# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.\_\_\_\_/2021

Adnan Khan.....Appellant

# VERSUS

The Regional Police Officer, Kohat and others......Respondents

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Through

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Ashraf Ali Khattak Advocate Supreme Court

# **BEFOR THE KHYBER PAKHTUŃKHWA SERVICE TRIBUNAL PESHAWAR**

SERVICE APPEAL No 2021

Adnan Khan- 5/0 Ramzan Khan Ex-Constable No.816, R/o Mardan Chowk Operation Staff, Jungle Khel, Tehsil Police Force, Kohat. and Distl: Kohat

Kityber Pakhtukhwa Service Tribunat

..... Appellant

Biary No. 41

Versus -

- The Regional Police Officer, Kohat Region Kohat.
- 2. **The** District Police Officer, Kohat.

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED FINAL ORDER OF THE RESPONDENT NO.1 END: NO.2462-63/EC, DATED KOHAT THE 25-02-2021, WHEREIN HE REJECTED THE DEPARTMENTAL APPEAL OF THE APPELLANT PREFERRED AGAINST THE ORDER edto-dav PASSED BY RESPONDENT'NO.2 VIDE OB NO.1373 DATED egistrar HE AWARDED 14-12-2018 WHEREIN MAJOR 2021 PUNISHMENT OF DISMISSAL FROM SERVICE AND THE ABSENCE PERIOD WAS TREATED AS UN AUTHORIZED Re-submitted to TEAVE WITHOUT PAY. and filed.

'Prayer in Appeal:strar 2021

On acceptance of the instant service appeal, this Hon'ble Tribunal may graciously be pleased to:-

- 1. Declare the impugned order of the respondent No.1 End: No.2462-63/EC, dated Kohat the 25-02-2021 and impugned order of respondent No.2 vide OB No.1373 dated 14-12-2018 as illegal, unlawful and without lawful authority;
- 2. <u>Set aside both the impugned orders and re-instate the</u> <u>appellant with all back benefits including the counting of</u> <u>intervening period as period on active duty.</u>
- 3. <u>Any other relief deemed appropriate in the circumstances of</u> <u>the case not specifically asked for may also be graciously</u> granted.

Respectfully Sheweth,

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The concise facts giving rise to the present Service Appeal are as under:-

- 1. That appellant is the employee of police force, Kohat. He has long service standing at his credit.
- That appellant was proceeded against departmentally for certain false allegations. He was served with charge sheet and statement of allegation vide No.9692-93/PA dated 17-10-2018 (Annexure-A). Appellant submitted reply to the charge sheet and denied the accusation in toto (Annexure-B).
- 3. That slip shod inquiry was conducted at the back and in the absence of appellant. Neither appellant was associated with inquiry proceedings nor provided opportunity of defense and hearing.
- 4. That final show cause notice was not served upon the appellant as such he was deprived from personal hearing and opportunity to confront with any evidence if any collected by the inquiry officer as appellant was not provided inquiry report.
- 5. That respondent No.2 vide impugned order vide OB No.1373 dated 14-12-2018 (Annexure-C) dismissed the appellant from his legal service.
- 6. That appellant being aggrieved from the impugned order of dismissal preferred departmental appeal/revision under section 11C of the Police Rules, 1975 (Annexure-D), but the same was rejected by respondent No.1 vide End: No.2462-63/EC, dated Kohat the 25-02-2021 (Annexure-E), hence the instant service appeal inter alia on the following grounds.

- That the penal authority has not treated the appellant in A. with law, rules and policy on the subject and accordance acted in violation of Article 4 of the Constitution of Pakistan, 1973. Moreover the act of the respondents amounts to exploitations, which is the violation of Article 3 of the Constitution, 1973. Mere allegation of commission of offence and registration of FIR against a person would not ispo facto make him guilty, rather he would be presumed to be innocent and would have right to enjoy the presumption of innocence until convicted by a court of competent jurisdiction after a proper trial with opportunity to defend himself on the allegation leveled against him. Reliance is placed on reported judgment of the Honorable Supreme Court of Pakistan cited as 2007 PLC (CS) 997. In the instant case; appellant has already been acquitted in one criminal case (Annexure-F) and whereas the 2<sup>nd</sup> one is pending adjudication before competent court of law therefore, the penal authority without waiting for the outcome of the criminal case imposed upon the appellant major punishment of dismissal, which is not tenable in the eyes of law and is liable to be set aside.
- B. That the Honorable Peshawar High Court vide reported Judgment 2019 PLC (CS) 255 has held that a civil servant who had been charged for a criminal offence, he was to be considered under suspension from the date of his arrest and could not be dismissed from service..... In the instant case, decision on FIR/Trial is pending and appellant is on bail. Department was legally bound to suspend the appellant till decision of criminal case registered against him. The Honorable Peshawar High Court has held in such like circumstances..... Law had not been followed and penal order was set aside. Reliance is placed on 2019 PLC (CS) 255.
- C. That section 16 of the of the Civil Servant Act, 1973 provide that a civil servant is liable for prescribed disciplinary actions and penalties only through prescribed procedure. In instant case prescribed procedure has not been followed.
- D. That so called slipshod inquiry has been conducted in the absence and at the back of the appellant. Appellant active participation during inquiry proceeding has been willfully and deliberately ignored. Inquiry proceedings are of judicial in nature in which participation of accused civil servant as per law condition sine qua non. On this ground the impugned orders are coarm non judice and liable to be set back.
- E. That the well-known principle of law "Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard. ....An adverse order passed against a person without

affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

F. That the non provision of the inquiry report amounts to deprive a civil servant from confronting and defending himself from evidence that may go against him, which is against the provision of Article 10A of the Constitution of Pakistan, 1973.

G. That under the provision of Rule 14 of E & D Rule, 2011, the competent authority was under legal obligations to peruse the inquiry report and determine as to whether the inquiry has been conducted in accordance with prescribed procedure and whether the charge are proved or otherwise. The competent authority has made no such efforts and dismissed the appellant with a single stroke of pen, which is nullity in the eyes of law and liable to be interfered with by this Honorable Tribunal.

- H. That appellant has been condemned unheard being deprived of the right personal hearing.
- I. Accused is stated to be a favorite child of law and he is presumed to be innocent unless proved otherwise and the benefit of doubt always goes to the accused and not to the prosecution as it is for the prosecution to stand on its own legs by proving all allegations to the hilt against the accused. Mere conjectures and presumption, however strong, could not be made a ground for removal from service of civil servant [1999 PLC (CS) 1332 (FST)]..... Unless and until prosecution proves accused guilty beyond any shadow of doubt, he would be considered innocent [1983 PLC (CS) 152 (FST)].
- J. That Re-instated employee would be entitled to back benefits as a matter of course unless employer is able to establish by cogent evidence that concerned employee had been gainfully employed elsewhere. In this respect, initial burden would lie upon the employer and not upon the employee to prove that such employee was gainfully employed during period of termination from his service. 2010 TD (Labour) 41.
- K. That Civil servant who was dismissed from service through arbitrary and whimsical action of the government functionaries and re instated through judicial order of Service Tribunal would have every right to recover arrears of salaries by way of back benefits due to them during the period of their dismissal and re instatement. It would be very unjust and harsh to deprive them of back benefits for the period for

which they remained out of job without any fault on their part and were not gainfully employed during that period.....Supreme Court allowing their appeal and directing payment of back benefits to the appellant. 2006 T D (SERVICE) 551 (a).

L. That the penal order is not a speaking order for the reason that no solid and legal grounds have been given by the penal authority in support of his penal order. On this score the impugned order is liable to be set aside.

M. That appellant would like to seek the permission of Your Kind Honoure for award of personal hearing. Appellant may kindly be granted the opportunity of personal hearing.

Appellant

Through

L 41 Ashraf Ali Khattak Advocate, Supreme Court of Pakistan

Dated: <u>25/3/2021</u>

# BEFOR THE KHYBER PAKHTUNKHWA SERVICE • TRIBUNAL PESHAWAR

### SERVICE APPEAL No. /2021

Adnan Khan Ex-Constable No.816, Operation Staff, Police Force, Kohat.

...... Appellant

Versus 👘

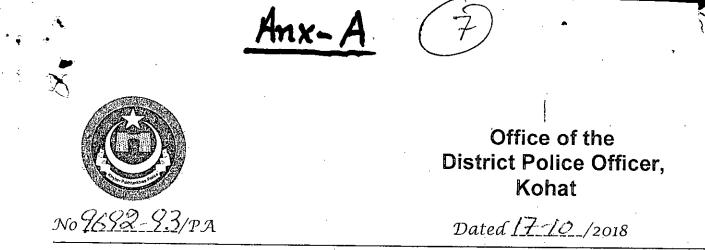
The Regional Police Officer, Kohat Region Kohat and others

.....Respondents

### **AFFIDAVIT**

I, Adnan Khan S/o Ramzan Khan Ex-Constable No.816, Operation Staff, Police Force, Kohat, 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 nothing has been concealed from this Hon'ble Court.

**Weponent** 



#### CHARGE SHEET.

I, <u>SOHAIL KHALID, DISTRICT POLICE OFFICER, KOHAT,</u> as competent authority under Khyber Pakhtunkhwa Police Rules 1975 (amendments 2014) am of the opinion that you **Constable Adnan No. 816** rendered yourself liable to be proceeded against, as you have committed the following act/omissions within the meaning of Rule 3 of the Police Rules 1975.

i. That you while posted at Police Lines Kohat has willfully absented yourself from duty vide DD No. 37 dated 01.10.2018 till date.

ii. That you are involved in a narcotics case vide FIR No. 737 dated07.10.2018 u/s 9C-CNSA PS MRS Kohat.

iii. That previously, you alongwith a lady while trafficking narcotics in motor car No. ADC-448 Islamabad was apprehended by SHO PS Billitang vide FIR No. 615 dated 27.11.2017 u/s 9C-CNSA PS Billitang and recover Charas weighing 07 KG from the motor car driven by you. You were held guilty of the charge during departmental enquiry, but kept pending for want of court decision in the said case, but your present act shows that you are a habitual offender. Therefore, you liable for re-departmental proceedings in the said charge.

2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 of the Police Rules 1975 and have rendered yourse liable to all or any of the penalties specified in the Rule 4 of Police Rules 1975

3. You are, therefore, required to submit your written statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

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

A statement of allegation is enclosed.

Attested by

4.

DISTRICT POLICE OFFICE KOHAT





Ι,

# Office of the District Police Officer, Kohat

Dated 17-20\_/2018

#### DISCIPLINARY ACTION

#### SOHAIL KHALID, DISTRICT POLICE OFFICER,

**KOHAT**, as competent authority, am of the opinion that you **Constable Adnan No. 816** have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

#### STATEMENT OF ALLEGATIONS

- i. That you while posted at Police Lines Kohat has willfully absented yourself from duty vide DD No. 37 dated 01.10.2018 till date.
- ii. That you are involved in a narcotics case vide FIR No. 737 dated 07.10.2018 u/s 9C-CNSA PS MRS Kohat.
- iii. That previously, you alongwith a lady while trafficking narcotics in motor car No. ADC-448 Islamabad was apprehended by SHO PS Billitang vide FIR No. 615 dated 27.11.2017 u/s 9C-CNSA PS Billitang and recover Charas weighing 07 KG from the motor car driven by you. You were held guilty of the charge during departmental enquiry, but kept pending for want of court decision in the said case, but your present act shows that you are a habitual offender. Therefore, you liable for re-departmental proceedings in the said charge.

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations <u>Mr. Ishaq Gul DSP Legal</u> <u>Kohat</u> is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Rule-1975, provide reasonable opportunity of hearing to the accused official, record his findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

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

DISTRICT POLICE OFFICER, KOHAT 2/1///

No. 9692-93 /PA, dated 17-10. /2018. Copy of above to:-

1.

2.

Mr. Ishaq Gul DSP Legal Kohat :- The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.

The <u>Accused Official:</u> with the directions to appear before the Enquiry Officer, on the date, time and place fixed by him, for the purpose of enquiry proceedings. ....

Anx-B 9 بحضور جناب ڈسٹرکٹ پولیس آفیسرصاحب کوھاٹ

جواب جارج شيٺ عنوان:

بحواله جارج شيث نمبرى 93/PA-9692 مورخه 2018-10-17 ذيل عرض ب-

جناب عالی!

\_1

یدکہ مور خد 2018-10-00 کو محرر پولیس لائن نے بیچے اطلاع دی۔ کہ تبادلہ پولیس لائن کو حاف سے تھاندلا بی ہوا ہے۔ جو کہ یس بیجہ گھر بلو مسائل فوری طور پر تھاند لا بی کے لیے روائلی نہ کر سکا۔ شومی قسمت بیچے تاحق طور پر مقد مد علت نجسر 737 مور خد 2018-2019-2017 م 2018 میں حاصل الکن نہ کر سکا۔ شومی قسمت بیچے تاحق طور پر مقد مد علت نجسر 737 مور خد سے کوئی ممنوعہ شے برآ مدہوئی ہے۔ بدیں وجہ میں پولیس کی گر فراری سے زیجنے کے لیے قانونی چارہ جو کی میں محروف راست سے کوئی منوعہ شے برآ مدہوئی ہے۔ بدیں وجہ میں پولیس کی گر فراری سے زیجنے کے لیے قانونی چارہ جو کی میں مصروف راست سے مور خد 2018-10-2019 کو بوری حالت پر دہائی لکر کر مور خد 2018 کا دور ہوتی جارت میں ایک حال اور نہ ہی میں کر سے قسم مور خد 2018-2010-2010 کو بوری حالت پر دہائی لکر کر مور خد 2018-2019 کو پولیس لائن میں اپنی حاضری کی رپورٹ کی۔ محمد معلت نمبر 2015 مور خد 2017-2017 مور خد 2018 کا تک میں میر ے خلاف تک میں میں میں میں کے بی کی میں میں میں ک

، اسوائے چنددن غیر حاضری میرے خلاف دیگر الزامات در ست نہ ہیں۔

Attested by

المد ااستدعام كه چارج شين زير بحث كوداخل دفتر ي جاين كالظم صادر فرمايا جائ -كنستبيل عدمان نمبر 816

· بودند 24-10-2018



OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT Tel: 0922-9260116 Fax 9260125

### ORDER

This order is passed on the departmental enquiry conducted against Constable Adnan No. 816 (hereinafter called accused official) under the Khyber Pakhtunkhwa, Police Rules, (Amended 2014) 1975.

Anx - C

The following charged were framed against the accused official:-

- a. He while posted at Police Lines Kohat has willfully absented himself from official duty vide DD No. 37 dated 01.10.2018 till date.
   b. That he was involved in a narcotics case vide FIR No. 737 dated 07.10.2018 u/s 9C-CNSA PS MRS Kohat.
- c. That previously, he alongwith a lady while trafficking narcotics in motor car No. ADC-448 Islamabad was apprehended by SHO PS Billitang vide FIR No. 615 dated 27.11.2017 u/s 9C-CNSA PS Billitang and recovered Charas weighing 07 KG from the motor car driven by him. He was held guilty of the charge during departmental enquiry, but kept pending for want of court decision in the said case, his present act shows that he was a habitual offender. Therefore, he liable for re-departmental proceedings in the said charge.

He was served with charge sheet & statement of allegations DSP Legal, Kohat was appointed to scrutinize the conduct of the accused official. The enquiry cfficer vide his finding and found him guilty of the charges leveled against him.

Final Show Cause Notice was issued at his home address, which was received by him on 22.11.2018, but the accused constable deliberately failed to submit reply.

The accused official was called for personal hearing in orderly room on 10.12.2018, but he deliberately did not appear.

Record gone through, which indicates that the accused official absented himself from lawful duty and subsequently charged in case FIR No. 737/2018 Police station MRS. Furthermore, the accused official was arrested alongwith a lady while trafficking narcotics in a motor car vide FIR No. 615/2017 Police Station Billitang Kohat. Record further indicates that the accused official admitted relationship with the lady accused in case FIR No. 737 and friendship with the lady arrested with him in FIR No. 615. The accused official was previously dismissed from service vide order dated 01.02.2016 for willful absence from the service for the period of 60 days however, the punishment was modified forfeiture of his one year service by Worthy RPO Kohat order dated 20.04.2016. Furthermore, it has been established that the accused official was a habitual absentee.

These act of the accused official earned bad name to a discipline force on one hand and involved himself in criminal act / trafficking of narcotics on the other.

Attested by

In view of the above and available record, I reached to the conclusion that the accused official was a habitual absentee and involved in criminal act/trafficking of narcotics. Therefore, these charges leveled against accused official constable Adnan No. 816 have been established beyond any shadow of doubt. Therefore, in exercise of powers conferred upon me under the **rules ibid**, a major punishment of "<u>dismissal from Service</u>" is imposed on accused constable Adnan No. 816 with immediate effect. The absence period is treated as un authorized leave without pay. Kit etc issued to the constable be collected.

Announced 10.12.2018

18/2/1/22

رمیلے ر رومیلے

المردر

# DISTRICT POLICE OFFICER, KOHAT

OB No. <u>1373</u> Date <u>14-12-</u>/2018

1.

No.13262-64/PA dated Kohat the 17-12-2018.

Copy of above to the:

- Reader/Pay officer/SRC/OHC for necessary action.
- 2. R.I to report for collection of items and clearance.

Attested by

THE HONORABE DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT

Anx\_D

APPEAL UNDER RULE 11 OF THE POLICE RULES 1975 (AMENDED 2014) AGAINST THE ORDER OF THE WORTHY DISTRICT POLICE OFFICER KOHAT DATED 17–12–2018 VIDE WHICH THE APPELLANT WAS DISMISSED FROM SERVICE WITHOUT ANY LAWFUL OR LEGAL JUSTIFICATION.

Respected Sir,

With great respect the appellant may be allowed to submit the following for your kind and sympathetic consideration;

Brief Hacts:

1. That appellant joined the Police Deptt: as police constable in the vear 2008.

2. That the appellant since his enrolment as constable discharged his official functions purely on merits, efficiency and selflessly.

3. That the appellant during his service remained obedient to law and as well as to his worthy senior officers. On account of this score, the worthy officers have never made any complaint against the appellant during his service.

4. That the Worthy Senor Officers also put their confidence in the appellant. They assigned a number of sensitive and risky tasks to the appellant which the appellant fearlessly and courageously accomplished with success.

Attestedby

5. That the appellant while serving in the police Deptt: fell in to a conspiracy. Some of the bad wishers of the appellant tried to ruin his service career and as well as reputation.

