

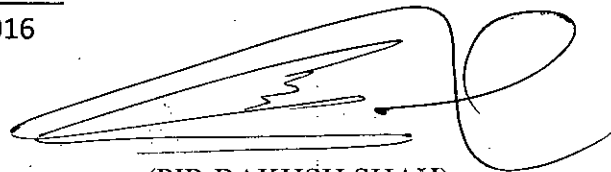
425/2014

Appeal No-425/2014  
Jamshed vs Police Dept: KPK

20.09.2016

Counsel for the appellant and Mr. Usman Ghani, Senior Government Pleader for respondents present. The instant appeal and other seven identical appeals No. 414/2014 titled "Ex-Driver Constable Khushdil No. 261-vs-Deputy Inspector General of Police/RPO, Bannu Region Bannu etc, 415/2014 titled Ex-Driver Constable Attique-ur-Rehman No. 1609-vs- Deputy Inspector General of Police/RPO, Bannu Region Bannu etc, 424/2014 titled "Azmatullah-vs-The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc" 426/2014 titled "Haleemullah-vs-The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc" 427/2014 titled Shah Fayaz-vs-The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc" 1065/2014 Ex-HC Maqbool Khan No. 4757-vs-The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar etc and 1066/2014 titled Ex HC Amjad Khan No. 4747- vs-The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar etc" are identical to Service Appeal No. 498/2014 titled "Jamshed Ali Shah-vs-Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc" decided on 04.05.2015 by this Tribunal. Since the same question of facts and law are involved in these appeals, all these appeals are therefore decided in terms of the aforementioned service appeal No. 498/2014. The respondents shall ascertain as to whether the present appellants are similarly placed persons or otherwise. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
20.09.2016



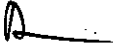
(PIR BAKHSH SHAH)  
MEMBER




(ABDUL LATIF)  
MEMBER

26.02.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Since the court time is over, therefore, the case is adjourned to 19-4-16 for arguments.

  
Member

  
Member

19.04.2016

Counsel for the appellant and Mr. Latif Khan, Naib Court alongwith Addl: AG for respondents present. Since the Court time is over therefore, case is adjourned for arguments to 20-5-16.


  
MEMBER

  
MEMBER

20.5.2016


Counsel for the appellant and Addl. AG for respondents present. Counsel for the appellant requested for adjournment. Adjourned for arguments on 20.9.2016.

  
Member

  
Member


13.11.2014

No one is present on behalf of the appellant. Mr. Shafi-uz-Zaman, Naib Court on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. The Tribunal is incomplete. To come up for written reply/comments on 09.01.2015.

  
Reader

09.01.2015

No one is present on behalf of the appellant. Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for written reply/comments on 29.04.2015.

  
Reader.

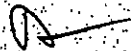
29.04.2015

Agent of counsel for the appellant and Mr. Yaqoob Khan, Naib Court alongwith Addl. A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 28.10.2015.

  
Chairman

28.10.2015

Clerk to counsel for the appellant and Asst. AG for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I. Khan. Therefore, the case is adjourned to 26-2-16 for arguments.

  
Member

Appeal No. 425/2014.

Mr. Jamshed.

3.

21.05.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the original order dated 31.12.2013, he filed departmental appeal, which has been rejected on 10.03.2014, hence the present appeal on 26.03.2014. He further contended that the impugned order dated 10.03.2014, has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules 1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 18.08.2014.

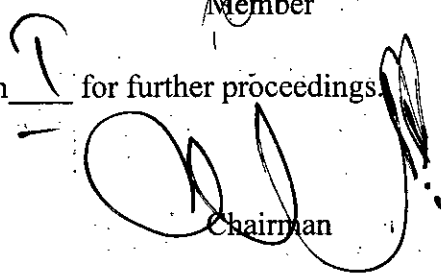


Member

4.

21.05.2014

This case be put before the Final Bench 1 for further proceedings.



Chairman

18.8.2014

The Hon'ble Bench is on tour to Abbottabad, therefore, case adjourned to 13.11.2014.

