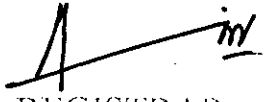


FORM OF ORDER SHEET

Court of _____

Appeal No. 1135/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/05/2023	<p>The appeal of Mr. Fazal Amin resubmitted today by Naila Jan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____</p> <p>By the order of Chairman  for REGISTRAR</p>

The appeal of Mr. Fazal Amin Ex-Constable no.4551 of District Peshawar KP received today i.e. on 27.04.2023 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal against the impugned order dated 05.8.2010 is not attached with the appeal which may be placed on it.
- 2- Annexure-C of the appeal is illegible which may be replaced by legible/better one.
- 3- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal.

No. 1339 /S.T,

DL 5/5 /2023.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Naila Jan Adv.
High Court Peshawar.

Remand all the objections and resubmitted
objections no 1: departmental appeal is attached as infra "B"
objection no 3: copies of charge sheet etc is not provided by the respondents to the appellant any reply may be received from the department/Respondents.

Naila Jan
17/05/2023

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

S.A. 1135 /2023

Fazal Amin (Ex-Constable No 4551) of District Peshawar Khyber
Pakhtunkhwa
..... (Appellant)

Vs

Govt. of Khyber Pakhtunkhwa through Capital City Police Officer,
Peshawar and one another
..... (Respondents)

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5.	Copy of the FIR	"A"	10
6.	Copy of the Impugned Order dated 10-08-2010	"B"	11
7.	Copy of the Court order 01-06-2021	"C"	12 to 14
8.	Copy of the departmental appeal and appellate/final order dated 27-03-2023	"D" & "E"	15 to 18
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Fazal Amin
Appellant

Through

Naila Jan
Naila Jan
Advocate High Court
Peshawar.

Dated: 10/4/2023.

D

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL NO. 1135/2023

Fazal Amin (Ex-Constable No 4551) of District Peshawar Khyber
Pakhtunkhwa
..... (Appellant)

Vs

1. Capital City Police Officer Peshawar Khyber Pakhtunkhwa.
2. Superintendent of Police City Peshawar.
..... (Respondents)

Service Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the impugned appellate/final order dated 27/03/2023 of respondent No 01 whereby representation of the appellant against the dismissal order of the appellant with retrospective effect dated 10/08/2010, has been rejected on no good Grounds in utter violation of law, Rules and Principles of Natural justice.

PRAYERS:

On Acceptance of the instant appeal both the impugned orders dated 10/08/2010 and Final/Appellate order dated 27/03/2023, may kindly be declared illegal, void ab initio against the law rules and principles of Natural Justice, Set aside the same impugned orders and the appellant may kindly be reinstated into service with all back benefits.

Respectfully Sheweth;

1. That the appellant was enlisted in the year 2007 as constable in the police department at district Peshawar and since his appointment the appellant performed his duties with full devotion, enthusiasm and to the entire satisfaction of hi high ups.
2. That the appellant while serving was involved falsely implicated in a concocted case, FIR No 188 dated 24/03/2009 Under Section

2

302/324/34 PPC PS Badaber. (Copy of the FIR is annexed as A)

3. That the appellant duly informed the respondents from the above facts however the respondents instead of suspending appellant, proceeded under Khyber Pakhtunkhwa Police Rules 1975 by issuing a charge sheet along with statement of allegations however the same was never communicated to the appellant till date and thereafter a slipshod inquiry was conducted without associating the appellant or recording pro-contra evidence and the inquiry officer recommended that the inquiry proceedings may be kept pending till decision of the court decision. It is worth to mention that at the time RSO 2000 was in field however the appellant was preceded under Police Rules 1975. (Copy of the charge sheet & along with statement of allegations and inquiry report has not been provided by the respondents to the appellant may graciously be requisitioned from the respondents)
4. That as per the impugned order dated 10/08/2010; the inquiry officer issued final show cause notice, instead of the competent authority (respondent No 02) however the same was not served on the appellant. (Copy of the Show cause Notice has not been provided by the respondents to the appellant may graciously be requisitioned from the respondents)
5. That the respondent No 01, without any opportunity of personal hearing, defense and without waiting for the outcome of the Court decision, dismissed the appellant with **retrospective effect** vide order dated 10/08/2010 w.e.f 09/03/2009 however the same was never communicated to the appellant and the appellant received the same on his personal efforts on 11/08/2021. (Copy of the **Impugned order dated 10/08/2010 is Annexure-B**)
6. That the Honorable Court of Additional District & Session Judge-IX Peshawar Vide order dated 01/06/2021, by acknowledging innocence of the appellant, released the appellant on bail. (Copy of the **Court order is annexed as Annexure-C**)
7. That feeling aggrieved from the impugned order dated 10/08/2010 the appellant filled a Departmental Appeal/Representation before Respondent No 02 however the same was rejected vide Final/Appellate Order dated 27/03/2023, in violation of law, rules and principles of natural Justice. (Copy of the departmental

