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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR.

Objection Petition in E.P No. 196/2023

In Service Appeal No. 5673/ 2021

Title: "IGP KP & others Vs Muhammad Noman"

INDEX

S. No	Documents	Page No. (From-To)
1	Index	01
2	Comments	02-03
3	Affidavit	04
4	Authority Letter	05
5	Copy of FIR is enclosed as "Annexure-A"	06-07
6	enquiry proceedings till dismissal order are annexed as "Annexure-B"	08-25
7	departmental appeal & revision petition rejection orders are annexed respectively as Annexure "C"	26-29
8	Acquittal Judgment is annexed as Annexure "D"	30-57
9	copy of S.T Judgment is annexed as Annexed "E"	58-71
10	Authority: Circular letter No. SOR.II9S&GAD/869JC/M dated 08.01.1990 of Esta Code KPK regarding Departmental Proceedings vis-à-vis Judicial Proceedings is enclosed as "Annexure-F"	72
11	Authorities of Supreme Court of Pakistan SCMR No. 2018 of 2001 & 562 of 2007 are enclosed as "Annexure-G"	73-76
09	CP No. 14-P/2023 "Annexure-E"	77

At Camp court DIK
Date: 20-09-2023
next date: -


DEPONENT

02
BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR.

Objection Petition in E.P No. 196/2023

In Service Appeal No. 5673/ 2021.

1. Deputy Inspector General of Police, Counter Terrorism Department KP Peshawar.
2. Superintendent of Police, CTD DIKhan.

.....(Objectors)

VERSUS

Muhammad Noman Ex-Constable No. 1218 CTD Unit DIKhan office of SSP/CTD South Zone

.....(Respondent)

Objection Petition u/s 47/48, u/order 21 rule 10 of C.P.C 1908 against Judgment dated 28.10.2022 by Objectors in E.P 196/2023 Titled as Muhammad Noman Vs IGP & others.

Respectfully Sheweth

The Objectors humbly submit as under:-

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7725

Dated 20/09/23

1. That above titled execution petition is pending before this Hon'ble Court which is fixed for 18/09/2023.
2. That the appellant (now respondent) filed the execution petition for the implementation of order/judgment decided by this Hon'ble Service Tribunal on 28/10/2022.
3. That the respondents (now objectors) file objection petition on the following grounds.

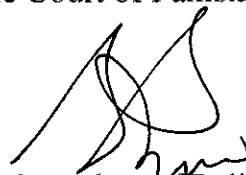
GROUND:-

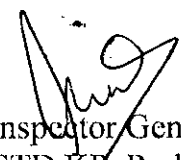
- A. That the respondent Muhammad Noman was caught red handed by the district Police of Police Station Cantt District DIKhan in case vide FIR No. 919 dated 18.10.2018 u/s 9 (B) CNSA/15AA (Copy of FIR is annexed as **Annexure "A"**).
- B. That, a proper departmental enquiry was initiated against Mohammad Noman & Mr. Gul Rauf Khan DSP CTD was appointed as enquiry officer. He was charge sheeted, statement of allegation was served upon him, during course of enquiry the allegations leveled against him were stand proved. Being a part of disciplined Force involvement in a moral turpitude case, hence the competent authority i.e. SSP CTD South Zone, KP awarded him major punishment of Dismissal from Service vide order No. 19-22/R/SSP/South Zone dated 24.01.2019 (enquiry proceedings till dismissal order is annexed as **Annexure "B"**).
- C. That, he filed a departmental appeal which was filed/rejected vide order No. 292/CTD dated 17.12.2020 and then filed revision petition, in this regard a board was held, the petitioner was heard in person but failed to advance any plausible explanation in rebuttal of the charges. The Board see no grounds & reasons for acceptance of his petition, hence, the same was also filed/rejected vide order No. 1881/21 dated 03.05.2021 (departmental appeal & revision petition rejection orders are annexed respectively as **Annexure "C"**).

- D. That, during criminal trial of above mentioned FIR, the accused was acquitted from the charges on mere contradictions in evidence (Acquittal Judgment is annexed as **Annexure "D"**), on this aspect he filed Service Appeal No. 5673/2021 in Service Tribunal at Camp Court DIKhan, which fated in favor of petitioner Noman (copy of Judgment is annexed as **Annexed "E"**).
- E. As per page 217 under chapter **Departmental Proceedings vis-à-vis Judicial Proceedings** of Esta Code KPK both the criminal and departmental proceedings can run parallel to each other against an accused officer/official and such proceedings are not independent on each other vide (Authority: Circular letter No. SOR.II9S&GAD)/869JC)M dated 08.01.1990) (**Annexure "F"**).
- F. That, the contents of above para "D" are strongly supported by various authorities of Supreme Court of Pakistan (SCMRs), but here the SCMR 2018 of 2001 & SCMR 562 of 2007 are enclosed herewith as (**Annexure "G"**).
- G. Acquittal in a criminal case is not sufficient ground to re-instate the delinquent official back in service as he has been declared guilty in departmental proceedings.
- H. That, as per Court Judgment dated 28.10.2022 the appellant may be re-instated into service from the date of his dismissal i.e. 24.01.2019. However, from 24.01.2019 till date, he remained as dismissed, hence the department is not liable for payment of salaries during period of dismissal. It is a well settle principle of law "**that work done pay done**".
- I. It might be possible that accused is acquitted from criminal case on the basis of weak investigation, lack of evidence on case file or some other lacunas in case file but in the case of the respondent (Muhammad Noman) he has been declared guilty in enquiry. So there is no chance that he has not been treated as per prevailing law.
- J. That the objectors preferred CP No. 14-P/2023 in Hon'ble Supreme Court of Pakistan against the judgment dated 28.10.2022 in S.A No. 5673/2021, which is yet to be decided (**Annexure "H"**).
- K. That at the same time two proceedings on one issue cannot be taken place hence the present execution petition is not maintainable in the eye of law.

Prayer:

It is therefore humbly prayed that on acceptance of instant objection petition an appropriate order may kindly be passed to stay the execution petition process till the outcome of CPLA already been lodged at Hon'ble Supreme Court of Pakistan.


Superintendent of Police,
CTD DIKhan.
(Objector No. 02)


Deputy Inspector General of Police,
CTD KP, Peshawar.
(Objector No. 01)

04

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR.

Objection Petition in Execution Petition No. 196/2023

In Service Appeal No. 5673/2021.

1. Deputy Inspector General of Police, Counter Terrorism Department KP Peshawar.
2. Superintendent of Police, CTD DIKhan.

.....(Objectors)

VERSUS

Muhammad Noman Ex-Constable No. 1218 CTD Unit DIKhan office of SSP/CTD South Zone

.....(Respondent)

AFFIDAVIT

We, the below mentioned objectors, do here by solemnly affirm and declare on oath that the contents of objection petition submitted are correct and true to the best of our knowledge and belief and that nothing has been concealed from this Honorable Court.

It is further stated on oath that in this appeal the answer's respondent

have neither been 20-09-23

placed a-party nor their defence struck off/costs

ATTESTED



[Handwritten signature]

Superintendent of Police,
CTD DIKhan.
(Objector No. 02)

[Handwritten signature]

Deputy Inspector General of Police,
CTD KP, Peshawar.
(Objector No. 01)



5

OFFICE OF THE
DEPUTY INSPECTOR GENERAL OF POLICE,
CTD, KHYBER PAKHTUNKHWA,
PESHAWAR.

AUTHORITY LETTER

We, the undersigned, do hereby authorize Mr. Shah Muhammad Khan SI Legal having CNIC# 12201-1886186-3 of CTD DIKhan to submit objection petition in Execution Petition No. 196/2023 titled "Muhammad Noman V/s Govt of KP & 03 Others" and to pursue the matter on behalf of the objectors.

Superintendent of Police,
CTD DIKhan.
(Objector No. 02)

Deputy Inspector General of Police,
CTD KP, Peshawar.
(Objector No. 01)

ابتدائی اطلاع نسبت فرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 ضابطہ فوجداری

DIK

ملع

جھادی

تھانہ

18.10.2018 وقت 15:30 بج

تاریخ

919

نمبر

-1	تاریخ وقت رپورٹ 18.10.18 وقت 15:45 بج	چاکیڈگی پرچہ 18.10.18 وقت 16:15 بج
-2	نام سکونت اطلاع دہندہ مستغیث	عمران اللہ تنک SHO کینٹ
-3	مختصر کیفیت جرم (معدہ دفعہ) حال اگر کچھ لیا گیا ہو	9(b) CNSA/15AA
-4	جائے وقوعہ فاصلہ تھانہ سے اور سمت	خانہ ازان ملزم نعمان خان واقع بستی نادعلیشاہ جانب جنوب فاصلہ 1/2 کلومیٹر
-5	نام و سکونت ملزم	نعمان ولد فضل ربانی قوم مروت سکنہ حال بستی نادعلیشاہ 7-1499393-12103
-6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	برسیدگی مراسلہ مقدمہ قائم ہوا۔
-7	تھانہ سے روانگی کی تاریخ وقت	بہ سبیل ڈاک

ابتدائی اطلاع نیچے درج کرو تحریری مراسلہ مخائب مدعی بالا بعرض قائمی مقدمہ بدست

کنسٹیبل محمد سلیمان 8777 موصول ہو کر ذیل ہے۔

محرر تھانہ چھاونی مخبر نے اطلاع دی کہ نعمان ولد فضل ربانی قوم مروت سکنہ حال بستی نادعلیشاہ جو کہ منشیات از قسم چرس کی خرید و فروخت کرتا ہے۔ اور اب بھی جائے وقوعہ بالا پر منشیات فروخت کر رہا ہے اطلاع کے پیش نظر علاقہ مجسٹریٹ سے سرچ وارنٹ حاصل کر کے اولاً تصدیق کیلئے کانسٹیبل نصیر احمد 6219 کو پرائیویٹ شخص کے روپ میں /1000 روپے کا نوٹ نمبر HJ-8352414 دیکر خانہ ملزم بالا بھجوایا۔ جس نے جا کر نعمان خان سے ایک پڑی چرس خرید کر من SHO کو مس کال دی۔ جو میں نے نفری پولیس کے ہمراہ لیڈی کانسٹیبل حمیر اختر 735 فوری طور پر جائے وقوعہ بالا پر پہنچ کر چھاپہ زنی حسب ضابطہ عمل میں لائی۔ تو صحن خانہ کے مین گیٹ کے سامنے پڑی چارپائی پر بیٹھا ہوا شخص کو موجود پاکر قابو کیا۔ جس نے دریافت پر اپنا نام نعمان خان مذکورہ بتلایا۔ جامہ تلاشی لینے پر مذکورہ کی بڈھ شلوار سے ایک ضرب پستول 9MM بلا نمبر معدہ فٹ میگزین معمولہ 5 عدد کارتوس پر 9MM بور کپڑے کی گھتی برنگ کریم کلر برآمد ہوئی۔ جو چیک کرنے پر گھتی میں سے پلاسٹک لفافہ میں لپیٹی ہوئی چرس کی پڑیاں، نقد مبلغ /11,900 روپے جسمیں چیک کرنے پر ایک نوٹ جو ٹسٹ پر چیز کیلئے دیا گیا گھتی کپڑا میں سے برآمد ہوا۔ برآمدہ چرس معدہ پر چیز پڑی کو یکجا کر کے بر موقع وزن کرنے پر 250 گرام اتری۔ مزید بدوران خانہ تلاشی کمرہ رہائشی میں ملزم بالا کی چارپائی کے اوپر سرہانے کے نیچے سے کاش چرمی میں سے ایک ضرب پستل 30 بور نمبر 2646 معدہ فٹ میگزین معمولہ 5 عدد کارتوس و سپیئر میگزین معمولہ 2 عدد کارتوس ٹوٹل 7 کارتوس پر 30 بور برآمد ہوئے۔ بر موقع طلبی پر بابت اسلحہ معدہ ایمنونیشن کسی قسم کا کوئی قانونی جواز پیش نہ کر سکا۔ اسلحہ معدہ ایمنونیشن معدہ برآمدہ شدہ چرس معدہ پلاسٹک لفافہ و نقد رقم مبلغ /11,900 روپے و کپڑا گھتی بروئے فرد قبضہ پولیس میں کر کے مذکورہ نعمان خان کا فعل قابل مواخذہ بجرم بالا کا پاکر حسب ضابطہ گرفتار کر کے مراسلہ بعرض قائمی مقدمہ بدست کنسٹیبل محمد سلیمان 8777 ارسال تھانہ ہے۔ تفتیش کا بندوبست کیا جاوے۔ دستخط انگریزی مدعی بالا 18.10.18 کارروائی تھانہ آمدہ تحریری مراسلہ درج بالا ہو کر پرچہ بجرم بالا چاک کر کے نقل FIR بعرض تفتیش حوالے INV سٹاف کی جاتی ہے۔ پرچہ گزارش ہے۔

Signature
 DSP/INV
 CTD KFS

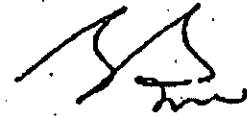
- SD-

MHC Cantt.
 18.10.18.

