

14.01.2016

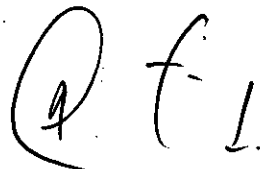
Counsel for appellant (Mr. Sajjid Amin, Advocate) and Mr. Ziaullah, GP for respondents present.

2. The appellant is aggrieved from the impugned order dated 1.1.2014 vide which he was awarded major penalty of compulsory retirement from service, against which he preferred departmental appeal on 7.1.2014 which was not responded hence the instant appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

3. Arguments heard and record perused.

4. The record shows that the appellant was transferred from Kohat to Karak vide order dated 2.5.2013. According to appellant he remained in Police Line district Karak during which stay he had not committed any illegality. The record shows that DPO Karak issued him charge sheet dated 10.12.2013 but he had long before been transferred from Karak to Kohat vide order dated 23.10.2013. The proceedings were initiated against the appellant by DPO Karak who was no more competent authority. Similarly the impugned order dated 1.1.2014 was also issued by DPO Karak during which period he was not competent authority of the appellant. Since the entire proceedings being undertaken by incompetent authority, therefore, the Tribunal is left with no option but to set-aside the impugned order. The impugned orders are set-aside. Consequently appellant is reinstated into service. The respondent-department may initiate proceedings de-novo against the appellant if so desired. The issue of back benefits be also decided by the respondent-department. The appeal is accepted accordingly in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
14.01.2016



MEMBER



MEMBER

03.09.2015

Counsel for the appellant and Mr. Muhammad Jan, GP with Mr. Baseer ASI for the respondents present. Since court is over, therefore, case to come up for arguments on 14-12-2016.



Member



Member

4.8-14

Re Wasth, bench 5 on
Tare, Desfer, case 5 of 16
10-9-14.

Reader

10.9.2014

Appellant in person and Mian Imtiaz Gul, DSP (Legal) on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Joint written reply/para-wise comments received on behalf of the respondents, copy whereof is handed over to the appellant for rejoinder. Reply to application for interim relief has not been received. To come up for reply to application for interim relief, arguments thereon and rejoinder on 9.1.2015.


Chairman

09.01.2015

Appellant in person and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for rejoinder on 06.03.2015.
Reader.

06.03.2015

Appellant in person and Assistant A.G for respondents present. Rejoinder submitted. To come up for arguments on 3.9.2015.


Member

Appeal No. 534/2014
Mr. Zameer Ali

09.05.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 01.01.2014, he filed departmental appeal on 07.01.2014, which has not been responded within the statutory period of 90 days, hence the present appeal on 15.04.2014. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. Appellant also filed an application for interim relief. Notice of application should also be issued to the respondents for reply/arguments. To come up for written reply/comments on main appeal on 04.08.2014 as well as reply/arguments on application on 11.06.2014.

Appellant Deposited
Security & Process Fee
Rs. 200/- Bank
Receipt is Attached with File.

JM
12-5-14

[Signature]
Member

09.05.2014

This case be put before the Final Bench *[Signature]* for further proceedings.

[Signature]
Chairman

11.6.2014

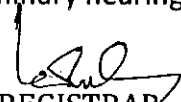

Appellant with counsel (Mr. Sajid Amin, Advocate) and Mr. Imtiaz Ali, DSP (Legal) on behalf of respondent No. 3 present and stated that main role in the instant case has been attributed to respondent No. 4 i.e. District Police Officer, Karak, on whose behalf no one is present to-day. However, the representative of respondent No. 3 undertook to inform the remaining respondents about the appeal and to appear for further proceedings in the case. The learned counsel for the appellant submitted copy of order dated 14.05.2014 whereby the Appellate Authority i.e. Deputy Inspector General of Police, Kohat Region, Kohat (respondent No.2) has rejected departmental appeal of the appellant. Reply to application for interim relief has not been received, and request for further time made on behalf of the respondents. To come up for reply to application for interim relief and written reply on main appeal on the date already fixed i.e. 04.8.2014.

[Signature]
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 534/2014

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 15/04/2014 | <p>The appeal of Mr. Zawar Ali presented today by Mr. Ijaz Anwar Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p> REGISTRAR</p> |
| 2 | 18-4-2014 | <p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>10-6-2014</u></p> <p> CHAIRMAN</p> |

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 534 /2014

Zawar Ali S/O Sardar Ali , Ex- Constable No. 89, District Police,
Kohat.

(Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and
others.

(Respondents)

INDEX

| S. No | Description of Documents | Annexure | Page No |
|-------|---|----------|---------|
| 1 | Memo of Appeal & Affidavit | | 1-5 |
| 2 | Copies of orders dated 2/5/2013 and 23/10/2013 | A & B | 6-7 |
| 3 | Copy of the Charge Sheet and Statement of Allegations | C | 8-9 |
| 4 | Copy of the Reply to the Charge Sheet | D | 10 |
| | Copy of inquiry report | E | 10A |
| 5 | Copy of the Order dated 01.01.2014 | F | 11 |
| 6 | Copy of departmental appeal | G | 12-13 |
| 9 | Vakalatnama. | | 14 |

Through


Appellant

IJAZ ANWAR
Advocate Peshawar

&


SAJID AMIN

Advocate, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 534/2014

567
15/4/2014

Zawar Ali S/O Sardar Ali , Ex- Constable No. 89, District Police, Kohat.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer Kohat, Region Kohat.
3. District Police Officer Kohat.
4. District Police Officer, Karak.

(Respondents)

Appeal under Section 4 of The Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 01.01.2014, whereby the appellant has been awarded the major penalty of "Compulsory Retirement From Service" against which his departmental appeal dated 07.01.2014 has not been responded despite the lapse of 90 days statutory period.

Prayer in Appeal: -

On acceptance of this appeal the impugned orders dated 01.01.2014 may please be set-aside and the appellant may be re-instated in service with all back benefits of service.

15/4/14
Respectfully Submitted:

1. That initially the appellant was enlisted as Constable in police department in the year 1988.
2. That ever since the appointment, appellant had performed his duties as assigned to him with zeal and devotion and there was no complaint whatsoever regarding his performance. It is pertinent to mention here that during the entire service, the performance of the appellant remained commendable, he traced and arrested criminals who were required to the Police in some high profile cases. Beside

this, during the roar of militancy, he always remained in the front line against the militants and demonstrated exceptional performance, gallantry and devotion beyond the call of duty. His performance was also appreciated by the High Ups.

3. That the appellant while posted at District Kohat, was transferred and posted to District Karak vide order dated 2/5/2013, on the basis of unfounded and baseless allegations of being involved in smuggling malpractices. The appellant hardly served at Kohat for 05 months when he was again transferred to Kohat vide order dated 23/10/2013 (Copies of orders dated 2/5/2013 and 23/10/2013 are attached as annexure A& B).
4. That while serving in the said capacity, the appellant was served with Charge Sheet and statement of allegations dated 10.12.2013, containing certain unfounded and baseless allegations. The allegations leveled in the Charge Sheet are reproduced bellow, for ready reference:

“You Constable Zawar Ali No. 89 carry bad reputation for corruption, furthermore your service record carries numerous bad entries which show your inefficiency, misconduct and ill reputation.”

(Copy of the Charge Sheet and Statement of Allegations is attached as Annexure C)
5. That the appellant duly replied the Charge Sheet and refuted the allegations leveled against him as false and baseless vide reply dated 17.12.2013 (Copy of the Reply to the Charge Sheet is attached as Annexure D)
6. That an inquiry was conducted and the inquiry officer also explain a factual position that the appellant is not involved in any corruption nor having any property or bank balance, and the allegations are only based on surmises having no footings and without evidence. (Copy of inquiry report is attached as annexure E).
7. That though the charges against the appellant remained unproved during the inquiry, moreover, he was never recommended for any punishment by the inquiry officer, yet without issuing upon him any Final Show Cause Notice, the appellant was awarded the major punishment of “Compulsory Retirement from Service” vide order dated 01.01.2014 to the appellant. (Copy of the Order dated 01.01.2014 is attached as Annexure F)

8. That the appellant also submitted his departmental appeal dated 7/1/2014, however it has not been responded till the lapse of statutory period. (Copy of departmental appeal dated 7/1/2014 is annexed as annexure G).
9. That the impugned Orders are illegal unlawful against law and facts hence liable to be set aside inter alia on the following grounds :

GROUNDS OF APPEAL .

- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law are badly violated.
- B. That no proper procedure has been followed before awarding the major penalty of compulsory retirement from Service, to the appellant. The appellant was never recommended for any punishment nor the charges was proved against him during the inquiry yet the respondent No. 4 while awarding penalty to the appellant never showed any reason for not agreeing with the inquiry report nor the appellant has been served with any show cause notice, thus the whole proceedings are defective in the eyes of law.
- C. That the allegations leveled against the appellant are general in nature and no specific instance has been shown where he has been found involved in the charges leveled against him, thus the Charge Sheet in itself is ambiguous and not warranted under the law.
- D. That the appellant was transferred from Karak on 23/10/2013, while the charge sheet was issued to him by respondent No. 4 (District Police Officer, Karak) on 10/12/2013 i.e after more than two months of his transfer from Karat, thus the respondent NO. 4 was having no authority to proceed against the appellant as such the whole proceedings as well as the order of penalty are without lawful authority and thus of no legal effect.
- E. That the appellant has not been allowed opportunity of personal hearing, thus he has been condemned unheard.
- F. That in the Charge Sheet/ Statement of allegations it was alleged that the appellant carries *bad reputation for corruption*, however not a single instance has been mentioned wherein he has been

found involved in such like such like activities, thus he has not been allowed fair opportunity to defend himself against the charges.

- G. That the charges leveled against the appellant were never proved during the inquiry. The inquiry officer while submitting his findings clearly stated that regarding charges there is no solid evidence against the appellant nor he has any bank balance or property, however, there were rumors regarding his corruption. Thus the charges were never proved against the appellant and he has been awarded penalty only on surmises and conjectures.
- H. That the appellant has never been served with final Show Cause Notice, nor has he been provided the copy of the inquiry report, before the imposition of penalty upon him, which is mandatory in case of awarding major penalty.
- I. That the appellant has never indulged in any such activities beneficial to his person except the performance of good duty. The allegations leveled against the appellant are quite baseless, based on hearsay evidence which has got no footings in the service laws. The Superior Courts have always held that no one should be condemned without solid reasons.
- J. That appellant has never committed any act or omission which could be termed as misconduct, albeit been awarded the penalty of "*compulsory retirement from Service.*"
- K. That the appellant has not been associated with the inquiry proceedings, his statement has not been recorded by the inquiry officer, nor any witness have been examined or if so examined the appellant has not been allowed to cross examine those who may have deposed against him.
- L. That the appellant has at about 26 years bright and spotless service career at his credit, the service record of the appellant bear testimony of his spotless service career, the appellant has never communicated any adverse entries nor has any bad entries in his ACRs, the penalty imposed upon him is too harsh and liable to be set aside.
- M. That the appellant never committed any act and omission that could be termed as misconduct albeit he has been awarded the penalty of compulsory retirement from service. The charges

leveled against the appellant were based on mere presumptions, moreover the same also remained unproved during the inquiry. All the proceedings conducted against the appellant and the penalty awarded to him was predetermined.

- N. That the facts and grounds mentioned in the reply to the Charge Sheet and the departmental appeal of the appellant may also be read as integral part of the instant departmental appeal.
- O. That the appellant is jobless since his illegal *Dismissal from Service*.
- P. That the appellant also seeks permission of this Honorable Tribunal to rely on additional grounds at the time of hearing of the instant appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the impugned orders dated 01.01.2014 may please be set-aside and the appellant may be re-instated in service with all back benefits of service

Through

Chauki
Appellant

Ijaz

IJAZ ANWAR

Advocate Peshawar

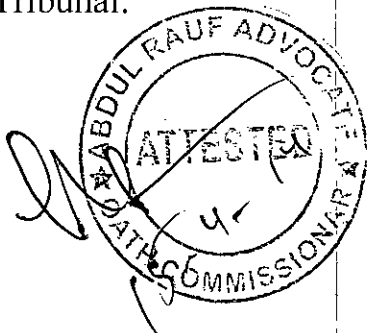
&

Sajid
SAJID AMIN

Advocate, Peshawar

AFFIDAVIT

I.ZAWAR ALI S/O SARDAR ALI R/O PEF GATE NO 5 STREET NO 4, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.



Chauki
Deponent

ANNEX - A

KOHAT REGION

POLICE DEPTT:

ORDER

The following Police officials of Kohat district are hereby transferred / posted to Karak district with immediate effect on the basis of complaints / illegal activities mentioned against each:-

| S/No. | Rank & Name | Complaint / Allegations |
|-------|--|---|
| 1 | IHC Wali Bat No. 643 I/C Highway Check Post | There are frequent complaints of corruption / malpractices against IHC Wali Bat I/C Highway Check Post. On several occasions he has been suspended and disciplinary action was initiated, but due to Political / other influence, he manages his choice posting on sensitive check posts. |
| 2 | IHC Sartaj Ali No. 931 Usterzai Nakabandi | Involved in illegal activities / smuggling and other malpractices. |
| 3 | HC Shahid Zaman No. 820 I/C City Check Post (on loan from Hangu) | Involvement in smuggling / malpractices and corruption. |
| 3 | HC Nigah Hussain No. 532 I/C Marai Check Post. | Wearing rank of ASI. He is in league with drug paddlers, also supports his uncle, known drug paddler / dealer Janu of Usterzai. |
| 4 | Const. Zawar Ali No. 653 I/C Nasrat Khel Nakabandi | Involved in smuggling / malpractices despite clear directions. |
| 5 | Const. Bahar Ali No. 1196 Marai Old PP | Being a simple constable, he has managed his posting I/C of a sensitive Police Post of his choice. Involved in illegal activities, smuggling and rampant corruption. |

(DR. ISHTIAQ AHMAD MARWAT)
Dy: Inspector General of Police-
Kohat Region, Kohat.

OFFICE OF THE DY: INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT

No. 13258-63 /EC, Dated Kohat the 2/5 /2013

- 1 Copy of above is submitted for favour of information to the:-
- 2 Provincial Police Officer, Khyber Pakhtunkhwa Peshawar please.
- 3 District Police Officer, Karak with the directions, the official should not be posted at check post / key point and nominate their substitute immediately for transfer to Kohat district
- 4 District Police Officer, Kohat with the directions to post honest, efficient officials after thorough verification.
- 5 District Police officer, Hangu
- Establishment Clerk

(DR. ISHTIAQ AHMED MARWAT)
Dy: Inspector General of Police
Kohat Region, Kohat.

[Handwritten signature]

*1-4/2013 for remaining mess affairs. 1/4/13
cost will amount to loss of mess.*

ANNEX-B

7

6

ORDER

Constable Zuwar Ali No. 658 is hereby transferred from Karak district and posted to Kohat district with immediate effect.

(DR. ISHTIAQ AHMED MARWAT)
Dy. Inspector General of Police
Kohat Region, Kohat.

OFFICE OF THE DY. INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT

No. 84/11-12 /EC

Dated Kohat the 23/11 /2013

Copy for information and necessary action to the:-

- 1 District Police Officer, Karak
- 2 District Police Officer, Kohat

(DR. ISHTIAQ AHMED MARWAT)
Dy. Inspector General of Police
Kohat Region, Kohat.

6359
24/10/13

Attested
[Signature]

8

ANNEX-C

No. 17085

Dated 10/12

CHARGE SHEET

Atiq Ullah Khan Wazir District Police Officer, Karak as competent authority,
hereby charges you, Constable Zawar Ali No. 89 presently serving at District
Kohat as follow:-

"You Constable Zawar Ali No.89 carry bad reputation for corruption.
Furthermore your service record carries numerous bad entries, which
show your inefficiency, misconduct and ill reputation."

2 By reason of your commission / omission, constitute miss-conduct
under Police disciplinary rules-1975 and have rendered your-self liable to all or any
of the penalties specified in Police rules 1975 ibid.