appeal and appellate/final order dated 27/03/2023 are annexed as annexure D&E)

8. That the appellant feeling aggrieved from the impugned orders dated 10/08/2010 & appellate/final order dated 27/03/2023, having no other adequate remedy hence filing the instant appeal on the following grounds

GROUND:

- A. That the impugned orders dated 10/08/2010 & appellate/final order dated 27/03/2023 are against the law, rules and Principles of natural justice void ab-initio hence liable to be set aside.
- B. That the appellant has not been associated with the disciplinary proceedings at any stage and proceeded ex-parte.
- C. That no opportunity of personal hearing or defense has been provided to the appellant before issuing the impugned orders dated 10/08/2010 & Appellate/final Order dated 27/03/2023 hence the appellant has been condemned unheard.
- D. That no charge sheet along with statement of allegation or show cause notice had been served on the appellant which are mandatory under Police Rules 1975.
- E. That it is evident from the final order dated 27/03/2023, that proceedings were conducted under Police Rules 1975 however at the time of initiation of the proceedings Removal from Services(Special Power) Ordinance 2000 (RSO-2000) was in, filed and as per Section 11 of the Ibid Ordinance 2000, the provisions of the ordinance has overriding effects on other laws and rules even then the appellant has been treated under a wrong law which vitiated the whole proceedings including the impugned orders dated 10/08/2010 & appellate/final order dated 27/03/2023.
- F. That in a similar nature cases reported as 2006 PLC cs Punjab 396 & 2005 PLC cs Punjab 804, the Punjab Service Tribunal have declared proceedings against civil servant under wrongs/repealed laws as Void & illegal and directed for de-nova inquiry under the prevailing laws/rules hence the appellant is also entitled for the same treatment.
- G. That the honorable Tribunal in another judgment 2005 PLC cs Punjab 747 has declared that under provisions of RSO 2000, all other rules relating to efficiency and discipline matters having

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stood abrogated, imposition of penalty of removal from service, fell in the realm of illegality on that score alone.

- H. That the inquiry officer neither recorded statement of any witness nor did the appellant was provided any opportunity to cross examined.
- I. That though as per law disciplinary proceedings and criminal proceedings are different from each other and may run side by side simultaneously however in case of major penalty the inquiry officer is to conduct inquiry and prove all the allegations however in the instant case no such inquiry has been conducted nor did the allegation has been proved against the appellant therefore the respondent no 02 was required to wait for the outcome of the court however in utter disregards to the law of the land the impugned orders have been issued and major penalty of dismissal has been awarded to the appellant.
- J. That neither regular inquiry under the relevant law was conducted against the appellant in order to prove the charges, nor did the competent authority waited for the outcome of the criminal case.
- K. That under the law, Final Show cause notice is to be issued by the competent authority however as per the impugn order dated 10/08/2010, the inquiry officer issued final show Cause Notice, instead of the competent authority (Respondent No 02) which is sufficient to establish that the whole proceedings had been carried out in utter violation of law and rules.
- L. That opportunity of Fair Trail, as guaranteed by Art 10 A of the constitution has not been provided to the appellant.
- M. That the appellant has not been treated in accordance with Art 4&25 of the constitution of Islamic republic of Pakistan 1973.
- N. That the appellant has been awarded the punishment with retrospective effect which is void order as per judgment 2002 SCMR 1124.
- O. That the appellant life was at risk as the appellant was falsely implicated in the case and there was eminent danger to life of the appellant therefore the absence of the appellant was not willful but due to the aforementioned reason which does not amount to misconduct.
- P. That since the impugned orders the appellant is jobless and facing hardship.

