

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**

**PESHAWAR.**

Objection Petition in E.P No. 68/2023

In Service Appeal No. 7937/ 2021

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. **5395**

Dated **17/5/2023**

Title: "Ashfaq Ali V/S Gov't of KP through Secretary Home & 03 Others"

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**DEPONENT**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR.**

Objection Petition in E.P No. 68/2023

In Service Appeal No. 7937/ 2021.

1. Government of Khyber Pakhtunkhwa through Secretary Home Civil Secretariate Peshawar.
  2. Inspector General of Police/ Provincial Police Officer, KP, Peshawar.
  3. Deputy Inspector General of Police, Counter Terrorism Department KP Peshawar.
  4. Superintendent of Police, Headquarter Counter Terrorism Department KP Peshawar.
- .....(Objectors)

VERSUS

Ashfaq Ali S/o Mir ALi Khan R/o Ako Dheri Post Office Lund Khwar Tehsil Takht Bhai District Mardan.....(Respondent)

**Objection Petition u/s 47/48, u/order 21 rule 10 of C.P.C 1908 against Judgment dated 08.11.2022 by Objectors in E.P 68/2023 Titled as Ashfaq Ali Vs Govt of KPK & others.**

**Respectfully Sheweth**

The Objectors humbly submit as under:-

1. That above titled execution petition is pending before this Hon'ble Court which is fixed for 23/05/2023.
2. That the appellant (now respondent) filed the execution petition for the implementation of order/judgment decided by this Hon'ble Service Tribunal on 08/11/2022.
3. That the respondents (now objectors) file objection petition on the following grounds.

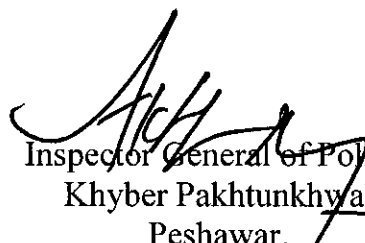
**GROUND:-**


- A. That the respondent Ashfaq Ali was caught red handed by the district Police of Police Station Lund Khwar District Mardan while smuggling/transporting non-custom paid vehicles and also recovered M4 Rifle along-with 02 Magazines & 60 rounds were recovered from his possession (F/A).
- B. He was directly charged in case FIR No. 492 dated 29.07.2017 u/s 419-420-468-471-171 PPC / 15AA PS Lund Khwar District Mardan (F/A).
- C. He was charge sheeted and proper departmental enquiries were carried out. Both the Enquiry Officers found him guilty and recommended him for dismissal from service (F/B). Which is sufficient ground for convincing the Hon'ble Tribunal, regarding his guilt i.e. involvement in transportation of NCP vehicles and Arms. The respondent department adopted proper procedure before imposing of major penalty, that's sole ground is enough for dismissal of appeal/execution.
- D. As per page 217 under chapter **Departmental Proceedings vis-à-vis Judicial Proceedings** of Esta Code KPK both the criminal and departmental proceedings can run parallel to each other against an accused officer/officail and such proceedings are not independent on each other vide (Authority: Circular letter No. SOR.II9S&GAD)/869JC)M dated 08.01.1990) (F/C).
- E. That, the contents of above para "D" are strongly supported by various authorities of Supreme Court of Pakistan (SCMRs), but here the SCMR 2018 of 2001 & SCMR 562 of 2007 are enclosed herewith as (F/D).

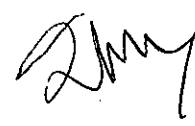
- F. Acquittal in a criminal case is not sufficient ground to re-instate the delinquent official back in service as he has been declared guilty in departmental proceedings.
- G. That, as per Court Judgment dated 08.11.2022 the appellant may be re-instated into service from the date of his first dismissal i.e. 09.11.2017, which is totally against the law and rules, because he had dismissed due to involvement in criminal case and was found guilty twice in enquiries. From 09.11.2017 to till date he was remained as dismissed hence the department is not liable for payment of salaries during period of dismissal. It is a well settle principle of law "*that work done pay done*".
- H. It might be possible that accused is acquitted from criminal case on the basis of weak investigation, lack of evidence on case file or some other lacunas in case file but in the case of the respondent ( Ashfaq Ali ) he has been declared guilty twice in two separate enquiries ( 1<sup>st</sup> departmental enquiry and de-novo enquiry ). So there is no chance that he has not been treated as per prevailing law.
- I. That the objectors preferred CPLA in Hon'ble Supreme Court of Pakistan against the judgment dated 08.11.2022 in S.A No. 7937/2021, which is yet to be decided (F/E).
- J. That at the same time two proceedings on one issue cannot be taken place hence the present execution petition is not maintainable in the eye of law.