3 You are, therefore, required to submit your written defense within
07-days of the receipt of this charge sheet to the enquiry Officer Mr. Gul Jamil
Khan SDPO Takht-e-Nasrati Your written defense if any should reach the Enquiry
Officers within the specified period, failing which it shall be presumed that you have
no defense to put in and in that case ex-parte action shall be taken against you.

4 Intimate whether you desire to be heard in person.

5 A statement of allegation is enclosed.

District Police Officer, Karak.

1012 /
2013

9

~~Amir Khan~~

No.

110

Dated

12/01

DISCIPLINARY ACTION

1. I, Atiq Ullah Khan Wazir Police Officer, Karak as competent authority, is of the opinion that **Constable Zawar Ali No.89** presently serving at District Kohat has rendered him liable to be proceeded against departmentally for the

charges of committing misconduct and negligence in duty.

"Constable Zawar Ali No.89 carries bad reputation for corruption. Furthermore his service record carries numerous bad entries, which show his inefficiency, misconduct and ill reputation."

The enquiry Officer Mr. Gul Jamal SDPO Takht-e-Nasrati shall in accordance with provision of the Police disciplinary rules-1975 may provide reasonable opportunity of hearing to the accused official, record his finding and make within 10-days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

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

[Signature]

District Police Officer, Karak.

No. 17086-87 /E.C.(enquiry), dated 10/12 2013

Copy to:-

- 1. The enquiry Officer for initiating proceeding against the accused under the Provision of Police disciplinary rules-1975.
- 2. Constable Zawar Ali No.89 presently serving at District Kohat.

[Signature]
AD

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17.12.03

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Handwritten circled number 9.

Handwritten signature

SDP 2005

Handwritten text in Urdu script, appearing to be a list or record of items, possibly related to a school or administrative office. The text is dense and difficult to decipher due to the cursive style and some fading.

Handwritten signature or name at the bottom of the page.

ANWER K & E

3

11

ANNEX-F

ORDER

15/1/14
08-1-14

This Order is passed on the departmental enquiry against Constable Zawar Ali No.89 now at District Kohat leading to the present departmental proceedings are as follows:-

According to the charge sheet, Constable Zawar Ali No.89 carried bad reputation for corruption and also carries numerous bad entries in his service record, which clearly show inefficiency, misconduct and ill reputation on his part.

Charge Sheet and Statement of allegation based on above allegations were served upon the defaulter Constable Zawar Ali No.89. Mr. Gul Jamal Khan, SDPO Takht-e-Nasra i was appointed as enquiry Officer to scrutinize the conduct of Constable Zawar Ali No.89 with reference to the charges leveled against him.

The Enquiry Officer conducted departmental enquiry, during the course of which he obtained land record and bank accounts in the name of defaulter Constable which proved nothing on his part. However, the enquiry officer recommended him as corrupt on the basis of general reputation and public perception for appropriate action.

From the perusal of available record, recommendations of enquiry officer and verbal information given by local Officers of special Branch and I.B about his corrupt reputation and received on transfer from Kohat District to this District on the complaint of involvement in smuggling, malpractices despite clear directions vide Deputy Inspector General of Police, Kohat Region, Kohat Order Endst.No. 3258-63/EC, dated 02.05.2013, the undersigned being competent authority under Rule-3 of NWFP now Khyber Pakhtunkhwa Police Rules 1975, am satisfied that the defaulter Constable is an Official of ill repute and remained involved in misuse of powers during his longer service of 25- years in Police Organization, hence in exercise of powers vested in me under rule 5(5) of the rules ibid, he is awarded major penalty of compulsory retirement from service with immediate effect.

OB No. 11
Dated 01-01-2014

SRE/OASi
P. n/entry. in his
Service Record

Signature
District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

No. 23-24 /EC, dated Karak the 01-01/2014.

Copy of above is submitted for information and further necessary action to:-
1. The Deputy Inspector General of Police, Kohat Region Kohat w/r to his Office Endst.No.1384-66/C-Cell, dated 22.08.2013.

Signature

P-②

12

ANNEXI-G

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE
KOHAT REGION, KOHAT

SUBJECT: APPEAL AGAINST THE ORDER OF D.P.O KARAK BEARING OB
NO.11 DATED 01-1-2014 VIDE WHICH THE APPELLANT THE WAS
AWARDED THE PENALTY OF COMPULSORY RETIREMENT
FROM SERVICE WITH IMMEDIATE EFFECT.

Respectfully Sheweth,

With great respect, the instant appeal is submitted on the following facts and grounds:

Facts:

The appellant was proceeded against departmentally and awarded the punishment of compulsory retirement from service by DPO Karak on the charges of corruption and carrying bad entries in his service record which indicated inefficiency misconduct and ill reputation on his part.

Grounds:

- A. That the enquiry officer vide his report conveyed that no solid proof regarding charges leveled against the appellant was available.
- B. That the enquiry officer had intimated that there was rumour that the appellant was involved in corruption.
- C. That the impugned order was based on hearsay evidence which was not admissible under the law.
- D. That no charge sheet was issued to the appellant by the DPO during of his stay in Distt: Karak. The same was issued after the appellant following his transfer from Distt: Karak had arrival at Distt: Kohat. In the circumstances the appellant could be issued charge sheet by the DPO Kohat for any wrong committed by the appellant in Distt: Karak. DPO Karak was not authorized to have charge sheeted the appellant.

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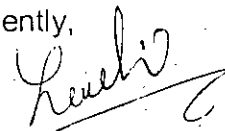
- E. That the whole proceedings against the appellant were unlawful and unjustified.
- F. That none from the general public was examined by the EO during the course of inquiry to substantiate the charge of corruption against the appellant.
- G. That the impugned order was not based on solid reasons. The same was arbitrary, unjustified and not sustainable in the eye of law.
- H. That no final show cause notice was issued to the appellant prior to imposition of the punishment and thus the principles of natural justice were completely ignored and no opportunity of defence was provided to the appellant.

Pray:

It is prayed that by accepting the instant appeal, the impugned order may be set aside and the appellant re-instated in service w.e.f. the date of compulsory retirement please.

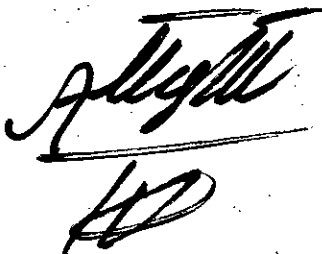
Dated: 07-1-2014.

Yours obediently,



Ex-constable Zawar Ali
No.89
R/O Chakir Kot, Shahabad,
PAF Gate-5 Street-4,
Tehsil & District, Kohat

7/1/2014



PLD 1989 Supreme Court 335

Present: Muhammad Haleem, C.J.,
Shafiur Rahman, Zaffar Hussain Mirza,
Saad Saood Jan and Naimuddin, JJ

SAMIUDDIN QURESHI--Appellant

versus

COLLECTOR OF CUSTOMS--Respondent

Civil Appeal No.66-k of 1988, decided on 25th January, 1989.

(On appeal from the judgment and order of Federal Service Tribunal, Karachi dated 1-9-1987 in Application No.95-K of 1983).

(a) Government Servants (Efficiency and Discipline) Rules, 1973---

--Rr. 5 & 6--Constitution of Pakistan (1973), Art.185(3)--Leave to appeal granted to consider inter alia the contention that there was no direct evidence to show that civil servant had accepted any illegal gratification and the order of removal from service was based on presumptions and suppositions and whether proceedings under the Rules were in the nature of quasi-criminal proceedings requiring establishment of misconduct on the basis of positive evidence beyond reasonable doubt.

(b) Government Servants (Efficiency and Discipline) Rules, 1973--

---Rr. 5 & 6--Conjecture or suspicion cannot take place of proof of fact--Dismissal on a charge of taking bribe or misconduct--Order of dismissal must be based on some evidence.

Principles of Administrative Law by M.P.Jain and S.N. Jain 2nd Edn., P.375 ref.

Muhammad Naseem, Advocate Supreme Court and H..Abdul Baqi, Advocate-on- Record for Appellant.

