

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT D.I.KHAN.

SERVICE APPEAL NO. 1652/2013

Date of institution ... 30.12.2013

Date of judgment ... 23.05.2016

Imran Khan S/O Alamagir Khan,
Distt: Police No. 528 Police Line, Tank-(Caste Miankhel Moh: Civil Line Tank).

... (Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through Provincial Police Officer(I.G.P) Khyber Pakhtunkhwa Peshawar.
2. D.I.G Police Tank D.I Khan Region D.I.Khan.
3. Distt: Police Officer, Tank.

... (Respondents)

SERVICIE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE ACT, 1974 AGAINST THE ORDER DATED 29.08.2013 OF DPO(RESPONDENT NO.3) VIDE WHICH THE APPELLANT WAS DISMISSED FROM SERVICE.

Mr. Shaikh Iftikharul Haq, Advocate.

.. For appellant.

Mr. Farkhaj Sikandar, Government Pleader

.. For respondents.

MR. MUHAMMAD AAMIR NAZIR

.. MEMBER (JUDICIAL)

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: The appellant Imran Khan S/O

Alamgir Khan through instant appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 has impugned order dated 29.08.2013 of respondent No.3 vide which the appellant was dismissed from service. Against the impugned order referred above, the appellant filed departmental appeal on 20.09.2013 which was not responded within the statutory period of 90 days.

2. Briefly stated facts as per contents of the appeal are that the appellant was appointed as Constable in District Police Tank vide order dated 18.07.2007. That after appointment

23.05.16

appellant started performing his duties with the entire satisfaction of his superiors. That due to involvement of the appellant in case FIR No. 319 dated 02.07.2013 u/s 3/4 Article/13-AO PPC Police Station Shaheed Mureed Akbar Tank, he was issued a charge sheet along with statement of allegations. Finally after enquiry, the appellant was dismissed from service vide impugned order dated 29.08.2013. Against the impugned order, the appellant filed departmental appeal on 20.09.2013 which was not responded within statutory period of 90 days, hence the instant appeal.

3. We have heard arguments of learned counsel for the appellant and learned Government Pleader for the respondents and have gone through the record available on file.

4. Learned counsel for the appellant argued before the court that the appellant was dismissed from service on the basis of frivolous FIR, that's why he ~~was~~ was acquitted from the charges leveled against him by competent court of law vide judgment dated 19.09.2014. Learned counsel for the appellant contended that since the charges on which the appellant was dismissed from service had not been proved before court of law and he was acquitted, therefore, the impugned dismissal order may be set aside and the appellant may be reinstated into service with back benefits.

5. While rebutting the arguments of learned counsel for the appellant, learned Government Pleader submitted before the court that the appellant was involved in misconduct and in this respect case FIR No. 319 dated 02.07.2013 was registered against him. That the respondents has rightly initiated departmental proceedings against the appellant and was dismissed from service. That the appeal being devoid of any merits may be dismissed.

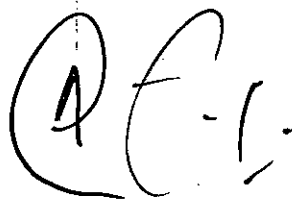
6. Perusal of the case file reveals that the appellant was serving as constable in the Police Department since 2007. It was in the year 2012 that he was charged in a criminal case vide FIR No. 319 dated 02.07.2012 u/s 3/4 Article/13-AO PPC Police Station Shaheed Mureed Akbar Tank. After involvement of the appellant in a criminal case, he was

23.05.16

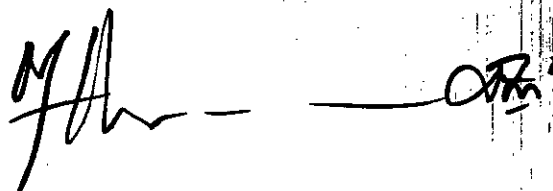
departmentally proceeded and in this respect charge sheet alongwith statement of allegations were issued to him. As a criminal case was registered against the appellant, therefore, the enquiry officer held that the appellant guilty of gross misconduct. Consequently, the competent authority imposed major penalty of dismissal from service upon the appellant.

7. On the other hand, the criminal case registered against the appellant vide FIR No. 319 was proceeded in the Court of Senior Civil Judge/Judicial Magistrate, Tank and eventually the accused/appellant got acquitted from the charges leveled against him vide judgment dated 19.09.2014. Since the competent court of law disbelieve the prosecution case and acquit the accused/appellant due to defective evidence, therefore, the charges of misconduct leveled upon the appellant in the enquiry proceeding on the basis of criminal case vide FIR No. 319 automatically stand omitted. Due to the acquittal of appellant in case FIR No. 319, the impugned dismissal order dated 29.08.2016 losses its validity, hence we are inclined to accept the instant appeal by setting aside the impugned order dated 29.08.2016 and reinstate the appellant into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
23.05.2016



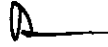
(ABDUL LATIF)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

22.02.2016

Counsel for the appellant and Mr. Farhaj Sikandar, GP for respondents present. Though a single FIR has been registered but the nature of the case property which is a pistol and the narcotics, convey that two separate challan might have been submitted which situation is not ^{being} clearly reflecting from record. To ascertain the situation, the parties are directed to produce all relevant record on the next date. To come up for arguments on 23.05.2016 at camp court D.I. Khan.



Member



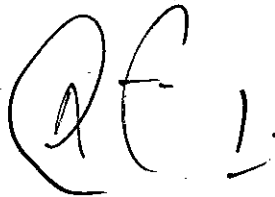
Member
Camp Court D.I Khan

23.05.2016

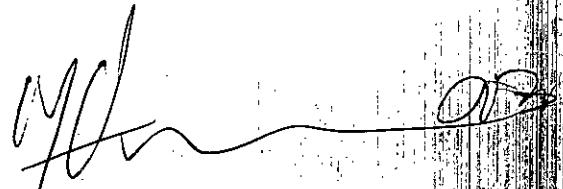
Counsel for the appellant and Mr. Muhammad Asif, HC alongwith Mr. Farkhaj Sikandar, GP for respondents present.

Vide our detailed judgment of to-day consists of three pages placed on file, we are inclined to accept the instant appeal by setting aside the impugned order dated 29.08.2016 and reinstate the appellant into service with all back benefits. Parties are, however, left to bear their own costs. File be consigned to the record.

Announced
23.05.2016




(ABDUL LATIF)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER
Camp Court, D.I. Khan

26-1-2015 - Appellant with counsel and Mubid Khan
H.C. for respondents with G.P. present. Reply
received copy whereof is handed over G.P. for
arguments on 27-4-2015 at camp court, D.I.K.


Member
Camp Court, D.I.K.


27.4.2015

Counsel for the appellant and Mr. Farhaj Sikandar, GP
with Muhammad Khan, H.C for the respondents present. Due
to non-availability of ^{Full} Bench, arguments could not be heard. To
come up for arguments on 27.10.2015 at camp court, D.I.Khan.


MEMBER
Camp Court, D.I.Khan.

27.10.2015

Clerk of counsel for the appellant Mr. Farhaj
Sikandar; GP with Muhammad Hussain, Inspector (Legal) for
the respondents present. The Bench is incomplete, therefore,
case to come up for arguments at camp court, D.I.Khan on
22-2-16.


MEMBER
Camp court, D.I.Khan

25-3-2014

conferred for the appellant and Malik Khan
H.C. with G.P. for respondents present written
apply not received. To come up for written apply
on 23-6-2014 at camp court D.I. Khan.

Member
Camp Court D.I.K.

23-6-2014

Appellant with counsel and Malik Khan
H.C. for respondents with G.P. present, written reply
received, copy whereof is handed over to appellant
for registration, if any. To come up for registration
on 30-9-14 at camp court D.I. Khan.

Member
Camp Court D.I.K.

30-9-14

Present as before on 23-6-2014. Respondent
not received. Case adjourned to 29-12-2014 for
registration of camp court, D.I. Khan.

Member
Camp Court D.I.K.

29-12-14



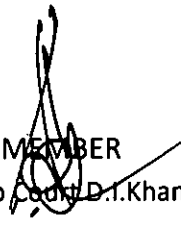
Counsel for the appellant and Malik Khan
H.C. for respondents present. Reply not received
due to incomplete bench. Case adjourned to 28-1-15
for registration of camp court D.I. Khan.

Member
Camp Court D.I.K.

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1652/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	30/12/2013	<p>The appeal of Mr. Imran Khan presented today by Mr. Shaikh Iftikharul Haq Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	28-1-2014	<p>This case is entrusted to Touring Bench D.I.Khan for preliminary hearing to be put up there on <u>28-1-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	27-01-2014	<p>Appellant with counsel present and heard. The learned counsel contended that appellant has not been treated in accordance with law. He has been dismissed from service on baseless charges and allegation. Points raised need consideration. Admit ^{SIT to all just legal objections.} Process fee & security within 10 days. Thereafter, notices be issued to respondents for submission of written reply on 25-03-2014 at Camp Court, D.I.Khan.</p> <p style="text-align: right;"> MEMBER Camp Court D.I.Khan</p>

Appellant deposited
 Rs. 1000/- Security
 attached with file

BEFORE KESBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

S.T.A No. 1652 2013

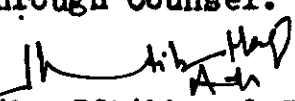
Imran Khan V/S Govt of K.P.K through P.P.O etc

Index.

S.No.	Particulars of documents	Annexure	Pages.
1.	Memo and grounds of the S.T.A	-	1-4
2.	Copy of First Page of Service book indicating appointment	A	- 5 -
3.	Copy of Charge Sheet .	B	- 6 -
4.	Copy of F.I.R & Documents Documents of enquiry & impugned order	C & D	7 - 10
5.	Copy of Departmental Appeal alongwith postal receipt.	E	- 11 -
6.	Wakalatnama.	-	- 12 -


Yours Humble Appellant.

through Counsel.


(Shaikh Iftikharul Haq)
Advocate High Court.

Dated. 26.12.2013 .

1

BEFORE THE SERVICE TRIBUNAL K.P.K. PESHAWAR.

S.T.A. No. 1652 2013

Imran Khan S/O Alangir Khan ,
Distt: Police No. 528
Police Line Tank
(Caste Miankhel Moh: Civil Line
Tank.)

no 1699
30-12-13

Appellant.

V/S

1. Govt of K.P.K through Provincial Police Officer (I.G.P) K.P.K. Peshawar.
2. D.I.G Police Tank -D.I.Khan Region D.I.Khan.
3. Distt: Police Officer, Tank.

[Respondents]

SERVICE APPEAL UNDER SECTION 4 OF K.P.K SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 29.8.2013 OF D.P.O (RESPONDENT NO.3) VIDE WHICH THE APPELLANT WAS DISMISSED FROM SERVICE

PRAYER.

ON ACCEPTANCE OF THE INSTANT APPEAL THE IMPUGNED ORDER DATED 29.8.2013 OF THE RESPONDENT NO.3 (D.P.O) MAY KINDLY BE SET ASIDE AND THE APPELLANT BE RE-INSTATED IN SERVICE WITH ALL BACK-BENEFIT IN THE INCUMBENCE OF RESPONDENT AUTHORITIES.

[Handwritten signature]
30/12/13

[Handwritten signature]
Asw

Respectfully Sir,

Facts.

That the Appellant was appointed as Constable

in District Police Tank on 18.7.2007 (First Page of Service Book) of appellant is enclosed as Annexure A.

2. That the Appellant was performing his duties with the entire satisfaction his superiors .During services Appellant received a Charge Sheet wherein it was stated that he (Appellant) is involved in Criminal Case vide F.I.R No. 319 dated.2.7.2013 U/A ^{provision} 3/4 article 13-A.O P.S. Shaheed Mureed Akbar Tank .Which was replied in detail that he was falsely implicated in the aforesaid criminal Case .Copy of charge sheet is enclosed as Annexure -B- whereas reply of Charge sheet is available with the Respondent authorities and they refused to provide the copy to Appellant. Copy of F.I.R is enclosed as Annexure C.

2. That thereafter the Respondent authorities allegedly conducted so called inquiry and lastly the Appellant was terminated vide impugned order No. @B 1051 dated.29.8.2013 by D.P.O.Tank .Documents of inquiry and impugned order dated.29.8.2013 is enclosed as Annexure D.

3. That the Appellant submitted Departmental Appeal on 20.9.2013 which was not accepted within stipulated period .Hence the instant Appeal .Copy of the Deptt: Appeal alongwith postal receipt is enclosed as Annexure E.

Handwritten signature
Adv.

GROUND OF APPEAL.

1. That the order of the Respondent authorities are against law facts and circumstances of the case and is liable to be set aside.

3

-3-


2. That the impugned termination order of Appellant is against the principal of law, service policy and is not in the consonance of Esta Code.
3. That the Appellant was falsely implicated in Criminal case although the Appellant has no nexus with the alleged offence. The Appellant has served the Department for 7/8 years without any dent and stigma
4. That the Respondent authorities have not conducted proper inquiry against the Appellant and the whole proceedings authorities is in violation of law, rules and service policy.
5. That the Counsel of Appellant may also be allowed to raise additional grounds during course of hearing.