Annexure "B"

ORDER

Constable Muhammad Nouman No. 1218 of operational staff CTD DIKhan Region is hereby suspended and closed to PS/CTD DIKhan with immediate effect being involved in Case FIR No. 919 dated 18.10.2018 u/s 9(b) CNSA/15AA Police station Cantt: district DIKhan.

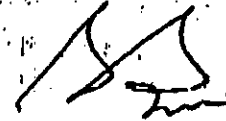


Superintendent of Police,
CTD, Dera Ismail Khan

No. 2565-67 /CTD dated DIKhan the 19/10/2018

For information:-

1. W/ Dy; Inspector General of Police CTD Khyber Pakhtunkhwa Peshawar
2. Senior Superintendent of Police, CTD, South Zone KP.
3. District Police officer Dera Ismail Khan.



Superintendent of Police,
CTD, Dera Ismail Khan

Arrested

J/S
DSP/INV
CTD KP

1-09

(7)

CHARGE SHEET

Whereas, I am satisfied that a formal enquiry contemplated by Khyber Pakhtunkhwa Police Rules 1975 amendment act-2016 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation if established would call for a major penalty as defined in rules-4(i)(B) of the aforesaid rules.

AND THEREFORE, as required by Police Rules 6(1) of the aforesaid rules, I **Superintendent of Police, CTD Dera Ismail Khan** hereby charge you **CONSTABLE NOUMAN NO. 1218** with the misconduct on the basis of the statement attached to this Charge Sheet.

AND, I, hereby direct you further under rules 6(i)(B) of the said rules to put in written defence within 3-days of receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state at the same time whether you desire to be heard in person or otherwise.

AND, in case, your reply is not received within the prescribed period, without sufficient case, it would be presumed that you have no defence to offer and that expert proceeding will be initiated against you.

Attested
[Signature]
**DSP/INV
CTD KP**

[Signature]
**Superintendent of Police,
CTD, Dera Ismail Khan**

(3)

P. 10

DISCIPLINARY ACTION

I, SUPERINTENDENT OF POLICE CTD, Dera Ismail Khan as a competent authority am of the opinion that you CONSTABLE NOUMAN NO.1218 have rendered yourself liable to be proceeded against and committed the following acts/omissions within the meaning of the Khyber Pakhtunkhwa Police Rules 1975 amendment act-2016.

STATEMENT OF ALLEGATION

You while posted at operational staff CTD DIKhan Region and directly charged/arrested in Vide Case FIR No. 919 dated 18.10.2018 u/s 9(b) CNSA/15AA Police station Cantt: district DIKhan. This is an undisciplined/illegal act and gross misconduct on your part which is punishable under the rules.

Hence the statement of allegation.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation Mr. Gul Rauf Khan DSP/CTD, Dera Ismail Khan is appointed as enquiry officer to conduct proper departmental enquiry under Police Rules 1975 amendment Act: 2016.
3. The enquiry officer shall in accordance with the provision of the ordinance, provide reasonable opportunity of the hearing to the accused, record its findings and make, within ten days of the receipt of this order recommendations as to punishment or other appropriate action against the accused.
4. The accused and a well conversant representative of the department shall join the proceedings on the date time and place fixed by the enquiry officers.

Accused
[Signature]
DSP/INV
CTD KP

[Signature]
Superintendent of Police,
CTD, Dera Ismail Khan

No. 2627-31/CTD Dated DIKhan the

23/10/2018

Copy to the:-

1. W/Dy: Inspector General of Police, CTD Khyber Pakhtunkhwa Peshawar w/r of his letter No. 9890-91/EC dated 19.10.2018.
2. Senior Superintendent of Police, CTD Southern Zone, Khyber Pakhtunkhwa.
3. Superintendent of Police Investigation DIKhan w/r of his letter No. 13686/INV/DIKhan dated 22.10.2018
4. Mr. Gul Rauf Khan DSP/CTD, Dera Ismail Khan. The enquiry officer for initiating proceeding against the defaulter under the provision of Khyber Pakhtunkhwa Police Rules 1975 amendment Act: 2016. Enquiry papers containing 6 pages are enclosed.
5. CONSTABLE NOUMAN NO.1218 with the direction to appear before the E.O on the date, time and place fixed by the E.O, for the purpose of enquiry proceeding.

[Signature]
Superintendent of Police,
CTD, Dera Ismail Khan

(تحریری عبوری بیان چارج شیٹ)

خارجی

کوآلٹریشن چارج شیٹ / CPD 31-2627-N0
23-10-2018

مشورہ نگار شمس عظیم اللہ بھٹو کے خلاف درجہ ۱۰۰۰ نمبر ۱۹۹

موزہ 18/10/18 حرم زینح / CNSA 9-B
تعداد چھادی

نس گھڑت اور ماہی اسبرڈ ہاؤس جسٹس فیصل مند
درج ذیل ہے

۱۔ ایڈیٹر گلگھر نیٹ ویب سائٹ شمس عظیم اللہ بھٹو اور نوجوان آبادی میں دلچسپی
خارجی SHE جس نے چارہ چارہ لڑائی کا مقصد پامال کرتے ہوئے
برائے شہری قتل ہوا۔ اور لڑائی بے سہارا کا خیال رکھنا اور
درجہ ۱۰۰۰ کو دھلے بھی دئے

DSP/INV
CTD KP

۲۔ آرخا SHE قریب سپر ڈانٹا محل مایا تھا۔ تو ہم انہیں وارنٹ
کے تحت بھی زینح 103 ضلع کوآلٹریشن چارج شیٹ کے تحت
جوڑا لیا گیا ہے۔

۳۔ انہی ٹیپوں نوجوان آبادی میں لڑائی بھڑک کر نہ تھا۔ سید فضل نے
پہلے کو لڑائی مہال اور دہلی میں میرا SHE تھا جو کہ وہ

دخاں ہوگی اور زور عام کے بارے میں پتہ نہ چل سکا۔
اور جملہ سائنس اور کیمسٹری کے اہلکار اور اہل کار کے ساتھ ساتھ

اور تحقیقات کے لیے اور وہی مہر سے نہیں کھڑے ہیں
اسی کارکردگی کے لیے مہر کو بھی

۴۔ جسے نشانیوں کے دفتر میں ملوث کر کے رکھیں۔ سید صاحب

۵۔ سید صاحب کے پاس کوئی چیز یا زمینی شکایت پلیر نہ تھی۔

۶۔ سید صاحب کے پاس کوئی چیز یا زمینی شکایت پلیر نہ تھی۔

۷۔ اور جسے ٹرانسپارنٹ کے ساتھ ساتھ ہی دیا گیا۔

Alleged
DSP/INV
CTD KP

۸۔ رہنما۔ یہی صاحب اور اہلکار کے ساتھ ساتھ ہی دیا گیا۔

۹۔ سید صاحب کے پاس کوئی چیز یا زمینی شکایت پلیر نہ تھی۔

۱۰۔ سید صاحب کے پاس کوئی چیز یا زمینی شکایت پلیر نہ تھی۔

۱۱۔ سید صاحب کے پاس کوئی چیز یا زمینی شکایت پلیر نہ تھی۔

۱۲۔ سید صاحب کے پاس کوئی چیز یا زمینی شکایت پلیر نہ تھی۔

تعمیر سے پہلے کیا؟ جبکہ خایہ مولاری اینٹری جیٹا یا
مستند لکھناو میں مشین کیا گیا۔

بلوچم - یہی مولاری جامع اور شفاف آواز میں پورے اصل

صفتت فعل پرمانے آگیا ہے . شخص مدعی تعم اور اصل

گنیز حضرت پر منیہ مولاری یا تعم پیر نہوان میں

Attested
ٹکڑہ سکتا ہے۔ اور نہ ہی پور جامع مولاری عمل ہو سکتا ہے۔

شان! اب جہ تعم اور یک خندہ المم اور آئی پادش اور

برستی منض خایہ جیٹا۔ جو کہ مدعی جی خود میں سچے میں

بلوچم جی انہوں نے خود انہی ہر فی سے تحریر ہوئی ہے

شکایت کا تذکرہ جو Fire میں ہے . وہ جی خایہ جیٹا

کو پور ہے . جنہر جی خایہ جیٹا کے الفاریشن

کا ہے . اور ماہر خایہ جیٹا کا عملہ نہیں کرتے

چاہئے عمل ہی خایہ جیٹا کے ہے . اور وہی پور

یا ماہر پور کو کسی قسم کی شکایت یا الفاریشن نہ ہونا .

DSP/INL
CTD KP

مات کی واضح خلافیت ہے۔ رجسٹری مات
 برآمدگی نہیں کھرتی ہے۔ انٹاریشن محتاب نمبر یا
 شکایات بہت کمشتات فروری کا ہے
 رٹی وجود نہیں ہے

ایسی تفریقات کے تحت کے ارجاب سے اور
 اگلے وقت کار کے وہاں معاملہ عنقریب عدالت الصاف
 میں جان بولے۔ جہاں شکایت صوابان کا عمل روبرو
 عدالت الصاف اور خلاف جانب سے دلائل کی موجودگی میں سے
 اور عدالت الصاف عنقریب اید جامع قلم شمار
 ہوگی۔ اور یہ بیان کی تحقیق عمل کر عدالت الصاف
 کے آخری فیصلہ پر آجائی۔ گندہ سے یہ حلف جاری
 ڈرامیشن امرائی کر تالہ فیصلہ سے اور حکم عدالت الصاف
 کے ساتھ رکھا جائے اور مستقیم ہی آئیرالے فیصلہ کر

Attest
 DSP/INV
 CTD KP

(17)

- 5 - P 15

بھی بیان کا حکم لکھ کر دیا گیا - اور موجودہ پوزیشن
 میں ہر بیان طبری بیان لکھ کر دیا گیا۔ کدہ نامی بیان
 عدالت العارف کے فیصلہ آنے اور بیان شامل ہونے پر
 خاجہ بھور شاہن پور کا اہم کاریم پور کا سندھستان کا
 اور جامر کھوج کی اصل کاپی نامہ پور۔

شکر

27/10
18

ذیل لکھی گئی 1218
 ذیل لکھی گئی 1218
 ذیل لکھی گئی 1218

03449408610

Attested

DEPIINV
 CTD KP

14-12-2018

بہان مکمل کھانہ نمبر 1218 سہ ماہی CTD دیکھ کر
ماہی پر عالم تحریر ہے کہ انگریزی جاری شدہ میں اس کی تحریر
عمومی جواب مہربانہ شرط

NO: 2627-31/CTD
23/10/2018

کے حکاموں جس میں اپنے خلاف لکھا ہے انہیں مزید جانچ کر

اور ڈسٹرکشن نمبر 919 مورچہ 18710/18 کم نمبر 9-3/MSA
15-11

Attestation چھاپی دیکھ کر اس کی کاپی ایک جانچ کر دیکھیں۔

انگریزی پڑھا ملاحظہ فرمائی جاوے گی۔ جس میں بھی ترمیم کی جائے

DSP/INV
CTD KP

جسٹس چھاننے چھاپی کی جملہ کارروائی اور سب سے پہلے فرم کھانہ

کے بارے میں تفصیل دیکھیں۔ کم سب سے پہلے ڈسٹرکشن نمبر کھانہ

کے بارے میں کیا قانونی جواز عطا اور جانچ کر جانچ کر جانچ کر

نہی کرنا چاہیے۔ اور بھی ترمیم 103 صفحہ

کے بھی جانچ کر جانچ کر جانچ کر

مدنی سوسائٹی مافقہ چھاپہ ریزی کی کارروائی میں سرور حکم ایس

آفسیئر۔ خاکسار کی طرف سے فراہم کردہ بنیادی حقائق

اور اس حوالہ نام بنیاد کارروائی جو کہ سرور وارنٹ کو مددگار

درجی بار کیا افعال میں مددگار تھا۔ یا نہ اور

اگر مددگار۔ تو مددگار کی جانب سے سرور قانون ایسا

کے ساتھ مددگار تھا۔ اگر نہ تھا۔ تو مددگار کے خلاف

کوئی تادیبی قانونی یا محکمہ کارروائی ہوئی۔ اور اگر

تادیبی تو مددگار کیوں نہ ہوئی۔ کیوں مددگار سے

بھیڑا تھا۔ وہ جو کچھ لکھا ہے۔ اسی کو بلاتریس

نہ ہوگی۔

یہ درجی میں موجود آئی ہے۔ یہ درجی کارروائی ہے

کے بارے میں قانون کارروازہ نہ سمجھنا۔ تو

مضامین۔ کہ ڈسپنس ڈیپارٹمنٹ پر کوئی ایچ نہ آتا

Attested
BSP/INV
CTD KP

روزنامہ ایسی مسزنگ محاذ کر اس بار روزنامت دیکھا جی تھی
 انٹیم ایسی مسزنگ گواہی منہ اور حمایت پارلیمانی
 اور مسزنگ کا عملہ منہ اور مسزنگ منہ تھن
 منہ اور آخری جان منہ ہی ایسی مسزنگ
 منہ زمرہ کمان عملہ کے کتوں آچکا ہے اور
 جانب ڈیٹا منہ ایسی مسزنگ منہ

Attested
 حاکم ایسی مسزنگ اور ایسی مسزنگ نسبت دو کارڈ
 منہ میں منہ منہ ہی منہ

DSP/INV
 CTD KP

۴ - منہ / منہ منہ منہ منہ منہ منہ
 اور منہ منہ منہ - اور منہ منہ منہ
 منہ منہ منہ منہ منہ منہ منہ
 منہ منہ منہ منہ منہ منہ منہ
 منہ منہ منہ منہ منہ منہ منہ

جوہر جامع اردنی، انصاف کا ضمیمہ فراہم کیے ہیں۔

ہری انسٹیٹیوٹ مولانا نذیر احمد صاحب سے اور مولانا درویش صاحب

کو ایک کتب خانہ انصاف فراہم کیا گیا۔ اور قسب ازبک

کوئی ضمیمہ اور اس کے نام نہ فراہم کیے۔ جوہر قسب انصاف

کا تقاضا ہے۔

اور مولانا انصاف کے جامع ضمیمہ مسترد کر کے

کارروائی کرنا کہ ضمیمہ مسترد ہو کر فراہم نہیں کیا گیا اور مولانا

انصاف کا ضمیمہ آج تک نہ فراہم کیا گیا اور قسب کو بھی

بہر بیان کا دفتر منظور فرمایا گیا۔ اور ڈپارٹمنٹ انصاف

کا ضمیمہ جامع انصاف میں فراہم کیا گیا۔



Attested



DSP/INV
CTD KP

فائنل رپورٹ

ڈیپارٹمنٹل انکوائری بر خلاف کنسٹیبل محمد نعمان نمبر 1218

جناب عالی!