S.Shahoodul Haq, Advocate Supreme Court and S.M.Abbas, Advocate-on- Record for Respondent No.1.

Date of hearing: 25th January, 1989.

JUDGMENT

NAIMUDDIN, J. --Leave was granted to consider inter alia the following submissions:
"that there was no direct evidence to show that the petitioner had accepted any illegal gratification and the order of removal was based on presumptions and suppositions and the question is whether proceedings under the Government Servants (Efficiency & Discipline) Rules, 1973 are in the nature of quasi-criminal proceedings requiring the establishment of the misconduct on the basis of positive evidence beyond reasonable doubt. "

2. Relevant facts giving rise to this appeal briefly stated are that the appellant was, at the relevant time, working as Preventive Officer of the Customs, Karachi. He was performing his duty as such at the Karachi airport on Terminal-I. On 13-6-1983 he was performing his duty as such, when he was requested by his colleague Inspector (Preventive) to assist him in clearing the baggage of an incoming passenger Abdul Waheed of SUPARCO. During the search, some contraband spare parts were found in the baggage which were detained by the appellant against a receipt issued by him. On that day the appellant did not check the baggage of any other passenger.

3. On the same day at about 1 P.M. the Assistant Collector (Preventive) Customs and the Deputy Collector (Preventive) Customs, visited the place where the appellant was on duty. The appellant's duty was at the grill room where the detained goods are kept. The Assistant Collector and the Deputy Collector found in the carton a bottle of whisky lying inside the grill, and there were also 36 currency notes of Rs.50 each total amounting to Rs.1,800. Therefore, a charge sheet was issued to the appellant on 1-9-1983 alongwith the statement of allegations. The statement of allegations reads as follows:-

"On 30-6-1983 at 1300 hours ACP/KAP-I and DCP/KAP inspected the Detention Grill and found 36 currency notes of Rs.50 denomination each, kept with a whisky bottle inside the cover of the said bottle lying in that grill. The currency notes were recovered in presence of the Detention Officer P.O. Mr. Samiuddin Qureshi who was asked to explain as to how these currency notes found place in the whisky bottle. He replied that he has no knowledge of it. It is pertinent to point out that no officer or Sepoy other than the Detention Officer or the Sepoy posted in the Detention Grill is supposed to enter the Detention Grill and the on-the-spot enquiries also revealed that nobody had entered the Grill. Even the Detention Officer, P.O. Mr. Samiuddin Qureshi could not name any officer who might have entered the Grill for such unauthorised and unlawful act. The currency was, therefore, detained under D.R. No.P.P.8366/83.1 dated 30-6-1983.

From the above facts, it is obvious that P.O. Mr. Samiuddin Qureshi is involved in keeping unauthorised currency concealed in the carton of a whisky bottle. This money obviously was extorted from the passengers and forms the illegal gratification concealed in the abovesaid manner.

Mr. Samiuddin Qureshi P.O. is, therefore, guilty of gross misconduct and is charge-sheeted for the reasons mentioned above. under the Government Servants (E&D) Rules, 1973.

4. Khawaja Tanweer Ahmad, Assistant Collector of Customs (Terminal-2) Karachi was appointed as Enquiry Officer. He conducted the enquiry and after examining several witnesses and considering the statement of the appellant he came to the following conclusions:

"However, there is no eye-witness to the fact that Detention Officer, Samiuddin Qureshi was found keeping the currency notes inside the carton of whisky bottle and the circumstantial evidences examined above are also not sufficient to prove that the currency notes were actually kept by Mr. Samiuddin.

Moreover, the whisky bottle under reference was shifted to the Detention Grill of Terminal-I from Terminal-II as it was a case of pending departure and so there is a possibility that the currency notes were already in the cover of whisky bottle when it was shifted from there and someone who kept the money, could not get a chance to take it out. It is also important to mention that the bottle was not received by D.O. Samiuddin.

In view of the above-stated finding and grounds thereof benefit of doubt can be given to Mr. Samiuddin Qureshi, Preventive Officer (under suspension)."

5. The Enquiry Officer submitted his report accordingly. But he was directed by order, dated 13-12-1983 to reconsider his finding. On this, the Enquiry Officer submitted fresh report on 17-12-1983 whereby he found as follows:

The first of the findings is that on 30-6-1983 no one other than the staff posted or the staff which was asked to perform duty entered inside the detention grill, and so in this way, there is no possibility for any one of the Customs staff working outside the grill for having kept currency notes in the whisky bottle cover, at least on 30-6-1983. Moreover, D.O. Mr. Samiuddin has accepted that on 30-6-1983 he examined the baggage of a passenger of a flight which was under clearance at the time he resumed his duty. After the examination of the baggage of the passenger, he went to the detention grill and started his routine working as detention officer."

On receipt of this report the Authorised Officer dismissed the appellant from service.

6. After availing of the departmental remedies and failing the appellant filed an appeal bearing No.95/K/1984 with the Federal Service Tribunal which was dismissed by the learned Tribunal. While dismissing the appeal, the Tribunal observed as follows:

"In these circumstances, there is strong presumption against the appellant that it was he who had himself or in collaboration with his staff, received the amount of Rs.1,800 and kept it in the cover of the bottle for taking it away at the close of the duty hours, This is the finding of the Inquiry Officer, the Authorised Officer and the Authority, with which we entirely agree. "

The aforesaid order of the learned Tribunal led to the filing of the present appeal for which leave was granted, as stated above.

7. We have heard Mr. Muhammad Naseem, Advocate for the appellant and Mr. Shahoodul Haque, Advocate for the respondent. It was submitted by Mr. Naseem that in the first Enquiry Report the Enquiry Officer had given the appellant the benefit of doubt but he was directed by the Authorised Officer to submit fresh report which was virtually a direction to him not to exonerate the appellant, and, therefore, this direction to submit-fresh report, was against law. He also submitted that the order of removal of the appellant from service is, based on no evidence, whatsoever and it is rather based on presumption or inference drawn but not warranted by facts proved. The learned counsel also submitted that the appellant had requested. the Enquiry Officer to summon Mr. Abdul Waheed of SUPARCO and examine him as a witness but his application was refused.

Taking up the second submission, first, the learned counsel for the 'appellant submitted that in his reply to the charge-sheet, the appellant has stated that there are four shifts, and each shift has its own detention officer: one sepoy and one Hammal. In addition, one Senior Preventive Officer is also posted in the day shift only to deal with the pending detained cases. At the time of taking charge from a shift, the cases, and boxes lying in the grill room are not physically checked because it is not possible for the detention officer to check the same. They are checked on two occasions i.e. first, while receiving them and then, at the time of their delivery. The whisky bottle was received in the grill on 31-1-1983 by the Chief Detention Officer vide P.D. No.5827 of 1983-second. The bottle was transferred from Terminal-2 where it was detained pending departure of the passenger.

8. Now, from the material on record it is clear that nobody had seen the appellant receiving the money from anybody or keeping the same in the carton of whisky bottle. It was suspected that the appellant had received the money from Abdul Waheed of SUPARCO but his contraband goods

were detained by the appellant, and therefore there was no reason for Abdul Waheed to give bribe to the appellant.' He made no complaint in this regard. Nobody else said that he had given the money to the appellant. The finding is based on conjecture or suspicion. Conjecture or suspicion can never take the place of proof of a fact. The carton was lying for more than three months in the grill room. In fact the carton was received by transfer from Terminal-2. There are no facts on the record from which even an inference could be drawn that the appellant had received the money as bribe from Abdul Waheed or any other passenger. The appellant had dealt with only one passenger on the day of incident namely, Abdul Waheed whose part of luggage was detained under proper Detention Receipt; nor could it be inferred that he had kept the money in the carton. Moreover, there is material on record that four persons per shift used to work in the grill room and in all 16 persons were there each day. This is, therefore, a case of no evidence whatsoever.

There is also no explanation as to why and at Whose instance the Assistant Collector and Deputy collector search The carton Of -whisky bottle and found out the money there when there was no report about it, and a large number of articles were kept in the grill room. Indeed, the appellant wanted to summon Abdul Waheed of SUPARCO but his request was unduly declined in view the assumption that he would not give evidence against the appellant because that would be, self-incriminating. It is common experience that people who are aggrieved by the demand of bribe do corn forward and report the matter to the concerned authorities and given the evidence.