In wake of submissions made above it is humbly prayed that the order dated.29.8.2013 of the Respondent No.3 (D.P.O.) may kindly be set aside and the Appellant may be re-instated in services with all back benefit.

Yours Humble Appellant.


Imran Khan

Through Counsel.


(Shaikh Iftikharul Haq)

Dated. 28. 12.2013

Advocate High Court.

4

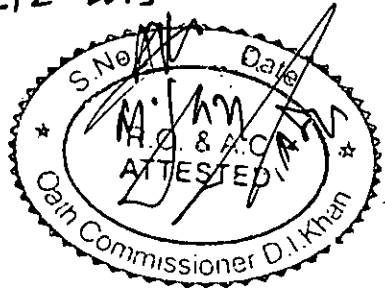
BEFORE THE PESHAWAR K.P.K. SERVICE TRIBUNAL PESHAWAR

Imran Khan V/S Govt of KPK through PPO

Affidavit.

I, Imran Khan S/O Alawgir Khan Distt:Police Constable
Police Line Tank do hereby solemnly affirm and declare
on oath that the contents of the appeal are true and
correct to the best of my knowledge and belief and that
nothing has been concealed from this Hon'ble Court

26-12-2013 Deponent.



5

APPENDIX AND SERVICE ROLL OF

Ann - "A"

Serial No. () in
() in
() in

District
District
District

Serial No.	Father's Name	Tribe or caste	Village or Town	Post and Telegraph Office	Police Station	District	Province	Date of Birth	Height	Chest Measurement	Date of Enrolment	Age on Enrolment	Distinctive Mark
100000 Khan	Alamgir Khan		Chisli Khan Jodhpur	Jodhpur			MWFP	16-5-1979	5-10"	34x35"	16-7-2007	28y 02m 07days	

Enrolment Roll No. Dated received back and attached to the Fauji Misal

Enrolment Service prior to present employment, which is approved for pension service.

Service or Department	Rank of grade	Pay of 1st Appointment	From	To	PERIOD		
					Year	Months	Days
Cause of and character on discharge from above service			Reference to orders approving above service for pension service in the police department				

Attested to be true copy
[Signature]

I understand that I have been appointed under section 7 of the Police Act (V of 1861), and the purport of that the provisions of the Act and of the Rules issued under it and now in force, by which my discipline and conduct are have been explained to me. I agree to serve faithfully under the provision of the said Police Act and to obey all issued to me by my Superior Officers and undertake not to resign appointment within three years from the date of appointment. I have received a certificate of appointment issued under section 8 of the Police Act (V of 1861)

Impression of fingers and thumb of left hand.

[Signature]
District Police
Signature

Little	Left Ring	Left Middle	Left Index	Left Thumb

CHARGE SHEET.

6

Ann - B

I, ANWAR SAEED KUNDI District Police Officer Tank being a competent authority under the NWFP Police Rules 1975 do hereby inform you Imran Khan No. 528 while posted at Police Lines Tank as follow:-

That you have committed the following serious misconduct:-

You, Constable Imran Khan No. 528 were involved in a Criminal Case vide FIR No. 319 dated 02.07.2013 U/S $\frac{3}{4}$ Article /13-AO PPC Police Station Shaheed Mureed Akbar Tank, which amounts to gross miss conduct on your part and punishable under the rules.

2. You appear to be guilty of misconduct of under section-3 of the NWFP Police Rules 1975 and have rendered yourself liable to any one of the penalties including dismissal form service in Section-3 of the ordinance ibid.
3. You are therefore required to submit your written defense within seven (7) days of the receipt of this Charge Sheet to the Inquiry Officer.
4. Your written defense, if any should be reach the Inquiry Officer within specified period, failing which it shall be presumed that you have no defense to put in and in that case exparte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegation is enclosed.

Attested to be true
copy -
[Signature]

[Signature]
(ANWAR SAEED KUNDI)
PSP
District Police Officer,
Tank

[Signature]

DISCIPLINARY ACTION.

8

1. ANWAR SAEED KUNDI District Police Officer Tank being a competent authority am of the opinion that you Constable Imran Khan No. 528 while posted at Police Lines Tank rendered himself liable to be proceeded against for committing the following:-

SUMMARY OF ALLEGATION.

You, Constable Imran Khan No. 528 were involved in a Criminal Case vide FIR No. 319 dated 02.07.2013 U/S Article 13-AO PPC Police Station Shaheed Mureed Akbar Tank, which amounts to gross miss conduct on your part and punishable under the rules.

Hence this statement of allegation is issued.

2. For this purpose of scrutinizing the conduct of said official with reference to above allegation, Insp: Kausar Ali RI is appointed as Inquiry Officer to conduct proper Departmental Inquiry under the NWFP Police Rules 1975.

3. The Inquiry Officer shall in accordance with the provision of the ordinance provide reasonable opportunity of the hearing to the accused, record its findings and make recommendation as to punishment or other appropriate action against the official within seven (7) days of the receipt of this order.

4. The official and a well conversant representative of the Department shall join the proceedings on the date, time and venue fixed by the Inquiry Officer.

(ANWAR SAEED KUNDI)
PSP

District Police Officer,
Tank

No. 2882-231 Dated Tank the 13/7/2013.

Copy to the:-
1- Insp: Kausar Ali RI the Inquiry Officer for initiating proceeding against the defaulter under the provision of NWFP Police Rules 1975 and submit findings report within stipulated period as per prescribed rules.

2- Const: Imran Khan No. 528 with the direction to appear before the Inquiry Officer on the date, time and venue fixed by the Inquiry Officer for the purpose of Inquiry proceedings.

(ANWAR SAEED KUNDI)
PSP

District Police Officer,
Tank

Attested to be true
copy.
Imran

FORMAL SHOW CAUSE NOTICE.

9

WHEREAS, you Constable Imran Khan No. 528, committed gross misconduct as defined in KPK Police Rules 1975 resultantly you were Charge Sheeted and served with the statement of allegations and Inspector Kousar Ali RI/Police Lines Tank was appointed for conduct proper Inquiry.

WHEREAS, the Inquiry Officer/Committee finalized the Inquiry proceedings giving you full opportunities of defence. Consequent upon the completion of Inquiry proceedings, the Inquiry Officer/Committee held you guilty of the charges leveled against you as per charge sheet. Finding report of E/O is attached.

AND WHEREAS, on-going though the findings and recommendation of Inquiry Officer/Committee, the material placed on record and other connected papers including your defence reply before the said Committee, I am satisfied that you have committed the misconduct and are guilty of the charges leveled against you as per statement of allegations conveyed to you, which stand proved and render you liable to be awarded one of the PUNISHMENT under the said rules.

NOW THEREFORE, I, ANWAR SAEED KUNDI District Police Officer Tank as competent authority have tentatively decided to impose upon you any one or more penalties including the penalty of DISMISSAL FROM SERVICE under Section 3 of the of the Police Rules.

You are therefore, required to Show Cause within Seven days of the receipt of this Notice, as to why the aforesaid penalty should not be imposed upon you failing which it shall be presumed that you have no defence to offer and exparte action shall be taken against you. Meanwhile also intimate whether you desire to be heard in person or otherwise.

Accepted to be true
copy.
Imran

[Signature]
(ANWAR SAEED KUNDI)
(PSP)
District Police Officer,
Tank
[Signature] 1/8



Ann- "D"

10
OFFICE OF THE
DISTRICT POLICE OFFICER
DISTRICT TANK

OFFICE ORDER.

My this order will dispose off departmental enquiry initiated against Constable Imran Khan No. 528 of Police Lines, Tank on the allegations that he while posted as Security Guard with the District Public Prosecutor Tank, reliable sources has informed that Constable Imran Khan No. 528 is involved in selling and supplying of narcotics under the shadow of Police Uniform which is injurious for the society and also prejudicial to public peace and tranquility, therefore he was kept under observation and suvellianced properly. On 02.07.2013, it was reliably informed that Constable Imran Khan No. 528 is bringng narcotics from Umer Adda Tank for further transportation to DIKhan was received and subsequently he was captured red handed by SHO Police Station, Shaheed Mureed Akbar, Tank vide Case FIR No. 319 dated 02.07.2013 U/Ss 3/4-PHO/13-AO Police Station, Shaheed Mureed Akbar, Tank. The narcotics weighing Bhang 500gm, Charass 200gm and Opium 20gm along with illicit arms/ammunition was recovered from him and taken into possession. He was placed under suspension. He was issued Charge Sheet. Charge sheet along with statement of allegation was served upon him. Inspector Kousar Ali, RI/Police Lines, Tank was nominated as Enquiry Officer. During enquiry, the accused official along with other PWs were examined. Their statement were placed on file. After finalization of enquiry, the enquiry report was received and perused. A Final Show Cause Notice was issued and served upon him properly. His reply to the Final Show Cause Notice was received and found un-satisfactory. His previous service carrier was also checked. From the perusal of enquiry file, his present attitude and previous service carrier, it is clearly evident that he is found involved in illegal activities of selling/supplying of narcotics under the umbrella of Police Uniform which caused great defamation to the enire Police Department and also injurious to the general society and young generation of the country. He is cancer for the society and Police Department as well. His further retention in the department is not adviceable, therefore, I ANWAR SAEED KUNDI (PSP), District Police Officer, Tank being competent authority under the Powers vested me, award Major Punishment of "DISMISSAL FROM SERVICE" to accused Constable Imran Khan No. 528 of this district police with immediate effect.

Order announced.

O/S no. 1051
25.8.13

29/8/2013

(ANWAR SAEED KUNDI) PSP
District Police Officer,
Tank.

Attested to be true
copy.

بھنور جناب والا شان ڈپٹی انسپکٹر جنرل آف پولیس ڈیرہ اسماعیل خان رینج

عنوان :- درخواست برائے اپیل بحالی ملازمت

جناب عالی!

گزارش بھنور انور ہے کہ مجھے مورخہ 28-8-2013 سے محکمہ پولیس جب میں بیلور کنسٹیبل ہمراہ گن میں

جناب ڈسٹرکٹ جج پٹاکہ برائے کیوٹر صاحب فرائض سرانجام دے رہا تھا کہ ملازمت سے برخاست کر دیا گیا ہے۔

حالانکہ محکمہ نام نہاد انکوآری جس میں میرے خلاف الزام ہے اس سے کتنا مجھے فرضی عمل کے ذریعہ محکمہ سے برخاست کیا گیا ہے۔

یہ کہ فائل شوکا ز نوٹس میں فائینڈنگ انکوآری رپورٹ بھی نہ شامل کی گئی اور نہ ہی باوجود اصرار کے اسکی نقل مجھے دی گئی

جناب انکوآری آفیسر صاحب جس نے انکوآری مکمل فرمائی میرے خلاف الزام ثابت نہ ہونے کا تحریر فرمایا تھا اور میں حیران

ہوں کہ میری محکمہ سے (Dismissal) کیسے ہو گئی۔

جس نام نہاد مقدمہ کو میرے خلاف (Dismissal) کا آل کار بنایا گیا ہے میں کوئی جان اور حقیقت نہیں ہے اور نہ

ہی مقدمہ ہذا کے نتائج کو سامنے رکھا گیا ہے تاہم مقدمہ ہذا جو زیر سماعت ہے اور یقیناً اس کا آخری فیصلہ انشاء اللہ میرے حق

میں ہونے کے قوی امکانات موجود ہیں۔

میری انتہائی مودبانہ گزارش ہے کہ میری انکوآری رپورٹ اور جملہ حالات و واقعات کو مد نظر رکھتے ہوئے اور سائل کی سا

7/8 سال بے داغ سروس ریکارڈ کو سامنے رکھتے ہوئے میرے بال بچوں اور افراد خانہ جس کی کفالت کو ہمت نہت کر دیا گیا ہے

فرمایا جائے۔ سائل تازیت آپ اور آپ کے اہل و عیال لینے دعا اور ہے گا۔

الارض

مورخہ 20/08/2013

کنسٹیبل عمران خان 528 معززین عالمگیر خان قوم میا خیل سکنہ محلہ سول لائن ٹانکہ

حال دین پور ڈیرہ اسماعیل خان

Attested to be true
copy.

[Signature]

No. 371

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. Ps.

Received a registered* addressed to

Date Stamp

Initials of Receiving Officer *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) (in words)

If insured.