**Prayer:**

It is therefore humbly prayed that on acceptance of instant objection petition an appropriate order may kindly be passed to stay the execution petition process till the outcome of CPLA already been lodged at Hon'ble Supreme Court of Pakistan.

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.  
(Objector No. 2)

  
Deputy Inspector General of Police,  
CTD Khyber Pakhtunkhwa,  
Peshawar.  
(Objector No. 3)

  
Superintendent of Police,  
CTD HQrs: Peshawar.  
(Objector No. 4)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR.**

Objection Petition in Execution Petition No. 68/2023

In Service Appeal No. 7937/2021.

Gov't of KP through Secretary Home Education Civil Secretariat Peshawar & 03 Others

.....(Objectors)

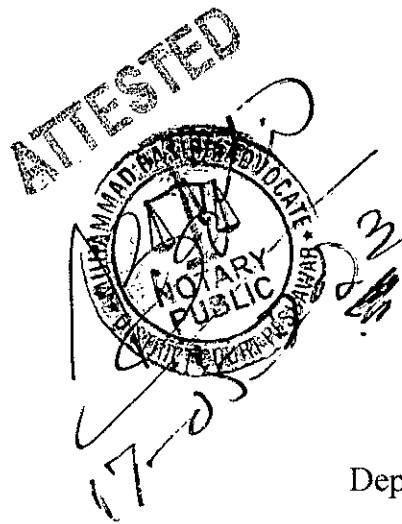
VERSUS

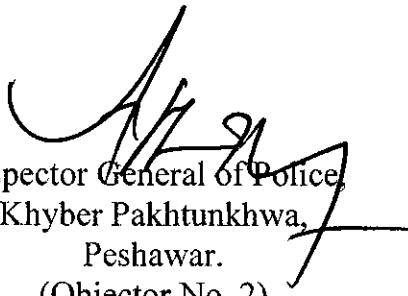
Ashfaq Ali S/o Mir Ali Khan R/o Ako Dheri Post Office Lund Khwar Tehsil Takht Bhai  
District Mardan


.....(Respondent)

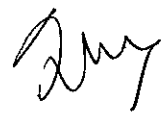
**AFFIDAVIT**

We, the below mentioned objectors, do here by solemnly affirm and declare on oath that the contents of objection petition submitted are correct and true to the best of our knowledge and belief and that nothing has been concealed from this Honorable Court.



  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.  
(Objector No. 2)

  
Deputy Inspector General of Police,  
Khyber Pakhtunkhwa,  
CTD, Peshawar.  
(Objector No. 3)

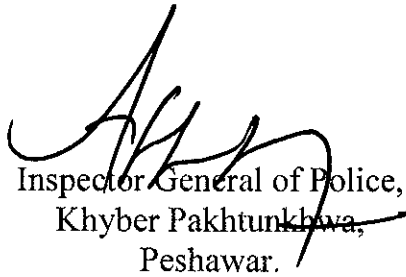
  
Superintendent of Police,  
HQrs: CTD Peshawar.  
(Objector No. 4)




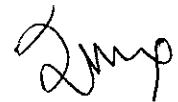
5  
OFFICE OF THE  
INSPECTOR GENERAL OF POLICE,  
KHYBER PAKHTUNKHWA,  
PESHAWAR.

AUTHORITY LETTER

We, the undersigned, do hereby authorize DSP Syed Amir Abbas having CNIC# 17301-8836248-7, and SI Gulzad Khan having CNIC# 17301-5214940-9; both of CTD Peshawar KPK to submit objection petition in **Execution Petition No. 68/2023** titled "**Ashfaq Ali V/s Govt of KP & 03 Others**" and to pursue the matter on behalf of objectors No. 02 to 04.

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.  
(Objector No. 2)

  
Deputy Inspector General of Police,  
Khyber Pakhtunkhwa,  
CTD, Peshawar.  
(Objector No. 3)

  
Superintendent of Police,  
HQrs: CTD Peshawar.  
(Objector No. 4)



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



مردان

ضلع

لوند خوڑ

تھانہ

تاریخ 29.07.2017 وقت 16:00 بجے

تاریخ

492

نمبر

1-	تاریخ وقت رپورٹ 29.07.17 وقت 16:30 بجے	چاکیڈگی پرچہ 29.07.17 وقت 16:55 بجے
2-	نام سکونت اطلاع دہندہ مستفیث	ذاکر خان SI
3-	مختصر کیفیت جرم (معد دفعہ) حال اگر کچھ لیا گیا ہو	پستول 9MM (50) عدد کارٹوس
4-	جائے وقوعہ فاصلہ تھانہ سے اور سمت	419-420-468-471-171-15AA M4 بمعہ (60) عدد کارٹوس
5-	نام و سکونت ملزم	زندہ چوکی ہاتھیاں
6-	کارروئی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	(1) اشفاق علی ولد میر علی سکنہ اکو ڈھیری (2) محمد عدنان علی ولد محمد فیاض سکنہ شب قدر حال شیخ ملتون (3) نیاز حسین انسپکٹر CTD (4) حاجی حیات کارخانوں باڑہ (5) آفتاب سکنہ سخاکوٹ برسیڈگی مراسم مقدمہ درج رجسٹر کیا جاتا ہے۔
7-	تھانہ سے روانگی کی تاریخ وقت	بہ سبیل ڈاک