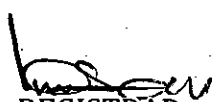
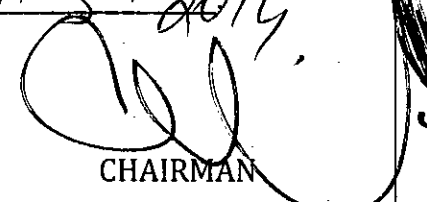


Reader

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 425/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/03/2014	<p>The appeal of Mr. Jemshed presented today by Mr. Khaled Rehman Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	31-3-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>21-5-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 425/2014

Jamshed ..... Appellant

Versus

The PPO KP and others.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-6
2.	Charge Sheet with Statement of Allegations		A	7-8
3.	Reply to Charge Sheet		B	0-9
4.	Enquiry Report		C	10-11
5.	Impugned original order	31.12.2013	D	0-12
6.	Departmental appeal		E	0-13
7.	Impugned appellate order	10.03.2014	F	0-14
8.	Appellate orders of other reinstated Policemen	10.03.2014	G	15-17
9.	Wakalat Nama			

Through

  
Appellant

**Khaled Rahman**  
Advocate, Peshawar  
3-D, Haroon Mansion,  
Khyber Bazar, Peshawar.  
Cell # 0345-9337312  
Off: Tel: # 091-2592458

Dated: 24 / 03/2014

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 495/2014

460  
26/3/14

Jamshed,  
Ex-Constable No.1896,  
PS Jani Khel, Bannu.....Appellant

Versus

1. The Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer,  
Bannu Region, Bannu.
3. The District Police Officer,  
District Bannu.....Respondents

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 10.03.2014 PASSED BY RESPONDENT NO.2 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT, AGAINST THE IMPUGNED ORDER DATED 31.12.2013 PASSED BY RESPONDENT NO.3 WHEREBY APPELLANT WAS DISMISSED FROM SERVICE, WAS UNLAWFULLY REJECTED.**

---

**PRAYER:**

On acceptance of the instant appeal, the impugned appellate order dated 10.03.2014 passed by Respondent No.2 and the original order dated 31.12.2013, passed by Respondent No.3 may graciously be set aside and appellant be reinstated into service with all back benefits.

---

26/3/14

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant joined the Police Force, Bannu as Constable on 09.06.2007 and since then was performing his duties regularly, dedicatedly and to the entire satisfaction of the high-ups.
2. That while posted as Constable at Police Station Jani Khel, Bannu, appellant was served with Charge Sheet and Statement of allegations (*Annex:-A*) alleging therein tainted reputation and the alleged involvement in anti-social activities.
3. That in response to the Charge Sheet, appellant submitted his reply (*Annex:-B*) wherein he denied the allegation and explained his position. The reply to the Charge Sheet and Statements of allegations may kindly be considered as an integral part of this appeal.
4. That thereafter, a summary and an irregular enquiry (*Annex:-C*) was conducted at the back of the appellant without associating him with the enquiry proceedings and affording him opportunity of defence. The Enquiry Officer, in his Enquiry Report found nothing against the appellant after the enquiry, however, he has recommended major penalty for the appellant on the basis of report of some intelligence report without independently enquiring into it and confronting the appellant with the same.



5. That on the basis of so-called enquiry and without issuing final Show Cause Notice to the appellant, the competent authority vide impugned order dated 31.12.2013 (*Annex:-D*) dismissed the appellant from service under Police Rules (Amended vide NWFP Gazette, 27.01.1976).
6. That being aggrieved of the impugned order *ibid*, appellant challenged the same before Respondent No.2 being the appellate authority vide departmental appeal (*Annex:-E*) thereby raising all the legal and factual objections but the same was also summarily rejected vide impugned appellate order dated 10.03.2014 (*Annex:-F*). The departmental appeal may also be considered as part of instant appeal. Hence this appeal *inter-alia* on the following grounds:-

**Grounds:**

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That the allegations leveled against the appellant are sweeping, generalized and had nothing to do with reality. It appears from the allegation that the competent authority had already made up its mind for the dismissal of the appellant without

impartially looking into the matter. Since the allegations are uncertain, ambiguous and vague on the basis of which no penalty muchless major could be given, therefore, the impugned orders are not legally sustainable.

