

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1060/2015

Date of institution ... 06.08.2015

Date of judgment ... 28.08.2018

Ex-Police Constable Ishaq Ali S/o Yousaf Ali
R/o Village Usterzai Bala ,Tehsil & District Kohat.

... (Appellant)

VERSUS

1. Inspector General of Police KPK Peshawar and two others.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE ORDER OF RESPONDENT NO. 3 BEARING NO. O.N
NO. 70 DATED 15.01.2014 AND RESPONDENT NO. 2 DATED
20.08.2014 WHEREIN THE APPELLANT WAS REMOVED
FROM SERVICE AND APPEAL OF APPELLANT WAS
DISMISSED BY RESPONDENTS ON 13.03.2015.

Mr. Syed Mudasir Pirzada, Advocate.

.. For appellant.

Mr. Kabirullah Khattak, Additional Advocate General

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: -

Learned

counsel for the appellants present. Mr. Kabirullah Khattak, Additional Advocate
General alongwith Mr. Arif Saleem, ASI for the respondents also present.

Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant
was serving in Police Department as Constable. During service he was removed
from service by the competent authority vide impugned order dated 15.01.2014
on the allegation that he was involved/arrested in case FIR No.138 dated

22.05.2013 under sections 9C CNSA P.S. Usterzai. The appellant filed departmental appeal (undated) which was rejected vide order dated 13.08.2014. The appellant filed revision petition on 20.01.2015 which was rejected on 13.03.2015 hence, the present service appeal.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellants contended that the appellant was serving in Police Department. It was further contended that the appellant was removed from service on the allegation that he was involved in the aforesaid criminal case. It was further contended that respondent-department was required to wait for departmental proceedings against the appellant till the decision of the aforesaid criminal case but the respondent-department has removed the appellant before the conclusion of the criminal case. It was further contended that the appellant was also acquitted from the charges leveled against him in the aforesaid criminal case by the competent authority vide detailed judgment dated 11.06.2014. It was further contended that the complainant of the aforesaid case has some personal grudges with the appellant therefore, the appellant was involved in the aforesaid criminal case malafidely. It was further contended that the impugned order of removal from service of the appellant was passed by the competent authority retrospectively therefore, the same is also void. It was further contended that as per statement of allegation Muhammad Kashif Aslam ASP Saddar Kohat was appointed as inquiry officer by the competent authority but the inquiry has been concluded by the Ihsanullah Khan, SDPO Kohat for the reason best known to the respondent-department. It was further contended that it has been mentioned in the inquiry report that the inquiry was entrusted to the undersigned i.e Ihsanullah, SDPO Kohat for completion but there is nothing on the record to show that for which reason the inquiry was handed over to the

M. Amin
28.8.2018

Ihsanullah, SDPO Kohat and the same was not completed by the inquiry officer appointed by the competent authority. It was further contended that neither proper inquiry was conducted nor opportunity of cross examination and defence was provided to the appellant nor any charge sheet and statement of allegation was served on the appellant as the appellant at the time of departmental proceeding was in jail therefore, it was contended that the appellant was condemned unheard. It was further contended that no limitation run against the void order therefore, the whole proceeding is illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was involved in narcotics cases. It was further contended that huge quantity of narcotics was recovered from his possession. It was further contended that a regular inquiry was conducted and the appellant was also provided opportunity of hearing therefore, the competent authority has rightly removed the appellant from service on the basis of departmental inquiry.

6. Perusal of the record reveals that the appellant was serving in Police Department. The record further reveals that the appellant was involved/arrested in the aforesaid criminal case and on the basis of aforesaid criminal case departmental proceeding was initiated against the appellant. The record further reveals that Muhammad Kashif Aslam, ASP Saddar Kohat was appointed as inquiry officer by the competent authority as revealed from the statement of allegation but for the reason best known to the respondent-department he had not completed the said inquiry rather handed over ^{to} the same to Mr. Ihsanullah, SDPO Kohat for completion of the same as indicated from the inquiry report which has rendered the inquiry proceeding illegal and liable to be set-aside. Furthermore, the appellant was removed from service vide order dated

M. Aslam
28.8.2018

15.01.2014 retrospectively therefore, the impugned order was also not passed in accordance with law and rules. As such the impugned order is illegal therefore, we accept the appeal, set-aside the impugned order and reinstate the appellant in service. However, respondent-department is directed to conduct de-novo inquiry in accordance with prescribed law and rules within a period of 90 days from the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

28.08.2018



(AHMAD HASSAN)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

28.08.2018

Learned counsel for the appellant and Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Arif Saleem, ASI for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed on file, we accept the appeal, set-aside the impugned order and reinstate the appellant in service. However, respondent-department is directed to conduct de-novo inquiry in accordance with prescribed law and rules within a period of 90 days from the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.08.2018



(AHMAD HASSAN)
MEMBER




(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

15.01.2018


Appellant in person present. Mr. Kabir Ullah Khattak,
Addl: AG alongwith Arif Saleem, ASI for the respondents present.
Lawyer community on strike on the call of Khyber Pakhtunkhwa
Bar Council. Adjourned. To come up for arguments on
15/03/2018 before D.B.


(Gul Zeb Khan)
Member


(M. Hamid Mughal)
Member

15.03.2018

Learned counsel for the appellant present. Learned Assistant
Advocate General alongwith Arif Saleem Stenographer on behalf of
the respondents present. Learned counsel for the appellant seeks
adjournment. Adjourn. To come up for arguments on 10.05.2018
before D.B


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

10.05.2018

The Tribunal is defunct due to retirement of Hon'ble Chairman.
Therefore, the case is adjourned. To come up on 25.07.2018:


READER


25.07.2018

Since 25.07.2018 has been declared as public holiday on account of
General Election. Therefore, case is adjourned on 28.08.2018 before D.B


READER

09.05.2017

Counsel for the appellant present. Mr. Arif Saleem, ASI alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 24.08.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

24.08.2017

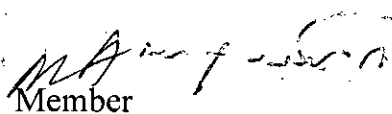
Counsel for the appellant and Mr. Ziaullah, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 30.10.2017 before D.B.


(Gul Zeb Khan)
Member


(Ahmad Hassan)
Member

30.10.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Arif Saleem, ASI for the respondents present. Learned counsel for the appellant seeks adjournment. Granted. To come up for arguments on 15.01.2018 before the D.B.


Member


Chairman

25.4.2016


Agent of counsel for the appellant and Mr. Muhammad Azam, S.I (Legal) 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 15.08.2016.


Chairman

15.08.2016

Counsel for the appellant and Mr. Arif Saleem, ASI alongwith Additional AG for respondents present. Learned counsel for the appellant requested that the rejoinder has not been prepared hence adjournment. To come up for rejoinder and arguments on 22-12-16 before D.B.

Member 


Member

22.12.2016

Counsel for the appellant and Additional AG for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 09.05.2017 before D.B.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

23.12.2015

Clerk to counsel for the appellant. Seeks adjournment.

Adjourned for preliminary hearing to 26.1.2016 before S.B.

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Member

26.1.2016

Counsel for the appellant present. Seeks adjournment.
Adjourned to 10.2.2016 for preliminary hearing before S.B.

Chairman

10.02.2016

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 involvement in narcotics and arrested in case FIR No. 188 dated 22.5.2013 registered under sections 9c-CNSA at PS Usterzai Kohat and removed from service vide impugned order dated 15.1.2014 where against he preferred departmental appeal on 18.7.2014 which was rejected on 20.8.2014 and appeal before IGP under Rule-11 -A was also rejected on 13.3.2015 and hence the instant service appeal on 6.8.2016.

That the appellant was falsely implicated in the said criminal case as he was acquitted of the charges by the Hon'ble Peshawar High Court vide judgment dated 11.6.2014 and that the inquiry was not conducted in the prescribed manners and as such the impugned orders are liable to be set-aside.

Points urged need consideration. Admit, subject to limitation. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 25.4.2016 before S.B. Notice of application for condonation of delay be also issued for the date fixed.




Chairman

Appellant Deposited
Security & Process Fee

FORM OF ORDER SHEET

Court of _____

Misc. Application No. 134 /2015

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10/11/2015	<p>The application for restoration of appeal no. 1060/2015 submitted by Mr. Ishaq Ali through Syed Mudasir Pirzada Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p style="text-align: center;">This Misc. application be put up before S. Bench on <u>24-11-15</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-	24.11.2015	<p>Petitioner with counsel present. Record perused according to which the appeal of the petitioner was dismissed in default for want of prosecution on 29.10.2015 when the same was fixed for preliminary hearing. Since the application has been submitted within time i.e on 10.11.2015 as such the same is accepted and appeal restored for preliminary hearing. Record be requisitioned for preliminary hearing for 23.12.2015 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Misc- application no-134/2015

Ishaq Ali

V/S

IGP

Appellant

Respondents

Service Appeal

Service Tribunal
Diary No. 1293
Date 10-11-2015

Application for Restoration

Respectfully Sheweth,

The Appellant state as under.

- 1:-That the above title appeal is pending before the honorable Service tribunal .
- 2:-That the date for preliminary hearing was fixed on 29-10-2015.
- 3:-That due to road accident the council for appellant was injured and was unable to attend the tribunal on date fixed.
- 4:-That by the reason mentioned above the appeal was dismissed in default for non appearance.
- 5:- That the application is within time .
- 6:-That the balance of convenience is also in support of appellant .
- 7:- That some other grounds will be agitated at the time of arguments with the permission of honorable tribunal .

Prayed:-

By acceptance of this restoration application it is humbly submitted that the appeal of the appellant may please be restored accordingly .

Appellant

Through


Syed Mudasir Pirzada(Advocate)

0345-9645854

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

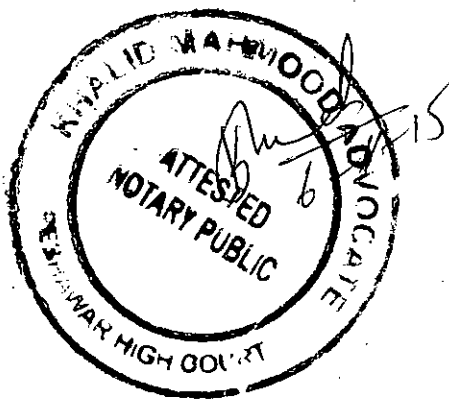
Ishaq Ali **Appellant**

VERSUS

I.G.P etc..... **Respondents**

AFFIDAVIT

I, Syed Mudasir Pirzada Advocate Peshawar, as per instruction of my client, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Mudasir
DEPONENT

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal 1060 2015

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala ,Tehsil & District Kohat.

(Appellant)

VERSUS

1:Inspector General of Police KPK Peshawar.

2:Deputy Inspector General of Police Kohat

3:-District Police Officer Kohat----- (Respondent)

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT,1974 AGAINST THE ORDER OF
RESPONDENT NO 3 BEARING O.B NO 70
DATED 15/01/2014 AND RESPONDENT NO 2
DATED 20/08/2014 WHEREIN THE
APPELLANT WAS REMOVED FROM SERVICE
AND APPEAL OF APPELLANT WAS DISMISSED
BY RESPONDENTS ON 13/03/2015.

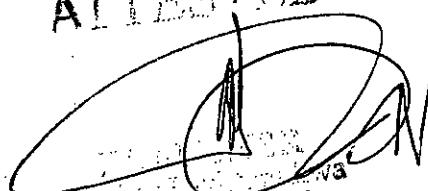
Re-sub-itted

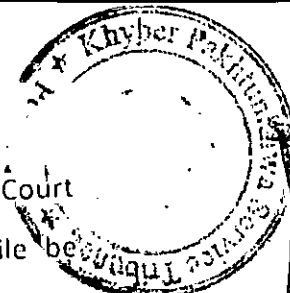
PRAYER:-

On accepting of this appeal , the respondents are directed to re-instated the appellatant in service with the date of his dismissal from service with all back benefits for the end of justice.

Respectfully Sheweth:-

With great veneration, the instant appeal is preferred by the appellatant on the following facts and grounds.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



29.10.2015

None present for appellant despite repeated calls. The Court time is about to over. Dismissed for want of prosecution. File be consigned to the record room.

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Chairman

ANNOUNCED
29.10.2015

Certified to be true copy
Khyber Pakhtunkhwa Services Tribunal
Peshawar

10.11.2015
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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

MISC application no. 134/2015

Ishaq Ali

V/S

IGP

Appellant

Respondents

Service Appeal

Application for Restoration

Respectfully Sheweth,

The Appellant state as under.

- 1:-That the above title appeal is pending before the honorable Service tribunal .
- 2:-That the date for preliminary hearing was fixed on 29-10-2015.
- 3:-That due to road accident the council for appellant was injured and was unable to attend the tribunal on date fixed.
- 4:-That by the reason mentioned above the appeal was dismissed in default for non appearance.
- 5:- That the application is within time .
- 6:-That the balance of convenience is also in support of appellant .
- 7:- That some other grounds will be agitated at the time of arguments with the permission of honorable tribunal .

Prayed:-

By acceptance of this restoration application it is humbly submitted that the appeal of the appellant may please be restored accordingly .

