

FORM OF ORDER SHEET

Court of _____

Appeal No. 1870/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/09/2023	<p>The appeal of Mr. Rafiq presented today by Mr. Umar Farooq Mohmand Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on</p> <p style="text-align: center;">By the order of Chairman</p> <p style="text-align: center;">REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1870 /2023

Rafiq

V/S

POLICE DEPTT:

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Dated: 14/09/2023

APPELLANT

(Signature)
RAFIQ

Through:

(Signature)
UMAR FAROOQ MOHMAND

(Signature)
MUHAMMAD AYUB

(Signature)
WALEED ADNAN

(Signature)
MAHMOOD JAN
Advocates, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1870 /2023

Mr. Rafiq, Ex-Constable No: 2881,
District Police, District Mohmand

..... **APPELLANT**

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- Regional Police Officer, Mardan Region at Mardan.
- 3- District Police Officer, District Mohmand.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 17/07/2023 COMMUNICATED ON 25/07/2023, WHEREBY THE APPELLANT HAS BEEN RE-INSTATED IN HIS SERVICE, BUT THE INTERVENING PERIOD IS TREATED AS LEAVE WITHOUT PAY.

PRAYER:

That on acceptance of this appeal the impugned appellate order dated 17/07/2023 may very kindly be rectified/modified to the extent that the intervening period may kindly be treated as period on duty/full pay with all back benefit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

1. That appellant is an employee of the respondent Department and performing his duty with full zeal & zest and up to the entire satisfaction of his high ups.
2. That the appellant while performing his duty was charged in a criminal case vide FIR No. 68 Dated: 25/07/2021 under section 324/34 PPC in Police Station Ekaghund and the respondents issued Charge Sheet alongwith statement of allegation for the ibid offence. Copies of the charge sheet & statement of allegation are attached as annexure**A**
3. That thereafter the respondent department initiated inquiry proceedings against the appellant, but the charges against the appellant has not been proved in the said inquiry. Copy of the inquiry report is attached as annexure.....**B**

4. That after inquiry proceedings, the Final Show Cause Notice was issued to the appellant on 28/12/2021, whereby the appellant denied all the allegations through his reply to the said Final Show Cause Notice. Copies of Show Cause Notice and its reply are attached as annexure.....C
5. That the appellant quite hopeful being innocent and falsely been charged in the above mentioned FIR to be exonerated from the charges, but astonishingly and without fulfilling all the legal and codel formalities, the respondent No 3 awarded major punishment of dismissal from services through order dated 10/03/2022. Copy of order dated 10/03/2022 is attached as annexure.....D
6. That feeling aggrieved from the Dismissal Order, the appellant preferred a Departmental Appeal before the respondent No 2. Copy of departmental appeal is attached as annexure..... E.
7. That the respondent No 2 kept pending in hand the aforesaid departmental appeal of the appellant till the outcome of the trial court as the trial in the mentioned FIR was subjudice before the competent court, where-after the appellant was acquitted of the charges by the District & Sessions Judge Mohmand, the appellant submitted application alongwith court judgment, where-after the appellate authority i.e. respondent No 2 through impugned appellate order dated 17/07/2023, re-instated the appellant into service, but astonishingly the intervening period has been treated as leave without pay, despite that the appellant was acquitted from the charges by the competent court. Copies of het judgment dated 12/05/2023 & appellate order dated 17/07/2023 are attached as annexure....."F" & "G"
8. That feeling aggrieved and having no other remedy filed the instant appeal on the following grounds amongst the others.

GROUND:

- A- That impugned appellate order dated 17/07/2023 passed by the respondent No 2 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be rectified/modified to the extent that intervening period may kindly be treated as period on duty.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That it is too heartburning that when the competent court of law has acquitted the appellant for the criminal charges, then there is no plausible ground or justification to proceed and punish the

appellant for one and the same charges. The act of respondents is tantamount to double jeopardy which is strictly forbidden by the constitution of Islamic Republic of Pakistan 1973.