- That against the appellant case FIR Nos.615 dt:27-11-2017 U/S
   9C-CNSA was registered in the police station Billitang while subsequently another case vide FIR No.737 dt:07-10-2018 U/S
   9 C-CNSA was registered in P.S MRS Kohat.
- 7. That both the above cases registered against the appellant were false and frivolous however, the appellant was arrested and subsequently faced trial of both the cases before the learned trial courts.
- 8. That regarding FIR No.615 dt:27-11-2017 U/S 9 C-CNSA P.S Billitang Kohat the appellant vide judgment dated 02-12-2020 was acquitted by the learned trial court i.e. Additional District & Sessions Judge-I Kohat.
- 9. That another case vide FIR No. 737 dt: 07-10-2018 U/S 9 C-CNSA P.S MRS is under trial in the court of Learned ADJ-I Kohat. It is likely that in this case too the appellant will be acquitted because he was not present at the spot at the time of the alleged recovery of the contraband narcotics. (Copy of the FIR is
  - enclosed) 10. That due the registration of illegal and malafide cases against the appellant he was arrested. On account of arrest of the appellant was forced to remain away from his duty, which was beyond his control.
  - 11. That in the meantime at the back of the appellant departmental enquiry was initiated wherein the appellant was charged three fold i.e. absence from duty, involvement in case FIR No.737 dt: 07-10-2018 U/S 9 C-CNSA P.S MRS and lastly

Attester by

involvement of the appellant in case FIR No.615 dt: 27-11-2017 U/S 9 C-CNSA P.S Billitang Kohat.

- That the one sided, unilateral, biased, malafide and so called 12: enquiry ended in dismissal of the appellant vide order dt:17-12-2018. (Copy of the impugned order is enclosed)
- 13. That the impugned punishment order consists of a number of inconsistencies, irregularities, contradictions, surmises and conjectures, hence, the said order is open to a number of legal , and factual questions.

That the appellant submits in the following lines some of the 14. grounds of appeal among the other which may kindly be perused with open, free and independent mind so that to arrive at just conclusion and enable your honor to do justice to the appellant.

### Grounds of Appeal:

- That the impugned order of punishment dt:17-12-2018 is . Α. not in accordance with law, rules and the established principle of justice. Hence the said order is not sustainable in the eyes of law and is legally liable to be set aside.
- That the impugned order; of punishment dt:17-12-2018 is Β. based on misreading of evidence coupled with surmises, conjectural and legal / factual discrepancies
- That upon the appellant no Show Cause Notice, Charge Sheet or statement of allegations was served. It is mentioned in the impugned order that the final show cause notice was served upon the appellant at his home address. The said statement is erroneous and absolutely incorrect. As stated above no show cause notice, charge sheet, statement of allegation or final show Att- Jes

cause notice was served upon the appellant.

D. That under the law and rules service of show cause notice, charge sheet, statement of allegation and final show cause notice is mandatory upon a defaulter official. Without service of the aforementioned documents, enquiry officer cannot legally proceed against a defaulter government official. If in absence of such documents, enquiry officer proceeds with the enquiry he obviously commits material legal error which amounts to miscarriage of justice. Such an act by the enquiry officer vitiates the entire enquiry proceedings.

E. That in absence of service of the above referred documents upon the defaulter official infliction of punishment by the competent authority is illegal ab-initio and of no legal effect upon the rights of the defaulter official.

F. That the entire enquiry was conducted at the back of the appellant. The appellant was never informed about the initiation of enquiry against him nor any show cause notice, charge sheet, statement of allegation or final show cause notice was served upon him. Hence the entire proceedings against the appellant were conducted without any legal sanction.

G. That under the law / rules, the enquiry officer is bound to record statement of the witnesses in presence of the defaulter official but in case of the appellant no witness was examined in his presence nor the appellant was provided legal right to cross examine such witnesses.

H. That the allegations against the appellant are vague and doubtful.

As far as the alleged absence of the appellant in concerned, the author should have taken notice of the fact that on account of registration of two fake, fabricated and malafide criminal cases against the appellant he (the appellant) was forced to remain

Attested by

away from the place of his service because the appellant was put in the jail as under trial prisoner. If service record of the appellant is perused, it will reveal that the appellant during his service remained punctual but in this case his presence was beyond his control. Thus remaining away from his place of duty was not intentional and deliberate therefore, the issue of absence cannot be made as one of the point of allegation against the appellant. That in the list of allegation, two cases registered against the appellant were referred. One is FIR No.615 dt:27-11-2017 U/S 9 C-CNSA P.S MRS Kohat and the other is FIR No.737 dt:07-10-2018 U/S 9C CNSA P.S. MRS Kohat.

In this regard it is respectfully submitted that both the cases against the appellant were registered illegally and upon malafide intention. Hence not only both the above mentioned cases but arrest of the appellant was also illegal. However, it is submitted by the appellant with great satisfaction that with blessings to Allah, the appellant has been acquitted after proper trial by the court of the learned Addl: Sessions Judge-I Kohat vide its judgment dt:02-12-2020. (Copy of the judgment is enclosed) That if the judgment of the learned court is perused, it will reveal that the appellant was not acquitted on the basis of the benefit of doubt but the learned trial court was pleased to vehemently declare that the appellant is not guilty of the charge of traffic king possessing narcotics. Hence, the allegation regarding or trafficking and possessing narcotics against the appellant proved incorrect and false.

That regarding the other illegal criminal case vide FIR No.737 dt:07-10-2018 U/S 9 C-CNSA P.S MRS Kohat, the appellant may be allowed to state that the place from where the recovery was affected, appellant was not present on the spot. Two ladies namely Zahida Sultan and Kiran were arrested because the contraband charas was allegedly recovered from their possession. The appellant was charged by Islam ud Din the then SHO MRS on the basis of malafide intention. In FIR charge /allegation against the appellant was purely suspicious, based on surmises and conjectures. The appellant submits with assurance that the said case against the appellant will not stand at the trial and the appellant will be Insha Allah ultimately acquitted from such a frivolous and doubtful charge. (Copy of FIR is enclosed).

1. That charge against the appellant at serial No. C in highly doubtful and contradictory in nature because at the one place it is stated that the departmental proceedings were kept pending till the decision of the criminal case vide FIR No.615 dt:27-11-2017 U/S 9 C-CNSA P.S Billitange Kohat while on the other at the subsequent place of the order at serial No. C it has been conversely stated that since he (the appellant) is a habitual offender therefore, he is liable to re-departmental proceedings in the said charge.

The stance taken by the order justifying reopening of the enquiry against the appellant is totally opposite to the law and the principles of justice. Once, if the departmental proceedings are kept pending till decision of Criminal case and subsequently if other case is registered, such development does not legally justify re-opening of enquiry against the defaulter. Hence plea for reopening and decision of the enquiry against the appellant has got no legal sanctity and the impugned order by all means is against the law and of no legal effect.

J. That it was a correct legal approach to keep pending the enquiry till decision of the criminal case. If subsequently another criminal case was registered against the appellant even then there is no  $M^{+}$ 

legal justification to re-open the enquiry. In that case the enquiry deserves to be kept pending till disposal of both the cases. By reopening the enquiry against the appellant the department has fell into a material legal error which is not curable in the eyes of law and has made the law the impugned order of punishment as illegal.

K. That the Honorable Supreme Court of Pakistan vide its judgment dated 10–10–2005 has held in its judgment that "Registration of FIR against a person would not ipso facto make him guilty rather he would be presumed to be innocent until convicted by a competent court". The Honorable court further stated that "in the present case the petitioner had acted with utmost hurry and hot haste for which no plausible explanation was provided by them either before the Tribunal or by Mr. Shahid Bajwa while arguing this petition in this court". Copy of the judgment is enclosed.

The relevant authority in the case of the appellant has not disclosed that what was the reason for re-opening departmental proceedings before decision of the criminal cae against the appellant. Thus the impugned order of dismissal is not only against the law/ rules but also violation of the judgment of the Honorable Supreme Court of Pakistan.

L. That similarly vide judgment dt: 14-02-2018 has hold in its Para 6 that "if criminal case is registered against the civil servant or employee, the employer is supposed to suspend that civil servant employee instead of dismissing him from his service/ employment". The Honorable Court further laid down that "in the instant case the decision of FIR/ trial is pending and petitioner is on bail, therefore, it was better and lawful for the employer to had suspended him till the decision of criminal case registered against

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him". The Honorable Court further held that "but the law has not been followed as under no law they can straightaway award penalty of dismissal from service". (Copy of the judgment is enclosed).

1. That when earlier the departmental enquiry against the appellant was kept pending till the decision of the criminal case then what prompted the authority to reopen the enquiry against the appellant before decision of the criminal case. Reason advanced by the competent authority in the impugned order is neither convincing nor lawful. Hence the enquiry seems to be based on malafide and thus it is not operative on the rights of the appellant and liable to be set aside.

N. That constitution or Pakistan vide Article 10-A has guaranteed fair, transparent and independent trial/enquiry. The present enquiry is the living example of the sheer violation of the Fundamental Right of the appellant, which is neither approved by the law/rules nor by the principles of justice. Thus at this score too the impugned order of punishment deserves to be set aside.

O. That after acquittal of the appellant by the learned trial court, the appellant went to the police lines for resuming duty, but the appellant was informed that he was dismissed from service. The deptt: did not bother to inform the appellant about the impugned punishment at his home address, which speaks of the ill will and malafide intention.

P. That with the one stoke of pen more or less ten years service of the appellant was thrown in dust bin without any lawful justification.

Q. That the appellant has a large family. The impugned order will put the entire family to starvation and the appellant is likely to sustain irreparable loss for no fault on his part.

R. That the impugned order of punishment is based on surmises, conjectures, doubts, suspicions and presumptions.
Under the law, no punishment can be imposed on the basis of presumptions. The impugned order thus becomes illegal on this score alone.

S. That the impugned order contains a number of legal flaws, inconsistencies, contradictions and lacunas, on account of which the impugned order is not sustainable in the eyes of law.

T. That if deemed proper the appellant may kindly be heard in person.

In view of the above facts, the impugned order of punishment being repugnant to law/ rules, contradictory, unfair, fanciful, capricious, doubtful and violative of law, rules and the golden principles of justice may very graciously be set aside and the appellant may kindly be reinstated in service with all back benefits. The appellant will pray for your long life and prosperity.

Dated: 20-01-2021.

Praver

Yours Obediently,

ADNAN KHAN S/o Ramzan Khan R/o Maidan Chowk Jungle Khel, Tehsil & District Kohat. Cell No. 0333-9624524

# IN THE COURT OF ABID ZAMAN

ADDITIONAL SESSIONS JUDGE-I/JUDGE SPECIAL

COURT, K	OHAT	
SPHC No:	42/2018	
Date of original institution:	14.04.2018	
Date of hearing:	02.12.2020	·
Date of Decision:	02.12.2020	к

THE STATE....VERSUS... Adnan Khan aged about 29/30 years s/o

	– Ramzan Khan r/o Maidan Chowk Jungle
	Khel Tehsil & District Kohat
	(Accused facing trial)
	Mst.Kiran Bhati d/o Saleem Bhati r/o
,	Garden Colony Kohat
	(Absconding accused)
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Charged vide FIR # 615 Dated 27.11.2017 U/sections: 9c CNSA Police Station: Bilitang, Kohat

Present:

APP Mr.Ibrar Khan for the State. Mr.Fawad Hussain Advocate for defence.

# JUDGMENT

Adnan Khan aged about 29/30 years s/o Ramzan Khan r/o Maidan Chowk Jungle Khel Tehsil & District Kohat (hereinafter referred to as accused facing trial) faced trial and is found not guilty for the offence u/s 9-c CNSA in case FIR No.615 dated 27.11.2017 registered at PS Bilitang Kohat.

Prosecution is always duty bound of full proof and failure thereof would always benefit accused facing trial. Benefit of even a single reasonable doubt, appeared from evidence of prosecution, is always golden principle of Administration of Criminal Justice. In this respect, reliance is placed upon the cases of "Muhammad Akram" reported in 2009 SCMR P-230, "Tariq Parveez" reported in 1995

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SCMR P-1345, "Hashim Qasim" reported in 2017 SCMR P-986, "Nasarullah alias Nasaro" reported in 2017 SCMR P-724 and "Muhammad Mansha" reported in 2018 SCMR P-772, Abdul Jabbar 2019 SCMR 129, Mst.Asia Bibf PLD 2019 SC Page-64, Khurshed Ahmad vs the State reported in 2020 MLD P-649, Mst.Asia Bibi vs The State and another reported in PLD 2019 SC P-64 and Abdul Jabbar and another vs the State reported in 2019 SCMR P-129.

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The reasons for above referred conclusion are as follows: Precisely, accused facing trial was found in possession of 7000 grams Charas Gardha and was challaned u/s 9c CNSA.

It is pertinent to mention here that co-accused Mst.Kiran Bhatti during the course of trial absented herself. Thus, she was proceeded u/s 512 Cr.PC and prosecution was allowed to adduce its evidence in her absentia.

Provisions of section 265c Cr.PC complied with and charge under Section 9-c CNSA was framed on 26.10.2018 which is as follows:

"That on 27.11.2017 at about 1600 hours at Main Pindi Kohat road, at Bilitang Chowk falling within the criminal jurisdiction of PS Bilitang, Kohat, and the local police was on Nakabandi, in the meanwhile, a motorcar No.ADC-448/Islamabad came which was driven by you accused Adnan Khan and your absconding co-accused Kiran Bhatti seated on rear seat. On checking the said motorcar the local police recovered two bags blue in color, concealed beneath the front to seat of the said motorcar, one bag containing four packets of ATTESTENTA BE TOUR Charas Gardha while the second bag containing three packets of

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Gardha, each packet weighing 1000/1000 grams (total 7000 grams Thus you committed an offence punishable u/s 9-c CNSA."

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Since accused facing trial pleaded not guilty and claimed trial, therefore prosecution was afforded full opportunity to prove their case and produced the following witnesses. Gist whereof is as follows. **PW.1 Naveed Khan ASI**, is marginal witness to recovery memo Ex.PC. **PW.2 Iqbal Khan SHO**, reiterated the same story as narrated in Murasila Ex.PA/1.

PW.3 Amanullah Khan SI, investigated the instant case.

**PW.4 Shah Muhammad No.25**, received the case property and kept the same in safe custody of PS Malkhana.

PW.5 Ubaid Khan s/o Yaqoob Khan, stated that he gave the motorcar No.ADC-448/Islamabad to accused Adnan on 27.11.2017 on rent. PW.6 Noor Khan HC, chalked out case FIR Ex.PA.

**PW.7 Khan Saeed Naib Court,** is marginal witness to recovery memo Ex.PW.6/1.

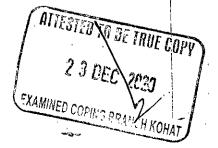
Prosecution closed its evidence on 29.09.2020 and statement of accused u/s 342/364 Cr.PC, 1898 was recorded on 5.10.2020. In a question No.11<sup>1</sup>, the accused facing trial replied as follows:

"I am totally innocent and falsely charged in the instant case by the local police to show their efficiency to their high ups. There is no independent and impartial witness against me."

Since accused refused to be examined on oath and production of defence evidence, therefore arguments of both the parties heard on 02.12.2020.

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- Arguments heard and record perused.



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Learned APP Mr.Ibrar Khan for State argued that narcotics we recovered from the motorcar which was in exclusive control of the accused facing trial being its driver. He further argued that PWs are consistent on main points of recovery and other proceeding in the instant case. That FSL report Ex.PZ is in positive. He next argued that safe custody and safe transit of the narcotics is proved through cogent and reliable evidence. He next argued that there is no ill-will or malafide on part of the complainant/SHO and PWs to falsely implicate the accused facing trial in the instant case. While summing up the case, he submitted that the prosecution has proved its case against the accused facing trial and accused may be convicted and sentenced to the maximum punishment provided by the law.

On the other hand, Syed Fawad Hussain Advocate, learned defence counsel contended that accused facing trial is innocent and he has been falsely implicated in the instant case complainant/SHO just to show efficiency to his highups by making. false and progress cases. Next argued that there is no independent and impartial witness of the recovery proceedings to prove the stance of prosecution/complainant. Next argued that the recovery was not effected in the mode and manner as mentioned in FIR. According to him, PWs to the alleged recovery are police officials and they have contradicted each other on material points. Next argued that prosecution has failed to prove the safe custody and safe transit of the recovered alleged contraband. While summing up the case, it was submitted that the prosecution has failed to prove its case against the accused facing trial beyond the shadow of doubt and that the accused facing trial may be acquitted of the charge leveled against him.

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Keeping in view the nature of the case, the point determination are as:

#### Points for determination:

- Whether recovery of 7000 grams Charas Gardha from accused facing trial was proved by prosecution?
- ii. Whether safe custody and safe transmission of samples was established against accused facing trial?
- iii. Whether the recovered contraband was proved as "Charas Gardha"?
- iv. Whether Call Detail Record (CDR) was proved to be collected in accordance with law and its value?
- v. Whether the motorcar No.ADC-448/Islamabad is liable to confiscation?
- vi. Whether the accused found guilty, if so, the sentence? My findings for points of determination:

Perusal of the record revealed that there was prior information regarding the smuggling/transportation of narcotics, which necessitated the association of private witness (s) to lend support to the genuineness of the recovery proceedings, if not so, there should have some plausible explanation for such failure on part of prosecution.

The association of private or independent witness (s) is conspicuously missing from the available record. Similarly, I scanned the statement of Iqbal Khan SHO (PW.2), there is no explanation, much less plausible, in respect of such failure. This material deficiency on part of prosecution, at the very bud makes the genuineness of recovery proceedings under the cloud of doubt.

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Secondly, another factor conspicuous from available record that no contraband was recovered from the personal possession of accused facing trial and nor on his pointation from motorcar No.ADC-448/Islamabad.

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No doubt, accused facing trial being driver of the vehicle is presumed to have control and knowledge of material, including narcotics, found in the vehicle, however this presumption is not sufficient to conclusively determine the conscious knowledge of accused facing trial regarding the presence of narcotics in the vehicle. In other words, the prosecution was duty bound to prove the conscious knowledge of accused facing trial regarding the presence of narcotics in the vehicle through cogent and reliable evidence.

The criminal intent is always consider as essential ingredient of every offence. In case in hand the conscious knowledge of accused facing trial is the basic ingredient to be proved through cogent evidence by prosecution in order to have conviction of accused facing trial.

In these circumstances, the first question before me that how Iqbal Khan SHO (PW.2) came into knowledge regarding the existence of narcotics secretly placed in the vehicle. I scanned the entire record but unable to find any satisfactory answer to this fundamental query.

Thirdly, complainant/SHO Iqbal Khan (PW.2) in his cross examination has categorically admitted that the Murasila (Ex.PA/1) was drafted on his dictation by his gunner, whose name remained in mystery. Such gunner was never produced before the court during trial of the case. This factor makes the preparation of Murasila (Ex.PA/1) on the spot highly doubtful. Besides, being suggestive of

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the fact that the recovery proceedings might have been conducted inside the PS.

