He also stated that he had handed over many persons who were working on commission with medical stores to SMT Police but he did not produce any documents in this regard except copies of two complaints u/s 107/151 CrPC being chalianed by ASI Hidayatur Rehman of PS Sheikh Mlatoon who had quarreled with each other.

#### **4. Conclusion/Recommendation:-**

- I. From the statement of Asif and Shamsur Rehman it has been established that defaulter official by using his official status was involved in receiving money from those persons who work on commission in Medical Stores. Besides it during inquiry some owner of Medical Stores disclosed that defaulter official, while posted at MMC, was regularly receiving cash amount from these persons who work on commission with Medical Stores but owner of those Medical Stores did not give me statement in writing due to fear of enmity. It is pertinent to note that many persons, who work on commission in medical stores, are wondering inside premises of Mardan Medical Complex. Whenever any medicines /test etc are prescribed /advised to any patient, these persons try to get medical prescription etc from patient and take them to their medical store, with whom they work on commission, for purchase of medicines. Entry of such type persons and hand carts are prohibited inside premises of Hospital but



defaulter official, instead of taking action against those persons, was receiving cash money etc from them which is gross misconduct on his part.

- II. His service book was also checked. It revealed that he was appointed as constable on 01.07.1991. During 24 years of service he has earned 05 good entries with ten bad entries. Moreover he was once previously discharged from service on account of absence from duty with effect from 11.12.2007 vide OB No. 1195 dated 09.07.2009 and later on the appellate authority re-instated him in service, as he produced medical certificate, vide office order No. 2538/ES dated 30.08.2010.
- III. It is further submitted that defaulter official claims himself to be as C-II Head Constable but neither there is any proper entry in his service book to show his promotion as Head Constable C-II nor there is any copy of written order of competent authority in service book.
- IV. As per record of Lines Officer, he was posted as Guard Commander MMC on 12.03.2014 and closed to line on 04.05.2014. Again he was sent as Guard Commander MMC on 05.05.2014 vide DD No. 86 while as per Police Rule 18-1 Guard Commanders are required to be changed /replaced after 03 months but the said provision of Police Rule was violated because he remained as Guard Commander for more than 14 months continuously from 05.05.2014 to July 2015, ~~2015~~.
- V. It is also astonishing to notice that how an official of the rank of constable was posted as guard commander by lines officer/RI. That officer, who had sent constable Fazlullah as Guard Commander Mardan Medical Complex, is also liable to be proceed against departmentally.
- VI. It has been that <sup>he is</sup> residing at SMT Town in rented Bangolow type home while on the other hand he also stated that one of his son is abroad at Belgium. However his standard of living is beyond his reasonable means.
- VII. A CD cassette showing recording /conversation of some medical stores owner/workers regarding receiving of money from them by defaulter official has also been obtained and placed on record.
- VIII. As such the allegations has been established against the constable Fazlullah No. 3231 and he is recommended for suitable punishment.

Submitted please.

*He is dismissed  
from service*

*OK*

*7.8.015*

  
(MIAN IMTIAZ GUL)  
DSP Legal Mardan.  
Enquiry Officer

**ORDER**

My this order will dispose of the departmental inquiry, which is conducted against Constable Fazlullah No. 3231, it has been reported against Constable Fazlullah No. 3231, while posted at PP Casualty Mardan Medical Complex, is recommended for departmental proceeding by using the rank of Head Constable and also involved in illegal activities. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and grass misconduct on his part as defined in rule 2(iii) of Police Rules 1975.


In this connection, Constable Fazlullah No. 3231, were issued charge sheets vide this office Nos. 1007/R, dated 14.07.2015 and also proceeded against departmentally through the Mian Imitiaz Gul DSP/Lega Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsements Nos. 826/LB dated 07.08.2015 as the allegations have been established against him and recommended him for suitable punishment.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Fazlullah No. 3231, is hereby dismissed from service, in exercise of the power vested in me under the above quoted rules.

**Order announced**

O.B No. 1342

Dated 7/8 /2015

  
(Gul Afzal Afzali)  
District Police Officer,  
Mardan.

No. 7018-23/R dated Mardan the 11/8 - /2015

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan.

57  
W-09-11  
P  
23-813

ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Fazalullah No. 3231 of Mardan District Police against the order of his dismissal from service issued by the District Police Officer, Mardan vide OB: No. 1342 dated 07.08.2015.