- D- That no regular inquiry has been conducted in to the matter, hence the appellant has been condemned unheard.
- E- That no right of personal hearing and personal defense has been provided to the appellant.
- F- That, the treatment meted out to the appellant clearly based on discrimination and mala fide and as such the respondents violated the Principle of Natural Justice.
- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated: 14/09/2023

APPELLANT

RAFIQ ^{رفیق}

Through:

UMAR FAROOQ MOHMAND 

MUHAMMAD AYUB 

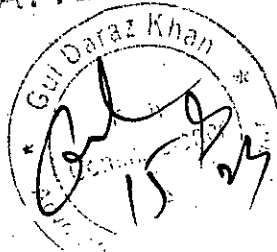
WALEED ADNAN 

MAHMOOD JAN 
Advocates, Peshawar

AFFIDAVIT

I, Mr. Rafiq, Ex-Constable No: 2881, District Police, District Mohmand, do hereby solemnly affirm and declare on oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal.

ATTESTED



DEPONENT ^{رفیق}

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

APPEAL NO. _____/2023

RAFEEQ

VS

POLICE DEPT

**APPLICATION FOR CONDONATION OF
DELAY IN FILING THE ABOVE NOTED
APPEAL**

R.SHEWETH:

- 1- That the appellant has filed an appeal along with this application in which no date has been fixed so far.
- 2- That the appellant prays for the condonation of delay in filing the above noted appeal inter alia on the following grounds:

GROUND OF APPLICATION:

- A- That valuable rights of the appellant are involved in the case hence the appeal deserve to decide on merit.
- B- That in the instant appeal monetary benefits of the appellant is involved.
- C- That it has been the consistent view of the Superior Courts that cases should be decided on merit rather on technicalities including the limitation. The same is reported in 2002 PLC C.S 1388, 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is therefore prayed that on acceptance of this application the delay in filing the above noted appeal may please be condoned.

APPELLANT

THROUGH:


**UMAR FAROOQ MOHMAND
ADVOCATE**

A-5

CHARGE SHEET

1) I, Salah-Ud-Din, District Police Officer, Mohmand Tribal District, as Competent Authority, hereby charge you **FC Rafique No. 2881** as follows:-

1) On the perusal of DD No. 16, dated 25-07-2021 u/s 324-34PPC PS Ekka Ghund that you along with others were involved in cross FIR version. Your such act is highly objectionable and render him liable for departmental proceeding.

(1) Being a part of a uniform force this act shows gross misconduct on your part.


By reason of the above, you appear to be guilty of misconduct under Police Disciplinary Rules 1975 with amendments 2014 and have rendered yourself liable to all or any of the penalties specified in the Rules:-

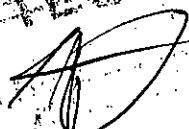
2) You are, therefore required to submit your written defense within 07 days of the receipt of this Charge Sheet to the Enquiry Officer as the case may be.

3) Your written defense, if any, should reach to the Enquiry Officer within the specified period failing which it shall be presumed that you have no defense to put in and in that case, ex-parte action will be taken against you.

4) You are also at liberty, if you wish to be heard in person.

5) Statement of allegation is enclosed.


District Police Officer,
Mohmand Tribal District

ATTESTED


6

SUMMARY OF ALLEGATION.

I, **Salah-Ud -Din, District Police Officer, Mohmand Tribal District**, am of the opinion that **FC Rafique No. 2881** has rendered himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Disciplinary Rules, 1975 read with Amendments 2014.

STATEMENT OF ALLEGATIONS.

1) On the perusal of DD No. 16, dated 25-07-2021 u/s 324-34PPC PS Ekka Ghund that he along with others were involved in cross FIR version. His such act is highly objectionable and render him liable for departmental proceeding.


ii) Being a part of a uniform force this act shows gross misconduct on his part.

2). For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, **Mr. Rokhan Zeb (SP Investigation)** is appointed as Enquiry Officer, to conduct enquiry under the Rules.

3). The Enquiry Officer shall, in accordance with the provision of the Police Disciplinary Rules, 1975 read with Amendments 2014 provide reasonable opportunity of hearing to the accused, record its findings and make within 15 days of the receipt of this order recommendation as to punishment or other appropriate action against the accused.