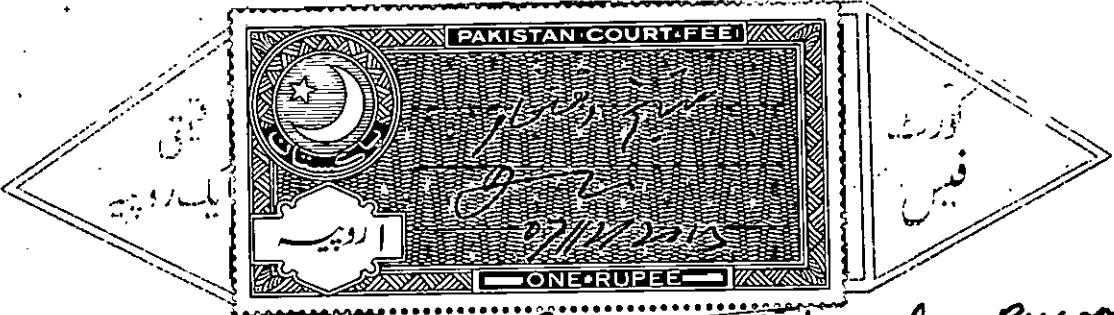
Insurance fee Rs. Ps. Weight Kilb Grams

Name and address of sender

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وکالت نامہ



Before the K.P.K. Service Tribunal

Appellant Imran Khan

Imran Khan vs Govt of K.P.K through P.P.O

Service Appeal

U/s 4 of K.P.K. Service Tribunal Act 1974

باعث تحریر آنکہ

D. I. Khan

Shrih Officer ul-Haq Advocate High Court

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں قاضی پر خود یا بنا یا دیگر رو برو عدالت حاضر ہوں گا اور ہر وقت آپ سے جانے مقدور وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر قاضی پر منظر حاضر نہ ہو اور آپ مقدمہ برپا نہیں ماضی کی جو سے کسی اور صورت خلاف ہو گیا تو صاحب موصوف اس کے کسی طریقہ ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام کیمبری کے علاوہ یا کیمبری کے اوقات سے پہلے یا پچھلے یا بروز تعطیل بندی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر کیمبری کے علاوہ اور دیگر مقامات آگے یا پورے تھیلے یا کیمبری کے اوقات کے آگے یا پچھلے نہیں ہونے پر منظر کوئی نقصان پہنچے تو اس کے ذمہ دار یا ایسے وقت کسی معاوضہ کے ادا کرنے یا منت نہ ہونے کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے اور کوئی صاحب موصوف پر وادعت صاحب موصوف مٹھی کردہ ذات خود منظور قبول ہوگا اور صاحب موصوف کو عرض دہی یا طلب دہی یا درخواست اجراء 1-1 سے آگے نظر بندی اپنی گمانی اور ہم درخواست برہم کے بیان دینے اور پر پائی یا رہائی نامہ دینا بر خلاف کرنے اقبال دہی کا بھی اختیار ہوگا اور بصورت مقرر ہونے تاریخ قاضی مقدمہ ہوگا بیرون از کیمبری صدر عدالت مقرر آگے دہی اور دہائی مقدمہ یا منسوی دہی ایک طرف یا درخواست عم اتالی یا قرضی یا گرفتاری میں تو ایسا اجراء دہی میں صاحب موصوف کو پیشوا اور ایسی شہادت منظور دہی کا اختیار ہوگا اور تمام سادت پرداخت صاحب موصوف مٹھی کردہ از خود منظور ہوں ہوگا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مزورہ یا اس کے کسی جزوی کارروائی یا بصورت درخواست نظر بندی اپنی گمانی یا دیگر حالت و مقدمہ مذکورہ کسی دوسرے وکیل یا برسر کو اپنے جہاں یا اپنے امراء مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں دہی اور ایسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران میں جو کہ ہر جانب التوا ہونے کا وہ صاحب موصوف کا حق ہوگا مگر صاحب موصوف کو ہاری نہیں تاریخ قاضی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو ہارا اختیار ہوگا کہ مقدمہ کی برپا نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

213
26

Attached & Accepted
Shrih Officer ul-Haq
Advocate High Court

Signature of Appellant

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

Service Appeal No. 1652/2013

Imran Khan s/o Alamgir Khan
District Police No. 528 Police Lines Tank
Caste Miankhel Moh: Civil Lines Tank.....(Appellant)

Versus

1. The Provincial Police Officer (IGP), Khyber Pakhtunkhwa Peshawar.
2. The Regional Police Officer (DIG), Dera Ismail Khan
3. The District Police Officer, Tank.....(Respondents)

WRITTEN REPLY ON BEHALF OF RESPONDENTS.

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action & locus standi.
2. That the appeal is bad for misjoinder/non-joinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come with clean hands.
5. That the appellant is estopped due to his own conduct.
6. That the appellant has concealed the material facts from Honourable Tribunal.
7. That appeal is not maintainable & incompetent
8. That the Honourable Service Tribunal has no jurisdiction to entertain the instant appeal.

BRIEF FACTS

1. Pertains to record.
2. Correct to the extent that appellant was charge sheeted on the allegations of involvement in a criminal case vide FIR No. 319 dated 02.07.2013 u/s 3/4 Article /13AO PS/SMA Tank. The remaining portion of the para is incorrect. Infact appellant was arrested by SHO PS/Tank and recovered 500-grams Bhang, 200-grams Charas, 20-grams Opium and unlicensed Pistol 30-bore from his personal possession.
3. Incorrect. A proper departmental inquiry was initiated by the competent authority and was found guilty of the charges.
4. Pertains to record.


*Govt: Peshawar
Dera Ismail Khan*

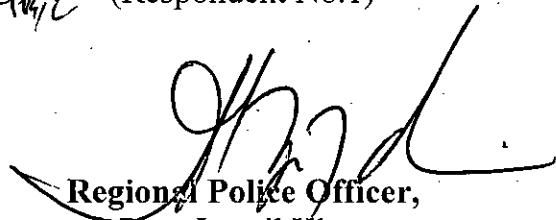
GROUND


- A. Incorrect. A proper departmental inquiry was initiated under the law & rules in which all the legal formalities have been observed.
- B. Incorrect. The order was passed under relevant laws applicable on Police Force.
- C. Incorrect. The contraband narcotics and unlicensed weapon as mentioned above were recovered from the personal possession of appellant and he was found guilty being found in illegal and criminal activities while member of Police Force.
- D. Incorrect. A proper departmental inquiry was initiated under the law & rules and no violation of law, rules and service policy have been done.
- E. The appeal may be treated according with law & rules.

PRAYER

It is, therefore, most humbly prayed that on acceptance of these parawise comments, the Appeal of the Appellant which is devoid of legal footing and merit may graciously be dismissed.


Provincial Police Officer
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


Regional Police Officer,
Dera Ismail Khan
(Respondent No.2)


District Police Officer,
Tank
(Respondent No.3)

Vetted
Salim
Govt: Peshawar
DERA ISMAIL KHAN

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

Service Appeal No. 1652/2013

Imran Khan s/o Alamgir Khan
District Police No. 528 Police Lines Tank
Caste Miankhel Moh: Civil Lines Tank.....(Appellant)

Versus

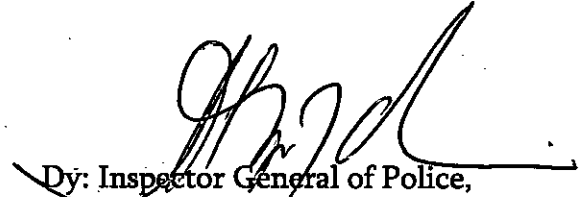
1. The Provincial Police Officer (IGP), Khyber Pakhtunkhwa Peshawar.
2. The Regional Police Officer (DIG), Dera Ismail Khan
3. The District Police Officer, Tank.....(Respondents)

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS

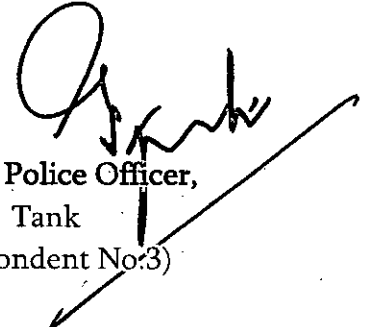
We, the respondents do hereby solemnly affirm and declare on oath that the contents, of Comments/Written reply to Appeal are true & correct to the best of our knowledge and nothing has been concealed from this Honourable Tribunal.



Provincial Police Officer
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)



Dy. Inspector General of Police,
D.I.Khan Range D.I.Khan
(Respondent No.2)



District Police Officer,
Tank
(Respondent No:3)

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

Service Appeal No. 1652/2013

Imran Khan s/o Alamgir Khan
District Police No. 528 Police Lines Tank
Caste Miankhel Moh: Civil Lines Tank.....(Appellant)

Versus

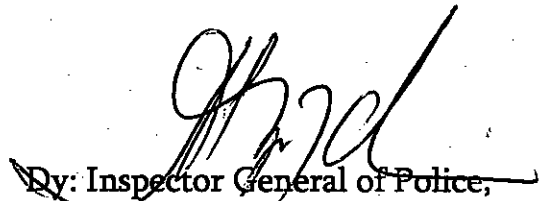
1. The Provincial Police Officer (IGP), Khyber Pakhtunkhwa Peshawar.
2. The Regional Police Officer (DIG), Dera Ismail Khan
3. The District Police Officer, Tank.....(Respondents)

A U T H O R I T Y

We, the respondents do hereby authorised DSP/Legal; DIKhan to appear before the Service Tribunal Khyber Pakhtunkhwa, Peshawar, on our behalf, He is also authorised to produce/ withdraw any application or documents in the interest of Respondents and the Police Department.



Provincial Police Officer
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)



Dy. Inspector General of Police,
D.I.Khan Range D.I.Khan
(Respondent No.2)



District Police Officer,
Tank
(Respondent No.3)

BEFORE THE HON'BLE SERVICE TRIBUNAL K.P.K. PESHAWAR.
SERVICE APPEAL NO. 1652/2013

Imran Khan V/S PPO (I.G.P) and others.

Rejoinder to the Reply of Respondent
on behalf of Appellant.

Rejoinder to Preliminary Objections .

1. That Objection para No.1 is incorrect. The Appellant is an aggrieved person .Thus he got cause of action and locus Standdi.
2. That Objection Para No.2 is incorrect. The Appellant have made the parties as Respondents who are necessary parties in the Appeal.
3. The Objection para No.3 is incorrect. The Appeal is well within time
4. That the Objection Para 4 is incorrect. .The Respondent authorities have not explained uncleanliness of the Appellant.Thus denied.
5. That Objection Para No.5 is incorrect.
6. That Objection para No.6 is incorrect.
7. That Objection para No.7 is incorrect.
8. That Objection No.8 is incorrect.

Rejoinder to Reply on Para Facts.

1. Needs no reply .
2. That Para No.2 of the Objection is incorrect. The Appellant was falsely implicated in the Criminal Case due to malafide intention and ulterior motives. After long criminal proceedings the Appellant was Hon'ably acquitted from the charges levelled against the Appellant. In this connection Judgment and order dated.19.9.2014 of acquittal of the Appellant is enclosed.
3. That Para No.3 of facts of theReply is incorrect. No proper enquiry have been conducted and have not given proper opportunity to the Appellant. Thusdenied.

Handwritten signature and initials:
H.L.W.
A.S.

Rejoinder to Reply on grounds.

A to E : That the Appellant have already been acquitted by the learned Trial Court after initiating long proceeding on the matter in questioned. He was falsely implicated in the criminal case by the Respondent authorities

That the Appellant submitted departmental appeal within stipulated period and filed a Service Appeal in the Hon'ble Service Tribunal

Handwritten signature/initials
Amen

In wake of submissions made above it is humbly prayed that the Appeal of the Appellant may kindly be accepted and the Appellant may kindly be restored on his Service with all back benefits on his original post and number.

Your Humble Appellant.

Handwritten signature
Muhammad Imran

through Counsel.

Handwritten signature
(Shajikha Iftikharul Haq)
Advocate High Court.

Dated.14.1.2015

Affidavit.

It is solemnly affirm and declare on oath that the contents of the Rejoinder is true and correct to the best of my knowledge and belief and that nothing has been concealed.

Handwritten signature
Deponent.

Handwritten signature
Oath Commissioner
Attested
District P. O. Khan
26/1/15

IN THE COURT OF MR. NADEEM MUHAMMAD, SENIOR CIVIL
JUDGE/JUDICIAL MAGISTRATE EMPOWERED WITH SECTION 30
CR.P.C, TANK

Criminal Case No:.....338/PO of 2013.
Date of Institution:.....23.10.2013.
Date of Decision..... 19.09.2014.

State.....VS.....

Imran Khan Son of Alamgir Khan Caste
Mian Khel R/O Mohallah Civil Line
Tehsil and District Tank
.....(Accused)

CASE FIR NO 319 DATED 02.07.2013 U/S 13 A.O-3/4 PO POLICE
STATION SMA, TANK.

JUDGMENT

My this Judgment is directed to dispose of the instant case titled above.