5

Q. That the appellant sought permission of this honorable tribunal to adduce other ground during final hearing of the instant appeal.

It is therefore requested that the appeal may kindly be accepted as prayed for.

Foghan
Appellant

Through

Naila

NAILA KHAN
Advocate High Court
Peshawar.

6

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

S.A _____ /2023

Fazal Amin (Ex-Constable No 4551) of District Peshawar Khyber
Pakhtunkhwa
..... (Appellant)

Vs

Govt. of Khyber Pakhtunkhwa through Capital City Police Officer,
Peshawar and one another
..... (Respondents)

AFFIDAVIT

I, Fazal Amin (Ex-Constable No 4551) of District Peshawar, Khyber
Pakhtunkhwa do hereby solemnly affirm and declare that all the contents
of the **accompanied appeal** are true and correct to the best of my
knowledge and belief and nothing has been concealed or withheld from
this Hon'ble Tribunal.

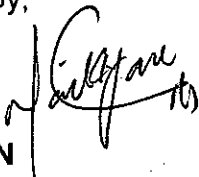
Fazal Amin

DEPONENT

CNIC: 17301-1561327-1

Cell No: 03147865078

Identified By;



NAILA JAN
Advocate High Court
Peshawar.

2

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

S.A _____ /2023

Fazal Amin (Ex-Constable No 4551) of District Peshawar Khyber
Pakhtunkhwa
..... (Appellant)

Vs

Govt. of Khyber Pakhtunkhwa through Capital City Police Officer,
Peshawar and one another
..... (Respondents)

ADDRESSES OF PARTIES

APPELLANT.


Fazal Amin (Ex-Constable No 4551) of District Peshawar
Khyber Pakhtunkhwa

RESPONDENTS.

1. Capital City Police Officer Peshawar Khyber
Pakhtunkhwa.
2. Superintendent of Police City Peshawar.

Fazal Amin
Appellant

Through


NAILA JAN
Advocate High Court
Peshawar.

Dated: _____ /04/2023

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL NO...../2023

Fazal Amin (Ex-Constable No 4551) of District Peshawar Khyber
Pakhtunkhwa

..... (Appellant)

Vs

1. Capital City Police Officer Peshawar Khyber Pakhtunkhwa.

2. Superintendent of Police City Peshawar.

..... (Respondents)

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth;

1. That the above titled appeal is filing today in which no date has been fixed so far.
2. That though the instant Appeal has been filed within time against the final order dated 27/03/2023 however if there is any delay the same is condonable on the following grounds;

GROUND:

- a) That the impugned order has been given retrospective effect which renders the impugned orders dated 10/08/2010 and Final/Appellate order dated 27/03/2023 to be void orders as per dictum laid down by the Apex 2002 SCMR 1124 whereas the apex court held that no limitation runs against void order reference is made to **2019 SCMR 648**, 2019 PLQD 1000.
- b) That the Supreme Court also laid down the precedent that cases are to be decided on merits rather than technicalities.
- c) That the proceedings have been initiated under abrogated/repealed law therefore as per the precedent of the Apex Court "superstructure on an ill foundation would fall to the grounds and the whole proceedings as well as subsequent orders has no standing in the law".
- d) That valuable rights of the appellant is being taken away may not be take away on the basis of technicalities.

9

It is therefore requested that the delay in filing the instant appeal may kindly be condoned for the end of justice.

Fazdin Amin
Appellant

Through



HALA JARI
Attorney-at-Law
Petitioner

9/29/09 ... 225-03 ... 0333-9212530

ابتدائی اطلاعی رپورٹ

Article A

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 153 مجموعہ ضابطہ نو جداری

ص - 2
P - 13

ضلع لہور

پڑھ بید

تاریخ وقت رپورٹ 24/03/09 رات 07:35

نمبر 188

49

تاریخ وقت رپورٹ	24/03/09 رات 08:45
نام و سکونت اطلاع دہندہ	سزا دہندگان درویش خان قرق اشکان بہتر - 31/3/09 حالہ
مختصر کیفیت جرم (مردودہ) حال اگر کچھ لیا گیا	324-302-34
جائے وقوعہ فاصلہ تھانہ سے اور دست	ماسٹر خیال بن نزد مکان آخان ڈاکٹر محمد حیات
نام و سکونت ملزم	1- فضل آصفین 2- مریو از لہان الیم 3- نامدار درویش حسین گار ساکنان ماسٹر گار
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو	مدعا کی رپورٹ میں ملزمین کی شناخت ہو چکی ہے
تھانہ سے روانگی کی تاریخ و وقت	پولیس اسٹیشن زلیخا