Amir Khan
h. Khan
h. Khan

358
10-11-21


District Police Officer,
Mohmand Tribal District

No. 1647-50 /PA

Dated Mohmand the: 28/07/2021

Cc:

- The Regional Police Officer, Mardan for favor of information.
- Enquiry Officer of the District Mohmand **Mr. Rokhan Zeb (SP Investigation)** is directed to initiate departmental proceedings against the accused under the Police Disciplinary Rules, 1975 read with Amendments 2014.
- **FC Rafique No. 2881** to appear before the Enquiry Officer on the date, time & Place fixed by the Enquiry Officer for the purpose of enquiry proceedings.

ATTESTED



انکوائری رپورٹ

B (7) جناب عالی!

بجوالہ چھٹی انگریزی نمبر PA/50-1647 مورخہ 28/07/2021 بجاریہ DPO صاحب ضلع مہمند معروض ہوں۔ کہ کنسٹبلان برادران (1) حاجی رفیق 2881 (2) تنظیم اللہ 2882 پر بجوالہ مد نمبر 16 روزنامچہ 25/07/2021 جرم 324/34 PPC تھانہ یکہ غنڈہ دعویداری ہو کر معطل ہو چکے ہیں۔ اور تنخواہیں بھی بند ہو چکے ہیں۔ مجروحین کنسٹبلان کے تنخواہیں کھولنے بارے میں مجروحین مسکی شریف خان نے بھی جناب DPO صاحب کو درخواست دی ہے۔ جولف انکوائری ہے۔ انکوائری ہذا من انسپکٹر کو حوالہ ہو کر ذیل کارروائی عمل میں لائی گئی ہے۔

دوران انکوائری حالات واقعات یوں پائے گئے۔ کہ کنسٹبلان (1) حاجی رفیق 2881 (2) تنظیم اللہ 2882 قبل ازیں خاصہ دارفوریس میں ڈیوٹی سہرا انجام دے رہے تھے۔ جبکہ سال 2020 میں محکمہ پولیس میں ضم ہو کر اور شاہ کس سنٹر کے ریکروٹ کورس کیلئے منتخب ہو کر دونوں کنسٹبلان برادران نے مورخہ 31/05/2021 کو ٹریننگ سنٹر میں حاضری کی۔ شاہ کس سنٹر کے افسران بالانے بوجہ عیدالضحیٰ 07 یوم چھٹی دیکر گھر جو آئے تھے۔ مورخہ 25/07/2021 کو بعد اختتام رخصت دونوں کنسٹبلان برادران مسکی عمران ساکن دیہہ اشہ کے ساتھ عمران کے ملکیتی موٹر سائیکل پر سوار ہو کر اڈہ واقع چینی پل روانہ ہوئے۔ جونہی وہ بمقام برج چوک پہنچے تو وہاں پر مسکی عادل ولد نور بدشاہ بھی اپنے موٹر سائیکل پر آ کر ان کو کہا۔ کہ ایک بندہ میرے ساتھ موٹر سائیکل پر سوار ہو جائے۔ تو کنسٹبل تنظیم اللہ 2882 عمران کیساتھ موٹر سائیکل پر بیٹھ کر بطرف اڈہ روانہ ہوئے۔ جونہی بمقام جائے وقوعہ پہنچے تو وہاں پر پہلے سے مسان گل شاہ علی۔ حسین۔ غوث علی پسران کنگار۔ ساکنان میچنی کریڈی کلبے جو پہلے سے مسلح ہتھیار آتشیں کھڑے تھے۔ ہر سبہ کسان نے حاجی رفیق۔ تنظیم اللہ۔ عمران اور عادل پر یہ ارادہ کیا۔ فائرنگ شروع کی۔ جنکے فائرنگ سے ہر چاروں کسان لگ کر شدید زخمی ہوئے۔ جبکہ عمران علاج معالجہ کیلئے راستہ میں زخموں کی تاب نہ لا کر جان بحق ہوا۔ ملزمان کی فائرنگ سے عمران کا موٹر سائیکل بھی نقصان رسید ہو چکا ہے۔ اسی طرح مجروح کنسٹبل حاجی رفیق کے مدعیت میر برخلاف ملزمان گل شاہ علی۔ حسین۔ غوث علی پسران کنگار ساکنان میچنی کریڈی کلبے بجوالہ مد نمبر 8 6 مورخہ 25/07/2021 جرم 302/324/34/427 PPC تھانہ یکہ غنڈہ مقدمہ درج رجسٹر ہو چکا ہے۔ مقدمہ ہذا میں دونوں کنسٹبلان برادران شدید زخمی ہو کر کنسٹبل حاجی رفیق نمبر 2881 وہیل چیئر پر پڑا ہے۔ جبکہ کنسٹبل تنظیم اللہ نمبر 2882 کو ما کے حالت میں بستہ خود پر پڑا ہے۔