معروض ہوں کہ کنسٹیبل محمد نعمان نمبر 1218 جو کہ ایلیٹ فورس تھانہ سی ٹی ڈی ڈیرہ اسماعیل خان میں آپریشنل پونٹ میں ڈیوٹی سرانجام دے رہا تھا۔ مورخہ 18.10.2018 کو مذکورہ کنسٹیبل جو کہ بستی نادر علی شاہ میں کرایہ کے گھر میں ہمراہ فیملی رہائش پذیر تھا۔ SHO تھانہ کینٹ معہ پارٹی پولیس نے بسلسلہ شکایت بعد حصول سرچ وارنٹ چھاپہ زنی کر کے بدوران خانہ تلاشی، جامہ تلاشی چرس وزنی 250 گرام، دو عدد پستل معہ ایمونیشن برآمد ہو کر مذکورہ کے خلاف مقدمہ 919 مورخہ 18.10.2018 BCNSA/15AA-9 تھانہ کینٹ درج رجسٹر ہو کر باقاعدہ تفتیش شروع کی۔

مذکورہ کے خلاف باقاعدہ انفران بالانے چارج شیٹ جاری کر کے من DSP/INT کو انکوائری افسر مقرر کیا گیا۔ انکوائری شروع کر کے مذکورہ کنسٹیبل محمد نعمان 1218 نے اپنا عبوری بیان تحریری پیش کیا جو لف انکوائری ہے۔ مزید ذیل کو ابان کو برائے بیانات طلب کئے گئے۔

Attested


DSP/INV
CTD KP

(1) عمر خطاب ASI محرر تھانہ CTD

(2) SHO تھانہ کینٹ عمران اللہ خٹک

(3) عبدالغفور نمبر 195 محرر تھانہ کینٹ

(4) کنسٹیبل نصیر احمد 6219 تھانہ کینٹ

(5) کنسٹیبل محمد سلیمان 8777 تھانہ کینٹ

(6) لیڈی کنسٹیبل حمیر اختر 735 تھانہ کینٹ

- 1- ASI عمر خطاب محرر تھانہ CTD نے اپنے بیان میں مذکورہ محمد نعمان 1218 کی بوقت وقوع غیر حاضری تسلیم کر چکا ہے۔
- 2- عمران اللہ SHO تھانہ کینٹ نے اپنے بیان میں FIR کی مکمل تائید کی ہے اور پرچیز نوٹ رقم مبلغ 1000/- روپے کا بھی ذکر چکا ہے۔ اور اسی طرح الزام علیہ محمد نعمان نے SHO مذکورہ پر بلا خوف کھلم کھلا جرح مکمل کر کے کوئی امر پوشیدہ مخفی نہیں رکھا گیا۔
- 3- عبدالغفور 195/HC محرر تھانہ کینٹ نے اپنے بیان میں FIR کی درست اندراج تسلیم کر چکا ہے۔
- 4- کنسٹیبل نصیر احمد (FRP) 6219 متعین تھانہ کینٹ نے اپنے بیان میں چرس پرچیز کو درست تسلیم کیا ہے۔ اور مکمل FIR کی تائید کی ہے۔ الزام علیہ نے مذکورہ گواہ پر چرس برآمدگی کے متعلق حلف دینے کا سوال کیا جس پر مذکورہ نے مکمل حلف اٹھا کر جواب دیا۔ اور پرچیز کو تسلیم کر لیا۔

کنسٹیبل محمد سلیمان (FRP) 8777 متعین تھانہ کینٹ نے اپنے بیان میں چرس، پستل ہائے کی برآمدگی کو درست تسلیم کر کے

فائل رپورٹ

ڈیپارٹمنٹل انکوائری بر خلاف کنسٹیبل محمد نعمان نمبر 1218

جناب عالی!

معروض ہوں کہ کنسٹیبل محمد نعمان نمبر 1218 جو کہ ایلیٹ فورس تھانہ سی ٹی ڈی ڈیرہ اسماعیل خان میں آپریشنل یونٹ میں ڈیوٹی سرانجام دے رہا تھا۔ مورخہ 18.10.2018 کو مذکورہ کنسٹیبل جو کہ بستی نادر علی شاہ میں کرایہ کے گھر میں ہمراہ فیملی رہائش پذیر تھا۔ SHO تھانہ کینٹ معہ پارٹی پولیس نے بسلسلہ شکایت بعد حصول سرچ وارنٹ چھاپہ زنی کر کے بدوران خانہ تلاشی چرس وزنی 250 گرام دو عدد پشیل معہ ایمو نشین برآمد ہو کر مذکورہ کے خلاف مقدمہ 919 مورخہ 18.10.2022 جرم BCNSA/15AA-9 تھانہ کینٹ درج رجسٹر ہو کر باقاعدہ تفتیش شروع کی۔ مذکورہ کے خلاف باقاعدہ افسران بالانے چارج شیٹ جاری کر کے من DSP/INT کو انکوائری افسر مقرر کیا گیا۔ انکوائری شروع کر کے مذکورہ کنسٹیبل محمد نعمان 121 نے اپنا عبوری بیان تحریری پیش کیا جو لفظ انکوائری ہے۔ مزید ذیل گواہان کو برائے بیانات طلب کئے گئے۔

(1) عمر خطاب ASI محررانہ (2) CTD

(2) SHO تھانہ کینٹ عمران اللہ خٹک

(3) عبدالغفور نمبر 195 محرر تھانہ کینٹ

(4) کنسٹیبل نصیر احمد 6219 تھانہ کینٹ

(5) کنسٹیبل محمد سلیمان 8777 تھانہ کینٹ

(6) لیڈی کنسٹیبل حمیر اختر 735 تھانہ کینٹ

1- ASI عمر خطاب محرر تھانہ CTD نے اپنے بیان میں مذکورہ محمد نعمان 1218 کی بوقت وقوعہ غیر حاضری تسلیم کر چکا ہے۔

2- عمران اللہ SHO تھانہ کینٹ نے اپنے بیان میں FIR کی مکمل تائید کی ہے اور پرچیز نوٹ رقم مبلغ -/1000 روپے کا بھی ذکر چکا ہے۔ اور اسی طرح الزام علیہ محمد نعمان نے SHO مذکورہ پر بلا خوف کھلم کھلا جرح مکمل کر کے کوئی امر پوشیدہ و مخفی نہیں رکھا گیا۔

3- عبدالغفور 195/HC محرر تھانہ کینٹ نے اپنے بیان میں FIR کی درست اندراج تسلیم کر چکا ہے۔

4- کنسٹیبل نصیر احمد (FRP) 1219 متعینہ تھانہ کینٹ نے اپنے بیان میں چرس پرچیز کو درست تسلیم کیا ہے۔ اور مکمل FIR کی تائید کی ہے۔

الزام علیہ نے مذکورہ گواہ پر چرس برآمدگی کے متعلق حلف دینے کا سوال کیا جس پر مذکورہ نے مکمل حلف اٹھا کر جواب دیا۔ اور پرچیز کو درست تسلیم کی ہے۔

5- کنسٹیبل محمد سلیمان (FRP) 8777 متعینہ تھانہ کینٹ نے اپنے بیان میں چرس پشیل ہائے کی برآمدگی کو درست تسلیم کر کے

Attested
DSP/INV
CTD KP

FIR کی مکمل تائید کی ہے۔

6- لیڈی کنسٹیبل حمیرا اختر 738 تھانہ کینٹ نے اپنے بیان میں چرس پلسٹل ہائے کی برآمدگی درست تسلیم کر کے FIR کی تائید کی ہے۔ اور پردہ مستورات کا بھی خیال رکھا ہے۔ کسی قسم کی SHO کینٹ نے الزام علیہ کی بیوی کو نہ تو دھکا دیا ہے۔ اور نہ ہی کوئی تلخ کلامی ہوئی ہے۔

7- الزام علیہ کنسٹیبل محمد نعمان نمبر 1218 نے بدوران انکوائری عبوری بیان کے علاوہ اپنا فائنل بیان بھی جمع کر چکا ہے۔ جس کے آخر میں اس نے عدالت کے حکم فیصلہ تک انکوائری موخر رکھنے کی استدعا کی ہے۔

عالیجاہ! جملہ گواہان کے بیانات جو بالترتیب قلمبند کے گئے ہیں اور الزام علیہ محمد نعمان 1218 کو ہر گواہ پر روبرو بیان قلمبندی مکمل جرح کرنے کا موقع بھی فراہم کیا گیا۔ جو اس نے باقاعدہ جرح بھی کر چکا ہے۔ اور ساتھ ہر بیان پر باقاعدہ دستخط بھی کر چکا ہے۔ تمام گواہان کے بیانات مکمل FIR کی تائید کرتا ہے۔ اور برآمدگی منشیات پلسٹل ہائے درست تسلیم کرتے ہیں۔ اور تمام بیانات تو ازان یکسوئی مانتے ہیں۔ کسی قسم کی کوئی رد و بدل نہیں پائی گئی۔

لہذا جملہ گواہان کے بیانات کی روشنی میں الزام علیہ محمد نعمان 1218 کے جرح تو اصل اور خفیہ معلومات و پتہ براری کرنے سے مذکورہ

محمد نعمان 1218 قصور وار پایا جاتا ہے۔

فائنل رپورٹ مرتب ہو کر گزارش ہے۔

Sd/-

ڈپٹی سپرنٹنڈنٹ آف پولیس INT

سی، ٹی، ڈی، ڈیرہ اسماعیل خان

17.12.2018

Attested

DSP/INV
CTD KP



30 P-24

OFFICE OF THE
SENIOR SUPERINTENDENT OF POLICE
COUNTER TERRORISM DEPARTMENT
 South Zone KPK
 Phone No. 09669260539, FAX No. 09669280540

WANE

This order is aimed to dispose-off the department proceeding against Constable Muhammad Noman No. 1218 of this unit on the charges that he while posted at CTD operational staff DIKhan, charged in case FIR No. 919 dated 18.10.2018 u/s (B) QNSA/15AA/PS Cantt.

He was served with charge sheet/statement of allegations. An enquiry was conducted into the matter through Mr. Gul Rauf Khan DSP/CTD DIKhan Range under Police Rules-1975 amended-2014, the enquiry officer submitted his finding report in which he stated that the defaulter constable is found guilty of the charges levelled against him.

Keeping in view the finding and recommendation of the enquiry officer the undersigned came to the conclusion that the charges of misconduct stand proved against him beyond any shadow of doubt.

Therefore, in the light of above, I, Ehsan Ullah Khan SSP, South Zone, CTD KP officer, Dera Ismail Khan, an exercise of power conferred upon me under Police Rules-1975 with amended 2014, award Constable Muhammad Noman No. 1218 "Major Punishment of Dismissal from the Police Service" with immediate effect.

Senior Superintendent of Police
 Counter Terrorism Department
 South Zone, KP

No. 19-72/R/SSP/South Zone dated 24/01/2019

Copy for information:

1. Dy: Inspector General of Police, CTD Khyber Pakhtunkhwa Peshawar
2. Regional Police officer, Dera Ismail Khan
3. District Police officer Dera Ismail Khan
4. Superintendent of Police, CTD Dera Ismail Khan Region w/r of its office letter No. 232/CTD/DIKhan dated 23.01.2019

Attested
 DSP/INV
 CTD KP

Attested

Senior Superintendent of Police
 Counter terrorism Department,
 South Zone KP

RI...
 06/02/2019

Attested

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STAN

PAR...