Appellant

Through

Mudasir
Syed Mudasir Pirzada(Advocate)

0345-9645854

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

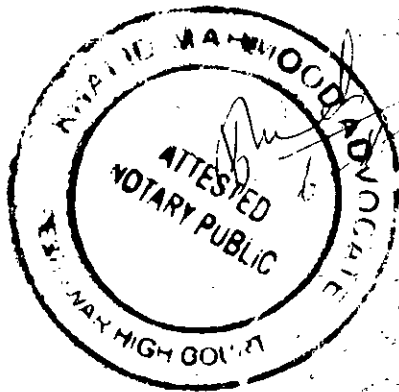
Ishaq Ali **Appellant**

VERSUS

I.G.P etc..... **Respondents**

AFFIDAVIT

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Mudasir
DEPONENT

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal 1060 2015

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala , Tehsil & District Kohat.

(Appellant)

VERSUS

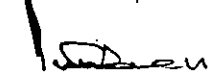
1: Inspector General of Police KPK Peshawar.

2: Deputy Inspector General of Police Kohat

3: District Police Officer Kohat----- (Respondent)

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE ORDER OF
RESPONDENT NO 3 BEARING O.B NO 70
DATED 15/01/2014 AND RESPONDENT NO 2
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APPELLANT WAS REMOVED FROM SERVICE
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BY RESPONDENTS ON 13/03/2015.

Re-submitted

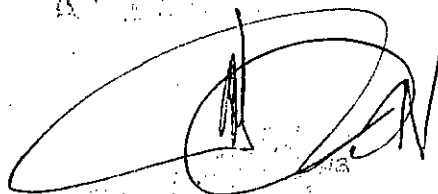

11/10/15

PRAYER:-

On accepting of this appeal , the respondents are directed to re-instated the appellant in service w.e.f the date of his dismissal from service with all back benefits for the end of justice.

Respectfully Sheweth:-

With great veneration, the instant appeal is preferred by the appellant on the following facts and grounds.



29.10.2015

None present for appellant despite repeated calls. The Court time is about to over. Dismissed for want of prosecution. File be consigned to the record room.

Chairman

ANNOUNCED
29.10.2015

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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

MISC- application no- 134/2015

Ishaq Ali

V/S

IGP

Appellant

Respondents

Service Appeal

Application for Restoration

Respectfully Sheweth,

The Appellant state as under.

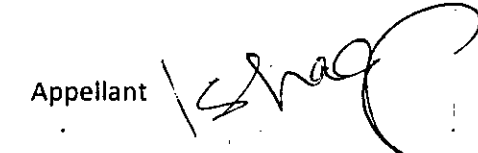

- 1:-That the above title appeal is pending before the honorable Service tribunal .
- 2:-That the date for preliminary hearing was fixed on 29-10-2015.
- 3:-That due to road accident the council for appellant was injured and was unable to attend the tribunal on date fixed.
- 4:-That by the reason mentioned above the appeal was dismissed in default for non appearance.
- 5:- That the application is within time .
- 6:-That the balance of convenience is also in support of appellant .
- 7:- That some other grounds will be agitated at the time of arguments with the permission of honorable tribunal .

Prayed:-

By acceptance of this restoration application it is humbly submitted that the appeal of the appellant may please be restored accordingly .

Appellant

Through



Syed Mudasir Pirzada(Advocate)

0345-9645854

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

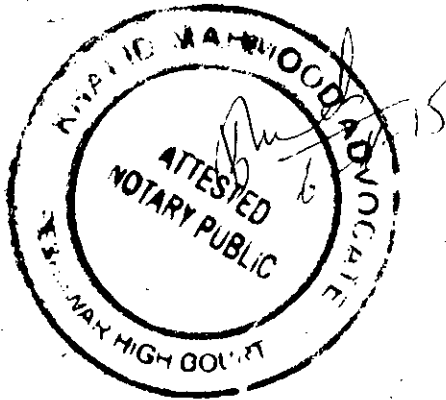
Ishaq Ali **Appellant**

VERSUS

I.G.P etc..... **Respondents**

AFFIDAVIT

I, Syed Mudasir Pirzada Advocate Peshawar, as per instruction of my client, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Mudasir
DEPONENT

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal 1060 2015

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala , Tehsil & District Kohat.

(Appellant)

VERSUS

1:Inspector General of Police KPK Peshawar.

2:Deputy Inspector General of Police Kohat

3:-District Police Officer Kohat----- (Respondent)

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT,1974 AGAINST THE ORDER OF
RESPONDENT NO 3 BEARING O.B NO 70
DATED 15/01/2014 AND RESPONDENT NO 2
DATED 20/08/2014 WHEREIN THE
APPELLANT WAS REMOVED FROM SERVICE
AND APPEAL OF APPELLANT WAS DISMISSED
BY RESPONDENTS ON 13/03/2015.

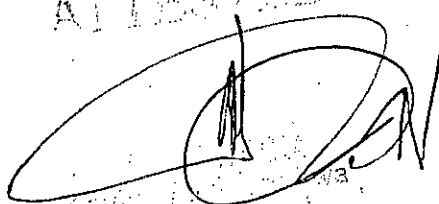
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PRAYER:-

On accepting of this appeal , the respondents are directed to re-instated the appellant in service w.e.f the date of his dismissal from service with all back benefits for the end of justice.

Respectfully Sheweth:-

With great veneration, the instant appeal is preferred by the appellant on the following facts and grounds.

ATTESTED


29.10.2015

None present for appellant despite repeated calls. The Court time is about to over. Dismissed for want of prosecution. File be consigned to the record room.

Chairman

ANNOUNCED
29.10.2015

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

Service appeal No. 1060/2015

Ishaq Ali Ex-Constable

..... Appellant.

VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar and others

..... Respondents.

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectively Sheweth:-

Parawise comments are submitted as under:-

Preliminary Objections:-

1. That the appeal is not maintainable in the present form.
2. That the appellant has got no cause of action.
3. That the appellant has not come to this Hon: Tribunal with clean hands.
4. That the appeal is badly time barred.
5. That the appeal is bad for misjoinder of unnecessary parties and non-joinder of necessary parties.

Reply on Facts:-

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Pertains to record.
5. Incorrect. Infact a proper departmental inquiry was initiated against the appellant, in which all the legal formality have been observed and he was held guilty.
6. Incorrect. Infact the departmental appeal under Rule 11 A of Khyber Pakhtunkhwa Rule 1975 was examined by the appeal board on 19.02.2015. The appellant was heard in person and found involved in narcotics case and convicted by trail court for 5 years imprisonment, however, he was acquitted by High Court Peshawar. Although appellant stated to have falsely been implicated in the case yet he failed to brought forward any cogent evidence therefore, his appeal was rejected by the competent authority vide order No. 3260-64/E-IV dated 13.03.2015. Copy enclosed as annexure "A".
7. The appellant has not come to this Honorable Tribunal with clean hands.

GROUNDS:-

- a. Incorrect. The orders were passed by the Authorities after proper departmental proceedings conducted purely on merits and in accordance with law & rules.
- b. Incorrect. The orders were passed by the authorities in accordance with law and rules, thus are sustainable.

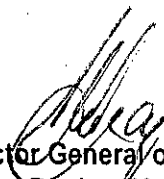
- c. Incorrect. The orders have been passed by the Authorities in accordance with law and rules.
- d. Incorrect. The punishment awarded to the appellant in accordance with law and rules, after proper departmental inquiry.
- e. Incorrect. The appellant was provided all the lawful opportunities of defence, including personal hearing before passing the orders.
- f. Incorrect. The punishment was awarded to appellant by the Authorities in accordance with law & rules after proper departmental proceedings.
- g. Pertains to record.
- h. Correct to the extent that the appellant was acquitted by the Honorable Peshawar High Court Peshawar, but on technical ground by giving benefit of doubt to him. It is worth to mention that learned trial court has convicted the appellant to suffer imprisonment for 5 year RI with fine for Rs. 50000/-.
- i. Pertains to record.
- j. Incorrect. Infact a proper departmental inquiry was initiated against the appellant on his professional misconduct being involved in a narcotics case in which he was held guilty.

The respondents may also be allowed to advance additional grounds at the time of arguments.

In view of the above, it is prayed that on acceptance of this reply, the instant appeal of the appellant may kindly be dismissed with cost.



District Police Officer,
Kohat
(Respondent No. 3)



Dy: Inspector General of Police,
Kohat Region, Kohat
(Respondent No. 2)



Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 1)

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

Service appeal No. 1060/2015

Ishaq Ali Ex-Constable

Appellant.

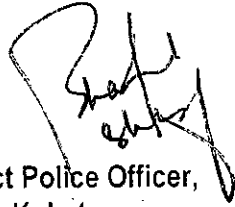
VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar and others

Respondents.

COUNTER AFFIDAVIT

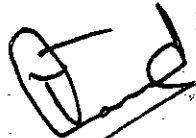
We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon. Court.



District Police Officer,
Kohat
(Respondent No. 3)



Dy: Inspector General of Police,
Kohat Region, Kohat
(Respondent No. 2)



Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 1)



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE, PESHAWAR

ORDER

This order is hereby passed to dispose off departmental appeal under Rule 11-a of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Constable Ishaq Ali No. 8200 of District Police Kohat against the Punishment order i.e dismissal from service passed against the appellant by DPO/Kohat vide his order Book No. 70 dated 15.01.2014.

In the light of recommendations of Appeal Board meeting held on 19.02.2015, the board examined the enquiry in detail & other relevant documents. It revealed that the appellant was served with Charge Sheet/Statement of Allegations and punishment order was announced on the basis of reply to the Charge Sheet and Statement of Allegations.

The appellant was also heard in person and record perused. He was found involved in narcotics case and convicted by trial court for five years however, he was acquitted by High court. Although he stated to have falsely been implicated in the case yet he failed to brought forward any cogent evidence. His case is not worth consideration, therefore, his appeal is rejected.

Order announced in the presence of appellant.

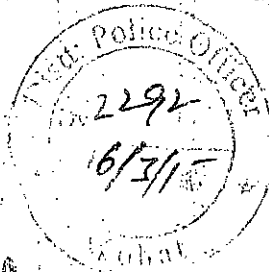
Sd/-
NASIR KHAN DURRANI
Inspector General of Police,
Khyber Pakhtunkhwa
Peshawar.

No. 3260-64 /E-IV dated Peshawar the 13/03/2015

Copy of above is forwarded to the:-

1. Deputy Inspector General of Police, Kohat Region.
2. DPO/Kohat. The service Roll, ~~Fauji Missal~~ and ~~Enquiry File~~ of the above named official are returned herewith.
3. PSO to IGP/Khyber Pakhtunkhwa Peshawar.
4. PA to Addl: IGP/HQrs Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs Khyber Pakhtunkhwa, Peshawar.

BAE
To Inspectors Her above
named Ex Constable
accordingly



(Signature)
(SYED FIDA HASSAN SHAH)
AIG/Establishment
For Inspector General of Police,
Khyber Pakhtunkhwa
Peshawar.

DEPARTMENTAL ENQUIRY AGAINST CONSTABLE ISHAQ ALI No. 820

The Instant Enquiry was handover to the undersigned on 22.08.2013 vide Diary No.2625 of this office. This enquiry finding deals with the enquiry of one Constable Ishaq Ali No. 820 who was arrested with the Chāras weighing 5000 grams vide FIR No. 138 dated 22.05.2013 U/S 9CNSA Police Station Usterzai, accused was arrested and was suspended vide No. 6527-29/PA dated 22.05.2013 of District Police Officer Kohat. The enquiry in hand was initiated against him and entrusted to ASP /Saddar Muhammad Kashif Aslam, was nominated as Enquiry Officer.

During Course of enquiry , E.O recorded statements of PWs and facilitate the accused Police Constable for cross examination statement of Constable Ishaq Ali recorded vide which he stated that he will brought the facts before the Court.

The enquiry in hand was entrusted to the undersigned vide: this office Dy: No. 2625/s dated 22.08.2013 for completion. All available record on file perused and find that all the statements shows that allegations levelled against accused constable are based on facts.

RECOMMENDATIONS

In View of the above facts and circumstances and statements recorded, I am of the opinion that the accused constable Ishaq Ali No. 820 is guilty of offence and the allegations levelled against him are established beyond any doubt. Therefore he is recommended for one of the punishment as deemed fit.

Submitted for favour of perusal and further orders please.

(ENQUIRY OFFICER)
IHSAN ULLAH KHAN,
SDPO/SADDAR KOHAT

IN THE COURT OF INAMULLAH KHAN, SESSIONS JUDGE/
JUDGE SPECIAL COURT, KOHAT

Spl: Hadd Case No-66/2013

Date of institution- 20.7.2013

Date of decision- 22.1.2014



The State

VERSUS

Ishaque Ali S/G Yousaf Ali, aged about 27/28 years r/o village Usterzai Bala, Tehsil & District Kohat... (Accused)

JUDGMENT:-

The above named accused has been sent up to this court to face trial in case vide F.I.R No-138 dated 22.5.2013 u/s 9(c) C.N S.A Police Station Usterzai, Kohat.

Brief facts leading to the present case are that on 22.5.2013 Mujtuba Ali S.H.O Police Station Usterzai, Kohat had an information that huge quantity of narcotics would be smuggled from "Pera" Orakzai Agency via "Marai village". Upon this information he (S.H.O) arranged a police party and made a barricade on *Kacha* way in the ravine of "*Soor Gudar*" and at 09.00 hours noticed a young man having a plastic sack on his shoulder who was tactfully encircled and over powered. The plastic sack was searched which lead to the recovery of five packets of chars each weighing 1000 grams, total 5000 grams. Five/five grams was separated from each packet as samples and sealed into parcels while the remaining chars was sealed in a separate parcel and taken into possession vide recovery memo.