علاوہ ازیں بجوالہ مد نمبر 16 روزنامچہ 25/07/2021 جرم 324/34 PPC تھانہ یکہ غنڈہ بالمقابل کر اس دوران رونا کی گئی ہے۔ اور اس مقدمہ میں ہر دونوں کنسٹبلان برادران حاجی رفیق اور تنظیم اللہ پر دعویداری ہو کر مثل مقدمہ عدالت میں زیر سماعت ہے۔ اور دونوں مجروحین کنسٹبلان برادران عدالت سے بر ضمانت ہیں۔ انکوائری کے سلسلہ میں مجروحین متذکرہ بالانکے بیانات لینے کے سلسلہ میں دیہہ میچنی بنگو جا کر مجروحین کنسٹبلان برادران میں سے کنسٹبل حاجی رفیق 2881 زخمی حالت میں پا کر اس کا بیان لیا گیا۔ جبکہ کنسٹبل تنظیم اللہ 2882 کو ما حالت میں بستہ خود پر پڑا پا کر جو بیان دینے کا قابل نہیں ہے۔ مجروح عادل کا بیان بھی لیا جا کر لف انکوائری ہے۔ دوران تاسمبندی بیانات حاجی رفیق۔ تنظیم اللہ اور عادل کے میڈیکل کاغذات بھی پیش کر کے جولف انکوائری ہذا ہے۔ اسی طرح تفتیشی آفسر ارشد خان تھانہ یکہ غنڈہ کا بھی تحریری بیان لیا جا کر لف انکوائری ہذا ہے۔ مجروحین کنسٹبلان (برادران) معطل ہو چکے ہیں۔ اور ان کے تنخواہیں بھی تاحال بند ہیں۔

خلاصہ انکوائری

8

انکوائری کاغذات من انسپٹر کو حوالہ ہو کر دوران انکوائری حالات واقعات یوں پائے گئے۔ کہ بحوالہ بد نمبر 16 روزنامہ
 25/07/2021 جرم PPC 324/34 تھانہ یکہ غنڈہ میں دعویٰ جاری مجروحین کنسٹیبلان (برادران) (1) حاجی رفیق 2881 (2) تنظیم
 اللہ 2882۔ مجروح عادل ولد نور سند شاہ سکند بنگلو اور مقتول عمران ولد سحر گل سکند بھائی کور پر ہو چکی ہیں۔ اور کنسٹیبلان (1) حاجی رفیق (2)
 2881 تنظیم اللہ 2882 معطل ہو چکے ہیں۔ جبکہ ہر دونوں مجروحین کنسٹیبلان (برادران) عدالت سے برضمانت ہیں۔ اور فریقین نے
 مابین مقدمات عدالت میں زیر سماعت ہے۔ وجہ عناد سابقہ قتل مقاتلہ کی دشمنی ہے۔ دوران انکوائری کنسٹیبلان مجروحین (برادران) میں
 کنسٹیبل حاجی رفیق نمبر 2881۔ مجروح عادل اور تفتیشی آفسر ارشد خان کے بیانات لئے جا کر لف انکوائری ہذا ہے۔ جبکہ مجروح کنسٹیبل تنظیم
 اللہ نمبر 2882 کو مایں ہے۔ اور گھر خود میں چار بابائی پر زندگی اور موت کے کشمکش میں پڑا ہے۔ حاجی رفیق۔ تنظیم اللہ اور عادل کے میڈیکل
 کاغذات بھی من انکوائری آفسر کو پیش کر کے جو لف انکوائری ہذا ہے۔ اسی طرح مجروح کنسٹیبل حاجی رفیق کی مدعیت میں برخلاف۔ زمان
 کنسٹیبلان برادران (1) گل شاہ علی نمبر 2195 (2) حسین نمبر 2207 (3) غوث علی نمبر 3616 پر بحوالہ مقدمہ علت 68 و 69
 25/07/2021 جرم PPC 302/324/148/149 تھانہ یکہ غنڈہ کی گئی ہے۔ دوران تفتیش و انکوائری کنسٹیبلان برادران (1) حاجی
 رفیق 2881 (2) تنظیم اللہ 2882 گنہگار ٹھہرائے گئے۔ جبکہ خلاف سنگین سزاء دینے کی سفارش کی جاتی ہے۔ انکوائری رپورٹ گزارش
 ہے۔

