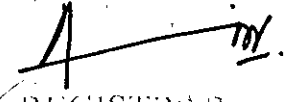


FORM OF ORDER SHEET

Court of _____

Appeal No. 1102/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/05/2023	<p>The appeal of Mr. Muhammad Yousaf resubmitted today by Mr. Taimur Ali Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on-</p> <p>_____</p> <p>By the order of Chairman  For REGISTRAR</p>

The appeal of Mr. Muhammad Yousaf IHC No.882 Police Station Gumbat Kohat received today i.e on 12.05.2023 is incomplete on the following score which is returned to the counsel for the appellat for completion and resubmission within 15 days.

- 1- Check list not attached with the appeal.
- 2- Appeal has not been flagged/marked with annexures marks.
- 3- Annexures of the appeal are not attested.
- 4- Affidavit be got attested by the Oath Commissioner.
- 5- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1409 /S.T,

Dt. 15/5 /2023.


For REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv.
High Court Peshawar.

Respected Sir,

- 1- Removed
- 2- Removed
- 3- Removed
- 4- Removed
- 5- Removed

Resubmitted after compliance



17/5/2023.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 1102/2023

Muhammad Yousaf

VS

Police Department

.....

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S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-06
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3.	Copy of FIR	A	09
4.	Copies of charge sheet, order dated 06.11.2020 and 05.01.2021	B,C&D	09-11
5.	Copy of judgment dated 28.06.2022	E	12-16
6.	Copies of reinstatement order dated 13.10.2022, charge sheet along with statement of allegations and reply	F,G&H	17-22
7.	Copy of inquiry report	I	23-25
8.	Copies of show cause notice and reply to show cause notice	J&K	26-27
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APPELLANT

THROUGH:


TAIMUR ALI KHAN
ADVOCATE HIGH COURT
0333-9390916

①

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

SERVICE APPEAL NO. 1102/2023

Khyber Pakhtunkhwa
Service Tribunal

Case No. 5298

Dated 12/5/2023

Mr. Muhammad Yousaf IHC No.882,
Police Station Gumbat, Kohat.

APPELLANT

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional police officer Kohat Division Kohat.
3. The District Police Officer, Kohat.

RESPONDENTS

.....

**APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 05.01.2023, WHEREBY
THE APPELLANT WAS REINSTATED IN SERVICE
WITH IMMEDIATE EFFECT, BUT MINOR
PUNISHMENT OF FORFEITURE OF TWO YEARS
APPROVED SERVICE HAS BEEN IMPOSED UPON
THE APPELLANT AND HIS INTERVENING PERIOD
WITH EFFECT FROM 06.11.2020 TO 31.12.2022 WAS
TREATED AS UNAUTHORISED LEAVE WITHOUT
PAY AND AGAINST NOT TAKING ACTION ON
DEPARTMENTAL APPEAL OF THE APPELLANT IN
THE STATUTORY PERIOD OF 90 DAYS.**

.....

PRAYER:

**THAT ON ACCEPTANCE OF THIS APPEAL, THE
FORFEITED TWO YEAR APPROVED SERVICE OF
THE APPELLANT MAY KINDLY BE RESTORED
WITH FURTHER DIRECTION TO THE
RESPONDENTS TO GRANT BACK BENEFITS IN THE
SHAPE OF THE SALARIES ALONG WITH OTHER**

Filed by
12/5/23

②

EMOLUMENTS FOR THE INTERVENING PERIOD 06.11.2020 TO 31.12.2022 BY TREATING THAT ON FULL PAY AND ALSO DIRECTED THE RESPONDENTS TO REINSTATE THE APPELLANT FROM THE DATE OF DISMISSAL I.E 06.11.2020 WITH ALL BACK AND CONSEQUENTIAL BENEFITS BY MODIFYING THE ORDER DATED 05.01.2023 TO THAT EXTENT. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

.....

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant is working in the respondent department since 2001 and since his appointment he is performing his duty with devotion and honesty, whatsoever assigned to him and has unblemished service-record throughout.
2. That Sohail Nawaz S/O Muhammad Nawaz resident Kohat was done to death by the fire Naveed Ullah and the appellant in order to arrest the accused was also injured by the fire of accused Naveed Ullah, however he was succeeded in the arrest of accused Naveed Ullah along with other police officials and in this respect FIR was registered No. 564 dated 22.04.2019 U/S302,324,353,427 PPC read with Section-15 AA PS City and the appellant also awarded Rs.50000/- as reward by his high ups for showing courage and bravery in the instant case, however deceased's father namely Muhammad Nawaz submitted complaint against appellant alleging therein that appellant had deliberately given contradictory evidence during the trial for the purpose of giving benefits to the accused namely Naveed Ullah, but the accused was convicted and sentence to imprisonment for life along with other convictions by the competent court of law due to fair investigation and evidence of Police Officials during trial of accused before the court. (Copy of FIR is attached as Annexure A).
3. That on the basis of above allegation, charge sheet was issued to the appellant which was properly replied by the appellant in which he denied the allegation, but without conducting proper inquiry the appellant was dismissed from service on vide order dated 06.11.2020 and his departmental appeal was also rejected on 05.01.2021. (Copies of charge sheet, order dated 06.11.2020 and 05.01.2021 are attached as Annexure-B,C&D)

4. That the appellant challenged orders dated 06.11.2020 and 05.01.2021 in this Honorable Service Tribunal in appeal No. 2818/21 which was heard and decided by this Honorable Tribunal on 28.06.2022. The Honorable Tribunal allowed the appeal of appellant by setting asides the impugned orders and the appellant was reinstated in service for the purpose of denovo inquiry with direction to the competent authority to conduct denovo inquiry strictly with according to relevant law/rules within period of sixty days with the receipt of judgment and also mentioned in the judgment that the appellant shall be associated with inquiry proceedings and fair opportunity be provided to him to defend himself. The issue of back benefits shall be subject to outcome of denovo inquiry. **(Copy of judgment dated 28.06.2022 is attached as Annexure-E)**
5. That in pursuance of judgment dated 28.06.2022, the appellant was reinstated in service only for the purpose of denovo inquiry on 13.10.2022 and charge sheet along with statement of allegations which was properly replied by the appellant in which he denied the allegation and gave real facts about the issue. **(Copies of reinstatement order dated 13.10.2022, charge sheet along with statement of allegations and reply are attached as Annexure F,G&H)**
6. That in compliance of judgment dated 28.6.2022, denovo inquiry was conduct against the appellant in which the inquiry officer give finding that Honorable Additional Session Judge-II Kohat in case FIR No. 564 dated 22.04.2019 U/S302,324,353,427 PPC read with section 15AA PS City has convicted the accused Naveed Ullah for life imprisonment and prior to the conviction the complainant had lodged a complaint against the appellant who was also injured in the said murder case and arrested the accused Naveed Ullah on spot and conviction awarded by the Honorable Court to accused are the hectic effort of police, fair investigation and evidence of Police Officials during trail of accused before the court, but despite that the inquiry officer gave recommendation of minor punishment for the appellant. **(Copy of inquiry report as Attached as Annexure-I)**
7. That show cause notice was issued to the appellant which was properly replied by the appellant in which he again denied the allegations and give the real facts about the issue. **(Copies of show cause notice and reply to show cause notice are attached as Annexure-J&K)**
8. That the respondent No.03 passed an order dated 05.01.2023, whereby appellant was reinstated with immediate effect and minor punishment of forfeiture of two years approved service has been imposed upon the appellant and his intervening period was treated as unauthorized leave without pay and the appellant being aggrieved

(4)

from the order dated 05.01.2023 filed departmental appeal on 17.01.2023 which was not responded in statutory period of 90 days. (Copies of order dated 05.01.2023 and departmental appeal are attached as Annexure-L&M)

9. That the appellant wants to file the instant appeal in this Honorable Tribunal for redressal of his grievance on the following grounds amongst others.