This inference is further strengthened by DD entry (Ex.PW.8/7) whereby, the names of Naveed Khan ASI (PW.1) as well as abandoned marginal witness Bashir Hussain was not mentioned.

Fourthly, I will discuss the statements of SHO/complainant Iqbal Khan (PW.2) and recovery witness Naveed Khan ASI (PW.1) regarding the truthfulness of these witness as well as genuineness of recovery proceedings.

At this stage, it is pertinent to mention that the status of these witnesses is not only that of recovery and marginal witness respectively but are just like the eyewitness (s) of the occurrence. Thus, principles which govern the appreciation of an eyewitness (s), do apply to the appreciation to the witnesses mentioned above.

The prime factor before me is, thus, whether complainant/SHO Iqbal Khan (PW.2) and Naveed Khan ASI (PW.1) are truthful and trustworthy witness.

Perusal of the record shows that Naveed Khan ASI (PW.1) in his cross examination stated that,

"The case property was in shape of slab...Some of the packets are powder and some are in a soft shape..."

On the other hand, Iqbal Khan SHO/complainant (PW.2) in his cross examination stated that,

"The contraband was in soft slab shape ... "

These extracts from the cross examinations of complainant/SHO Iqbal Khan (PW.2) and Naveed Khan ASI (PW.1)

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convinced me that both these witnesses contradicts each other material aspect of the case.

Thus, both these witnesses namely complainant/SHO Iqbal Khan (PW.2) and Naveed Khan ASI (PW.1) are not truthful and worth reliable witnesses, which creates serious doubt regarding the actual mode and manner of the recovery and its genuineness.

Fifthly, accused facing is not the registered owner of the motorcar No.ADC-448/Islamabad. The incriminating material against accused facing trial is rent deed (Ex.PW.4/1) in support whereof one Obaid Khan was examined as (PW.5) i.e. owner of Rent A Car running at District Kohat by the name of "Shan Rent A Car".

During cross examination of Obaid Khan (PW.5) it is admitted that his 161 Cr.PC statement was recorded on 5.2.2018 i.e. after about 70 days of registration of the case. Such kind of delayed statement and that too without any plausible explanation makes the worth of Obaid Khan (PW.5) less. In the same manner, the genuineness of rent deed (Ex.PW.4/1) also becomes highly doubtful. On this score alone, I am not able to rely upon rent deed (Ex.PW.4/1). The prosecution is, thus, failed to prove that how vehicle No. ADC-448/Islamabad came into hands of accused facing trial through cogent and reliable evidence.

Lastly, in case in hand 7000 grams narcotics was recovered contained in seven packets and samples of 5/5 grams each were separated from each packet. In such like scenario, the prosecution was duty bound to connect each sample with its origin. Perusal of statements of complainant/SHO Iqbal Khan (PW.2) and one of the marginal witness examined as PW.1, namely Naveed Khan ASI would reveal that was not marked with distinct identification to connect the

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same with its origin. Same deficiencies exist in the contents Murasila (Ex.PA/1) as well as recovery memo (PC). This is a materia lacuna on part of prosecution. In this respect, I am guided by the cases of Zafar Iqbal reported in 2019 YLR P-F916 (Lahore High Court), Safdar Iqbal reported in 2019 MLD P-1518 (Lahore) and Muhammad Yaseen reported in 2020 P.Cr.L.J P-1295 (Lahore) wherein such kind of recovery was disbelieved and discarded.

Thus, point No.i is decided in negative.

Prosecution was duty bound to prove the safe custody and safe transit of the recovered narcotics. In this respect, I am guided by the cases of Amjid Ali reported in 2012 SCMR P-577, Ikramullah reported in 2015 SCMR P-1002, Muhammad Arshad Mughal reported in 2019 YLR Page-925 and "Abdul Ghani and others Vs. the State and others (2019 SCMR 608).

For proper understanding, it is necessary to reproduce some portion from the case of **Abdul Ghani** (Supra) as:

"It has already been clarified by this Court in the cases of the State through Regional Director ANT v Imam Bakhsh and others (2018 SCMR 2039), Ikramullah and others v. The state (2015 SCMR 1002) and Amjad Ali v The State (2012 SCMR 577) that in a case where safe custody of the recovered substance or safe transmission of samples of the recovered substance is not proved by the prosecution through independent evidence there it cannot be concluded that the prosecution had succeeded in establishing its case against the appellants beyond reasonable doubt. The case in hand suffers from the same legal defects. This appeal is, therefore, allowed, the convictions and sentences of the appellants recorded and upheld by the courts below are set aside and

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they are acquitted of the charge by extending the benefit of doub them. They shall be released from the jail forthwith if not required to be detained in connection with any other case."

Shah Muhammad No.25 (PW.4), the transmitter, in his cross examination stated that,

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"It is correct that my 161 Cr.PC statement was recorded on 25.12.2017 whereas Ex.PX is of 29.11.2017. It is correct that there is no entry of daily diary regarding my departure from the PS to the FSL Peshawar as well as entry of arrival from FSL Peshawar to PS."

Thus the transmitter i.e. Shah Muhammad No.25 (PW.4) came into possession of samples on 29.11.2017.

Noor Khan HC (PW.6) Moharrir of the concerned PS, in his cross examination stated that,

"It is correct that samples were handed over to me on 29.11.2017 by Investigating Officer Amanullah Khan SI. It is correct that entry of register No.19 is not available on case file."

These extracts of Shah Muhammad No.24 (PW.4) and Noor Khan HC (PW.6) convinced me that the representative samples were handed over by complainant/SHO Iqbal Khan (PW.2) to Amanullah Investigating Officer of the case (PW.3) on the date of recovery i.e. 27.11.2017. Similarly, the absence/non-production of entry of register No.19 (register kept at concerned PS for safe custody of case property) further strengthened the suggestion that the representative samples never remained in the Malkhana of the concerned PS but was remained in possession of Amanullah SI Retired Investigating Officer

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(PW.3).

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Amanullah SI Retired (PW.3), Investigating Officer of the case, his cross examination categorically admitted the possession of representative in his custody till its dispatch for FSL examination on 29.11.2017. Amanullah SI Retired (PW.3), Investigating Officer of the case being prosecution witness and his custody by no stretch of imagination can be considered as safe custody.

By now, it is well settled by Superior Courts that whenever a law provided a thing to be done in particular manner such thing should be done in that manner.

The custody of representative samples with Amanullah SI Retired (PW.3), Investigating Officer of the case from 27.11.2017 till 29.11.2017 amounts to illegality and materially impaired the safe custody of representative samples. In this view of the matter, the prosecution has miserably failed to prove the safe custody of representative samples.

### Thus, point No.ii is decided in negative.

By now it is well settled by Superior Courts that FSL report shall contain all the details regarding the tests applied and protocols followed while preparing such report.

These are (i) tests and analysis of the alleged drug (ii) the results of the test(s) carried out and (iii) the test protocols applied to carry out these tests.

In absence of such mandatory requirements, the FSL report is held inconsequential and in violation of mandatory provision of Rule-6 of Control of Narcotics Substances (Government Analyst) Rules, 2001. In this respect, reliance is placed upon the cases of **Imam Bakhsh reported in 2018 SCMR P-2039, the case of Muhammad** 

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Arshid Mughal reported in 2019 YLR P-925 and Ikramulla reported in SCMR 2015 P-1002, Khair ul Bashar 2019 SCMR P-930, Qaiser Javed reported in PLD 2020 SC P-57, Muhammad Boota reported in 2020 SCMR P-196, Aman ul Haq reported in 2020 P.Cr.L.J P-1263 (Peshawar High Court) and Muhammad Yaseen reported in 2020 P.Cr.L.J P-1295 (Lahore).

FSL report Ex.PZ is blank and not prepared in the prescribed form as per the above-mentioned protocols. Thus, the allegedly recovered drug was not proved to be Charas. Hence the FSL report Ex.PZ does not quality the above referred mandatory standards.

Another material lacuna which is transpired from perusal of FSL report Ex.PZ is that no chemical analysis etc were conducted in respect of each sample separately. No doubt, seven samples of 5/5° grams each were received by FSL for examination. The chemical examiner was duty bound to conduct analysis of each sample separately and mention the results alongwith protocols accordingly. This mandatory requirement is substantially in FSL report Ex.PZ. At this stage, it is relevant to reproduce a para from the case of **Ameer Zeb reported in PLD 2012 SC P-380 of the Hon'ble Supreme Court** of Pakistan, as:

"As is evident from the resume of the precedent cases mentioned above, the trend of authority of this Court leans overwhelmingly in favour of obtaining and sending for chemical analysis a <u>separate</u> <u>sample of every separate packet/cake/slab of the substance allegedly</u> <u>recovered from an accused person's possession</u> and for its <u>separate</u> <u>analysis</u> by the Chemical Examiner in order to confirm and establish **Allowing Of THUE Cover** and doubt that the entire quantity of the allegedly recovered **Allowing DEC 2020**  13 | <sup>o</sup> a g o State, Ve Adum Khanete U/S 9c CNSA

substance was indeed narcotic substance. It is our considered opinion that a sample taken of a recovered substance must be a representative sample of the entire substance recovered and if no sample is taken from any particular packet/cake/slab or if different samples taken from different packets/cakes/slabs are not kept separately for their separate analysis by the Chemical Examiner then the sample would not be a representative sample and it would be unsafe to rely on the mere word of mouth of the prosecution witnesses regarding the substance of which no sample has been taken or tested being narcotic substance." (Underlining is mine).

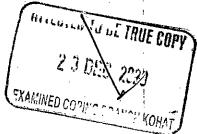
The same principles of chemical analysis of each sample separately were also followed in recent cases of Zafar Iqbal reported in 2019 YLR P-1916 (Lahore High Court), Safdur Iqbal reported in 2019 MLD P-1518 (Lahore) and Muhammad Yaseen reported in 2020 P.Cr.L.J P-1295 (Lahore).

This deficiency makes the FSL report Ex.PZ as inconsequential. Thus, point No.iii is decided in negative.

Importantly, another piece of evidence is CDR whereupon the prosecution relies the most. However, the following serious infirmities are found:

i. Firstly, the prosecution was duty bound to have had received the CDR with an endorsement of the Cellular Company concerned having stamp and signature thereupon of the concerned authorized officer.

Secondly, while taking into possession the CDR, the same must be through a recovery memo with recovery witnesses and should have been associated a person from the



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concerned Cellular Company. But no such recovery memory and witnesses were associated by the prosecution.

- iii. Thirdly, there should have been a statement of the Representative of the Cellular Company to the effect of issuance and receipt of CDR. But no such evidence has been collected by the prosecution.
- iv. Fourthly, the CDR does not bear even a single signature of authorized officer of the concerned company.

v. Fifthly, there is no transcription/record pertaining to the conversation of the accused facing trial and without such transcript of the conversation, the CDR is not worth reliable.
vi. Sixthly, there is no proof of issuance of the SIM number in the name of accused facing trial and its use by the accused facing trial.

On the basis of above referred serious infirmities, I am convinced that the CDR is doubtful whether the same is generated by Investigation Officer himself or the same has been issued by the concerned Cellular Company. In this view of the matter, I am clear in my mind that CDR cannot be considered either substantive or corroborative piece of evidence in order to connect the accused facing trial with the commission of crime. Here I am guided by the cases of Azeem Khan reported in 2016 SCMR P-274, State vs Behram Khan reported in 2016 MLD P-63, Tariq Hussain reported in 2018 MLD P-1573 and Kaleemullah reported in 2018 YLR P-2363.

### Thus, point No.iv is decided in negative.

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Now, coming towards vehicle in case in hand, it would be appropriate to refer to the two relevant provisions of the CNSA Act, 15 | Page State - Vs Adnan Khan etc U/S 9c CNSA

1997, namely, the proviso of section 74 of the Act ibid, deals with the temporary custody while section 32 provides for confiscation or otherwise of such vehicle at the conclusion of the trial. The present case involves the latter statutory provisions of law which for the sake of ready reference is reproduced as under:

"S. 32. Articles connected with narcotics.--- (1) Whenever an offence has been committed which is punishable under this Act, the narcotics drug, psychotropic substance or controlled substance, material, apparatus and utensils in respect of which or by means of which, such offence has been committed shall be liable to confiscation: (2) Any narcotic drug, psychotropic substance or controlled substance lawfully imported, transported, manufactured, possessed, or sold alongwith, or in addition to, any narcotics drug, psychotropic substance or controlled substance which is liable to confiscation (1) and the receptacles or packages, and the vehicles, vessels and other conveyance used in carrying such drugs and substances shall likewise be liable to confiscation:

Provided that no vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that the owner thereof knew that the officer was being, or was to be committed.

Section 32 of the Act, 1997 deals with the final confiscation, or release of the vehicle to the owner, after the conclusion of the trial. If he had proved that he had no knowledge about the offence, which allegedly had been committed in the vehicle. Not only that an innocent owner of the vehicle entitled to the return of the vehicle but the burden has been placed on the prosecution to establish that the owner had the knowledge of his vehicle being used in the crime. As far as the

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question of knowledge is concerned, undisputedly it is required to proved by leading evidence to form such opinion after having take into, consideration the facts of the case. Reliance is placed on the case of **Allah Ditta reported in 2010 SCMR 1181**.

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I will apply above referred criteria to the facts and circumstances of the case in hand.

Admittedly, the recovered narcotics was not concealed in its any cavity specially designed for the purpose of concealing the same. Admittedly the vehicle was not in the ownership of the accused and the same was just driven by accused facing trial. Admittedly, the owner of the vehicle has not been challaned to court to stand trial as co-accused. It is nowhere either alleged or proved on record that the owner of the vehicle had any direct or indirect connection with the commission of offence under trial and in this back drop the vehicle is not liable to be confiscated u/s 32 and 33 of CNSA while holding this I glean guidance from the case laws Muhammad Sarwar reported in 2005 P.Cr.L.J 1005 (Federal Shariat Court), Bakhtiar reported in 2009 MLD 131 (Peshawar), Haroon ur Rasheed reported in 2016 P.Cr.LJ 56 (Lahore), Badshah Zada reported in 2019 P.Cr.L.J P-1341 (Lahore) and is not liable to confiscation and the vehicle be handed over to its legitimate and registered owner of the vehicle. It is pertinent to mention here that motorcar No. ADC-448/Islamabad has already been returned to its lawful and registered owner. Thus, surcties of the bond are discharged. A disposal of the case property to the above effect be made after the expiry of the period of revision or appeal if any.

Thus, point No.v is decided in negative.

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In view of decisions on points for determination, accused fact trial is not guilty and exercising powers u/s 265-H(1) Cr.PC, 1898, accused Adnan Khan s/o Ramzan Khan is acquitted of the charge leveled against him. Accused is on bail, his sureties are discharged from the liability of bail bonds.

# Thus, point No.vi is decided in negative.

So far as case of co-accused Mst.Kiran Bhatti d/o Saleem Bhatti r/o Garden Colony Kohat is concerned. Prima facie, a strong case exist against her. She is, therefore declared as proclaimed offender. Perpetual non-bailable warrant of arrest be issued against her. In this respect, the DEO and DPO Kohat be intimated to enlist her name in the relevant register.

Case property be destroyed subject to appeal/revision. File be consigned to the Record Room after its proper compilation and completion.

## ANNOUNCED

02.12.2020

CERTIFICATE:

### (ABID ZAMAN) Addl: Sessions Judge-I/JSC, Kohat

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It is hereby certified that this judgment consists of -17- pages. I have read each page, corrected and signed.

Addl: Sessions Judge-I/JSC, Kohat

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### KOHAT REGION

### ORDER.

This order will dispose of an appeal preferred by Ex-Constable Aduan Khan No. 816 of Operation Staff Kohat, against the punishment order, passed by DPO Kohat vide OB No. 1373, dated 14.12.2018 whereby he was awarded major punishment of dismissal from service on the following allegations:-

The appellant while posted at Police Lines Kohat absented himself from official duty vide DD No. 37, dated 01.10.2018 till the date of his dismissal i.e. 14.12.2018.
 That he was found involved in narcotics case vide FIR No. 737, dated 07.10.2018 u/s 9C-CNSA PS MRS, Kohat.

3. That previously, he alongwith a lady while trafficking narcotics in Motorcar bearing No. ADC-448 Islamabad was apprehended by SHO PS Billitang and recovered Charas weighting 07 KG from the Motorcar driven by him.

3. Previously he was awarded major punishment of dismissal from service due to his absence of 60 days from lawful duty: however, punishment was modified into forfeiture of one year approved service by the then RPO / Kohat.

Comments as well as relevant record were requisitioned from DPO Kohat. The appellant was also heard in person in Orderly Room, held in this office on 18.02.2021 wherein he failed to advance any plausible explanation.

Record gone through, which indicates that the appellant being a member of disciplined force was trafficking narcotics and caught red handed by the Police which tarnished the image of Police.

Above in view, the undersigned reached to the conclusion that the allegations leveled against the appellant are fully proved duly established by the E.O in his findings. Hence, the impugned order passed by DPO Kohat is justified, upheld and the appeal hadly time-barred about more that 02-years is hereby rejected.

Order Announced 18.02.2021

1491 TATA P.M

(TAYYAB HAFEEZ) TSP Region Police Officer.

No. 2462-63 /EC, dated Kohat the 25/2 /2021.

Copy to District Police Officer. Kohat for information and necessary action w/r to his office Memo: No. 1827/LB. dated 03.02.2021. His Service Record & Fauji Missal is returned herewith.