۲۶

محمد زمان خان انسپٹر انوسٹی گیشن ضلع مہمند

Sir

Forwarded P13

Order
13/12/2021

Issue Final Show Cause
to both Constables Haji Rafiq
2881; Tanzeem Ullah 2882

SP
11/12/2021

13/12

ATTESTED

[Signature]



OFFICE OF THE
DISTRICT POLICE OFFICER,
MOHMAND TRIBAL DISTRICT GHALLANAI

Email: dpomohmand@gmail.com
Ph: 0924-290179 Fax: 0924-290056

CO

FINAL SHOW CAUSE NOTICE

No. 3821 /PA, dated Mohmand the: 28/12/2021

WHEREAS, You FC Rafique No. 2881 while posted at Circle Ekka Ghund was found guilty as under:-

That you while posted at Circle Ekka Ghund were charged vide DD No. 16 dated 25.07.2021 u/s 324-34PPc PS Ekka Ghund in cross version FIR. Your such act was highly objectionable and render liable for departmental proceeding.

To substantiate the allegation leveled in the cross version FIR, you were charge sheeted together with statement of allegation and SP Investigation Mohmand was appointed as an inquiry officer to conduct inquiry under the rule.

WHEREAS, Enquiry Officer in findings of the enquiry report has found you guilty and therefore, he has recommended you for awarding **Major punishment**.

AND WHEREAS, I am satisfied that you had committed misconduct and guilty of negligence and carelessness which stand proved and rendered you liable.

Now Therefore, I **Salah-ud-Din**, District Police Officer, Mohmand as Competent Authority has tentatively decided to imposed upon you, any one or more penalties including the penalty of dismissal from service under KPK Police Rules, 1975.

You are therefore, required to submit reply of this Final Show Cause within **07** days of the receipt of this notice, as to why the aforesaid penalty or any other should not be imposed upon you, failing which it shall be presumed that you have no defense to offer and an ex-parte action shall be taken against you. Meanwhile you also intimate that whether you desire to be heard in person or otherwise.

District Police Officer,
Mohmand Tribal District

EO, کس پر ملزم ہو کر خود کی توثیق سے
کسی گناہ کا ملزم نہیں ہونا چاہیے اور اس
افسر کا بیان کوٹ لیا جاوے

TESTED

4/2/22

جانے
تین دن آفرم
بیان لے کر بیان سے
بجائے ملزمان کو تین
تین سے بنا مار پائے سے ہیں

22/12/21

To,

The District Police
Officer, Mohmand.

10

SUBJECT:-

Reply To Final Show
Cause Notice.


Respected Sir,

I, Rafique No. 2881, was falsely and
malafidely been charged in DD No. 16, Dated
25/7/2021, U/S: 324/34 ^{PPC} of P.S. Yakkah Ghund,
Just to cross the FIR, in which I am
the complainant.

During the days of occurrence I was a
trainee in Shakar training Center, Jamrud and
on the relevant day we were proceeding for
training, unarmed, as your good self better
knows that one has to go unarmed for
training, furthermore the trial of the case is
in progress and I am still not convicted for any
such charge and I am sure that I will be
acquitted of the charges in the near future.

Therefore the inquiry conducted against me
may kindly be stopped and I may kindly
be exonerated.

ATTESTED



Yours Sincerely

Rafique FC

No. 2881



OFFICE OF THE
DISTRICT POLICE OFFICER
MOHMAND TRIBAL DISTRICT GHALLANAI
Email: dpomohmand@gmail.com
Ph: 0924-290179 Fax: 0924-290056

D-(11)


ORDER:

This order will dispose-off the inquiry proceeding against **FC Rafique No. 2881** with the allegations that he was charged in a cross version FIR vide DD No. 16, dated 25-07-2021 u/s 302-34 PPC by Police Station Ekka Ghund.