- C. That Police Rules, 1975 as amended in 1976 have wrongly been applied to the appellant as the same have no statutory backing, while the relevant rules applicable, were ignored, therefore, the impugned orders are not legally correct.
- D. That no regular enquiry was conducted into the allegations and only a summary and fill-in-the-blank enquiry was conducted, on the basis of which no major penalty can legally be imposed. Thus the impugned orders based upon an improper enquiry are also not tenable.
- E. That the Enquiry Officer after recording the statements of the relevant and concerned people found no evidence in support of the allegations, therefore, the appellant should have been exonerated from the charges leveled against him but then he recommended major penalty upon the appellant on the basis of the report of some intelligence agency which is highly illegal and in violation of the settled principles of law as no penalty muchless major can be imposed on the basis of report of intelligence agency. Moreover, appellant has not been confronted with the so-called intelligence report, therefore, the impugned orders are nullity in the eye of law and liable to be

set aside.

- F. That it is a settled law that where major penalty is to be imposed then regular enquiry is necessary but no such regular enquiry was conducted, therefore, the impugned major penalty is unwarranted in law.
- G. That no opportunity of personal hearing was afforded to the appellant, which is also the mandatory requirement of law as well as the principle of natural justice. Thus appellant was condemned unheard and accordingly the impugned orders are void, ab-initio, arbitrary and hence not sustainable.
- H. That the controversy was factual in nature, necessitating the holding of regular enquiry, without which no solid conclusion could be reached, whereas no such enquiry was conducted.
- I. That no Show Cause Notice, which is also mandatory under the law, was issued to the appellant and hence in absence of the Show Cause Notice the imposition of major penalty is completely unwarranted, illegal and hence not maintainable.
- J. That one Mr. Mushtaq LHC and Sadullah FC were also proceeded against alongwith the appellant for the same allegations and they too were dismissed from service on almost the same charges and the same report of the Enquiry Officer. On their appeal before Respondent No.2, the impugned orders was

set aside and they were reinstated into service vide orders dated 10.03.2014 (*Annex:-G*).

K. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

  
Appellant

Through

  
Khaled Rahman,  
Advocate, Peshawar.

Dated: 24 / 03 / 2014

CHARGE SHEET

ANNEX A<sup>s</sup> (7)

1. MUHAMMAD IQBAL District Police Officer, Bannu, as competent authority, hereby charge you Constable Jamshid No. 1896 of PS Jani Khel, Bannu as you have been suspended by the Regional Police Officer, Bannu on the basis of your tainted reputation and your alleged involvement in anti-social activities. Your activities are against the norms of a disciplined service, morality and impartialness which are badly required for the police force.

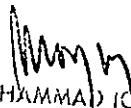
2. By reason of the above you appear to be guilty of misconduct under the police Rules (amended vide NWFP gazette, 27 January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.

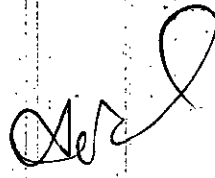
3. You are therefore, directed to submit your defense within 07 days of the receipt of this Charge Sheet to the enquiry officer.

4. 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 in that case an ex-parte action shall be taken against you.

5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.

  
(MUHAMMAD) IQBAL  
District Police Officer,  
Bannu.




STATEMENT OF ALLEGATIONS:

I, Muhammad Iqbal, District Police Officer, Bannu as competent authority, am of the opinion that Constable Jamshid No.1896 of PS Jani Khel, Bannu has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette 27<sup>th</sup> January 1976).

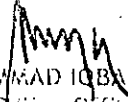
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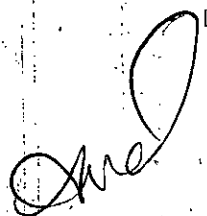
STATEMENT OF ALLEGATIONS:

1. He has been suspended by the Regional Police Officer, Bannu on the basis of his tainted reputation and his alleged involvement in anti-social activities. His activities are against the norms of a disciplined service, morality and impartialness which are badly required for the police force.
2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Mr. Liaqat Shah, DSP Naurang, District Lakki Marwat, is appointed as Enquiry Officer.
3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.
4. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.

  
(MUHAMMAD IQBAL)  
District Police Officer,  
Bannu.

No. 668-70/sre dt- 06-12-13  
Copies to (1) Constable Jamshid No.1896 of PS Jani Khel  
(2) DSP Naurang, District Lakki Marwat (3) SRC Bannu.

  
(MUHAMMAD IQBAL)  
District Police Officer,  
Bannu.