GROUND: -

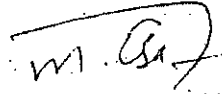
- A) That the impugned orders dated 05.01.2023 is against the law, rules and norms of justice, therefore, not tenable and the punishment of forfeiture of two year approved service may be restored and the intervening period with effect from 06.11.2020 to 31.12.2022 may be treated on full pay along with other emoluments by modifying the order dated 05.01.2023 to that extent.
- B) That the accused Naveed Ullah was arrested by the appellant on which the appellant has awarded the cash of Rs.50000/- as reward for his bravery, however the complaint by the father of deceased was made against appellant alleging therein that appellant had deliberately given contradictory evidence during the trial for the purpose of giving benefits to the accused namely Naveed Ullah, but the accused was convicted and sentence to imprisonment for life along with other convictions by the competent court of law due to fair investigation and evidence of Police Officials during trial of accused before the court which means that the father of the deceased made a baseless complaint on which the appellant was dismissed from service and later on minor punishment of forfeiture of two years approved was imposed upon the appellant and his intervening period was also treated as unauthorized leave without pay for no fault on his part.
- C) That in enquiry report inquiry officer gave his finding that Honorable Additional Session Judge-II Kohat in case FIR No. 564 dated 22.04.2019 U/S302,324,353,427 PPC read with section 15AA PS City has convicted the accused Naveed Ullah for life imprisonment and prior to the conviction the complainant had lodged a complaint against the appellant who was also injured in the said murder case and arrested the accused Naveed Ullah on spot and conviction awarded by the Honorable Court to accused are the hectic effort of police, fair investigation and evidence of Police Officials during trial of accused before the court, but despite that the inquiry officer gave recommendation of minor punishment for the appellant, which means that the appellant has been punished for no fault on his part and as such the appellant is entitled to restored his forfeited 02

years approved service and back benefits in shape of salaries along with other emoluments for the intervening period with effect from 06.11.2020 to 31.12.2022.

- D) That the appellant was dismissed from service on 06.11.2020, which was challenged by the appellant in service appeal No. 2818/2021. The Honorable Service set aside the order dated 06.11.2020 meaning by the appellant is entitled to be reinstated with effect from 06.11.2020 but he was reinstated in service through in order dated 05.01.2023 with immediate effect instead of 06.11.2020 and by reinstating with an effect from 05.01.2023 instead of 06.11.2020 there is break in service from 06.11.2020 to 05.01.2023 due to which his seniority and promotion will be effected and will even create complication in the finalization of his pension after his retirement, therefore the order dated 05.01.2023 is also liable to be modified to an extent of reinstatement with effect from 06.11.2020 instead 31.12.2022.
- E) That as per superior court judgment that once an official was reinstated in service after exoneration of charges leveled against him, the period during which he remained either suspended or dismissed/removed could not be attributed as fault on his part. Absence of official during period of dismissal/removal was not voluntary on his part but it was due to the order of the authority which restrained from attending his job/duty. Therefore, his service record could neither be adversely affected nor could he be denied any benefits to which he would have been entitled had he not been removed/dismissed and as such the appellant is entitle for the salaries for the period with effect from 06.11.2020 to 04.01.2023 on the basis of Apex Court judgment.
- F) That the appellant remained unpaid employees (not remained gainfully employed) for the period from dismissal of his service till reinstatement into service which is evident from the affidavit made by the appellant in this respect and as per superior courts judgment, he is entitle for back benefits in the shape of salaries for the period with effect from 06.11.2020 to 31.12.2022. **(Copy of affidavit is attached as Annexure-N)**
- G) That the appellant has not been treated in accordance with law and rules and minor punishment of forfeiture of two years approved service has been imposed upon him and the intervening period with effect from 06.11.2020 to 31.12.2022 has been treated leave without pay for no fault on his part, which is not against the norms of justice and fair play.
- H) That the appellant seeks permission of this Honorable Tribunal to advance others grounds and proofs at the time of hearing.

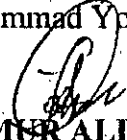
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It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.



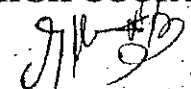
APPELLANT
Muhammad Yousaf

THROUGH:



TAIMUR ALI KHAN
ADVOCATE HIGH COURT

&



SHAKIR ULLAH TORANI
ADVOCATE PESHAWAR

7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____ /2023

Muhammad Yousaf

VS

Police Department

AFFIDAVIT

I, Muhammad Yousaf IHC No.882, Police Station Gumbat, Kohat, (Appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this Honorable Tribunal.


DEPONENT

ابتدائی اطلاع رپورٹ

مدعی 3-2055720-14301
0333 9625595

کنٹر

(فائیل) ابتدائی اطلاع نسبت مجرم قابل دست اندازی پولیس رپورٹ شروع زیر دفعہ 152 مجموعہ متابطہ نویداری

منبع کوہاٹ

تھانہ سیٹی

تاریخ و وقت وقوع 22/4/19 09:00 بجے

نمبر 564

1	تاریخ و وقت وقوع 22/4/19 09:03 بجے	حاکم کی سرپرستی 22/4/19 09:30 بجے
2	نام و سکونت اطلاع دہندہ و متنبہ	TC (HC) وارڈن سید کوثر کوہاٹ
3	مختصر کیفیت مجرم (موجودہ) حال اگر کچھ لگا کر	302-324-353 427-15A
4	جائے وقوع فاصلہ تھانہ سے اور سمت	انڈیا نزد الشیخ سید علی سلطان خان تھانہ
5	نام و سکونت ملزم	4301-1596822-9 0314-9051068
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وجہ بیان کرو۔	سر سید کی سرپرستی دی گئی
7	تھانہ سے روانگی کی تاریخ و وقت	19-4-2019