ابتدائی اطلاع فتحی درج کرو۔ پورٹ صدر صینٹ مندرجہ ذیل نمبر 2 سے
 سسٹن آخان بہادر اس وقت راجہ خان صدر گار حالہ قمبر بہ 27/28 سال لہوری ایک ایب ڈاکٹر بہ انفرادی طور
 دیکھ کر پتہ لگا کر پورٹ کرنا چاہتے تھے۔ پچھلے صبح میں جے ہارام جے ہارام قتل کرنے کے لیے لہوری ماسٹر گار کو قتل کرنے کے لیے
 جارہے تھے۔ ماسٹر گار جے ہارام قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔
 لہان گرجیم۔ نامدار درویش حسین گار ساکنان ماسٹر گار کے پاس چلے گئے۔ اسے آواز دے کر گھر کے
 نے جیسے دیکھے، اسے لہان قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔
 جن پر۔ جیسے میں بال بال پائے گیا۔ ماسٹر گار قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔
 تک دیکھ اٹھ دوڑا۔ جسے قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔
 ماسٹر گار جے ہارام قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔
 ماسٹر گار قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔
 تمام حالت میں رپورٹ قریب قریب ماسٹر گار کے پاس لائی گئی۔ ماسٹر گار قتل کرنے کے لیے جارہے تھے۔
 قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔
 KMC کے پاس لائی گئی۔ ماسٹر گار قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔
 قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔ قتل کرنے کے لیے جارہے تھے۔

24/03/09

11

Amir
B

ORDER

This is departmental proceedings against Constable Fazal-e-Amin No.4551, while posted to Police Station Faqirabad, on the grounds that he absented himself vide DD No. 11 dated 09.03.2009 and continuously remained absent till to date. It is also come to the notice that he has involved himself in a murder case vide FIR No. 188 dated 24.03.2009 u/s 302/324/34-PPC-Police Station Badaber.

Disciplinary proceedings were initiated against him and he was issued Charge Sheet with statement of allegations. SDPO/Faqirabad was appointed as enquiry officer for completion the enquiry against the defaulter.

Findings of the enquiry officer alongwith relevant papers were received and perused. As per findings of the enquiry officer, he was issued Final Show Cause Notice vide this office No.1686/SP-City dated 24.04.2009 on his home address but no reply/explanation has been received. The enquiry proceedings were lying pending till the decision of the court. The honourable court has declared him PO u/s 512-CrPC.

Keeping in view the recommendation, circumstances, and court decision, the undersigned came to the conclusion to take stern action against him as experte and he is awarded the major punishment of dismissal from service from the date of his absence i.e. 09.03.2009.

Hanabi
(SYED HAMMAD ABID)PSP
Superintendent of Police City,
Peshawar.

Received to
day on 11/8/2009

OB: No. 2722

Dated 5-8/Aug: 2010.

No. 4125 /SP: City: dated Peshawar, the 10 /Aug: 2010. //
Copy for information and necessary action to:-

1. The CCP Peshawar.
 2. The SSP Coordination CCP, Peshawar.
 3. The SSP Operations Peshawar.
 04. The SP HQrs:
 5. SDPO/Faqirabad.
 6. CRC
 7. OASI Branch
 8. Fauji Missal Branch with enquiry report for record.
- Mr. Azam*
Praveer
CR 11/8/2010
- S*