ابتدائی اطلاع نیچے درج کرو مراسم موصولہ منجانب ذاکر خان SI انچارج چوکی عمر آباد سے

بدست لقمان HC بہ مضمون ذیل ہے بخد مت SHO صاحب تھانہ لوند خوڑ امروز میں معہ لقمان HC خورشید 951، شہاب 2666 بسلسلہ گشت و ناکہ بندی بمقام جیوڑ روڈ نزد جرنڈہ موجود تھا کہ اس دوران جانب عمر آباد سے ایک لینیڈ کروزر نمبری اسلام آباد UB.001/IJ برنگ سفید نہایت تیز رفتاری سے آتا ہوا جسکو بغرض چیکنگ ٹھرانے کا اشارہ کر کے ڈرائیور گاڑی نے رکھنے کی بجائے گاڑی کی رفتار اور بھی تیز کر کے جسکا تعاقب بذریعہ پرائیویٹ گاڑی کر کے اور ساتھ ہی بذریعہ وائرلس چوکی ہاتھیاں کو اطلاع پاس کر کے وہاں پر موجود پولیس پارٹی کی مدد سے گاڑی قابو کر کے گاڑی میں دو جوان العمر اشخاص سوار تھے ڈرائیونگ سیٹ پر موجود شخص نیچے اترتے ہی سروس کارڈ پیش کیا اسکے ساتھ فرنٹ سیٹ پر موجود شخص جو مسلح بہ رائفل M4 تھانے دریافت پر اپنا نام اشفاق علی ولد میر علی سکنہ اکو ڈھیری حال کنسٹیبل CTD مردان اور انسپکٹر نیاز حسین CTD مردان کاگن مین بتلایا اور انسپکٹر نیاز حسین کے ہدایت پر کیپٹن عدنان کو ملاکنڈ ایجنسی کے حدود تک پہنچا رہا تھا جکے گفتگو پر شک گزر کر تصدیق کرتے ہوئے کیپٹن جسکا نام محمد عدنان علی ولد محمد فیاض ساکن شب قدر حال شیخ ملتون معلوم ہوا ہر دو کسان کو قابو کر کے ملزم محمد عدنان کے قبضہ سے ایکسٹریٹ پستول 9MM نمبری LYG881 معہ کاش 3 عدد میگنیزین مجموعہ 50 عدد کارٹوس جبکہ ملزم اشفاق کے قبضہ سے ایکسٹریٹ رائفل M4/larbine نمبری W472538 بمعہ 2 عدد میگنیزین 60 عدد کارٹوس بلا لائسنس برآمد کر کے ہر دو کسان نے سرسری اشارہ گین پر بتلایا کہ گاڑی حاضرہ کے متعلق اُنکے پاس کوئی دستاویزات نہیں ہے اور وہ نیاز حسین انسپکٹر CTD کے ہدایت پر اس گاڑی کو مبلغ 60000 روپے کر ایہ پر حدود سخاکوٹ پہنچا رہے تھے یہ گاڑی حاجی حیات سکنہ کارخانوں باڑہ ایجنسی کی ملکیت ہے اور قبل ازیں بھی انہیں 17/18 عدد مختلف قسم کے گاڑیوں کو سخاکوٹ کو پہنچاتے وہاں پر آفتاب نامی شخص کو حوالہ کرتے ہیں اور نیاز حسین انسپکٹر CTD اپنے بنگلہ واقع SMT میں گاڑیوں پر CTD کے سرکاری نمبر پلیٹ لگا کر ہم اسکے ہدایت پر سخاکوٹ ملاکنڈ ایجنسی پہنچا کر آفتاب کے حوالہ کرتے ہیں اور انسپکٹر نیاز حسین ہمیں معقول معاوضہ دیتا ہے سریدست اسلحہ جعلی کارڈ اور گاڑی متذکرہ بال بروئے فرد قبضہ پولیس میں کر کے ہر دو ملزمان حاضرہ انسپکٹر CTD حاجی حیات اور آفتاب مذکورین بالا کو مرتکبان جرم بالا کے پاکر ملزمان اشفاق اور محمد عدنان حاضرہ کو حسب ضابطہ گرفتار کر کے جبکہ نیاز حسین حاجی حیات اور آفتاب کی گرفتاری درپیش رکھ کر مراسم بغرض قائمی مقدمہ بدست لقمان HC ارسال تھانہ ہے تفتیش کیجئے دستخط انگریزی ذاکر خان SI انچارج چوکی عمر آباد مورخہ 29/07/17 کارروائی تھانہ بعد آمد مراسم حرف بہ حرف درج ہو کر پرچہ مجرم بالا مرتب ہوا نقول FIR و مراسم بغرض تفتیش حوالہ شعبہ تفتیش کیے جاتے ہیں۔ پرچہ گزارش ہے۔

Attestd  
SIPSI  
CTD KP

-SD-

SIPS Lund Khwar.