Inamullah Khan
INAMULLAH KHAN
District & Sessions Judge
Kohat
22/01/2014

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3-551

Accused was arrested and the present case was registered against him vide F.I.R Exh.PA.

After registration of the case, the legal machinery came into motion and upon completion of investigation, challan against the accused u/s 9(c) C.N.S.A was submitted before this Court. Accused was summoned and on appearance in custody he was delivered copies of relevant documents u/s 265(c) Cr.P.C and formally charge sheeted to which he did not plead guilty and claimed trial.

PW-1 Mazhar Abbas LHC is the marginal witness to the recovery memo Exh.PW 1/1 through which the I.O recovered from the right hand of the accused one plastic bag having five packets containing five kilograms chars and took into possession the same vide recovery memo. Five/five grams were separated for FSL and sealed into parcels and the remaining chars Exh.P-1 was sealed in another parcel. That the seizing officer affixed three seals with a monogram of "I.G". That the recovery memo was prepared by him which he signed on the spot.

[Handwritten signature]
District & Sessions Judge
Kohat
22/01/2014

PW-2 Mujtaba Ali ASI is the complainant and author of the report and has narrated the same facts as mentioned in the report, therefore, to avoid repetition, the same is not be produced. He, however, further stated that he took into his possession the recovered chars vide recovery memo Exh.PW 1/1 in the presence of marginal witnesses, drafted murašila Exh.PA/1 and sent it to the PS for registration of the case.

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through constable Kiramat Ali. That he issued arrest card of the accused Exh.PW 2/1. That the site plan was prepared by the I.O at his pointation and that after completion of investigation by the investigation staff, he submitted complete challan in the case.

PW-3 Salahuddin LHC has stated that on the day of occurrence he was handed over the recovered chars and the parcels of sample. That he delivered the parcels of sample to the investigation staff while kept the remaining chars in the Malkhana of the PS under his safe custody.

PW-4 Awal Zaman ASI has stated that on receipt of murasila, he registered the case vide FIR Exh.PA which bears his signature and that he had correctly incorporated the contents of murasila into FIR.

PW-5 Ghazi Usman S.I is the Investigating officer of the case and has stated as under:-

"After registration of the case, investigation was handed over to me during which I proceeded to the spot and prepared site plan Exh.PB at the instance of SHO/seizing officer which is correct with all its foot notes and drawing. The SHO and the marginal witnesses of the recovery memo were present at the spot and I recorded the statements u/s 161 Cr.P.C. I then came back to Marai Check Post where I recorded the statement of Kiramat Ali FC u/s 161 Cr.P.C who brought the murasila to the PS. I then came to the police station Usterzai and Maddar Moharrar produced me parcels No-1 to 5 and parcel No-6 containing remaining case property which I examined. I drafted application for sending the samples i.e parcel No-1 to 5 which is Exh.Pw 5/1 and the result is Exh.PZ which is in positive. I recorded the statement of Salahuddin Moharrar and Awal

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22/11/2014
Judge

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22/11/14
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Zaman ASI u/s 161 Cr.P.C. I also attached road certificate Exh.PW 5/2. I applied for custody of the accused vide my application Exh.PW 5/3 and two days police custody was granted. I interrogated the accused and again applied for more police custody vide my application Exh.PW 5/4 but my request was turned down and the accused was sent to judicial lockup. I recorded the statement of accused u/s 161 Cr.P.C. I recorded the statement of Khuram Shahzad constable who took the samples to FSL. After completion of investigation I handed over the case file to SHO for submission of challan. All the above documents bear my signatures".

After the closure of prosecution evidence, accused was examined u/s 342 Cr.P.C wherein he professed innocence and refuted the prosecution allegation as false. He wished to be examined on Oath and produce defence evidence.

Statement of accused on Oath within the meaning of section 340(2) Cr.P.C was recorded. Accused produced Raza Khan LHC, Police Post Marai and Rehmatullah Moharrar of PS Usterzai as DW-1 and DW-2 respectively.

I have heard learned defence counsel, learned Public Prosecutor for the State and have examined the entire record thoroughly.

The report/murasila Exh.PA/1 incorporated in F.I.R Exh.PA shows that the occurrence is of 9:00 hour while the report is made at 09.30 hour. So the same is promptly lodged report. The accused is shown to have been arrested red handed with 5000 grams Chars.

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 22/01/2014
 District Sessions Judge
 Kohat

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There is nothing in the site plan going against the facts narrated in murasila/FIR.

According to recovery memo Exh.PW 1/1, five packets each weighing 1000 grams Chars "Gardah" was effected from the personal possession of the accused. Recovery memo shows that the recovery was witnessed by two witnesses Nazir Khan S.I and Mazhar Abbas LHC. One of them namely Mazhar Abbas LHC has been produced by the prosecution as PW-1 in the court while seizing officer Mujtaba Ali S.H.O has been produced as PW-2. Thorough perusal of their statements suggests that they are consistent through out regarding the mode, place and manner of the recovery. When both the statements are compared in juxtaposition, there appears no contradiction between them on any material point rather they are in line with each other as well as in line with the F.I.R and site plan. PW-1 i.e marginal witness namely Mazhar Abbas has stated in cross examination that the Chars was in "Gardah" form. He further stated that it was in "Rora" form. The court during statement of PW-1 de-sealed the parcel and given observation that the Chars was in "Rora" form and each parcel was found cut from corner probably for taking samples. The seizing officer Mujtaba Ali SHO has also stated in cross that the Chars was in shape of powder/"Gardah". These statements fully supported the version of F.I.R. During lengthy cross examination nothing could be extracted from either of these witnesses indicating towards any noticeable crack in the prosecution case. Though both the

Signature
MAZHAR ABAS KHAN
District Sessions Judge
Kohat
2-2/11/2014

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witnesses as per recovery memo are police officials but in absence of any malice the police witnesses are also as good witnesses as private ones.

The Forensic Science Laboratory's report Exh.PZ shows the Chars as brown solid which further strengthened the contention of the prosecution.

As far as the formal witnesses i.e PW-3 and PW-4 re concerned, nothing could be noticed in their statements to create any doubt in the case.

The Investigating Officer of the case Ghazi Usman S.I appeared as PW-5 and fully supported the prosecution version and narrated the whole proceedings conducted by him during investigation. He has been cross examined at length but nothing could be extracted from his mouth to create any dent or doubt in the prosecution case.

The accused opted to be examined on Oath wherein he stated that he was arrested from Marai Check Post and that nothing was recovered from him. Accused also produced one Raza Khan LHC of Police Post Marai as DW-1 from whom the Daily Diaries dated 21st to 24th April, 2013 were exhibited while Rehmatullah Moharrar of Police Station Usterzai has been examined as DW-2 who produced extract from the register of daily diary dated 22.5.2013. The defence raised point as to how the accused managed to go to tribal territory on foot and reached back to the place of occurrence within an hour. This point of defence is of no avail as no where prosecution has taken

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Gh
GHAZI USMAN
District Sessions Judge
Kohat
22-1-2014

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the plea that the accused went on foot and came back from tribal territory. Prosecution point is that the accused was found in possession of 5000 grams chars which was duly recovered from him and he was arrested. The second defence point is that marginal witness PW-1 states that the Chars was "Rora" while seizing officer (PW-2) states that it was "Gardah". This contention is also of no avail as "Gardah" means *Kacha* Chars and not necessarily fully powdered while "Rora" indicates that some portions are in powder form while the major portions are in solid pieces. During trial at the time of recording of statement of marginal witness (PW-1), the following was observed by the court:-

"The chars was wrapped in yellow plastic bags which are five in numbers. The chars was in "Rora" form and it is in dried pieces and transforms into powder. Each parcel was cut from corner probably for taking sample"

The controversy of "Rora" (solid pieces) and powder is explained in the manner that with the passage of time, the moisture goes out and gradually the "Rora" transforms into powdered.

The F.S.L report Exh PZ also shows it brown solid. All these factors are in line with the F.L.R version.

The next plea of the defence is that seizing officer (PW-2) stated that he received information about smuggling of narcotics at 6.00/7.00 AM while the accused at that time was in police post and reportedly left the police post Marai after 8.00 hour. He

WARD
22/05/14

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contended that this is logically impossible. In my view this contention is also of no avail to the defence as the information was regarding smuggling of narcotics which always took place in a complex manner like arrangement of contraband, its movement, its change from different hands to hands etc. Moreover, no specific position of the accused was disclosed in the information. So getting of information at 6/7 AM in no way goes in favour of accused.

Another point which the defence raised is that the police vehicle was standing at the time of going of accused and his coming back and the accused would have definitely noticed it then why did he dare to come back on the same way. This plea is hypothetical in nature and no benefit can be taken from such point by the accused.

The defence also took plea that actually the case was registered against the accused due to personal grudge of seizing officer Mujtaba Ali SHO (PW-2) with the accused. When cross examined on this point, PW-2 stated that prior to the occurrence hard words were exchanged between him and the accused as he was not satisfied from the conduct and service of the accused being police official and the accused was directed to always inform him (seizing officer) while leaving the police station. In my view directing the subordinate to perform the duty in accordance with law is in no way can be taken as personal grudge. The accused has never attempted to approach his high-ups during whole time of investigation and trial that he was innocent and

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was malafidely involved by the seizing officer. Rather it has been proved by the defence that he was absent from duty from Marai Check Post at the day of occurrence. Moreover, it is unbelievable that the whole raiding/police party and the I.O would join hands to involve their own subordinate/colleague falsely in a serious offence. No evidence regarding any enmity/malafide of the police party towards the accused could be brought on record. Hence this plea of the defence is not proved and is therefore turned down.

In light of above discussion, I am of the firm view that the prosecution has proved its case against the accused beyond any shadow of doubt. Hence upon conviction u/s 9(c) C.N.S.A, accused is sentenced to five years rigorous imprisonment with a fine of Rs.50,000/- (Fifty thousand) and in default whereof he shall further suffer two months S.I. Benefit of section 382-B Cr.P.C is extended to the accused. Case property stands confiscated to the State and be destroyed but after the expiry of period of appeal/revision. Attested copy of judgment is delivered to the accused free of cost and his thumb impression is obtained on the margin of order sheet.

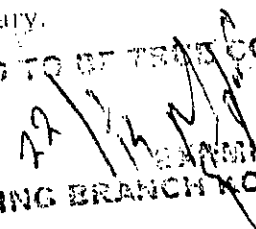
ANNOUNCED
January 22, 2014

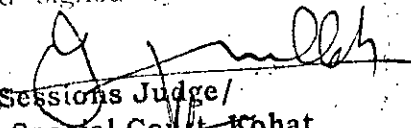

INAMULLAH KHAN
Sessions Judge/
Judge Special Court, Kohat

Certificate:-

Certified that this judgment consists of nine pages. Each page has been corrected and signed by me wherever necessary.

ATTESTED TO BE TRUE COPY


COPING BRANCH KOHAT


Sessions Judge/
Judge Special Court, Kohat

INAMULLAH KHAN
District & Sessions Judge
Kohat.

22.01.2014

FINAL SHOW CAUSE NOTICE

1. I, **Muhammad Saleem, District Police Officer, Kohat** as competent authority under the Police Rule 1975 serve you **Constable Ishaq Ali No. 820** as follow:-

The consequent upon the completion of enquiries conducted against you by the Enquiry Officer, **Mr. Ihsan Ullah Khan SDPO Saddar, Kohat.**

2. On going through the findings and recommendations of the Enquiry Officer, the materials on the record and other connected papers, I am satisfied that the charge against you is proved and you have committed the following acts/omission specified in Police Rule 1975.

"Arrested in case FIR No. 138 dated 22.05.2013 u/s 9CCNSA PS Usterzai".

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Rule 1975.

4. You are therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. Copy of finding of the enquiry officer is enclosed.

No. 13056/PA
Dated 03-9-2013

**DISTRICT POLICE OFFICER,
KOHAT**

No 13056PA /PA
dt 03-09-13

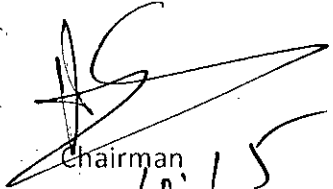
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Handwritten notes at the bottom of the page, including the number 820 and the date 20/5/13.

29.10.2015

None present for appellant despite repeated calls. The Court time is about to over. Dismissed for want of prosecution. File be consigned to the record room.

ANNOUNCED
29.10.2015





Chairman
29.10.15

FORM-A

FORM OF ORDER SHEET

Court _____

Case No. 1060/2015

	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	01.10.2015	<p>The appeal of Mr. Ishaq Ali resubmitted to-day by Mr. Syed Mudassir Pirzada, Advocate may be entered in the institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case be put up before the S.B for preliminary hearing on <u>14-10-15</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	14.10.2015	<p>Junior to counsel for the appellant present. Seeks adjournment. Adjourned to 29.10.2015 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Ishaq Ali received on 06.08.2015 was returned back to his counsel (Syed Mudassir Pirzada Advocate, Kohat) for completion and resubmission within 15 days. To-day i.e. on 29.08.2015, the same has been resubmitted but without removing objections properly. Draft of the appeal is also ambiguous.

Submitted for further order please.

Ishaq
REGISTRAR
KPK SERVICE TRIBUNAL,
PESHAWAR.

Hon'ble Chairman

Be returned with the
directions to address office
objections within a week

01.09.15

Ref.

Be returned to the counsel per the
appellant.