از دفتر DSP سرکل ٹورنگ انڈیا انشورنس کمپنی

PANNE C

تاریخ 21.12.2013

انٹرنیٹ آف انشورنس کمپنیز روٹ

صاحب عالی! عرض حضرت یوں تم کاٹیل 2 نومبر 1896 کے صرف

حوالہ جاری شدہ ہے سہمی آف ایگنسٹن 668.70 شرح 12/2013 کو

دفتر بڑا حوالہ ہو کر صاحب DSP کو یوں نے کاٹیل

مئی 1896 کے خلاف الزام عائد کیا ہے کہ انکی صلاحیتیں

عناصیر سے روابط ہے۔ جو غیر قانونی اور خلاف دیکھیں ہے

اور حکم یوں کیلئے بدنامی ہے۔ جاری شدہ سہمی آف ایگنسٹن

میں DSP سرکل ٹورنگ کو انٹرنیٹ انشورنس فوراً کے اداکانات

صادر کے انٹرنیٹ بڈلیم ڈاک شرح 08/13 کو بند کر دیا

وصول ہوئی ہے۔ الزام علیہ انشورنس نے اپنے خلاف لگائے

تھے الزامات کا تفصیلہ حوالہ دیگر الزامات کو غلط اور

بے بنیاد بتلے ہے۔

دوران انٹرنیٹ ذیل گواہان شمول الزام علیہ انشورنس طلب کے

بیانات موجودگی الزام علیہ انشورنس قلمبند کر کے الزام علیہ کو

گواہان پر حد کر کے اور اپنا دفاع کرنے کا پورا پورا

حق اختیار دیا گیا، لطافاً ریکارڈ SRC، ASI یوں

الزام علیہ کاٹیل مئی 1896 شرح 09/2007

P.T.O







OFFICE OF THE  
DISTRICT POLICE OFFICER,

BANNU.

Phone No: 0928-9270 038

Fax No: 0928-9270045

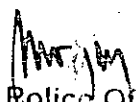
No. 1454 /EC

Dated 31.12.2013

To: Constable Jamshed No.1896 of District Bannu Police.

ORDER

1. You, Constable Jamshed No.1896 were charged for the misconduct communicated to you during departmental proceedings, the gist of which is that you had a tainted reputation and remained involved in anti social activities. Accordingly proper departmental enquiry was conducted to find out facts.
2. Mr. liaqat Shah DSP Naurang District Lakki was appointed as Enquiry Officer who has submitted his findings wherein the charges leveled against you have been proved.
3. You were called in the orderly room on 30.12.2013 and were heard in person. You had nothing substantial in your defense. I, Mohammad Iqbal, DPO Bannu, as competent authority under Police Rules (amended vide NWFP gazette, 27 January 1976) have come to the conclusion that charges leveled against you are proved beyond any doubt and that your retention in police service would be harmful for the force. I have, therefore, decided to impose major penalty of dismission from service upon you. This order will take effect immediately.

  
District Police Officer,  
Bannu.



حضور ضابطہ درالامان ریجنل پولیس آفسر صاحبان سے ملنے تک نہیں ہوئی

اسد علی : - حال فرمائے ملازمت سے ملے بعد ماہ اپریل 3 صبح 5 بجے ملے تھے۔  
نہ آپ فری لانس کی سہری سماعت پر لیٹن کرنٹ فائنل ہوگا  
لوٹن ایجوکیٹڈ لیجسلیٹو اینڈ ٹریڈنگ سوسائٹی کے بورڈ 1454 درجہ 12/31  
ملازمت سے برخاستہ کیا گیا۔ اور سید مال بخش سے ظلم کیا گیا۔

صاحب

سائل کی جانب سے حضور سے ذیل ملاحظہ فرمائیں اپیل کرتا ہوں :-

1- تاریخ 6/9 کی حکم دہیں میں بطور مینیجر مقرر ہو گیا۔ اور پولیس  
کوارٹر کیمپالیا ٹریننگ حاصل کی۔ اور کچھ دنوں میں مختلف مقامات  
پر اس وقت اعلیٰ افسران مالا لودی انجام دیا رہا۔

2- درجہ 12/6 مائل کی اجازت حاصل کی گئی تھی۔ تاہم من مانیٹ  
سہ ماہی دشمن مٹا کر تیسرا درجہ رکھنے اور بڑی شہرت رکھنا  
ملنے کے الزامات کی صورت میں وضاحت کو حتمی دیا گیا۔ تاکہ میں ٹوٹ  
نہا کر رہا 3- میں نے کئی سالوں