(TAYYAB HAFEEZ) PSP

weitin Police Officer.

ed by

بعدالت بپناور مانی کورٹ بپناور

مقده

دعوكي

جرم

بمقام

وكالت نامه

BC No Sign

الأفكيه ومنجانيه فركان فكركبنام حمكرم باعث تحريآ نكه

مقد مه مندرجه عنوان بالا میں اپنی طرف سے واسط پیروی و جواب دہی وکل کا روائی متعلقہ آن مقام \_\_\_\_\_\_ بیش ایم \_\_\_\_\_ کیلے \_\_\_ انسی ف علی ایٹر و کیلی ۔\_\_\_\_ مقرر کر کے اقر ارکیا جاتا ہے ۔ کہ وکیل موصوف کو مقد مہ کی کل کا روائی کا کمل اختیا رہوگا۔ نیز وکیل صاحب کو عرضی دعویٰ داخل کرنے ، جواب دعو کی ، اپیل ، نظر ثانی کا بھی اختیا رحاصل ہوگا نیز وکیل صاحب بصورت ڈگری برخلاف من اختیا رد ہندہ اپیل ، نظر ثانی کا بھی اختیا رحاصل ہوگا نیز وکیل صاحب بصورت ڈگری برخلاف من اختیا رد ہندہ اپیل ، نظر ثانی کا بھی اختیا رحاصل ہوگا تا عد الت انتہا یعنی سریم کو رث آف پا کستان دائر کر سکتا ہے و کیل موصوف بصورت عدم پیرو کی کا روائی کیل فرفہ یا ڈگری کیل مقدر و کی معرف کی موصوف بصورت عدم پیرو کی کا روائی کیل فرفہ یا ڈگری کیل مورف آف پا کستان دائر کر سکتا ہے اور و کیل موصوف میں حجانب مقد مہ متذکرہ کی کل یا جزوی کا روائی کیلئے اپنی بجائے دیگر و کیل میں اختیا رحاصل ہو کا کو تھی وہ جملہ اختیا رحاصل ہو نگے جو کہ و کیل میں وصولی کر سکتا گا اور مزید ہے کہ و کیل موصوف کو تھی وہ جملہ اختیا رحاصل ہو نگے جو کہ و کیل میں وصولی کر سکتا اور کیل موصوف میں رے جانب کو ہی وہ جملہ اختیا رحاصل ہو نگے جو کہ و کیل موصوف کو صل کی اپنی موسوف میں کے کا رو یک کی پرداختہ منظور و قبول ہوگا لہذا میں نے و کیل موصوف کو حاصل ہیں بیکھا میں مال خاند ایک میں اختیا ہو کہ کیل موسوف میں کر کی کا میں میں ہے کہ موسوف ہوں اختہ منظور و قبول ہوگا لہذا میں نے و کیل موصوف کو حاصل ہیں بیکھا سی صورت میں تما میا خت ہ مہ میں کہ موسوں کی محکم ہوں کہ موسوف کو مال ہیں محکم میں موسوں کر کر کیا ہے ہوں ہو کہ موسوف کر کر کی کہ موسوف کر کر کیا ہے ہوں ہو کہ موسوف کر کر کہا ہے ہوں ہوگا لین ایک ہو ہو کہ کہ مع میں موسوں کہ موصوف کہ موسوں کر کے اور کی ہو کہ کہ موسوں کر کہ کہ کہ موسوف کر کہ کہ موسوں کر کہ کہ موسوں کہ کہ موسول ہوں ہو کہ کہ موسوں کر کے اور کہ کہ ہو ہو کہ ہو ہو کہ کہ موسوں کر کے اور کر کہ کہ کہ ہو کہ ہم ہو ہو کہ ہو ہو کہ کہ موسوں کہ کہ کہ کہ موسوں کہ کہ موسوں کہ ہو ہو ہو کہ ہو ہو ہو کہ ہو ہو ہو کہ ہو ہو کہ ہو ہو ہو ہو کہ ہو ہو ہو ہو کہ ہو ہو کہ ہو ہو ہو کہ ہو ہو ہو کہ ہو ہو ہو کہ ہو ہو ہو ہو ہ

کے کئے منظور ہے۔



ر. میکند

### BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

## Service Appeal No. 5232/2021 Adnan Khan

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Ex-Constable No. 816, District Kohat

## ..... Appellant

Versus

# Regional Police Officer, Kohat & other

..... Respondents

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Deponent

#### BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 5232/2021 Adnan Khan Ex-Constable No. 816, District Kohat

## Versus

Regional Police Officer, Kohat & other

...... Respondents

. Appellant

### PARAWISE COMMENTS BY RESPONDENTS.

### Respectfully Sheweth:-Preliminary Objections:-

- i. That the appellant has got no cause of action.
- ii. The appellant has got no locus standi to file the instant appeal.
- iii. That the appeal is bad for misjoinder and nonjoinder of necessary parties.
- iv. That the appellant is estopped to file the instant appeal for his own act.
- v. That the appeal is bad in eyes of law and not maintainable.
- vi. That the appellant has not approached the honorable Tribunal with clean hands.
- vii. That revision petition of appellant has been rejected by Inspector General of Police, Khyber Pakhtunkhwa, who is not impleaded as respondent, nor the order is questioned. Copy of order is annexure **A**.
- viii. That the appeal is barred by law & limitation.

### Facts :- .

- 1. The appellant was employee of Police department, but he has not good service record.
- 2. The appellant was being member of a disciplined force indulged himself in immoral activities of transportation of narcotics. He was charged in case FIR No. 737 dated 07.10.2018 u/s 9 C CNSA Police station MRS Kohat. Similarly, the appellant alongwith a lady while trafficking narcotics in a motorcar No. ADC 448 Islamabad was apprehended by local Police and the accused were charged vide FIR No. 615 dated 27.10.2017 u/s 9C CNSA PS Bilitang Kohat: Therefore, departmental proceedings were initiated against the appellant under the relevant rules by respondent No. 2. He was charge sheeted of which he replied but found unsatisfactory. Copy of FIRs are annexure B & B -1.

Incorrect, the appellant was associated with the inquiry officer during the course of inquiry. The relevant witnesses were examined in presence of appellant he was afforded opportunity of cross examination of witnesses, which he did. Copies of statements are **annexure C**.

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- 4. Incorrect, final show cause notice was served upon the appellant through his home address, vide Letter No. 12076/PA dated 20.11.2018 which was received by him with his signature, but the accused deliberately failed to submit reply to the final show cause notice. Copy of letter & show cause notice with signature of appellant as token of receipt is **annexure D & D-1**.
- 5. Besides service of final show cause notice, the appellant was called for personal hearing by respondent No. 2, but he failed to appear before the aforesaid respondent. Hence, on completion of all codal formalities, the charges / allegations leveled against the appellant were proved beyond any shadow of doubt and he was a stigma on a disciplined department, damaged the image of Police, therefore, there was no other option accept his dismissal from service in the best interest of department. Copy of a speaking and self-explanatory order passed by respondent No. 2 is **annexure E**.
- 6. The appellant filed departmental appeal after a willful unexplained delay of about 03 years, which was found devoid of merit, barred by limitation and rightly rejected by respondent No. 1. Copy of order is **annexure F**.

### Grounds:-

C.

3.

- A. Incorrect, the appellant was involved in heinous immoral criminal act i.e involvement in narcotics. Therefore, he was proceeded with departmentally by respondent No. 2 under the relevant rules. There was sufficient evidence collected during the course of inquiry regarding his involvement which was established against him. Furthermore, it is a well principle that departmental-and criminal proceedings are distinct in nature, can run side by side and opinion of one authority is not binding on the other. While the appellant has been held guilty of the charges / allegations leveled against him in departmental proceedings. It is added that co-accused of appellant charge in FIR No. 615/2017 has been declared proclaimed offender by the trial court while trial of case FIR No. 737/2018 has yet to be concluded and there is probability of his conviction in former case. Hence, the appellant can't be stated as innocent.
- B. Each and every case has its own facts and circumstances. Departmental proceedings were initiated against the appellant by respondent No. 2 and it is mandatory for finalization within stipulated period as prescribed in the relevant rules.
  - The appellant was employee of Police, therefore, he was proceeded with departmentally under the prescribed Khyber Pakhtunkhwa Police Rules 1975 amended 2014.

Incorrect, the inquiry officer has conducted proceedings in depth and followed the relevant fulles.

1.

P-3

- Incorrect, the appellant was not treated as "Audi altram Partem". He was associated with the inquiry proceedings, afforded opportunity of cross examination as annexure B, served with final show cause notice, but did not file reply, nor appear before the respondent No. 2 in orderly room. The appellant was also hear in person by respondent No. 1 during his departmental appeal, but the appellant failed to advance any plausible explanation to his gross misconduct.
- F. Incorrect, all codal formalities were fulfilled during the course of departmental proceedings.
- G. Incorrect, E & D Rules 2011 are not applicable to the appellant, however, the respondent No. 2 had carefully gone through the inquiry file and reached to the conclusion that the charges / allegations leveled against the appellant have been proved beyond any shadow of doubt.
- H. Incorrect, reply is submitted in para No. E.
- I. Incorrect, the appellant was a member of a disciplined department, he earned bad name to the department, caused embarrassment and damaged image of the department. Furthermore, he was a stigma on the Police department.
- J. Incorrect, the appellant is still dismissed from service against which the appellant approached this Tribunal.
- K. Incorrect, the appellant was proceeded with departmentally under the relevant rules and all codal formalities were fulfilled. The appellant was dismissed from service for his own act and not entitled for reinstatement in service including back benefits.
- L. Incorrect, the respondents have passed speaking orders based on factsmaterial and evidence available on record.
- M. The respondents may also be allowed to advance other grounds during the course of arguments.

Prayer --

D. .

E.

In view of the above, it is prayed that the appeal contrary to facts, law & rules, devoid of merits and not maintainable may graciously be dismissed with costs.

District Police Officer.

Kenat (Respondent No. 2)

Regional Defice Officer, Kohat (Respondent No. 1)

#### BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

### Service Appeal No. 5232/2021 Adnan Khan Ex-Constable No. 816, District Kohat

..... Appellant

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Vers<u>us</u>

Regional Police Officer, Kohat & other

..... Respondents

### **COUNTER AFFIDAVIT**

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.

District Police Officer, Kohat (Respondent No. 2)

Regional Police Officer,

Kohat (Respondent No. 1)

2-6 كرن. ٥-٦٢/١٦/٠ Annex B 11- 130 TTA تبكرد جرل بوليس موم مرودند) فمردى ابتدابي اطلاعي ركورط زانع. ۲-38301-3683340-4 1003575518094 ( دانین) ابترائ اطلاع نسبت مرم تابل دست اندازی بولیس دادر مرز در دند مه الجموع منا بطر و بداری mRs. st مبيع كمرجان تار الد ت وقد مر الم را من مد: 11 المجر 737 413.50 01/10 01/10 113:3 مارت دومت رادر <u>مارح رون</u> 14203-5237394-1 تام دسکونت الملاع دمیندو دمتینیت. 0336-8251101 العرار) الروز) وملك ر میت جرم (مودنو) حال *اگر کچو باگیا ہو* (0), V2(1), 3200) 9rensa مبائح وتوعرنا ملهمقائزس الدمينت 41. ج م از از مقصد جان دا قد مسالمان ز<u>م الم</u> ی دانده سلطام در الوم مسلطام زر محد در در مرم مدینه ما در منیس شرود. مسل مسلی طرح در دان . نا) وسویت طرافی کارز در عبر الزایق ایم : صرف کمی مشاور - دف عدینان دکد نو مامن طفال صل کاردالی بونغیش کے متعلق کا کم اگراطسلاع در بھ كريص توقف مواموتو وجربيان كرو-- Gibir Parania مقارد م روائلی که ارتبا دونت يد ت بل في إطلاع يتحدد وي كور الك فترمري مواسم محاس السوار الون المرد لا 375 حرصول سور درم ترمل 2 محدرت الداع مل كم مسى لدمان ولد لمولى من من العراب ولد لمولى من المراجد جوند ويومستوارث منستهات انمقتسم فيوس ومنوة ولااخ عبد من ما لاكر ا در لدمس بسمال من فتدف الحال لان فى تشورت اروليم مسمعل وماهج الدورس جي بسام مالا يرماني حدار مس مستسات فرود م ١٠ دور يو ر صرمین در مسروس مومرد ما در در دراخت دم نامیان) دانده ساما، دهتر در الورانس کا دن مراس مرديدة فعل على خليصا والذابي دورمي مد أنبان تن وجتر عد الزون ملم حافي كمسيا متيا در دراية . ير ي مد مال كر م اير ومك كنة كان فرود مار جنس در مال در المرول ميد جرس زر و و عامال و فلود ر سے قرور سیرتن میں میں لیے سوح مربر دیار صکورتی بر مذراح دیا لت معدد الرام من حد 133 الرو الملي، والك يعدد مس من من الجزام مدون قدار عدم المرو المدو ساد حلم مديدا ٥٩ حدة ورا عليده وطود ورا سوت مند مادم فر في سرمبر و ما مار الم عالم عالم و المردان اسما معالم المركب في جري الملق وور في المركب مركب المركب والا ترك المركب والله ترك المركب والله المركب والله الم د مسورت مرصب خابط ترم ما و در عبر مدمان ما ترم والارم مراسم مدم الما مراس م الموت - ومقوط المراجى العمد (المراب المراب في المحاسم وفي المحالية 

P-7 مار) انبکوجرل پیلی موبر ورد) برای ابتدابي اطلاعي ركوريط is ExpA ( فائين) ابترابي اطلاع نسبت مجرم قابل دست الدارى بوليس رزرا مترون در دفعه ٥٢ المجموع منا يطرفو جدارى متسابة ولجي تعك مبنه كمطط تاريخ دونت وتوع 11 تاريخ دونت وتوع 11 515 7 ß <u>F Hive</u>  $\neg$ تاريخ ووقت ركور في <u>11 وقق</u> <u>مداما: مالدكى برحز 1/ 2 وقد</u> <u> 516,40</u> 112-01-039165-6-7 333-9657745 5HO (10) نام وسكونت اطلاع دبهنو ومتغيث. ۲ مختفر مغيت جرم (موردنو) حال اگرکچو ليا گيا ہو מסד גודפתיוול ٣ 911NSA المرآهدة) بالح وقوع فاصل خاد سے ادر میت ۲ میں زرمی کو جان روٹر ملی ندا 14301-8638712-3 نا وسکونت ملزم رو <u>عدمال جان و م</u> مضان خان مكرمين جوك علرسيو مركز الم مرين المحرك علرسيو َ هُ كاردوالي تجريفيش كمح متعلق كومي أكراطسلاع درب 0.335 1988384 كري مين توقف مو موتودج بيان كرو . مراسر اسل مرجر دما جارا مقاد مدروانگی کی تاریخ ووقت بیربیل زاگه ايت لأبي اطلاع يتحدد من كرويس ومت أتب الحرميري مراسله فوانب ا مال خال هاد يوست كنيل ساعد حسن ١٦٥٠ موصول يوكردر جوزل سع محرر تعادم الملاع الع مراج مردی توجان دون بر افرند می افرند می می دون ما دی مقاد مرس سرات از مسر طرس ملالقيم حوكمركار متماد ، سمنال ی حافظی اس اطلاع ایر س حصر فد درخان دد ۸ ، الشرحس عدر ساد مین 130 رو گرنفری ا<u>دل</u> ں سے متباح مالا ماکہ میری کرکے گاڈیوں سے حکم میں وضروف بھے وفيت مشعام بالاء ه انک سنیں مورد نبر<u>ADC44</u> آکرشکوک جان لوقدتم سائلا سك م ودانورسے دربانت مرا منا مام عدمان خان وار مصحان خان مىدان موك على من مورری منعل خبل توجات شرلا با مسل محل مب بر مردی سرا مام مح مرن عطى وخشرسك معلم مكنه مماردن مالعان توجات متراط، نبرود توجو ترما رسة بي انات ار مرد منى ليب بسركونى حضويد رشت المراحد مرمو مرا المترحو أرقادا يربى بالا العاد المرات الله ورنى الرآور كرات الما فول كالمزال الرائد المعامر س المكلا ن الرور و دمك كما شبب عدر الول خلارد مر کے لیے نه سی میں ارزال ار و کار و حسن ترور در مک ما شب همر اس الروا ، الرود بوکم ا ملی معلم کمیٹ ع کے میں بحر کمٹر کسیر مَن تحیز ہوئے 17 مار حکلہ لیتا با دیکی عضر پر ى 6965 كالمرجعة في بلا شك المعالمي المركم المالي مراكر لطور موت مارس مرج وسم وقع برميرة أسان في منهات معد كاوي ومكين كالبركر في فراد الم المسام وأركا دمري ماله ، مله سرو س خرومفه موسي جن كرم مرود كسال توم مكب حرم

بلا ما ما كر حسب جما لط كرفنا ركد مصحلة كرمنا رس لا طرم محلط بولس الدس سير الم ما المد واست الما حا ماسع جم اسلر سفرض "ما أى مقدم مدست الس ما حد حس والداد الم سع لد المرد 21 حفد الغرس حواله أدم الما ما حاد المقدم مع حاد المراري المعال حال (12) P-8 الفا م من مك مورج بي 75 كاردائي تعام آمد مراسله حرف عرف درجه ما مريز رم مي الما مر مرجر مي المريز مرجر مي الم ما كا حاك مركم لكل مرج مفرض للبش حواله الما الما الما كل مرجر الري حر Noorke He PS.BT .

27-11-17

و طرب الطلاع كذيبي الطلاع وبنو مرتب تمثل موجد بالس كاميم يا نشان لكا ياجام محكم الدر أصر تحرم كمان و انبلاكي الحلاع كالوستخط مطور تعديق بوكا. محروف الفاط ، مرم مرار شنائي سے بالمقاب فام برايك مدام يا متبر على الترتيب واسط بالندين عن قريكر يا وسط ايت ويا فافنان ان تجاد ، وزور المعايلية المعايلية .... .

SATO Mariel Miller America (19) Om 6/ Ul leb - 1 6/ 3 conor 23, 227 Lio Co 5 (11) 2 00 C velip 16 me all aller Olin for Air Cio ( 59/00 - 50 - inde ( 6.00 AIT & 165 ( 700/ 410 6 B Amin i & FIR bug (Min C) / / SECNISA ( 2), 11. 18 No file 2 2 pl in the de (By acesa) P, SI/KI SHO GT 31 · X · 18 40-11, else en conpril : Un 8 2 200 Aripin bub the ne esittoir ...? 12 w ai an and and 

& WULLAND I Con I Con 16 16 So thole Cose in 1016 ( a 200/5 -20301/au is 24 5 1/3 000 9 0 Cilling of a for and and 7 (10-2) 540. GT ALB AND 31/10-18 31/10-18 31/10-18 31/10-18 31/10-18 (E.) XXX [ £ 80 (ab contribution - 1 le los of Canil a . . ~ (w/ 6 0/ 10/ 65/ 60/ 65/ 65/ 65/ 26/ 26/ 2.5. ( Engelow - 2. 5296,200258 - U Rod Me My 311 Y. 6 6 / 6 12 (m ? ( Grandon - o - (+ Gran Char 6 - 2 2017 Durgelis 63 0 60 60 0 - 2 - 2 - 2

MRS is si citation in all in the Arsa 10. 27 de en 737 Europe g 7- ero c. Oprilu المان المانية في المان و والم سور على المام كا مطالع مو المان المانية في والم سور على المام كا مطالع مو in protivitie and it all and in sto and and ويمل فو زودة مستورات حرى وعيره علاق عند سے سال لافر اور مر مرد المرامدين بير وغير فتق لولن من مر عرب بسر كل 1300 الرامدين تو حرت جم الله الم الرقة موجود مسورات و تده مسلطا لر- الالالران موصية المرجم عزمان في كرفعار في ريش تعد مراسل ارسال فرق رفق وغذر رج رفس مور الموران نفتش فوق رابر ارسال فرق رفق وغذار بالمرابع الموالان فرد مع بالماب الم لقسر وقع فس السالر في فريت المال في الوالان فرد مع بالماب تلیند کے بنی ، بر تح مستورات تو مقرم هفرا من شرالت قرمے عربات في في المرجان دام محراس لو في منظور المرج صل وفي من أَسْرُولَتْ فَروران يرد فرمسور الصوران الفي مركم المسراف 18 5 At 311X, 311X, 15.