بدرست سخی الرحمن HC ابتدائی اطلاع یحییٰ درج کو موجود ایک خیر کی سرپرستی میں متعلقہ اقبال کی بطور سٹیبل رپورٹ موصول ہو کر خود بخود ختم ہوئی۔ حضرت آفتاب خان تھانہ میں سخی الرحمن محمد ارباب 998، مینہاج 358 بمقام تحصیل گیٹ چوک بوقت بالا بسلا گشت موجود تھا۔ کہ اچانک بوقت بالا جانب تانکہ چوک فائرنگ اور لوہا انناس کی پھیل دیکھ کر دیکھا کہ ڈیلوٹی پر موجود TO محمد یوسف 882 کو ایک مسلح شخص جس کا پتہ نام نوید اللہ ولد فریب اللہ بنی محمد زئی معلوم ہوا کہ ساتھ تحفظ رکھتا ہوا فروری طور پر بسلا د کشلان موجود تھان شخص حاضر ہوا اور کر کے علیہ مسلح کیا گیا موقع پر خود TO محمد یوسف یوں رلیٹ کی کہ میں بسلا بس سواری سواری موٹر سائیکل ٹریفک کنٹرول پٹرولنگ ڈیلوٹی بمقام بالا موجود تھا گرفتار شخص نوید اللہ نے ایک دوسرے شخص جس کا پتہ نام سہیل نواز ولد محمد نواز بسلا محمد زئی معلوم ہوا پراپی بسٹول سے بارادہ قتل فائرنگ شروع کی جس کی فائرنگ سے سہیل نواز لگ کر ٹھانڈا بن گیا۔ مسلح شخص کو قابو کرنے کی کوشش کی تو نہ تو وہ نے مجھ پر بھی بارادہ قتل بھی ایک فائرنگ کیا نتیجے کے طور پر میں دائیں باؤل کی پینڈی پر لگ کر زخمی ہوا اس اثناء میں آپ پولیس آفیسر مد سہیل نواز نے موقع پر پہنچ کر نوید اللہ کو قابو کیا کے غیر مسلح کر دیا نوید اللہ کی فائرنگ سے ایک راہ گیر عورت بھی زخمی ہو چکی ہے جب کہ میرا سوکر کا موٹر سائیکل بھی فائرنگ سے بچا ہوا ہے۔ خود سہیل نواز زخمی کی تاب نہ لا کر موقع پر جان بحق ہوا ہے میں برخلاف نوید اللہ ولد فریب اللہ کے خلاف اپنی ادیر بارادہ قتل فائر کرنے اور زخمی کرنے مقصود سہیل نواز کے قتل اور راہ گیر عورت کے زخمی ہونے کا موٹر سائیکل کی نقصان سانی کا رپورٹ سولڈ سٹریٹ انگریز کا رپورٹ کنندہ کاروائی پولیس میں گفٹہ رپورٹ TO محمد یوسف خروج و قریب درج بالا ہو کر ڈھونڈ کر سنایا سمجھایا گیا بدرست تسلیم کر کے زیر رپورٹ خود دستخط ثبت کی جس کی میں تصدیق کرتا ہوں P-T-O



No 3138-39/PA

Office of the
District Police Officer,
Kohat

Dated 29/7/2020

CHARGE SHEET

1. **MR. JAVED IQBAL, DISTRICT POLICE OFFICER, KOHAT,**
as competent authority under Khyber Pakhtunkhwa Police Rules
(amendments 2014) 1975, am of the opinion that you **HC Muhammad Yousaf**
No. 882 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. *That you are injured complainant in case FIR No. 564 dated 22.04.2019 u/ss 302,324,353,427, 15 AA PS City, wherein, one Sohail Nawaz s/o Muhammad Nawaz r/o Muhammad Zai which was murdered and one lady pedestrian was hit by accused Naveed and sustained fire arms injury as well.*
- ii. *That as complained by father of deceased Naveed you being complainant, injured and eye of witness of the case got recorded contradictory statement before the trial court have connivance with accused in order to extend benefit to him and thus violated the prosecution case intentionally.*

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

29/7



10

C

OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT

ORDER

This order will dispose of departmental enquiry conducted against IHC Muhammad Yousaf No. 882, (hereinafter called **accused official**) under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendment 2014).

ii. Short facts of the case are that the accused was complainant of case FIR No. 564 dated 22.04.2019 u/ss 302,324,353,427 PPC, 15 AA, PS City, wherein, one Sohail Nawaz s/o Muhammad Nawaz r/o Muhammad Zai was killed, the accused official on duty and one lady pedestrian were also got injured by accused Naveed Ullah. Accused Naveed Ullah was arrested on the spot by Police.

iii. On completion of investigation case was challaned to court for trial and PWs were examined. The accused official was also examined as PW by the trial court. During trial, Muhammad Nawaz father of deceased filed a complaint against the accused official wherein he alleged that the complainant of FIR (**accused official**) in connivance with accused deliberately contradicted his statement in the court, vitiated the prosecution case and extended benefit to the charged accused.

iv. For the reasons, the accused official was served with Charge Sheet & Statement of Allegations and SP Operations Kohat was appointed as enquiry officer to scrutinize conducted of the accused official. The enquiry officer after fulfilling the coddle formalities held the accused official guilty of the charge as he recorded contradictory statement and extended benefit to the accused.

v. On perusal of enquiry file, Final Show Cause Notice was issued and served upon the accused official, to which he filed reply and found unsatisfactory. Therefore, the accused official was heard in person in orderly room held on 04.11.2020, wherein he was afforded ample opportunity of hearing and defense, but failed to submit any plausible explanation to his professional misconduct.

vi. Record gone through, which indicates that the accused official was complainant and primary eyewitness of the incident, who contradicted his statement in order to extend undue benefit to the charged accused. Record and personal hearing of the accused official indicates that the accused official had joined hands with the charged accused and effected compromise out of the court. From the above, I reached to the conclusion that the accused official has recorded contradicted statement before the trial court and vitiated the prosecution case. Hence, the charges / allegations framed against the accused official are established and he is held guilty of the charges. Therefore, in exercise of powers conferred upon me under the rules *ibid* I, Javed Iqbal, District Police Officer, Kohat, impose a major punishment of dismissal from service with immediate effect, on the accused official kit etc be collected and report.

Announced

04.11.2020

DISTRICT POLICE OFFICER,
KOHAT

OB No.

762

Dated

05-11-2020

No.

5547-50/PA dated Kohat the 06-11-2020.

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

1. Regional Police Officer, Kohat please
2. Reader/R.I/ LO/Pay officer/SRC/OHC for necessary action.

POLICE DEPTT:

KOHAT REGION

ORDER.


This order will dispose of a departmental appeal, moved by Ex-HC Muhammad Yousaf No. 882 of Operation Staff Kohat against the punishment order, passed by DPO Kohat vide OB No. 762, dated 05.11.2020 whereby he was awarded major punishment of **dismissal from service** on the following allegations:-

On 22.04.2019, an armed person opened firing, resultantly one person named Sohail Nawaz s/o Muhammad Nawaz r/o Muhammad Zai got hit and died. One pedestrian lady and the appellant present on duty at the spot were also got hit and sustained firearm injuries. The accused was arrested after hot pursued by Police and recovered weapon of offense. A case vide FIR No. 564, dated 22.04.2018 u/ss 302, 324, 353, 427 PPC, 15-AA PS City was registered on the report of appellant. The appellant was complainant and eyewitness of the case. During commencement of trial, father of the deceased Sohail Nawaz filed a complaint against the appellant and alleged that the appellant recorded contradictory statement during trial. Therefore, proper departmental proceedings were initiated against the appellant.

He preferred an appeal to the undersigned upon which comments were obtained from DPO Kohat and his service record was perused. He was also heard in person in Orderly Room, held on 30.12.2020. During hearing, he did not advance any plausible explanation in his defense.

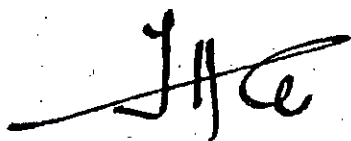
I have gone through the available record and came to the conclusion that the punishment order passed by DPO Kohat is justified. The appellant has given contradictory statement before the court of law and the allegations were also established by the E.O in his findings. Therefore, His appeal being devoid of merits is hereby rejected.

Order Announced
30.12.2020


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

No. 155 /EC, dated Kohat the 05-01-2021.

Copy to District Police Officer, Kohat for information and necessary action w/r to his office Memo: No. 17637/LB, dated 17.12.2020. His Service Roll & Fauji Missal is returned herewith.