4- اس وقت میں لوڈنگ انٹرویو افسر مقرر ہوا۔ جنہوں نے میرے بارے میں  
صرف الزامات میں ہی تھے۔ لیکن کئی کئی شہرت شروع کی۔ لیکن  
کوئی شہرت نہ تھی اور خفا میں نے سید صاحب سے ایک بار گفت

صاحب

اور نے سید صاحب کو تحریر کیا۔ کہ خفیہ ایجنسی کے لوگوں کی  
کہ میں منشیات کا خرید و بیچ کرتا تھا اور منشیات فروشان سے درالیم  
رکھتا ہوں۔ جس کا کوئی حقیقت نہیں ہے۔ اگر میں خفیہ ایجنسی  
کے مابین سید صاحب کوئی شہرت ہوئی۔ تو بہر وقت سید صاحب

دکوت میرے افسران بالا کی نگرانی سے۔ ہونہ یہ لوگ میرے خاتمہ زاد  
ہیں۔ آئین یہ ایک بے بیاد جوڑ کو بیاد بنایا ہے  
3 میں گرفت ہے۔

۴۔ وہ جگہ جہاں نے پستی پر ملک بنا۔ میں نے الزامات مارے  
ایسی جھٹائی پیش کی۔ لیکن جگہ جہاں نے میری ایک کٹی نہ پستی  
اور اس کے آخری الفاظ میرے لئے یہ تھے۔ کہ انکو میں مجبور ہوں  
ایک لکڑی راستہ چھوڑنا ہوں۔ آپ مہربان سے تشریح  
داخل کریں۔

ملاحظہ! میرے قلم سائقہ ظلم ہوا ہے۔ کوئی فائنل ہو گا۔ التو  
نہ تھا۔ تاہم بیروت کے ایسی جھٹائی پیش کرتا۔ میں قوم رسد  
کا مفادار ہوں۔ کوئی غلط کام نہیں کیا ہے  
لیذا عارضہ اہل کرتا ہوں۔ یہ سائل کو اجسدہ مائیل ورڈیں  
حال فنانہ طبع۔ تار اسبیا دماغو رپورٹ

Ex - مائیل جمہوریت 1896

0333-9734231

POLICE DEPARTMENT.

BANNU REGION.

ORDER

ANNEX F<sup>23</sup>

14

My this order will dispose of departmental appeal preferred by Ex: FC Jamshid No. 1896. of Operation Staff, Bannu against the order of Major Punishment of dismissal from service by DPO/Bannu vide Order No. 1454 dated 31-12-2013 for committing of the following omissions:-

- That his reputation was reported to be tainted as well as charged for anti social activities

The said EX: FC was proceeded against departmentally for the above misconduct. Mr. Liaqat Shah, DSP/Naurang, District Lakki Marwat was appointed as Enquiry Officer, who conducted proper departmental enquiry into the allegations and submitted his findings. The delinquent Police FC was reported to be guilty of the charges. Hence, he was awarded major punishment of Compulsory retirement from service by the competent authority under police rule-1975 vide Order Book No and dated quoted above.

The appellant preferred departmental appeal before the undersigned for set asiding the awarded punishment. The undersigned, besides perusing the departmental enquiry file and contents of the appeal, also verified the allegations through various sources which were found accurate. Opportunity of personal hearing was also afforded to the appellant but failed to satisfy the undersigned regarding the allegations leveled against him.

Keeping in view the above, therefore, I SAJID ALI KHAN, Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me under Police Rules 1975. hereby file the instant appeal with immediate effect.  
Order announced.

(Sajid Ali Khan)PSP  
Regional Police Officer,  
Bannu Region, Bannu.

No. 617-18 /EC, dated Bannu the 10 / 01 / 2014.

Copy to:-

1. The District Police Officer, Bannu along with service record containing departmental proceeding file for information and necessary action w/r to his office memo: No. 808 dated 28-01-2014.
2. ✓ Ex: FC Jamshid No. 1896.

(Sajid Ali Khan)PSP  
Regional Police Officer,  
Bannu Region, Bannu

LHC 449 *Obno OB 66-51*

POLICE DEPARTMENT.

BANNU REGION.