بردة طرجان في تشير مح عليم عرتان كوابيا دوست اورشريك معسرا با . اور علم ال (جرس) عران فى منس طا بر مرت لا إس يحواله مرا بيان كيا مرد وملزمان كو مرد مليدى سان بالما من ف ستر عدانت مرتح مكر عرانت خ سامغ المن سانات سے مخدف بومر عدانت نے صل تد عوال کار مقدمن شرح مدرم مرنان مسلوالد کانام رمقال معام سرا. لىلوف كأوفاني لتروع ترتيخ وبك حلوف كارواني ولوشى على ور جرم رتباع الحار مازم عدنان فو وس من الموركتشل لوس لا من توحاك س لسبات توالد مد معنع 10 س ير توريس واضر ها ف ىيدىت الآنى ماب سى عىورى غانت عرب مى مى سى مو خرو بزاس هس خالط مرغانت کرفتار تفور بر دو خرو بزا سرمرى وخافظت برمدم عرفان التي الكور عماه كابرترا ج . فقده من برتن ملز وان 2 موله ال غراب ى AC مصل مرجل فرج بر من مازمان مح أسمس وقوم من وقرع سے سلے وقوع کے وقعت رابط مرفر رس ، مدم عدمان في (BBA) في تاريخ مشي معنف 18 25 م تسرك موتر معنى 115 متر ع تراج تنفيت ا مشوقى مر موتر معنى ١٦٦ متر ع تراج تنفيت ا حسى جودي بالى حاك - حوداتى وسر مانع بولى -011 mps. 31-10-18 Docte My 31x118 BD (m)xxx 

Asi d'élisé ilisé A Che 27 - Restin Costo cuo حرف مر مام مرد المرود الم مر المرود الم مر الم المر الم الم المر الم الم الم المر الم المر الم سن معرف ومان سے اس میں کار کی میں کار کی میں زیر ا Cinal Color Color and and IN in a stand of the server of the server as the server as a server as a server as the 2 2 m 2 m Enil ( b p p ch ( b p b b p b) Lung a give in the show a go we N Jele (N) = ono the mining of a gradie Siller in P. Jud Sier Siller No eight for the mul 31-10-18 CINA (P) XX BIIN RISA 66,20 Rgo

(9,0)P-12 MRS. rus An Uby in بمان هيد ورخر 7/7 كو حراه ٥ ٨٤ ماحب ١ سر ١ لدين ، مر متر نفرن لا منظر الدر جن RF & ور شك . 2 بوت 12:30 مر ماعدا م بالاط فرازان فيصرفان واضح معم فيكون مزد PTS في برتبايا - بالرخام من م دو معريس موجود بار جنون ف HO کے بو بحث بیرا بن ما) ذاہرہ سلطام دختر فحوالوب سير ماؤى ستيس سمردر مناج ما نداى ما حرن دختر حبر الرزاق كم من حال آيم بي الماور شد 2 - قريم ى دران بر الله عالى تس والد موجد بار عان ص س ١١ ينب ورس وده حود باحر و ندر الوس في من لي ي

حسی سے . موجع بیر بزر سر خروس سراز و وزن کر بیر حصل کا مراب میں 130 گرا میں یہ برایک سالی میں سے <u>۱۰</u> گرا بغرض تحسر بر 25 اور تسا مالی میں بابال مسر بیسر کر برخ و د صفر دلولی میں تھی . فرد بر میں کر دور میں کر در سے فرد بر سے ج موجع سے بیر دو خواتین میڈ دو ماہر کو حس جما مل کو فیل دیل ج میل بیان ج

(Fam) Khan: Abj-17RS 31-10-18 - Eline 20 - Eline 20 - Fire - Cil-31-10-18 - Eline 20 سوال

جب آ - رواس نے قط ہم قدایا ہو وہاں ہر کون کون عط ؟ وبان مر دو فواشن ذرم مسلطان، حرف فوجو شن - جوملا معد فعد مراحر -13 جرار ومقارقين موال . دبان بر کونی ندی مورود دنی جار کس

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P-15 Annex-E

OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT Tel: 0922-9260116 Fax 9260125

### SHO PS Jungle Khel

No 1.2076 /PA Dated <u>20.11-</u>/2018.

Subject: -

### FINAL SHOW CAUSE NOTICE

Memo: – Enclosed please find herewith a Final Show Cause Notice (in duplicate) against Constable Adnan No. 816 to serve upon him on his home address. One copy of the same duly signed by him and return to this office for further necessary action. His home address is as under:

Constable Adnan No. 816 S/O Ramzan Khan R/O Medan Chowk Jungle Khel Mohallah Shinwari district Kohat.

> DISTRICT POLICE OFFICER, KOHAT 6/2 28///

P-16 Annex-D

## OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT

Tel: 0922-9260116 Fax 9260125

No 16855/PA dated Kohat the 13/11/2018

# FINAL SHOW CAUSE NOTICE

I, <u>Capt. ® Wahid Mehmood, District Police Officer,</u> <u>Kohat</u> as competent authority, under the Khyber Pakhtunkhwa Police Rules 1975, (amended 2014) is hereby serve you, <u>Constable Adnan No.</u> **816** as fallow:-

- That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide office No. 9692-93/PA dated 17.10.2018.
- ii. On going, through the finding and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the inquiry officer.
  - I am satisfied that you have committed the following acts/omissions, specified in section 3 of the said ordinance.
  - That you while posted at Police Lines Kohat has willfully absented yourself from duty vide DD No. 37 dated 01.10.2018 till date.

b. That you are involved in a narcotics case vide FIR No. 737 dated 07.10.2018 u/s 9C-CNSA PS MRS Kohat.

That previously, you alongwith a lady while trafficking narcotics in motor car No. ADC-448 Islamabad was apprehended by SHO PS Billitang vide FIR No. 615 dated 27.11.2017 u/s 9C-CNSA PS Billitang and recovered Charas weighing 07 KG from the motor car driven by you. You were held guilty of the charge during departmental enquiry, but kept pending for want of court decision in the said case, but your present act shows that you are a habitual offender. Therefore, you liable for re-departmental proceedings in the said charge.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you major penalty provided under the Rules **ibid**.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 07 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

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The copy of the finding of inquiry officer is enclosed.

## OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT Tel: 0922-9260116 Fax 9260125

# ORDER

b.

C.

This order is passed on the departmental enquiry conducted against Constable Adnan No. 816 (hereinafter called accused official) under the Khyber Pakhtunkhwa, Police Rules, (Amended 2014) 1975.

The following charged were framed against the accused official:-

He while posted at Police Lines Kohat has willfully absented a. himself from official duty vide DD No. 37 dated 01.10.2018 till date. That he was involved in a narcotics case vide FIR No. 737 dated 07.10.2018 u/s 9C-CNSA PS MRS Kohat.

That previously, he alongwith a lady while trafficking narcotics in motor car No. ADC-448 Islamabad was apprehended by SHO PS Billitang vide FIR No. 615 dated 27.11.2017 u/s 9C-CNSA PS Billitang and recovered Charas weighing 07 KG from the motor car driven by him. He was held guilty of the charge during departmental enquiry, but kept pending for want of court decision in the said case, his present act shows that he was a habitual offender. Therefore, he liable for re-departmental proceedings in the said charge.

He was served with charge sheet & statement of allegations DSP Legal, Kohat was appointed to scrutinize the conduct of the accused official. The enquiry officer vide his finding and found him guilty of the charges leveled

Final Show Cause Notice was issued at his home address, which was received by him on 22.11.2018, but the accused constable deliberately failed to submit reply. The accused official was called for personal hearing in orderly

room on 10:12:2018; but he deliberately did not appear Record: gone>through? which indicates that the accused? official absented himself from lawful-duty and subsequently charged in case. FIR No 37/2018 Police station MRS Furthermore: the accused official was arrested alongwith a lady while trafficking narcotics in a motor car vide FIR No 615/2017 Police Station Billitang Kohat, Record further indicates that the accused official admitted relationship with the lady accused in case FIR No. 737 and friendship with the lady arrested with him in FIR No 615 The accused official was previously, dismissed from service vide order, dated: 01'02'2016 for willful absence from the service for the period of 60 days however the punishment was modified forfeiture of his one year, service by Worthy RPO Kohat order. dated.20.04-2016. Furthermore: it has been established that the accused official was a habitual absentee so

withese act of the accused official earned bad name to a discipline forceron one hand and involved himself in criminal act // trafficking of narcotics

In view of the above and available record, I reached to the conclusion that the accused official was a habitual absentee and involved in criminal act/trafficking of narcotics. Therefore, these charges leveled against accused official constable Adnan No. 816 have been established beyond any shadow of doubt. Therefore, in exercise of powers conferred upon me under the rules ibid, a major punishment of "dismissal from Service" is imposed on accused constable Adnan No. 816 with immediate effect. The absence period is treated as un authorized leave without pay. Kit etc issued to the constable be

Announced 10.12.2018

OB No. <u>1373</u> Date <u>14-12-</u>/2018

1.

2.

# DISTRICT POLICE OFFICER, KOHAT Ch 14/12,

P - 18

No<u>13262\_64</u>PA dated Kohat the <u>17-12-</u>2018.

Copy of above to the:

Reader/Pay officer/SRC/OHC for necessary action. R.I to report for collection of items and clearance.

### POLICE DEPTT:

### KOHAT REGION

Annex-P

### ORDER.

This order will dispose of an appeal preferred by Ex-Constable Adnan Khan No. 816 of Operation Staff Kohat, against the punishment order, passed by DPO Kohat vide OB No. 1373, dated 14.12.2018 whereby he was awarded major punishment of dismissal from service on the following allegations:-

1. The appellant while posted at Police Lines Kohat absented himself from official duty vide DD No. 37, dated 01.10.2018 till the date of his dismissal i.e. 14.12.2018. 2. That he was found involved in narcotics case vide FIR No. 737, dated 07.10.2018

u/s 9C-CNSA PS MRS, Kohat.

3. That previously, he alongwith a lady while trafficking narcotics in Motorcar bearing No. ADC-448 Islamabad was apprehended by SHO PS Billitang and recovered Charas weighting 07 KG from the Motorcar driven by him.

3. Previously he was awarded major punishment of dismissal from service due to his absence of 60 days from lawful duty; however, punishment was modified into forfeiture of one year approved service by the then RPO / Kohat.

Comments as well as relevant record were requisitioned from DPO Kohat. The appellant was also heard in person in Orderly Room, held in this office on 18.02.2021 wherein he failed to advance any plausible explanation.

Record gone through, which indicates that the appellant being a member of disciplined force was trafficking narcotics and caught red handed by the Police which tarnished the image of Police.

Above in view, the undersigned reached to the conclusion that the allegations leveled against the appellant are fully proved duly established by the E.O in his findings. Hence, the impugned order passed by DPO Kohat is justified, upheld and the appeal badly time-barred about more that 02-years is hereby rejected.

necessary action w/r to his office Memo: No. 1827/LB, dated 03.02.2021. His Service

The appellant Ex-Const: Adnan Khan No. 816 of Kohat

Copy to District Police Officer. Kohat for information and

Order Announced 18.02.2021

1491

Record & Fauji Missal is returned herewith.

OHE/SAC Ets 31/ Autor

1.

(TAYYAB HAFEEZ) PSP Region Police Officer, Kohat Region.

No. 2462-63 /EC, dated Kohat the 25/2 /2021.

Fatel 9.5/72-75

(TAYYAB HAFEEZ) PSP Region Police Officer,

**REFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR** 

# Service Appeal No.5232/ 2021

Adnan Khan, Ex-Constable No.816, District Kohat ......(Appellant)

### Versus

Regional Police Officer, Kohat & others ......(Respondents)

# **INDEX**

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2.	Copy of order of acquittal of the appellant in criminal case.	RJ-I	5-19

Through

Jel-spin

Ashraf Ali Khattak Advocate, Supreme Court of Pakistan

&

Ali Bakht Mughal

Advocate, Peshawar

Dated: 15-07-2022

### **EFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

1

### Service Appeal No.5232/ 2021

Adnan Khan, Ex-Constable No.816, District Kohat ......(Appellant)

### Versus

Regional Police Officer, Kohat & others ......(Respondents)

### REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth,

d.

Rejoinder on behalf of appellant is as under: -

### Reply to the preliminary objections: -

That the preliminary objections raised by the answering respondents are incorrect, flimsy in nature and has no legal backing. The answering respondents has failed to explain as to why appellant has no cause of action and locus standi? Why the appeal is for bad for mis-joinder and non-joinder of necessary parties? Why the appellant is stopped to file the instant appeal for his own act? Why the appeal is bad in the eyes of law and non maintainable and how the appellant has not approached this Hon'ble Tribunal with clean hands? How the appeal is barred by law and limitation? In absence of any legal and factual support proper rejoinder could not be made and submitted.

However, it is very humbly submitted that appellant has cause of action and locus standi, there is no question of mis-joinder and non-joinder of necessary parties, no estoppels lies against the appellant, the appeal is maintainable as per law and the appellant has approached this Hon'ble Tribunal with clean hands. The appeal is well within time. The record attached with memo of service appeal as well as the record attached with the reply of the answering respondents negates the version / pleas of the answering respondents incorporated in the preliminary objections of their reply.

## **REPLY TO FACTS: -**

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1.

That reply to para No. 1 is incorrect, hence denied. The service record of the appellant that he has been assigned number of sensitive and risky tasks which appellant fearlessly and courageously accomplished with success.

2. That reply to para No.2 is also incorrect, hence denied. Some of the colleagues and some of his superiors launched conspiracy against the appellant which resulted into lodging of FIRs in order to ruin his service career and reputation of the appellant. Appellant has been honorably acquitted in both criminal cases (Annex/Rj-I).

- 3. That reply to para No.3 is also incorrect, hence denied. The statement of SHO attached with reply of the respondents is different from the one which he had made during the trial. So far the question of cross examination is concerned, the bear perusal of cross questions shows that the same has been made by the inquiry officer himself and not by the appellant. Under the rules, it is the right of the appellant to cross examine the witness but the said right was denied. Furthermore, it is humbly submitted that there is no provision of law and rules to cross examine the accused. The cross examination in Chief) is nullity in the eyes of law therefore, inadmissible and could not be relied upon. It is well settled principle of law that prosecution has to prove its case by itself and cannot be allowed to take advantage of any statement or otherwise of any evidence rendered by the accused person.
- 4. That reply to para No.4 is incorrect, hence denied. Appellant has never been served with Final Show Cause, there is nothing on record to show that the same has been properly served upon the appellant.
- 5. That reply to para No.5 is incorrect, hence denied. Appellant had never been called for personal hearing and was deprived of his right of defense. The inquiry officer had not conducted the inquiry in accordance with the prescribed procedure therefore, the whole proceedings are illegal and is liable to be set aside.
- 6. That reply to paras No.6 is incorrect, hence denied. Appellant has been acquitted from the criminal charge vide order dated 02-12-2020 whereafter appellant immediately filed departmental appeal. The Hon'ble Supreme Court of Pakistan vide reported Judgment PLD 2010 SC 295 has held that;

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"It would have been a futile attempt on the part of civil servant to challenge his removal from service before earning the acquittal in the relevant criminal case---It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case which had formed the foundation of his removal from service. Appeal before Service Tribunal was not barred by limitation."

### **REPLY TO GROUNDS: -**

That reply to grounds of appeal by the answering respondents are incorrect, hence denied. Section 16 of the Civil Servant Act, 1973 provides that all civil servants are liable to prescribed disciplinary action in accordance with prescribed procedure. In the instant case the whole proceedings taken against the appellant are illegal. The proceedings taken and adopted by the inquiry officer were against the law and rules. Appellant has been condemned unheard and more so, opportunity of defense was denied to him. Moreover, the appellate authority has not dealt with the departmental appeal in accordance with the prescribed rules. Appellant rely on the grounds taken by him in the memo of his service appeal and would like to seek the permission of this Hon'ble Tribunal to advance more grounds at the time of hearing.

Rule 9 of the E&D Rules, 2011 provides that in case of absence of a civil servant for more than seven days, he shall be served with notice on his home address calling him to join his duty within stipulated time and in case, no response has been received, publication in two leading news papers must be made before removing the absentee from his service. The mandatory provision of Rule 9 has not been adopted, which is against the mandatory provisions of law and therefore, the charge of absentee is illegal and liable to be struck down. It is also humbly submitted that appellant was booked in FIR No.737 dated 07-10-2018 and was released on bail on 20-10-2018 and he submitted his arrival report at Police Lines, Kohat on 24-10-2018 and whereas the charge sheet was served on 17-10-2018 meaning thereby that appellant was not absent.

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It is, therefore, humbly prayed that on acceptance this rejoinder in Appeal the instant Appeal may kindly be allowed in favour of the appellant and against respondents.

Through

Giri

Ashraf Ali Khattak Advocate, Supreme Court of Pakistan

&

Ali Bakht Mughal Advocate, Peshawar

Dated: 15-07-2022

### **AFFIDAVIT**

d'r

I, Adnan Khan S/o Ramzan Khan, Ex-Constable No.816, Operation Staff, Police Force, District Kohat do hereby solemnly affirm and declare on Oath that all the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Hon'ble Tribunal.

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Kumatra Rehman Advocate 1 Comprissioner 10-2022 Endst: 10. 3370-75



IN THE COURT OF ABID ZAMAN ADDITIONAL SESSIONS JUDGE-I/JUDGE SPECIAL COURT,				
KOHAT				
SPHC No:	31/2019			
Date of original institution:	22.02.2019	1		
Date of hearing:	17.04.2021	•		
Date of Decision:	17.04.2021	• •		

THE STATE....VERSUS...1) Adnan aged about 30/31 years s/o Ramzan r/o Mohallah Saidan Shinwari

Jungle Khel Kohat 2) Mst.Kiran aged about 33/34 years daughter of Abdul Razzaq r/o Haji . Camp Peshawar.

(Accused facing trial) 3) Mst.Zahida Sultan daughter of Akhtar Ayub r/o village Sangeni Shakardara, Tehsil Essa Khel District Mianwali.

(Dead co-accused)

Case FIR No.737 dated 7.10.2018 u/s 9-C CNSA of PS MRS, Kohat

#### Present:

Mr.Amjid Ali, APP for the State.