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Page 1
C

IN THE COURT OF MUHAMMAD TAHIR AURANZEB
AD&S.J. PESHAWAR

459/1A of 2021
Fazal-e-Amin Vs The State

ORDER
01.06.2021

1. Counsel for the accused/ petitioner and complainant present. Sr.PP for the State present. Record already received.
2. Accused/petitioner namely Fazale-Amin s/o Fazal-e-Rahim seeks his post-arrest bail in case FIR # 188 dated 24.3.2009 registered U/S 302/324/34 PPC/512 Cr.P.C registered at Police Station Badabher.
3. Facts of the case are that on 24.3.2009 at 07:35 hours, the complainant Sharafat Khan lodged report to the police of Police Station Badabher that he alongwith his brother Johar Khan was going on bicycle from their house to Sarband. His deceased brother was riding the bicycle when they reached near Masho Kheil Bridge i.e. house of Dr. Ajmal Khan, Fazal Ameen, Rab Nawaz and Namidar were standing with deadly weapons and started firing at them on seeing them. As a result of firing his brother got hit and died at the spot while he escaped unhurt. One Alamzaib witnessed the occurrence. The motive was disclosed that few days prior to occurrence, there was a quarrel on issue of children between the deceased and accused Fazal Ameen.
4. Accused remained absconder for sufficient long time. Later on accused Namidar was arrested and he faced trial wherein he was acquitted by the learned District & Sessions Judge in session case No. 69/SC of 2012 on 13.6.2013. The present accused/ petitioner was arrested on 04.5.2021 and then sent to judicial lock up after completion of investigation.

M. T. —
Muhammad Tahir Aurangzeb
Adclt. District & Sessions
Judge-IX Peshawar

ATTESTED

23 SEP 2021
(Examined)
Page No. District Court Peshawar

AS

5. The learned counsel for the accused/ petitioner Mr. Saeed Khan Advocate produced unreported judgments in Cr.M BA No. 1583-P of 2013 "Niaz Ali Vs The State" decided on 18.12.2013, C.R.L petition No. 51-P of 2017 of august Court decided on 27.11.2017 titled as "Akhtar BAdshah Vs The State", Cr.M BA No. 1978-P of 2019 decided on 06.9.2019 "Nizar Ali Vs The State" of Hon'ble Peshawar High Court, Peshawar, Cr.M BA No.41-P of 2020 "Muhammad Rasool Vs Zulfikar" decided on 14.2.2020 by Hon'ble Peshawar High Court, Peshawar. It was his arguments that his case is at par with the acquitted co-accused hence, accused/ petitioner be released on bail.

6. On the contrary the learned counsel for the complainant produced reported judgments 2018 P Cr.LJ 481 "Habib Ullah Vs Qadir Khan", Cr.M BA No. 4001-P of 2020 "Hashmat Vs The State" decided on 25.1.2021 and requested that the bail may be declined.

7. Perusal of record reveals that the complainant being eye witness of the case charged acquitted co-accused, accused/ petitioner and absconding co-accused directly in FIR with general role of firing and the deceased was having more than nine injuries on his body. The co-accused was acquitted and the acquittal of the co-accused itself is no ground for grant of bail. It is also available on record that the acquitted co-accused was in custody during his trial and his bail was declined by Sessions Court. The question arises that whether in each and every case the refusal of bail of acquitted co-accused will be entertained for refusal of bail for other co-accused with role at par. This Court has obtained guidance from both pro and contra views and reached to the view that whenever the case of prosecution is without inherent defects then the refusal of bail of one accused during his trial is a considerable factor for belated arrested

W.C.
Muhammad Iqbal Aurangzeb
Addl District & Sessions
Judge-L, Peshawar

APPROVED
2

2022
20
District Court Peshawar

14

accused but when the prosecution case is presented with inherent defects then it is not a considerable factor against other accused who were absconding at the time of trial of acquitted co-accused.


b

8. In the instant case the eye witnesses were disbelieved in previous trial of acquitted co-accused with role at par and the medico-legal evidence and ocular account need consideration with margin of further inquiry because in site plan the accused fired from the front on the deceased when he was riding on a bicycle with restricted movements then in such like situation availability of four entry wounds from the back side might be an inherent defect. This Court will not touch the merits in depth from the arguments of accused/ petitioner that the eye witness was sitting on bicycle on rear seat and the deceased has sustained number of injuries on front and back but the eye witness escaped un-hurt, however this aspect suggest some margin of further probe. It is an admitted legal point that mere abscondance is not a ground for refusal of bail when it is available on merits. The accused/ petitioner has made margin of further probe in his case for the purpose of bail.