Summarized facts of the case are that on 02.07.2013 SHO Amir Abdullah along with other police Nafree was on routine gusht towards village Umer Adda. When they reached village Umer Adda. they saw a man coming on his motorcycle towards Tank Bazaar. He was stopped on suspicion and on asking he disclosed his name as Imran son of Alamgir. His body search was conducted. During his body search one plastic shopper was recovered from his right side pocket of shirt. which contained 20 grams chars and 10 gram Opium . On further checking of his shalwar one 30 bore pistol was also recovered which contained 05 live rounds of same bore. 500 grams of Bung was also recovered from the right handle of the motorcycle. Later on the SHO/Complainant prepared the Murasila and sent it to the police station through constable Zahid No 304. On the basis of murasila the above mentioned FIR was lodged.

After completion of the investigation, complete challan was submitted in this Court on 23.10.2013 for trial. Accused was summoned in the instant case and requirements of Section 241-A Cr.P.C 1898, were complied with on 13.12.2013. Formal charge was framed on accused on 06.02.2014, wherein accused claimed trial.

The prosecution evidence was summoned and the prosecution produced evidence in support of instant case. In order to prove the case against the accused, prosecution produced and examined six (06) witnesses while PW Constable Fazal Rehman and constable Said Rasool were abandoned by the prosecution being un-necessary.

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جسٹس ناہدیم محمد
19.9.14
338

19.9.14

ATTESTED
EXAMINER
District & Sessions Court
18/10/14

23

After closure of prosecution evidence, statement of accused was recorded U/S 342 Cr.P.C, wherein accused denied the allegations leveled against him in the charge and showed himself as innocent.

Arguments of learned counsel for the accused and SPP for the state heard and case file perused.

The prosecution first witness in the instant case was Ayub Khan, whom has appeared as PW-1 and has stated during his examination in chief that on the receipt of the Murasila, he incorporated the FIR which correctly bears his signature and the same is exhibited as Ex:PW-1/1.

The prosecution second witness in the instant case was Constable Rehmat Ali No 1 who was marginal witness to the recovery memo which is exhibited as Ex: PW 2/1. In his presence SHO Amir Abdullah handed over to the I.O one 30 bore pistol along with 02 magazine and 07 live rounds of 30 bore. 20 grams chars, 10 grams Opium and 500 grams bung in case FIR No 319 dated 02.07.2013 U/S 13 AO Police Station SMA Tank and his statement was recorded by the I.O.

The prosecution third witness was Constable Sheikh Saadi No 603 whom has appeared as PW-3. He has stated in his examination in chief that during the days of occurrence he was posted as constable. On the day of occurrence he was present with the SHO and other police party when one 30 bore pistol along with 02 magazine and 07 live rounds of 30 bore. 20 grams chars, 10 grams Opium and 500 grams bung were recovered by SHO, who prepared the murasila and sent it to the police station. His statement was also recorded on the spot.

The prosecution fourth witness was Constable Zahid Khan 304 who has appeared as PW-4 and has stated during his examination in chief that he was present with the SHO at the time of occurrence when the SHO/complainant recovered the said chars, Opium, Bung and one 30 bore pistol. Accused was also arrested at the spot. The murasila was prepared by SHO, who handed over to him the said murasila which he took to the Police station and handed over to the I.O and came back to the spot with the I.O.

10
19.9.14

ATTESTED
EXAMINER
District & Session Court
Tank.

18-10-14

The prosecution fifth witness was Sher Badshah ASI who has appeared as PW-5 and has stated during his examination in chief that during the days of occurrence he was posted at Police Station SMA Tank. He has conducted investigation in the instant case. On receipt of murasila he proceeded to the spot, where on pointation of SHO/complainant Amir Abdullah he prepared the site plan which is Ex: PW 5/1. On the spot SHO/complainant handed over to him one 30 bore pistol No 6760 along with 02 magazine and 07 live rounds. The said pistol is Ex: P1. He recorded the statements of PWs U/S 161 Cr.P.C. On the completion of investigation he handed over the challan to the SHO.

The prosecution sixth and last witness was Amir Abdullah SHO who is also complainant of the instant case. He has appeared as PW-6 and has stated during his examination in chief that during the days of occurrence he was posted as SHO of PS SMA Tank. On 02.07.2014 SHO he along with other police Nafree was on routine gisht towards village Umer Adda. When they reached village Umer Adda. They saw a man coming on his motorcycle towards Tank Bazaar. He was stopped on suspicion, who disclosed his name as Imran Son of Alamgir. His body search was conducted. During his body search one plastic shopper was recovered from his right side pocket of shirt, which contained 20 gram of chars and 10 gram of Opium. On further checking of his shalwar one 30 bore pistol was also recovered which contained 05 live rounds of same bore. 500 grams of Bung was also recovered from the right handle of the motorcycle. Later on he prepared the Murasila and sent it to the police station through constable Zahid No 304. On the basis of murasila the above mentioned FIR was lodged.

I have given due consideration to the record of the instant case as well as submissions made before this court from which it is very much clear that there are contradictions in the statement of prosecution witnesses. PW-04 Constable Zahid Khan has stated in his cross examination that accused was coming from Tank side, while PW-06 who is also complainant of the instant case has clearly stated in his statement that accused was proceeding towards Tank from Umer Adda. PW-03 has stated that he along with the accused and the police along with murasila went to the police station whereas

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19.9.14

ATTESTED
EXAMINER
District & Session Court
Tank
18-10-14

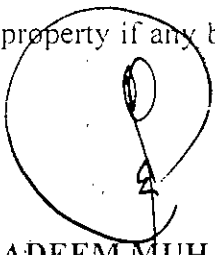
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PW-04 has stated that he took the murasila to the police station all alone. PW-05 in his statement has stated that when he reached the spot the complainant of the case who is PW-06 had not prepared any recovery memo. The said witness further states that PW-04 who is constable Zahid did not accompany him to the spot, whereas the said witness in his examination in chief has admitted that he returned to the spot along with the investigation staff. PW-06 who is complainant of the case has admitted in his statement he did not prepare the recovery memo at the time of recovery from the accused. Apart from these material contradictions there is a delay of 20 days in sending the samples to the FSL and this delay has not been explained by the I.O.

All the above mentioned points and contradictions in the evidence produced by the prosecution raises a benefit of doubt in favour of the accused and these above mentioned points and contradictions leads this Court to decide that the accused is not guilty of the charge leveled against him.

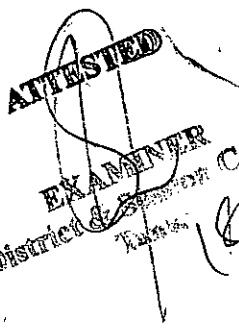
Therefore, in the light of the abovementioned circumstances, I hereby acquit the accused from the charges leveled against him. Case property if any be confiscated to the state after expiry of revision/appeal period.


ANNOUNCED:
19.09.2014


(NADEEM MUHAMMAD)
Senior Civil Judge, Tank.

CERTIFICATE

Certified that this Judgment consists of Four (04) pages. Each page has been signed by me after making necessary correction therein.


ATTESTED
EXAMINER
District & Sessions Court
Tank
18-10-14


(NADEEM MUHAMMAD)
Senior Civil Judge, Tank.

ابتدائی اطلاعی رپورٹ

فارم نمبر ۲۳-۵

(۱)

1/51

(فائل) ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردستی ۱۵ مجموعہ ضابطہ فوجداری کا

SMR

تاریخ 27/01/2013 وقت 15:00 بجے

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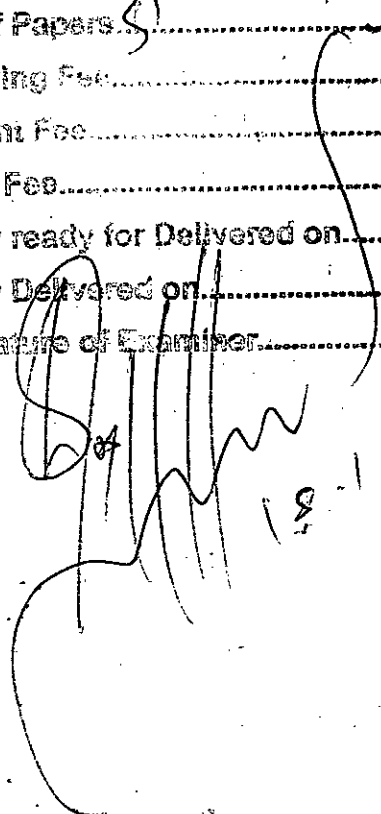
1	تاریخ و وقت رپورٹ	27/01/2013 وقت 15:00 بجے
2	نام و سکونت اطلاع دہندہ مستفیث	آدمیر عبد اللہ خان SMASHO کمانڈ
3	مختصر کیفیت مجرم (معدومہ) حال اگر کچھ لیا گیا ہو	معدومہ ہو کر مالکوں کو گمان کیا کہ مقتول کی نعشیں ان کے پاس ہیں
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت	گروہ مسلح قورم صاحبین کے پاس ہے
5	نام و سکونت ملزم	محمد علی صاحب
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کر دو	بے سبب
7	تھانہ سے روانگی کی تاریخ و وقت	بے سبب

این خورشیدی فراسٹل صاحبان کمانڈ
 خان SMASHO کمانڈ SMASHO نام ابتدائی اطلاع دہندہ کے درج کردہ
 یہ کہ مقتول محمد علی صاحب کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں
 نیا نیا ہو کر ان کے پاس ملنے کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں
 یہ کہ مقتول محمد علی صاحب کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں
 یہ کہ مقتول محمد علی صاحب کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں
 یہ کہ مقتول محمد علی صاحب کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں
 یہ کہ مقتول محمد علی صاحب کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں
 یہ کہ مقتول محمد علی صاحب کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں
 یہ کہ مقتول محمد علی صاحب کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں
 یہ کہ مقتول محمد علی صاحب کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں
 یہ کہ مقتول محمد علی صاحب کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں
 یہ کہ مقتول محمد علی صاحب کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں
 یہ کہ مقتول محمد علی صاحب کو گمان ہے کہ مقتول کی نعشیں ان کے پاس ہیں

MAB1/PS1/Tank
 02/17/13

ATTESTED
 EXAMINER
 District & Session Court
 Tank
 18-10-13

G.R. No. 2345
Application Received On 17-10-14
No of Papers 9
Copying Fee
Urgent Fee
Total Fee
Copy ready for Delivered on
Copy Delivered on 18-10-14
Signature of Examiner



18-10-14

18-10-14

BEFORE THE HON'BLE SERVICE TRIBUNAL K.P.K. PESHAWAR.
SERVICE APPEAL NO. 1652/2013

Ismān Khan V/S PPO (I.G.P) and others.

Rejoinder to the Reply of Respondent
on behalf of Appellant.

Rejoinder to Preliminary Objections .

1. That Objection para No.1 is incorrect. The Appellant is an aggrieved person .Thus he got cause of action and locus Standi.
2. That Objection Para No.2 is incorrect. The Appellant have made the parties as Respondents who are necessary parties in the Appeal.
3. The Objection para No.3 is incorrect. The Appeal is well within time
4. That the Objection Para 4 is incorrect. .The Respondent authorities have not explained uncleanliness of the Appellant.Thus denied.
5. That Objection Para No.5 is incorrect.
6. That Objection para No.6 is incorrect.
7. That Objection para No.7 is incorrect.
8. That Objection No.8 is incorrect.

Rejoinder to Reply on Para Facts.

1. Needs no reply .
2. That Para No.2 of the Objection is incorrect. The Appellant was falsely implicated in the Criminal Case due to malafide intention and ulterior motives. After long criminal proceedings the Appellant was Hon'ably acquitted from the charges levelled against the Appellant. In this connection Judgment and order dated.19.9.2014 of acquittal of the Appellant is enclosed.
3. That Para No.3 on facts of theReply is incorrect. No proper enquiry have been conducted and have not given proper opportunity to the Appellant. Thus denied.

Handwritten signature and initials:
A. A. A.

Rejoinder to Reply on grounds.

A to E : That the Appellant have already been acquitted by the learned Trial Court after initiating long proceeding on the matter in questioned. He was falsely implicated in the criminal case by the Respondent authorities

That the Appellant submitted departmental appeal within stipulated period and filed a Service Appeal in the Hon'ble Service Tribunal

*Imtiaz
Aan*

In wake of submissions made above it is humbly prayed that the Appeal of the Appellant may kindly be accepted and the Appellant may kindly be restored on his Service with all back benefits on his original post and number.

Your Humble Appellant:

Imtiaz
Muhammad Imran

through Counsel.

Imtiaz Haq
(Shaikh Iftikharul Haq)

Advocate High Court.

Dated.14.1.2015

Affidavit.

It is solemnly affirm and declare on oath that the contents of the Rejoinder is true and correct to the best of my knowledge and belief and that nothing has been concealed.

Imtiaz
Deponent.

Imtiaz
26/1/15

(22)

IN THE COURT OF MR. NADEEM MUHAMMAD, SENIOR CIVIL
JUDGE/JUDICIAL MAGISTRATE EMPOWERED WITH SECTION 30

CR.P.C, TANK

Criminal Case No:.....338/PO of 2013.

Date of Institution:.....23.10.2013.

Date of Decision:.....19.09.2014.

State.....VS.....