ORDER

*ANNEX 3*

15

My this order will dispose of departmental appeal preferred by Ex: LHC Mushtaq No. 449 of Operation Staff, Bannu against the order of Major Punishment of Compulsory retirement from service by DPO/Bannu vide OB No. 1460 dated 31-12-2013 for committing of the following omissions:-

- That his reputation was reported to be tainted as well as charged for anti social activities.

The said Ex: LHC was proceeded against departmentally for the above misconduct. Mr. Sana Ullahkhan DSP/ WQrs, District Bannu was appointed as Enquiry Officer, who conducted proper departmental enquiry into the allegations and submitted his findings. The delinquent Police LHC was reported to be guilty of the charges. Hence, he was awarded major punishment of dismissal by the competent authority under police rule-1975 vide Order Book No and dated quoted above.

The appellant preferred departmental appeal before the undersigned for set asiding the awarded punishment. The undersigned, besides hearing in person the appellant, also perused departmental enquiry file and contents of the appeal and it was found:-

- That the enquiry was not conducted in proper way and according to the charges but a general view has been offered by enquiry Officer
- That the relevant persons/officials i.e OASI, SRC and ASRC have not been examined which is mandatory under the rules.
- That finding of the Enquiry Officer is not exhaustive, as silent to show for what purpose patwari Halqa and Bank reports were obtained when the concerned scribes were not examined on oath.
- That Order sheet is also incomplete as there is nothing regarding conclusion of the enquiry tht on which date it was completed.

Keeping in view the above, therefore, I SAJID ALI KHAN, Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me under Police Rules 1975. Hereby set aside order issued by DPO/Bannu vide OB No and dated quoted above and the appellant is reinstated into service for the purpose of Denove enquiry.  
Order announced.

(Sajid Ali Khan)PSP  
Regional Police Officer,  
Bannu Region, Bannu.

No. 601-02 /EC, dated Bannu the 10/1/2014 /2014.

Copy to:-

*DSR/149*  
*SRC/149*  
*with S/149*  
*departmental enquiry*  
*papers for further reference*  
*copy to be made in the*  
*said office*

The District Police Officer, Bannu along with service record containing departmental proceeding file for information and with the direction to initiate Denove enquiry departmental proceeding and to conclude within stipulated period under the law under intimation to this office please. This refer to his memo No. 1772 dated 11-02-2014.

LHC Mushtaq No. 449

(Sajid Ali Khan)PSP  
Regional Police Officer,  
Bannu Region, Bannu

*Sajid Ali Khan*  
*10/1/2014*

*Sajid*

*Announced*  
*10/1/2014*

ORDER

My this order will dispose of departmental appeal preferred by Ex: FC Saad Ullah No. 102 of Operation Staff, Bannu against the order of Major Punishment of dismissal from service by DPO/Bannu vide OB No. 1456 dated 31-12-2013 for committing of the following omissions:-

16

- That his reputation was reported to be tainted as well as charged for anti social activities

The said Ex: FC was proceeded against departmentally for the above misconduct. Mr. Liaqat Shah, DSP/Naurang, District Lakki Marwat was appointed as Enquiry Officer, who conducted proper departmental enquiry into the allegations and submitted his findings. The delinquent Police FC was reported to be guilty of the charges. Hence, he was awarded major punishment of dismissal by the competent authority under police rule-1975 vide Order Book No and dated quoted above.

The appellant preferred departmental appeal before the undersigned for set asiding the awarded punishment. The undersigned, besides hearing in person the appellant, also perused departmental enquiry file and contents of the appeal and it was found:-

- That the enquiry was not conducted in proper way and according to the charges but a general view has been offered by enquiry Officer
- That the relevant persons/officials i.e OASI, SRC and ASRC have not been examined which is mandatory under the rules.
- That finding of the Enquiry Officer is not exhaustive, as silent to show for what purpose patwari Halqa and Bank reports were obtained when the concerned scribes were not examined on oath.
- That Order sheet is also incomplete e.g there is nothing regarding conclusion of the enquiry tht on which date it was completed.

Keeping in view the above, therefore, I SAJID ALI KHAN, Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me under Police Rules 1975. Hereby set aside order issued by DPO/Bannu vide OB No and dated quoted above and the appellant is reinstated into service from the date of dismissal for the purpose of Denove enquiry.  
Order announced.