(D)

P-25

OFFICE OF THE
SENIOR SUPERINTENDENT OF POLICE
COUNTER TERRORISM DEPARTMENT

South Zone KPK
Phone No. 09659280539, FAX to 0966028540

ORDER

This order is aimed to dispose-off the department proceeding against **Constable Muhammad Noman No. 1218** of this unit on the charges that he while posted at CTD operational staff DIKhan, charged in case FIR No. 919 dated 18.10.2018 u/s 9(B) CNSA/15AA PS Cantt.

He was served with charge sheet/statement of allegations. An enquiry was conducted into the matter through **Mr. Gul Rauf Khan DSP/ CTD DIKhan Range** under Police Rules-1975 ammended-2014, the enquiry officer submitted his finding report in which he stated that the defaulter constable is found guilty of the charges levelled against him.

Keeping in view the finding and recommendation of the enquiry officer the undersigned came to the conclusion that the charges of misconduct stand proved against him beyond any shadow of doubt.

Therefore, in the light of above, I, **Ehsan Ullah Khan SSP, South Zone, CTD KP officer, Dera ismail Khan**, an exercise of power conferred upon me under Police Rules 1975 with amended 2014, award **Constable Muhammad Noman No. 1218** "Major Punishment of **Dismissal from the Police Service**" with immediate effect.

Sd/-

Senior Superintendent of Police
Counter Terrorism Department
South Zone, KP

No. 19-22 /R/SSP/South Zone dated 24 / 01 /2019

Copy for information:

1. Dy: Inspector General of Police, CTD Kyber Pakthunkhwa Peshawar
2. Regional Police officer, Dera Ismail Khan
3. District Police officer Dera Ismail Khan
4. Superintendent of Police CTD Dera Ismail Khan Region w/r of his office letter No. 232/CTD/ DIKhan dated 23.01.2019

Attested

Sd/-

Senior Superintendent of Police
Counter Terrorism Department
South Zone, KP

P-26

Annexure "C"

بخدمت جناب DIG/CTD صاحب خیبر پختونخوا پشاور

عنوان :- درخواست بمراد بحالی سروس

جناب عالی!

مودہ نامہ گزارش ہے کہ من سابقہ کنشیل مقدمہ نمبر 919 مورخہ 18.10.2018 جرم CNSA-15AA(B) 9 تھانہ کینٹ ڈیرہ اسماعیل خان میں نامزد ملزم ہو کر داخل سنٹرل جیل کیا گیا جس پر میرے خلاف محکمہ انکوائری کا تحرک کیا جا کر انکوائری آفیسر نے قصور وار تصور کرتے ہوئے سروس سے برخاستگی کی سفارش کی جو بحوالہ آرڈر لیٹر نمبر R/SSP-19-22 مورخہ 24.01.2019 حسب اہم جناب SSP صاحب ساؤتھ زون نے من کنشیل کو سروس سے برخاست کیا۔ قبل ازیں بھی انفران بالا کو جرم کی درخواست گزار تھی جس پر کوئی عملدرآمد نہ ہوا۔

من سابقہ کنشیل بعد االت ASJ/Model & Criminal Court ڈیرہ اسماعیل خان سے مقدمہ بالا میں مورخہ 05.09.2020 کو باعزت طور پر بری ہو چکا ہوں جس کی مصدقہ کاپی ہمراہ درخواست لف ہے جو میری بے گناہی کا واضح ثبوت ہے۔ لہذا بذریعہ درخواست استدعا ہے کہ من سائل کو بے قصور تصور کرتے ہوئے تاریخ برخاستگی سے دوبارہ سروس پر بحال کئے جانے کا مناسب حکم صادر فرمادیں تاکہ من سائل باعزت طور اپنا رزق کما کر اپنے بچوں کی عیال داری کر سکے۔

سائل تازیت دعا گو ہوں گا

مورخہ: 14-09-2020

عارض

سابقہ کنشیل محمد نومان نمبر 1218 متعینہ سی ٹی ڈی ڈیرہ اسماعیل خان

0344-940-8610

SP-110:

EC

Attested

DSP/INV
CTD KP

DIG/CTD

15/09/2020



P-27

**OFFICE OF THE,
DEPUTY INSPECTOR GENERAL OF POLICE,
COUNTER TERRORISM DEPARTMENT,
KHYBER PAKHTUNKHWA, PESHAWAR.**

ORDER

Ex-Constable Muhammad Noman No. 1218 while posted in CTD D.I.Khan Region was involved in case vide FIR No. 919 dated 18-10-2018 U/S 9(B) CNSA/15AA PS Cantt. He was issued charged sheet and summary of allegation by SP CTD D.I.Khan Region and DSP Gul Rauf nominated as enquiry officer to probe into the matter. The enquiry officer submitted his findings and the above named official was declared guilty. In this regard SSP CTD Southern Zone Khyber Pakhtunkhwa awarded him major punishment i.e. "Dismissal from Service" vide order No. 19-22/R/SSP/South Zone dated 24-01-2019. The applicant submitted departmental appeal after lapse of one year nine months before the Worthy Deputy Inspector General of Police CTD Khyber Pakhtunkhwa for re-instatement. However, the competent authority has upheld the punishment & case has been filled being badly time barred.

OB No. 259 CTD
Dated: 03/11/2020

SP/HQrs:
For Deputy Inspector General of Police,
CTD, Khyber Pakhtunkhwa,
Peshawar.

No 13624-³⁰ /EC/CTD Dated Peshawar the 03/11/2020

Copy of above is forwarded for information and necessary action to the:-

1. Senior Superintendent of Police, CTD Southern Zone Khyber Pakhtunkhwa.
2. Superintendent of Police, CTD D.I.Khan Region.
3. Ex- Constable Muhammad Noman No. 1218. *Affected*
4. Accountant, OASI, SKC CTD HQrs: Peshawar.

DSP INV
CTD KP

بخدمت جناب (IGP) صاحب خیبر پختونخوا پشاور
عنوان:- درخواست بمراد بحالی سرویس

جناب عالی

مورد بانہ گزارش ہے کہ من سابقہ کنشیل مقدمہ نمبر 919 مورخہ 18.10.2018 جرم CNSA-15AA(B) 9 تھانہ کینٹ ڈیرہ اسماعیل خان میں نامزد ملزم ہو کر داخل سنٹرل جیل کیا گیا جس پر میرے خلاف حکمانہ انکوائری کا تحرک کیا جا کر انکوائری آفیسر نے تصور دار تصور کرتے ہوئے سرویس سے برخاستگی کی سفارش کی جو بحوالہ آرڈر ایئر نمبر 19-22/R/ISSP مورخہ 24.01.2019 حسب حکم جناب SSP صاحب ساؤتھ زون نے من کنشیل کو سرویس سے برخاست کیا۔

من سابقہ کنشیل بعدالت ASD/Model & Criminal Court ڈیرہ اسماعیل خان سے مقدمہ بالا میں مورخہ 05.09.2020 کو باعزت طور پر بری ہو چکا ہوں جس کی مصدقہ کاپی ہمراہ درخواست لف ہے جو میری بے گناہی کا واضح ثبوت ہے۔ لہذا بذریعہ درخواست استدعا ہے کہ من سائل کو بے تصور تصور کر کے تھوڑے تاریخ برخاستگی سے دوبارہ سرویس پر بحال کئے جانے کا مناسب حکم صادر فرمادیں تاکہ من سائل باعزت طور اپنا رزق کما کر اپنے بچوں کی عیال داری کر سکے۔

Attested

DSP/INP
CTD KP

M. NAUMAN

سائل تازیت دعا گروہوں کا
مورخہ: 03-11-2020

عارض سابقہ کنشیل محمد نعمان نمبر 1218 متعینہ سی ٹی ڈی ڈیرہ اسماعیل خان

0344-9608610

Suppl. Serial

1. D. G. / ops

AS
10/11/20

19
12-11-20



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 1881 /21, dated Peshawar the 03/05/2021

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-FC Muhammad Noman No. 1218. The petitioner was dismissed from service by SSP/CTD South Zone, Khyber Pakhtunkhwa vide order Endst: No. 19-22/R/SSP/South Zone, dated 24.01.2019 on the allegations that he while posted at CTD Operation Staff DIKhan was charged in case FIR No. 919, dated 18.10.2018 u/s 9(B) CNSA/15AA PS Cantt. His appeal was filed being badly time barred by Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar vide order Endst: No. 13624-30/EC/CTD, dated 03.11.2020.

Meeting of Appellate Board was held on 13.04.2021 wherein petitioner was heard in person. Petitioner contended that he has been acquitted by the court of ASI/Judge Special Court/Judge Model Criminal Trial Court, DIKhan vide judgment dated 05.09.2020.

The Board examined the enquiry papers which reveals that the allegations against the petitioner has been proved. During hearing, petitioner failed to advance any plausible explanation in rebuttal of the charges. The Board see no ground and reasons for acceptance of his petition, therefore, the Board decided that his petition is hereby rejected.

Sd/-

KASHIF ALAM, PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. S/ 1882-90/21,

Copy of the above is forwarded to the:

1. Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar. One Service Roll and one enquiry file (49 pages) of the above named Ex-FC received vide your office Memo: No. 16115/EC/CTD, dated 23.12.2020 is returned herewith for your office record.
2. SSP/CTD South Zone, Khyber Pakhtunkhwa.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
5. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E IV CPO Peshawar.

Attached
DSI
CTD K-

(IRFAN BELAH KHAN) PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

P-30

Annexure "D"

②
F/2

IN THE COURT OF **MUHAMMAD ASIM**
JUDGE SPECIAL COURT / JUDGE MODEL CRIMINAL TRIAL COURT,
DERA ISMAIL KHAN

CNSA Case No..... 396/MCTC of 2019

Date of Original Institution..... 23.02.2019
Date of receiving to MCTC 22.11.2019
Date of Decision..... 05.09.2020

THE STATE

VERSUS

Nouman Khan son of Fazal Rabani
Caste Marwat r/o Basti Naad Ali Shah
D.I.Khan. (Accused facing trial)

CHARGE U/S 9- (B) CNSA VIDE FIR NO.919
DATED 18.10.2018 POLICE STATION CANTT
DERA ISMAIL KHAN

Present: Mr. Fauseer Ali Mehdi APP for the State.
Mr. Arbab Jehangir Advocate, for Accused

JUDGMENT:

1. Accused Nouman Khan faced trial before this Court in case FIR No.919 dated 18.10.2018 U/S 9-(b) CNSA registered at Police Station Cantt, D.I.Khan.

2. According to contents of FIR based on Murasila are that secret information regarding selling of narcotics by the accused at the spot i.e. at his house situated at Basti Nand Ali Shah received. Initially after obtaining search warrant from the Magistrate

Handwritten notes and signatures on the right side of the page, including "MCTC" and "396/MCTC".

Stamp: DSP/INV CTD KP

Stamp: ATTESTED

Handwritten date: 5.9.2020

(1/2)

P-31

IN THE COURT OF **MUHAMMAD ASIM**
ASIJUDGE SPECIAL COURT/JUDGE MODEL CRIMINAL TRIAL COURT
DERA ISMAIL KHAN.

CNSA Cuse No.....396/MTC of 2019

Date of Original Institution.....23.02.2019

Date of receiving to MCTC..... 22.11.2019 ..05.09.2020SJ

Date of Decision.....05.09.2020

THE STATE

VERSUS

Nauman Khan son of Fazal Rabi
Caste Marwat r/o Basti Naad Ali Sliah
D.I.Khan..... (*Accused facing trial*)

CHARGE U/S 9- (B) CNSA VIDE FIR NO.919
DATED 18.10.2018 POLICE STATION CANTT
DERA ISMAIL KHAN.

Present: Mr. Tanseer Ali Mehdi APP for the State.

Mr. Arbab Jehangir Advocate, for Accused.