Imran Khan Son of Alamgir Khan Caste
Mian Khel R/O Mohallah Civil Line
Tehsil and District Tank
.....(Accused)

CASE FIR NO 319 DATED 02.07.2013 U/S 13 A.O-3/4 PO POLICE
STATION SMA, TANK.

JUDGMENT

My this Judgment is directed to dispose of the instant case titled above.

Summarized facts of the case are that on 02.07.2013 SHO Amir Abdullah along with other police Nafree was on routine gusht towards village Umer Adda. When they reached village Umer Adda. they saw a man coming on his motorecycle towards Tank Bazaar. He was stopped on suspicion and on asking he disclosed his name as Imran son of Alamgir. His body search was conducted. During his body search one plastic shopper was recovered from his right side pocket of shirt, which contained 20 grams chars and 10 gram Opium . On further checking of his shalwar one 30 bore pistol was also recovered which contained 05 live rounds of same bore. 500 grams of Bung was also recovered from the right handle of the motorecycle. Later on the SHO/Complainant prepared the Murasila and sent it to the police station through constable Zahid No 304. On the basis of murasila the above mentioned FIR was lodged.

After completion of the investigation, complete challan was submitted in this Court on 23.10.2013 for trial. Accused was summoned in the instant case and requirements of Section 241-A Cr.P.C 1898, were complied with on 13.12.2013. Formal charge was framed on accused on 06.02.2014, wherein accused claimed trial.

The prosecution evidence was summoned and the prosecution produced evidence in support of instant case. In order to prove the case against the accused, prosecution produced and examined six (06) witnesses while PW Constable Fazal Rehman and constable Said Rasool were abandoned by the prosecution being un-necessary.

ATTESTED

EXAMINER
District & Sessions Court
TANK

19.9.14

Handwritten notes in Urdu and English, including "FIR" and "338".

After closure of prosecution evidence, statement of accused was recorded U/S 342 Cr.P.C. wherein accused denied the allegations leveled against him in the charge and showed himself as innocent.

Arguments of learned counsel for the accused and SPP for the state heard and case file perused.

The prosecution first witness in the instant case was Ayub Khan, whom has appeared as PW-1 and has stated during his examination in chief that on the receipt of the Murasila, he incorporated the FIR which correctly bears his signature and the same is exhibited as Ex:PW-1/1.

The prosecution second witness in the instant case was Constable Rehmat Ali No 1 who was marginal witness to the recovery memo which is exhibited as Ex: PW 2/1. In his presence SHO Amir Abdullah handed over to the I.O one 30 bore pistol along with 02 magazine and 07 live rounds of 30 bore, 20 grams chars, 10 grams Opium and 500 grams bung in case FIR No 319 dated 02.07.2013 U/S 13 AO Police Station SMA Tank and his statement was recorded by the I.O.

The prosecution third witness was Constable Sheikh Saadi No 603 whom has appeared as PW-3. He has stated in his examination in chief that during the days of occurrence he was posted as constable. On the day of occurrence he was present with the SHO and other police party when one 30 bore pistol along with 02 magazine and 07 live rounds of 30 bore, 20 grams chars, 10 grams Opium and 500 grams bung were recovered by SHO, who prepared the murasila and sent it to the police station. His statement was also recorded on the spot.

The prosecution fourth witness was Constable Zahid Khan 304 who has appeared as PW-4 and has stated during his examination in chief that he was present with the SHO at the time of occurrence when the SHO/complainant recovered the said chars, Opium, Bung and one 30 bore pistol. Accused was also arrested at the spot. The murasila was prepared by SHO, who handed over to him the said murasila which he took to the Police station and handed over to the I.O and came back to the spot with the I.O.

23

10

19.9.14

ARRESTED

EXAMINER
District & Session Court
Tank.

The prosecution fifth witness was Sher Badshah ASI who has appeared as PW-5 and has stated during his examination in chief that during the days of occurrence he was posted at Police Station SMA Tank. He has conducted investigation in the instant case. On receipt of murasila he proceeded to the spot, where on pointation of SHO/complainant Amir Abdullah he prepared the site plan which is Ex: PW 5/1. On the spot SHO/complainant handed over to him one 30 bore pistol No 6760 along with 02 magazine and 07 live rounds. The said pistol is Ex: P1. He recorded the statements of PWs U/S 161 Cr.P.C. On the completion of investigation he handed over the challan to the SHO.

The prosecution sixth and last witness was Amir Abdullah SHO who is also complainant of the instant case. He has appeared as PW-6 and has stated during his examination in chief that during the days of occurrence he was posted as SHO of PS SMA Tank. On-02.07.2014 SHO he along with other police Nafree was on routine gusat towards village Umer Adda. When they reached village Umer Adda: They saw a man coming on his motorcycle towards Tank Bazaar. He was stopped on susp who disclosed his name as Imran Son of Alamgir. His body search was conducted during his body search one plastic shopper was recovered from his right side pocket shirt, which contained 20 gram of chars and 10 gram of Opium. On further search of his shakvar one 30 bore pistol was also recovered which contained 05 live rounds of same bore. 500 grams of Bung was also recovered from the right handle of the motorcycle. Later on he prepared the Murasila and sent it to the police station through constable Zahid No 304. On the basis of murasila the above mentioned FIR was lodged.

I have given due consideration to the record of the instant case as well as submissions made before this court from which it is very much clear that there are contradictions in the statement of prosecution witnesses. PW-04 Constable Zahid Khan has stated in his cross examination that accused was coming from Tank side, while PW-06 who is also complainant of the instant case has clearly stated in his statement that accused was proceeding Towards Tank from Umer Adda. PW-03 has stated that he along with the accused and the police along with murasila went to the police station whereas

ATTESTED

EXAMINER
District & Session Court
Tank

18-10

19.9.14

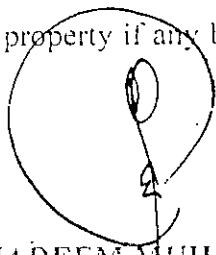
25

PW-04 has stated that he took the murasila to the police station all alone. PW-05 in his statement has stated that when he reached the spot the complainant of the case who is PW-06 had not prepared any recovery memo. The said witness further states that PW-04 who is constable Zahid did not accompany him to the spot, whereas the said witness in his examination in chief has admitted that he returned to the spot along with the investigation staff. PW-06 who is complainant of the case has admitted in his statement he did not prepare the recovery memo at the time of recovery from the accused. Apart from these material contradictions there is a delay of 20 days in sending the samples to the FSL and this delay has not been explained by the I.O.

All the above mentioned points and contradictions in the evidence produced by the prosecution raises a benefit of doubt in favour of the accused and these above mentioned points and contradictions leads this Court to decide that the accused is not guilty of the charge leveled against him.

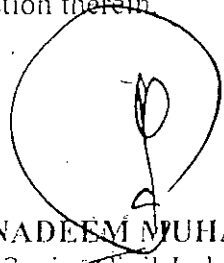
Therefore, in the light of the abovementioned circumstances, I hereby acquit the accused from the charges leveled against him. Case property if any be confiscated to the state after expiry of revision/appeal period.

ANNOUNCED:
19.09.2014


(NADEEM MUHAMMAD)
Senior Civil Judge, Tank.

CERTIFICATE

Certified that this Judgment consists of Four (04) pages. Each page has been signed by me after making necessary correction therein


(NADEEM MUHAMMAD)
Senior Civil Judge, Tank.

ATTESTED
EXAMINER
DISTRICT & SESSIONS COURT
TANK
16/09/14

ابتدائی اطلاعی رپورٹ

فارم نمبر ۲۲-۵

(1) Exp 7/13

فاتیل (ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر نمبر ۱۵۱۱ مجموعہ ضابطہ فوجداری ۱-۱۰۱)

SMP

ضلع

تاریخ 27/13 وقت ص ۱۵-۱۶ بجے

319

1

انہ بر

تاریخ و وقت رپورٹ	27/13 وقت ص ۱۵-۱۶ بجے
نام و سکونت اطلاع دہندہ مستفیث	آرمہ عبدالکریم خان S.M.A.S.H. ٹانڈہ
مختصر کیفیت مجرم (معدومہ) حال اگر کچھ لیا گیا ہو	34/1380 ایشیا ٹریڈنگ سوسائٹی
جائے وقوعہ فاصلہ تھانہ سے اور سمت	گورنمنٹ ہائی اسکول دوکاناں ہاؤسنگ سوسائٹی نیٹھالہ
نام و سکونت ملزم	عبدلکرم ولد علی گجر قوم میانکپڑی ٹیڈا ہاؤسنگ سوسائٹی
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	جو سیکرٹری سرکار سے فراہم کیا گیا
تھانہ سے روانگی کی تاریخ و وقت	۲۷/۱۳

خانہ SHO ٹانڈہ S.M.A.S.H. کی اطلاع کے مطابق درج کردہ ذیل تحریریں حاصل ہوئی ہیں اور ان میں سے ایک کے تحت تفتیش شروع کی جا رہی ہے۔ جب تک کہ تفتیش مکمل ہو جائے گی تب تک کہ تفتیش شروع کی جا رہی ہے۔ جب تک کہ تفتیش مکمل ہو جائے گی تب تک کہ تفتیش شروع کی جا رہی ہے۔

تفتیش کے تحت ایک گاڑی (جس کا نمبر 304) اور اس کے ساتھ ساتھ ایک گاڑی (جس کا نمبر 6760) بھی تفتیش کے تحت لائی جا رہی ہے۔

تفتیش کے تحت ایک گاڑی (جس کا نمبر 304) اور اس کے ساتھ ساتھ ایک گاڑی (جس کا نمبر 6760) بھی تفتیش کے تحت لائی جا رہی ہے۔

تفتیش کے تحت ایک گاڑی (جس کا نمبر 304) اور اس کے ساتھ ساتھ ایک گاڑی (جس کا نمبر 6760) بھی تفتیش کے تحت لائی جا رہی ہے۔

M.A.Tank
02/17/13

REGISTERED
M.A.TANK
District & Session Court
TANK.

For Appeal

CLD 1158, which, prima facie, supports the submissions of the petitioner.

4. Having heard the learned counsel for the petitioner and learned Advocate on Record for the caveators, we are inclined to grant leave to consider, inter alia, the questions whether the High Court was legally justified and under a legal duty to exercise its jurisdiction for the enforcement of a right as claimed by the respondents and whether they could be said to be aggrieved persons by withdrawal of the invitation for tender on the part of the petitioner-Corporation? Order accordingly.

Leave granted.

S.M.B./P-12/SC

2007 S C M R 192

[Supreme Court of Pakistan]

Present: Faqir Muhammad Khokhar and Syed Jamshed Ali, JJ

SHAKEEL AHMAD---Petitioner

versus

I.-G. PUNJAB POLICE, LAHORE and others---Respondents

Civil Petition No. 1314/L of 2004, decided on 26th July, 2006.

(Against the judgment, dated 10-2-2004 passed by Punjab Service Tribunal, Lahore in Appeal No. 1714 of 2003).

(a) Police Order (22 of 2002)---

---Art. 31---Subordinate police officials---Keeping subordinates ranks free from indiscipline and highhandedness---Possible in a manner, which upholds rule of law---Such officials must be dealt with in accordance with law. [p. 194] A

(b) Punjab Police (Efficiency and Discipline) Rules, 1975---

---R. 4---Constitution of Pakistan (1973), Art.13---Double punishment on same allegation---Not legal---Principles. [p. 194] B

(c) Punjab Police (Efficiency and Discipline) Rules, 1975---

---Rr. 3, 4, 5 & 6---Punjab Removal from Service (Special Powers) Ordinance (IV of 2000), S.3---Constitution of Pakistan (1973), Art.212(3)---Dismissal from service due to pendency of criminal case against police official---Validity---Unless such official was found guilty, F.I.R would remain an unsubstantiated allegation and on its basis maximum penalty could not be imposed---After acquittal of such official

from criminal case on basis of compromise, allegations in show-cause notice remained unsubstantiated---Authority had not provided opportunity to such official to submit reply to show-cause notice---Such official had been punished without any evidence---Supreme Court set aside such penalty, directed reinstatement of such official in his substantive rank, but he has to remain under suspension---Competent authority was directed to hold fresh inquiry under Punjab Removal from Service (Special Powers) Ordinance, 2000 and pass fresh order in accordance with law. [pp. 194, 195] C, E & F

(d) Civil service---

---Disciplinary proceedings---Disputed questions of fact---Regular inquiry should be held, so that accused official be in a position to defend himself. [p. 194] D

Hafiz Tariq Nasim, Advocate Supreme Court for Petitioner.

Ch. Aamir Rehman, Additional Advocate-General and Muneer Ahmed, D.S.P. (Legal) for Respondent No.1 and 3.

ORDER

SYED JAMSHED ALI, J.--- The petitioner, ex-Sub Inspector, Police, seeks leave to appeal against the judgment, dated 10-2-2004 of the learned Punjab Service Tribunal. It arises out of the following circumstances.