Ishaq
21/9/15

No. 1371/ST

dt: 7/9/15

The appeal of Mr. Ishaq Ali Ex- Constable police Teshil and Distt. Kohat received to-day i.e. on 06.08.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of first departmental appeal preferred by the appellant against the order 15.1.2014 which was dismissed/rejected on 20.8.2014 mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be serial wise as mentioned in the memo of appeal.
- 4- One copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1186 /S.T,

Dt. 7/8 /2015

Amirullah
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Mudasir Pirzada Adv. Kohat.

*Re-submitted
by Syed Mudasir Pirzada
Advocate
25/8/15
0345-9645854*

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal 1060 2015

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala ,Tehsil & District Kohat.

(Appellant)

VERSUS

1:-INSPECTOR GENERAL OF KPK POLICE PESHAWAR.

2:-DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT

3:-DISTRICT POLICE OFFICER KOHAT

(Respondents)

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Sr No	Description of Documents	Annexure	Page No
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2	Affidavit		
3	Addresses of the Parties		
4	Application for Condonation of delay with affidavit	A	1-3
5	Copy of Charge Sheet & Disciplinary Action	B	4-6
6	Copy Of Final Show Cause Notice And Reply (along with order (OB- No 70- dated 15/01/2014)	C	7-9
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10	Copy of Medical Reports	G	37-38
	Wakalat Nama	H	

Appellant

Through

Syed Mudasir Pirzada &

Advocate 0345-9645854

Dt:-6/8/2015

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal 1060 2015

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala , Tehsil & District Kohat.

(Appellant)

VERSUS

Inspector General of Police KPK Peshawar.

Deputy Inspector General of Police Kohat

District Police Officer Kohat

(Respondent)

ADDRESSES OF THE PARTIES

APPELLANT:-

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala , Tehsil & District Kohat.

RESPONDENTS:-

- 1:-Inspector General of Police KHYBER PAKHTOON KHWA Peshawar.
- 2:-Deputy Inspector General of Police Kohat Region Kohat
- 3:-District Police Officer Kohat

Appellant

Through

06/08/2015

Syed Mudasir Pirzada &

Izat Maab Advocate

Advocate 0345-9645854

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal 1060 2015

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala , Tehsil & District Kohat.

(Appellant)

VERSUS

1:Inspector General of Police KPK Peshawar.

2:Deputy Inspector General of Police Kohat

3:-District Police Officer Kohat----- (Respondent)

**APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT,1974 AGAINST THE ORDER OF
RESPONDENT NO 3 BEARING O.B NO 70
DATED 15/01/2014 AND RESPONDENT NO 2
DATED 20/08/2014 WHEREIN THE
APPELLANT WAS REMOVED FROM SERVICE
AND APPEAL OF APPELLANT WAS DISMISSED
BY RESPONDENTS ON 13/03/2015.**

Ne-sub-iffa-1
1/10/15
PRAYER:-

On accepting of this appeal , the respondents are directed to re-instated the appellatant in service w.e.f the date of his dismissal from service with all back benefits for the end of justice.

Respectfully Sheweth:-

With great veneration, the instant appeal is preferred by the appellatant on the following facts and grounds.

Fact:-

- 1- That the appellant was appointed as Constable and was performing his duty to the entire satisfaction of his superiors in Kohat after completion of his training.
- 2- That the appellant while posted at PP Marai ,was arrested vide case FIR No 188 dated 22-05-2013 . U/S (9c-CNSA) PS Usterzai Kohat .
- 3- That the department then issued a Charge Sheet along with Disciplinary action to the appellant due to above case(**Copy of Charge Sheet and Disciplinary Action is Annexed as Annexure " B "**)
- 4- That appellant feeling aggrieved from the order of DPO Kohat Police as a Respondent No 3 , in which the present appellant is removed from service hence appellant preferred departmental appeal before Respondent No 2(**DIG Kohat Region Kohat**) on 18 /09 /2014 which was also dismissed by respondent no 2 vide order dated 20 /8 /2014. (Copy of Departmental appeal and order dated 20 /8 /2014 are (**annexed as Annexure "D " respectively**)
- 5- That Respondent No 3 (**District Police Officer**) without taking into consideration the stance taken by appellant and ignoring previous service record of appellant imposed the major penalty on appellant and removed the appellant from service without waiting for decision of the Honable Peshawar High Court Peshawar in the aforesaid mentioned case.(Copy of Order dated 11/06/2014 is annexed as Annexure "E ")
- 6- That the appellant again filed departmental appeal/mercy petition dated19/01/15 where the competent authority assured the appellant by Giving him false consolation that he will be re-instated on filing second appeal/mercy petition which was also dismissed by respondent No-1 (**Copy of Appeal/ mercy petition and order is annexed as Annexure "F "**)
- 7- That feeling aggrieved from the above mentioned illegal orders the appeal is filed inter-alia on the following grounds.

GROUNDS:-

- a- That the impugned orders are illegal, arbitrary, without jurisdiction and without lawful authority.
- b- That the impugned orders are suffering from perversity of reasoning hence not sustainable in the eyes of law and liable to be set aside.

- c- That the impugned orders are against the spirit of law.
- d- That the punishment awarded to appellant is very much harsh in nature.
- e- That the impugned orders have been passed against the principle of natural justice as has been removed from service without giving him opportunity of being heard.
- f- That the dismissal of appellant from service is not only injustice to appellant but also to the family members of appellant as appellant is the only source of earning of his family.
- g- That the appellant while posted at PP Marai ,was arrested vide case FIR No 188 dated 22-05-2013 . U/S (9c-CNSA) PS Usterzai Kohat .
- h- That the appellant has been acquitted in the mentioned above case by the Honable Peshawar High Court Peshawar vide judgment/order dated 11-06-2014(**Copy of Judgment/Order is annexed as Annexure "E "**)
- i- That the appellant was removed from his service on dated 15-01-2014 vide OB-No 70 by the respondent No-3.
- j- That the appellant trial was under process when he was removed from service without waiting for the decision of the court, it is settled law by now that the accused is presumed to be innocent until proved guilty, hence the impugned order passed on 30-08-2013 is illegal, without jurisdiction and without lawful authority.

That some other grounds may be adduced during the course of arguments with the kind permission of hon,able tribunal.

Prayer:-

It is therefore respectfully prayed that on acceptance of this service appeal the impugned orders dated 30-08-2013 & 23-10-2013 of the respondents may be declared as illegal, without jurisdiction and without lawful authority and the appellant may be reinstated with all back benefits.

Appellant

Through

Date _____ 2015

Syed Mudasir Pirzada &

Izat Maab Advocate

Advocate 0345-9645854

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal 1060 2015

A.W.F. Province
Service Tribunal
Diary No. 440
Dated 06-8-2015

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala, Tehsil & District Kohat.

(Appellant)

VERSUS

1: Inspector General of Police KPK Peshawar.

2: Deputy Inspector General of Police Kohat

3:- District Police Officer Kohat----- (Respondent)

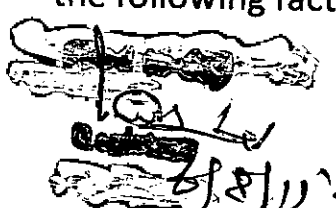
**APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE ORDER OF
RESPONDENT NO 3 BEARING O.B NO 70
DATED 15/01/2014 AND RESPONDENT NO 2
DATED 20/08/2014 WHEREIN THE
APPELLANT WAS REMOVED FROM SERVICE
AND APPEAL OF APPELLANT WAS DISMISSED
BY RESPONDENTS ON 13/03/2015.**

PRAYER:-

On accepting of this appeal, the respondents are directed to re-instated the appellant in service w.e.f the date of his dismissal from service with all back benefits for the end of justice.

Respectfully Sheweth:-

With great veneration, the instant appeal is preferred by the appellant on the following facts and grounds.



Service Appeal No. _____ 2012

Ex-Police Constable Ihsan Ali (S/O Yousof Ali) Village Gisterai Bala, Tehsil & District Kohat.

(Appellant)

VERSUS

1: Inspector General of Police KPK Peshawar.

2: Deputy Inspector General of Police Kohat

3: District Police Officer Kohat ----- (Respondent)

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE ORDER OF
RESPONDENT NO 3 BEARING O.B. NO 70
DATED 15/01/2014 AND RESPONDENT NO 2
DATED 20/08/2014 WHEREIN THE
APPELLANT WAS REMOVED FROM SERVICE
AND APPEAL OF APPELLANT WAS DISMISSED
BY RESPONDENTS ON 13/03/2012.

PRAYER:-

On accepting of this appeal, the respondents are directed to re-instate the appellant in service w.e.f. the date of his dismissal from service with all back benefits for the end of justice.

Respectfully Sheweth:-

With great veneration, the instant appeal is preferred by the appellant on the following facts and grounds

(Signature and Stamp)

Facts:-

- 1- That the appellant was appointed as Constable and was performing his duty to the entire satisfaction of his superiors in Kohat after completion of his training.
- 2- That the department then issued a Charge Sheet along with Disciplinary action to the appellant. (Copy of Charge Sheet and Disciplinary Action is Annexed as Annexure " B)
- 3- That appellant feeling aggrieved from the order of Respondent No 3 ,appellant preferred departmental appeal before Respondent No 2 on 18 /09 /2014 which was dismissed by respondent no 2 vide order dated 20 /8 /2014. (Copy of Departmental appeal and order dated 20 /8 /2014 are annexed as Annexure "D " respectively)
- 4- That Respondent No 3 without taking into consideration the stance taken by appellant and ignoring previous record of appellant imposed the major penalty on appellant and removed the appellant from service without waiting for decision of the Honable court in the aforesaid mentioned case.(Copy of Order dated 11/06/2014 is annexed as Annexure "E ")
- 5- That the appellant again filed departmental appeal/mercy petition dated 19/01/15 where the competent authority assured the appellant by Giving him false consolation that he will be reinstated on filing second appeal/mercy petition which was also dismissed by respondent No-1 (Copy of Appeal/ mercy petition and order is annexed as Annexure "F ")
- 6- That feeling aggrieved from the above mentioned illegal orders the appeal is filed inter-alia on the following grounds.

GROUNDS:-

- a- That the impugned orders are illegal, arbitrary, without jurisdiction and without lawful authority.
- b- That the impugned orders are suffering from perversity of reasoning hence not sustainable in the eyes of law and liable to be set aside.
- c- That the impugned orders are against the spirit of law.
- d- That the punishment awarded to appellant is very much harsh in nature.

1- That the appellant was appointed as Constable and was performing his duty to the entire

satisfaction of his superiors in Kohat after completion of his training.

2- That the department then issued a Charge Sheet along with Disciplinary action to the

appellant (Copy of Charge Sheet and Disciplinary Action is Annexed as Annexure "B")

3- That appellant feeling aggrieved from the order of Respondent No 3, appellant preferred

departmental appeal before Respondent No 2 on 18/09/2014 which was dismissed by

respondent no 2 vide order dated 20/10/2014. (Copy of Departmental appeal and order dated

20/10/2014 are annexed as Annexure "D" respectively)

4- That Respondent No 3 without taking into consideration the stance taken by appellant and

ignoring previous record of appellant imposed the major penalty on appellant and removed the

appellant from service without waiting for decision of the Honable court in the aforesaid

mentioned case. (Copy of Order dated 11/02/2014 is annexed as Annexure "E")

5- That the appellant again filed departmental appeal/mercy petition dated 19/01/15 where the

competent authority assured the appellant by giving him false consolation that he will be re-

instated on filing second appeal/mercy petition which was also dismissed by respondent No-1

(Copy of Appeal/mercy petition and order is annexed as Annexure "F")

6- That feeling aggrieved from the above mentioned illegal orders the appeal is filed inter-alia on

the following grounds.

GROUND:-

a- That the impugned orders are illegal, arbitrary, without jurisdiction and without lawful authority.

b- That the impugned orders are suffering from perversity of reasoning hence not sustainable in

the eyes of law and liable to be set aside.

c- That the impugned orders are against the spirit of law.

d- That the punishment awarded to appellant is very much harsh in nature.

- e- That the impugned orders have been passed against the principle of natural justice as has been removed from service without giving him opportunity of being heard.
- f- That the dismissal of appellant from service is not only injustice to appellant but also to the family members of appellant as appellant is the only source of earning of his family.
- g- That the appellant while posted at PP Marai ,was arrested vide case FIR No 188 dated 22-05-2013 . U/S (9c-CNSA) PS Usterzai Kohat .
- h- That the appellant has been acquitted from the case by the Honable Peshawar High Court Peshawar vide judgment/order dated 11-06-2014(Copy of Judgment/Order is annexed as Annexure "E ")
- i- That the appellant was removed from his service on dated 15-01-2014 vide OB-No 70 by the respondent No-3.
- j- That the appellant trial was under process when he was removed from service without waiting for the decision of the court, it is settled law by now that the accused is presumed to be innocent until proved guilty, hence the impugned order passed on 30-08-2013 is illegal, without jurisdiction and without lawful authority.

That some other grounds may be adduced during the course of arguments with the kind permission of hon,able tribunal.

Prayer:-

It is therefore respectfully prayed that on acceptance of this service appeal the impugned orders dated ~~15-1-2014~~¹⁵⁻¹⁻²⁰¹⁴ & ~~13-3-2015~~¹³⁻³⁻²⁰¹⁵ of the respondents may be declared as illegal, without jurisdiction and without lawful authority and the appellant may be reinstated with all back benefits.