29.07.17

7

**FINDINGS OF INQUIRY AGAINST CONSTABLE ASHFAQ ALI No.182, CTD**  
**HQrs PESHAWAR.**

The undersigned were entrusted with an inquiry against Constable Ashfaq Ali No.182, CTD Headquarter, with the following allegations:

- I. That he is reportedly involved in the transportation and smuggling of Non Custom Paid (NCP) vehicles, vide FIR No.492 dated 29-07-2017 u/s 419-420-468-471-171PPC-15AA PS Lund Khwar district Mardan.
- II. On the direction of Inspector Niaz Hussain he received the NCP vehicle from one Haji Hayat Khan r/o Bara Khyber Agency for transportation to Skhakot.
- III. On the spot 1x M4 Rifle, No. W472538, 2 No. Magazines and 60 rounds were also recovered from his possession, which indicate he is also involved in transportation of illegal weapons.


The defaulter Constable Ashfaq Ali No.182 reply to the charge sheet, was received. He was also called upon by the enquiry committee and heard in person. During the course of enquiry the statements of the following officials were got recorded:-

1. Inspector Niaz Hussain, CTD HQrs.
2. SI Zakir Khan, Incharge Police Post Umar Abad PS Lund Khwar.
3. ASI Mazhar Ali, I/O case FIR No.492/2017.
4. ASI Khan Mohammad, Moharrar PS CTD Mardan.
5. Constable Ashfaq Ali No.182, CTD HQrs.

**FINDINGS:**

1. During the probe, Constable Ashfaq Ali No.182 denied all charges leveled against him, however as per the statements of I/O of FIR No.492/2017 and SI Zakir Khan, I/C Police Post Umar Abad PS Lund Khwar, the said Constable is involved in the smuggling of NCP vehicles. The above mentioned case is still under investigation.

2. It also transpired that the defaulter Constable Ashfaq Ali No.182 has close ties with criminal/PO Munawwar @ Adnan Ali which has been proved by his presence and arrest on the spot along with the criminal/PO Munawwar @ Adnan Ali in NCP Vehicle when they were transporting to Skhakot on the day of occurrence. This also proves that the defaulter Constable Ashfaq Ali No.182 is an active member of the racket, run by Inspector Niaz Hussain and criminal/PO Munawwar @ Adnan Ali.

  
 Anwar  
 DB/INV  
 CTD KP



page (2)

**CONCLUSION:**

After going through the available record and statements of the above mentioned officials, the enquiry committee came to the conclusion that Constable Ashfaq Ali No.182 has close ties with a criminal/PO Munawar @ Adnan Ali and smuggle NCP vehicles on mutual understanding/partnership with Munawar @ Adnan Ali. It is established that the defaulter Constable Ashfaq Ali No.182 is involved in smuggling of NCP Vehicles and declared guilty in the instant enquiry, it is recommended that he may be dismissed from service.

DSP HQrs.,  
CTD, KP, Peshawar.

SSP, Int & Surv:  
CTD, KP, Peshawar.

DSP Int & Surv  
CTD KP

**DENOVO INQUIRY AGAINST CONSTABLE ASHFAQ ALI BELT NO: 182**

Please refer to your Charge Sheet No. 7866-70 dated 24/06/2021 On the subject cited above.

It is submitted that denovo inquiry was initiated against constable Ashfaq Ali Belt No. 182 on the orders of the honorable court.