Arbab
Jehangir
OSP/INV
CTD KP

JUDGMENT:

1. Accused Nouman Khan faced trial before this Court Case FIR No.919 dated 18.10.2018 U/S 9-(b) CNSA registered at Police Station Cantt, D.I.Khan.
2. According to contents of FIR based on Murasila are that secret information regarding selling of narcotics by the accused at the spot i.c. at his house situated at Basti Naad Al Shah received. Initially after obtaining search warrant from the Illaqa

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Magistrate, D.I.Khan. SHO/complainant deputed constable Naseer Ahmad No.6219 in disguise of private person alongwith currency note of Rs.1000/- bearing NO.HJ 8352414 for test purchase, who purchased one sachet of chars from the accused and after miscall of the said constable through his mobile, the complainant/SHO alongwith other police party including lady constable, conducted search of the house, wherein one person was sitting on the cot lying in the courtyard near the main entrance gate of the house. The said person was apprehended. On query, he disclosed his name as Noman Khan. The personal search of the accused led a recovery of one 9 MM pistol without number alongwith fit magazine containing five rounds of same bore, one cloth bag having shopper bag, which contained wrapped sachets of chars and a sale money of Rs.11900/- including the currency note of test purchase. After amalgamation the contraband chars which became 250 grams. The further house search of accused was made which led recovery of 30 bore pistol bearing NO. 2646 alongwith magazine having five rounds of the same bore, a spare magazine containing 02 rounds, total seven rounds of 30 bore duly wrapped in a Kaash cloth lying under the pillow of the residential room of house of the accused, for which he could not produce any legal justification. The accused was arrested on the spot. The SHO/complainant drafted the Murasila and sent

Attested

DSE/INV
CTD KP

ATTESTED
Exhibition

5/9/2020

P-33

Magistrate, D.I.Khan. SHO/complainant deputed constable Naseer Ahmad No. 6219 in disguise of private person alongwith currency note of Rs.1000/- bearing NO.11J 8352414 for test purchase, who purchased one sachet of chars from the accused and after miscall of the said constable through his mobile, the complainant/SHO alongwith other police party including lady, constable. conducted search of the house, wherein one person was sitting on the cot lying in the courtyard near the main entrance gate of the house. The said person was apprehended. On query. he disclosed his name as Noman Khan. The personal search of the accused led a recovery of one 9 MM pistol without number alongwith fit magazine containing live rounds of same bore, one cloth bag having shopper bag, which contained wrapped sachets of chars and a sale money of Rs.11900/- including the currency note of test purchase. After amalgamation the contraband chars which became 250 grams. The further house search of accused was made which led recovery of 30 bore pistol bearing NO. 2646 alongwith lit magazine having five rounds of the same bore, a spare magazine containing 02 rounds, total seven rounds of 30 bore duly wrapped in a Kaash cloth lying under the pillow of the residential room of house of the accused, for which he could not produce any legal justification. The accused was arrested on the spot. The SHO/complainant drafted the Murasila and sent

Attested
by
DSP/INV
CTD KP

P-34

(25)

the same to Police Station for registration of case, on the strength whereof, instant case was registered against accused facing trial.

3. After completion of investigation, complete challan was submitted in due course of law and the case file was entrusted to the Court for trial. Accused was summoned to face the trial. On his appearance provisions of Section 265-C Cr.PC were complied with and thereafter formal charge was framed against the accused to which he pleaded not guilty and claimed for trial.

4. After framing of charge, the prosecution was directed to produce its witnesses in support of its case.

5. The Prosecution in order to prove its case produced as many as 06 witnesses. The brief resume of the prosecution evidence is as under:-

➤ PW-1 is Imran Ullah Khattak SHO, who received information that one Noman son of Fazal Rabani is involved in the business of narcotics. He obtained search warrant vide his application Ex.PW 1/1 while search warrant is Ex.PW 1/2, deputed constable Naseeb Ahmad NO.6219 as test purchaser by giving him a note of Rs.1000/-. The said constable after purchasing the said sachet from the accused informed him. PW-1 further stated that he alongwith police party including lady constable proceeded to the spot and they entered in the house of accused, accused was sitting inside of his house on cot. Accused was overpowered by the local police. SHO made personal search of accused and recovered one pistol 9MM alongwith fit magazine containing 03 rounds

Attested

**DSP/INV
CTD KP**

5.9.2020

**ATTESTED
Examined**

P-35

the same to Police Station for registration of case, on the strength whereof, instant case was registered against accused facing trial.

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Attested

DSP/IN/10
CTD KP

from his trouser fold. On further search he also recovered a bandolier Cream colour fasten with trouser of accused, containing 250 grams chars alongwith Rs.11900/- as sale amount. On further search one 30 bore pistol No.2646 alongwith fit magazine containing 05 rounds and a spare magazine 02 rounds recovered from beneath the Pillow lying on the cot in the residential room of the accused facing trial. PW-1/SHO prepared the recovery memo Ex.PW 1/3. He separated 05 grams chars for FSL and sealed the same into parcel No.1 while the remaining chars 245 grams was sealed into parcel No.2 (Ex.P-1). The pistol 9 MM with fit magazine were sealed into parcel No.3 (Ex.P-2). He also sealed the sale amount into parcel No.4 (Ex.P-3). The pistol 30 bore with fit magazine were sealed into parcel No.5 (Ex.P-4). SHO affixed seals 3/3 seals on each parcel with the monogram ZA. SHO/complainant arrested the accused and issued his card of arrest Ex.PW 1/4. SHO/Complainant drafted the Murasila Ex.PA/1 and sent the same to Police Station through Constable Muhammad Suleman NO.8777 for registration of FIR. On the arrival of I.O, SHO/complainant handed over the custody of accused, his card of arrest, Case property and recovery memo to Investigating Officer. On the pointation of SHO/complainant, IO prepared site plan. After completion of investigation he submitted complete challan against the accused.

Arrested
SP/INV
CTD KP

> PW-2 is Abdul Ghafoor MHC, who on receipt of murasila chalked out the FIR Ex.PA.

> PW-3 is Muhammad Suleman No.8777, who is marginal witness of recovery memo Ex.PW 1/3 vide which SHO/complainant in his presence recovered and took into possession one pistol 9 MM alongwith fit magazine containing 05 rounds from the possession of accused. SHO

ASH
5-9-2020

SHO ATTESTED
Signature

2-37

from his trouser fold. On further search he also recovered a bandolier Cream colour fasten with trouser of accused, containing 250 grams chars alongwith Rs.11900/- as sale amount. On further search one 30 bore pistol No.2646 alongwith fit magazine containing 05 rounds and a spare magazine 02 rounds recovered from beneath the Pillow lying on the cot in the residential room of the accused facing trial. PW-1/SHO prepared the recovery memo Ex.PW 1/3, He separated 05 grams chars for FSL and scaled the same into parcel No.1 while the remaining chars 245 grams was sealed into parcel No.2 (Ex.P-1). The pistol 9 MM with fit magazine were sealed into parcel No.3 (Ex.P-2). He also sealed the sale amount into parcel No.4 (Ex.P-3). The pistol 30 bore with fit magazine were sealed into parcel No.5 (Ex.P-4). SHO affixed seals 3/3 seals on each parcel with the monogram ZA. SHO/complainant arrested the accused and issued his card of arrest Ex.PW 1/4. SHO/Complainant drafted the Murasila Ex.PA/I and sent the same to Police Station through Constable Muhammad Suleman NO.8777 for registration of FIR. On the arrival of 1.0, SHO/complainant handed over the custody of accused, his card of arrest, Case property and recovery memo to Investigating Officer. On the pointation of SHO/complainant, IO prepared site plan. After completion of investigation he submitted complete challan against the accused.

PW-2 is Abdul Ghafoor MHC, who on receipt of murasila "chalked out the FIR Ex.PA.

PW-3 is Muhammad Suleman No .8777, who is marginal Witness of recovery memo Ex.PW 1/3 vide which SHO/complainant in his presence recovered and took into Possession one pistol 9 MM alongwith fit magazine containing 05 rounds from the possession of accused SHO

Arrested

1/10
DSP/INV
CTD KP

during further search also recovered and took into possession a bandolier cream colour fasten with the shalwar of accused, containing 250 grams chars alongwith. Rs.11900/- as sale amount and one 30 bore pistol No.2646 alongwith its magazine containing 05 rounds and a spare magazine having 02 rounds of the same recovered beneath the pillow lying on the cot in the residential room of the accused facing trial.

> PW-4 is Bashir Hussain SI retired, who on receipt of copy of FIR, proceeded to the spot with other police officials where SHO along with other police officials were also present. Investigating Officer prepared site plan Ex.PB on the pointation of SHO. Investigating Officer recorded the statement of PWs and accused. He also placed on file FSL result which is Ex.PK. PW-4/Investigating Officer produced the accused before the JMFC vide his applications Ex.Pw4/1 & Ex PW 4/2. As the accused facing trial was serving in police department at CTD D.I.Khan and in this respect a letter from SP Investigation DIKhan to SP CTD DIKhan is available on file and is Ex.PW 4/3. Investigating Officer also annexed attested copies of DDs regarding his departure and arrival back to the Police Station which is Ex.PW 4/4 and Ex.Pw 4/5. Investigating Officer recorded the statements of PWs. After completion of investigation he handed over the case file to the then SHO for submission of challan.

Attested

[Signature]
DSP/INV
CTD KP

> PW-5 is Ghulam Qasim son of Rab Nawaz, who has stated that his brother Saeed owns a house in Basti Naad Ali Shah near his house and as his brother is residing in Rawalpindi/Islamabad that is why he takes care the house of his brother. PW-5 gave the said house to accused Nauman on rent and on the day of occurrence local police raided the said house, arrested the accused, recovered arms ammunition and chars. He exhibited Rent deed ad Ex.PW 5/1 while copy of Tenant acknowledgment receipt is Ex.PW 5/2.

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5.9.2020

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7/2

ATTESTED

2-39

during further search also recovered and took into possession a bandolier cream colour fasten with the shalwar of accused, containing 250 grams chars alongwith Rs .11900/- as sale amount and one 30 bore pistol No.2646 alongwith fit magazine containing 05 rounds and a spare magazine having 02 rounds of the same recovered beneath the pillow lying , the cot in the residential room of the accused facing trial PW-4 is Bashir Hussain SI retired, who on receipt of copy- of FIR, proceeded to the spot with other police official where SHO along with other police officials were also presents Investigating Officer prepared site plan Ex. PB on the point out Of SHO. Investigating Officer recorded the statement of PWs and accused. He also placed on file FSL result which is Ex.PK.PW 4/Investigating Officer produced the accused before the JMJC Vide his applications Ex.Pw4/1 & Ex PW 4/2. As the accused facing trial was serving in police department at CTD D.I.Khan and in this respect a letter from SP Investigation DIKhan to SP CTD DIKhan is available on file and is Ex .PW 4/3. Investigating Officer also annexed attested copies of DDs regarding his Departure and arrival back to the Police Station which is Ex.PW 4/4 and Ex.Pw 4/5. Investigating Officer recorded the statements of PWs. After completion of investigation he handed over the case file to the then SHO for submission of challan.

PW-5 is Ghulam Qasim son of Rab Nawaz, who has stated That his brother Saeed owns a house in Basti Naad Ali Shah near his house and as his brother is residing in Rawalpindi/Islamabad that is why he takes care the house of His brother. PW-5 gave the said house to accused Nauman on rent and on the day of occurrence local police raided the said house: arrested the accused, recovered arms ammunition and chars. He exhibited Rent deed ad Ex.PW 5/1 while copy of Tenant acknowledgment receipt is Ex.PW 5/2.

Attested
DSP/INV
CTD KP

P-340

(27)

➤ PW-6 is Naseer Ahmad Constable, who stated that the SHO/complainant had given note of Rs.1000/- having No.HJ8352414. PW-6 purchased the chas one scathe from the accused and informed the SHO who rushed to the spot with lady constable and other police nafri. In his presence SHO recovered and took into possession 9 MM pistol without number alongwith fit magazine containing 05 live rounds and cloth of bag cream colour, chas weighing 250 grams including the amount Rs.11900/-, one pistol 30 bore with fitted magazine containing 05 rounds and one spare magazine containing 02 rounds were also recovered from the residential room of accused.

6. After close of the prosecution evidence, statement of accused facing trial U/S 342 Cr.P.C was recorded wherein he denied the charges and professed his innocence. However, the accused facing trial neither opted to be examined on oath nor wished to produce any evidence in his defence.

7. I have heard the arguments of learned APP for the State, learned defence counsel and have thoroughly perused the record.

8. Learned APP for the state argued that in pursuant to the spy information regarding the involvement of accused facing trial in narcotic business, SHO/complainant obtained search warrant from the competent court, before conducting search, test purchase was conducted and after due process search was conducted in the house of accused which culminated in to the recovery of narcotics and illegal weapon. He contended that the

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Attested
DSP/INV
CTD KP

2-41

PW-6. is Naseer Ahmad Constable, who stated that the SHO/complainant had given note of Rs.1000/- having No.HJ8352414. PW-6 purchased the chas one seathe from the accused and informed the SHO who rushed to the spot with lady constable and other police nafri. In his presence SHO recovered, and took into possession 9 MM Pistol without number alongwith fit magazine containing, live, rounds and cloth of bag cream colour, chas weighing 250 sare..is including sale amount Rs.11900/-, one pistol 30 bore with fitted magazine containing 05 rounds and one spare magazine having 02 rounds were also recovered from the residential room of accused.

6 After close of the prosecution evidence, statement of accused facing trial U/S 342 Cr.P.C was recorded wherein he denied the charges and professed his innocence. However, the accused facing trial neither opted to be examined on oath nor wished to produce any evidence in his defiance.

7. I have heard the arguments of learned APP for the State. learned defiance counsel and have thoroughly perused the record.

8. Learned APP for the state argued that in pursuant to the spy information regarding the involvement of accused facing trial in narcotic business, SHO/complainant obtained search warrant from the competent court, before conducting search . test purchase was conducted and after due process search was conducted in the house of accused which culminated in to the recovery of narcotics and illegal weapon. He contended that the

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P-42

28

prosecution has produced evidence in line with the contents of FIR and no contradiction found in the statements of prosecution witnesses. He submitted that the samples of recovered narcotic were sent to FSL, the report of which is positive which fully proves the charge against the accused facing trial. With these submissions he requested for the conviction of accused.