To scrutinize the conduct of the delinquent official, he was issued charge sheet together with statement of allegation & inquiry was entrusted to Investigation Officer vide this office letter No. 1647-50/PA, dated 28.07.2021. The inquiry officer after fulfilling all legal and codal formalities, the alleged constable was found at fault, however, recommended for **Major Punishment**.

In light of findings of the inquiry officer, the undersigned issued final show cause notice to the delinquent officials reply to which was received, perused and was found unsatisfactory.

Based on the above **I Salah-ud-Din Kundi, District Police Officer, Mohmand** being the competent authority and exercise of power vested in me under the Khyber Pakhtunkhwa, Government Servant (Efficiency & Discipline) rules 2011, hereby awarded him **Major Punishment of Dismissal from the service with immediate effect.**


District Police Officer,
Mohmand Tribal District

OB No. 1349

Dated: 10/03/2022

No. 936-40 /PA, dated Mohmand the: 10/03/2022

Copy forwarded to the:

- Regional Police Officer, Mardan for favor of kind information please.
- HC/EC/FMC/Pay Officer/Kot In-charge

ATTESTED



To,

The Regional Police Officer,
Mardan Region, Mardan.

1
E-12

Subject: - DEPARTMENTAL APPEAL AGAINST THE DISMISSAL ORDER DATED 10/03/2022

Respected sir,

The appellants submits as under:

It is stated with great respect that the appellant was appointed in your good self-department as constable vide F.C. No.2881 and was performing his duties quite efficiently and upto the entire satisfaction of his high ups.

That appellant while performing his and during service, a false, fabricated and baseless FIR vide DD No. 16 dated 25-07-2021 u/s 324/34 PPC Police Station EkkaGhund was registered/ lodged against the appellant with malafide intention.

That after registration of FIR the appellant was arrested by the local police and was put behind the bars. That thereafter the appellant preferred a bail petition before the competent forum wherein the petition was accepted and he was released on bail.

That in pursuance to the FIR supra departmental proceeding was initiated against him and he was removed from service without following the codal formalities.

That the appellant was not associated with the inquiry and hence the whole proceeding was conducted one sided.

That the appellant has not been heard in person and no opportunity of personal hearing and personal defense has been provided to the appellant, hence condemned unheard thus violated Article-10-A of the constitution of Islamic republic of Pakistan, 1973.

That no conclusive proof in that respect is available with the inquiry officer and he neither provided an opportunity to the appellant against that person to cross examine, nor provided with the opportunity of personal defense in that respect.

That the impugned order dated 10-03-2022 is illegal and void as the procedure provided by the Khyber Pakhtunkhwa (E&D) Rules, 2011 had not been followed.

It is, therefore, most humbly prayed that on acceptance of this Departmental appeal impugned order dated 10-03-2022 may very kindly be set aside and the appellant may kindly be re-instated into service with all back benefits.

Dated: 22-03-2022

ATTESTED
[Signature]

Yours obediently,

[Signature]
(RAFIQUE)
Ex-FC NO.2881

Received
[Signature]
22/03/22

**IN THE COURT OF MUHAMMAD NASIM, SESSIONS JUDGE,
DISTRICT MOHMAND.**



Sessions Case No.59/SC of 2022.
Date of Institution: 13.09.2021.
Date of receipt in this court: 17.02.2022
Date of Decision: 12.05.2023.

State through Haji Rafiq..... **Complainant.**
Versus
Gul Shah Ali and others District Mohmand..... **Accused facing trial.**

CHARGED UNDER SECTION 302/324/34/427-PPC CASE FIR NO-68,
DATED-25.07.2021 OF POLICE STATION EKKAGHUND, DISTRICT
MOHMAND.

3
5
District Sessions Judge
District Mohmand

State through Gul Shah Ali **Complainant.**
Versus
Haji Rafiq and others..... **Accused facing trial.**

CHARGED UNDER SECTION 324/34-PPC CROSS VERSION
RECORDED VIDE MAD NO. 20 DAILY DIARY 25.07.2021 OF P.S
EKKAGHUND.