**FOLLOWING FACTS WERE RECORDED:**

1. On 29/07/2017 at about 16.00 hours, the local police stopped a vehicle at the check post near Hathyan Mardan. It was bearing Registration No. UB 001 Islamabad. Name of the driver has been mentioned as Adnan Ali. When he was taken off the driving seat, he was having a pistol who disclosed himself to be captain of the Pakistan Army: designated himself as Captain Adnan. He also told the local police that they cannot check him. He produced a forged Pak Army Service Card.
2. The second person who was accompanying Adnan Ali (captain Adnan) was sitting on the passenger seat. He was armed with an M4 rifle and he disclosed his name as Ashfaq Ali. He also stated that he was serving as constable at CTD Mardan. Presently he was serving as gunman of Niaz Hussain Inspector. He also told that they were transporting the vehicle to Sakha Kot on the direction of Inspector Niaz Hussain CTD Mardan.
3. FIR of the same was lodged in Lund Khwar Police Station Mardan U/S: 419/420/468/471/171/15AA dated: 29/07/2017(Copy Enclosed vide F/A-1).
4. Investigation was initiated which mentioned that:
  - a. the vehicle stopped at the check post had no legal documents,
  - b. The said vehicle belonged to Haji Hayat Khan r/o Karkhano Bara, Khyber Agency.
  - c. They have transported 17-18 vehicles to Skhakot.
  - d. They are transporting a vehicle on rent and they take Rs. 60000/- per vehicle for transporting it from Mardan to Sakha Kot.
5. Challan was submitted in the case. There were four accused namely: Ashfaq Ali, Muhammad Adnan (later proved as Munawwar Shah), Niaz Hussain and Aftab Ur Rehman. They were brought to appear before the honorable court.
6. Accused Niaz Hussain was discharged in the case on 12-10-2017 and accused Aftab Ur Rehman was charged on 29-07-2017.

**STATEMENT OF ASHFAQ ALI BELT NO. 182 (copy attached vide F/B).**

Ashfaq Ali was called to the office of the undersigned. He stated on oath that the charges levelled against him are baseless. He denied all the charges leveled against him as per the charge sheet issued to him with regard to Denovo Inquiry. Following are the allegations as per the charge sheet issued to him:

- i. That you are reportedly involved in the transportation and smuggling of Non-Custom Paid (NCP) Vehicles, vide FIR No. 492 u/s 419-420-468-471-171-15AA dated: 29-07-2017. PS Lund Khwar, Mardan.
- ii. On the direction of the then Inspector Niaz Hussain, you received the NCP Vehicles from one Haji Hayat Khan r/o Bara Khyber Agency for transportation to Skhakot.
- iii. On the spot 1 X M4 Rifle, No. W472538, 02 No. Magazines and 60 rounds were also recovered from your possession, which indicate you are also involved in the transportation of illegal weapons.

*[Handwritten signature and initials]*  
S. S. KP

He mentioned that the M4 rifle has not been recovered from his possession. He alleged that SI Zakir Khan falsely implicated him in the case out of personal grudges. He also mentioned that he has been acquitted by the honorable court in the same case (Statement attached)

**STATEMENT OF NIAZ HUSSAIN INSPECTOR**

He was formally called to attend the inquiry proceedings but he could not appear in person. He was then contacted through his personal mobile number (03134444081). He excused to appear in person on account of his illness. He gave the following statement on phone:

"I was SHO CTD Mardan at that time when the occurrence took place. On the day of the occurrence, I was not in Mardan. I was in Charsadda on some official duties. After the incident I was called to Mardan. I was arrested in the same case through 161 CrPc Statements of both Ashfaq Ali Constable Belt No. 182 and Muhammad Adnan (later known as Munawar Shah). Ashfaq Ali was gunman with me two months before the date of occurrence. He was also suspended in a personal enmity in his village (Roznamcha Report). I was discharged in the said case after a few days when the case was put in court.

**STATEMENT OF NOOR DARAZ KHAN SI (the then SHO Lund Khuwar) copy attached vide F/C.**

He stated on oath that he was informed by SI Zakir Khan that during Naka Bandi, Vehicle Land Cruiser bearing Registration No. UB 001 ICT Islamabad, Color: White was stopped at the place of occurrence. SI Zakir Khan was himself present on spot. The accused along with their belongings namely the vehicle and the arms ammunition were taken into custody. FIR was registered in PS Lund Khwar. FIR No. 492, U/S: 419,420,468,471,171,15AA, DATED: 29-07-2017.

**STATEMENT OF SI ZAKIR KHAN (THE THEN INCHARGE OF CHAUKI HATHYAN copy attached vide F/D.**

He stated on oath that I along with other police officials was present on spot on Chappar Road on the day of the incident. The vehicle was stopped at the place of occurrence which was a White Colour Land Cruiser bearing Reg. No: 001 ICT-Islamabad. The two persons namely Ashfaq Ali Belt no.182 and Muhammad Adnan were arrested along with an M-4 and a 9 MM pistol. They were taken into custody. A service card of the Pakistan Army was also recovered from the possession of Muhammad Adnan( he called himself Captain Adnan).