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

31/12

12

E

BEFORE The KHYBER PUKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal



APPEAL NO. 2818 /2021

Diary No. 2255

Dated 02/02/2021

Muhammad Yousaf (Ex: IHC No. 882 Of District Police Kohat.

(Appellant)

VERSUS

1. Inspector General of Police Khyber Pukhtunkhwa Peshawar.
2. Regional Police Officer Kohat Region.
3. District Police Officer Kohat.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 6/11/2020 OF RESPONDENT NO 1 WHEREBY THE APPELLANT WAS DISMISSED FROM HIS SERVICE AND APPELLATE ORDER DATED 05/01/2021 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED FOR NO GOOD GROUND BY RESPONDENT NO 2 FOR NO GOOD GROUND AND NON DECIDING REVISION PETITION OF THE

Filed day
12/02/2021
Registrar

nyal

Re-submitted to day
and filed.

16/2/2021
Registrar

(13)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 2818/2021

Date of Institution ... 02.02.2021

Date of Decision ... 28.06.2022



Muhammad Yousaf Ex-IHC No. 882 of District Police Kohat.

... (Appellant)

VERSUS

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

MISS. NAILA JAN,
Advocate

For appellant.

MR. RIAZ AHMAD PAINDAKHEL,
Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Briefly stated the facts necessary for disposal of the instant service appeal are that the appellant was injured complainant in case FIR No. 564 dated 22.04.2019 under sections 302/324/353/427 PPC read with Section-15 AA Police Station City, wherein one Sohail Nawaz S/O Muhammad Nawaz Resident of Muhammad Zai Kohat was done to death, while the appellant alongwith a lady pedestrian sustained injuries with the firing of accused Naveed Ullah, who was arrested on the spot. When the testimony of the appellant was recorded during the trial, deceased's father namely Muhammad Nawaz submitted a complaint against the appellant, alleging therein that he had deliberately tendered contradictory evidence during the trial.

for the purpose of giving benefit to the accused namely Naveed Ullah. Departmental action was thus taken against the appellant and on conclusion of the inquiry, he was dismissed from service vide order bearing O.B No. 762 dated 05.11.2020 passed by District Police Officer Kohat. The departmental appeal of the appellant was also rejected vide order dated 30.12.2020, hence the instant service appeal.

2. Respondents contested the appeal by way of submitting para-wise comments, wherein they refuted the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the appellant was having an unblemished service record and had furnished a true ocular account of the occurrence during trial; that the appellant was himself injured in the occurrence, therefore, it is not possible that he would have extended any deliberate concessions to the accused in his testimony recorded during the trial; that during cross examination, the appellant had stated that accused was arrested in *Purana Larri Adda*, which fact has also been admitted by the respondents in para-4 of their reply by stating that the accused was arrested after a hot pursuit; that disciplinary action was taken against the appellant on the complaint filed by father of deceased Sohail Nawaz, however he was not examined during the inquiry proceedings; that the inquiry officer has not examined any witness in support of the allegations against the appellant but even then the appellant was found guilty of the allegations leveled against him; that the accused Naveed Ullah has been convicted by the court in the concerned criminal case, which also shows that the appellant had not deliberately extended any concession to the accused in his evidence recorded in the trial court; that the appellant was appointed in the Police Department in the year 2001 and in view of his long unblemished service record, the penalty awarded to him is too harsh.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant being

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an injured complainant/eye witness of the occurrence had intentionally tendered contradictory evidence during the trial so as to extend benefit to the accused; that the testimony recorded by the appellant in the trial court would show that he was hand in glove with the accused; that a regular inquiry was conducted in the matter and the appellant was afforded opportunity of self defense as well as personal hearing; that the allegations against the appellant stood proved in a regular inquiry; therefore, he has rightly been dismissed from service.

5. We have heard arguments of learned counsel for the parties and have perused the record.

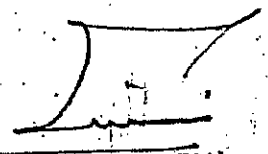
6. A perusal of the record would show that no incriminating material in support of the charge against the appellant was put to him in the shape of evidence during the inquiry. Disciplinary action was taken against the appellant upon the complaint of one Muhammad Nawaz, who is father of the deceased Sohail Nawaz, however the said Muhammad Nawaz was not at all examined by the inquiry officer. Instead of complainant Muhammad Nawaz, statement of his brother namely Muhammad Anwar was recorded during the inquiry proceedings, however the appellant was not provided any opportunity of cross examination of the said witness as well as rest of the witnesses examined during the inquiry proceedings, which has caused prejudice to the appellant. Moreover, the inquiry officer has not recorded any evidence, which could show that the appellant had effected compromise with the accused through an outside settlement but while passing the impugned order dated 05.11.2020, the District Police Officer Kohat has mentioned therein that the record as well as personal hearing of the appellant indicates that the appellant had effected compromise with the accused through an outside court settlement. One of the adverse finding against the appellant recorded by the inquiry officer is that it was mentioned in the FIR that the accused was arrested on the spot but the appellant had mentioned in his testimony recorded during the trial that the accused was


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arrested from *Purana Larri Adda*. While going through the comments so submitted by the respondents, it has been mentioned by the respondents in reply to para-4 of the facts that the accused was arrested after hot pursuit. The aforementioned reply of the respondents is supporting the testimony of the appellant to the effect that the accused was not arrested on the spot. Keeping in view the facts and circumstances of the case, conducting of de-novo inquiry in the matter is necessary for reaching a just and right conclusion.

7. In light of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service for the purpose of de-novo inquiry with the directions to the competent Authority to conduct de-novo inquiry strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to defend himself. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.06.2022


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


(ROZINA REHMAN)
MEMBER (JUDICIAL)


REGISTRAR
Peshawar

Date of Presentation of Application 23/8/22
Number of Words 2000
Filing Fee 22/-
Stamp 4/-
Total 26/-
Date of Copy sent 23/8/22
Date of Completion of Copy 23/8/22
Date of Delivery to Copy 23/8/22



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

ORDER

In pursuance of Judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar, dated 28.06.2022 in Service Appeal No. 2818/202. Ex - IHC Muhammad Yousaf No. 882 is hereby re-instated in service only for the purpose of denovo enquiry.

OB No. 495

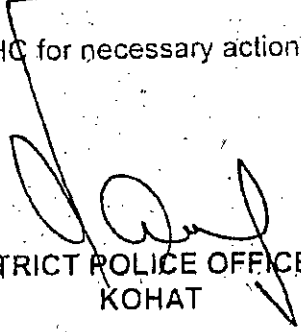
Dated 13-10-2022

DISTRICT POLICE OFFICER,
KOHAT

No 10204 /PA dated 13-10-2022

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

1. Assistant Inspector General of Police, Enquiries, Internal Accountability Branch Khyber Pakhtunkhwa, Peshawar w/r to his office letter No. 1362-64/CPO/IAB dated 06.10.2022
2. SP Courts & Litigation CPO Peshawar letter No. 4330/Legal dated 06.09.2022.
3. SP Investigation Kohat (enquiry officer) for necessary action and file report within stipulated period.
4. L.O Police Lines/Pay Officer/Reader/ SRC/OHC for necessary action.