Brief facts of the case are that he while posted at Police Post Casualty Mardan Medical Complex was recommended for departmental proceeding by using the rank of Head Constable and also involved in illegal activities. His this attitude adversely reflected on his performance, while discharging his official duty which is an indiscipline act and gross misconduct on his part. In this connection he was issued charge sheet and also proceeded against departmentally through Deputy Superintendent of Police Legal, Mardan, who after fulfilling necessary process, submitted his findings to District Police Officer, Mardan and the allegation were established against him for suitable punishment, the District Police, Mardan agreed with the findings of enquiry Officer and the alleged Constable was dismissed from service.

I have perused the record and also heard the appellant in person in orderly room held in this office on 09.09.2015 & his case was also secretly verified from I/C District Security Branch, Mardan, and in his report the defaulter official was found guilty of the misconduct and also reported that he is not fit for further service as he earned bad name for the Police department.. Having examined the case carefully, the punishment is too harsh, keeping in view his prolong service, poor family circumstances, the order of District Police Officer, Mardan issued vide his office OB: No. 1342 dated 07.08.2015 is hereby converted into compulsory retirement from service with immediate effect.

ORDER ANNOUNCED.

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

No. 5621 /ES, Dated Mardan the 17-9- /2015.

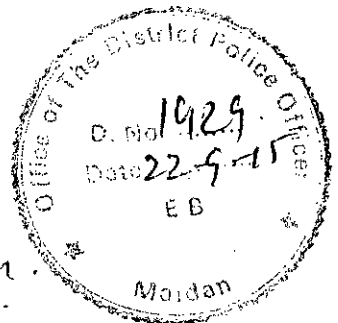
Copy to District Police Officer, Mardan for information & necessary action w/r to his office Memo: No. 982/LF dated 31.08.2015. His Service record is returned herewith.

(\*\*\*\*\*)

OB/E.C/O.H.C/P.R.  
For action.

M  
DPO/Mardan  
18/9/15

OB 1666  
21-9-15



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

**APPEAL No.1274/2015**

**FAZALULLAH**

**VS**

**POLICE: DEPTT**

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE**  
**TO THE REPLY SUBMITTED BY THE RESPONDENTS**

**R/SHEWETH:**

All the preliminary objections raised by the respondents are incorrect and baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

**ON FACTS:**

- 1- Admitted correct by the respondents hence need no comments.
- 2- Admitted correct by the respondents hence need no comments.
- 3- Incorrect and not replied accordingly. That vide impugned order dated 11-08-2015 the major punishment of dismissal was imposed on the appellant by the respondent No.3 without conducting regular inquiry in the matter and without giving the opportunity of personal hearing to appellant.
- 4- Incorrect and not replied accordingly. That the appellant filed Departmental appeal against the impugned order dated 11-08-2015 vide dated 24-08-2015. That on the said appeal the appellate authority converted the punishment of Dismissal to that of another major punishment of Compulsory retirement from service with immediate effect vide order dated 17-09-2015 communicated to appellant on 30-10-2015.
- 5- Incorrect and not replied accordingly hence denied.

**GROUND:**

**(A to E):**

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect, baseless and not in accordance with law and Rules

hence denied. That the impugned order dated 11-08-2015 issued by the respondents are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside. That no charge sheet no show cause notice and chance of personnel hearing/defense has been given to the appellant. That no regular inquiry has been conducted against the appellant which is as per Supreme Court judgments is necessary in punitive actions against civil servants. That respondent No.3 acted in arbitrary and malafide manner while issuing the impugned order dated 11-08-2015 against the appellant.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted in favor of the appellant.

**APPELLANT**



**FAZALULLAH**

**THROUGH:**



**NOOR MOHAMMAD KHATTAK**

**&**



**SYED IMDAD HUSSAIN**  
**ADVOCATES**

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No 2743 /ST

Dated 26 /12/2017


To

The District Police Officer ,  
Government of Khyber Pahtunkhwa,  
Mardan.

Subject: JUDGEMENT/ ORDER IN APPEAL NO. 1274/15, MR.FAZALULLAH.

I am directed to forward herewith a certified copy of Judgment/order dated 15/12/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

*OL*