9. On the other hand learned counsel appearing on behalf of accused facing trial while refuting the submissions made by the learned APP for the State, argued that the complainant while making ingress into the house of accused and making search did not call upon the respectable inhabitants of the locality to witness the search and recoveries and thus violated the mandatory provisions of law and in this respect the case of prosecution is doubtful in its inception. He submitted that material contradictions have been surfaced amongst the cross examination of the prosecution witnesses which create doubt regarding the involvement of accused facing trial in the present case. He argued with vehemence that prosecution failed to prove safe custody and transmission of drug from the Police Station to Chemical Examiner as the witness who alleged to bring the samples to the FSL has not been examined by the prosecution. He contended that the prosecution case is full of infirmities and contradictions benefit of which should be given

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P-44

29

to the accused facing trial. He requested for acquittal of accused facing trial.

10. Record examined in the light of arguments. The case of prosecution according to the FIR is that upon spy information regarding the involvement of accused facing trial in narcotics dealing, the complainant Imran Ullah Khattak SHO Cantt D.I.Khan obtained search warrant from the Illaqa Magistrate and prior to raid constable Naseer Ahmad No.6219 was sent with a note of Rs.1000/- bearing No. JH-8352414 as a test purchaser. Naseer Ahmad No.6219 as PW-6 deposed that he was deputed by the SHO as test purchaser upon which he visited the place of occurrence and met a person namely Noman Khan who was selling charas from whom he purchased charas in lieu of Rs.1000/-. In the FIR Ex.PA the name of person who conducted test purchase is mentioned as Naseer Ahmad constable No.6219. When complainant of the present case namely, Imran Ullah Khattak appeared as PW-1, who stated in his examination in chief that he deputed Constable Naseeb Ahmad No.6219 as test purchaser. PW-6 is Naseer Muhammad constable No. 853 who stated that he was deputed by the SHO as test purchaser. The name of person who was deputed for test purchase is Naseer Ahmad No.6219 in the FIR which is different from the person as mentioned in the statement of complainant as PW-1 and similarly the number of Naseer

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accused facing trial..

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P-46

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Muhammad as mentioned in his statement as PW-6 does not tally the number as mentioned in the FIR. When any person is deputed for test purchase the person who deputed him gives currency note to be signed by him in order to exclude any doubt. In the present case the complainant/SHO did not sign the currency note which was given for the purpose of test purchase.

It is also important to mention here that the said currency note has not been produced during the evidence of prosecution. In the light of foregoing discussion the name of person who was deputed for test purchase is different in the FIR and statement of complainant and his number is also different as evident from statement of PW-6 and FIR on one hand and on the other hand the currency note was neither signed by the complainant nor produced during the evidence of prosecution. This shows that the test purchase has not been conducted in accordance with the law and settled principles

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11. An another intriguing aspect of the present case is that all the proceedings right from spy information till the recovery of contraband and ammunition have been written down in the murasila Ex:PA/1. It was incumbent upon the complainant to reduce into writing in the daily diary regarding the information received from the person as spy and the proceedings of test purchase. No daily diary regarding the fact of spy information and test purchase have been reduced neither this fact has been

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P-47

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P-48

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mentioned in the statements of complainant and Investigating Officer. At least test purchase proceedings, being independent proceedings must be brought on record prior to the raid. Not doing so by the complainant makes the test purchase proceedings highly doubtful which is the foundation of present case.

2. The extract of Mad No.33 and Mad No.41 is available on record as Ex.Pw 4/4 According to Mad No. 33 SHO complainant of present case Imran Ullah Khattak alongwith other police officials under the supervision of DSP City Circle left the Police Station for search and strike operation on 18.10.2018 at 15:00 hours. Meaning thereby that complainant of the instant case Imran Ullah Khattak left the Police Station on 18.10.2018 at 03:00 I.M. According to Mad No. 41 the said Imran Ullah Khattak SHO on 18.10.2018 at 21:40 hours alongwith police officials mentioned in Mad No. 33 returned after search and strike operation within the jurisdiction of Police Station Cant D.I.F han. Mad No. 41 contains the fact of present case which are narrated as during search operation spy information was received regarding the involvement of Noman accused facing trial in the narcotics dealing at which he obtained search warrant Ex.PW 1/2 and after the proceedings of test purchase, he raided the house of accused and recovered narcotic and illegal weapon. It is pertinent to mention here that

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2-48

mentioned in the statements of complainant and Investigating Officer. At least test purchase proceedings, being independent proceedings must be brought on record prior to the raid. Not doing so by the complainant makes the test purchase proceedings highly doubtful which is the foundation of present case.

12. The extract of Mad No.33 and Mad No.41 is available on record as Ex.Pw 4/4. According to Mad No. 33 SHO complainant of present case Imran Ullah Khattak alongwith other police officials under the supervision of DSP City Circle left the Police Station for search and strike operation on 18.10.2018 at 15:00 hours. Meaning there by that complainant of the instant case Imran Ullah Khattak left the Police Station on 18.10.2018 at 03:00 P.M. According to Mad No. 41 the said Imran Ullah Khattak SHO on 18.10.2018 at 21:40 hours alongwith police officials mentioned in Mad No. 33 returned after search and strike operation within the jurisdiction of Police Station Cant D.I.Khan. Mad No. 41 contains the fact of present case which are narrated as during search operation spy information was received regarding the involvement of Noman accused facing trial in the narcotics dealing at which he obtained search warrant Ex.PW 1/2 and after the proceedings of test purchase, he raided the house of accused and recovered narcotic and illegal weapon . It is pertinent to mention here that

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P-50

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complainant Imran Ullah Khattak and police official left the Police Station at 15:00 hour i.e. 03 p.m for search and strike operation and during that operation received spy information and he obtained search warrant from the Illaqa Magistrate. The order of learned JM-1, E.I.Khan dated 18.10.2018 is available on record according to which SHO Police Station Cantt E.I.Khan appeared before the court and submitted an application for issuance of search warrant against the accused facing trial. When complainant left the Police Station on 18.10.2018 at 03:00 P.M. and he received information during search and strike operation which naturally consumed some time. The close of court timing is 03:00 p.m therefore, the story narrated by the complainant in Mad No. 33 and Mad No.41 dated 18.10.2018 is not believable. Further as per statement of PW-6 he was sent by SHO for test purchase at 15:15 hours. When as per record the complainant left the Police Station at 15:00 hours and after that received spy information and obtained search warrant from the Illaqa Magistrate then it does not appeal to the prudent mind that all these events occurred within 15 minutes, herefore, the statemnet of Naseer Muhammad PW-6 regarding his sending for test purchase at 15:15 hours is not believable.

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13. Various contra-fictions occurred in the statements of prosecution witnesses which make the case of accused being

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251

complainant Imran Ullah Khattak and police official left the Police Station at 15:00 hour i.e. 03 p.m for search and strike operation and during that operation received spy information and he obtained search warrant from the Illaqa Magistrate The order of learned JM-I, D.I.Khan dated 18.10.2018 is available on record according to which SHO Police Station (Cantt. D.I.Khan appeared before the court and submitted an application for issuance of search warrant against the accused facing trial. When complainant left the Police Station on 18.10.2018 at 03:00 P.m and he received information during search and strike operation which naturally consumed some time. The close of court timing is 03:00 pm therefore, the story narrated by the complainant in Mad No. 33 and Mad No.41 dated 18 10.2018 is not believable. Further as per statement of PW-6 he was sent by SHO for test purchase at 15:15 hours. When as per record the complainant left the Police Station at 15:00 hours and after that received spy information and obtained search warrant from the Illaqa Magistrate then it does not appeal to the prudent mind that all these events occurred within 15 minutes, therefore, the statement of Naseer Muhammad PW-6 regarding his sending for test purchase at 15:15 hours is not believable.

A 13. Various contradictions occurred in the statements of prosecution witnesses which make the case of accused facing

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P-52

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trial doubtful. In Murasila Ex.PA/1 after conducting test purchase PW-6 gave mis call to the complainant while as per statement of PW-6, he informed the SHO complainant. In Murasila Ex.PA/1 and F R Ex.PA it is mentioned that lady constable Humaira Akhtar No. 735 accompanying the raiding party, but, in the site plan Ex.PB neither contains her name nor any point has been assigned to her. As per statement of complainant PW-1, when he alongwith other police officials reached to the house of accused facing trial he was present in the Veranda of his house while on the other hand PW-6 stated that accused facing trial was sitting outside of his house. According to Bashir Hussain Investigating Officer he remained on the spot for about one hour and 55 minutes while PW-6 states in cross examination that Investigating Officer took 40/45 minutes in preparing the recovery memo. The above stated contradiction are material contradictions which are fatal to the prosecution case.

14. Most important aspect of the present case making it highly doubtful is that prosecution has badly failed to prove the safe custody and transmission of drug from the Police Station to the Chemical Examiner. As per the statement of PW-1 he handed over the custody of accused, his card of arrest, case property and recovery memo to the Investigating Officer. Bashir Hussain Investigating Officer when appeared as PW-1.

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CTD KP

253

trial doubtful. In Murasila Ex.PA/1 after conducting test purchase PW-6 gave miscall to the complainant while as per statement of PW-6, he informed the SHO complainant. In Murasila Ex.PA/1 and. FIR Ex.PA it is mentioned that lady constable Humaira Akhtar No. 735 accompanying the raiding party, but, in the site plan Ex.PB neither contains here name nor any point has been assigned to her. As per statement, of complainant PW-1. when he alongwith other police officials reached to the house of accused facing trial he was present in the Veranda of his house white on the other hand PW-6 stated that accused facing trial was sitting outside of his house. According to Bashir Hussain Investigating Officer he remained on the spot for about one hour and 55 minutes while PW-6 states in cross examination that Investigating Officer took 40/45 minutes in preparing the recovery memo. The above stated contradiction are material contradictions which are fatal to the prosecution case.

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P-54

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he did not utter a single word regarding the receipt of case property. Similarly, Abdu Ghafoor Muharrir as PW-2 stated that he received murasila sent by the SHO, through Constable Muhammad Suleman. He categorically stated in cross examination that he only chalked out the FIR and nothing has been done by him. It is shrouded in mystery that who brought the case property to the Police Station and who received the same. Further the person who took the samples to the FSL has neither mentioned by the Investigating Officer nor his statement was recorded during course of investigation. When the prosecution failed to prove the safe custody and transmission of drug to the FSL then the Chemical Report cannot be relied upon.

15. In view of above mentioned circumstances, it can be easily concluded that prosecution has failed to bring home guilt to accused beyond any shadow of reasonable doubt and present case is not only full of contradictions, but there is no material evidence against the accused facing trial. The witnesses of recovery memo, complainant as well as Investigating Officer have not deposed in proper manner and have contradicted each other version. No accused can be convicted on mere score of oral submissions unless properly corroborated through cogent and confidence inspiring evidence. It is also repeatedly held that even a single circumstance creating reasonable doubt is

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255

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P-58

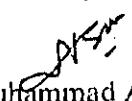
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sufficient to acquit the accused, what to say about material contradictions of the present case.

Resultantly, while extending the benefit of doubt to the accused facing trial, the accused namely Noman Khan son of Fazal Rabani is hereby acquitted in the instant case. Accused is on bail, his sureties are also discharged from the liabilities of bail bonds.

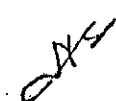
Case property i.e. narcotics be destroyed, while personal lawful belonging i.e. Cash amount Rs.11900/- recovered from the possession of accused be handed over to the accused after expiry of period of appeal/revision. File be consigned to record room of learned District & Sessions Judge, D.I.Khan after its necessary completion and compilation.


Pronounced in open court at D.I.Khan, under my hand and seal of the court this 05th day of September, 2020.


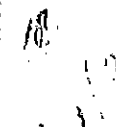

(Muhammad Asim)
ASJ/Judge Special Court/
Judge Model Criminal Trial Court
Dera Ismail Khan.

CERTIFICATE

Certified that this judgment consists of 14 (Fourteen) pages, each page has been read over, corrected wherever it was necessary and signed by n.e.


(Muhammad Asim)
ASJ/Judge Special Court/
Judge Model Criminal Trial Court
Dera Ismail Khan

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Sufficient to acquit the accused, what to say about material contradictions of the present case.

Resultantly, while extending the benefit of doubt to the accused facing trial. the accused namely Noman Khan son of Fazal Rabani is hereby acquitted in the instant case. Accused is on bail, his sureties are also discharged from the liabilities of bail bonds

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Sd

(Muhammad Asim)
ASJ/Judge Special Court/
Judge Model Criminal Trial Court
Dera Ismail Khan.

CERTIFICATE

Certified that this judgment consists of 14 (Fourteen) pages, each page has been read over, corrected wherever it was necessary and signed by me.

Sd

(Muhammad Asim)
ASJ/Judge Special Court/
Judge Model Criminal Trial Court
Dera Ismail Khan.

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PESHAWAR

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Annexure "E"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR CAMP COURT D.I.KHAN.