DISTRICT POLICE OFFICER,
KOHAT



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Office of the
District Police Officer,
Kohat

No 10204-05/PA

Dated 13-10-2022

CHARGE SHEET

I, **MR. SHAFI ULLAH KHAN, DISTRICT POLICE OFFICER, KOHAT**, as competent authority under Khyber Pakhtunkhwa Police Rules (amendments 2014) 1975, am of the opinion that you **Ex ✓ IHC Muhammad Yousaf No. 882 (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. *That you are injured complainant in case FIR No. 564 dated 22.04.2019 u/ss 302,324,353,427, 15 AA PS City, wherein, one Sohail Nawaz s/o Muhammad Nawaz r/o Muhammad Zai which was murdered and one lady pedestrian was hit by accused Naveed and sustained fire arms injury as well.*
- ii. *That as complained by father of deceased Naveed you being complainant, injured and eye of witness of the case got recorded contradictory statement before the trial court have connivance with accused in order to extend benefit to him and thus violated the prosecution case intentionally.*

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 07days 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



No 10204-05/PA

Office of the
District Police Officer,
Kohat

Dated 13-10-2022

DISCIPLINARY ACTION

1. MR. SHAFI ULLAH KHAN, DISTRICT POLICE OFFICER, KOHAT, as competent authority, am of the opinion that you Ex - IHC Muhammad Yousaf No. 882 (re-instated for the purpose of denovo enquiry) have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

- i. *That you are injured complainant in case FIR No. 564 dated 22.04.2019 u/ss 302,324,353,427, 15 AA PS City, wherein, one Sohail Nawaz s/o Muhammad Nawaz r/o Muhammad Zai which was murdered and one lady pedestrian was hit by accused Naveed and sustained fire arms injury as well.*
- ii. *That as complained by father of deceased Naveed you being complainant, injured and eye of witness of the case got recorded contradictory statement before the trial court have connivance with accused in order to extend benefit to him and thus violated the prosecution case intentionally.*

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations SP Investigation 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 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. 10204-05/PA, dated 13-10-2022.

- Copy of above to:-
1. SP Investigation Kohat:- The Enquiry Officer for 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.

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REPLY OF CHARGE SHEET

Respected Sir,

Kindly with reference to the charge sheet No. 10204-05/PA dated 13-10-2022 received by me on 19-10-2022, it has been alleged that:

- i. That you are injured complainant in case FIR No. 564 dated 22-04-2018 U/S 302-324-353-427-15AA P.S City, wherein one Sohail Nawaz S/o Muhammad Nawaz R/o Muhammad Zai was murdered and one lady pedestrian was hit by accused Naveed and sustained fire arm injury as well.
- ii. That as complained by father of deceased Naveed you being complainant injured and eye witness of the case got recorded contradictory statement before the trial court have connivance with accused in order to extend benefit to him and thus violated by the prosecution case intentionally.

Sir, in reply to the charge sheet, it is respectfully submitted that on the day of occurrence, the respondent was on official duty as Traffic Warden outside Tehsil Gate Kohat, in the meantime the respondent heard report of fire shots in the limits of Tanga Stand located near Tehsil Gate. He rushed to the spot and consequent upon firing of the accused he was also hit. He sustained injury while his motor cycle was also punctured, when the respondent reached the spot, people assembled there informed him that the accused was running to wards the Old Larry

Adda. The respondent chased him and ultimately overpowered him in the Old Lorry Adda. After a short while ASI Iqbal with police party arrived and the respondent handed over the accused who disclosed his name as Naveed Ullah S/o Qareebullah R/o Muhammad Zai Kohat. ASI Iqbal drafted Murasila and sent it to P.S City for registration of case where case was accordingly registered.

That as far as complaint of the father of the deceased is concerned, his statement is unbelievable and has got no footings because if judgment of the learned trial court ADJ-II Kohat is perused it will reveal that statement of the respondent was believed by the learned court and consequently vide judgment dated 11-10-2021, the accused was sentenced to life imprisonment.

Sir, if statement of respondent was not in accordance with record or the respondent would have concealed facts, then the court should have passed some adverse remarks and recommended the respondent for departmental action or the public prosecutor should have approached the departmental authority the taking action against the respondent but neither the trial court nor the prosecution suggested any thing adverse against the respondent. Hence complaint made by the father of the deceased is of no Vail and it has got no value in the eyes of law. Over and above his complaint becomes infructuous in light of awarding life imprisonment by the trial court to the accused. (copy of the judgment is enclosed)

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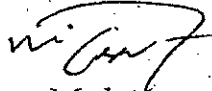
In addition to the above, the learned Service Tribunal vide its judgment dated 28-06-2022 has mentioned in its comments that the accused was not arrested on the spot instead he was arrested after a hot pursuit. thus, stance taken by the respondent as such, no justification is left to serve charge sheet upon the respondent. Moreover, the respondent for displaying bravery in the case was awarded 50,000/- rupees by the worthy DIG Kohat Division.

In view of the above, it is requested that the charge sheet may kindly be withdrawn and the enquiry may please be filed without further proceedings.

Thanking you in anticipation.

Dated 24-10-2022

Yours Obediently



Muhammad Yousaf
IHC No. 882

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**INQUIRY FINDINGS REPORT IN DE NOVO ENQUIRY AGAINST
IHC MUHAMMAD YOUSAF NO. 882**

Charge sheet based on statement of allegation with other documents received from DPO Kohat vide No. 10204-051/PA dated 13.10.2022, wherein the following allegations were leveled against IHC Muhammad Yousaf. Contents of allegations are as under:-

- I. *"That you were injured complainant in case FIR No. 564, dated 22.04.2019 u/s. 302/324/353/427/15AA PS City wherein, one Sohail Nawaz S/O Muhammad Nawaz R/O Muhammad Zai which was murdered and one lady pedestrian was hit by accused Naveed and sustained fire arms injury as well.*
- II. *That as complained by father of deceased Sohail Nawaz you being complainant, injured and eye witness of the case got recorded contradictory statement before the trial court have connivance with accused in order to extend benefit to him and thus violated the prosecution case intentionally"*

The undersigned was appointed as enquiry officer therefore above quoted charge-sheet based on statement of allegation was served upon the defaulter IHC with the direction to submit his written statement before the undersigned on or before the target date.

Reply of the defaulter official was received, placed on file and found un-satisfactory. The complainant of above mentioned case was summoned from District Jail Kohat confined in narcotics case by addressing a letter No. 5377/GC, dated 01.11.2022 to produce the complainant before the undersigned for recording his statement. Moreover ASI Muhammad Iqbal presently posted as SHO PS Jungle Khel and constable Muhammad Minhaj who were on routine patrolling at the time of occurrence were also summoned.

The complainant Muhammad Nawaz submitted an application against IHC Muhammad Yousaf on which he was departmentally proceeded and finally IHC Muhammad Yousaf was dismissed from service by competent authority. Appellant challenged the impugned punishment before KP Service Tribunal Peshawar and was set-aside with the directions to department for Denovo Enquiry within 90 days

The following witnesses were examined in presence of accused official and their statements duly signed were placed on file.

1. **Statement of Haq Nawaz cousin of the complainant**

He stated that he submitted an application to Worthy Regional Police Officer Kohat which was written by Muhammad Nawaz. He saw original application which was signed by him and stated that he was marginal witness of the incident. Accused Naveed Ullah killed his nephew at Tanga Chowk Kohat. In this incident one woman and TO Muhammad Yousaf (accused official) were also injured. He further stated that during trail he saw the statement of Police Official namely Muhammad Yousaf which was found contradictory to Murasila i.e that he has not seen the accused while accused firing on his cousin. This was a big blunder of IHC Muhammad Yousaf being responsible official of the force. Besides this contradictory statement, the Honorable trial court convicted the accused Naveed Ullah for life imprisonment.