Appellant

Through

Date

6/8/2015

Syed Mudasir Pirzada &

Izat Maab Advocate

Advocate 0345-9645854

e- That the impugned orders have been passed against the principle of natural justice as has

been removed from service without giving him opportunity of being heard.

f- That the dismissal of appellant from service is not only injustice to appellant but also to the

family members of appellant as appellant is the only source of earning of his family.

g- That the appellant while posted at P. Marai, was arrested vide case FIR No 188 dated 25-05-2013. U/S (9c-GNSA) P2 Ustatal Kohat.

h- That the appellant has been acquitted from the case by the Honble Peshwar High Court

Peshwar vide judgment/order dated 11-06-2014 (Copy of Judgment/Order is annexed as

Annexure E.)

i- That the appellant was removed from his service on dated 15-01-2014 vide OB-No 70 by the

respondent No-3.

j- That the appellant was under process when he was removed from service without waiting

for the decision of the court, it is settled law by now that the accused is presumed to be

innocent until proved guilty, hence the impugned order passed on 30-08-2013 is illegal, without

jurisdiction and without lawful authority.

That some other grounds may be adduced during the course of arguments with the kind permission of hon'ble tribunal.

Prayer:-

It is therefore respectfully prayed that on acceptance of this service appeal the impugned orders dated 30-08-2013 & 23-10-2013 of the respondents may be declared as illegal, without jurisdiction and without lawful authority and the appellant may be reinstated with all back benefits.

Appellant

Through

2012

Date

Zyed Mudazir Pirzada &

Ishtiaq Ahmad Advocate

Advocate 0342-0642824

BEFORE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. _____ /2015.

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala , Tehsil & District Kohat.
VERSUS
Inspector General of Police and others Respondents

AFFIDAVIT.

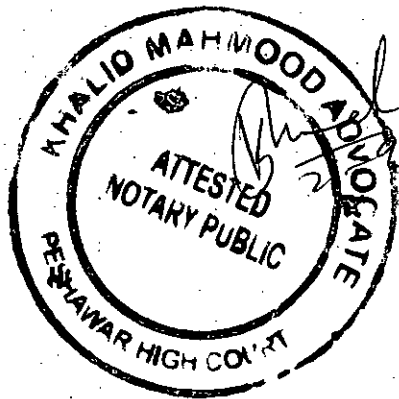
I, Ishaq Ali s/o Yousaf Ali do hereby solemnly affirm and declare on oath that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed here in from this Honourable Court.

Deponent

Identified by:

Syed Mudasir Pirzada &
Izat Maab Advocate
Advocate 0345-9645854

6/8/15



[Handwritten signature]

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal _____ 2015

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala ,Tehsil & District Kohat.

(Appellant)

VERSUS

Inspector General of Police KPK Peshawar.

Deputy Inspector General of Police Kohat

District Police Officer Kohat

(Respondent)

ADDRESSES OF THE PARTIES

APPELLANT:-

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala ,Tehsil & District Kohat.

RESPONDENTS:-

1:-Inspector General of Police KHYBER PAKHTOON KHWA Peshawar.

2:-Deputy Inspector General of Police Kohat Region Kohat

3:-District Police Officer Kohat

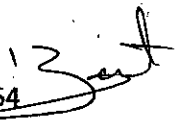
Appellant

Through

06/08/2015


Syed Mudasir Pirzada &

Izat Maab Advocate

Advocate 0345-9645854 



Service Appeal _____ 2012

Ex-Police Constable Ishad Ali S/O Yousof Ali R/O Village Usterzal Bala, Tehsil & District Kohat

(Appellant)

VERSUS

Inspector General of Police K.P. Peshawar.

Deputy Inspector General of Police Kohat

District Police Officer Kohat (Respondent)

ADDRESSES OF THE PARTIES

APPELLANT:-

Ex-Police Constable Ishad Ali S/O Yousof Ali R/O Village Usterzal Bala, Tehsil & District Kohat

RESPONDENTS:-

1:-Inspector General of Police KHYBER PAKHTOON KHWA Peshawar.

2:-Deputy Inspector General of Police Kohat Region Kohat

3:-District Police Officer Kohat

Appellant

Through

06/08/2012

Syed Mudazir Pirzada &

Lat Mabd Advocate

Advocate 0342-9842824

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2015

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala ,Tehsil & District Kohat.

Appellant

VERSUS

Inspector General of police and others

.....

Respondents

APPLICATION FOR CONDONATION OF DELAY.

Respectfully Sheweth

- 1- That the instant application is being filed along with the main appeal in which no date of hearing has yet been fixed.
- 2- That the appellant has got a very good prima facie case as he was appointed as constable after fulfilling all the legal and codal formalities.
- 3- That the appellant was removed from service on very flimsy grounds as well as his appeal was also dismissed by the appellate authority without application of mind.
- 4- That due to severe ailment of appellant father as the appellant father was suffering from blood sugar as well as road side accident disability due to which appellant father leg was amputated and there was no one to take care of appellant father as he was the only male attendant with his father in hospital, who later on died, was unable to approach this Honourable Court in time. (Medical Reports of Appellant father are annexed as Annexure " G ").

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2012

Ex-Police Constable Ishaq Ali S/O Yousof Ali R/O Village Usterza Bala, Tehsil & District Kohat.

Appellant

VERSUS

Respondents

.....

Inspector General of Police and others

APPLICATION FOR CONDONATION OF DELAY.

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- 3- That the appellant was removed from service on very flimsy grounds as well as his appeal was also dismissed by the appellate authority without application of mind.
- 4- That due to severe ailment of appellant father as the appellant father was suffering from blood sugar as well as road side accident disability due to which appellant father leg was amputated and there was no one to take care of appellant father as he was the only male attendant with his father in hospital, who later on died, was unable to approach this Honourable Court in time. (Medical Reports of Appellant father are annexed as Annexure ")

- 5- That the appellant was also given false consolation of reinstatement by the respondent on filing second appeal/ mercy petition but step back from their wordings and left the appellant helpless.
- 6- That even otherwise no limitation runs against void order.
- 7- That the law favours adjudication of cases on merits and technicality should not be a hindrance in the way of substantial justice.
- 8- That it shall be in the interest of justice to condone the delay and decide the matter on merits.

It is therefore most humbly prayed that on acceptance of this application the delay, may kindly be condoned in the interest of justice.

Applicant

Through



Syed Mudasir Pirzada &

Izat Maab Advocate


Advocate. 0345-9645854

✓

5- That the appellant was also given false consolation of reinstatement by the respondent on filing second appeal mercy petition but step back from their workings and left the appellant helpless.

6- That even otherwise no limitation runs against void order.

7- That the law favours adjudication of cases on merits and technicality should not be a hindrance in the way of substantial justice.

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It is therefore most humbly prayed that on acceptance of

this application the delay may kindly be condoned in the interest of justice.

Applicant

Through

Syed Mubasir Pirzada &

Lat Masp Advocate

Advocate 0342-6042824

BEFORE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. _____/2014.

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala, Tehsil & District Kohat.

VERSUS

Inspector General of Police and others Respondents

AFFIDAVIT.

I, Ishaq Ali s/o Yousaf Ali do hereby solemnly affirm and declare on oath that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed here in from this Honourable Court.

Deponent.

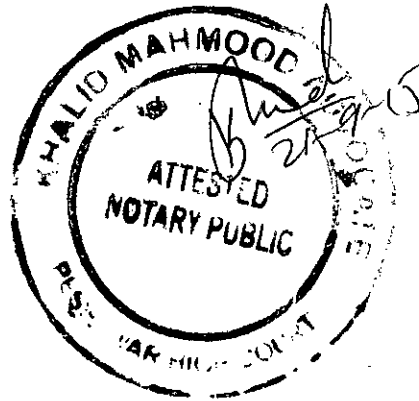
Identified by:

Ishaq

Mud
Syed Mudasir Pirzada &

Izat Maab Advocate

Advocate 0345-9645854



BEFORE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. _____/5014.

Ex-Police Constable Ishaq Ali s/o Younsaf Au Village Ustozai Balochistan District Kohat

VERSUS

Inspector General of Police and others Respondents

AFFIDAVIT.

I, Ishaq Ali s/o Younsaf Au do hereby solemnly affirm and declare on oath that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed here in from this Honorable Court.

Deponent.

Identified by:

Zayed Mubashir Pirzada &

Ishtiaq Mubashir Pirzada

Advocates. 0342 964224



BEFORE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2015.

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala , Tehsil & District Kohat.

(Appellant)

VERSUS

Inspector General of Police and others

Respondents

APPLICATION FOR INTERIM RELIEF.

- 1- That the instant application for interim relief is being filed alongwith the main appeal in which no date of hearing has yet been fixed.
- 2- That the integral part of the appeal may kindly be read as part of this application.
- 3- That the appellant has got a good prima facie case and is hopeful of its success.
- 4- That the balance of convenience lies in a favour of appellant and if he is not granted interim relief he will suffer from irreparable loss.

It is therefore, respectfully prayed that on acceptance of this application the impugned orders dated and may be suspended till the final decision of this service appeal.

Applicant

Through



Syed Mudasir Pirzada &

Izat Maab Advocate

Advocate 0345-9645854

CERTIFICATE:-

Certified that no such like appeal has earlier been filed in this Hon,able Service tribunal as per instruction of my client.

LIST OF BOOKS

1:-Constitution of Pakistan,1973.

2:-Case law according to need

BETORE KPH SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2012.

Ex-Police Constable Ishaq Ali S/O Yousof Ali R/O Village Usterzal Bala, Terzil & District Kohat.

(Appellant)

VERSUS

Inspector General of Police and others Respondents

APPLICATION FOR INTERIM RELIEF.

- 1 - That the instant application for interim relief is being filed alongwith the main appeal in which no date of hearing has yet been fixed.
- 2 - That the integral part of the appeal may kindly be read as part of this application.
- 3 - That the appellant has got a good prima facie case and is hopeful of its success.
- 4 - That the balance of convenience lies in a favour of appellant and if he is not granted interim relief he will suffer from irreparable loss.

It is therefore, respectfully prayed that on acceptance of this application the impugned orders dated and may be suspended till the final decision of this service appeal.

Applicant

Through

Syed Mudasir Pirzada &

Advocate

Advocate 0342-9842824

CERTIFICATE:-

Certified that no such like appeal has earlier been filed in this Hon'ble Service Tribunal as per instruction of my client.

LIST OF BOOKS

1:-Constitution of Pakistan, 1973.

2 - Case law according to need

CHARGE SHEET

1. I DILAWAR KHAN BANGASH, DISTRICT POLICE OFFICER, KOHAT as competent authority, hereby charge you Constable Ishaq Ali No. 820 committed the following irregularities:-

Arrested in case FIR No. 138 dated 22.05.2013 u/s 9CCNSA PS Usterzai.

2. By reasons of the above, you appear to guilty of misconduct under Police Rule-1975 and have rendered yourself liable to all or any of the penalties.

3. You are therefore, required to submit your written defence within 07 days of the receipt of this Charge Sheet to the enquiry officer.

Your written defense if any should reach 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 ex-parte action shall be taken against you.

4. A statement of allegation is enclosed.

DISTRICT POLICE OFFICER,
KOHAT

PA
Call the accused
constables Ishaq Ali
No- 820 and other
concerned persons on
28/05/13

ASP / SPO
Kohat

Office of Hassan
OFFICE SUPDT:
POLICE DEPTT:
KOHAT DISTT:

Ishaq Ali
SP / SPO
24-05-13

Attest

SP. U.S. U.S.T
24-5-13

DISCIPLINARY ACTION

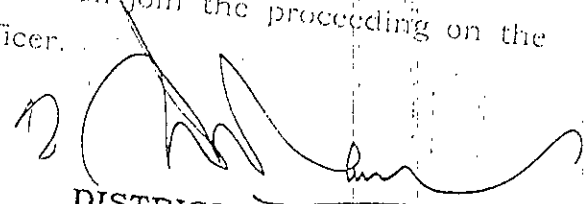
I, DILAWAR KHAN BANGASH, DISTRICT POLICE OFFICER, KOHAT, as competent authority, am of the opinion that Constable Ishaq Ali No. 820 has rendered himself liable to be proceeded against as he committed the following acts/omissions under Police Rule 1975:-

STATEMENT OF ALLEGATIONS

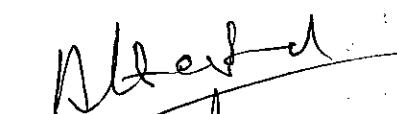

Arrested in case FIR No. 138 dated 22.05.2013 u/s 9CCNSA PS Usterzai.

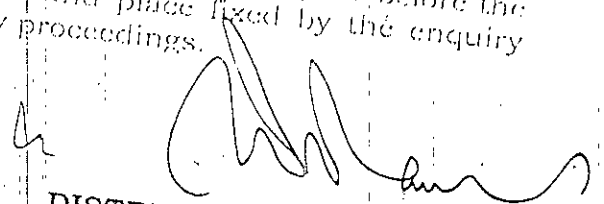
For the purpose of scrutinizing the conduct of said accused with reference to the above allegations, Muhammad Kashif Aslam ASP Saddar, Kohat is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Rule-1975, provide reasonable opportunity of hearing to the accused official, record its findings and make recommendations as to within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.


DISTRICT POLICE OFFICER,
KOHAT

- No 6530-3/PA, dated 22-5-2013.
1. Copy of above is submitted to the Deputy Inspector General of Police, Kohat Region Kohat for information.
 2. Copy to Muhammad Kashif Aslam ASP Saddar, Kohat is appointed as Enquiry Officer to conduct proper departmental enquiry against the above named defaulter official and submit finding within the stipulated period.
 3. Constable Ishaq Ali No. 820 is hereby directed to appear before the Enquiry officer, on the date, time and place fixed by the enquiry officer, for the purpose of enquiry proceedings.



