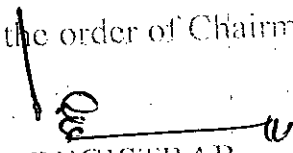


FORM OF ORDER SHEET

Court of _____

Case No.- 983/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/05/2023	<p>The appeal of Mr. Gul Noor resubmitted today by Mr. Ashraf Ali Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Gul Noor Constable no. 1779 Police Force Kohat received today i.e. on 14.03.2023, is incomplete on the following score which is returned to the co Counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures-C&D of the appeal are illegible which may be replaced by legible/better one.
- 2- Certificate be furnished that whether any appeal on the subject matter has earlier been filed in this Tribunal.
- 3- Memorandum of appeal be got signed by the appellant.
- 4- Check list is not attached with the appeal.
- 5- Appeal has not been flagged/marked with annexures marks.
- 6- Annexures of the appeal are unattested.
- 7- Copies charge sheet, statement of allegations, Show Cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 8- Copy of departmental appeal against the impugned order is not attached with the appeal which may be placed on it.
- 9- Copy of rejection order of departmental appeal is not attached with the appeal.
- 10- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.
- 11- The documents that are to be provided must be legible/readable.

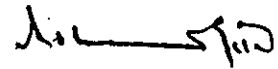
No. 947/S.T.

Dt. 15/3/2023


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ashraf Ali Khattak Adv.
High Court at Peshawar.

Required documents are still awaited
kindly extend the opportunity of filing
required documents, please



Ashraf Ali
Advocate

18/3/23

Sir

The objection of this office and reply of counsel
from the appellant is submitted for order, please.

No. St 1226
18/04/23


Humble ~~claim~~ - on

7 days after Eid holidays 18/4/23
are granted 18/4/23

All objection are properly attended. Appellant vide Para No. 8 has submitted that he requested for provision/grant of inquiry report, but the same was denied. Moreover, no final show cause has been served upon the appellant therefore no reply to final show cause is available, which is evident from the contents of memorandum of appeal.

Certificate to the effect that appellant has not approached any other forum or this Honourable Tribunal regarding the same matter before the instant service appeal are already available at page No. 6 of the instant service Appeal.

It is requested to kindly place the appeal before the Honourable Tribunal for onward legal process.


Ashraf Ali
Advocate
3/8/23

**BEFOR THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

SERVICE APPEAL No. 983/2023

Gul Noor,
Constable No.1779,
Police Force, Kohat.

..... Appellant

Versus

The Regional Police Officer,
Kohat Region Kohat and others

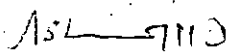
..... Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal with affidavit, Certificate and addresses of parties			1-7
2.	Copy of the judgment in Service Appeal No.1628/2021 of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 15-06-2022		A	8-11
3.	Copy of re-instatement order dated 23-08-2022 and charge assumption report.		B	12-16
4.	Copy of the impugned order dated 14-11-2022		C	-17
5.	Copy of the departmental appeal and impugned rejection order of respondent No.1	05-12-2022 08-02-2023	D	18-21
6.	Wakalat Nama.			22


Appellant

Through


Ashraf Ali Khattak
Advocate,
Supreme Court of Pakistan

Dated /02/2023

BEFOR THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL No. 983/2023

Gul Noor,
Constable No.1779,
Police Force, Kohat.

..... Appellant

Versus

1. **The Regional Police Officer,**
Kohat Region Kohat.
2. **The District Police Officer,**
Kohat.

.....
 4/3/23
 14/3/2023

..... Respondents

Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the impugned Final order of the respondent No.1 End: No.1807/EC, dated Kohat the 08-02-2023, wherein he rejected the departmental appeal of the appellant preferred against the impugned order passed by respondent No.2 vide OB No.566 dated 14-11-2022, wherein he agreed with the finding of the inquiry officer and filed the departmental proceedings and re-instated the appellant “with immediate” and the intervening period was treated as unauthorized leave without pay on the alleged principle of “No work, no pay”

Prayer in Appeal:-

On acceptance of the instant service appeal, this Hon'ble Tribunal may graciously be pleased to:-

1. Declare the impugned order of the respondent No.1 End: No. 1807/EC, dated Kohat the 08-02-2023 and impugned order of respondent No.2 vide OB No. 566 dated 14-11-2022 as illegal, unlawful and without lawful authority;
2. Set aside both the impugned orders to the extent of re-instatement with immediate effect and treating the intervening period as un-authorized leave without pay.