9. In view of above instant post arrest bail petition is accepted subject to furnishing bail bonds to the tune of Rs 200,000/- with two local and reliable sureties to the satisfaction of this Court.

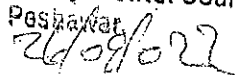
10. Record be returned along with copy of this order. File be consigned to record room after necessary completion.


ANNOUNCED
01.06.2021


Muhammad Tahir Aurangzeb
Additional Sessions Judge-IX,
Peshawar



CERTIFIED TO BE TRUE COPY

(Examiner)
Copying Agency District Court
Peshawar


No.	49162
Dated of Application	26-09-22
Name of Applicant	26/9/22
Word / Pages	P. 07
Fee	100
Signatures of	
Dated of	26/9/22
Dated of Delivery	26/09/2022

To

The worthy Capital City Police Officer
Peshawar, Khyber Pakhtunkhwa.

Subject:-

DEPARTMENT APPEAL AGAINST THE IMPUGNED ORDER
DATED 24/08/2022, COMMUNICATED ON 23/08/2022
WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM
HIS SERVICE WITH RETROSPECTIVE EFFECT ON THE BASIS
OF SOME BASELESS ALLEGATIONS IN UTTER VIOLATION
OF LAW, RULES AND PROVISION OF REMOVAL FORM
SERVICE (SPECIAL POWER) ORDINANCE 2000.

Prayers:

ON ACCEPTANCE OF THIS DEPARTMENT APPEAL THE
IMPUGNED ORDER DATED: 05/08/2010 MAY KINDLY BE SET-
ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED
INTO SERVICE WITH ALL BACK BENEFITS.

Dear sir,

The appellant submits the following with great Respect;

1. That the appellant was inducted into police Department as constable and since his appointment the appellant performed his duties with great zeal, zest, enthusiasm and to the entire satisfaction of High ups.
2. That the appellant 05/08/2010 was lastly posted at Police Station Faqirabad where the appellant on the verbal permission of the in charge proceeded home however the appellant along with his brother was falsely involved in criminal case FIR No 188 under Section 302/324/34 PPC of PS badaber. (copy of the FIR is annexure-A).
3. That the enemy of the appellant were powerful and they were looking for the opportunity to kill the appellant therefore the appellant due to threat to his life could not join his duty however the appellant informed his high ups about the nomination of the appellant in the FIR.
4. That thereafter the appellant himself surrender before the local police where the appellant was sent to judicial lock up however being innocent the appellant was released on bail by court of Additional District and Session Judge Peshawar vide its judgment / order dated 01/06/2021 and after releasing the appellant approached for joining his duty however the appellant was orally informed that the appellant has already been dismissed from service however neither the impugned order, nor did the copy of charge sheet along with statement of allegations, inquiry report or show cause notice has been provided to the appellant despite several requests.
5. That the appellant received the impugned dismissal order dated 24/08/2022 on his own efforts on 11/08/2021 which was issued at the back of appellant in total disregards of law, rules principles of natural

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justice. (Copy of the impugned Order dated 05/08/2010 is annexed as annexure-B).

6. That the appellant feeling aggrieved from the impugned illegal dismissal order dated 05/08/2010, having no other adequate remedy hence filing the instant Department appeal on the following grounds inter alia;

GROUND:

- A. That the impugned order is against the law rules Principles of Natural Justice, void ab initio hence liable to be set aside.
- B. That no charge sheet along with statement of allegation has been issued / served before initiating the so called Department ex party inquiry which is mandatory under the law.
- C. That no opportunity of personal hearing / defense has been provided to the appellant at any stage of the disciplinary proceedings. Hence the appellant has been condemned unheard.
- D. That no regular inquiry has been conducted accordance with provision of RSO 2000 and no opportunity of defense has been provided to the appellant.
- E. That the inquiry officer as well as the Competent Authority was in the knowledge that the appellant has been named in a concocted criminal case they have to wait for the outcome of criminal case however in a cursory manner the impugned order has been issued.
- F. That no opportunity of personal hearing has been granted before issuing the impugned order dated 05/08/2010.
- G. That no statement of any witness has been recorded nor did the appellant have been confronted with anything and the inquiry officer failed to bring any iota of evidence against the appellant.
- H. That neither the appellant committed the alleged act nor did the appellant have been attributed the commission of the alleged act however the appellant was made escape goat and was illegally penalized.
- I. That right of fair Trial has not been provided to the appellant as guaranteed by Article 10 A of the Constitution of Pakistan 1973.
- J. That the appellant has not been treated in accordance with Art 4 and 25 of the Constitution of Pakistan 1973.