2. Disciplinary proceedings were initiated against the petitioner under the Police (Efficiency and Discipline) Rules, 1975 by way of show-cause notice, dated 21-3-2000, according to which on the night between 20/21-3-2000, he apprehended three persons brought them to Police Station, Sadar, Muzaffargarh, they were subjected to severe torture as a result of which one Allah Diwaya, succumbed to injuries for which F.I.R. No. 120, was registered on 21-3-2000, under sections 302/452/342/148/149, P.P.C. at Police Station, City Muzaffargarh. On 22-3-2000 i.e. the next day, the Superintendent of Police, Muzaffargarh passed the order i.e. "I therefore, finding the S.I. guilty of above gross misconduct award punishment of reversion from the rank of S.I. to his substantive rank to A.S.I. with immediate effect". (underlined to supply emphasis). However, on 30-3-2000, another order was passed according to which the petitioner was dismissed from service. His departmental appeal was dismissed on 20-3-2003 and his appeal before the Punjab Service Tribunal was dismissed on 6-1-2004.

2-A. The learned counsel for the petitioner submits that the petitioner could not have been punished twice on the same allegations.

In the criminal case aforesaid, he was acquitted vide judgment, dated 26-2-2002 but had already been punished by the departmental authority without any inquiry and without affording any opportunity of personal hearing to the petitioner.

3. On the other hand, the learned Additional Advocate General has defended the impugned judgment. He submits that the petitioner was acquitted in the criminal case by way of a compromise and payment of Diyat to the legal heirs of the deceased itself established the guilt of the petitioner and, therefore, no inquiry was necessary. Since the petitioner had not even submitted reply to the show-cause notice, he cannot complain that an opportunity of hearing was not granted to him.

4. We have considered the submissions. Although we appreciate the anxiety of the senior Police Officers in keeping the subordinates ranks clean and free of indiscipline and highhandedness yet we will like to emphasize that this objective is to be achieved in a manner which upholds rule of law. We are fully aware of the worst popular perception of the subordinate police officials, still they have to be dealt with in accordance with law.

5. In this case, we find that the show-cause notice was issued on 21-3-2000 and the basis thereof was registration of the criminal case aforesaid. The petitioner was allowed a period of seven days to reply to the show-cause notice but the first punitive order was passed on 22-3-2000 and it specifically stated that the reversion from the rank of S.-I. to his substantive rank of A.S.-I. was by way of punishment. It, thus, amounted to reduction in rank and, therefore, he could not have been punished on the same allegation again. This is one aspect of the matter.

6. The second is that when the order of dismissal was passed, criminal case was pending and the sole basis of the dismissal order was registration of the criminal case. It may be noted that unless an accused person is found guilty an F.I.R. remains unsubstantiated allegation and solely on that basis imposition of maximum penalty is again all cannons of fairness. After acquittal of the petitioner, even though the basis thereof was compromise, the allegations contained in the show-cause notice remained unsubstantiated. This Court, in a number of judgments, has laid down the rule that if disputed questions of fact are involved particularly in case of major penalty, a regular inquiry should be held so that an accused official is in a position to properly defend himself. We will like to observe that according to show cause notice, dated 21-3-2000, a period of seven days was allowed to submit reply, but the first penal order having been passed on 22-3-2000 there was no occasion for the petitioner to submit reply to the show cause notice. It was one of

the considerations weighing with the said competent authority that the petitioner had not submitted reply to the show cause notice and this argument was even pressed before us by the learned Additional Advocate General. As per as other contentions of learned Additional Advocate General are concerned we do not find any merit because on the date of order of dismissal, the criminal case was pending which was finally decided on 26-2-2002.

7. For what has been stated above, we are of the view that the petitioner was punished without any evidence and without providing to him an opportunity to defend himself which could not be done. Accordingly, we convert this petition into appeal, allow the same and direct reinstatement of the petitioner in his substantive rank as an A.S.I. However, he will remain under suspension. The competent authority will hold a fresh inquiry under the Punjab Removal from Service (Special Powers) Ordinance, 2000 and pass a fresh order in accordance with law. Order, dated 21-3-2000 will be treated as an order of reversion simpliciter to the substantive rank and not an order of penalty. The question of back-benefits is left to be decided by the competent authority at the time of final decision of the departmental proceedings.

S.A.K./S-54/SC

Order accordingly.

2007 S C M R 195

[Supreme Court of Pakistan]

Before Sardar Muhammad Raza Khan and Nasir-ul-Mulk, JJ

COLLECTOR CUSTOMS, PESHAWAR---Petitioner

versus

Messrs PAPER INTERNATIONAL (PVT.) LTD.,
NOWSHERA and another---Respondents

Civil Petition No. 173-P of 2002, decided on 16th August, 2006.

(On appeal from the judgment, dated 12-12-2001 of the Peshawar High Court, Peshawar Passed in F.A.O. No. 91 of 2000).

Customs Act (IV of 1969)---

---S. 156(1), Cls. (62) & (90)---Constitution of Pakistan (1973),
Art.185(3)---Goods illegally taken out of warehouse without payment of
duty---Allegation against importer-respondent was that he unloaded
imported consignment in private bonded warehouse and consumed a

For Appeal

petitioners, the respondents are directed to re-process the cases of the petitioners by adopting the following procedures:--

- (a) A Committee shall be constituted consisting of fair, impartial and sufficiently senior officers within seven days from the date of receipt of a certified copy of this order. The Committee shall hold its first meeting within 15 days thereafter. The Committee shall individually examine the case of each petitioner after granting him a meaningful hearing.
- (b) In case any of the petitioners has submitted a fake document, there is any criminal case pending against him, is not a resident of the area for which recruitments were made or otherwise does not meet the eligibility criteria provided in the advertisement on the basis of which he was appointed, such petitioner shall not be inducted into service. All other petitioners shall be deemed to have been reinstated into service with effect from the date on which their services were terminated. However, their three year contract shall commence from the date on which they are directed to take charge.
- (c) The Committee shall conclude its work within a maximum period of 30 days from the date of its first meeting.
- (d) The petitioners have voluntarily and of their own free will agreed to give up and forego any claim for back benefits of any nature.
- (e) The cases of the petitioners shall be considered for regularization on the same criteria as other similarly placed employees at the appropriate time.
- (f) All the petitioners shall appear before the Executive District Officer (R), Chiniot, provide him their latest addresses and contact numbers for the purpose of being summoned to appear before the Committee."

Undoubtedly such order passed by the learned High Court is absolutely valid and it has been left to the department itself to scrutinize/examine the eligibility of the respondents those who pass the test would be retained as employees by applying the rule of locus poenitentiae, notwithstanding that there was some irregularity in the process of selection, may be on account of one of the members, who is said to have acted as an appointing authority was not competent to sit in the same meeting. Whereas those who are not eligible or qualified shall go. This is for the department now to act fairly in terms of the direction of the learned High Court and take further action.

2. In view of the above, we do not find any merit in this appeal which is accordingly dismissed. However, we direct that the re-process of selection, as has been mandated by the learned High Court in the impugned judgment, may be completed within a period of two months without fail, otherwise the delinquents shall be taken to task.

C.M.A. 1738-L of 2013:

3. As we have decided the appeal, this application is rendered infructuous and is accordingly dismissed; however, let the applicant(s) of this application move to the concerned authority which have to re-process the matter in the light of the verdict of the High Court about the retention or otherwise of those who were the petitioners before High Court and it is for that authority to see if the applicant(s) can also be given the benefit of the impugned judgment in terms of law laid down in Hameed Akhtar Niazi v. Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185).

MWA/G-5/SC

Order accordingly.

2015 S C M R 77

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J.,
Tassaduq Hussain Jillani, Amir Hani Muslim,
Gulzar Ahmed and Sh. Azmat Saeed, JJ

INSPECTOR-GENERAL OF POLICE, PUNJAB---Appellant

versus

TARIQ MAHMOOD---Respondent

Civil Appeal No. 52 of 2012, decided on 25th April, 2013.

(On appeal from the judgment dated 20-10-2011 of the Punjab Service Tribunal, Lahore passed in Appeal No.3039 of 2010)

Civil Service Rules (Punjab)---

---R. 7.3---Fundamental Rules, R. 54---Reinstatement in service--- Back benefits, entitlement to--- Payment of back benefits on reinstatement in service---Scope---Police official was dismissed from service due to registration of F.I.R. and civil suit filed against him--- Police official filed revision petition before the Inspector General of Police, which was kept pending till the decision of F.I.R. case and civil suit by the court---Subsequently police official was acquitted from the

F.I.R. case and as a result his revision petition was allowed and he was reinstated in service---Service Tribunal allowed payment of back benefits to the police official for the period during which he remained out of service---Validity---Grant of back benefits to an employee who was reinstated by a Court/Tribunal or the department was a rule and denial of such benefits was an exception on the proof that such person had remained gainfully employed during such period---Entitlement of back benefits of a person had to be determined on the basis of facts of each case independently---Police official could not be held responsible for the period during which his revision petition was kept pending due to the F.I.R. and civil suit, because such pendency was on account of the act of the police department---Revision petition filed by police official was kept pending till the decision of the criminal as well as civil case, which had no relevance because unless he had been found guilty by the Court, he was not debarred from performing his duty---Police official was entitled to back benefits, as it was the police department, which on basis of a wrong opinion kept him away from performing his duty---Police official was entitled to back benefits from the date of filing revision petition till his reinstatement in service---Appeal was dismissed accordingly. [pp. 91, 92] A, B, C & D

Muhammad Hussain and others v. EDO (Education) and others 2007 SCMR 855; Federation of Pakistan through Secretary, Ministry of Education and others v. Naheed Naushahi 2010 SCMR 11; Sher Muhammad Shahzad v. District Health Officer 2006 SCMR 421; Binyamin Masih v. Government of Punjab through Secretary Education, Lahore 2005 SCMR 1032; General Manager/Circle Executive Muslim Commercial Bank Limited v. Mehmood Ahmed Butt 2002 SCMR 1064; Pakistan through General Manager, P.W.R., v. Mrs. A.V. Issacs PLD 1970 SC 415; Muhammad Bashir v. Secretary to the Government of Pakistan 1994 SCMR 1801 and Trustees of the Port of Karachi v. Muhammad Saleem 1994 SCMR 2213 ref.

Jawwad Hassan, Additional A.-G. for Appellant.

Aftab Alam, Advocate Supreme Court for Respondent.

Date of hearing: 25th April, 2013.

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, C.J.---Leave to appeal has been granted by this Court vide order dated 1st March, 2012, to examine the following question:--

"Inter alia contends that the learned Service Tribunal could not have exercised discretion to modify the quantum of punishment. Relies on IG (Prisons) N.-W.F.P., etc. v. Syed Jaffar Shah

(2009 PLC (C.S.) 47). Leave is granted inter alia to consider the issue raised.

2. On 13th March, 2012, the learned Bench, seized of the matter, was required to examine the provisions of rule 7.3 of the Civil Service Rules (Punjab) in the context of the payment of the entire back benefits for a period of 17 years, 8 months and 29 days during which the respondent stood removed from service and in this behalf, two judgments, titled as *Muhammad Hussain and others v. EDO (Education) and others* (2007 SCMR 855) and *Federation of Pakistan through Secretary Ministry of Education and others v. Naheed Naushahi*, (2010 SCMR 11) were cited. The learned Bench noted that some principles had been laid down in both the above-mentioned judgments but not in a definite way, particularly, when examined in the light of the circumstances of this case, therefore, it was considered appropriate that a rule be enunciated, after considering all the relevant aspects, arising in this and similar cases with further observation that it be placed before a Bench of five learned Judges of this Court for resolving the conflicting judgments.

3. A brief account of the facts of the instant case is that upon a written complaint submitted by one Mst. Sakina Bibi through her husband, a case was registered against the respondent, Constable Tariq Mehmood (No.7607) and others, vide F.I.R. No.52/1992 under sections 109/419/420/468/471, P.P.C. at Police Station Lower Mall, Lahore. Due to registration of the criminal case he was placed under suspension on 6-7-1992 w.e.f. 29-6-1992. Incidentally, the respondent had also been found absent from duty for a period of three months and 26 days w.e.f. 29-6-1992 to 28-7-1992 and 30-8-1992 up till the passing of order dated 16-11-1992, when in pursuance of departmental proceedings, he was dismissed from service under Punjab Police Rules, 1975. Against the order of dismissal from service, respondent preferred an appeal which was dismissed on 21-4-1993.

4. The respondent had been facing trial before the learned Magistrate in pursuance of the above-referred F.I.R. In the meanwhile, he also filed a Revision Petition before the Inspector General of Police. Revision petition so filed by him was entertained but it was kept pending till the decision of the case arising out of the F.I.R. noted hereinabove, as well as adjudication of a civil suit. It may also be noted that in respect of the same subject matter, a civil suit was also pending in which the respondent was not a party. However, in the criminal case noted hereinabove, the respondent was ultimately acquitted from the criminal charge by the learned Magistrate Section-30, Lahore vide order dated 1-3-2010 not on merits but while disposing of application under section 249-A, Cr.P.C.