3. Direct the respondents to Re-instate the appellant with all back benefits by treating the intervening period between dismissal from service dated 19-09-2020 to re-instatement order dated 14-11-2022 as on active duty.
4. Any other relief deemed appropriate in the circumstances of the case not specifically asked for may also be graciously granted.

Respectfully Sheweth,

The concise facts giving rise to the present Service Appeal are as under:-

1. That appellant is the employee of police force, Kohat. He has long service standing at his credit.
2. That appellant was dismissed from service by the Worthy DPO, Kohat vide order dated 19-09-2020. Appellant filed departmental appeal which was rejected by respondent No.1 vide order dated 05-01-2021.
3. That appellant being aggrieved from both the above cited orders, filed Service Appeal No.1628/2021 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar. The Hon'ble Service Tribunal allowed the appeal by setting aside both the impugned orders dated 19-09-2020 and 05-01-2021 and reinstated the appellant into service with all back benefits, leaving the departmental authority at liberty to conduct denovo inquiry against the appellant within a period of 60 days of the receipt of the copy of the Judgment, if so desires.

Copy of the judgment in Service Appeal No.1628/2021 of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 15-06-2022 is attached as Annexure-A.

4. That appellant was provisionally reinstated into service for the purpose of denovo inquiry vide order dated 23-08-2022 and appellant resumed his duty vide Naqlemad No.11, Roznamscha dated 25-08-2022.

Copy of re-instatment order dated 23-08-2022 and charge assumption certificate are attached as Annexure-B,

5. That fresh inquiry proceeding were initiated and appellant was served with charge sheet and statement of allegations vide No.8910-11/PA dated 23-08-2022. Appellant submitted his reply and negated the charges leveled against him.
6. That inquiry was conducted at the back of the appellant. Appellant was neither associated with the inquiry proceedings nor allowed to cross examine the witnesses, however, inquiry officer failed to procure any incriminating evidence against the appellant.
7. That appellant was exonerated from all leveled charges by the inquiry officer. Appellant requested for provision of inquiry report

but the same was denied. Appellant was also deprived from final show cause and reply to show cause.

8. That the competent authority vide order OB No.566 Endst. No.10560-61/PA dated 14-11-2022 reinstated the appellant with immediate effect and the intervening period has been treated as unauthorized leave without pay on the principle of "No Work No Pay".

Copy of the impugned order dated 14-11-2022 is attached as Annexure-C.

9. That appellant being aggrieved from the impugned order preferred departmental appeal, which has now been rejected vide order dated 08-02-2023. *The impugned was dated on 15/2/2023 and now communicated to appellant.* Copy of the departmental appeal and impugned rejection order of respondent No.1 is attached as Annexure-E.

Hence appellant being aggrieved of the above mentioned impugned orders and finding no adequate and efficacious remedy is constrained to file this service appeal on the following amongst other grounds:

Grounds;

- A. That appellant has not been treated by the penal authority in accordance with law, rules and policy on the subject and acted in violation of Articles 4 & 10-A of the Constitution of Pakistan, 1973. The inquiry officer has exonerated the appellant from all charges therefore, the Worthy DPO, Kohat was under legal obligation to adhere to the provisions of Section 17 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 to treat the intervening period in between the dismissal order dated 19-09-2020 and reinstatement order dated 14-11-2022 as on duty and reinstate the appellant with all back benefits.
- B. Accused is stated to be a favorite child of law and he is presumed to be innocent unless proved otherwise and the benefit of doubt always goes to the accused and not to the prosecution as it is for the prosecution to stand on its own legs by proving all allegations to the hilt against the accused. Mere conjectures and presumption, however strong, could not be made a ground for removal from service, of civil servant [1999 PLC (CS) 1332 (FST)].... Unless and until prosecution proves accused guilty beyond any shadow of doubt, he would be considered innocent [1983 PLC (CS) 152 (FST)].