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STATEMENT OF MUHAMMAD NAWAZ S/O HAQ NAWAZ

He was serving in Frontier constabulary but later on arrested/ confined in District Jail Kohat in narcotics case. He submitted his application through Muhammad Anwar (brother) to Worthy Regional Police Officer Kohat. In his application, he stated that his son was killed by accused Naveed Ullah in Tanga Chowk and due to the firing of accused one women and Police official Namely Muhammad Yousaf were also hit and injured. Police Official Muhammad Yousaf was the eye witness of the case but during trail he give contradicted his statement. Besides this contradictory statement of accused official, the Honorable Additional Session Judge convicted the accused for life imprisonment.

3. **STATEMENT OF ASI MUHAMMAD IQBAL**

He stated that during the day of occurrence he was posted a ASI PS City and he alongwith other Police official were on routine patrolling. In the meanwhile, he heard firing towards from Tanga Chowk therefore, he rushed to the spot where IHC Muhammad Yousaf was found in injured condition and overpowered/ arrested the accused namely Naveed Ullah. On the report of IHC Muhammad Yousaf a written Murasila was drafted and registered a FIR against the accused Naveed Ullah in PS City. During trail he recorded the same statement before the court.

4. **STATEMENT OF CONSTABLE MIRTAJ UD DIN**

He stated that he alongwith ASI Muhammad Iqbal was on routine patrolling in the meanwhile he heard the firing towards Tanga Chowk therefore, he rushed to the spot where IHC Muhammad Yousaf in injured condition with the accused Namely Naveed Ullah were found and on the report of Muhammad Yousaf, ASI Muhammad Iqbal registered proper FIR against the accused and he recorded the same statement before the honorable trail court.

5. **STATEMENT OF ACCUSED OFFICIAL IHC MUHAMMAD YOUSAF**

Accused official Muhammad Yousaf denied the allegation and stated that due to solid evidence of Police official including his statement, the honorable court had announced the judgment case FIR No. 564, dated 22.04.2019 u/s 302/324/353/427/15AA PS City wherein the accused Naveed Ullah was convicted/sentenced for life imprisonment. The complainant has leveled wrong allegation against him in his application moved to RPO Kohat.

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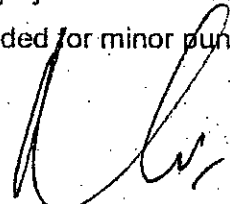
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FINDING

The undersigned enquire into the matter, as per available record, examination of complainant/witnesses IHC Muhammad Yousaf produced a copy of Judgment of court passed by Honorable Additional Session Judge-II Kohat. The complainant ~~logged~~ the complaint against the IHC Muhammad Yousaf before the announcement of Judgment by ~~trial~~ court. Moreover the complainant presently confined in District Jail Kohat in a Narcotics case in which a huge quantity of Narcotics was recovered from his direct possession. During cross examination the complainant and his brother admitted that the accused namely Naveed Ullah, charged for the murder of his son was convicted by the court, for life imprisonment. The judgment was announced on 11.10.2021 by Honorable Additional Session Judge-II Kohat in case FIR No 564, dated 22.04.2019 u/s 302/324/353/427/15AA PS City. Prior to the conviction the complainant had lodged a complaint against IHC Muhammad Yousaf who was also injured in the said murder case and arrested the accused Naveed Ullah on the spot. The conviction awarded by Honorable Court to accused are the hectic efforts of Police, fair investigation and evidence of Police Officials during trail of accused before the court.

RECOMMENDATION

Keeping in view of above facts and statements of witnesses and conviction of accused Naveed Ullah in the murder case, it appears that minor fault on the part of accused official exist. He has given contradictory reply to the question of defense counsel by saying that it is correct that he has not seen the accused firing at deceased, but on the other side the trial court has ignored this minor contradiction and awarded sentenced of life imprisonment to accused Naveed Ullah. Accused official has sustained fire arm injury in the said occurrence while arresting the accused, therefore he is recommended for minor punishment.



(Mir Faraz Khan)
Enquiry officer
Superintendent of Police
Investigation Kohat
15-11-2022



(26) J (19)

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

Tel: 0922-920116 Fax 920125

No 10751 /PA dated Kohat the 22/11 /2022

FINAL SHOW CAUSE NOTICE

1. I, **Mr. Shafi Ullah Khan, District Police Officer, Kohat** as competent authority, under the Khyber Pakhtunkhwa Police Rules 1975, (amended 2014) is hereby serve you, **IHC Muhammad Yousaf No. 882** as follow:-

- i. That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide office No. 10204-05/PA dated 13.10.2022.
- ii. On going, through the finding and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the inquiry officer.

I am satisfied that you have committed the following acts/omissions, specified in section 3 of the said ordinance.

- i. ***That you are injured complainant in case FIR No. 564 dated 22.04.2019 u/ss 302,324,353,427, 15 AA PS City, wherein, one Sohail Nawaz s/o Muhammad Nawaz r/o Muhammad Zai which was murdered and one lady pedestrian was hit by accused Naveed and sustained fire arms injury as well.***
- ii. ***That as complained by father of deceased Naveed you being complainant, injured and eye of witness of the case got recorded contradictory statement before the trial court have connivance with accused in order to extend benefit to him and thus violated the prosecution case intentionally.***

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you major penalty provided under the Rules *ibid*.

3. 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.

4. If no reply to this notice is received within 07 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ~~ex-parte~~ action shall be taken against you.

5. The copy of the finding of inquiry officer is enclosed.


**DISTRICT POLICE OFFICER,
KOHAT**

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بھور صاحب DPO صاحب کوٹھ

(18)

عنوان :-

حوالہ شوکارڈ انس فیری PA/10751/10751/PA 11/22

ذریعہ عالی

محرومن قدرت ہوں میں نے جو جواب درویشان انکو اثری
 انکو اثری افسر صاحب کو دیا ہے وہی میرا بیان ہے
 سائل ایک غریب شخص ہے سائل کا چوٹے چوٹے کے
 میں لہذا اب صاحب سے استدعا کی جاتی ہے کہ
 میرا انکو اثری کو سائل کے سائل کو نوکری بحال
 کرنے کا حکم صادر فرمایا جاوے
 سائل ساری عمر دعاؤں سے رہے گا

عین نوکریں جرتی کریم 11/23

العارضین

امکا تابع فرمان ہیں ڈاکٹر اسٹیل محمد اوسف علیہ 999

23-11-22



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OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT

Tel: 0922-9260116 Fax 9260125

ORDER

This order will dispose of de-novo departmental proceedings initiated against IHC Muhammad Yousaf No. 882 / 999 under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendment 2014).

The essential facts arising of the case are that he was injured complainant in case FIR No. 564 dated 22.04.2019 u/ss 302,324,353,427, 15 AA PS City, wherein, one Sohail Nawaz s/o Muhammad Nawaz r/o Muhammad Zai which was murdered and one lady pedestrian was hit by accused Naveed and sustained fire arms injury as well.

That as complained by father of deceased Naveed he being complainant, injured and eye of witness of the case got recorded contradictory statement before the trial court have connivance with accused in order to extend benefit to him and thus violated the prosecution case intentionally.