**STATEMENT OF ASI MAZHAR ALI (Investigation officer) copy attached vide F/E.**

He also stated on oath that the accused Muhammad Adnan s/o Muhammad Fayyaz r/o Shabqadar, Ashfaq Ali s/o Ameer Ali r/o Lund Khwar Mardan and Niaz Hussain Inspector are involved in the case: FIR No. 492, U/S: 419,420,468,471,171,15AA, DATED: 29-07-2017, PS Lund Khwar Mardan. As I was handed over the Murasila and the FIR for Investigation of the said case along with the arrested accused. I recorded their

*(Signature)*  
ASI MAZHAR ALI  
CTD KP

statements and challaned them to the concerned honorable court. The case is under trial in the court.

**STATEMENT OF MUHAMMAD ADNAN (FAKE Captain) (actually Munawwar Shah)**

The undersigned tried to include him in the inquiry proceedings but it was transpired that the said person is a P.O from the court in the said case and wanted to local police in some other cases. Hence his statement was not recorded.

**FINDINGS OF THE INQUIRY OFFICER:**

After taking statements of the concerned and perusing the record, the following conclusions are hereby made:

- A. Constable Ashfaq Ali Belt No. 182 CTD Mardan was actually present in the said vehicle driven by Muhammad Adnan at the time of the occurrence.
- B. He did not mention the purpose of his movement from Mardan to Skhakot in an unregistered NCP Vehicle driven by Muhammad Adnan as he was not on duty as per the statement of Inspector Niaz Hussain.
- C. Inspector Niaz Hussain denied any links with the constable at the time of the occurrence of the incident.
- D. As per the statements of the then SHO Noor Daraz Khan and the then Incharge Chauki Hathian, Zakir Khan, FIR has been genuinely registered, recovery of unlicensed weapons and the custody of the unregistered/NCP vehicle have also been genuinely made.
- E. Constable Ashfaq was already suspended and had no duty as gunmen with Inspector Niaz Hussain as is evident from a DD Report (No. 09. Dated; 04/07/2017, PS CTD Mardan Region) copy attached vide F/F.
- F. Statement of the then Investigation Officer named Mazhar Khan ASI also testifies the involvement of Ashfaq Ali in the offence committed.
- G. The confiscation of the NCP Vehicle by the police at Hathian shows that the vehicle is being transported for illegal purposes as it is adjacent to Malakand where NCP Vehicles are allowed to be driven.

**RECOMMENDATIONS:**

Keeping in view the above-mentioned facts, it is evident that constable Ashfaq Ali Belt No. 182 is involved in the charges levelled against him. Hence, he is hereby recommended for legal action against him by the senior officers.

*DISP  
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Mardan*

Superintendent of Police,  
Counter Terrorism Department (CTD)  
Peshawar Region

- (7) The enquiry proceedings once started should be held without interruption, as far as possible, on day to day basis.
- (8) On receipt of the enquiry report the case should be processed expeditiously.
- (9) It should be impressed upon the Enquiry Officer that the quality of work produced by him will reflect on his efficiency, which will be recorded in his ACR.
- (10) The initiating officer should record his assessment of the Enquiry Officer's performance in the ACR.

(Authority: Circular letter No.SORII (S&GAD)3(4)/78, dated 3rd October, 1984)

#### **Stoppage of increment under Government Servants (Efficiency & Discipline) Rules, 1973.**

Instances have come to the notice of the Government where the penalty of stoppage of increment under the NWFP Government Servants (Efficiency & Discipline) Rules, 1973, has been imposed on Government Servants, who have reached the maximum of the pay scale, thus making the penalty ineffective. I am accordingly directed to request that the competent authorities may, in future, kindly keep in view the stage of the pay scale at which a Government servant is drawing pay before imposing the penalty of stoppage of increment on him under the above rule.

(Authority: Circular letter No.SORII(S&GAD)5(29)/86, dated 27th December, 1986).

#### **Departmental Proceedings vis-a-vis Judicial Proceedings.**

The question as to whether or not a departmental inquiry and judicial proceedings can run parallel to each other against an accused officer/official has been examined in consultation with the Law Department.

2. It is hereby clarified that Court and Departmental proceedings may start from an identical charge(s) and can run parallel to each other. They can take place simultaneously against an accused on the same set of facts and yet may end differently without affecting their validity. Even departmental inquiry can be held subsequently on the same charges of which Government servants has been acquitted by a Court. The two proceedings are to be pursued independent of each other and it is not necessary to pend departmental proceedings till the finalization of judicial proceedings.

3. It may also be clarified that Court Proceedings also include criminal proceedings pending against a civil servant.

4. The above instructions may please be brought to the notice of all concerned.

(Authority: Circular letter No.SOR.II(S&GAD)5(29)/86(KC), dated 8.1.1990)

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[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, Qazi Muhammad Farooq and Hamid Ali Mirza, JJ

Messrs HABIB BANK LTD.----Petitioner

versus

SHAHID MASUD MALIK and others--- Respondents

Civil Petitions Nos.564 and 565 of 2001, decided on 8th May, 2001.