- C. That Re-instated employee would be entitled to back benefits as a matter of course unless employer is able to establish by cogent evidence that concerned employee had been gainfully employed elsewhere. In this respect, initial burden would lie upon the employer and not upon the employee to prove that such employee was gainfully employed during period of termination from his service. 2010 TD (Labour) 41.
- D. That Civil servant who was dismissed from service through arbitrary and whimsical action of the government functionaries and re instated through judicial order of Service Tribunal would have every right to recover arrears of salaries by way of back benefits due to them during the period of their dismissal and re instatement. It would be very unjust and harsh to deprive them of back benefits for the period for which they remained out of job without any fault on their part and were not gainfully employed during that period.....Supreme Court allowing their appeal and directing payment of back benefits to the appellant. 2006 T D (SERVICE) 551 (a).
- E. That the penal order is not a speaking order for the reason that no solid and legal grounds have been given by the penal authority in support of his penal order. On this score the impugned order is liable to be set aside.

Through

Appellant



ASL 5110
Ashraf Ali Kliattak
Advocate,

Supreme Court of Pakistan

Dated: ___/___/2021

BEFOR THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL No. _____/2021

Gul Noor,
Constable No.1779,
Police Force, Kohat.

..... **Appellant**

Versus

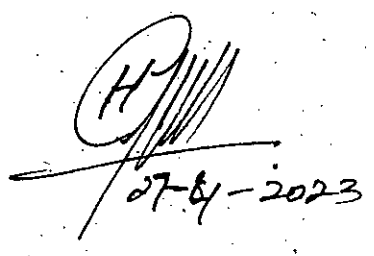
The Regional Police Officer,
Kohat Region Kohat and others

..... **Respondents**

AFFIDAVIT

I, **Gul Noor Constable No.1779**, Police Force, Kohat , do hereby solemnly affirm and declare on oath that the contents of this service appeal are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.


Deponent



CERTIFICATE

Certified on instruction that Appellant has not previously moved this Hon'ble Tribunal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 regarding present matter.

اشرف علی خٹاک

Ashraf Ali Khattak
Advocate, Peshawar.

List of Books

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

NOTE

1. Five spare copies of the Service Appeal are enclosed in a separate file cover.
2. Memo of addresses is also attached.

اشرف علی خٹاک

Ashraf Ali Khattak
Advocate, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ /2023

Gul Noor,
Constable No.1779,
Police Force, Kohat.

..... Appellant

Versus

The Regional Police Officer,
Kohat Region Kohat and others

..... Respondents

ADDRESSES OF THE PARTIES

Gul Noor,
Constable No.1779,
Police Force, Kohat.

..... Appellant


Versus

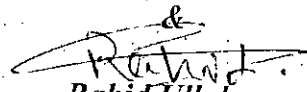
a. The Deputy Inspector General,
Kohat Region, Kohat:

b. The District Police Officer,
Kohat Region, Kohat.....

..... Respondents.

Through


Appellant
ASL-7110
Ashraf Ali Khattak
Advocate,
Supreme Court of Pakistan


Rahid Ullah
Advocate, Peshawar

Anx-A

Service Appeal No. 1628/2021

Date of Institution ... 26.01.2021

Date of Decision ... 15.06.2022

8



Khasadar Constable, Gul Noor No. 1779, District Police Kohat.

... (Appellant)

VERSUS

The Regional Police Officer, Kohat Region, Kohat and another.

... (Respondents)

MR. ASHRAF ALI KHATTAK,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN

--- MEMBER (JUDICIAL)

MR. MIAN MUHAMMAD

--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts are that departmental action was taken against the appellant on the allegations that he was having links with criminals for personal gain. On conclusion of the inquiry, District Police Officer Kohat imposed major penalty of dismissal from service upon the appellant, vide impugned order dated 19.09.2020. The departmental appeal of the appellant was rejected by Regional Police Officer Kohat Region Kohat vide order dated 05.01.2021. The appellant has now approached this Tribunal through filing of the instant service appeal for redressal of his grievance.