Mr.Ibrar Alam Advocate and Mr.Mudasir Jalil

Advocate for accused Mst.Kiran.

Syed Mudasir Pirzada Advocate for accused Adnan.

JUDGMENT

Accused Adnan aged about 30/31 years s/o Ramzan r/o Mohallah Saidan Shinwari Jungle Khel Kohat and Mst.Kiran aged about 33/34 years daughter of Abdul Razzaq r/o Haji Camp Peshawar (hereinafter referred to as accused facing trial) faced trial and are found not guilty in case FIR No.737 dated 7.10.2018 u/s 9-

C CNSA of PS MRS, Kohat.

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Prosecution is always duty bound of full proof and failure thereof would always benefit accused facing trial. Benefit of even a single reasonable doubt, appeared from evidence of prosecution, is always golden principle of Administration of Criminal Justice. In this respect, reliance is placed upon the cases of "Muhammad Akram" reported in 2009 SCMR P-230, "Tariq Parveez" reported in 1995 SCMR P-1345, "Hashim Qasim" reported in 2017 SCMR P-986, "Nasarullah alias Nasaro" reported in 2017 SCMR P-724 and "Muhammad Mansha" reported in 2018 SCMR P-772, Abdul Jabbar 2019 SCMR 129, Mst.Asia Bibi PLD 2019 SC Page-64, Khurshed Ahmad vs the State reported in 2020 MLD P-649, Mst.Asia Bibi vs The State and another reported in PLD 2019 SC P-64 and Abdul Jabbar and another vs the State reported in 2019 SCMR P-129.

The reasons for above referred conclusion are as follows:

As per contents of FIR, case of prosecution is that on the day of occurrence Islam ud Din SHO of Police Station MRS Kohat received information that one Adnan being involved in narcotics business will transport the huge quantity of Charas through ladies via tribal territory to different Districts of Punjab, and at the moment is also present on the crime venue; that upon the authentic information raiding party was constituted including lady constable and subsequently place of occurrence/house of accused was raided, wherefrom two females were arrested. On query they disclosed their names as Mst Zahida Sultana

1.5 JER ZEZZ

3 | State Vs Adnan etc 11 packets of Charas U/S9C CNSA

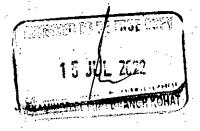
(dead co-accused) and the other accused disclosed her name a Mst.Kiran (accused facing trial). From the search of room, one cotton box was recovered which led to the recovery of 11 packets of Charas weighing 1200 grams each, thus total of 13200 grams Charas was recovered. Hence the instant case.

It is pertinent to mention here that accused Mst.Zahida Sultana died during the course of trial. In this respect, statement of DFC concerned was recorded as CW.1 and proceedings against accused Mst.Zahida Sultana were abated.

Provisions of section 265c Cr.PC complied with on and charge against the accused facing trial Adnan and Mst.Kiran under Section 9-C CNSA was framed on 8.10.2019 to which accused pleaded not guilty and claimed trial.

The relevant portion of charge is as under:

"That on 7.10.2018 at about 1230 ours at the upper house of Qisar Khan situated at Muslim Town near PTS, falling within the criminal jurisdiction of Police Station MRS, Kohat the local police raided your house, where you female accused Kiran was available and on search, the police recovered a cotton containing 11 packets of Charas Gardha, each packet weighing 1200/1200 making a total of 13200 gram of Charas Gardha, which was the ownership of you accused Adnan, having conscious knowledge of it."



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Thus, prosecution was afforded full opportunity to prove their case and produced the following witnesses. Gist whereof is as follows. **PW.1** Islam ud Din SHO, reiterated the same story as mentioned in Murasila.

**PW.2 Muhammad Farooq No.510,** is marginal witness to recovery memo Ex.PW.1/1.

PW.3 Manzoor ur Rehman OII, investigated the case.

PW.4 Yousaf Hayat SHO, submitted complete challan Ex.PK.

**PW.5** Asif Sharif SHO/Inspector, submitted supplementary challan Ex.PK/1.

PW.6 Faizullah SI, chalked out case FIR Ex.PA.

**PW.7 Fayaz ud Din No.66,** transmitted the parcel of samples to FSL in his safe custody.

**PW.8 Khan Wada MHC**, kept the case property in safe custody of Malkhana of the Police Station.

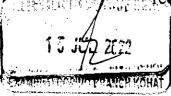
PW.9 Imran LHC, is marginal witness to recovery memo Ex.PC.

Prosecution closed its evidence on and statements of accused u/s 342/364 Cr.PC, 1898 were recorded on 17.04.2021.

Since accused refused to be examined on oath and production of defence evidence, therefore arguments of both the parties heard.

Arguments heard and record perused.

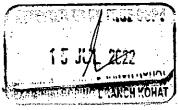
Learned APP Mr.Amjid Ali for State argued that narcotics was



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lady accused were present at the time of recovery, having conscisknowledge of the same. That FSL report Ex.PZ is in positive. He next argued that safe custody and safe transit of the narcotics is proved through cogent and reliable evidence. He next argued that there is no ill-will or malafide on part of the complainant/SHO and PWs to falsely implicate the accused facing trial in the instant case. He further argued that PWs are consistent on main points of recovery and other proceeding in the instant case. While summing up the case, he submitted that the prosecution has proved its case against the accused facing trial and accused may be convicted and sentenced to the maximum punishment provided by the law.

On the other hand, Mr.Ibrar Alam Advocate and Mr.Mudasir Jalil Advocate for accused Mst.Kiran and Syed Mudasir Pirzada Advocate for accused Adnan contended that accused facing trial are innocent and he was falsely implicated in the instant case. Further contended that no independent witness i.e. Malak or Nazim of the locality was associated to testify the raid proceedings. Next argued that the recovery was not effected in the mode and manner as mentioned in FIR. According to them, PWs to the alleged recovery are police officials and they have contradicted each other on material points. Next argued that prosecution has failed to prove the safe custody and safe transit of the recovered alleged contraband. While summing up the case, it was submitted that the prosecution has failed to prove its case against the accused facing



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trial beyond the shadow of doubt and that the accused facing trial may be acquitted of the charge leveled against them.

Keeping in view the nature of the case, the points for determination are as:

## Points for determination:

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Whether the recovered contraband was proved as "Charas"?

Whether recovery of 13200 grams Charas from accused facing trial was proved by prosecution?

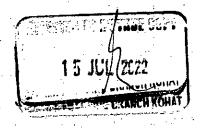
iii. Whether safe custody and safe transmission of samples was established against accused facing trial?

Whether the accused found guilty, if so, the sentence?

# My findings for points of determination:

The cases of narcotics, as case in hand, hinge on the question that whether the contraband recovered from the accused is Charas etc. The determining factor in this respect is the FSL. In this scenario, the FSL report always assumes great importance in cases of narcotics and conviction in favor of prosecution.

By now it is well settled by Superior Courts that FSL report shall contain all the details regarding the tests applied and protocols followed while preparing such report. These are (i) tests and analysis of the alleged drug (ii) the results of the test(s) carried out and (iii) the test protocols applied to carry out these tests.

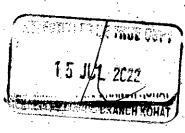


7 | State - Vs Adnan etc 11 packets of Charas U/S9C CNSA

In absence of such mandatory requirements, the FSL report held inconsequential and in violation of mandatory provision of Rule6 of Control of Narcotics Substances (Government Analyst) Rules, 2001. In this respect, reliance is placed upon the cases of Imam Bakhsh reported in 2018 SCMR P-2039, Muhammad Arshid Mughal reported in 2019 YLR P-925, Ikramullah reported in SCMR 2015 P-1002, Khair ul Bashar 2019 SCMR P-930, Qaiser Javed reported in PLD 2020 SC P-57, Muhammad Boota reported in 2020 SCMR P-196, Aman ul Haq reported in 2020 P.Cr.L.J P-1263 (Peshawar High Court) and Muhammad Yaseen reported in 2020 P.Cr.L.J P-1295 (Lahore).

FSL report Ex.PZ is substantially blank and there is no details regarding tests conducted on the sample and the protocols while conducting such tests. Similarly, there is no description regarding the confirmatory tests conducted on the sample under examination. Need not to mention that chemical tests/field tests or/and presumptive test/preliminary tests are considered not sufficient to determine the exact nature of contraband. In nutshell, report (Ex.PZ) is not worth reliable in case in hand and does not quality the above referred mandatory standards.

Thus, point No.i is decided in negative.



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For proper appreciation and understanding I will bifurcate the case of accused Adnan from co-accused Mst.Kiran.

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Admittedly, the place of occurrence was the house of one Qaisar Khan situated at Muslim Town near PTS. Accused Adnan was not present on the spot. Moreover, recovery was neither effected from personal possession of accused Adnan nor on his pointation. Moreso, entire record is silent in respect of any connectivity of accused Adnan with the house of Qaisar Khan. Thus, in my humble view, no case exists against the accused Adnan.

Now, I will take up the case of accused Mst.Kiran. In this respect, testimonies of Islam ud Din SHO/complainant (PW.1) and Muhammad Farooq No.510 (PW.2) are of grave importance as they were present on the spot and eyewitnesses of the occurrence. Thus, I will scrutinize their testimonies with great care and caution.

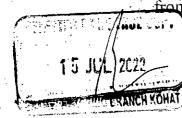
Islam ud Din SHO/complainant (PW.1) in his cross examination stated that,

"I spent 1 1/2 hours on entire proceedings on the spot." On the other hand, Muhammad Farooq No.510 (PW.2) in his cross examination stated that,

"We spent two and half hours on the spot proceedings and thereafter left the place of occurrence."

This major contradiction puts first doubt in veracity of Islam ud Din SHO/complainant (PW.1) and Muhammad Farooq No.510 (PW.2).

Secondly, prosecution took the stance that recovery was effected from the house of one Qaisar Khan. In this respect, the relevant portion



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of the testimonies of Islam ud Din SHO (PW.1) and Muhammad Farm No.510 (PW.2) are as under:

Islam ud Din SHO (PW.1) in his cross examination stated that, ."I have mentioned the place of occurrence and shown in Murasila as Qaisar Khan and who is the øwner of that property...The owner of the house is one Qaisar Khan. Self-stated that accused Mst.Kiran and Mst.Zahida (now dead) were tenants in the place of recovery."

Muhammad Farooq No.510 (PW.2) in his cross examination stated that,

"I do not know about the ownership of the property."

In this situation, prosecution was duty bound to prove the connectivity of accused Mst.Kiran with the house of one Qaisar Khan. These factors are material to prove the conscious knowledge of accused Mst.Kiran in respect of narcotics allegedly recovered from the said house.

> Manzoor ur Rehman ur Rehman OII (PW.3) was duty bound to investigate the case regarding this material aspect, which is lacking in the case in hand. The entire record is silent regarding the ownership of the house in question. Similarly, no documents in respect of tenancy are available on file.

Thirdly, Islam ud Din Khan (PW.1), admitted in his cross

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type of tools were used for cutting or opening the packets. Similarly, these tools were not taken into possession on recovery memo.

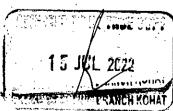
Thus, in light of these material contradictions, I am of the opinion that Islam ud Din SHO (PW.1) and Muhammad Farooq No.510 (PW.2) are not truthful witnesses and there is reasonable doubt in their testimonies. It is cardinal principle of criminal administration of justice, that if a single reasonable doubt in the prosecution case is created, the accused should have been extended its benefit, therefore, in the instant case benefit of reasonable doubt is extended to the accused Mst.Kiran.

Fourthly, another piece of evidence is CDR, whereupon the prosecution relies the most. However, the following serious infirmities are found:

Firstly, the prosecution was duty bound to have had received the CDR with an endorsement of the Cellular Company concerned having stamp and signature thereupon of the concerned authorized officer.

Secondly, while taking into possession the CDR, the same must be through a recovery memo with recovery witnesses and should have been associated a person from the concerned Cellular Company. But no such recovery memo and witnesses were associated by the prosecution.

Thirdly, there should have been a statement of the Representative of the Cellular Company to the effect of



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issuance and receipt of CDR. But no such evidence has be collected by the prosecution.

Fourthly, the CDR does not bear even a single signature of authorized officer of the concerned company.

Fifthly, there is no transcription/record pertaining to the conversation of the accused facing trial and without such transcript of the conversation, the CDR is not worth reliable. Sixthly, there is no proof of issuance of the SIM number in the name of accused facing trial and its use by the accused facing trial.

On the basis of above referred serious infirmities, I am convinced that the CDR is doubtful whether the same is generated by Investigation Officer himself or the same has been issued by the concerned Cellular Company. In this view of the matter, I am clear in , Secure Judging mind that CDR cannot be considered either substantive or corroborative piece of evidence in order to connect the accused facing trial with the commission of crime. Here I am guided by the cases of Azeem Khan reported in 2016 SCMR P-274, State vs Behram Khan reported in 2016 MLD P-63, Tariq Hussain reported in 2018 MLD P-1573 and Kaleemullah reported in 2018 YLR P-2363.

Lastly, in case in hand 13200 grams narcotics was recovered contained in eleven packets and samples of 10/10 grams each were 1.050 11.00 15 JU -20

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separated from each packet. In such like scenario, the prosecution was duty bound to connect each sample with its origin.

To avoid such doubt prosecution was required to mark numbers on each parcel as well as numbers on each representative sample. In other words, this separate numbering was essential in order to dislodge the doubt of preparation of samples from one parcel or / and to confirm that there is representative sample from each parcel.

Cross examination of Islam ud Din SHO (PW.1) and Muhammad Farooq No.510 (PW.2) are suggestive of the fact that the parcels as well as its representative samples were not separately numbered. In absence of separate numbers there is strong probability that the samples could have been taken from one parcel or / and there is strong probability that the samples sent for FSL could have not been the correct representative of each parcel. This material aspect of the case makes the recovery proceedings highly doubtful. Consequently, prosecution has not made out a case beyond shadow of any reasonable doubt regarding sample taken from each parcel.

In this respect, I am guided by the cases of Zafar Iqbal reported in 2019 YLR P-1916 (Lahore High Court), Safdar Iqbal reported in 2019 MLD P-1518 (Lahore) and Muhammad Yaseen reported in 2020 P.Cr.L.J P-1295 (Lahore) wherein such kind of recovery was disbelieved and discarded.

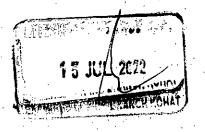
Thus, point No.ii is decided in negative.

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Prosecution was duty bound to prove the safe custody and sat transit of the recovered narcotics. In this respect, I am guided by the cases of Amjid Ali reported in 2012 SCMR P-577, Ikramullah reported in 2015 SCMR P-1002. Muhammad Arshad Mughal reported in 2019 YLR Page-925 and "Abdul Ghani and others Vs. the State and others (2019 SCMR 608).

For proper understanding, it is necessary to reproduce some portion from the case of Abdul Ghani (Supra) as:

"It has already been clarified by this Court in the cases of the State through Regional Director ANT v Imam Bakhsh and others (2018 SCMR 2039). Ikramullah and others v. The state (2015 SCMR 1002) and Amjad Ali v The State (2012 SCMR 577) that in a case where safe custody of the recovered substance or safe transmission of samples of the recovered substance is not proved by the prosecution through independent evidence there it cannot be concluded that the prosecution had succeeded in establishing its case against the appellants beyond reasonable doubt. The case in hand suffers from the same legal defects. This appeal is, therefore, allowed, the convictions and sentences of the appellants recorded and upheld by the courts below are set aside and they are acquitted of the charge by extending the benefit of doubt to them. They shall be released from the jail forthwith if not required to be detained in connection with any other case."



High & Session Judge I Kohat 14 | State ... Vs Adnan etc 11 packets of Charas U/S9C CNSA

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Manzoor ur Rehman OII (PW.3), in his cross examination stated that,

"I have seen the case property alongwith samples in the Police Station on 07.10.2018, which were handed over to me on 07.10.2018 by Moharrir of the Police Station."

Similarly, Fayaz ud Din No.66 (PW.7), transmitter in his cross examination stated that,

"It is correct that the parcel of samples was handed over to me on 8.10.2018... It is correct that the parcel of samples was in the custody of Investigation Officer from the date of occurrence till 8.10.2018."

Whereas, the FSL report reveals that the parcel of samples was received on 8.10.2018.

These extracts of star prosecution witnesses clearly reveals that parcel of samples were in the custody of IO from the date of occurrence till their dispatch to FSL.

Investigating Officer being prosecution witness and his custody by no stretch of imagination can be considered as safe custody.

By now, it is well settled by Superior Courts that whenever a law provided a thing to be done in particular manner such thing should be done in that manner.

The custody of representative samples from date of occurrence till their dispatch to FSL amounts to illegality and materially impaired the safe custody of representative samples. In this view of the matter, the

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prosecution has miserably failed to prove the safe custody representative samples.

Thus, point No.iii is decided in negative.

In view of decisions on points for determination, accused facingtrial are not guilty and exercising powers u/s 265-H(1) Cr.PC. 1898. accused Adnan and Mst.Kiran are acquitted of the charge leveled against them. Accused are on bail, their sureties are discharged from the liability of bail bonds.

Thus, point No.iv is decided in negative.

Case property i.e. narcotics be destroyed subject to appeal/revision while mobile Orange Leaf model-0225 and Nokia model RM1187 alongwith SIMs be returned to their lawful owners. File be consigned to the Record Room after its proper compilation and completion.

ANNOUNCED 17.04.2021

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7.04.21 (ABID ZAMAN)

Addl: Sessions Judge-I/JSC, Kohat

## **CERTIFICATE:**

It is hereby certified that this judgment consists of -15- pages. I have read each page, corrected and signed.