Muhammad Hassan
OFFICER SUPDT
POLICE DEPTT
KOHAT DISTT


DISTRICT POLICE OFFICER,
KOHAT

ORDER

Constable Ishaq Ali No. 820 is hereby suspended and closed to Police lines Kohat with immediate effect while he was arrested in case FIR No. 138 dated 22.05.2013 u/s 9CCNSA PS Usterzai.

Muhammad Kashif Aslam ASP Saddar, Kohat is appointed as enquiry officer to conduct proper departmental enquiry against the above named defaulter constable and submit finding within the stipulated period.

DISTRICT POLICE OFFICER,
KOHAT

OFFICE OF THE DISTRICT POLICE OFFICER KOHAT

No 6527-29 PA dated Kohat the 22-5-2013

1. Copy of above is submitted to the Deputy Inspector General of Police Kohat Region Kohat for information.
2. Copy to Muhammad Kashif Aslam ASP Saddar, Kohat to conduct proper departmental enquiry against the above named defaulter constable and submit finding within the stipulated period.
3. RI Police Lines Kohat

[Handwritten signature]

[Handwritten signature]

DISTRICT POLICE OFFICER,
KOHAT

[Handwritten signature]
S. *[Handwritten]* Hassan
OFFICER SUPDT :
POLICE DEPTT :
KOHAT DISTT :

FINAL SHOW CAUSE NOTICE

1. I, Muhammad Saleem, District Police Officer, Kohat as competent authority under the Police Rule 1975 serve you Constable Ishaq Ali No. 820 as follow:-

The consequent upon the completion of enquiries conducted against you by the Enquiry Officer, Mr. Ihsan Ullah Khan SDPO Sadder, Kohat.

2. On going through the findings and recommendations of the Enquiry Officer, the materials on the record and other connected papers, I am satisfied that the charge against you is proved and you have committed the following acts/omission specified in Police Rule 1975.

"Arrested in case FIR No. 138 dated 22.05.2013 u/s 9CCNSA PS Usterzai".

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Rule 1975.

4. You are therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. Copy of finding of the enquiry officer is enclosed.

No. 13056/PA
Dated 03-9-2013

Alhesh

DISTRICT POLICE OFFICER,
KOHAT

S. Ihsan
S. P. O. SUPPT.
POLICE DEPTT.
KOHAT DISTT.

BEFORE THE DISTT: POLICE OFFICER, KOHAT

SUBJECT: REPLY TO FINAL SHOW CAUSE NOTICE.

Respected Sir,

Kindly with reference to the final show cause notice received vide your office No:13056/PA dated 03-9-2013, it is stated that I have been charged falsely in the case FIR No.138, dated 22-5-2013.

Now, I am facing the trial in the instance case in the court of Honourable Session Judge, Kohat.

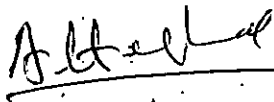
Uptill now I am not convicted by the competent Court, so it is presume in the eye of law that I am innocent.

As I am innocent, therefore, there is strong ground that I will be acquitted.

So, it is humbly prayed that till the decision of court o departmental action should ^{not} be taken against me.

Dated: 06-9-2013.

Yours obediently,

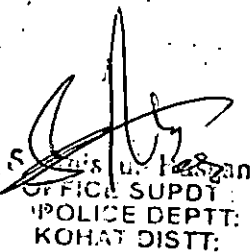


Ishaq Ali Ishaq Ali

No.820

Marai Check Post,

Kohat.


S. Ishaq Ali
OFFICE SUPDT
POLICE DEPTT
KOHAT DISTT.

ORDER

This order is passed on the departmental enquiry against Constable Ishaq Ali No. 820 of this district Police under Police Rule 1975.

Brief facts of the departmental enquiry are that the above named defaulter constable while posted at PP Marai, was involved/arrested vide case FIR No. 188 dated 22.05.2013 U/S 09 C CNSA PS Usterzai Kohat.

He was served with charge sheet/summary of allegations and SDPO Saddar, Kohat was appointed as Enquiry Officer to proceed against him departmentally. The enquiry officer has submitted his findings and recommended that he is found guilty of the charges leveled against him.

He was served with Final Show Cause Notice. His reply was perused and found unsatisfactory. He has been found guilty of the charge. His involvement in possessing in narcotics has been proved beyond any doubt. By his gross misconduct, he has brought a bad name to the department. Therefore, he is removed from service with effect from 22.05.2013.

OB No. 70
Date 15-01-2014

DISTRICT POLICE OFFICER,
KOHAT

Alhabad

[Signature]
S. Zahir Arshad
OFFICE SUPDT :
POLICE DEPTT :
KOHAT DISTT :

11/3
20-1-14
[Signature]
[Signature]
[Signature]
[Signature]

BEFORE THE PROVINCIAL POLICE OFFICER,
KHYBER PAKHTUNKHWA, PESHAWAR

Subject: RE-INSTATEMENT IN SERVICE AFTER ACQUITTAL IN
THE CRIMINAL CASE

Respectfully Sheweth:

With due respect it is humbly submitted that the petitioner was serving as constable in Kohat District Police and posted to "Marai" Check Post in the year 2013 within the jurisdiction of P.S Usterzai, when he was falsely implicated in a criminal case by Mr. Mutaba then SHO P.S Usterzai on account of personal grudges through FIR No. 138 dated 22-05-2013 U/S 9C CNSA P.S Usterzai. As a result of trial of the criminal case, the petitioner was convicted by the learned Session Judge Kohat vide judgment dated 22-01-2014.

On the departmental side, the petitioner on account of the above mentioned criminal case, was dismissed from service by DPO Kohat vide O.B No. 70 dated 15-01-2014. The appeal of the petitioner against the order of DPO Kohat was also rejected by the Range Chief Kohat.

The petitioner had filed an appeal before the Honourable Peshawar High Court Peshawar against the conviction order passed by the learned Session Judge Kohat which appeal was accepted and the petitioner was acquitted in the criminal case cited above vide judgment dated 16-02-2014. (Attested copy of the judgment is enclosed herewith)

Now the question would arise that whether the petitioner is entitled to re-instatement in service after he earned acquittal in the criminal case?

(2)

(1)

The answer is that an acquittal has no shades and there is no concept of honourable or dishonourable acquittals. All acquittals are certainly honourable. If this be the case then the petitioner could not be stigmatized or penalized on account of his involvement in a criminal case.

An ultimate acquittal in a criminal case exonerates the accused person completely for all future purpose vis-i-vis the criminal charge against him as is evident from the concept of autrefois acquit embodied in S.403 CrPC and the protection guaranteed by Article 13(a) of the constitution of the Islamic Republic of Pakistan, 1973. The petitioner's alleged involvement in a criminal case was the only ground on which he had been dismissed from service by DPO Kohat. The said ground has subsequently disappeared through his acquittal making him re-emerge as a fit and proper person entitled to continue with his service. The petitioner is justified in claiming his re-instatement in service upon earning an acquittal from the competent court.

As such it is requested that in view of the above discussion, the petitioner may be ordered to be re-instated in service w.e.f. the date of his dismissal from service with all back benefits please.

Yours Obediently

Ishaq Ali

Ex. Constable Ishaq Ail

No. 520

R/o Usterzai Bala, P.S. Usterzai
District Kohat

POLICE DEPARTMENT

KOHAT REGION

ORDER.

This order is passed on departmental appeal, moved by Ex-Constable Ishaq Ali No. 520 of Kohat district Police against the punishment order of DPO Kohat vide O.B No. 70, dated 05.01.2014, whereby he was awarded major punishment of removal from service. The defaulter Constable has requested for setting aside the said order and reinstatement in service.

Facts are that the appellant while posted at Police Post Marai, was found involved / arrested vide case FIR No. 188, dated 22.05.2013 U/S 09-CNSA Police Station Usterzai Kohat, which speaks of his lack of interest in official duty and malafide intentions.

Proper departmental enquiry was initiated against him and Charge sheet alongwith statement of allegations was issued to him by the DPO Kohat. SDPO Kohat was appointed as Enquiry Officer for the purpose of conducting departmental enquiry. After completion of enquiry, the E.O. in his findings recommended him for legal punishment provided by the rules. Resultantly, he was awarded major punishment of removal from service by DPO Kohat.

Aggrieved from the said punishment order, he preferred the instant appeal for reinstatement in service.

Record requisitioned and the matter was perused by the undersigned. The appellant was called in Orderly Room held in this office on 13.08.2014. He was heard in person, questions him regarding his misconduct, but he did not submit any plausible explanation in his defence and could not satisfy the undersigned.

Therefore, going through the available record and oral explanation of the defaulter official, the undersigned came to the conclusion that the order passed by DPO Kohat is justified and upheld. Hence, the appeal is hereby rejected.

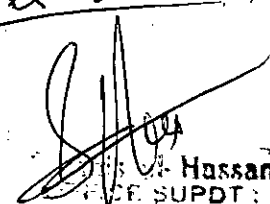
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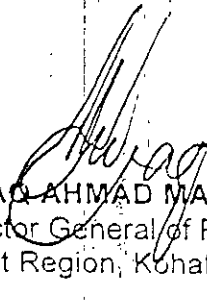

(DR. ISHTIAQ AHMAD MARWAT)
Dy. Inspector General of Police,
Kohat Region, Kohat.

No. 7665-66/EC, dated Kohat the 2018 /2014.

Copy to the District Police Officer, Kohat for information w/r to his office Memo: No. 12558/LB, dated 15.07.2014. His service record is enclosed herewith.

2. Appellant Ex-Const: Ishaq Ali No. 520

Attested

Hassan
POLICE SUPDT.
POLICE CERT.
KOHAT DIST.


(DR. ISHTIAQ AHMAD MARWAT)
Dy. Inspector General of Police,
Kohat Region, Kohat.

Opening Sheet for Criminal Appeals (Section 419, Criminal Procedure Code)

IN THE PESHAWAR HIGH COURT, PESHAWAR.

JUDICIAL DEPARTMENT.

Appellate Side Criminal Cas. No. 54-2014

District	Date of filing petition	Whether filed, by appellant in person or by pleader or agent	Stamp in petition appeal
Kohat	28-01-2014	by counsel	

Ishaque Ali

caused-Appellant.

Versus

THE STATE

Respondent.

Appeal from the order of ... A Session Judge / JSC Kohat

dated the ... 22-01-2014

Charge

Sentence... Appellant has been convicted under 9C, CNSA to suffer imprisonment for 5 years and with fine for Rs. 5000/-

GROUND OF APPEAL/REVISION.

RE-FILED TODAY

Deputy Registrar
28 JAN 2014

ATTESTED

EXAMINER
Peshawar High Court.

03 SEP 2014

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BEFORE THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR

Criminal Appeal No. 54-1/2014

Ishaque Ali S/o Yousaf Ali R/o Village Usterzai Bala, Tehsil &
District Kohat, at present Convict District Jail Kohat.

... APPELLANT

Versus

The state

...RESPONDENT

APPEAL UNDER SECTION 48 OF CNSA AGAINST THE
JUDGMENT / ORDER DATED 22/01/2014 OF THE
LEARNED SJ / JSC KOHAT, VIDE WHICH THE
APPELLANT HAS BEEN CONVICTED UNDER SECTION
9C CNSA TO SUFFER IMPRISONMENT FOR 5 YEAR RI
WITH FINE FOR RS. 50000/- OR IN DEFAULT TO
SUFFER SI FOR 2 MONTHS, THE BENEFIT OF
SECTION 382-B CR.P.C IS EXTENDED TO THE
APPELLANT IN CASE FIR NO. 138, DATED
22/05/2013, UNDER SECTION 9C CNSA, PS
USTARZAI, KOHAT

ON ACCEPTANCE OF THIS APPEAL THE JUDGMENT
AND ORDER DATED 22/01/2014 OF THE LEARNED
TRIAL COURT MAY VERY KINDLY BE SET ASIDE AND
THE APPELLANT BE ACQUITTED OF THE CHARGES IN
THE INSTANT CASE

FILES TODAY

Deputy Registrar

27 JAN 2014

ATTESTED

EXAMINER
Peshawar High Court

03 SEP 2014

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RESPECTFULLY SHEWETH,

The appellant submit as under: -

1. That the appellant was arrested by the local police in the above case.
2. That after recording evidence the learned trial court convicted the accused under section 9C CNSA to suffer imprisonment for 5 years and to pay fine Rs. 50,000/- and or in default to suffer SI for 2 months, the benefit of section 382-B Cr.P.C is given. (Copy of FIR, judgment and order dated 22/01/2014 are annexed as "A" and "B", respectively).
3. That the appellant filed the instant appeal before this Honourable Court on the following grounds inter alia: -

GROUND: -

- A. That the judgment and order of the learned trial court are against the law and facts, hence untenable,
- B. That the learned trial court has not properly appreciated the evidence available on the file and have passed the impugned judgment totally against the law and facts.

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EXAMINER
Peshawar High Court

03 SEP 2014

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C. That re-appraisal of the entire evidence is therefore required in the instant appeal by this Honourable Court.

D. That the prosecution has badly failed to prove the case against the appellant as such the impugned judgment and order is liable to be set aside.

E. That the judgment and order of the learned trial court is based on mere assumption and presumption and cannot be called a judgment, in accordance with section 369 of Cr.P.C.

F. That the prosecution case is full of contradiction and the defense has successfully brushed aside through various dents in the entire prosecution case.