2. It is pertinent to mention that the revision petition of the appellant was rejected by the appellate Board vide order dated 12.07.2021 issued during the pendency of the instant service appeal, therefore, upon the request of learned counsel for the

ATTESTED

Khyber Pakhtunkhwa
Services Tribunal
Peshawar

appellant, the setting-aside of the same has been ordered to be included in prayer made by the appellant in the instant service appeal.

3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

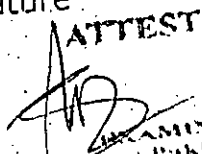
4. Learned counsel for the appellant has contended that the allegations, against the appellant were factual in nature, however no evidence was collected during the inquiry, which could prove the baseless allegations leveled against the appellant; that the mandatory provisions of Khyber Pakhtunkhwa Police Rules, 1975 were not complied with and neither any final show-cause notice was issued to the appellant nor the copy of inquiry was handed over to him; that the witnesses were examined in absence of the appellant and no opportunity of cross-examination was provided to the appellant. In the last he requested that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

5. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellant had indulged himself in illegal activities and was having liaison with criminals; that the allegations against the appellant were proved in a regular inquiry conducted against him; that the appellant was provided opportunity of self defense as well as persona hearing, however he was unable to produce any cogent evidence in his defense, therefore, he has rightly been awarded the penalty of dismissal from service.

6. We have heard the arguments of learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and have perused the record.

7. A perusal of the record would show that departmental action was taken against the appellant on the allegations that he was having links with criminals for personal gain. The very allegations leveled against the appellant are omnibus in nature

9

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


for the reason that the name of not a single criminal mentioned in the charge sheet, with whom the appellant was having links. Even during the inquiry proceedings, the name of any criminal has not surfaced, with whom the appellant was having links. Witnesses namely Fazal Karim No. 1964, Naib Subedar Shoukat Khan No. 1800, Subedar Shafi Akbar No. 1799, Jamshaid Khan 1769, Said Umer 1802, Muhammad Farooq No. 1936, Asghar Khan No. 1946, Rab Nawaz No. 1947 and Banaras Khan No. 1940 were examined during the inquiry. Copies of statements of witnesses examined during the inquiry are available on the record, which would show that no opportunity of cross examination was given to the appellant, therefore, their testimony could not be legally taken into consideration for awarding penalty to the appellant. Moreover, majority of the witnesses have stated that they do not know that the appellant were having any links with criminals. It is, however astonishing that the inquiry officer has mentioned in his inquiry report that all the witnesses have verified that the appellant was having links with few criminals. It appears that the inquiry officer was bent upon to declare the appellant guilty of the charges leveled against him.

10

J.

8. August Supreme Court of Pakistan in its judgment reported as PLD 1981 SC-176 has graciously held that rules devoid of provision of final show cause notice, alongwith inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as such in a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him.


9. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits, leaving the departmental Authority at liberty to conduct de-novo inquiry against the appellant within a period of 60 days of receipt of copy of this judgment, if it so desires. In case of de-novo inquiry, the issue of back benefits shall be subject to

TESTED

EXAMINER
Khan Sahib Pakhriki
Khan Sahib Pakhriki

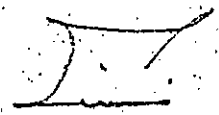
outcome of de-novo inquiry. In case the de-novo inquiry is not concluded within the period of 60 days of receipt of copy of this judgment, the appellant shall be considered to have been reinstated with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

11

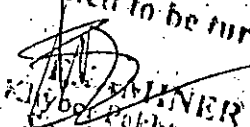
ANNOUNCED
15.06.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy

A. D. KHAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application: 15-6-22
Number of Words: 1600
Copying Fee: 18/-
Urgent: -
Total: 18/-
Name of Copies: -
Date of Completion of Copy: 15-7-22
Date of Delivery of Copy: 15-7-22



B

'Anx-B' 12

OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT
Tel: 0922-920116 Fax 920125

ORDER

In compliance with Judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar dated 15.06.2022, passed in service appeal No. 1628/2021 and CPO Peshawar letter No. 3541/Legal dated 25.07.2022. Ex- Constable Gul Noor No. 1779 is hereby provisionally re-instated in service only for the purpose of denovo enquiry with immediate effect till further order.