JUDGMENT.
12.05.2023

1. On 25.07.2021 Abdullah Jan Khan ASI (PW-5), on receipt of information of the occurrence, reached to the Trauma Center of LRH Hospital Peshawar along with other police officials, where he found the persons of Haji Rafiq (PW-12), and Adil (PW-13) laying in injured condition, whereas the person of Tanzeeumullah was found lying injured and in unconscious condition.

12.05.2023
District Sessions Judge
District Mohmand

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FORM "A"
FORM OF ORDER SHEET

Court of DSJ, Mohmand

Case No. 59/SC of 2022

Serial No. of Order Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
74	12/05/2023	<p>Present:</p> <p>The accused Gul Shah Ali and Ghos Ali in custody, (in FIR case), the Accused Haji Rafiq and Adil in person (in Mad case); Mr. Bakhtiar Khan learned Sr. PP for the state.</p> <p>Vide my detailed judgement of today consisting of 30 pages placed on file it is held that the prosecution has proved its case against the accused Gul Shah Ali and Ghaus Ali beyond any shadow of doubt. The said accused are therefore convicted u/s 302 (b)/34-PPC and sentenced to life imprisonment and to pay a compensation of Rs 5,00,000 (five lac) within the meaning of section 544 A CrPC to the legal heirs of the deceased Muhammad Imran. In default of payment of compensation, the accused shall further undergo 6 months SI.</p> <p>The said accused are also convicted u/s 324/34 PPC (on three counts) for attempting to cause Qatal-i-amd of PW Haji Rafiq, Adil, and injured Tanzeemullah, and sentenced to undergo ten years RI and to pay a fine of Rs 1,00,000/-(one lac) each; in default of payment of fine the accused shall further undergo three months SI.</p> <p>Similarly the accused Gul Shah Ali and Ghaus Ali are convicted for the offence u/s 337 F(vi)/34 PPC for causing Jurh Ghair-Jaifah Munaqqilah to Haji Rafiq and sentenced to undergo five years RI as tazir and to pay Daman of Rs 1,00,000/-(one lac).</p> <p>Similarly the accused Gul Shah Ali and Ghaus Ali are convicted for the offence u/s 337 F(vi)/34 PPC for causing Jurh Ghair-Jaifah Munaqqilah to PW Adil and sentenced to undergo five years RI as tazir and to pay Daman of Rs 1,00,000/-(one lac).</p> <p>Similarly, the accused Gul Shah Ali and Ghaus Ali are also convicted for the offence u/s 336/34 PPC for causing Itlaf-i-Salahiyat-iudw to PW Tanzeemullah and sentenced to undergo ten years RI as tazir and to pay Arsh equivalent to value of Diyat in the light of section 337Q-PPC.</p>

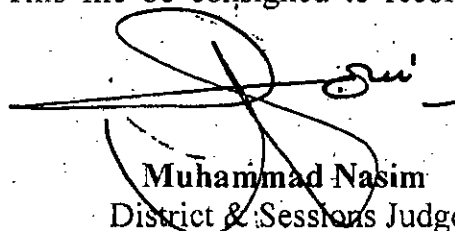
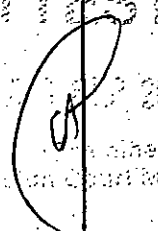
Imran

MULHAN AND TANMIM
District & Session Judge
District Mohmand

2023

(Examiner)
Session Court Mohmand

15

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
74conti..	12/05/2023	<p>Similarly, the accused Gul Shah Ali and Ghaus Ali are convicted for the offence u/s 427/34 PPC and sentenced to undergo one-month SI and to pay a fine of Rs. 5000 each. In default of payment the accused shall undergo 10 days SI.</p> <p>Benefit of Section 382 B CrPC is given to the accused. All the sentences so awarded shall run concurrently. Case property be disposed of according to law, whereas the motor bike belonging to the deceased Muhammad Imran be returned to his legal heirs.</p> <p>It is clear from the above that there exists a prima facie case against the absconding co-accused namely Hussain. He is therefore declared proclaimed offender. Perpetual warrant of arrest be issued against him and his name be forwarded to DPO Mohmand for entry into the Register maintained for the POs.</p> <p>Since prosecution failed to prove its case against the accused Haji Rafiq, Adil, and Tanzeemullah beyond any shadow of doubt. All the said accused are therefore acquitted of the charges. They are on bail. Their sureties are discharged from the liability of their bails bonds. And attested copy of this judgment be supplied to each of the accused free of cost. This file be consigned to record room.</p> <p>Announced 12.05.2023.</p> <p style="text-align: right;"> Muhammad Nasim District & Sessions Judge, Mohmand</p> <p style="text-align: center;">ATTESTED  12/05/2023 Court Officer Mohmand Court Mohmand</p>

G-16

ORDER.