In compliance with the judgment of Service Tribunal dated 28.06.2022, denovo departmental proceedings initiated after approval of the competent authority. SP Investigation Kohat was appointed as enquiry officer to conduct the denovo enquiry. Charge Sheet alongwith statement of allegations were issued to the accused officer. The accused officer was associated with the proceedings and afforded ample opportunity of defense by E.O. Hence the enquiry officer recommended him for minor punishment.

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 I, Abdul Rauf Babar, District Police Officer, Kohat, is hereby awarded a minor punishment of forfeiture of two years approved service on accused IHC Muhammad Yousaf No. 882 / 999. He is re-instated in service, with immediate effect and the intervening period is treated as un-authorized leave without pay on the principle of "No work, no pay".

Announced

03.01.2023

DISTRICT POLICE OFFICER,
KOHAT

No. 39-42 /PA dated Kohat the 05-1-2023

1. Copy of above is submitted for favor of information to the:-
Regional Police Officer Police Kohat.
2. AIG, Enquiries Internal Accountability, Khyber Pakhtunkhwa, Peshawar w/r to his office Memo: No. 1707-09 / CPO / IAB, dated 13.12.2022
3. Reader, Pay Officer, SRC and OHC for necessary action.

OB No. 9
Dated 4.01.2023

DISTRICT POLICE OFFICER,
KOHAT

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Through proper Channel

THE HONORABLE DEPUTY INSPECTOR GENERAL OF POLICE
KOHAT REGION KOHAT

APPEAL UNDER RULE 11 OF THE POLICE RULES 1975
(AMENDED 2014) AGAINST THE ORDER OF THE WORTHY
DISTRICT POLICE OFFICER KOHAT DATED 03-01-2023
VIDE WHICH THE APPELLANT WAS AWARDED
PUNISHMENT OF FORFEITURE OF TWO YEARS APPROVED
SERVICE AND THE INTERVENING PERIOD WAS DIRECTED
TO BE TREATED AS UNAUTHORIZED LEAVE WITHOUT PAY
ON THE PRINCIPLE OF NO WORK NO PAY.

Respected Sir,

The appellant may graciously be allowed to submit the following for your kind and sympathetic consideration;

Facts of the Case:

1. That in year 2019, the appellant while posted as T.O. Traffic Police Kohat was charge sheeted to the effect that the appellant was injured in case FIR No.564 dt:22-4-2019 U/S 302/324/353/427 PPC/15-AA P.S City wherein one Sohail Nawaz S/o Muhammad Nawaz R/o Muhammad Zai was murdered and one lady pedestrian was hit by accused Naveed and sustained Fire Arm injury as well. The charge sheet further elaborated that as complained by father of deceased Sohail Nawaz the appellant being complainant injured and eye witness of the case got recorded contradictory statement before the trial

court, having connivance with accused in order to extend benefit to him and thus violated the prosecution case intentionally.

2. That departmental enquiry against the appellant was initiated which resulted in dismissal of the appellant vide OB No.762 dated 05-11-2020 passed by the District Police Officer Kohat.
3. That the appellant moved departmental appeal before the worthy DIG Kohat Region Kohat but the same was rejected vide order dt:30-12-2020.
4. That ultimately, the appellant moved appeal before the Khyber Pakhtun Khwa Service Tribunal Peshawar.
5. That the service Tribunal vide judgment dt:28-6-2022 had allowed the appeal and set aside the impugned orders. It was further directed that de novo inquiry against the appellant be conducted and for the purpose de novo inquiry he shall be reinstated in service. The deptt: accordingly conducted de novo inquiry and reinstated the appellant for the purpose of de novo enquiry. (Copy of the judgment is enclosed)
6. That upon conclusion of the de-novo inquiry, the competent authority awarded the appellant punishment of forfeiture of two years approved service, though the appellant was reinstated in service with immediate effect however, the intervening period was directed to be treated as unauthorized leave without pay on the principle of "No work, no pay". (Copy of the order is enclosed)
7. That the impugned order of punishment has aggrieved the appellant, hence he has been left no other option except the file the instant appeal before your goodself.
8. That the following are some of the grounds of appeal amongst other which may kindly be considered sympathetically.

Grounds of Appeal:

- A. That the impugned order is not in accordance with law and rules, hence it is liable to be set aside.
- B. That the inquiry officer though examined witnesses but the appellant was not provided opportunity to cross examine them. Hence their statements have got no legal value and no punishment can be based on such incomplete statements of the witnesses.
- C. That as submitted earlier, the appellant has given no concession to the accused charged U/S 302 PPC during his court statement.
- D. That upon conclusion of trial the learned trial court vide judgment dt: has awarded life imprisonment to the accused.
- E. That if the appellant would have given any concession, such punishment to the accused was not possible. The punishment itself manifestly proves that the trial court was satisfied from the statement of the appellant and resultantly had awarded him life imprisonment.
- F. That the punishment order itself belies the allegation of benefiting the accused by the appellant in his court statement.
- G. That there is no contradiction in the court statement of the appellant.
- H. That the learned trial court has not taken judicial notice of the alleged contradiction in the court statement of the appellant, nor the learned trial court has recommended any punitive action against the appellant.

- I. That in absence of any direction by the trial court, suo moto initiation action against the appellant was unwarranted and of no legal consequence.
- J. That it is incorrect to suggest that statement of the appellant contained any contradictions or discrepancies.
- K. That the enquiry officer also admitted in his findings that conviction awarded by Honorable Court to accused is the hectic efforts of police, fair investigation and evidence of police officials during trial of accused before the court.
- L. That last two paragraphs of the findings of the enquiry officers are contradictory with each other.

In the second last paragraph, the inquiry officer has praised the police officers including the appellant including the appellant for getting conviction of the accused while in the last paragraph it has been stated that minor contradiction existed in the court statement of the appellant. Hence no punishment whatsoever can be awarded on such a contradictory inquiry.

- M. That the learned trial Court i.e. Addl: Session Judge-II Kohat is the best judge to recommend the appellant for departmental action. In absence of his direction the allegation leveled against the appellant is speculative, whimsical and of no legal consequence. Hence no punishment can be awarded to the appellant.
- N. That the basis of allegation against the appellant is complaint of the father of the deceased. However, it may be appreciated that father of the deceased being an ordinary person was not aware of the legal technicalities, therefore, his statement has got no legal implication. Secondly, the complainant moved his complaint before judgment of the

learned trial court. It was advisable that the police deptt: should have waited for the conclusion of the trial but no such exercise was under taken and the enquiry against the appellant was initiated in hurried manner i.e. before the announcement of punishment by the learned trial court and thirdly, punishment announced by the trial court to the accused belied statement of the complainant regarding making the alleged concessions made to the accused in his court statements.

All the above factors have made the enquiry highly doubtful and legally defective and no punishment can be awarded on such a flimsy and whimsical enquiry.

- O. That the punishment is based on sheer misunderstanding which has got no legal force in the eyes of law.
- P. That Article 10-A of the constitutional has declared it a fundamental right of an accused or defaulter official that case/ enquiry against him will be conducted in fair, transparent and independent manner. By not conducting enquiry against the appellant in fair and transparent manner fundamental right of the appellant has been badly violated / infringed and as such no punishment can be legally awarded to the appellant.
- Q. That the impugned order is also violation of Rule 29 of the Fundamental Rules. In view of the foretasted rule, competent authority was required to have mentioned that for how much period two years approved service of the appellant was forfeited but the impugned order does not contain any such period, hence the impugned order is not sustainable in the eyes of law and as such the said order deserves to be set aside at this score alone.