5. It may be observed that this Court in the case of Dr. Muhammad Islam v. Govt. of N.-W.F.P. through Secondary Food, Agriculture Live Stock and Cooperative Department Peshawar and 2 others (1998 SCMR 1993) had declared that all acquittals are certainly honourable. There can be no acquittal which may be said to be dis-honourable and the law has not drawn any distinction between these two types of acquittals. Thus, after recording of acquittal, the revision petition so preferred by him was allowed on 13-8-2010. The relevant paras therefrom are reproduced herein below:--

"This order shall dispose of a revision petition preferred by Ex-Constable Tariq Mehmood No.7607 of Lahore district against the punishment of "dismissal from service" awarded by the SP Headquarters, Lahore vide order No. 5575-80/ST, dated 26-11-1992 on the charge of his involvement in case F.I.R. No.52/92 under sections 419/420/468/471, P.P.C., Police Station Lower Mall, Lahore and absence from duty for a period of about 4 months. His appeal was rejected by the appellate authority vide order No.16150-51/AC, dated 21-4-1993.

- (2) The undersigned has gone through the revision petition, parawise comments thereon offered by the punishing as well as appellate authorities and other relevant papers minutely. The petitioner has also been heard in person in the Orderly Room on 11-5-2010.
- (3) Upon perusal of the case file it has transpired that on receipt of instant appeal the case was referred to AIG Legal for opinion as the criminal case is under trial who opined that the innocence of the appellant can not be established prior to the decision of the criminal case, which will be however, decided by the court after the disposal of civil suit, In the light of legal opinion the then competent authority directed on 13-2-1994 to pend the case till the decision of the court."
- (4) The petitioner in his revision petition as well as during the course of personal hearing denied the allegations levelled against him and stated that he was falsely implicated in the above said criminal case. During personal appearance he has adduced a copy of order dated 1-3-2010 by Magistrate Section-30, Lahore, vide which he has been acquitted in case F.I.R. No.52/92 under sections 419/420/468/471, P.P.C., Police Station Lower Mall, Lahore under section 249-A, Cr.P.C. When asked about his absence from duty, the petitioner stated that he remained absent due to registration of said criminal (case) against him. Now the case has been decided by the

competent court of law and there is no reason to keep it pending further.

- (5) In the light of his acquittal in the criminal case, a lenient view is taken. The petitioner is reinstated in service with immediate effect and the period of absence/out of service will be treated as leave without pay. No emolument will be paid to him for the period of his absence/out of service."

6. In the opinion of the AIG, back benefits of the period during which the respondent could not join his service could not be established because of the pendency of the decision of the criminal case, which was to be decided by the Court after disposal of the civil suit case to determine the innocence of the respondent. We may observe, at this stage, that this opinion was against the law because the proposition of the law is that a person is innocent unless he is proven guilty by a competent Court of law. Reference may be made to the case of MUHAMMAD ASGHAR alias NANNAH v. STATE (2010 SCMR 1706).

However, for the redressal of his grievance in respect of grant of back benefits, he approached the Service Tribunal and succeeded in getting the back benefits as prayed for vide impugned judgment dated 20-10-2011. Concluding para therefrom is reproduced herein below:--

"5. The departmental view that according to rule 7.3 of CSR it is discretion of the competent authority to treat the period of absence either on duty or otherwise. But the discretion has to be used judiciously. After acquittal in the criminal case and his reinstatement by the departmental authority there is no justification for depriving him of the benefits of the period that he remained out of service. Appeal is, therefore, accepted and the impugned orders are set aside. He be paid benefits of the period that he remained out of service."

7. The learned Additional Advocate-General, Punjab, in support of his arguments stated that as this Court in the judgment reported as Naheed Naushahi (Supra) had observed that the question of grant of back benefits in terms of monetary benefits has to be decided by the Department keeping in view the facts whether civil servant had been engaged in any job during the period when he was subjected to departmental proceedings or otherwise. Therefore, the Tribunal could not have passed an order in his favour without determining this aspect of the case. Reliance has also been placed by him on the case of Muhammad Bashir v. Secretary to the Government of the

Punjab, Education Department, Lahore and 2 others (1994 SCMR 1801).

Whereas on the other hand in the case of *Muhammad Hussain* (ibid) it has been held that grant of service back-benefits to an employee who had been illegally kept away from employment was the rule and denial of such benefits to such a reinstated employee was an exception on the proof of such a person having remained gainfully employed during such a period. Therefore, he prayed that under Rule 7.3 of CSR, Service Tribunal may have not allowed him back benefits in view of the judgment which has been relied upon.

8. Learned counsel for the respondent stated that in view of the facts and circumstances of the case, Service Tribunal had given relief which is in accordance with the law laid down in the case of *Muhammad Hussain* (ibid).

9. We have carefully examined arguments put forward by both the learned counsel for the parties. It would be appropriate to note that a Full Bench of this Court in the case of *Muhammad Bashir* (ibid), while taking into consideration facts of the case, namely, the appellant therein was compulsorily retired on 26-6-1986 after completing 25 years of service under section 12(ii) of Punjab Civil Servants Act, 1974. After having failed to get his grievance redressed from the departmental authorities, he challenged the order of his retirement before Punjab Service Tribunal on two grounds, firstly, that he had not completed 25 years' service qualifying for pension and secondly, that the order of reinstatement had not been made in accordance with public interest. The Tribunal did not attend to the first ground but allowed appeal on the ground that the record of appellant was satisfactory and good. The Tribunal also held that the intervening period during which he remained out of service would be treated as leave without pay and on having taken into consideration section 16 of Punjab Civil Servants Act, 1974 read with FR 54 held as under:--

"In the present case clause (b) would attract. The Committee shall also take into consideration whether a civil servant has earned any amount by way of salary or as profit on account of his having accepted some employment or been engaged in some profitable business during the intervening period. Similarly, according to proviso (ii) of section 16 of the Punjab Civil Servants Act, 1974, where an order of removal of a civil servant has been set aside, he shall be entitled to such arrears of pay as the authority setting aside the order may determine. In the instant case, the Tribunal has not allowed the arrears of pay without assigning any reason. The learned counsel appearing on

behalf of the respondents has referred to comments of the Punjab Service Tribunal, which state as under:--

"While hearing the case the appellant Muhammad Bashir had given his comment to forego arrears in case of his re-instatement in service. Consequently in the last para. of the judgment dated 28-3-1992 it is observed that the intervening period during which the appellant remained out of service shall be treated as leave without pay."

At this stage it would be appropriate to place in juxtaposition FR 54 and CSR 7.3 as under:--

F.R. 54	7.3 Civil Service Rules (Punjab)
When the suspension of a Government servant is held to have been unjustifiable or not wholly justifiable; or when a Government servant who has been dismissed, removed or suspended is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty...	When a Government Servant who has been dismissed or removed from service, is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:
(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and, by an order to be separately recorded any allowance of which he was in receipt prior to his dismissal, removal or suspension; and	(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and by an order to be separately recorded and allowances of which he was in receipt prior to his dismissal or removal; or
(b) if otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribe. It further provides that in a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.	(b) "if otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribe". In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. In a case falling under Clause (b), it will not be treated as a

period spent on duty unless the revising or appellate authority so directs.

In a case falling under clause (b) it will not be treated as a period spent on duty unless the revising or appellate authority so directs. Provided that the amount of arrears payable to the government servants concerned, whether he is re-instated as a result of a Court judgment or acceptance of his appeal by the departmental authority, shall be reduced by the amount earned by way of salary or as profit on account of his having accepted some employment or been engaged in some profitable business during the period he remained dismissed, removed or suspended, and for the determination of the said amount a committee shall be constituted consisting of two officers of the Administrative Division and a representative of the Finance Division.

In the provisions quoted above, one thing is common namely that on re-instatement either by Court order or by the departmental authority, after acceptance of appeal, the employee would be entitled to back benefits, if it is established that he had not been engaged gainfully during the period when he was out of job.

10. There is yet another provision on this subject i.e. Sl.No.155 Vol-II, Esta Code, 2007 Edition, the contents whereof are reproduced hereinbelow:--

Reinstatement of Government Servants on Court decision and Functions of Enquiry Committee.

A. reference is invited to the O.M. from the Law Division No.F.7(8)-70-Sol(1), dated 12th August, 1970 (SL No.154) which states, inter alia, that, in accordance with the Supreme Court's judgment in C.A. No.28 of 1969 (West Pakistan

Mrs. A. V. Issacs), if the dismissal of a government servant is held to be unlawful, he has to be allowed salary for the period he was kept out of service, reduced by the amount, if any, that he might have earned by way of salary, or as profits, on account of having accepted some employment, or having been engaged in some profitable business, during the above period. Thus, the legal status of Governments' claims for arrears of pay and allowances is no longer the same as had been indicated in para.3 of this Ministry's Circular D.O. No.F.9(15)-RI (Rwp.)/61 dated 23rd December, 1961 (Annex). Consequently, it is no longer appropriate for the enquiry committee referred to in para.4 of that circular D.O. to consider on merits, in cases in which government servants are restored to their posts as a result of Court's decisions, as to whether or not, and not to what extent, pay and allowance for the period of their absence from duty should be restored.

- (2) It has accordingly been decided that, in cases where a government servant is reinstated retrospectively as a result of a Court's decision, the functions of the enquiry committee to be set up under para.4 of this Ministry's Circular D.O.No.F.9(15)-RI(RHT)/61 dated 23rd December, 1961 (Annex) would henceforth be as follows:-
- (a) The Ministry/Division/Department, as the case may be, may obtain from the government servant concerned, a solemn declaration, supported by an affidavit, as to the particulars of his employment, or engagement in profitable business, during the period of his absence from duty, and the amount earned by him by way of salary from such employment, or as profits in such business.
- (b) After examining such evidence as might be available, and cross-examining, if necessary, the government servant, the Ministry/Division/Department, as the case may be, may give their findings as to whether or not the above declaration is, 'prima facie' acceptable and on what grounds.
- (c) If the declaration is found to be, 'prima facie' unacceptable, the Ministry/Division/Department, as the case may be, should refer the case to the committee, which, before giving their finding as to the amount earned by the government servant during the period of absence from duty, may get the declaration properly verified/scrutinized by any agency they consider appropriate. For example, if the case had been dealt with by the Special

Police Establishment at any earlier stage in any connection, this verification/scrutiny may be arranged to be carried out by that Establishment. For purpose of this verification/scrutiny, assistance of the relevant Income-tax authorities may also be sought, if the government servant concerned be an Income-tax payer.

(d) In case the reinstatement of the government servant has been ordered by the Court on account of the relevant administrative action having been found to be defective, the committee should also give their findings:

(i) As to which officers were responsible for that defectiveness of administrative action; and

(ii) As to whether any, and what part, of the amount payable to the government servant by way of net salary for the period of his absence from duty, might justifiably be recovered from such officers. The recovery from such officers will, of course, follow departmental proceedings under the Government Servants (Efficiency and Discipline) Rules.

(3) The above instructions do not apply to cases in which government servants are reinstated as a result of acceptance of appeals by departmental appellate authorities, which will continue to be regulated by provisions of FR-54 as hitherto.

(Annex)

(Extract of paras, 4 and 5 of the Finance Division letter No.F.1(15)RI (Rwp)/61, dated 23rd December, 1961 as amended).

(4) If as a result of Court decision, a government servant restored to his post, the question whether pay and allowances for the period he was under suspension or was removed from service should be decided on merit of each case. For this purpose, it is suggested that in all cases the Ministry or Department concerned should order a departmental enquiry headed by the representative of the Ministry/Department Administratively concerned with their Financial Adviser/Deputy Financial Adviser as a member of the committee. This committee should consider whether, on the merits of the case, Government would be justified in restoring the official concerned, the pay and allowances for the period involved and, if so, whether in full or in part. In coming to a conclusion whether pay and allowances to the individual should

or should not be restored, following considerations will have to be kept in view:--

(a) Whether the person concerned was acquitted on a purely technical or procedural grounds or whether the actual allegations against him had been gone into and were found to be incorrect;

(b) Whether the individual during the period he was away from active duty and other sources of income; and so on.

(5) It has further been decided that in cases where the total period involved does not exceed 12 months from the time the individual was suspended or removed from service, the final decision should be taken by the Ministry concerned at the level of Secretary and in all other cases the matter should be referred to the Ministry of Finance for prior concurrence."

In view of the above provisions of F.R. and CSR as well as Esta Code, this Court had been expressing its opinion with regards to the settled law in various pronouncements. Reference may be made to judgments in the cases of Muhammad Hussain (ibid); Naheed Naushahi's case (supra); Sher Muhammad Shahzad v. District Health Officer (2006 SCMR 421); Binyamin Masih v. Government of Punjab through Secretary Education, Lahore (2005 SCMR 1032); General Manager/Circle Executive Muslim Commercial Bank Limited v. Mehmood Ahmed Butt (2002 SCMR 1064); Pakistan through General Manager, P.W.R., v. Mrs. A. V. Issacs (PLD 1970 SC 415).