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- K. That no statement of any witness has been recorded nor did opportunity of cross examination have been provided to the appellatant.
 - L. That absence of the appellatant was not willful but for the reason that life of the appellatant was in danger hence the same does not constitute misconduct.
 - M. That the inquiry officer was either to prove the charges or should have recommend the Competent Authority to wait for the outcome of criminal case however without proving the charges and waiting for the outcome of the criminal case the appellatant was subjected to major penalty in violation of laws and rules.
 - N. That no show cause notice has ever been issued or served on appellatant which is mandatory under the law.
 - O. That since the impugned order the appellatant is jobless and being the sole breed earner the family of appellatant facing problems.
 - P. The impugned order dated 05/08/2010 has been given retrospective effect and as for dictum laid down by the apex court punishment cannot be awarded form retrospective effect as such order is void order.
 - Q. That the appellatant seeks personal Hearing before your Good self.

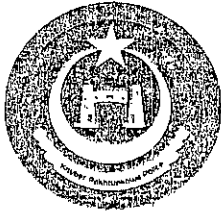
It is therefore, requested that the instant Department appeal may kindly be accepted as prayed for.

Your's Obediently

Fazal Amin

Fazal Amin (Ex-Constable No. 4551)

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OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

ORDER.

This order will dispose of the departmental appeal preferred by **Ex-Constable Fazal Amin No. 4551**, who was awarded the major punishment of "**Dismissal from service**" under KP PR-1975 by SP/City Peshawar vide OB No. 2722, dated 05.08.2010.

2- Short facts leading to the instant appeal are that the defaulter Constable while posted at police Station Faqirabad Peshawar was proceeded against departmentally on the charges of his wilful absence w.e.from 09.03.2009 to 05.08.2010 (01 years, 04 months & 26 days) without taking permission/leave of the competent authority. He was also involved in a criminal case vide FIR No. 188, dated 24.03.2009, u/s 302/324/34-PPC PS Badaber.

3- He was issued proper Charge Sheet and Summary of Allegations by SP/City Peshawar. SDPO/Faqirabad Peshawar was appointed as inquiry officer to scrutinize the conduct of the accused official. The inquiry officer after conducting proper inquiry submitted his findings in which the defaulter Constable was found guilty. The competent authority in light of the findings of the inquiry officer issued him Final Show Cause Notice, which was delivered to him at his home address, but he did not reply to the said notice nor appeared before the competent authority, hence awarded the above major punishment.

4- He was heard in person in O.R and the relevant record along with his explanation perused. During personal hearing the appellant failed to submit any plausible explanation in his defence. He was given ample opportunity to prove his innocence but he could not defend himself. Therefore, his appeal for setting aside the punishment awarded to him by SP/City Peshawar is hereby **rejected/filed** being also time barred for 12 years, 03 month and 18 days.

[Handwritten mark]

(MUHAMMAD IJAZ KHAN) PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 1275-11 /PA dated Peshawar the 27 /12/2023

Copies for information and necessary action to the:-

1. SP/City Peshawar
2. AD-IT CCP Peshawar
3. OASI, PO, CRC.
4. FMC along with complete fouji missal.
5. Official Concerned

بعد التضرار کا دس کاروباروں کا تضرار



2023ء منجانب ایڈیشن

فصل اعلیٰ بنام حکومت

مورخہ
مقدمہ
دعویٰ
پرم

باعث تحریر آئنگے

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

لستامہ کیلئے نائید جان

آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز

وکیل بر صاحب کو راضی نامہ کرے۔ یہ تقرر ثالثہ فیصلہ بر حلف دیے جناب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی

نیز دائر کرنے اپیل غرائی 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 نیا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا سہارا

واختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو ترچہ ہر جائز التوائے 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۔

المرتوم 27 ماہ اپریل 2023ء

Fogalman

فصل اعلیٰ (ایڈیشن)

مستند
Attested & accepted by
Nailajan