DISTRICT POLICE OFFICER,
KOHAT

OB No. 274
Dated 23-8-2022
No 8907-09 /PA dated 23-8-2022

Copy of above to the:-

1. Reader/Pay officer/SRC/OHC for necessary action.
2. Accused constable.

DISTRICT POLICE OFFICER,
KOHAT

ATTACHED

13

پولیس میں

تفصیلاً

تعمیر روزنامہ 25/08/22

صدا - حاضری بجالی سروس پر 25/08/22 وقت 13:45 بجے

بکس کاٹیل گالینور 1779 حوالہ No. 274 OB No. 23-8-022

8907-09.PA 23-8-22 ڈیپو انکوائری کے بارے میں عارضی طور پر بحال ہو کر حاضر آنے پر حاضری راج روزنامہ بجالی ہے۔ تعمیر لوظ مناسب کارروائی، انظار میں دفتر 25/08/22 ارسال ہوگی

بجالی

تعمیر بحالی اصل ہے

~~H.C. LINE~~
Kohat
25-08-22

ATTESTED



No. 8910-11 /PA

Office of the
District Police Officer,
Kohat

Dated 23-8 /2022

14

DISCIPLINARY ACTION

I, **MUHAMMAD SULEMAN, DISTRICT POLICE OFFICER, KOHAT** as competent authority, am of the opinion that you **Ex - Constable Gul Noor No. 1779 (re-instated for the purpose of denovo enquiry)** have rendered yourself liable to be proceeded against departmentally (denovo) under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

- i. *It has been learnt through reliable sources / secret information that you have links with criminals for your personal gain, which shows inefficiency on your part and grave misconduct.*

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations **Mr. Rahim Hussain SP/HQrs Traffic Peshawar** 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 his findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

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

**DISTRICT POLICE OFFICER,
KOHAT**

No. 8910-11 /PA, dated 23-8 /2022.

Copy of above to:-

1. **Mr. Rahim Hussain SP/HQrs Traffic Peshawar:-** The Enquiry Officer for initiating denovo enquiry proceedings against the accused under the provisions of Police Rule-1975.
2. **The Accused official:-** with the directions to appear before the Enquiry Officer, on the date, time and place fixed by him, for the purpose of enquiry proceedings.

[Handwritten signature]

[Handwritten signature]



No 8910-11 /PA

Office of the
District Police Officer,
Kohat

Dated 23-8-2022

15

CHARGE SHEET

I, **MUHAMMAD SULEMAN, DISTRICT POLICE OFFICER, KOHAT**, as competent authority under Khyber Pakhtunkhwa Police Rules 1975 (amendments 2014) , am of the opinion that you **Ex - Constable Gul Noor No. 1779 (re-instated for the purpose of denovo enquiry)** rendered yourself liable to be proceeded against, as you have omitted the following act/omissions within the meaning of Rule 3 of the Police Rules 1975.

i. *It has been learnt through reliable sources / secret information that you have links with criminals for your personal gain, which shows inefficiency on your part and grave misconduct.*


2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 of the Rules ibid and have rendered yourself liable to all or any of the penalties specified in the Rule 4 of the Rules ibid.

3. You are, therefore, required to submit your written statement 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 ex-parte action shall be taken against you.