R. That the order of declaring the intervening period as leave without pay is also not based on the sound reason.

It is well established that usually such orders are issued in the case of absence from duty of defaulter official. Undoubtedly, in the case of the appellant, he while on duty was suspended and subsequently dismissed from service. Thus the appellant was forced to leave the office. Absence during the intervening period was not voluntary, hence, in this case principle of "No Work no pay" is not applicable. The appellant was forced to quite office and was reinstated in service upon legal and valid order. The appellant if would have remained absent from duty then the authority was justified to apply the said rule i.e. "No work no pay" however, its application on the case of the appellant is not warranted and for refusing to pay his legal salary no shelter can be taken of any rule including the rule state above. The absence and reinstatement of the appellant were on the orders of the competent authority in which the appellant has got not direct or indirect role, thus receipt of salary of the appellant for the intervening period which stretches for more or less two and half years is legally justified and direction may be issued for payment of the due salary for the intervening period to the appellant.

S. That if payment of salary pertaining to the intervening period is refused. It will create a big gap in service of the appellant for no fault on his part and as such will adversely affect his pensionary benefits.

T. That appellant is a poor person and he cannot bear the burden of economic loss on the principle of no work no pay which is not applicable in the case of the appellant. The

appellant has done nothing illegal. The appellant was made victimized of a complaint moved by father of the deceased who has no legal back ground. The complaint was moved during trial of the criminal case. On basis of the said complaint pre-mature departmental proceedings were initiated and before announcement of decision of the criminal case, punishment of dismissal of the appellant was awarded which was subsequently set aside by the Honorable Service Tribunal.

The above un-rebuttable fact manifestly shows that the appellant was roped in a frivolous, baseless and unfounded enquiry which ended in his dismissal from service however, the same was set aside by the KPK Service Tribunal. Since the prosecution was unable to prove allegation against the appellant, hence his pay for the period during which he was grilled in the departmental proceedings cannot be withheld or forfeited and the appellant deserves to receive his full salary coupled with other benefits for the period when he was under the process of departmental action.

- U. That hands of the complainant who deposed against the appellant were not clean. The complainant did not move the complainant with clean hands because reportedly he himself is a criminal and at present he is confined in a narcotics case in the District Jail Kohat.
- V. That in the great interest of law, justice and fair play, the impugned order deserves to be revisited and reviewed and the same be set aside.
- W. That the appellant was not afforded opportunity to cross examine the witnesses during the enquiry proceedings.

X. That if deemed proper the appellant may kindly be heard in person.

Prayers:

In view of the legal and factual facts, it has been established that during enquiry and as well as by awarding punishment to the appellant, legal requirements were not fulfilled. Hence, it is prayed that by accepting the instant appeal, impugned order dt:03-01-2023 may kindly be set aside. Forfeiture of two years approved service of the appellant may kindly be quashed and salary and others benefits from the date of dismissal till the date of reinstatement in service may be directed to be paid to the appellant. The appellant will pray for your long life and prosperity for this act of kindness.

Dated: 17-01-2023.

Yours Obediently,



Muhammad Yusuf

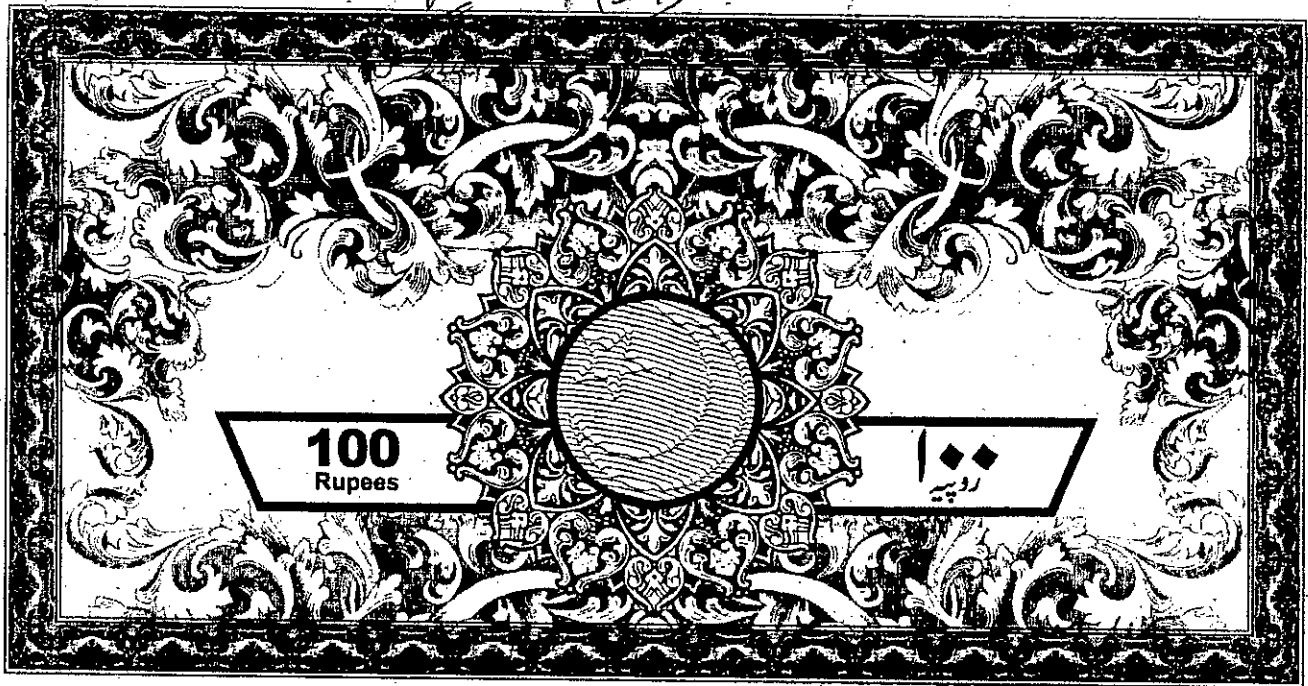
IHC No.882/1999

P.P. Shadi Khel

P.S. Gumbat

District Police Kohat.

Cell No. 0333-9625595.




بیانِ حلفی

منکم صہبی محمد جعفر و سہیل ولد محمد فرید صاحب مکہ ماغزی محل و ڈاکخان

ضلع کوھاٹ حلفاً بیان ہوں
 من فقر نے وضع 06-11-2020 سے لیکر 31-12-2022 تک کسی
 بھی سرکاری یا غیر سرکاری ادارے میں کوئی ملازمت نہیں کی اور
 نہ اس دوران کو روزگار کیا ہے

(Signature)

محمد جعفر و سہیل ولد محمد فرید صاحب مکہ ماغزی محل و ڈاکخان
 ضلع کوھاٹ
 NIC = 14301 2055720-3
 Mob = 0333 9625595

ATTESTED

 12-05-2023

KP Service Tribunal
Peshawar

محمد یوسف — 2 متجانب
محمد یوسف بنام پولیس

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام یتساور کیلئے تیسرے عدلیہ خان اور سائلہ اللہ لودھی

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 قی تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی 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 محتاج 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 مذکور با اختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے

سب سے وہوگا۔ 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 سندر ہے۔

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ماہ

المرقوم

العبد گ واه العبد

مستور