(On appeal from the judgment dated 9-12-2000 passed by the Federal Service Tribunal, Islamabad in Appeals Nos. 117(R)/C/E of 2000 and 1886(R) of 1999).

(a) Civil Servants Act (LXXI of 1973)---

---S.16---Departmental proceedings and criminal proceedings---Difference and distinction---Departmental proceedings are different and distinct from criminal charge which if has been levelled simultaneously against civil servant.

(b) Service Tribunals Act (LXX of 1973)---

----Ss. 2-A &amp; 4---Constitution of Pakistan (1973), Art. 185(3)---Dismissal from service---Findings of Service Tribunal based upon findings recorded by other forums---Validity---Acquittal from criminal charge---Effect--Employee of Banking Company was dismissed from service---Labour Court reinstated the employee and Criminal Court acquitted him of the charge--After insertion of S.2-A, in Service Tribunals Act, 1973 matter was transferred to Service Tribunal and the Tribunal on the basis of findings recorded by Labour Court as well as by the Criminal Court allowed appeal of the employee and he was reinstated in service---Legality---Instead of basing its decision on finding of a forum which had no jurisdiction to decide the case, the Service Tribunal should have examined the case independently on the basis of material collected during departmental inquiry including show cause notice and inquiry report---Conclusion drawn by Criminal Court would have no bearing on the departmental proceedings as the latter had to be decided independently ---Where the Tribunal had not applied its independent mind, such findings of the Tribunal were not sustainable---Petition for leave to appeal was converted into appeal, and judgment passed by Service Tribunal was set aside---Case was remanded to Service Tribunal for decision afresh.

Ajmal Kamal Mirza, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellants.

Respondents in person.

Date of hearing: 8<sup>th</sup> May, 2001.

Registrar  
Supreme Court of Pakistan  
CTD KE


**ORDER**

We have heard learned counsel for the appellants and have also gone through the impugned judgment, dated 9-12-2000 passed by the Federal Service Tribunal, Islamabad. It is noteworthy that the Service Tribunal had based its judgment on the findings of Presiding Officer Labour Court recorded while disposing of application under section 25-A of the I.R.O., 1969 filed by the respondent, the order of the Criminal Court acquitting the respondent-employee from the criminal charge has also been considered as one of the factor for his reinstatement. It is well-settled that the departmental proceedings are different and distinct from the criminal charge which if has been levelled simultaneously against an employee. Likewise the Tribunal may have not taken into consideration the findings recorded in favour of the, respondent by the Labour Court because after the amendment in the Civil Servants Act by means of section 2-A for the purpose of the Service Tribunal the respondent employee had been treated to be a civil servant with a right to approach Service Tribunal for his redressal of grievance. Therefore, the Service Tribunal will examine his case independently on the basis of material collected during the departmental inquiry including show cause notice and Inquiry Report etc., instead of basing its decision on the finding of a forum which firstly had no jurisdiction to decide the case secondly any finding recorded by the criminal Court regarding criminal charges against an employee arising out of the same transaction because no conclusion drawn in this behalf by a Criminal Court will have any bearing on the departmental proceedings which ought to have decided independently. It may be noted that in fact impugned orders have not been passed by the Service Tribunal by applying its judicial mind and had disposed of the appeals in a mechanical manner just observing that as Presiding Officer of Labour Court had recorded finding in favour of the respondent and the Criminal Court has also acquitted him of the charge, therefore, he is ordered to be reinstated. Such findings, however, are not sustainable in law thus deserves interference by this Court.

As a result of above discussion, these petitions are converted into appeals and allowed. Both the cases are remanded to the Federal Service for decision of the appeals expeditiously as far as possible within a period of three months preferably. No order as to costs.

Q.M.H./M.A.K./H-38/S

Case remanded.

  
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page (15)

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Authority S.C.  
in D/Enquiry

2007 S C M R 562

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar and Mian Shakirullah Jan, JJ

SUPERINTENDENT OF POLICE, D.I. KHAN and others----Petitioners

Versus

IHSANULLAH----Respondent

Civil Petition No.384-P of 2005, decided on 14th November, 2006.

(On appeal from the judgment, dated 10-5-2005 of the N.-W.F.P. Service Tribunal Peshawar in Appeal No.180 of 2004).