9. Further, the Enquiry Officer also in first Instance, had given the appellant benefit of doubt though he ought to have, on evidence before him, found that the charge against the appellant was not proved as there was no evidence.

10. To dismiss a civil servant or for that matter, any employee a charge of taking bribe or misconduct is as serious a matter as convicting a person for a crime, because his whole career is ruined! Therefore, the order of dismissal must be based on some evidence. In support we may refer a passage from "Principles of Administrative Law" by M.P. Jain and S.N. Jain (Second Edition) which at page 375 reads as follows:

"Relief may also available to an individual if the tribunal has erroneously refused to admit admissible and material evidence or has erroneously admitted inadmissible evidence which has influenced the impugned findings Of fact. A finding is said to be based on no evidence when it is solely based on conjecture, surmise or suspicion. Since this happens exceptionally there are not many cases where a finding is quashed because of no evidence., One such exceptional case is India v. H.C. Goal (AIR 1964 SC 364), Here the question Was whether the Petitioner had attempted to bribe his senior officer. The only evidence was that the petitioner had gone to the house of the official and brought out from his wallet a piece Of folded paper which appeared to be a hundred-rupee note e from the colour and size of the paper but 'had kept it back on being reprimanded. There was evidence that the, eyesight of the official was not perfect. It was held that the finding of attempted bribe by the disciplinary authority was based on were suspicion. The Court did not find any evidence in support of the finding, In another case Tribhuban Prakash v. India (AIR 1970 S C 540) the Supreme Court quashed the finding of the administrative authority on the ground of no legal evidence as it was based purely on conjectures and surmises."

In view of the above it is not necessary to go into the first submission.

11. For all these reasons we allow this appeal, set aside the order of dismissal and -reinstate the appellant to hi left to bear their own costs.

M. B.A. /S-256/S

Appeal allowed.

Sr. No. Date of
order/
proceedings

2

Order or other proceedings with signature of Judge/
Magistrate

3

KHYYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 498/2014.
Jamshed Ali Shah Versus Provincial Police Officer, Khyber
Pakhtunkhwa, Peshawar etc.

JUDGMENT

4.05.2015

ABDUL LATIF, MEMBER. Counsel for the
appellant (Mr. Sajid Amin, Advocate) and Mr. Ziaullah,
Government Pleader with Mir Faraz Khan, Inspector (Legal)
for the respondents present.

2. This appeal has been preferred by appellant Mr.
Jamshed Ali Shah, H.C No. 782 District Police, Bannu under
Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act,
1974 against the order dated 10.1.2014 whereby the appellant
had been awarded major penalty of compulsory retirement
from service and against which his departmental appeal dated
15.1.2014 had been rejected vide order dated 10.3.2014.

3. Through this single judgment five (5) other
identical appeals submitted under Appeals No. 499/2014
Hamdullah Jan, No. 500/2014 Mehboob Khan, No. 501/2014
Abdul Saboor, No. 502/2014 Sifat Ullah, 503/2014 Siraj Khan
are also decided in the same terms as the appellants were
proceeded and penalized for almost the same nature of
charges.

ATTESTED
JUDGE
MAGISTRATE
PESHAWAR

4. The appellant was appointed as Constable in Police Department in the year, 1993 and was promoted to the rank of Head Constable in the year, 2005. While serving in the said capacity he amongst others was suspended from service vide order dated 7.11.2013 allegedly on account of having tainted reputation and involvement in anti-social activities. Two enquiries were conducted against him one by Mr. Liaqat Shah, DSP Naurang and the other by two Members Committee i.e. DPO Kohat and D.I.G D.I.Khan. Both the enquiries recommended him for major punishment and accordingly he was compulsorily retired from service by competent authority vide order dated 10.1.2014. He submitted departmental appeal against the said order to the appellate authority (Regional Police Officer) who did not accede to his request and filed the appeal.

5. The learned counsel for the appellant argued that the appellant was not associated with the proceedings in both the enquiries which were conducted at the same time. He submitted that due to the partisan behaviour of the enquiry officer the appellant also submitted application on 10.12.2013 for marking the enquiry to other officer which was not allowed. He stated that the appellant was not charge sheeted for the second enquiry wherein he was recommended for major punishment. He further argued that no specific charge was framed against him and no evidence was produced

against the appellant, no witnesses were produced nor was he allowed to cross examine any witness against him. Similarly no final show cause notice was issued before imposition of major penalty on him. He further argued that enquiry when proper charge sheet was issued/replied to was submitted on 11.1.2014 whereas penalty was awarded to him on 10.1.2014, thus the whole proceedings as well as order of penalty seemed to be pre-determined which is not maintainable under the law. He also argued that enquiry based its findings on secret probe which is not authentic and dependable in the eyes of law. He relied on 2010-PLC(C.S)724 and PLD 1989-Supreme Court-335.

6. The learned Government Pleader argued that all codal formalities were fulfilled before passing of the final order by the competent authority. He stated that charge sheet and statement of allegations were served upon the appellant and enquiry was conducted where proper opportunity of defence was given to the appellant. Moreover, the appellant was also heard in person before award of the penalty. As far as the question of final show cause notice was concerned, he clarified that there was no provision of such notice in the Police Rules, 1975.

7. Arguments of the learned counsel for the parties heard and record perused with their assistance.

8. From record it transpired that charges leveled against the appellant were not specific and solid evidence could not be collected to substantiate the charges. The enquiry was rendered ineffective as penalty was imposed a day before its submission. Moreover, the enquiry placed reliance on a secret probe instead of collection of evidence which is bad in the eyes of law. Also the conduct of second enquiry simultaneously rendered the proceedings defective.

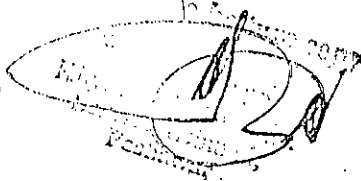
9. The impugned order is therefore, set aside. In order to meet the ends of justice and provide opportunity of fair trial, the case is remanded back to the respondent department for denovo enquiry strictly in accordance with law/rules. The appellant is reinstated in service for the purpose of the denovo enquiry proceedings. Back benefits will be subject to outcome of the fresh enquiry which should be completed within thirty days of the receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

10. connected five service appeals, mentioned in para-3 of the judgment, are also disposed of in the above terms.

ANNOUNCED
04.05.2015.

Sd/- Abdul Latif,
Member
Sd/- P. S. Babu
Member

Certified



14/05/2015
16/05/2015
17/05/2015
18/05/2015
19/05/2015

25.5.2015

Sr. No. _____

Date of order/proceedings _____

21.08.2015

ATTESTED
Khyber Pakhtunkhwa Service Tribunal
Registrar



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 613/2014

Bahar Ali Versus District Police Officer, District Kohat
and others.

JUDGMENT

PIR BAKHSII SIAH, MEMBER-
Appellant

with counsel (Syed Mudassar Pirzada) and Government

Pleader (Mr. Muhammad Jan) with Habib Khan, ASI (Legal)

for the respondents present.

2. Appellant Bahar Ali, Ex-Constable was compulsorily

retired from service by the competent authority vide order

dated 01.01.2014, against which he filed departmental appeal

on 07.1.2014 and also submitted service appeal on 17.3.2014

which was premature and returned to his counsel by Registrar

of this Tribunal with the direction to remove the deficiencies.

Hence, he resubmitted the appeal on 02.05.2015, after lapse of

the statutory period. His departmental appeal was also rejected

on 14.5.2014.

3. According to charge sheet, the following charge was

framed against the appellant:-

...You Constable Bahar Ali No. 232 carry bad reputation
for corruption. Furthermore, your service record carried
numerous bad entries which show your inefficiency,
mis-conduct and ill reputation.

been reduced in departmental appeals, therefore, this Tribunal is also inclined to convert major penalty of compulsory retirement of the appellant into that of one increment for two years. Needless to mention that the appellant stands reinstated into service and the intervening period shall be treated as leave of the kind due. The instant appeal is allowed in accordance with the above terms. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
21.8.2015.