Addl: Sessions Judge-I/JSC. Kohat

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لتلرج روزنا در المراج 80 J'SU , EM150 ale 08 10 20 20 EUBI 7.00 esti e mRS à lès mitte estélis Les تَبْلَى حَوْنَ نَبْرِ121029- 2290 m 16/1 202 07018 pg 737 cile ciel 816 cilie de vije en lig of mRScles Prensap? میں ترقیاری در بنی یے قرر RR فرلون تويتلا باكرتيني عزيان 616 دوالرمر 37 موزنا في المرام من بر سنور غير حافي الملاع درج روزنافی سو کم افیل علی و فرت بو دفا ترامتيك بالا ماميان لوارسال وي 1/le lo 8i8, 12 y population for Inismices Rel. el' ub Divisional Police HQrs: Rohat 09/10/18 mitte-Lain 08-10-013 Siv, Forgende HULL 10

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24 B 13 4 23 102 10 a 22 Not the State of a al al a for the state of the second as a second a s مقرع من على من ألكي - جمله از خارم و دوني ملاحان تلتي عن حوجود في من من عرفر و دا بطارون مستريوري مع فسال من مر المر و و فی مر مر مر مر مر مر مر مر مر ال وی تر م مردان مالان ملانة من برتحير من فطر رتحفة اور وتكى سكبور في طافراها ر تحويدًا معدملا سرف كو مجلس في كريس طرح مع مع ما ما اور الكو مار ما چیک کوط در ملزم من مر جود شدل لاک ای بی عدالت وال في ملاطن كالملبور في كاف من خول رهدا اور طرطن في مرى مر مالحان مرمع ن درام بر مرين مري مري مري المان در تين - مدر رسا ي فرادان قرار دا مي المعددي بالا يرفي وال لى فى - جدر معطى سيبل مردى 16 متى ميں خدم مرجو دلار فالم قلاف رور في مر مالازى ون روز الجرالى ولا في 1 64/10 Forworded أنقل عط لهاعل MAD mm-Line Ki 06-10-18 Lo-line AT 06-10-18 Adad Sed

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جناب عالى ! بحوالد فائنل شركاز نوٹس نمبرى PA-3163 مور خد 2018-03-29 عرض ب: کہ فائنل شوکا زنوٹس کے سلسلے میں میر اوہی بیان ہے جوتل ازیں چارج شیٹ کے جواب میں داخل کر چکا ہویں۔ بجصين كاموقع دياجائ

مورضة: 2018-12-14

أعرضن كانشيبل عدنان خان نمبر 816 حال متعينه بوليس لائن ، كوباٹ



### DEPARTMENTAL INQUIRY AGAINST CONSTABLE ADNAN NO. 816

R/Sir, It is submitted that I have been appointed as inquiry officer in departmental inquiry initiated against Constable Adnan No. 816, Police Lines, Kohat. The accused official was served with charge sheet alongwith statement of allegations issued by your good office vide No. 9195-96/PA dated 30.11.2017 on the below score of charge:-

That you while posted at Police Lines Kohat has willfully absented yourself from duty vide DD No. 37 dated 01.10.2018 till date.

, ii. `

iii.

That you are involved in a narcotics case vide FIR No. 737 dated 07.11.2018 u/s 9 C-CNSA PS MRS Kohat.

That previously, you alongwith a lady while trafficking narcotics in motor car No. ADC-448 Islamabad was apprehended by SHO PS Bilitang vide FIR No. 615 dated 27.11.2017 u/s 9C-CNSA PS Bilitang vide FIR No. 615 dated 27.11.2017 u/s 9 C-CNSA PS Bilitang and recovered Charas weighing 07 KGs from the motor car driven by you. You were held guilty of the charge during departmental inquiry, but kept pending for want of court decision in the said case, but your present act show that you are a habitual offender. Therefore, you liable for re-departmental proceedings in the said charge.

2. The accused official was called and charge sheet alongwith statement of allegations was served upon him. He submitted reply to the charge sheet and denied the charges framed against him.

3. In order to probe the charges the following officials were summoned and examined in presence of accused official and he was provided opportunity of cross examination:-

i. SI Islam ud Din, the then SHO PS MRS.

ii. ASI Farid Khan, PS MRS.

iii. SI Manzoor, Oll, PS MRS.

iv. Muhammad Iqbal, the then SHO PS Bilitang.

y. ASI Navid Khan, the then posted PS Bilitang.

vi. SI Aman Ullah, the then Oll, PS Billitang.

4. SI Islam ud Din, the then SHO PS MRS, stated that he has arrested two ladies from a Bala Khana and recovered 11 Packets of charas weighing 1320 Gms and drafted Murasla for registration of case. The case was entrusted to KBI for reinvestigation. The accused official put a cross question regarding his involvement, it was replied by the witness that the lady disclosed name of one Adnan r/o Jungle Khel.

5. SI Manzoor ur Rehman OII stated that he is investigating case FIR No. 737 dated 07:10.2018 u/s 9 CNSA PS MRS. The arrested lady accused admitted their guilt and disclosed that Adman is their friend. The arrested accused further stated that the charas is owned by accused. Arrest of accused as has got bail before arrest.

6. ASI Farid Khan marginal witness of the recovery memo was also examined, who supported the raid and recovery of narcotics / arrest of lady accused.

7. Regarding enarge iii. SI Muhammad Iqbal stated that on 27.11.2017, he recovered 7060 to Charas from a motorcar and arrested constable Adnan alongwith a lady named Kiran Bhatti. A case, vide FIR No. 615 dated 27.11.2017 u/s 9 CCNSA was registered against both the accused and case, was entrusted to KBI for investigation. Accused was provided opportunity of cross-examination. The accused was cross examined by me. Where he admitted that the girl arrested with him was his girlfriend and the recovery was effected from her.

8. Witness ASI Naveed Khan who is marginal witness of the recovery memoralso verified the recovery of charas from motorcar and taken into possession by SHO in his presence.

 SI Aman Ullah, stated that he has conducted investigation of the case and accused cificial admitted his guilt during the course of investigation.

10. Pegarding Willful absence of accused, daily diaries No. 3 dated 27.11 2017. PP Sumari Bala and daily diary No. 22 dated 11 09/2018 were requisitioned and praced on file, where the accused petilioner is reported absent and their after charge / arrested in the respective cases.

11. In view of the above, it is submitted that the accused official admitted relationship with the lady accused as they are his girlfriends. The accused official is involved in narcotics peddling, which carned that name to the Folice and commission of social prime. Furthermore, the absence of accused official from his place of posting and subsequently arrested / charged in narcotics cases established his guilt. Therefore, the charges levelled against the accused official have been established beyond any shadow of doubt and accused official constable Adnah and his retention in a discipline force will earn bad name to the department.

Enril Indulty File

W/DPO.Kohat

# Der Laga Kohat Enquiry Officer



## Office of the Place of Real Parts - District Police Officer, Kohat

Dated 17-10 /2018

#### CHARGE SHEET.

Konger (1995) No. 685

- Distant 17-10-018

Dr: No.

SOHAIL KHALID, DISTRICT POLICE OFFICER, KOHAT, I, as competent authority under Khyber Pakhtunkhwa Police Rules 1975 (amendments 2014) am of the opinion that you Constable Adnan No. 816 rendered yourself liable to be proceeded against, as you have committed the following act/omissions within the meaning of Rule 3 of the Police Rules 1975.

- That you while posted at Police Lines Kohat has willfully absented i. yourself from duty vide DD No. 37 dated 01.10.2018 till date.
- That you are involved in a narcotics case vide FIR No. 737 dated ii. 07.10.2018 u/s 9C-CNSA PS MRS Kohat.

That previously, you alongwith a lady while trafficking narcotics in iii. motor car No. ADC-448 Islamabad was apprehended by SHO PS Billitang vide FIR No. 615 dated 27.11.2017 u/s 9C-CNSA PS Billitang and recover Charas weighing 07 KG from the motor car driven by you. You were held guilty of the charge during departmental enquiry, but kept pending for want of court decision in the said case, but your present act shows that you are a habitual offender. Therefore, you liable for re-departmental proceedings in the said charge.

By reasons of the above, you appear to be guilty of 2. misconduct under Rule 3 of the Police Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the Rule 4 of Police Rules 1975.

You are, therefore, required to submit your written ЗJ statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

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

A statement of allegation is enclosed.

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DISTRICT POLICE OFFICER, KOHAT

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## Office of the District Police Officer, Kohat

Dated 17-20 /2018

#### DISCIPLINARY ACTION

I, <u>SOHAIL KHALID, DISTRICT POLICE OFFICER,</u> <u>KOHAT</u>, as competent authority, am of the opinion that you **Constable Adnan No. 816** have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

#### STATEMENT OF ALLEGATIONS

- That you while posted at Police Lines Kohat has willfully absented yourself from duty vide DD No. 37 dated 01.10.2018 till date.
- ii. That you are involved in a narcotics case vide FIR No. 737 dated 07.10.2018 u/s 9C-CNSA PS MRS Kohat.

That previously, you alongwith a lady while trafficking narcotics in motor car No. ADC-448 Islamabad was apprehended by SHO PS Billitang vide FIR No. 615 dated 27.11.2017 u/s 9C-CNSA PS Billitang and recovery Charas weighing 07 KG from the motor car driven by you. You were held guilty of the charge during departmental enquiry, but kept pending for want of court decision in the said case, but your present act shows that you are a habitual offender. Therefore, you liable for re-departmental proceedings in the said charge.

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations <u>Mr. Ishaq Gul DSP Legal</u> <u>Kohat</u> is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Rule-1975, provide reasonable opportunity of hearing to the accused official, record his findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

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

DISTRICT POLICE OFFICER, KOHAT 22 16/1

769<u>2-93</u>/PA, dated\_ 17-10. 12018. Copy of above to:-

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<u>Mr. Ishaq Gul DSP Legal Kohat</u>:- The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.

The <u>Accused Official:</u> with the directions to appear before the Enquiry Officer, on the date, time and place fixed by him, for the purpose of enquiry proceedings.

#### DEPARTMENTAL INQUIRY AGAINST CONSTABLE ADNAN NO. 816 (under suspension)

R/Sir,

1.1

It is submitted that I have been appointed as inquiry officer in departmental inquiry initiated against Constable Adnan No. 816, Police Lines, Kohat. The accused official was served with charge sheet alongwith statement of allegations issued by your good office vide No: 9195-96/PA dated 30.11.2017 on the below score of charge:-

"Being involved in criminal case vide FIR No. 615 dated 27.11.2017 u/s 9 CCNSA

PS Billitang, which is a gross misconduct on your part".

2. The accused official was confined in district Jail Kohat and charge sheet alongwith statement of allegations was served upon through Superintendent, district Jail Kohat vide this office Letter No. 22164/LB dated 11.12.2017. Compliance report received vide Superintendent, district Jail Kohat letter No. 4290/WE dated 15.12.2017.

3. Accused was confined in Jail, summoned repeatedly by the court concerned by could not be produced due to insurgency duty of Police. Lastly, accused was released on bail by the court and called to join the inquiry proceedings.

4. On 19.03.2018, witnesses named SI Muhammad Iqbal, SHO PS Bilitang, ASI Naveed Khan, SI Aman Ullah I.O of the case and accused official were called and examined.

5. SI Muhammad Iqbal stated that on the eventful day he stopped a motorcar and on search 7000 Gms Charas were recovered from a motorcar. The accused official alongwith a lady.named Kiran Bhatti were arrested and a case vide FIR No. 615 dated 27.11.2017 u/s 9 CCNSA was registered against both the accused.

Witness ASI Naveed Khan who is marginal witness of the recovery memo also verified the recovery of charas from motorcar and taken into possession by SHO in his presence.
 SI Aman Ullah, stated that he has conducted investigation of the case and

accused official admitted his guilt during the course of investigation.

8. Similarly, Muhammad Shoaib, MHC PP Sumari Bala was examined who produced daily dairy No. 03 dated 27.11.2017 regarding willful absence of accused official from lawful duty.

9. The accused official was afforded opportunity of cross examination of the witnesses, but he did not cross examine the above mentioned witnesses. Furthermore, a questioner was provided to the accused, but could not submit plausible answers to the questions and failed to establish any malafide on the part of Police.

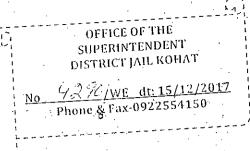
10. From the above and evidence collected, it has been established that the accused official, while posted at PP Sumari Bala absented himself from duty. On the eventful day, the accused official alongwith one lady named Kiran Bhatti while trafficking huge quantity of charas weighing 7000 Gms in a motorcar were apprehended by SHO PS Bilitang.

211 30

11. In view of the above, the accused official has committed professional misconduct, indulged himself in transportation of narcotics in addition to commission of a criminal act. Therefore, the charge levelled against the accused official has been established beyond any shadow of doubt and accused official constable Adnan is recommended for one of the major punishment provided under Khyber Pakhtunkhwa, Police Rules (Amended - 2014) 1975. *Encl: Inquiry File* 

W/DPO Kohat

DSP Legal, Kohat Enquiry Olficer



SNPERANTE

DESTRICT JAIL KOHAT

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The District Police Officer, Kohat

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х. <sup>1</sup>	· , ·	97 NO. 22104	thinks in the second	· · ·
	above.		•	

Enclosed find herewith Charge Sheet alongwith Statement of allegation dully signed and dated by Constable Adnan s/o Muhammad Rumzan, No: 816, confined in this Jail in case FIR No. 615 dated: 27-11-2017, U/S: 9C-CNSA, PS: Bilitang, Kohat, for your further necessary action at your end, please.

Office of the District Police Officer. Kohat

Dated 36 1/2017

## CHARGE SHEET.,

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JAVED IOBAL, DISTRICT POLICE OFFICER, KOHAT, as a the deale southority funder. Khyber Pakhtunkhwa "Police Rules 1975 weathing the 2014) am of the opinion that you Constable Adnan No. 816 the left is yourself liable to be proceeded against, as you have committed the the area for omissions within the meaning of Rule 3 of the Police Rules 1975.

> Being involved in Criminal Case vide FIR No. 615 dated 27.11.2017 u/s 9 CCNSA PS Billitang, which is a gross misconduct on your part.

By reasons of the above; you appear to be guilty of antuct under Rule 3 of the Police Rules 1975 and have rendered yourself f(z) to all or any of the penalties specified in the Rule 4 of Police Rules 1975.

and therefore, required to submit your written, a most within 07days of the receipt of this Churge Sheet to the enquiry

Your written defense if any should reach the Enquiry Officer . , the specified period, failing which it shall be presumed that you have no a te part in and ex-parte action shall be taken against you.

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DISTRICT'POLICE OFFICER, KOHAT Z.

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## Office of the District Police Officer, Kohat

#### - 1 Paterl \_\_\_\_\_ 2017 - -

#### DISCIPLINARY ACTION

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#### STATEMENT OF ALLEGATIONS

regang involved in Criminal Case yide FIK No. 615 dated 27.11.2017 u/s 9 CC/ISA PS Billitang, which is a gross misconduct on your part.

For the purpose of scrutinizing the conduct of said a creed with reference to the above allegations <u>triate conditions</u> is pointed as enquiry officer. The enquiry officer shall in accordance with evision of the Police Role-1975, provide reasonable opportunity of hearing to the data to set her and her another shall be written wenty five days of the triate of this order, recommendations as to publishment or other provided with negative the accused official

The accused official shall juin the proceeding on the  $1 \le 2$  and place fixed by the enquiry officient.

DISTRICT POLICE OFFICER, KOHAT - 1/2 / 25/29

proceedings against the accused under the provisions of Police Rede 1975.

the <u>Accused</u> <u>Official</u>: with the directions, to appear before the Encody Officer on the date, time and place fixed by him. for the set place of enquiry proceedings

### BEFORE THE DISTRICT FOLICE OFFICER, KOHAT

REPLY OF THE CHARGE SHEET

Respected Sir,

SUBJECT:

Dated:

9 Jan., 2018.

Kindly with reference to the Charge sheet bearing No. 9.195-96/PA dated 3 .11.2017, it is submitted that I have been falsely charged in Case DIR NO. 615 dated 27.11.2017 U/S 9 CNSA FS Bilitang.

On the day of occurrence, I was proceeding in the car towards Gumbat to participte in the marriage ceremony of my friend when I was stopped by Muhammad Inbal SHO near Bilitang Chowk. As nothing was recovered from my possession, therefore I protested. On this Count, the instant false case was registered against me and my relative lady present in the car. The falsohood of the matter is further evident from the fact that the place of occurrence is shown to be Bilitang Chowk on main Kohat.Rawalpindi Road, but no independent and inpartial private witness is cited as a witness.

Since I am innocent, therefore it is requested that the instant charge sheet may kindly be dropped and the departmental proceedings kept pending till the decision of the criminal case against me because a person is considered to be innocent till proved otherwise

Yours Obedientl

CONSLABLE ADNAN NU. 845 D'strict. Police Mohat.

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216 / Vist d= 6 21 dictor (5) Parcharold Straight 1.00 On Churst of a cite - 6 やしんの シリンションシンシン 12.0-1575-6C - 2 حيثر کارسی آب کی عرب کے Bolorlo Line. حشرى برك ترك كي القان ك - 3 - 0 ميري حيث في حياتي المراز العلى الم F. Grobberg F. C. G. G. F. F. -14:00 Huby Our of 24/26 is the 2. 1 2 2 - 6 - 6 0 7 - 7 T 6.00-John Cherry 5. to billion Oger ACRY B. W.C. 5 Widden at Line G to be bill of Stor Stor JE, 2013-6 × 035220 Ab M. Name 27-0-P OF LO ON FORD & CORE ししいしいののこう いちゃし しゃ や Por At Proving (Jr. 1) 3. (Jr. 1) 3. (Jr. 1) 3.



OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT Tel: 0922-9260116 Fax 9260125

## ORDER

Constable Adnan No. 816, who was placed under suspension in connection with involvement in case FIR No. 615 dated 27.11.2017 u/s 9 CCNSA PS Billitang vide OB No. 998 dated 05.12.2017 is hereby re-instated in service from the date of his suspension and his enquiry is kept pending till the decision of court.

POLICE OFFICER, DISTRI KOHAT

601 OB Nó. 25-5-/2018 Date.

action

No<u>57.58-67</u>/PA dated Kohat the<u>28-5</u>2018. Copy of above to the:-R.I/Reader/Pay officer/SRC/OFIC for necessary

0 16 10 100 Ling - Locali قى ئىر ئار كابى توال قىلى چ بىرلان ونا بالمر. مربورد موسوط نه کامی حوالم قرب در مرب کامی مر المعبر کویی میا مناع، مورع دی م (C) dy DECIK 6-12-018

# OFFICE OF THE DISTRICT POLICE OFFICER KOHAT

## SHOW CAUSE NOTICE (Under Rule<sup>2</sup>5(3) KPK Police Rules, 1975

That You <u>Constable Adnan No. 816</u> have rendered yourself liable in proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa, Police Ru 1975 (Amendment 2014) for following misconduct;

i. You while posted at Police Lines Kohat had absented yourself fr official duty vide DD No. 37 dated 01.10.2018 and reported arrival v DD No. 08 dated 25.10.2018 (Total absence period i.e 24 days) with any leave or permission from the competent authority. Your this a shows in-efficiency and gross misconduct on your part.

That by reason of above, as sufficient material is placed before the undersigned, therefore it is decided to proceed against you in gener Police proceeding without aid of enquiry officer:
 That: the misconduct

That- the misconduct on your part is prejudicial to good order or discipline in the Police force.

 That your retention in the Police force will amount to encourage in efficient and unbecoming of good Police officers.

5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules.