North-West Frontier Province Service Tribunals Act (I of 1974)---

----S. 4---Dismissal from service on account of his arrest in a criminal case---Acquittal from criminal charges---Time-barred appeal---Civil servant was dismissed from service, after he was arrested in criminal case---Civil servant during his arrest, filed departmental representation but did not avail remedy of appeal before Service Tribunal---Civil servant, after he was acquitted from criminal charge, filed appeal before Service Tribunal, which was accepted and he was reinstated in service---Validity---Appeal before Service Tribunal was filed belatedly from date of his dismissal and after five months from the date of his acquittal from criminal charges---Civil servant had lost his right and could not agitate for reinstatement---Acquittal of civil servant from criminal charges would have absolutely no bearing on merits of case as disciplinary proceedings were to be initiated according to service rules independently---Judgment passed by Service Tribunal, reinstating civil servant in service, after acquittal from the criminal charge was not sustainable in law---Supreme Court set aside the judgment passed by Service Tribunal and order of dismissal of civil servant from service was maintained---Appeal was allowed.

Executive Engineer and others v. Zahid Sharif 2005 SCMR 824 and Sami Ullah v. Inspector-General of Police and others 2006 SCMR 554 ref.

Khushdil Khan, Additional Advocate-General N.-W.F.P. and Altai, S.-I. (Legal) for Petitioners.

Abdul Aziz Kundi, Advocate Supreme Court for Respondent.

**ORDER**

**ABDUL HAMEED DOGAR, J.**--- This petition is directed against judgment, dated 10-5-2005 passed by learned N.-W.F.P. Service Tribunal, camp at D.I. Khan whereby Appeal No.180 of 2004 filed by respondent was allowed and he was reinstated into service without back-benefits.

2. Brief facts leading to the filing of instant petition are that respondent was dismissed from service on

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The allegation that on 12-7-2001 he was found in possession of 225 grams of Charas. Case was registered against him in which he was arrested and sent up to face the trial. According to learned counsel for the respondent he made representation to the competent authority but did avail the remedy of filing appeal before the learned Tribunal challenging his dismissal. According to him after his acquittal from the criminal case which took place on 9-10-2003 he filed instant appeal before Tribunal on 18-3-2004 mainly on the ground that he was acquitted from criminal charges as such be reinstated in service. The appeal before the Tribunal was filed belatedly from date of his dismissal and after five months from the date of his acquittal from the criminal charges. This being so, respondent has lost his right and cannot agitate for reinstatement. By now it is the settled principle of law that acquittal of civil servant from criminal charges would have absolutely no bearing on the merits of the case as the disciplinary proceedings are to be initiated according to service rules independently. Reliance can be made to the cases of Executive Engineer and others v. Zahid Sharif 2005 SCMR 824 wherein it has been held that acquittal of civil servant from Court would not impose any bar for initiation of disciplinary proceedings as his acquittal would have no bearing on disciplinary proceedings at all. In case of Sami Ullah v. Inspector-General of Police and others 2006 SCMR 554 it has been held that acquittal of petitioner from criminal case would have absolutely no bearing on the merits of the case and in the case of N.E.D. University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453 it has been held that departmental representation of civil servant was barred by limitation and on the basis of such representation Service Tribunal could not reinstate him in service.

3. In view of what has been discussed hereinabove and the case-law referred (supra) the impugned judgment reinstating the respondent in service after acquittal from the criminal charge is not sustainable in law hence the same is set aside. The petition is converted into appeal and allowed. The order of dismissal from service of respondent is maintained.

M.H./S-81/SC

Appeal allowed.

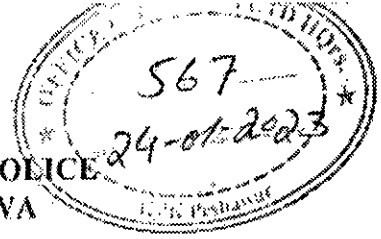
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OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
Central Police Office, Peshawar.



No. 215

/ Legal

dated the 24 / 01 / 2022.

To: The Deputy Inspector General of Police,  
CTD, Khyber Pakhtunkhwa, Peshawar.

Subject: LODGING OF APPEAL BEFORE SUPREME COURT OF  
PAKISTAN AGAINST JUDGMENT DATED 08.11.2022 IN  
SERVICE APPEAL NO. 7937/2021 TITLED ASHFAQ ALI VS  
DEPUTY INSPECTOR GENERAL OF POLICE CTD KHYBER  
PAKHTUNKHWA ETC.

Memo: Please refer to your office Letter No. 481/Inv/HQ, dated 10.01.2023,  
on the subject cited above.

It is intimated that the subject case has been declared fit for lodging of  
appeal by Scrutiny Committee of Law Department on 18.01.2023.

It is, therefore, directed that to depute an officer to execute Power of  
Attorney and attend the office of Advocate General, Khyber Pakhtunkhwa, Peshawar  
within two days for further course of action. (Copy of agenda Item No. 22 is enclosed).  
please.

DSP/ LEGAL  
For Assistant Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.  
23.01.2023

Sp/Investigation

USP/INV  
CTD KP

DIG CTD  
24-01-2023