Sd/- Mir Bakht Khan
Member
Sd/- Abdul Latif
Member

Certified to be true copy

DEPARTMENT
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 26-8-2015
Number of Pages 1600
Copying Fee 10
Original 2
Total 12
Name of Copyist [Signature]
Date of Certification of Copy 26-8-2015
Date of Delivery of Copy 26-8-2015

POWER OF ATTORNEY

In the Court of KPK Service Tribunal Peshawar
Zawar Ali

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

the P.F.O and others

} Defendant
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

Sajid Amin Advocate my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at Peshawar
the _____ day to _____ the year _____ (5/19)
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Sajid Amin
SAJID AMIN
ADVOCATE HIGH COURT
Legal Advisor Services & Labour Laws Consultants
FR-3-4, Fourth Floor, Bilour Plaza Peshawar Cantt.
Ph: 091-5272054, Mob: 0333-4584986, 03339155956

Ijaz Anwar
Ijaz Anwar
Advocate High Courts & Supreme Court of Pakistan

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

In the matter of
Appeal No. _____/2014

Zawar Ali S/O Sardar Ali Ex Constable No. 89 District Police Kohat.
(Applicant)

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa Peshawar and others.
(Respondents)

**Application for the suspension of the impugned
order Dated 01.01.2014 till the decision of the
above noted Appeal**

Respectfully Submitted:

1. That the appellant has filed the titled appeal in this Honourable Tribunal in which today i.e 9.5.2014 is the date fixed for preliminary arguments.
2. That the facts and ground mentioned in the accompanied appeal may be read as integral part of this application.
3. That the applicant has got a good prima facie case and there is likelihood of it success.
4. That the applicant would be exposed to great hard ship and inconvenience in case the order is not suspended.
5. That the order passed is in violation of law and posting and transfer policy.

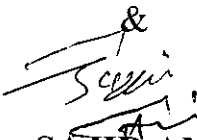
6. That it will also serve the interest of justice if the order impugned is suspended till the final decision of the appeal.

It is, therefore, prayed that on acceptance of this application the operation of the impugned transfer order dated 01.01.2014, may please be suspended till the decision of the appeal.


Applicant

Through


IJAZ ANWAR
Advocate, Peshawar

&

SAJID AMIN
Advocate, Peshawar

AFFIDAVIT

I, **Zawar Ali S/O Sardar Ali Ex Constable No. 89 District Police Kohat**, do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct to best of my knowledge and believe and that nothing has been kept back or concealed from this Honourable Tribunal.




DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In the Matter of

Appeal No. 534/2014

**ZAWAR ALI
VERSUS
PROVINCIAL POLICE OFFICER AND OTHERS**

APPLICATION FOR EARLY HEARING IN THE TITLED APPEAL.

Respectfully Sheweth,

1. That the titled appeal is pending adjudication before this Honourable Tribunal and is fixed for preliminary hearing on 10/06/2014.
2. That the similar nature titled "MOHIB ULLAH VERSUS THE GOVT. AND OTHERS" "SARTAJ VERSUS GOVT. AND OTHERS" "SHAHID VERSUS GOVT. AND OTHERS" are fixed for hearing before the primary bench on 09/05/2014.

It is therefore, humbly prayed that on acceptance of this application the instant appeal may kindly be fixed for hearing on 09/05/2014.

Dated: 05/05/2014

Through

Leubri
Applicant

Sajid Amin
SAJID AMIN

Advocate, Peshawar.

for 9/5/14

5/5/14

In the Matter of
Appeal No. 534/2014

**ZAWAR ALI
VERSUS
PROVINCIAL POLICE OFFICER AND OTHERS**

APPLICATION FOR EARLY HEARING IN THE TITLED APPEAL.


Respectfully Sheweth,

1. That the titled appeal is pending adjudication before this Honourable Tribunal and is fixed for preliminary hearing on 10/06/2014.
2. That the similar nature titled "MOHIB ULLAH VERSUS THE GOVT. AND OTHERS" "SARTAJ VERSUS GOVT. AND OTHERS" "SHAHID VERSUS GOVT. AND OTHERS" are fixed for hearing before the primary bench on 09/05/2014.

It is therefore, humbly prayed that on acceptance of this application the instant appeal may kindly be fixed for hearing on 05/05/2014.

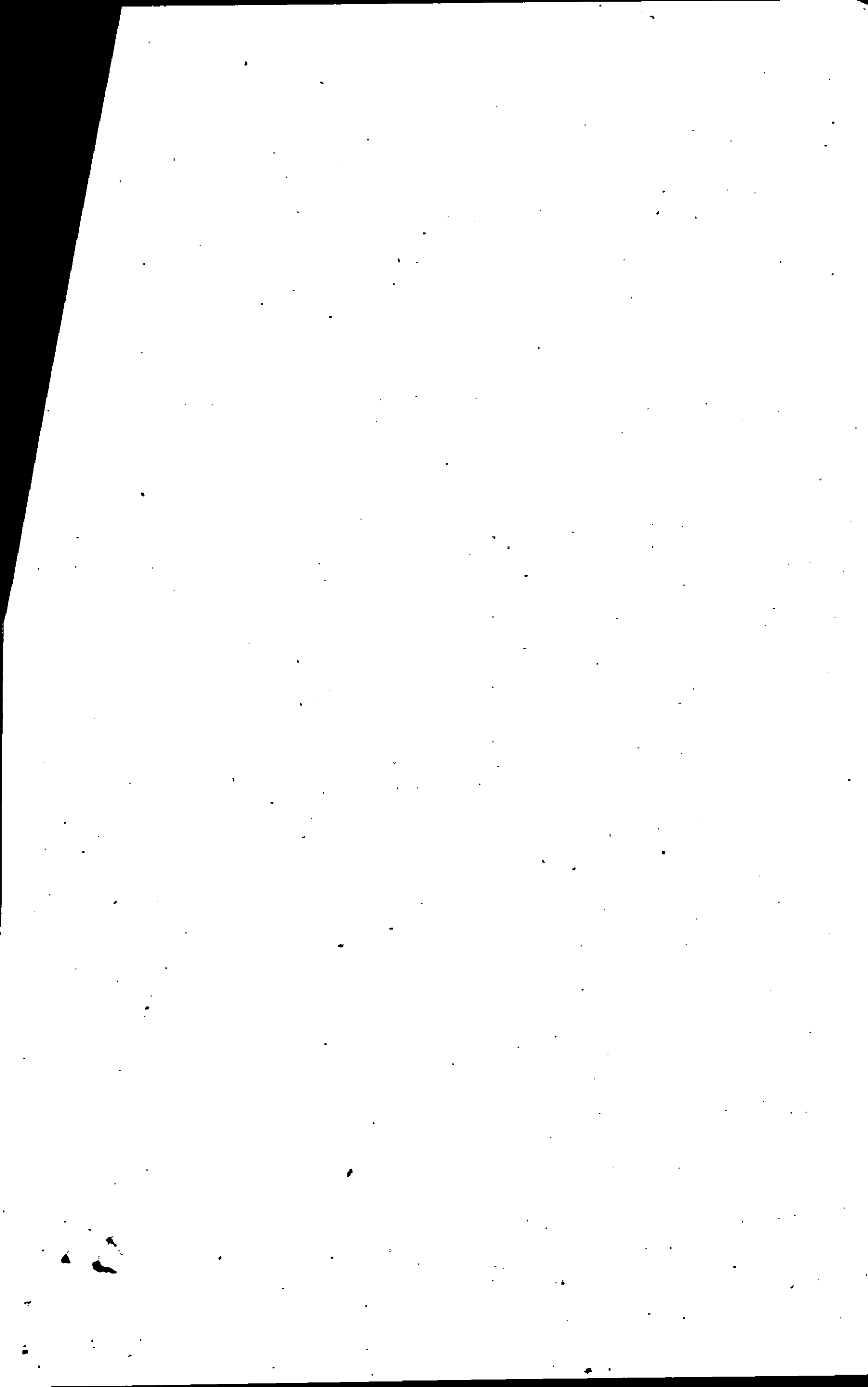
d: 05/05/2014

Through


Applicant


SAJID AMIN

Advocate, Peshawar.