G. That the complainant SHO has personal grudges with the appellant, therefore the appellant was involved in the instant false and concocted case, with ulterior motives and malafide intentions, just to deprive the appellant from his police service.

H. That the appellant has excellent service record in the police department and has no previous criminal history.

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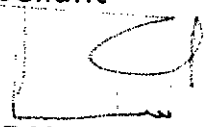
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Peshawar High Court
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I. That other points be brought in the notice of this Honourable Court and discussed at the time of arguments.

It is, therefore, humbly prayed that on acceptance of this appeal the appellant may kindly be acquitted in the instant case.

Dated: - 27-01-2014

Appellant
Through 
SAIF ULLAH KHALIL
Advocate, High Court Peshawar

Certificate: -

Certificated that as per instructions of my client no such like appeal has earlier been filed before this Honourable Court.


Advocate

ATTESTED
EXAMINER
Peshawar High Court.
03 SEP 2014

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BEFORE THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR

CA # 33-P/214
Criminal Appeal No. 54-P/2014

Ishaque Ali Versus The state

APPLICATION FOR SUSPENSION OF THE
IMPUGNED JUDGMENT / ORDER DATED
22/01/2014 AND RELEASE OF THE PETITIONER ON
BAIL TILL THE DECISION OF THE INSTANT APPEAL

Respectfully Sheweth,

The appellant submit as under;

1. That the above titled appeal is going to be filed today before this Honorable Court, in which no date of hearing is yet been fixed.
2. That the appellant is innocent and has falsely been implicated and convicted through wrong judgment by the learned trial court.
3. That a very short sentence of 5 years is involved in the instant appeal and in such like cases, this Honourable Court is also pleased to suspend the sentence and released the accused on bail.

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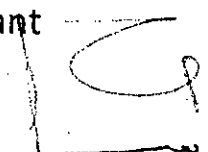
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EXAMINER
PESHAWAR HIGH COURT
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4. That the appellant is hopeful of the success of the instant appeal.
5. That the appellant remained behind the bars since his arrest and in case if the appellant is succeeded in the instant appeal his previous time of life cannot be compensated.
6. That other points be brought in the notice of this Honourable court at the time of arguments with the prior permission.

It is, therefore, most humbly prayed that on acceptance of this application the sentence / conviction of the appellant may kindly be suspended and the appellant may kindly be released on bail till the final decision of the instant appeal.

Applicant
Through 
SAIF ULLAH KHALIL (Senior)
Advocate, High Court Peshawar

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EXAMINER
Peshawar High Court
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BEFORE THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR

Criminal Appeal No. 54-P/2014

Ishaque Ali

Versus

The state

AFFIDAVIT

I, Saif Ullah Khalil Advocate High Court Peshawar as per instructions of my client hereby solemnly affirm and declare on oath that the contents of the instant application for suspension of sentence are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

DEPONENT

No:.....7/35.....
 Certified that the above was verified on solemnly affirmation before me in office, this...27/1/14... day of...Jan... 2014 by...Saif Ullah Khalil...
 Advocate...Peshawar... who was identified by...Self...
 Who is personally known to me:
27/1/14
 Oath Commissioner
 Peshawar High Court, Peshawar.

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EXAMINER
Peshawar High Court.

03 SEP 2014

FILED TODAY

Deputy Registrar
27 JAN 2014

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,

PESHAWAR
 (Judicial Department)

Cr.A. # 54-P/2014

Date of hearing: 11.06.2014.

Petitioner(s): Ishaque Ali) by Saifullah
Khalil Advocate.

Respondent(s): (State) by Riaz Khan Paindakhel
AA G

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- Appellant

Ishaque Ali was tried for crime under section 9 (c) of the Control of Narcotic Substances Act, 1997, and at conclusion of trial, learned Sessions Judge/Judge Special Court Kohat, vide impugned judgment dated 22.01.2014, convicted and sentenced him under section 9 (c) of the Act, to undergo 05 years rigorous imprisonment and to pay a fine of Rs.50,000/- or in default thereof to undergo 02 months S.I. further. Benefit of section 382-B Cr.P.C. was extended to him.

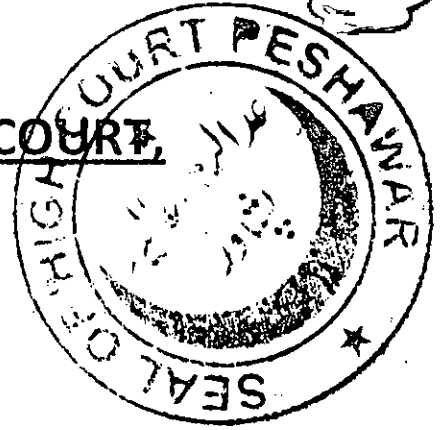
2. The appellant has questioned his conviction and sentence through the instant appeal

*M. Siraj Afridi P.S.D

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 PESHAWAR HIGH COURT

03 SEP 2014





while the State through Advocate-General Khyber Pakhtunkhwa has filed Cr.R. No.43-P/2014, titled, "The State Vs Ishque Ali" seeking enhancement of sentence of the respondent/convict.

3. As both, the appeal as well as revision petition, are the outcome of same judgment, we, therefore, propose to dispose of both, through this common judgment.

4. On 22.05.2013, on receipt of information qua trafficking of huge quantity of narcotics from "Pera Orakzai Agency" via village Marai, Mujtab Ali SHO (PW.2) alongwith Nazir Khan S.I., Mazhar Abbas IHC (PW.1) and constable Kiramat Ali 898, conducted a barricade on a beaten path in the ravine of "Soor Gudar". At 0900 hours, they observed a youngman, having a sack on his shoulder, who was prudently cordoned off and on search of the sack, five packets chars, each weighing 1000 grams, making the total of 5000 grams, were recovered. From each packet, 5 grams were allegedly separated as samples for the purpose of

Ais-a-m...

*M.Siraj Afridi P.S.D

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EXAMINER
Peshawar High Court.

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chemical analysis by the Forensic Science Laboratory. The accused was arrested, who on query disclosed his name as Ishaque Ali. The recovered contrabands were taken into possession through recovery memo, murasila was drafted and sent to Police Station, on the basis of which FIR, mentioned was registered against the accused/appellant.

5. On completion of investigation, challan was submitted against the accused/appellant before the Trial Court, where he was charge sheeted to which he pleaded not guilty and claimed trial. In order to bring home guilt of the accused/appellant, prosecution led its evidence by producing five witnesses. After closure of the prosecution evidence, appellant/accused was examined under section 342 Cr.P.C. wherein he denied the prosecution allegations and professed his innocence. He, however, opted to be examined on oath under section 340 (2) Cr.P.C. and to produce evidence in defence. Besides, examination of the accused under section 340 (2) Cr.P.C., Raza Khan LHC Police Post

Ass. to examine etc.

*M. Sireen Afridi P.S.D

ATTESTED
EXAMINER
Peshawar High Court.
03 SEP 2014

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Marai and Rehmatullah Moharrir of PS Usterzai were examined as DW.1 and DW.2, respectively. On conclusion of trial, the learned Trial Court, after hearing both the sides, convicted and sentence the appellant/accused, as referred above.

6. Learned counsel for the appellant argued that the appellant, who was a police constable belonging to a poor family has been a scapegoat by complainant SHO on account of his personal grudges, by falsely implicating him in the case, which fact has also been admitted by the complainant SHO in cross-examination; that testimony of the PWs are suffering from glaring contradictions and discrepancies creating serious doubts in the prosecution case benefit of which is to be extended to the appellant/accused; that appellant has successfully established his defence version through cogent and confidence inspiring evidence that on the day of occurrence he had been arrested from Marai Checkpost where he was posted and was implicated in the case but the learned Trial court has

As per the order of the court

*M. Siroi Afridi P.S.D

ATTESTED
EXAMINER
Peshawar High Court.
03 SEP 2014

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totally oversighted material contradictions in the prosecution evidence creating serious doubts in the prosecution case and the prosecution and wrongly held the accused guilty of the offence, therefore, the impugned judgment being not sustainable in the eye of law, is liable to be set at naught.

7. Conversely, learned A.A.G. contended that appellant/accused has been arrested red handed along with huge quantity of narcotics and the prosecution has proved his guilt through cogent and confidence inspiring evidence corroborated by positive FSL report. He went on to say that learned Trial court has rightly held him guilty of the offence, but has awarded him lesser sentence which is unwarranted because when his guilt was proved upto the hilt, the Trial Court ought to have awarded him the maximum penalty provided by the statute. He sought dismissal of the appeal and requested for enhancement of sentence of the appellant.

8. We have considered the respective submissions of both the sides, and perused the record with their able assistance.

Ass. Exam. in

*M. Siraj Afridi P.S.D

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9. It appears from the record that appellant/accused was official of police force and during the days of occurrence he was posted in Marai Check-post falls within the jurisdiction of Police Station Usterzai, which fact has also been admitted by PW.1 Mazhar Abbas LHC, marginal witness of recovery memo Exh.PW.1/1. He admitted that during the days of occurrence, accused was police constable and was posted in Marai Check-post on the day of occurrence. Similarly, Mujtaba Ali ASI (PW.2), who is complainant and Seizing Officer, has categorically admitted exchange of hot words prior to the alleged incident with the accused/appellant being his subordinate by virtue of which he was under his strict observations. The relevant part of his statement reads as under:

Assessment

"The accused during the days of occurrence was under his subordination and posted at Marai Check-post which falls within the jurisdiction of Police Station Usterzai. It is correct that prior to the occurrence hot words were exchanged between me and

*M. Siraj Afridi, P.S. D

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Peshawar High Court.
03 SEP 2014

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the accused in Police Station Usterzai because I was not satisfied from the conduct and service of the accused and directed him that whenever he leaves the Police Station beside endorsement in the roznamcha, he must have informed me. I have also directed Incharge of the Marai Check-post that whenever the accused seeks leave from the Check-post, the incharge must informed me about his leave".

10. True that, the hon'ble apex court has held in plethora of judgments that police officials are as good witnesses like others and their testimony can be relied upon for conviction unless any ill will or ulterior motive is proved against them by the defence. In the instant case, from the statement of the complainant SHO, his ulterior motive and personal grudge with the appellant cannot be excluded from consideration, therefore, it would be hard for us to blindly rely on his testimony rather his testimony is to be observed with a high degree of care and caution.

Assessment

*M. Siraj Afridi P.S.D

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Peshawar High Court
03 SEP 2014

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11. A look over his statement would reveal that it does not find corroboration from the statement of PW.1 Mazhar Abbas LHC, marginal witness to recovery memo. He deposed that he drafted murasila, recovery memo and card of arrest on the dictation of Mujtaba Ali ASI (PW.2), whereas complainant SHO PW.2 stated that "I written down the murasila, recovery memo and card of arrest within 30/35 minutes. I started writing down the murasila at 9.30 a.m. I remained on the spot till the arrival of the I.O." Two versions are forthcoming about scribing of these documents in light of statements of aforesaid two important witnesses, which of the two versions is correct, would be best known to them, however, it creates serious doubts in the prosecution case. Yet there is another astonishing aspect of the case. In the murasila it has been mentioned by the SHO (PW.2) that they noticed a youngman having a plastic sack on his shoulder, who was tactfully cordoned off, and recovery from the bag was effected. He further

Ass. - as per the

*M. Siraj Afridi P.S.D.

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Peshawar High Court.
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mentions that on query the man disclose his name as "Ishaque Ali son of Yousaf Ali resident of Usterzai Bala", which seems very strange because when the accused being police constable and was under his subordination so much so that there was also exchange of hot words between them and he was under strict observation of the SHO, in our humble view there was no occasion for the complainant SHO to inquire his name, rather the SHO should have mentioned that when they noticed him, he found him to be Ishaque Ali constable his subordinate, but the SHO in order to show more suspense in the story, has adopted this way, and this aspect of the case totally discard the prosecution story to be believed. Similarly, in cross-examination PW:2 deposed that at the time of recovery, 7/8 police personnel were present with him but he has not mentioned the names of those personnel in the murasila, rather he has specifically mentioned that he along with Nazir Khan SI, Mazhar Abbas LHC and Kiramat Ali constable conducted barricade. Had

As per the...

**M. Siraj Afridi P.S.D*

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MURADABAD COURT
13 SEP 2014

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other police officials present with the SHO, he would have mentioned that besides the above named officials he was also accompanied by other police personnel. But nothing of the sort has been mentioned there in the murasila to believe about the stance of presence of 7/8 officials with him. The SHO has shown his visit to the spot for conducting barricade in police vehicle which was allegedly parked there, but no vehicle has been shown in the site plan. The existence of tribal territory in close proximity with the place of occurrence has been admitted by the PWs. No effort of the accused to flee away while noticing the police has been alleged by the prosecution, which seems quite unnatural. The accused has allegedly been shown in a ravine on a beaten path, where there was no excess of the vehicle so he could easily manage his escape by running towards tribal territory. No narcotics smuggler having a chance to make his escape good by entering in tribal territory after covering little distance would so simply provide opportunity of his

Assessment

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arrest to stand like a sick duck. This part of story of the prosecution is also not appeal able to a prudent mind.

12. In initial report, recovery of chras Gardah has been shown. Similarly, both the PWs i.e. witness of the recovery memo and complainant SHO, have reiterated the same shape of the contrabands in their statements by stating that the shape of charas was in power/gardah, but during cross-examination of PW.1, when the case property was de-sealed on the request of defence, the same was found in form of "Rora" i.e. in dried pieces, which negates the versions of the complainant.