In the case of Muhammad Hussain (ibid), this Court has clearly settled the law stating that:--

"It is a settled law that grant of service back-benefits to an employee who had been illegally kept away from employment was the rule and denial of such benefits to such a reinstated employee was an exception on the proof of such a person having remained gainfully employed during such a period."

And further that:--

"It is an admitted fact that there is nothing on record that the petitioners were gainfully employed anywhere during the relevant period and this fact was also not considered by the learned Service Tribunal in para 6 of the impugned judgment. Therefore, it would be very unjust and harsh to deprive the petitioners of back-benefits for the period for which they remained out of job without any fault from their side. It is a settled law that back benefits in such

situation cannot be withheld by the respondents or by the learned Service Tribunal."

In the same case, the Supreme Court also distinguished the judgment of this Court in Mansoor-ul-Haq's case, cited above:--

"The learned Service Tribunal has refused back-benefits to the petitioners in view of law laid down by this Court in Mansoor-ul-Haq's case 2004 SCMR 1308 which is distinguished on facts and law wherein PIDC vide order dated 23-6-1986 terminated Mansoor-ul-Haq's lien by stating that the same will be maintained by PACO, a borrowing organization and not in the PIDC and the said proposal was accepted by the PACO, therefore, the judgment relied by the Law Officer and learned Service Tribunal is distinguished on facts and law."

In the case of Sher Muhammad (supra) it was held:--

"...there is nothing on record that the petitioners were gainfully employed anywhere during the relevant period. It would be very unjust and harsh to deprive them of back-benefits for the period for which they remained out of job without any fault from their side. At the cost of repetition they were proceeded under (Efficiency and Discipline) Rules for no fault on their part and their services were terminated in an arbitrary manner without providing any reason. The departmental authority rejected their appeals simply on the ground that they were appointed against the post of Medical Technician in an erratic manner without noticing that they were selected as Dispensers in BS-6 and the competent authority of its own adjusted them as Medical Technicians in their own pay and scale. It was not their fault that they held the post of Medical Technician. All these aspects have not been considered and the petitioners were made to suffer throughout this period for no fault of their own. In these circumstances we fail to understand how their salary can be withheld for the said period when they remained out of service due to whimsical and arbitrary actions of the functionaries. The petitioners have got every right to recover their arrears. Reliance in this respect is placed on Pakistan through General Manager, P.W.R., Lahore v. Mrs. A.V. Issacs (PLD 1970 SC 415). Accordingly, keeping in view all the aforesaid features of the cases, we convert these petitions into appeals and allow the petitioners all the back-benefits."

In the case of Binyamin Masih (supra), the Service Tribunal accepted the appeal preferred on behalf of the petitioner therein. However, it refused to grant back-benefits for the period during which the petitioner

remained out of service. It was ordered by this Court that the intervening period be treated as leave of the kind due to him. The Supreme Court converted the petition into appeal and accepted the same while modifying the judgment of the Tribunal to the extent that the salary concerning the period from 24-1-1996 to 11-2-2000 would be paid to the petitioner within a period of four weeks under intimation to the Assistant Registrar of this Court at Lahore.

This Court ruled in the Mehmood Ahmed Butt case (supra) that:--

"It may be added that grant of service benefits to an employee who had been illegally kept away from his employment was the rule and denial of service benefits to such a reinstated employee was an exception on the proof of such a person having remained gainfully employed during such a period. The mere fact that the respondent had left the country and had gone abroad without any proof of his being gainfully employed during the period in question, was not sufficient to deprive him of the benefits in issue. Needless also to add that nothing is available with us to hold that the respondent had remained gainfully employed somewhere during the said period."

The Supreme Court directed in its judgment in the Naheed Naushahi case (supra):--

"Thus we are of the considered opinion that the Service Tribunal instead of granting relief as it is evident from the concluding paras with regard to the financial back-benefits may have referred the case to the department for establishing a Committee for the purpose as noted above. Before parting with this order it is to be noted that the department shall refer the case of the respondent to the Committee, which will be constituted in view of the above instructions contained in Sl.No.151 of the Code for determining whether she is entitled for the claimed financial benefits or not. However, the department is directed to dispose of the matter in respect of her back-benefits expeditiously but not beyond the period of two months on receipt of this order."

In the case of Muhammad Bashir v. Secretary to the Government of Pakistan (1994 SCMR 1801), leave to appeal was granted to the appellant to consider whether the Service Tribunal was justified in refusing back benefits. The brief facts of the case were that:--

"...the appellant was serving as Subject Specialist in Government Comprehensive School, Faisalabad, when he was retired from service under section 12(ii) of Punjab Civil

Servants Act, 1974, after having completed 25 years' service, on 26-6-1986. The appellant having failed to get his grievance redressed from the Departmental authorities, approached the Punjab Service Tribunal. He challenged the order of his retirement on two grounds; firstly, the appellant had not completed 25 years' service qualifying for pension, and secondly that the order of retirement had not been made in the public interest. The learned Service Tribunal had not attended to ground No. 1 but allowed the appeal on the ground that the record of the appellant was satisfactory and good. The Character Roll presented in the Court depicts that his service record was quite satisfactory/good. While allowing the appeal the Service Tribunal held that the intervening period, during which the appellant remained out of service, shall be treated as leave without pay."

Citing the provisions of F.R. 54, the Supreme Court held that:--

"In the present case clause (b) would attract. The Committee shall also take into consideration whether a civil servant has earned any amount by way of salary or as profit on account of his having accepted some employment or been engaged in some profitable business during the intervening period. Similarly, according to proviso (ii) of section 16 of the Punjab Civil Servants Act, 1974, where an order of removal of a civil servant has been set aside, he shall be entitled to such arrears of pay as the authority setting aside the order may determine. In the instant case the Tribunal has not allowed the arrears of pay without assigning any reason."

In the case of Trustees of The Port of Karachi v. Muhammad Saleem (1994 SCMR 2213) the Court has held that while the entitlement of a reinstated employee to get the back benefits is to be determined on the basis of the facts of each case independently.

In the impugned judgment in this case, the Service Tribunal had held that the appellant had given his comment to forego arrears (back benefits) in case of his re-instatement in service. Consequently, it was observed by the tribunal that the intervening period during which the appellant remained out of service shall be treated as leave without pay. However, the Supreme Court held that this concession of the appellant had not been incorporated in the impugned judgment of the Service Tribunal and that there was also no reference to that back benefits are not allowed in view of the concession of the appellant. Therefore, it was held that these comments cannot be taken into consideration. In view of these facts and circumstances, the appeal was accepted, and the case

remanded to the official respondents for deciding the matter in accordance with law. The Committee was ordered to decide the appellant's entitlement of arrears of pay and adjustment, if any, in accordance with Rule F.R. 54 and Civil Services Laws.

11. The crux of the above case-law is that the grant of back benefits to an employee who was reinstated by a Court/Tribunal or the department is a rule and denial of such benefit is an exception on the proof of that such a person had remained gainfully employed during such period. The entitlement of back benefits of a person has to be determined on the basis of facts of each case independently. There would be cases at times when no difficulty is felt by the Court or Tribunal to grant the back benefits when there are admitted facts between the parties but when there is a dispute in respect of the facts then of course, the matter had to be referred to the Department.

12. In the instant case the respondent was dismissed from service was awarded to him vide order dated 26-11-1992 but later on reinstated on 13-8-2010, however, the back benefits were not awarded to him as the intervening period was considered as absence/out of service. The case of the respondent is to be considered at the touchstone of the principles of granting back benefits as deduced from the judgments cited above. It is to be observed that as far as the question of granting back benefits to the respondent with regard to the period during which he remained absent from duty i.e. period of about 4 months could be based on a disputed fact but as far as the period during which his Revision Petition was kept pending for decision of the criminal as well as civil cases are concerned, the respondent cannot be held responsible for the same because it was on account of the act of the Department for which he cannot be held responsible in any manner, therefore, in view of such admitted facts and following the principles as laid down in both the above said judgments as well as in the case of Muhammad Bashir (supra), we are of the opinion that minus the period during which he remained absent from duty i.e. four months, he is entitled to back benefits subject to establishing before the department in terms of Rule 7.3 of CSR that he was not gainfully employed during this period. As far as rest of the period is concerned, he is entitled for back benefits, as it was the Department, which on the basis of a wrong opinion kept him away from performing his duty, as it is evident from the order dated 13-8-2010 passed by the Revisional Authority, which has already been reproduced hereinabove.

12(sic.) For the foregoing reasons, we are of the opinion that there is no conflict in the judgments, which has been cited in the subsequent leave granting order dated 13-3-2012, the principles of both the cases are common, as it has been observed hereinabove. In the cases of such like

nature, the Department should have decided the cases, depending upon the facts of each case and as far as the instant case is concerned, the respondent is entitled to get back benefits during the period when he had instituted a revision petition, which was kept pending till the decision of the criminal as well as civil cases, which have no relevance as unless he had been found guilty by the Court, he was not debarred from performing his duty. Therefore, from the date of filing of the revision petition and till its decision he is entitled for back benefits as far as the question of giving him back benefits during the period when he remained absent, it is for the Department to conduct an inquiry and independently decide whether he is entitled for the same or not.

13. Thus, the appeal is dismissed with costs.

MWA/I-18/SC

Appeal dismissed.

2015 S C M R 92

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and
Umar Ata Bandial, JJ

Mst. ROOH AFZA---Appellant

versus

AURANGZEB and others---Respondents

Civil Appeal No. 568 of 2008, decided on 26th August, 2014.

(On appeal from judgment of Peshawar High Court, Peshawar dated 7-4-2008, passed in Civil Revision No.489 of 2005)

(a) Khyber Pakhtunkhwa Pre-emption Act (X of 1987)---

---Ss. 13 & 14---Suit for possession through pre-emption---Pre-emptor not appearing as witness before the Trial Court without any valid justification---Effect---Pre-emptor exercised her right of pre-emption by making the requisite Talbs, and the suit for possession through pre-emption was also instituted by her in person---Subsequently without any valid justification, the pre-emptor did not appear before the Trial Court as witness for exercising her right of pre-emption, but for such purpose, she gave special power-of-attorney to her husband---Suit for possession through pre-emption had been rightly dismissed by the High Court in such circumstances---Appeal was dismissed accordingly. [p. 99] A

Abdul Qayyum v. Muhammad Sadiq 2007 SCMR 957 ref.

(b) Khyber Pakhtunkhwa Pre-emption Act (X of 1987)---

---S. 13---Suit for possession through pre-emption---Performance of Talb-i-Muwathibat---Lapse of 10-15 minutes in performing Talb-i-Muwathibat---Effect---Fatal to right of pre-emption---Slightest lapse of time in performance of Talb-i-Muwathibat was fatal to the case of the pre-emptor---No redundancy could be attributed in performance of Talb-i-Muwathibat to accommodate a pre-emptor who had not been vigilant in making such Talb---Pre-emptor consumed 10-15 minutes to discuss the matter with her family members before taking the decision of exercising her right of pre-emption---Talb-i-Muwathibat was not performed in accordance with law in such circumstances---Suit for possession through pre-emption had been rightly dismissed by the High Court---Appeal was dismissed accordingly. [pp. 99, 100] B & C

Mian Pir Muhammad v. Faqir Muhammad PLD 2007 SC 302; Muhammad Nazeef Khan v. Gulbat Khan 2012 SCMR 235; Sonabashi Kuer v. Chaudhary Ramdeo Singh AIR 1951 Pat 521 and Muhammad Ahmad Said Khan v. Madho Prasad 35 Ind Cas 911 ref.

(c) Khyber Pakhtunkhwa Pre-emption Act (X of 1987)---

---S. 13--- Qanun-e-Shahadat (10 of 1984), Art. 79--- Suit for possession through pre-emption---Talb-i-Ishhad---Attestation by two witnesses---Non-appearance of one of the witnesses of Talb-i-Ishhad in court---Effect---Fatal to right of pre-emption---Plea of pre-emptor that one of the attesting witnesses of Talb-i-Ishhad, who was also the son of the pre-emptor, could not appear in court as witness as he was out of the country at the relevant time---Validity---Notice of Talb-i-Ishhad had to be attested by two truthful witnesses---Even if one of the witness of Talb-i-Ishhad was out of the country at the relevant time, he could have come to Pakistan to appear in the witness box in support of his mother's (pre-emptor's) claim---Suit for possession through pre-emption had been rightly dismissed by the High Court in such circumstances---Appeal was dismissed accordingly. [p. 100] D

Abdul Khan v. Ramzano Bibi PLD 2013 SC 193 and Muhammad Mal Khan v. Allah Yar Khan 2002 SCMR 235 ref.

Gulzarin Kiyani, Senior Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for Appellant.

Haji Muhammad Zahir Shah, Advocate Supreme Court/Advocate-on-Record for Respondents.

Date of hearing: 26th August, 2014.