In the Matter of

Appeal No. 534/2014

ZAWAR ALI

VERSUS

PROVINCIAL POLICE OFFICER AND OTHERS

APPLICATION FOR EARLY HEARING IN THE TITLED APPEAL.


Respectfully Sheweth,

1. That the titled appeal is pending adjudication before this Honourable Tribunal and is fixed for preliminary hearing on 10/06/2014.
2. That the similar nature titled "MOHIB ULLAH VERSUS THE GOVT. AND OTHERS" "SARTAJ VERSUS GOVT. AND OTHERS" "SHAHID VERSUS GOVT. AND OTHERS" are fixed for hearing before the primary bench on 09/05/2014.

It is therefore, humbly prayed that on acceptance of this application the instant appeal may kindly be fixed for hearing on 09/05/2014.

Dated: 05/05/2014

Through


Applicant


SAJID AMIN

Advocate, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In the Matter of

Appeal No. 534/2014

ZAWAR ALI

VERSUS

PROVINCIAL POLICE OFFICER AND OTHERS

APPLICATION FOR EARLY HEARING IN THE TITLED APPEAL.

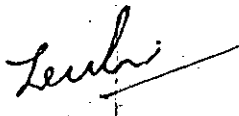
Respectfully Sheweth,


1. That the titled appeal is pending adjudication before this Honourable Tribunal and is fixed for preliminary hearing on 10/06/2014.
2. That the similar nature titled "**MOHIB ULLAH VERSUS THE GOVT. AND OTHERS**" "**SARTAJ VERSUS GOVT. AND OTHERS**" "**SHAHID VERSUS GOVT. AND OTHERS**" are fixed for hearing before the primary bench on 09/05/2014.

It is therefore, humbly prayed that on acceptance of this application the instant appeal may kindly be fixed for hearing on 09/05/2014.

Dated: 05/05/2014

Through


Applicant


SAJID AMIN

Advocate, Peshawar.

ORDER.

This order will dispose the appeal preferred by Ex-Constable Zawar Ali No. 89 of Karak district Police; wherein he was awarded major punishment of compulsory retirement from service by DPO Karak vide O.B No. 11, dated 01.01.2014. He requested for setting aside the punishment order and reinstatement in service.

Facts are that the official earned bad-reputation for corruption and also has numerous bad entries in his service record, which clearly shows his inefficiency, negligence and ill-reputation on his part.

On the basis of the above-mentioned charges / omissions, Charge Sheet & Statement of allegations was issued to him under Police Disciplinary Rule 1975 by DPO Karak and Mr. Gul Jamal (SDPO Takht-e-Nasrati Karak) was appointed as enquiry officer to conduct proper departmental enquiry against him. The enquiry officer conducted transparent enquiry, completed all enquiry formalities, gave him full opportunity of hearing to the defaulter. On conclusion, the E.O submitted findings report, in which the defaulter was found guilty of the charges.

Aggrieved from the said order, the appellant preferred the instant departmental appeal for setting aside the punishment order passed by DPO Karak.

Therefore, the defaulter official was heard in person in orderly room held in this office on 14.05.2014. He did not submit any satisfactory account in his defense and could not satisfy the undersigned.

Keeping in view of the above, enquiry papers and available record, the undersigned reached to the conclusion that charges leveled against him are proved without any doubt. The order passed by the DPO Karak is accordance with law / rules. Therefore, appeal is hereby rejected.


ANNOUNCED
15/05.2014


(DR. ISHTIAQ AHMAD MARWAT)
Dy. Inspector General of Police,
Kohat Region, Kohat.

No. 4850-5P /EC, dated Kohat the 18/5 /2014.

Copy of above for information and necessary action to the District Police Officer, Karak w/r to his office Memo: No. 3116/L.B, dated 25.02.2014. His service record is enclosed herewith.

2. Ex-Constable Zawar Ali of Karak district


(DR. ISHTIAQ AHMAD MARWAT)
Dy. Inspector General of Police,
Kohat Region, Kohat.

BEFORE THE KHYBER PAKHUTNKHWA SERVICE TRIBUNAL KP, PESHAWAR

Appeal No. 534/2014 Titled

Zawar Ali Ex- Constable No. 89 of District Police
Kohat (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkwa, Peshawar.
2. The Regional Police Officer Kohat Region Kohat..
3. The District Police Officer, Kohat.
4. The District Police Officer, Karak... (Respondents)

**PARA-WISE COMMENTS/REPLY TO APPEAL ON BEHALF OF
RESPONDENTS NO. 1 TO 4.**

Respectfully Shiewith,

Para-wise comments/Reply to appeal on behalf
of Respondents No. 1 to 4 are submitted as below,

Preliminary objections

1. The appellant has got no cause of action to file the present appeal.
2. The appellant has not come to this Tribunal with clean hands.
3. The appeal is not maintainable in its present form.
4. The appeal is time barred.
5. The appeal is bad for mis-joinder and non-joinder of necessary parties.

Facts

1. Admitted correct according to service record of appellant, need no comments.
2. Admitted correct.
3. Admitted correct according to record, need no comments.
4. Admitted correct, need no comments.
5. Incorrect, the appellant failed to furnish proper reply based on sound reasons hence was found not satisfactory and proper punishment order was passed vide O.B No. 11 dated 01.01.2014.

6. Admitted correct to the extent that Enquiry Officer Mr. Gul Jamal Khan Ex- SDPO Takht -e- Nasrati District Karak vide his findings of inquiry is recommended the appellant to be exonerated as allegation of corruption were not available on the record However, punishment order was passed on the findings of enquiry, verbal intelligence reports and public perception about the appellant to be corrupt.
7. Incorrect, already explained vide pare-6 above furthermore there is no provision regarding issuance of Final Show Cause Notice to a defaulter Police Officer Rule-V(v) of N.W.F.P now Khyber Pakhtunkhwa Police Rules-1975 is very much clear on the subject.
8. The Departmental appeal filed the appellant against punishment order vide OB No. 11 dated 01.01.2014 was properly dealt the by Respondent No. 2. Proper opportunity of personal hearing was provided to the appellant and appeal rejected by the respondent No. 2 vide Order No. 4850-51/EC, dated 19.05.2014, Copy of order dated 19.05.2014 enclosed as Annexure "A".
9. Incorrect, the punishment order is quite legal, in accordance with the provision of law/Rules and based on facts.

GROUND

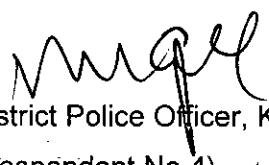
- a. Incorrect, the appellant was treated in accordance with laws and rules in force and no irregularity was done in disposal of his departmental case of disciplinary nature.
- b. Proper procedure was followed in conduct of inquiry against the appellant and major punishment of compulsory retirement from service was awarded to the appellant on the charges of corruption and malpractices during performance of duties.
- c. Incorrect, summary of allegation issued by the Respondent No. 4 against the appellant was quite legal and speaking in nature.
- d. Incorrect, the Respondent No. 4 being competent authority to award punishment to defaulter Police officers up to the rank of Sub-Inspector, has adopted proper procedure for issuance of Show Cause Notice / Summary of allegations to the


appellant and awarded proper punishment to the appellant after conduct of departmental enquiry in accordance with the rule of subject, no irregularity was exercised by the Respondent No. 04.


- e. In correct, proper opportunity of personal hearing was provided to the appellant during inquiry, decision by the Respondent No. 4 and disposal of appeal by the Respondents No. 2 & 4.
- f. Incorrect, the appellant was known as corrupt in the society as well as within Police Force.
- g. Incorrect, already explained in para 6&7 of facts above.
- h. There is no provision in NWFP now Khyber Pakhtunkhwa Police Rules 1975, Rule 5(v) is very much clear on the subject.
- i. Incorrect, need no comments.
- j. Incorrect, need no comments.
- k. Incorrect, need no comments.
- l. Correct according to service record.
- m. Incorrect, need no comments.
- n. Incorrect, need no comments.
- o. The appellant was awarded major punishment of compulsory retirement from service on the charges of Corruption and malpractices during performance of duties in Police Force.
- p. That the Respondents may also take additional grounds during arguments with the permission of Honorable Tribunal.