(Sajid Ali Khan)PSP  
Regional Police Officer,  
Bannu Region, Bannu.

No. 603-04 /EC, dated Bannu the 10 / 03 /2014.

Copy to:-

The District Police Officer, Bannu along with service record containing departmental proceeding file for information and with the direction to initiate Denove enquiry departmental proceeding and to conclude within stipulated period under the law under intimation to this office please. This refer to his memo No. 830 dated 28-01-2014.

*Handwritten notes:*  
DPO/Bannu ✓  
SRC / OASI  
with g/hal and  
departmental  
papers for further  
process/ action  
enquiry with his  
against the basis

Ex: FC Saad Ullah No. 102

*Handwritten signature and date:*  
10/3/2014

(Sajid Ali Khan)PSP  
Regional Police Officer,  
Bannu Region, Bannu

*Handwritten notes:*  
Parwana Millat  
Phone 1852224  
12/3/14

*Handwritten signature:*  
Ad

(17)

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WAKALAT NAMA

IN THE COURT OF

GPle Service Tribunal

Dansheed

Appellant(s)/Petitioner(s)

Gout

VERSUS

Respondent(s)

I/We \_\_\_\_\_ do hereby appoint  
Mr. Khaled Rehman, Advocate in the above mentioned case, to do all or  
any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this \_\_\_\_\_

Attested & Accepted by

Khaled Rehman,  
Advocate, Peshawar.

06/27  
Signature of Executants

جوت

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUN KHWA PESHAWAR**

**Appeal No. 425/2014.**

Jamshed Ex-Constable No.1896, District Police Bannu.

(Appellant)

**VERSUS**

1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

2) Regional Police Officer Bannu Region, Bannu

3) District Police Officer Bannu

(Respondents)

**PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS No.1 to 3.**

Respectfully Sheweth:

**PRELIMINARY OBJECTIONS:**

- 1) That the appellant has approached the Honourable Tribunal with unclean hands
- 2) That the appellant is estopped to file the appeal due to his own conduct.
- 3) That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
- 4) That the appellant has concealed the actual facts and material facts from the Honourable Tribunal.
- 5) That the appeal of appellant is not maintainable.

**OBJECTIONS ON FACTS**

- 0-15  
29.04.14
- (1) Incorrect. The appellant has indifferent record and remained willfully absent from official duty on many occasions.
  - (2) Charge sheet based on statement of allegations was issued to the appellant after verification through various sources.
  - (3) The reply of the appellant was found unsatisfactory. As per record he was involved in anti social activities etc stated therein.
  - (4) Incorrect. All the codal formalities were observed during the course of inquiry and all opportunities of hearing and defense were provided to the appellant.
  - (5) Incorrect. Inquiry was conducted under Police Rule 1975 by the Inquiry Officer. Charge-sheet based on statement of allegations were issued to the appellant while issuance of final show-cause notice is not mandatory under the said Rules.
  - (6) Incorrect. All the opportunities were provided to the appellant during the hearing of departmental appeal and the appellant has wrongly challenged the valid/legal order of the respondents.

**OBJECTIONS ON GROUNDS.**

- A. Incorrect. The orders of the respondents are based on facts, legal and in accordance with law/ rules.
- B. Incorrect. Proper inquiry under the prevailing Rules. was conducted through inquiry officer wherein the charges/allegations leveled were established against the appellant and appropriate punishment was, given to the

appellant after providing all the opportunities of hearing/defense.

- C. Incorrect. Police Rules 1975 as amended 1976 is the proper law/rules for the Police force. The plea of the appellant is misconceived and baseless.
- D. Incorrect. Proper inquiry was conducted through DSP Naurang district Lakki Marwat and on receipt of findings report, an opportunity was provided for hearing to appellant, and appropriate order for dismissal from service was passed.
- E. Incorrect. The allegations of tainted reputation and involvement in anti social activities were established against the appellant and thereafter, order for dismissal from service was passed in accordance with law/ rules.
- F. Incorrect. Regular inquiry through DSP Naurang Lakki Marwat was conducted in accordance with law and rules.
- G. Incorrect. All the opportunities of hearing/defense were provided to appellant.
- H. Incorrect. Regular inquiry under the prevailing rules was conducted and in the light of findings report, a legal order was passed by respondent No.3 in accordance with law and rules.
- I. Incorrect. Charge-sheet based on statement of allegations were issued to the appellant. Issuance of final show-cause notice is not mandatory under the Police rules 1975.
- J. Incorrect. The cases of Mushtaq LHC and others were different from the case of appellant.
- K. That the respondents may be allowed to add or advance any other grounds during the hearing of the appeal.