This order will dispose off the departmental appeal preferred by Ex-Constable Rafique No. 2881, of Mohmand District against the order of District Police Officer, Mohmand, whereby he was awarded major punishment of dismissal from service vide OB: No. 1349 dated 10.03.2022 by the District Police Officer, Mohmand. The appellant was proceeded against departmentally on the allegations that he was involved in a cross version FIR vide DD No. 16 dated 25.07.2021 U/S 302/34-PPC Police Station, Yakka Ghund District Mohmand.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Inspector Muhammad Zaman of Investigation Wing, Mohmand was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities submitted his findings to District Police Officer, Mohmand, wherein he has recommended the delinquent Officer for major punishment.

In light of findings of Enquiry Officer issued him Final Show Cause Notice to the delinquent Officer to which his reply was received/perused and found unsatisfactory. Therefore, he was awarded major punishment of dismissal from service vide OB: No. 1349 dated 01.06.2022 by the District Police Officer, Mohmand.

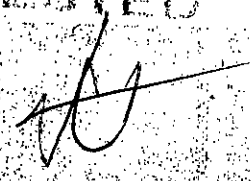
Feeling aggrieved from the order of District Police Officer, Mohmand, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 01.06.2022, the Superintendent of Police Investigation, Mohmand was asked fresh report regarding involvement of appellant, vide this office endorsement No. 3891/ES dated 02.06.2022.

The Superintendent of Police Investigation, Mohmand has submitted his report vide his office letter No. 491/Inv: Mohmand dated 04.08.2022 wherein he has stated that trial of the case is in progress and as per case file, evidence is available regarding the involvement of appellant.

Hence, the appellant was again summoned and heard in person in Orderly Room held in this office on 09.08.2022.

From the perusal of the enquiry file and personal hearing of the appellant it has been found that trial of the case is sub-judice before the concerned court which has not yet been decided. Therefore, his departmental appeal was kept pending in hand till the final outcome of the trial vide case FIR, quoted above by the

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then Regional Police Officer, Mardan vide this office order endorsement No. 5302/ES dated 09.08.2022. However, the appellant, after acquittal from the charges by the Court of learned District & Sessions Judge Mohmand, submitted application along with court order.

Hence, the appellant was again summoned and heard in person in orderly room held in this office on 21.06.2023.

From the perusal of the enquiry file and service record of the appellant, it has been found that the appellant has been acquitted from the charges by the trial court vide order quoted above.

Based on the above, I, Muhammad Suleman, PSP Regional Police Officer, Mardan, being the appellate authority, hereby set aside the order of punishment of dismissal from service and re-instate the appellant into service on the basis of Court orders. However, the intervening period is treated as leave without pay.

Order Announced.

(MUHAMMAD SULEMAN) PSP
Regional Police Officer,
Mardan.

No. 5302/ES, Dated Mardan the 17/07 /2023.

Copy forwarded to District Police Officer, Mohmand for information and necessary action w/r to his office Memo No. 833/Legal dated 25.04.2022. His Service Record is returned herewith.

3424
25.07.23

Q11
OBC/EC/OSI/PO
For
Mardan

DPOM
21-7-23

OB No. 2395
dt. 24-7-23

ATTESTED



VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No _____/2023

Rafiq

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Public Department

(RESPONDENT)
(DEFENDANT)

I/We Rafiq

Do hereby appoint and constitute **Umar Farooq Mohmand Advocate High Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. _____/_____/2023



CLIENT



ACCEPTED

**Umar Farooq Mohmand
ADVOCATE HIGH COURT**


WALEED ADNAN


KAMRAN KHAN


MUHAMMAD AYUB

&


**MAHMOOD JAN
ADVOCATES**

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)