Assessment

13. On assessing and evaluating the prosecution evidence, we observed not a single but plethora of serious doubts in the prosecution evidence, benefit of which is to be extended to the accused in light of cardinal principle of administration of criminal justice that prosecution is bound to prove its case beyond any shadow of doubt and any reasonable doubt arises in the prosecution

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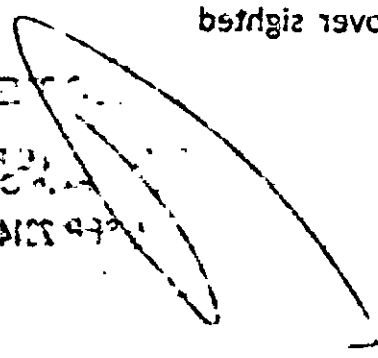


case, benefit of the same must be extended to the accused, not as a grace or concession, but as a matter of right. Basically, it is the principle enshrined in Islamic jurisprudence, fourteen hundred years ago that "it would be better to acquit hundred culprits than convicting one innocent soul." Which has now been transformed into the form of the principle that "acquitting by error would be better than convicting by error". The said commandment has evolved into the theory of benefit of doubt, which, invariably, is extended to the accused for safe administration of criminal justice.

1A. As the prosecution has miserably failed to prove the guilt of the appellant through cogent and confidence inspiring evidence, therefore, we do deem it not appropriate to discuss the plea taken in defence by the appellant, which other wise is proved. We have gone through the impugned judgment of the trial Court, wherein all these material contradictions and discrepancies in the prosecution evidence creating doubts in a prudent mind, have been over sighted

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case, benefit of the same must be extended to the accused, not as a grace or concession, but as a matter of right. Basically, it is the principle enshrined in Islamic jurisprudence, fourteen hundred years ago that "it would be better to acquit hundred culprits than convicting one innocent soul." Which has now been transformed into the form of the principle that, "acquitting by error would be better than convicting by error". The said commandment has evolved into the theory of benefit of doubt, which, invariably, is extended to the accused for safe administration of criminal justice.

Assessment

14. As the prosecution has miserably failed to prove the guilt of the appellant through cogent and confidence inspiring evidence, therefore, we do deem it not appropriate to discuss the plea taken in defence by the appellant, which other wise is proved. We have gone through the impugned judgment of the trial Court, wherein all these material contradictions and discrepanceis in the prosecution evidence creating doubts in a prudent mind, have been over sighted

**M. Siraj Afridi P.S.D*

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EXAMINER
High Court,
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and thus wrongly held the appellant guilty of the offence. Consequently, the impugned judgment being not sustainable in the eye of law, we allow this appeal, set-aside the conviction and sentence of the appellant recorded by the trial court vide impugned judgment and acquit him of the charge. On acquittal of the appellant, connected Cr.R. No.43-P/2014, titled, "The State Vs Ishaque Ali" has become infructuous, which stands dismissed as such.

15. These are the reasons for our short order of even date.

Announced.
11.06.2014

*سول وائسز رشید کھان
سول آسجد اللہ کھان چمپانی*

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 Date of Receipt of Copy 03-9-14
 Date of Payment of Fee 03-9-14
Amjad Ali

*M.Siraj Afridi, P.S.D

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Registrar
Peshawar High Court, Peshawar
P.O. Box 100, Peshawar
Tel: 011-2510000

23 SEP 2014



1. BEFORE THE PROVINCIAL POLICE OFFICER,
2. ASSISTANT INSPECTOR GENERAL LEGAL
3. ASSISTANT INSPECTOR GENERAL ESTABLISHMENT

Subject: REINSTATEMENT IN SERVICE AFTER ACQUITTAL IN
THE CRIMINAL CASE.

Respectfully Sheweth:

With due respect it is humbly submitted that the petitioner was serving as constable in Kohat District Police and posted to "Marai Check Post in the year 2013 within the jurisdiction of P.S Usterzai. When he was falsely implicated in criminal case by Mr. Mujtaba then SHO P.S Usterzai on account of personal grudges through FIR No.138 dated 22-05-2013 U/S 9C CNSA Usterzai. As a result of trial of the criminal case, the petitioner was convicted by the learned Session Judge Kohat vide judgment dated 22-01-2014.

On the departmental side, the petitioner on account of the above mentioned criminal case, was dismissed from service by DPO Kohat vide O.B. No.70 dated 15-01-2014. The appeal of the petitioner against the order of DPO Kohat was also rejected by the Range Chief Kohat.

The petitioner had filed an appeal before the Honourable Peshawar High Court Peshawar was against the conviction order passed by the learned Session Judge, Kohat which appeal was accepted and the petitioner was acquitted in the criminal case cited above vide judgment dated 16-02+2014. (Attested copy of the judgment is enclosed herewith).

Now the question would arise that the petitioner is entitled to reinstatement in service after he earned acquittal in the criminal case?

The answer is that an acquittal has no shades and there is no concept of honourable or dishonourable acquittals. All acquittals are certainly honourable. If this be the case then the petitioner could not be stigmatized or penalized on account of his involvement in a criminal case.

(2)

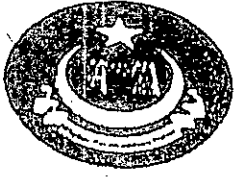
An ultimate acquittal in a criminal case exonerates the accused person completely for all future purpose vis-i-vis the criminal charges against him as is evident from the concept of autrefois acquit embodied in S.403 CrPC and the protection guaranteed by Article 13(a) of the constitution of the Islamic Republic of Pakistan, 1973. The petitioner's alleged involvement in a criminal case was the only ground on which he had been dismissed from service by DPO Kohat. The said ground has consequently disappeared through his acquittal making him re-emerge as a fit and proper person entitled to continue with his service. The petitioner is justified in claiming his re-instatement in service upon earning acquittal from the competent court.

As such it is requested that in view of the above discussion, the petitioner may be ordered to be re-instated in service w.e.f the date of his dismissal from service with all back benefits please.

It is stated that I am a poor man having no source of income except this service. I am appearing before the honourable committee for 3rd times and again I request am innocent in above said case please may be revised on the decision of honourable committee and may be re-instated in service. I shall be very thankful to for your this kindness.

Ishaq Ali
Yours Obediently,
Ex. Constable Ishaq Ali
No. 820
R/o Usterzai Bala, P.S Usterzai
District Kohat

20-01-15



Annexure F

Page 36

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE, PESHAWAR

ORDER

This order is hereby passed to dispose off departmental appeal under Rule 11-a of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Constable Ishaq Ali No. 820 of District Police Kohat against the Punishment order i.e dismissal from service passed against the appellant by DPO/Kohat vide his order Book No. 70 dated 15.01.2014.

In the light of recommendations of Appeal Board meeting held on 19.02.2015, the board examined the enquiry in detail & other relevant documents. It revealed that the appellant was served with Charge Sheet/Statement of Allegations and punishment order was announced on the basis of reply to the Charge Sheet and Statement of Allegations.

The appellant was also heard in person and record perused. He was found involved in narcotics case and convicted by trial court for five years however, he was acquitted by High court. Although he stated to have falsely been implicated in the case yet he failed to brought forward any cogent evidence. His case is not worth consideration, therefore, his appeal is rejected.

Order announced in the presence of appellant.

Sd/-
NASIR KHAN DURRANI
Inspector General of Police
Khyber Pakhtunkhwa
Peshawar.

No. 3260-64 /E-IV dated Peshawar the 13/03/2015

Copy of above is forwarded to the:-

1. Deputy Inspector General of Police, Kohat Region.
2. DPO/Kohat. The service Roll, ~~Faizi Misal~~ and Enquiry File of the above named official are returned herewith.
3. PSO to IGP/Khyber Pakhtunkhwa Peshawar.
4. PA to Addl: IGP/HQrs Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs Khyber Pakhtunkhwa, Peshawar.

Attested

Syed Fida Hassan
POLICE SUPDT:
POLICE DEPTT:
KOHAT DISTT:

(SYED FIDA HASSAN SHAH)
AIG/Establishment
For Inspector General of Police,
Khyber Pakhtunkhwa
Peshawar.

Lt. Col.

Dr. Khalid Ibrahim

M.B.B.S (QAU), FCPS (Pak), MRCS (Glasgow)
Classified Surgical Specialist
General & Orthopaedic Surgeon
CMH Thall
Cell: 0300-5043277



Annexure G
Page 37
ڈاکٹر خالد ابراہیم

کلاسفائیڈ سرجیکل اسپیشلسٹ
ایم بی بی ایس (کیو اے یو) ایف سی پی ایس (پاک)
ایم آر سی ایس (گلاسگو)
جنرل اینڈ آرٹھوپیڈک سرجن
سی ایم ایچ ٹال

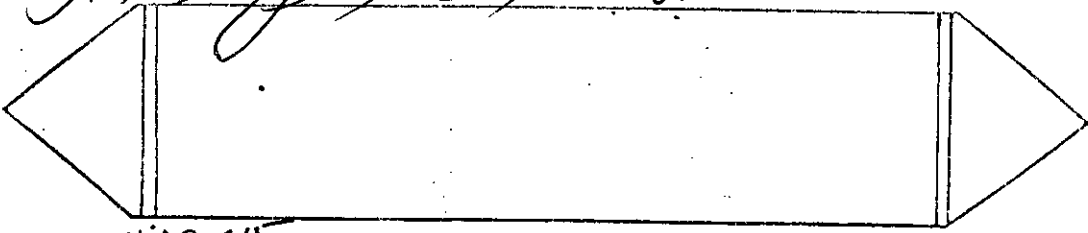
Patient Name Young Alr Age 52 Sex ♂ Date 10/03/2015

Clinical Record

R.T.A
X-Ray
Hammer
Admit
Eugeny

7. Bi xerox
Ad. Valium 10mg - 4x
Tab. Mefen
Tab. Ciprofloxacin
Tab. Voltaren SR
[Signature]

بعدالت جناب سر سید محمد حسین صاحب کتب خانہ



کتاب 2، جناب

4/4/2017

کاٹنگٹن و سوان علی بنام

موزخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام ~~کاٹنگٹن~~ کیلئے ~~سید محمد حسین صاحب کتب خانہ~~
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جائزہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المزقوم 6/4/17 ماہ 2017

واہ العی

کے لئے منظور ہے۔

بمقام

Attested and accepted
/ Shaf...

Mud
Attested & accepted

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal _____ 2015

Ex-Police Constable Ishaq Ali S/O Yousaf Ali R/O Village Usterzai Bala, Tehsil & District Kohat.

(Appellant)

VERSUS

1:-INSPECTOR GENERAL OF KPK POLICE PESHAWAR.

2:-DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT

3:-DISTRICT POLICE OFFICER KOHAT

(Respondents)

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Appellant

Through

Syed Madasir Pirzada &

Advocate 0345-9645854

Dt:-6/8/2015

BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal _____ 2015

Ex-Police Constable Ishao Ali S/O Yousaf Ali R/C Village Usterzai Bala ,Tehsil & District Kohat

(Appellant)

VERSUS

1:Inspector General of Police KPK Peshawar.

2:Deputy Inspector General of Police Kohat

3:-District Police Officer Kohat----- (Respondent)

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT,1974 AGAINST THE ORDER OF
RESPONDENT NO 3 BEARING O.B NO 70
DATED 15/01/2014 AND RESPONDENT NO 2
DATED 20/08/2014 WHEREIN THE
APPELLANT WAS REMOVED FROM SERVICE
AND APPEAL OF APPELLANT WAS DISMISSED
BY RESPONDENTS ON 13/03/2015.

PRAYER:-

On accepting of this appeal, the respondents are directed to re-instated the appellant in service w.e.f the date of his dismissal from service with all back benefits for the end of justice.

Respectfully Sheweth:-

With great veneration, the instant appeal is preferred by the appellant on the following facts and grounds.

- 1- That the appellant was appointed as Constable and was performing his duty to the entire satisfaction of his superiors in Kohat after completion of his training.
- 2- That the department then issued a Charge Sheet along with Disciplinary action to the appellant. (Copy of Charge Sheet and Disciplinary Action is Annexed as Annexure " B)
- 3- That appellant feeling aggrieved from the order of Respondent No 3 ,appellant preferred departmental appeal before Respondent No 2 on 18 /09 /2014 which was dismissed by respondent no 2-vide order dated 20 /8 /2014. (Copy of Departmental appeal and order dated 20 /8 /2014 are annexed as Annexure "D " respectively) .
- 4- That Respondent No 3 without taking into consideration the stance taken by appellant and ignoring previous record of appellant imposed the major penalty on appellant and removed the appellant from service without waiting for decision of the Honable court in the aforesaid mentioned case.(Copy of Order dated 11/06/2014 is annexed as Annexure "E ")
- 5- That the appellant again filed departmental appeal/mercy petition dated 19/01/15 where the competent authority assured the appellant by Giving him false consolation that he will be re-instated on filing second appeal/mercy petition which was also dismissed by respondent No-1 . (Copy of Appeal/ mercy petition and order is annexed as Annexure "F ")
- 6- That feeling aggrieved from the above mentioned illegal orders the appeal is filed inter-alia on the following grounds.

GROUNDS:-

- a- That the impugned orders are illegal, arbitrary, without jurisdiction and without lawful authority.
- b- That the impugned orders are suffering from perversity of reasoning hence not sustainable in the eyes of law and liable to be set aside.
- c- That the impugned orders are against the spirit of law.
- d- That the punishment awarded to appellant is very much harsh in nature.