 6: You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 (Amendment 2014) for the misconduct referred to above.

You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex-parte action shall be taken against you.

You are further directed to inform the undersigned that you wish to be heard in person or not.

Grounds of action are also enclosed with this notice

No. 124271PA

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Dated 37.1/ /2018

DISTRICT POLICE OFFICER, KOHAT 27/1

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### OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT Tel: 0922-9260116 Fax 9260125

## SHO PS Jungle Khel

Subject: -

12826 /PA No Dated c.5-12-12018.

# SHOW CAUSE NOTICE

Memo: - Enclosed please find herewith a Show Cause Notice (in duplicate) against Constable Adnan No. 816 to serve upon him on his home address. One copy of the same duly signed by him and return to this office for further necessary action. His home address is as under:

Constable Adnan No. 816 S/O Ramzan Khan R/O Medan Chowk Jungle Khel Mohallah Shinwari district Kohat.

> DISTRICT POLICE OFFICER, KOHAT

2007 P L C (C.S.) 997

[Supreme Court of Pakistan]

Present: Rana Bhagwandas and Saiyed Saeed Ashhad, JJ

HABIB BANK LIMITED

Versus

#### GHULAM MUSTAFA KHAIRATI

Civil Petition No.411-K of 2004, decided on 10th October, 2005.

(On appeal from the order, dated 12-3-2004 passed by Federal Service Tribunal at Karachi in Appeal No.1472(K) of 1998).

(a) Service Tribunats Act (LXX of 1973)----

----Ss. 2-A & 4---Employee of Nationalized Institution---Privatization of such Institution during pendency of appeal by its employee before Service Tribunal---Effect---Such subsequent development would neither deprive such employee of his status as civil servant nor ous jurisdiction of Service Tribunal to proceed with pending appeal---Principles.

Mere fact of privatization of Nationalized Institution by way of transfer/sale of its controlling share by the Federal Government to a private party would not be sufficient to oust the jurisdiction of the Service Tribunal to proceed with the case of an employee of such institution as at the time of filing of the appeal before the Tribunal he was a civil servant as provided by section 2-A of Service Tribunals Act, 1973 and a subsequent development would not deprive or strip such employee of his status as civil servant would have no adverse effect on the pending appeal.

(b) Criginal trial----

Registration of F.I.R. against a person-Effect-Mere allegation of commission of an offence and registration of F.I.R. against a person would not ipso facto make him guilty, rather he would be presumed to the innocent until convicted by a competent Court-

More-allegation of commission of an offence against a person, and registration of 1, R. in the respect of a certain offence or more than one offence against such person would not upso that one offence and he would continue to enjoy the presumption of innocence until convicted by a Court of competent jurisdiction after a proper .\* trial with opportunity to defend himself on the allegations levelled against him.

(c) Habib Bank Limited (Staff) Service Rules, 1981-

----R. 15---Termination bf service in lieu of pay for notice period---Senior Executive-Vice-President---Non-performance of duties by employee due to his arrest in a criminal case----Imposition of such penalty by Authority for having lost faith and confidence in employee and for not keeping such post vacant for indefinite .period---Validity---Mere registration of criminal case against employee would not ipso facto- make him guilty of commission of offence---Employee would continue to enjoy presumption of innocence until convicted by competent Court after trial---Authority could have posted another officer on .such post till decision of criminal case---Employee on conviction in criminal case would have lost his job---Authority during pendency of criminal case could institute departmental proceedings against employee for his alleged criminal acts found to be false subsequently---Simpliciter termination of service of employee under R.15 of Habib Bank Limited (Service) Rules, 1981 for having lost trust and confidence of competent authority was an illegal order.

#### (d) Civil service----

----Initiation of departmental proceedings against civil servant before or after his acquittal in criminal case---Principal.

Before the quashment of F.I.R. and the pendency of criminal case the authority can initiate departmental proceedings as the criminal and departmental proceedings are entirely different not being co-extensive nor inter-connected. Even after acquittal of civil servant in criminal trial, departmental proceedings could have been instituted as these are concerned with the service discipline, good conduct, integrity and efficiency of civil servant.

Syed Muhammad Iqbal Jafri v. Registrar; Lahore High Court 2004 PLC (C.S.) 809 rel

### (e) Civil service---

----Removal/dismissal/termination of services of an employee of nationalized Bank having no statutory rules---Validity---Such penalty could not be imposed on employee without issuing him show-cause notice calling upon his explanation and holding of an inquiry, if required, into allegations---Mere fact that existing Service Rules of Bank did not have statutory backing would not give unlimited, unfettered anal absolute power to competent authority to ignore same and deprive employee of his right of access to natural justice.

Arshad Jamal v. N.-W.F.P. Forest Development Corporation and others 2004 PLC (C.S.) 802; The Managing Director, Sui Southern Gas Co. Ltd., v. Saleem Mustafa Shaikh and others PLD 2001 SC 176; Managing Director, Sui Southern Gas Company Limited, Karachi v. Ghulam Abbas and others 2003 PLC (C.S.) 796; Nazakat Ali v. WAPDA through Manager and others 2004 SCMR 145 and Anisa Rehman Vs. P.I.A.C. 1994 SCMR 2232 rel.

## (f) Service Tribunals Act (LXX of 1973)---

----S. 4---Appeal---Time-barred appeal---Condonation of delay---Validity---Discretion of condoning delay in filing appeal, if legally, judiciously and properly exercised would not be interfered with.

Managing Director, Sui Southern Gas Company Limited Karachi v. Ghulam Abbas and others 2003 PLC (C.S.) 796 and Nazakat Ali v. WAPDA through Manager and others 2004 SCMR 145 rel.

Shalud Anwar Bajwa, Advocate Supreme Court and Ahmedullah Faruqi, Advocate-on Record for Petitioner.

Suleman Habibullah, Advocate-on-Record for Respondent.

#### ORDER

SAIYED SAEED ASHHAD, J.---This petition for leave to appeal has been filed by petitioner-Bank assailing the judgment dated 12-3-2004 of the Federal Service Tribunal (hereinafter referred to as the "Tribunal") in Appeal No.1472(K) of 1998 whereby the Tribunal has set aside the order of termination of the respondent and reinstated him in service with mult monetary and other consequential benefits.

2. Facts requisite for disposal of this petition are that respondent was employed as Senior Executive Vice-President in Habib Bank Limited. He was involved in some criminal charges for which an F.I.R. was registered and he was arrested therein. As a result of his arrest which prolonged on account of dismissal of his bail application, he could not perform his duties on the post held by him. The petitioner-Bank after observing that the post could not be kept vacant for an indefinite period as it was not known when he would be enlarged on bail or released from the charges levelled against him and further that on account of his involvement in criminal acts they had lost faith and confidence in him, thus constraints on the part of the management from allowing to occupy a very senior and confidential position terminated his services with immediate effect in pursuance of Clause 15 of the Habib Bank Limited (Staff) Service Rules, 1981 on three months pay in lieu of notice.

3. The respondent submitted his representations, legal notices etc. but the petitioner-Bank did not redress the grievance of the respondent on the ground that his termination was simpliciter and further that his service with the Bank was governed by the principle of master and servant which gave ample power to the petitioner-Bank to remove/terminate an employee after serving of notice or pay in lieu thereof and there was no requirement of providing opportunity of personal hearing.

4. As the petitioner-Bank failed to redress his grievance the respondent approached High Court of Sindh by filling Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan. This petition was dismissed after incorporation of section 2-A in the Service Tribunals Act, 1973 {hereinafter referred as the "Act"}. It will be advantageous to reproduce the observations of the High- Court regarding condonation of delay in filing appeal before the Tribunal as under: ---

The petitioner apart from the available pleas, would be free to apply for condonation of delay under section 5 of the Limitation Act for the reason that the petitioner has been pursuing his petition diligently and in good faith."

5. The order of the High Court was challenged by respondent before this Court by way of C.P.L.A. No.52 of 1998. The C.P.L.A. was dismissed vide order dated 4-6-1998 upholding the order of the High Court to the effect that the Tribunal would have the sole jurisdiction to proceed with the case of the respondent after incorporation of section 2-A in the Act. Consequently respondent filed appeal under section 6 of the Act on 4-4-1998.

6. The petitioner objected to the maintainability of appeal before the Tribunal on the ground of limitation. The Tribunal after minute and thorough examination of the provisions of

section 5 of the Limitation Act and taking into consideration the facts and circumstances of the case condoned the delay by placing reliance on the pronouncements of this Court laying down the principle for condonation of delay.

7. Feeling aggrieved and dissatisfied with the impugned judgment the petitioner-Bank filed this petition for leave to appeal.

8. We have heard the arguments of Mr. Shahid Anwar. Bajwa learned Advocate Supreme Court on behalf of petitioner and Mr. Suleman Habibullah learned Advocate-on-Record for Respondent.

9. Mr. Shahid Anwar Bajwa in support of the petition raised the following three contentions:-

(i) That on 12-3-2004 when the judgment was announced, the Tribunal had ceased to have jurisdiction to proceed with the case of the respondent inasmuch as by that date the petitioner-Bank after completion of privatization process had been handed over to Agha Khan Foundation as they had acquired 51 interest in the petitioner-Bank whereafter it could not be said that the Bank was being run controlled and managed by the Federal Government thus depriving the respondent of the status of civil servants as per section 2-A of the Act.

(ii) That the petitioner on account of his involvement in criminal acts and offences of serious nature for which F.I.R. No.98 of 1994 dated 26-12-1994 was registered by F.I.A. under sections 161/162 P.P.C. read with section 5(2) of Prevention of Corruption Act (II of 1947) was found to be dishonest unreliable unscrupulous and tricky person becoming unfit for employment in an institution like a Bank where utmost trust respect credibility and honesty is required leaving no option with the Bank but to terminate his services and

(iii) That the Tribunal had erred in condoning the delay in filing the appeal by the respondent as no cogent, plausible and satisfactory ground had been advanced by the respondent for the delay in filing the appeal and the Tribunal had acted in an arbitrary and fanciful manner in condoning the delay.

10. Mr. Sideman Habibullah, learned Advocate-on-Record appearing on behalf of respondent on the other hand supported the-judgment of the Tribunal and submitted that the Tribunal had considered each and every aspect of the case in condoning the delay and minutely examined all the contentions of the counsel for the parties as well as relevant provisions of the law applicable to the facts and circumstances of the case relating to the rights, liabilities and obligations of the parties.

11. Relative to the first contention raised by Mr. Shahid Anwar Bajwa it is to be observed that this contention was not available to the petitioner at the time when the appeal was argued before the Tribunal, therefore, the Tribunal could not have considered and dilated upon the contention which has been raised for the first time today. The petitioner did not even raise this ground in their petition for leave to appeal filed by them in this Court. Even otherwise raising of this plea or ground before us would be of no help to the petitioner in view of the judgment of a larger Bench of this Court in Civil Petitions Nos.204 to 240, 247, 248-K of 2004 and 199-K of 2005 (Manzoor Ali and others v. United Bank Ltd. and another) holding that mere fact of privatization of Nationalized Institution by way of transfer/sale of its controlling share by the Federal Government to a private party would not be sufficient to oust the jurisdiction of the Service Tribunal to proceed with the case of an employee of such institution as at the time of filing of the appeal before the Tribunal he was a civil servant as provided by section 2-A of the Act and a subsequent development would not deprive or strip such civil servant of his status as civil servant would have no adverse effect on the pending appeal. This contention is therefore decided against the petitioner.

12. Taking into consideration the second contention advanced by Mr. Shahid Bajwa it may be observed matrix a settled principle of law that mere allegation of commission of an offence against a person and registration of FIR intrespect of a certain offence or more than one / offence against such person would not ipsoffacto make him guilty of commission of such / offence and he would continue to enjoy the presumption of innocence until convicted livea Court of competent jurisdiction after a proper trial with opportunity to defend himself on they allogations levelled against him in the present case the petitioner had acted with utmost hurry, and hot haste for which no plausible explanation was provided by them either before they Tribunal or by Mr. Shahid Bajwa while arguing this petition in this Court. What was stated in support of removal/termination was that the post occupied by the respondent was of Senior Executive Vice-President which could not be kept vacant for a long period and that on account of the criminal act/offence committed by him he had lost faith, confidence and trust of the competent authority for holding such a senior appointment. Both the' rounds advanced by Mr. Shahid Bajwa do not appear to carry weight. As regards the contention that the post could not be kept vacant for long period, it may be observed that it could have been filled in by posting another officer or additional charge of the post could have been given to another officer till such time the respondent's case has been decided by a competent Court. However, in case of conviction he would have lost his job. The petitioner could have instituted departmental proceedings against the respondent for his alleged criminal acts under their service rules known as Habib Bank Limited (Staff) Service Rules, 1981 (hereafter referred to the "Rules"). Removal of the respondent under clause 15 of the Rules on the ground that respondent had lost faith, confidence and trust of the competent authority was an illegal order which in the garb of termination simpliciter was in effect by way of punishment for the alleged criminal acts of respondent which were sub-judice before a competent Court and which subsequently were found to be baseless and false. Before the quashment of the F.I.R. and pendency of the criminal case the petitioner could have initiated departmental proceedings as the criminal case and the departmental proceedings are entirely different not being co-extensive nor inter-connected. Even after acquittal of respondent in criminal trial, departmental proceedings could have been instituted as the departmental proceedings are concerned with the service discipline, good conduct, integrity and efficiency of the employees. For the above reliance is placed on the case of Syed Muhammad lqbal Jafri v. Registrar, Lahore High Court, 2004 PLC (C.S.) 809.

13. Admittedly at the time when action of termination was, taken against the respondent the petitioner-Bank was being managed, run and controlled by the Federal Government and though at that time the exact status of the employees of the Nationalized Banks could not be determined but the fact is that the law of Master and Servant had ceased to be applicable as the petitioner-Bank was no longer a privately managed bank and further that the employees of the petitioner-Bank had g been given certain guarantees and sanction under The Banks (Nationalization) Act, 1974. It is also an admitted fact that Service Rules for the petitioner employees had been framed and were in existence. The competent authority of the respondent-Bank thus had no power to terminate the services of the respondent without

issuing show-cause notice to the respondent, calling upon his explanation and holding an inquiry, if so required into the allegations. The competent authority thus acted not only in contravention of the provisions of law relating to the removal, dismissal and termination of the employees of a nationalized bank but also, violated the provisions of natural justice according to which no one can be condemned without providing him an opportunity of defending himself. Such order could not be said to be a legal, valid and proper order. The fact that the Service Rules in existence in the Petitioner's Bank did not have 'statutory backing would not give unlimited, unfettered and absolute power to the Petitioner to ignore the same and to deprive the respondent of his right. It of access to natural justice. If any authority is required in support of the above proposition the same are available from the judgments in the cases of (i) Arshad Jamal v. N.-W.F.P. Forest Development Corporation and other's 2004 PLC (C.S.) 802, (ii) The Managing Director, Sui Southern Gas Co. Ltd. v. Saleem Mustafa Shaikh and others PLD 2001 SC 176 (iii) Managing. Director, Sui Southern Gas Company Limited, Karachi v. Ghulam Abbas and. others 2003 PLC. (C.S.) 796; (iv) Nazakat Ali v. WAPDA through Manager and others 2004 SCMR 145 and (v) Anisa Rehman v. P.I.A.C. 1994 SCMR 2232.

14. With regard to the contention that the Tribunal had erred in condoning the delay on the ground that no plausible satisfactory and sufficient ground was advanced by respondent for condonation of delay in filing the appeal, it may be stated that delay was condoned by the Tribunal after a minute and detailed examination of the facts and circumstances of the case the grounds advanced by the respondent for the delay and the pronouncements made by this Court in a large number of cases laying down the principle for condonation or otherwise of the delay in filing appeals and application etc. The Tribunal while condoning the delay did not commit any illegality or material irregularity or acted arbitrarily or against the settled principles governing condonation of delay which would compel this Court to interfere with the exercise of discretion. In a large number of the cases this Court has pronounced that when discretion of condoning the delay in filing an appeal has been legally judiciously and properly exercised then same is not required to be interfered with: Reference may be made to the case of Managing Director, Sui. Southern Gas Company Limited, Karachi v. Ghulam Abbas and others 2003 PLC (C.S.) 796 wherein this Court while discussing the ambit of the discretionary power of the Tribunal relative to condonation of delay observed as under:--

Besides above reference, decision of the cases, on merits have always been encouraged instead of non-suiting the litigants for technical reasons including on limitation. In this behalf good number of precedents can be cited where question of limitation was considered sympathetically after taking into consideration the relevant facts. Reliance is placed on the cases of Muhammad Yaqoob v. Pakistan Petroleum Limited and another 2000 SCMR 830, Messrs. Pakistan State Oil Company Limited v. Muhammad Tahir Khan and others PLD 2001 SC 980. Teckam Das M. Haseja, Executive Engineer, WAPDA v. Chairman, WAPDA 2000 SCMR 142. There are cases where even delay has been condoned by the Tribunal without receiving application from the appellant but no interference was made by this Court on the premises that Service Tribunal had passed order in exercise of its discretionary powers. In this behalf reference may be made to the case of WAPDA v. Muhammad Khalid 1991 SCMR 1765. Relevant para there from reads as under thus:

As regards the question that no application for condonation of delay had been filed by the respondent the matter being one of the discretion, the finding of the Tribunal cannot be set aside on a technicality alone.

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In the case of Nazakat Ali v. WAPDA through Manager and others 2004 SCMR 145 this Court made the following observations:---

"... It hardly needs any elucidation that sufficiency of cause for condonation of delay being question of fact is within the exclusive jurisdiction of learned Federal Service Tribunal and once the discretion concerning condonation of delay was exercised judiciously by the 'Service Tribunal it cannot be disturbed by this Court without any justification which is lacking in this case. In this regard we are fortified by the dictum laid down in Syed Ali Hasan Rizvi v. Islamic Republic of Pakistan 1986 SCMR 1086, Muhammad Azhar Khan v. Service Tribunal, Islamabad 1976 SCMR 262, Water and Power Development Authority v. Abdur Rashid Dar 1990 SCMR 1513 and Sher Bahadar v. Government of N.-W.F.P. 1990 SCMR 1519.

The conclusion arrived at by the learned Federal Service Tribunal being strictly in consonance of law and being well-based does not warrant any interference. The petition being meritless is dismissed and leave refused."

Perusal of the relevant portion of the judgment of the Tribunal dealing with this issue leaves no doubt that it had decided this issue after a thorough and very minute examination of the facts, circumstances and the relevant case. Thus the exercise of discretion does not require to be interfered with.

16. For the foregoing facts, discussion and reasons this petition for leave to appeal is found to be without any substance. Accordingly it is dismissed and leave to appeal is refused.

Leave refused.

S.A.K./H-38/SC