4. A statement of allegation is enclosed.

**DISTRICT POLICE OFFICER,
KOHAT**


DATED

بحوالہ چارٹ شیٹ نمبر 8911-Pa/23-08-2022 مجاریہ DPO صاحب کوہاٹ

معروض ہوں کہ میرے خلاف بے بنیاد لگائے گئے الزامات کے سلسلے میں محکمانہ کارروائی کے خلاف عدالت میں اپیل دائر کر کے عدالت نے مسائل کو بیک بینیفٹ کیساتھ بحال کر دیا۔ علاوہ ازیں مسائل کے خلاف کوئی ٹھوس ثبوت اشہادت بدوارن انکوٹری نہیں لایا گیا ہے۔ مسائل کے خلاف کریمنل لوگوں کے ساتھ میل میلاپ رکھنے کی الزام لگا کر مگر مسائل نے ابھی تک کسی قسم کی کریمنل اشخاص کے ساتھ میلا نہیں رکھا ہے۔ اور نہ مسائل کے خلاف کریمنل اشخاص کے ساتھ کسی قسم کی میل میلاپ ثابت ہوا ہے۔

معلوم ہوا ہے کہ انضمام قبائلی علاقہ جات کے خلاف کسی شخص نے مجھے بدنام کرنے کی کوشش کی ہے۔ کیونکہ ایسے لوگ سابقہ خاصہ دار پولیس میں ملازمت کرنے والوں کو خلاف ہے۔

سرکاری ملازم ہونے کی حیثیت سے سرکاری فرائض ادا کرنے کا پابندی رکھ کر نہایت جانفشانی کے ساتھ ڈیوٹی سرانجام دی ہے۔ مسائل کسی شخص کے سیاسی مقاصد سے تعلق نہیں رکھتا ہے۔ مسائل بے گناہ ہے مسائل کے خلاف جاری شدہ چارج شیٹ داخل دفتر فرمایا جاوے۔

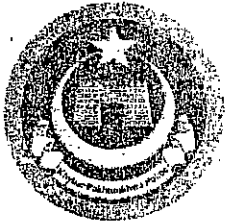
مسائل گل نور سابقہ کانسٹیبل بیلٹ نمبر 1779



العبد

ACCEPTED

'Anx-c' 17



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

Tel: 0922-9260116 Fax 9260125

ORDER

This order will dispose of de-novo departmental proceedings initiated against Constable Gul Noor No. 1779 (Ex-Khasadar) under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendment 2014).

Brief facts of the case are that it has been learnt through reliable sources / secret information that he has links with criminals for his personal gain, which shows inefficiency on his part and grave misconduct.

In compliance with the judgment of Service Tribunal dated 15.06.2022, denovo departmental proceedings initiated after approval of the competent authority. The SP HQrs Traffic Peshawar was appointed as enquiry officer to conduct the denovo enquiry. Charge Sheet alongwith statement of allegations were issued to the accused official. The delinquent constable was associated with the proceedings and afforded ample opportunity of defense by E.O. Hence the enquiry officer not guilty the accused constable (Ex-Khasadar) from the charges leveled against him.

Therefore, the defaulter official was called in Orderly Room and heard in person, he put plausible reply of his explanation to his gross professional misconduct.

In view of above, and available record, I agreed with the finding of enquiry officer, therefore, in exercise of powers conferred upon me under the rules ibid 1, Shafi Ullah Khan, District Police Officer, Kohat, the instant enquiry is hereby **"filed"** and the delinquent constable (Ex-Khasadar) is hereby **re-instated in service with immediate**. The intervening period is treated as unauthorized leave without pay on the principle of "No work, no pay".

DISTRICT POLICE OFFICER
KOHAT

OB No. 566

Date 11-11-2022

No 10560-61/PA dated Kohat the 14-11-2022.

Copy of above is submitted for favor of information to the:-

1. AIG Enquiries, Internal Accountability Branch, Khyber Pakhtunkhwa, Peshawar w/r to his office Memo: No. 1345-47/CPO/IAB, dated 30.09.2022
2. Reader, Pay Officer, SRC and OHC for necessary action.

DISTRICT POLICE OFFICER,
KOHAT

16/11/22
کتابت شد
11/11/22
کتابت شد

(Anx-D)¹

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To

The Regional Police Officer,
Kohat Region, Kohat.