BEFORE **KALIM ARSHAD KHAN ... CHAIRMAN**
ROZINA REHMAN ... MEMBER (Judicial)

Service Appeal No.5673/2021

Muhammad Noman, Ex-Constable No. 1218, CTD Unit, D.I.Khan.
Office of SSP CTD, South Zone, Presently, Care of Fazal Rabani
Marwat, Basti Naad Ali Shah, D.I.Khan.
.....(Appellant)

VERSUS

- 1. The Provincial Police Officer (IGP), Khyber Pakhtunkhwa, Central Police Office, Peshawar.
- 2. Deputy Inspector General of Police/Counter Terrorism Department, Khyber Pakhtunkhwa, Peshawar.
- 3. Senior Superintendent of Police, CTD, South Zone, Khyber Pakhtunkhwa, at Dera Ismail Khan.
- 4. Superintendent of Police, CTD, Dera Ismail Khan.
.....(Respondents)

Present:

Mr. Muhammad Ismail Alizai, Advocate, For appellant.

Mr. Muhammad Jan, District Attorney, For respondents.

Date of Institution..... 26.05.2021
Dates of Hearing..... 28.10.2022
Date of Decision..... 28.10.2022

SERVICE APPEAL AGAINST FIRST, ORDER DATED 24.01.2019 WHEREBY THE APPELLANT IS AWARDED PUNISHMENT OF DISMISSAL FROM SERVICE BY RESPONDENT NO.3 & SECONDLY, FROM FINAL ORDER DATED 03.05.2021 OF RESPONDENT NO.1 WHEREBY DEPARTMENTAL APPEAL/REVISION PETITION WAS REJECTED.

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR CAMP COURT.D.I.KHAN.

BEFORE: KALIM ARSHAD KHAN..... CHAIRMAN

ROZINA REHMAN.....MEMBER (Judicial)

259

Service Appeal No.5673/2021

Muhammad Noman, Ex-Constable No. 1218, CTD Unit, D.I.Khan office of SSP/CTD. South Zone. Presently Care of Fazal Rabani Marwat, Basti Naad Ali Shah, D.I.Khan.
..... (Appellant)

VERSUS

1. **The Provincial Police Officer (IGP)**, Khyber Pakhtunkhwa, Central Police Office. Peshawar.
2. **Deputy Inspector General of Police/Counter Terrorism Department**, Khyber Pakhtunkhwa. Peshawar.
3. **Senior Superintendent of Police**, CTD, South Zone, Khyber Pakhtunkhwa, at Dera Ismail Khan.
4. **Superintendent of Police**, CTD, Dera Ismail Khan.

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CTD KP

..... (Respondents)

Present:

Mr.Muhammad Ismail Alizai.
Advocate..... For appellant.

Mr. Muhammad Jan,
District Attorney..... For respondents.

Date of Institution..... 26.05.2021

Dates of Hearing..... 28.10.2022

Date of Decision..... 28.10.2022

SERVICE APPEAL AGAINST FIRST, ORDER DATED 24.01.2019 WHEREBY THE APPELLANT IS AWARDED PUNISHMENT OF DISMISSAL. FROM SERVICE BY RESPONDENT NO.3 & SECONDLY, FROM FINAL ORDER DATED 03.05.2021 OF RESPONDENT NO.1 WHEREBY DEPARTMENTAL APPEAL/REVISION PETITION WAS REJECTED.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN:- Briefly stated the facts giving rise to filing of the instant service appeal are that disciplinary action was taken against the appellant on the allegation that he was charged in case FIR No. 919 dated 18.10.2018 registered under Sections 9(b) CNSA read with section 15AA of Police Station Cantonment D.I.Khan. That on conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service vide impugned order dated 24.01.2019. The appellant filed departmental appeal, however the same was filed on 17.12.2020, therefore, the appellant filed revision petition, which was also rejected vide order dated 03.05.2021, hence the instant service appeal.

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

3. Learned counsel for the appellant has contended that the appellant was not at all associated with the inquiry proceedings and the inquiry officer even did not bother to afford opportunity to the appellant to record his statement. He further argued that neither copy of the inquiry report was provided to the appellant nor any final show-cause notice was issued to him. He also argued that the impugned order of dismissal of the appellant was passed prior to outcome of the trial of the criminal case registered against him, which fact has rendered the impugned order as void ab-initio. He next contended that the appellant has already been

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Page 2

P-81

JUDGMENT

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7 P-82

Case No. 107 of 2020, *Muhammad Noman vs. The Provincial Police Officer (PPO) Khoya Pakhtunkhwa*
and others, decided on 28.10.2022 by Division Bench comprising Chief Justice
and Justice, Islamabad High Court, Federal Shariat Court, Islamabad, Sindh High Court, Karachi, Balochistan High Court, Quetta, Gilgit-Baltistan High Court, Gilgit-Baltistan, Service Tribunal, Camp Court

acquitted in the criminal case registered against him, therefore, the impugned orders are liable to be set-aside and the appellant is entitled to be reinstated in service with all back benefits.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant the local police of Police Station Cantonment D.I.Khan recovered Charas "Hashish" weighing about 250 grams as well as two pistols with ammunitions from the possession of the appellant, therefore, case FIR No. 919 dated 18.10.2018 under Sections 9(b) CNS/Armed with section 15AA of Police Station Cantonment D.I.Khan was registered against the appellant. He further argued that the inquiry proceedings were conducted in accordance with relevant rules and the appellant was provided ample opportunity of self-defense as well as personal hearing but he failed to produce any cogent material in rebuttal of the charges leveled against him; that departmental as well as criminal proceedings are distinct in nature and can run parallel. He next argued that the appellant has been acquitted in the criminal cases, however the allegations leveled against him were proved in the departmental inquiry, therefore, he has rightly been dismissed from service. In the last he argued that the appellant has been dismissed from service vide order dated 24.01.2019 but he has submitted departmental appeal on 14.09.2020 which is badly time barred, therefore, the appeal in hand is not maintainable and is liable to be dismissed with costs.

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

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acquitted in the criminal case registered against him, therefore, the impugned orders are liable to be set-aside and the appellant is entitled to be reinstated in service with all back benefits.

4. On the other hand Learned District Attorney for the respondents has contended that the appellant the local police of Police Station Cantonment D.I.Khan recovered Charas "Hashish" weighing about 250 grams as well as two pistols with ammunitions from the possession of the appellant, therefore, case FIR No. 919 dated 18.10.2018 under Sections 9(b) CNSA read with section 15AA of Police Station Cantonment D.I.Khan was registered against the appellant. He further argued that the inquiry proceedings were conducted in accordance with relevant rules and the appellant was provided ample opportunity of self-defense as well as personal hearing but he failed to produce any cogent material in rebuttal of the charges leveled against him; that departmental as well as criminal proceedings are distinct in nature and can run parallel. He next argued that the appellant has been acquitted in the criminal cases, however the allegations leveled against him were proved in the departmental inquiry, therefore, he has rightly been dismissed from service. In the last he argued that the appellant has been dismissed from service vide order dated 24.01.2019 but he has submitted departmental appeal on 14.09.2020 which is badly time barred, therefore, the appeal in hand is not maintainable and is liable to be dismissed with costs.

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

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CS P 64

Case No. 107 of 2022, *Muhammad Yousaf vs. The Provincial Police Officer (P.O.) of the Khyber Pakhtunkhwa*
Police Department, Dera Ismail Khan and others. Decided on 24.10.2022 by Justice Saif-ur-Rahman, District
Judge, Dera Ismail Khan. Member, Judicial Khyber Pakhtunkhwa Service Tribunal, Camp Cantt
D.I.Khan.

6. A perusal of the record would show that the appellant was dismissed from service vide order dated 24.01.2019 on the allegations of his involvement in case FIR No. 919 dated 18.10.2018 registered under Section 9(b) CNSAread with section 15AA of Police Station Cantonment D.I.Khan. Charge sheet (undated) was issued by giving three days' time to the appellant to put in written defence, in contravention of the provisions of rule 6 (b) of the Khyber Pakhtunkhwa Police Rules, 1975 (as amended upto 2014), which require the authority to give seven days' time to the accused official to put in written defence after the show cause notice has been served upon the appellant. Mr. Gul Rauf Khan DSP/CTD Dera Ismail Khan was appointed as inquiry officer in the matter, who submitted his report to the Senior Superintendent of Police, Counter Terrorism Department Sought Zone Khyber Pakhtunkhwa, who straightaway passed the impugned order. As usual, the entire record of the enquiry proceedings has not been placed on record by the respondents and only a report is on the file. As per the report, the inquiry officer has recorded the statements of police officials namely Mr. Ume, Khitab ASI Muharrar P.S CTD, Inuran Ullah Khattak SHO P.S Cantt, Abdul Ghafoor No. 195 P.S Cantt, Constable Naseer Ahmad No. 6219 P.S Cantt, Constable Muhammad Suleman No.8777 P.S Cantt and Lady Constable Humaira Akhtar No. 735 P.S Cantt but, it appears that, the appellant was not provided opportunity of cross examination to all the witnesses, which has rendered the whole proceedings illegal and liable to be set-aside. None of the statements of the witnesses has been placed on file to ascertain whether the enquiry officer reached a proper conclusion or not

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P-65

6. A perusal of the record would show that the appellant was dismissed from service vide order dated 24.01.2019 on the allegations of his involvement in case FIR No. 919 dated 18.10.2018 registered under Section 9(b) CNSA read with section 15AA of Police Station Cantonment D.I.Khan. Charge sheet (undated) was issued by giving three days' time to the appellant to put in written defence, in contravention of the provisions of rule 6 i(b) of the Khyber Pakhtunkhwa Police Rules, 1975 (as amended upto 2014), which require the authority to give seven days' time to the accused official to put in written defence after the show cause notice has been served upon the appellant. Mr. Gul Rauf Khan DSP/CTD Dera Ismail Khan was appointed as inquiry officer in the matter, who submitted his report to the Senior Superintendent of Police, Counter Terrorism Department Sought Zone Khyber Pakhtunkhwa, who straightaway passed the impugned order. As usual, the entire record of the enquiry proceedings has not been placed on record by the respondents and only a report is on the file. As per the report, the inquiry officer has recorded the statements of police officials namely Mr. Umer Khitab ASI Muharrar P.S CTD, Imran Ullah Khattak SHOP.S Cantt, Abdul Ghafoor No. 195 P.S Cantt. Constable Naseer Ahmad No. 6219 PS Cantt, Constable Muhammad Suleman No.8777 P.S Cantt and Lady Constable Humaira Akhtar No. 735 P.S Cantt but, it appears that, the appellant was not provided opportunity of cross examination to all the witnesses, which has rendered the whole proceedings illegal and liable to be set-aside. None of the statements of the witnesses has been placed on file to ascertain whether the enquiry officer reached a proper conclusion or not

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P-67

especially when it is stated in the enquiry report that ASI Umar Khitab, Moharrar Police Station CTD alleged that the appellant was absent from duty at the time of occurrence, then it was incumbent upon the respondents to have placed any concrete document showing and proving such alleged absence of the appellant at the relevant point of time together with the supporting documentary evidence that at the time the appellant was to perform duty at such and such place etc. Similarly, what action was taken on his alleged absence is also not disclosed. So much so the statement of this important witness was not placed on record to make assessment of the above facts. All these factors lead us to hold that the enquiry conducted in the above mode and manner has rendered it fruitless.

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7. On receipt of report of the DSP/CTD D.I.Khan Range, the appellant was straightaway dismissed by the Senior Superintendent of Police CTD South Zone KP at DIKhan vide order dated 24.01.2019, without issuing him final show cause notice as the impugned order is silent regarding issuance of show cause notice or providing any opportunity of personal hearing after conduct of the alleged enquiry and holding the appellant guilty of misconduct, Similarly, copy of the proceedings conducted by DSP/CTD D.I.Khan Range were also not provided to the appellant. This Tribunal has already held in numerous judgments that issuing of final show-cause notice as well as providing of copy of the inquiry report to the delinquent official/officer was a must. Reliance is also placed on judgment of august Supreme Court of Pakistan

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State of Punjab, District Court, Multan. Judgment in the case of Muhammad Iqbal vs. The Director of Public Prosecution, District Court, Multan, dated 05.09.2020.

reported as PLD 1981 Supreme Court 176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the inquiry report to the appellant has caused miscarriage of justice. In such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him. Besides the disciplinary proceedings were initiated by the Superintendent of Police CTD, D.I.Khan, as is evident from statement of allegation vide Endst No.2627-31/CTD dated 23.10.2018, wherein the Superintendent of Police, CTD D.I.Khan, showing himself to be the Competent Authority, initiated the departmental proceedings whereas vide the impugned order No.19-22/R/SSP/South Zone, dated 24.01.2019, instead, the Senior Superintendent of Police CTD South Zone, Khyber Pakhtunkhwa, has passed the same without showing whether and how the SSP CTD South Zone KP became the Authority at the time when the impugned order of dismissal of the appellant was passed.