In the light of above facts and circumstances, it is requested that appeal filed by the appellant may very kindly be dismissed being not maintainable and time barred.


District Police Office, Kohat
(Respondent No.3)


District Police Officer, Karak
(Respondent No.4)


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


Dy: Inspector General of Police,
Kohat Region Kohat.
(Respondent No.2)

BEFORE THE KHYBER PAKHUTNKHWA SERVICE TRIBUNAL KP, PESHAWAR

Appeal No. 534/2014 Titled

Zawar Ali Ex- Constable No. 89 of District Police
Kohat (Appellant)

Versus

9. The Provincial Police Officer, Khyber Pakhtunkwa,
Peshawar.

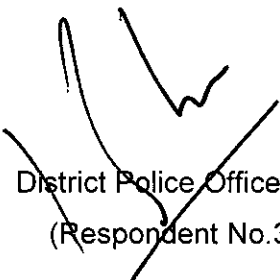
10. The Regional Police Officer Kohat Region Kohat..

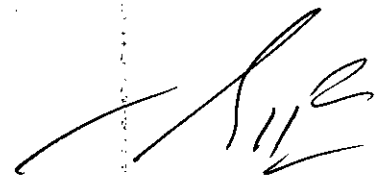
11. The District Police Officer, Kohat.

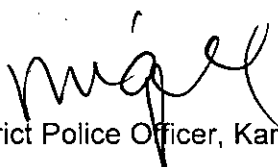
The District Police Officer, Karak..... Respondents


Subject: **AFFIDAVIT**

We the respondents do hereby affirm on oath that
the contents of comments prepared in response to the above
titled service appeal are true and correct to best of our
knowledge and belief.


District Police Office, Kohat
(Respondent No.3)

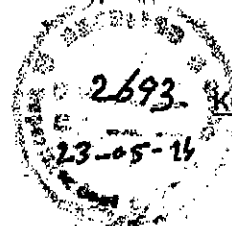

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)


District Police Officer, Karak
(Respondent No.4)


Dy. Inspector General of Police,
Kohat Region Kohat.
(Respondent No.2)



Gul Pasi



KOHAT REGION

POLICE DEPARTMENT

ORDER.

This order will dispose the appeal preferred by Ex-Constable Zawar Ali No. 89 of Karak district Police, wherein he was awarded major punishment of compulsory retirement from service by DPO Karak vide O.B No. 11, dated 01.01.2014. He requested for setting aside the punishment order and reinstatement in service.

Facts are that the official earned bad-reputation for corruption and also has numerous bad entries in his service record, which clearly shows his inefficiency, negligence and ill-reputation on his part.

On the basis of the above-mentioned charges / omissions, Charge Sheet & Statement of allegations was issued to him under Police Disciplinary Rule 1975 by DPO Karak and Mr. Gul Jamal (SDPO Takht-e-Nasrati Karak) was appointed as enquiry officer to conduct proper departmental enquiry against him. The enquiry officer conducted transparent enquiry, completed all enquiry formalities, gave him full opportunity of hearing to the defaulter. On conclusion, the E.O submitted findings report, in which the defaulter was found guilty of the charges.

Aggrieved from the said order, the appellant preferred the instant departmental appeal for setting aside the punishment order passed by DPO Karak.

Therefore, the defaulter official was heard in person in orderly room held in this office on 14.05.2014. He did not submit any satisfactory account in his defense and could not satisfy the undersigned.

Keeping in view of the above, enquiry papers and available record, the undersigned reached to the conclusion that charges leveled against him are proved without any doubt. The order passed by the DPO Karak is accordance with law / rules. Therefore, appeal is hereby rejected.

ANNOUNCED
18.05.2014

[Signature]
(DR. ISHTIAQ AHMAD MARWAT)
Dy. Inspector General of Police,
Kohat Region, Kohat.

No. 4850-5A /EC, dated Kohat the 15/5 /2014.

Copy of above for information and necessary action to the District Police Officer, Karak w/r to his office Memo: No: 3116/LB, dated 25.02.2014. His service record is enclosed herewith.

2. Ex-Constable Zawar Ali of Karak district

SRE
[Signature]
Dist. Police Officer
Karak 21/5/2014

[Signature]
(DR. ISHTIAQ AHMAD MARWAT)
Dy. Inspector General of Police,
Kohat Region, Kohat.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of _____
Appeal No. 534 / 2014

Zawar Ali Ex- Constable No. 89 District Police Kohat.
(Appellant)

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and
others.
(Respondents)

REPLICATION ON BEHALF OF THE APPELLANT

Respectfully submitted:

Rejoinder on behalf of the appellant is as under:-

Preliminary Objections:

1. Contents incorrect and misleading, the appellant has illegally been awarded the penalty of Removal from service thus being an aggrieved civil servant he has got the necessary cause of action to file the instant appeal.
2. Contents incorrect and misleading, the appellant has come to the tribunal with clean hands.
3. Contents incorrect and misleading, the appeal is filed well in accordance with the prescribed rules and procedure hence maintainable in its present form.
4. Contents incorrect and misleading, the appeal is filed well within the prescribed period of limitation.
5. Contents incorrect and false, all parties necessary for the disposal of the instant appeal are arrayed in the instant appeal.

Facts of the Case:

1. Contents being admitted need no reply. Moreover contents of Para 1 of the appeal are correct.
2. Contents being admitted hence need no reply.
3. Contents being admitted need no reply. Moreover contents of Para-3 of the appeal are correct.
4. Contents being admitted need no reply.
5. Contents of Para 5 of the appeal are correct the reply submitted to the Para is incorrect, false and misleading.
6. Contents of Para 6 of the appeal being partially accepted by the appellant hence to the extent of admission need no reply. However the contention of the respondents regarding verbal intelligence reports and public perception is unfounded and baseless. Moreover the same cannot be made base for awarding major penalty to the appellant that too when the Inquiry Officer has himself in his findings held that the charges were not proved against the appellant.
7. Contents of Para-7 of the Appeal are Correct the reply submitted to the Para is incorrect false and misleading one. Moreover as is admitted by the respondents in their reply to Para-6 above that the inquiry officer has exonerated the appellant, thus in case the authority awarding punishment was not agreed with the findings of the inquiry it was required to have served a show case notice upon the appellant explicitly stating the reasons of such disagreement and to mention the grounds for awarding penalty despite being exonerated by the inquiry officer.
8. Contents of Para 8 of the appeal are correct the reply submitted to the Para is incorrect, false and misleading.
9. Contents of Para 9 of the appeal are correct the reply submitted to the Para is incorrect, false and misleading.

Grounds of Appeal:

The Grounds (A to P) taken in the memo of appeal are legal and will be substantiated at the hearing of this appeal.

It is, therefore, prayed that on acceptance of this replication the service appeal of the appellant be accepted as prayed for.



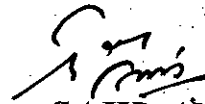
Appellant

Through

IJAZ ANWAR

Advocate Peshawar

&



SAJID AMIN

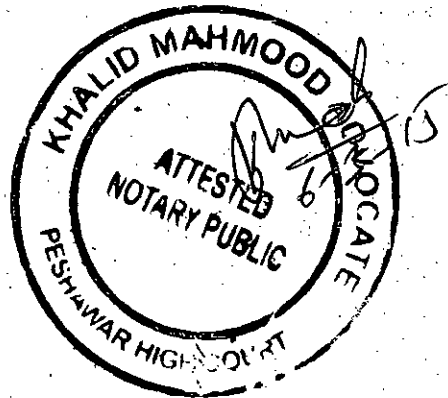
Advocate, Peshawar.

AFFIDAVIT

I do hereby solemnly affirm and declare on oath that the contents of the above replication as well as appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.



Deponent



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 124 ST Dated 26 / 1 / 2016


To

The DPO,
Karak.

Subject: - Judgement.

I am directed to forward herewith certified copy of Judgement dated 14.1.2016 passed by this Tribunal on subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.