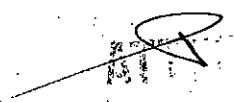
Subject:

DEPARTMENTAL APPEAL AGAINST THE ORDER OB. No.566 Endst. No.10560-61/PA DATED 14-11-2022 OF THE WORTHY DISTRICT POLICE OFFICER, KOHAT WHEREIN HE REINSTATED THE APPELLANT WITH IMMEDIATE EFFECT AND THE INTERVENING PERIOD HAS BEEN TREATED AS UNAUTHORIZED LEAVE WITHOUT PAY ON THE PRINCIPLE OF "NO WORK, NO PAY".

Respected Sir,

With due respect appellant humbly submits as to the following:

1. That appellant was dismissed from service by the Worthy DPO, Kohat vide order dated 19-09-2020. Appellant filed departmental appeal which was rejected by your good office vide order dated 05-01-2021.
2. That appellant being aggrieved from both the above cited orders, filed Service Appeal No.1628/2021 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar. The Hon'ble Service Tribunal allowed the appeal by setting aside both the impugned orders dated 19-09-2020 and 05-01-2021 and reinstated the appellant into service with all back benefits, leaving the departmental authority at liberty to conduct denovo inquiry against the appellant within a period of 60 days of the receipt of the copy of the Judgment, if so desires.
3. That appellant was provisionally reinstated into service for the purpose of denovo inquiry vide order dated 23-08-2022 and appellant resumed his duty vide Naqlemad No.11, Roznamscha dated 25-08-2022.
4. That fresh inquiry proceedings were initiated and appellant was served with charge sheet and statement of allegations vide No.8910-11/PA dated 23-08-2022. Appellant submitted his reply and negated the charges leveled against him.



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5. That inquiry was conducted at the back of the appellant. Appellant was neither associated with the inquiry proceedings nor allowed to cross examine the witnesses, however, inquiry officer failed to procure any incriminating evidence against the appellant.
 6. That appellant was exonerated from all leveled charges by the inquiry officer. Appellant requested for provision of inquiry report but the same was denied.
 7. That the competent authority vide order OB No.566 Endst. No.10560-61/PA dated 14-11-2022 reinstated the appellant with immediate effect and the intervening period has been treated as unauthorized leave without pay on the principle of "No Work No Pay".
 8. That appellant now being aggrieved from the impugned order of the Worthy District Police Officer, Kohat cited ibid, prefers the instant departmental appeal inter alia on the following grounds;
 - A. That appellant has not been treated by the penal authority in accordance with law, rules and policy on the subject and acted in violation of Articles 4 & 10-A of the Constitution of Pakistan, 1973. The inquiry officer has exonerated the appellant from all charges therefore, the Worthy DPO, Kohat was under legal obligation to adhere to the provisions of Section 17 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 to treat the intervening period in between the dismissal order dated 19-09-2020 and reinstatement order dated 14-11-2022 as on duty and reinstate the appellant with all back benefits.
 - B. Accused is stated to be a favorite child of law and he is presumed to be innocent unless proved otherwise and the benefit of doubt always goes to the accused and not to the prosecution as it is for the prosecution to stand on its own legs by proving all allegations to the hilt against the accused. Mere conjectures and presumption, however strong, could not be made a ground for removal from service of civil servant [1999 PLC (CS) 1332 (FST)]. Unless and until prosecution proves accused guilty beyond any shadow of doubt, he would be considered innocent [1983 PLC (CS) 152 (FST)].
 - C. That Re-instated employee would be entitled to back benefits as a matter of course unless employer is able to establish by cogent evidence that concerned employee had been gainfully employed elsewhere. In this respect, initial burden would lie upon the employer and not upon the employee to prove that



such employee was gainfully employed during period of termination from his service. 2010 TD (Labour) 41.

- D. That Civil servant who was dismissed from service through arbitrary and whimsical action of the government functionaries and re instated through judicial order of Service Tribunal would have every right to recover arrears of salaries by way of back benefits due to them during the period of their dismissal and re instatement. It would be very unjust and harsh to deprive them of back benefits for the period for which they remained out of job without any fault on their part and were not gainfully employed during that period.....Supreme Court allowing their appeal and directing payment of back benefits to the appellants. 2006 T D (SERVICE) 551 (a).
- E. That the penal order is not a speaking order for the reason that no solid and legal grounds have been given by the penal authority in support of his penal order. On this score the impugned order is liable to be set aside.