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8. Moreover, the appellant has already been acquitted vide judgment dated 05.09.2020 passed by the then ASJ/Judge Special Court/Judge Model Criminal Trial Court, Dera Ismail Khan. It is evident from perusal of the record that disciplinary action was taken against the appellant on the ground of his involvement in case FIR No. 919 dated 18.10.2018 under Sections 9(h) CNSA/15AA of Police Station Cantt D.I.Khan, however after acquittal of the appellant, the very ground, on the basis of

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P-69

reported as PLD 1981 Supreme Court 176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the inquiry report to the appellant has caused miscarriage of justice, in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him. Besides the disciplinary proceedings were initiated by the Superintendent of Police CTD, D.I.Khan, as is evident from statement of allegation vide Endst No.2627-31/CTD dated 23.10.2018, wherein the Superintendent of Police, CTD D.1.Khan, showing himself to be the Competent Authority, initiated the departmental proceedings whereas vide the impugned order No. 19-22/R/SSP/South Zone, dated 24.01.2019, instead, the Senior Superintendent of Police CTD South Zone, Khyber Pakhtunkhwa, has passed the same without showing whether and how the SSP CTD South Zone KP became the Authority at the time when the impugned order of dismissal of the appellant was passed.

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8. Moreover, the appellant has already been acquitted vide judgment dated 05.09.2020 passed by the then ASJ/Judge Special Court/Judge Model Criminal Trial Court, Dera Ismail Khan. It is evident from perusal of the record that disciplinary action was taken against the appellant on the ground of his involvement in case FIR No. 919 dated 18.10.2018 under Sections 9(b) CNSA/ISAA of Police Station Cantt D.I.Khan, however after acquittal of the appellant, the very ground, on the basis of

11 P-70

Case No. 2021 of 2022 *Abdoul Mounem Nounou vs The Provincial Police Officer (KPT) Khayer Pathan*
and others. Judgment dated 28/10/2022 by Division Bench comprising Justice Khayer Pathan
and Justice Chinnor Member Judicial Khair, Islamabad Service Tribunal Camp Court

which disciplinary action was taken against the appellant has vanished away.

9. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Costs to follow the event. Consign.

10. Pronounced in open Court at D.I.Khan and given under our hands and seal of the Tribunal on this 28th day of October, 2022



KALIM ARSHAD KHAN
Chairman
Camp Court D.I.Khan



ROZINA REHMAN
Member (Judicial)
Camp Court D.I.Khan

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CTD KP

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P-71

which disciplinary action was taken against the appellant has vanished away.

9. In view of the above discussion, the appeal I hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Costs to follow the event. Consign.

10. *Pronounced in the open Court and given under over hand*

Seal of the Tribunal on this 28th day of October, 2022.

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Arshad
DSP/INV
CTD KP

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KALIM ARSHAD KHAN
Chairman
Camp Court D.I.Khan

-Sd-
ROZINA REHMAN
Member (Judicial)
Camp Court D.I.Khan

- (7) The enquiry proceedings once started should be held without interruption, as far as possible, on day to day basis.
- (8) On receipt of the enquiry report the case should be processed expeditiously.
- (9) It should be impressed upon the Enquiry Officer that the quality of work produced by him will reflect on his efficiency, which will be recorded in his ACR.
- (10) The initiating officer should record his assessment of the Enquiry Officer's performance in the ACR.

(Authority: Circular letter No.SORII (S&GAD)3(4)/78, dated 3rd October, 1984)

Stoppage of increment under Government Servants (Efficiency & Discipline) Rules, 1973.

Instances have come to the notice of the Government where the penalty of stoppage of increment under the NWFP Government Servants (Efficiency & Discipline) Rules, 1973, has been imposed on Government Servants, who have reached the maximum of the pay scale, thus making the penalty ineffective. I am accordingly directed to request that the competent authorities may, in future, kindly keep in view the stage of the pay scale at which a Government servant is drawing pay before imposing the penalty of stoppage of increment on him under the above rule.

(Authority: Circular letter No.SORII(S&GAD)5(29)/86, dated 27th December, 1986).

Departmental Proceedings vis-a-vis Judicial Proceedings.

The question as to whether or not a departmental inquiry and judicial proceedings can run parallel to each other against an accused officer/official has been examined in consultation with the Law Department.

2. It is hereby clarified that Court and Departmental proceedings may start from an identical charge(s) and can run parallel to each other. They can take place simultaneously against an accused on the same set of facts and yet may end differently without affecting their validity. Even departmental inquiry can be held subsequently on the same charges of which Government servants has been acquitted by a Court. The two proceedings are to be pursued independent of each other and it is not necessary to pend departmental proceedings till the finalization of judicial proceedings.

3. It may also be clarified that Court Proceedings also include criminal proceedings pending against a civil servant.

4. The above instructions may please be brought to the notice of all concerned.

(Authority: Circular letter No.SOR.II(S&GAD)5(29)/86(KC), dated 8.1.1990)

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 CTD KP

2001 SCMR 2018

[Supreme Court of Pakistan]

P-73

Annexure "G"

Present: Iftikhar Muhammad Chaudhry, Qazi Muhammad Farooq and Hamid Ali Mirza, JJ

Messrs HABIB BANK LTD.---Petitioner

versus

SHAHID MASUD MALIK and others-- --Respondents

Civil Petitions Nos.564 and 565 of 2001, decided on 8th May, 2001.

(On appeal from the judgment dated 9-12-2000 passed by the Federal Service Tribunal, Islamabad in Appeals Nos. 117(R)C/E of 2000 and 1886(R) of 1999).

(a) Civil Servants Act (LXXI of 1973)---

---S.16---Departmental proceedings and criminal proceedings---Difference and distinction---Departmental proceedings are different and distinct from criminal charge which if has been levelled simultaneously against civil servant.

(b) Service Tribunals Act (LXX of 1973)---

---Ss. 2-A & 4---Constitution of Pakistan (1973), Art. 185(3)---Dismissal from service---Findings of Service Tribunal based upon findings recorded by other forums---Validity---Acquittal from criminal charge---Effect--Employee of Banking Company was dismissed from service---Labour Court reinstated the employee and Criminal Court acquitted him of the charge--After insertion of S.2-A, in Service Tribunals Act, 1973 matter was transferred to Service Tribunal and the Tribunal on the basis of findings recorded by Labour Court as well as by the Criminal Court allowed appeal of the employee and he was reinstated in service---Legality---Instead of basing its decision on finding of a forum which had no jurisdiction to decide the case, the Service Tribunal should have examined the case independently on the basis of material collected during departmental inquiry including show cause notice and inquiry report---Conclusion drawn by Criminal Court would have no bearing on the departmental proceedings as the latter had to be decided independently ---Where the Tribunal had not applied its independent mind, such findings of the Tribunal were not sustainable---Petition for leave to appeal was converted into appeal, and judgment passed by Service Tribunal was set aside---Case was remanded to Service Tribunal for decision afresh.

Ajmal Kamal Mirza, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellants.

Respondents in person.

Date of hearing: 8th May, 2001.

P-74

ORDER

We have heard learned counsel for the appellants and have also gone through the impugned judgment, dated 9-12-2000 passed by the Federal Service Tribunal, Islamabad. It is noteworthy that the Service Tribunal had based its judgment on the findings of Presiding Officer Labour Court recorded while disposing of application under section 25-A of the I.R.O., 1969 filed by the respondent, the order of the Criminal Court acquitting the respondent-employee from the criminal charge has also been considered as one of the factor for his reinstatement. It is well-settled that the departmental proceedings are different and distinct from the criminal charge which if has been levelled simultaneously against an employee. Likewise the Tribunal may have not taken into consideration the findings recorded in favour of the, respondent by the Labour Court because after the amendment in the Civil Servants Act by means of section 2-A for the purpose of the Service Tribunal the respondent employee had been treated to be a civil servant with a right to approach Service Tribunal for his redressal of grievance. Therefore, the Service Tribunal will examine his case independently on the basis of material collected during the departmental inquiry including show cause notice and Inquiry Report etc., instead of basing its decision on the finding of a forum which firstly had no jurisdiction to decide the case secondly any finding recorded by the criminal Court regarding criminal charges against an employee arising out of the same transaction because no conclusion drawn in this behalf by a Criminal Court will have any bearing on the departmental proceedings which ought to have decided independently. It may be noted that in fact impugned orders have not been passed by the Service Tribunal by applying its judicial mind and had disposed of the appeals in a mechanical manner just observing that as Presiding Officer of Labour Court had recorded finding in favour of the respondent and the Criminal Court has also acquitted him of the charge, therefore, he is ordered to be reinstated. Such findings, however, are not sustainable in law thus deserves interference by this Court.

As a result of above discussion, these petitions are converted into appeals and allowed. Both the cases are remanded to the Federal Service for decision of the appeals expeditiously as far as possible within a period of three months preferably. No order as to costs.

Q.M.H./M.A.K./H-38/S

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Case remanded.

P-75

2007 S C M R 562

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar and Mian Shakirullah Jan, JJ

SUPERINTENDENT OF POLICE, D.I. KHAN and others----Petitioners

Versus

HISANULLAH----Respondent

Civil Petition No.384-P of 2005, decided on 14th November, 2006.

(On appeal from the judgment, dated 10-5-2005 of the N.-W.F.P. Service Tribunal Peshawar in Appeal No.180 of 2004).

North-West Frontier Province Service Tribunals Act (I of 1974)---

---S. 4---Dismissal from service on account of his arrest in a criminal case---Acquittal from criminal charges---Time-barred appeal---Civil servant was dismissed from service, after he was arrested in criminal case---Civil servant during his arrest, filed departmental representation but did not avail, remedy of appeal before Service Tribunal---Civil servant, after he was acquitted from criminal charge, filed appeal before Service Tribunal, which was accepted and he was reinstated in service---Validity---Appeal before Service Tribunal was filed belatedly from date of his dismissal and after five months from the date of his acquittal from criminal charges---Civil servant had lost his right and could not agitate for reinstatement---Acquittal of civil servant from criminal charges would have absolutely no bearing on merits of case as disciplinary proceedings were to be initiated according to service rules independently---Judgment passed by Service Tribunal, reinstating civil servant in service, after acquittal from the criminal charge was not sustainable in law---Supreme Court set aside the judgment passed by Service Tribunal and order of dismissal of civil servant from service was maintained---Appeal was allowed.

Executive Engineer and others v. Zahid Sharif 2005 SCMR 824 and Sami Ullah v. Inspector-General of Police and others 2006 SCMR 554 ref.


Khushdil Khan, Additional Advocate-General N.-W.F.P. and Altai, S.-I. (Legal) for Petitioners.

Abdul Aziz Kundi, Advocate Supreme Court for Respondent.

ORDER

ABDUL HAMEED DOGAR, J.--- This petition is directed against judgment, dated 10-5-2005 passed by learned N.-W.F.P. Service Tribunal, camp at D.I. Khan whereby Appeal No.180 of 2004 filed by respondent was allowed and he was reinstated into service without back-benefits.

2. Brief facts leading to the filing of instant petition are that respondent was dismissed from service on the allegation that on 12-7-2001 he was found in possession of 225 grams of Charas. Case was registered against him in which he was arrested and sent up to face the trial. According to learned counsel for the respondent he made representation to the competent authority but did not avail the remedy of filing appeal before the learned Tribunal challenging his dismissal. According to him after his acquittal from the criminal case which took place on 9-10-2003 he filed instant appeal before Tribunal on 18-3-2004 mainly

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P-76

on the ground that he was acquitted from criminal charges as such be reinstated in service. The appeal before the Tribunal was filed belatedly from date of his dismissal and after five months from the date of his acquittal from the criminal charges. This being so, respondent has lost his right and cannot agitate for reinstatement. By now it is the settled principle of law that acquittal of civil servant from criminal charges would have absolutely no bearing on the merits of the case as the disciplinary proceedings are to be initiated according to service rules independently. Reliance can be made to the cases of Executive Engineer and others v. Zahid Sharif 2005 SCMR 824 wherein it has been held that acquittal of civil servant from Court would not impose any bar for initiation of disciplinary proceedings as his acquittal would have no bearing on disciplinary proceedings at all. In case of Sami Ullah v. Inspector-General of Police and others 2006 SCMR 554 it has been held that acquittal of petitioner from criminal case would have absolutely no bearing on the merits of the case and in the case of N.E.D. University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453 it has been held that departmental representation of civil servant was barred by limitation and on the basis of such representation Service Tribunal could not reinstate him in service.

3. In view of what has been discussed hereinabove and the case-law referred (supra) the impugned judgment reinstating the respondent in service after acquittal from the criminal charge is not sustainable in law hence the same is set aside. The petition is converted into appeal and allowed. The order of dismissal from service of respondent is maintained.

M.H./S-81/SC

Appeal allowed.

Abdullah

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DSP/INV
CTD KP

P-77

Annexure "A"
"H"

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA No. 14-P /2023

Provincial Police Officer (IGP) Khyber Pakhtunkhwa,
Peshawar & othersPETITIONERS

VERSUS

Muhammad NomanRESPONDENT

Appeal from : KPK, Service Tribunal, Camp Court, D.I.Khan
Counsel for Petitioner : Advocate General, KPK, Peshawar
Instituted by : Farid Ullah Kundl, AOR

Affected

A. M.
DGP INV
CTD KP