In view of the above, it is humbly requested before Your kind Honour to modify the impugned order OB.No.566 Endst. No.10560-61/PA dated 14-11-2022 of the Worthy District Police Officer Kohat, to the extent of treating the intervening period as on duty and allow all back benefits.


Appellant

Gul Noor
Belt No.1779
Police Force, Kohat.

Dated: 05 /12/2022



POLICE DEPTT:

KOHAT REGION

21

ORDER.


This order will dispose of a departmental appeal moved by Constable Gul Noor No. 1779 of Kohat district Police against the punishment order, passed by DPO Kohat vide OB No. 566, dated 11.11.2022 whereby his intervening period in which he was out of service on account of dismissal, was treated as unauthorized leave without pay after conducting denove enquiry in the light of judgment passed by KP Service Tribunal vide judgment dated 15.06.2022. Initially he was dealt with departmentally on the charges of developing links with criminals for his personal gain and the proceedings culminated in his dismissal from service. He after availing next departmental / appellate forums approached KP Service Tribunal wherein appeal of the appellant was partially accepted with the direction to hold denove enquiry which resulted into his reinstatement with treating his intervening period as unauthorized leave without pay on the principle of "no work, no pay".

Comments as well as relevant record were obtained from DPO Kohat and perused. He was also heard in person in detail held in this office on 07.02.2023. During hearing, the appellant denied the allegations leveled against him.

In view of above discussion, I endorse and agree with the orders passed by DPO Kohat. He is not entitled to any pay during unauthorized leave and discharging no official duty. This department cannot afford any loss to the Government's exchequers by taking lenient view in this instant appeal. The competent authority has already taken a lenient view in shape of his reinstatement into service. Therefore, in exercise of powers conferred upon the undersigned under Police Rules 1975, amended 2014 Rules, Section- 11(2), the instant appeal being devoid of merits is hereby **rejected**.

Order Announced
07.02.2023


1216
15/2/23


(DAR ALI KHAN) PSP
Region Police Officer,
Kohat Region.

No. 1207 /EC, dated Kohat the 08/02 /2023.

Copy to District Police Officer, Kohat for information and necessary action w/r to his office Memo: No. 260/LB, dated 10.01.2023. His Service Record is returned herewith.

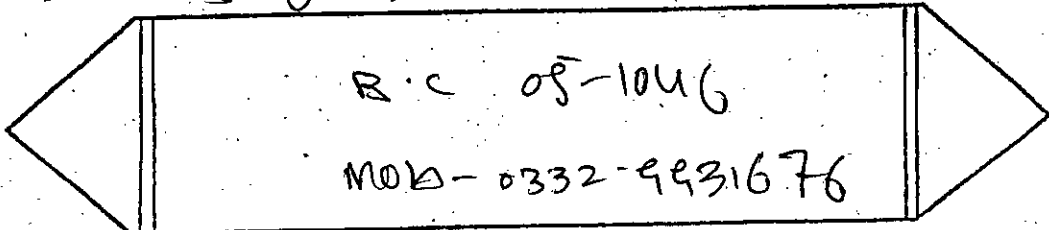
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JCSI/SRE
for action


(DAR ALI KHAN) PSP
Region Police Officer,
Kohat Region.

District Police Officer,
Kohat
14/2/23



بعدالت جناب سندھ سٹریٹیجیوں کے لیے



2023ء منجانب

گل نواز بنام گورنمنٹ

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام لسٹڈ آرگنائزیشن کیلئے ایسٹریٹجی (علیٰ علی) ایگزیکٹو رائٹرز اور ایسٹریٹجی رائٹرز

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقریر نمائندہ فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور ضولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی 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 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا ساختہ
پر واختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانتا تو اے مقدمہ کے سبب سے وہ 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۔

ACCEPTED BY

المترجم _____ ماہ _____ 2023ء

واحد العبد

بمقام
کے لئے منظور
Acceptance
Rohani