**Prayer:**

In view of the above facts and stated reasons, the appeal of appellant is devoid of legal force, may kindly be dismissed with costs.

  
Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)  
2/14/6

  
Regional Police Officer,  
Bannu Region, Bannu.  
(Respondent No.2)

  
District Police Officer,  
Bannu.  
(Respondent No.3)

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUN KHWA PESHAWAR**

**Appeal No. 425/2014.**

Jamshed Ex-Constable No.1896, District Police Bannu.

(Appellant)

**VERSUS**

1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

2) Regional Police Officer Bannu Region, Bannu

3) District Police Officer Bannu

(Respondents)

**COUNTER AFFIDAVIT**

We, do hereby solemnly affirm and declare that the contents of the attached comments are true and correct to the best of our knowledge and belief and nothing has been with held or concealed from this Honorable Tribunal.

(Deponent)

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

(Deponent)

**Regional Police Officer  
Bannu Region, Bannu.  
(Respondent No.II)**

(Deponent)

**District Police Officer,  
Bannu  
(Respondent No.III)**

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUN KHWA PESHAWAR**

**Appeal No. 425/2014.**

Jamshed Ex-Constable No.1896, District Police Bannu.

(Appellant)

**VERSUS**

1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

2) Regional Police Officer Bannu Region, Bannu

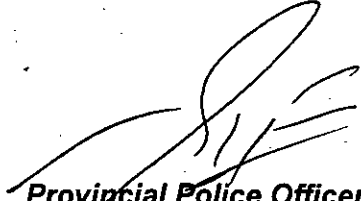
3) District Police Officer Bannu

(Respondents)

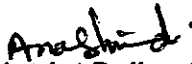
**AUTHORITY LETTER.**

Mr. Mir Faraz Khan Inspector Legal Bannu is hereby authorized to appear before the Service Tribunal Khyber Pakhtun Khwa Peshawar on behalf of the undersigned in the above cited case.

He is authorized to submit and sign all documents pertaining to the present appeal.

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

  
**Regional Police Officer,  
Bannu Region, Bannu.  
(Respondent No.2)**

  
**District Police Officer,  
Bannu.  
(Respondent No.3)**

طاہر اعجاز  
6

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT:  
MR. JUSTICE MIAN SAQIB NISAR  
MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE MAQBOOL BAQAR

CIVIL PETITION NO. 1254 OF 2015  
(Against the judgment dated 12.5.2015 of  
the KPK Service Tribunal, Peshawar passed  
in Appeal No. 506/2014)

Tahir Ijaz

Petitioner(s)

VERSUS

District Police Officer, Bannu etc.

Respondent(s)

For the petitioner(s):

Mr. Abdul Rashid Awan, ASC  
Mr. M. S. Khattak, AOR

For the respondent(s):

Mr. Waqar Ahmed Rana, Addl. A.G. KPK

Date of hearing:

09.09.2015

ORDER

MIAN SAQIB NISAR, J. Having heard the learned counsel for the parties and also having gone through the record, wherefrom it reveals that no substantial evidence was recorded against the petitioner by the Inquiry Officer pursuant to the allegations enunciated in the charge sheet, yet the former has been dismissed from service by the departmental hierarchy. Although the order has been diluted by the learned Tribunal and the dismissal has been converted into removal from service, yet the learned Tribunal has not taken into consideration that the evidence to the effect of allegations against the petitioner was not available on the record and that the Inquiry Officer had either found the petitioner guilty on the basis of surmises, or on account of hearsay evidence. Thus, the order of removal from service of the petitioner is not sustainable in law. However, we, by setting aside the impugned order and without in any way reinstating the petitioner into service, though deeming him as reinstated, as has been conceded by his counsel for the purposes of inquiry direct that a fresh inquiry be conducted against him.

ATTESTED

Superintendent  
Supreme Court of Pakistan  
Islamabad





OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
CENTRAL POLICE OFFICE, PESHAWAR



ORDER

This order is hereby passed to dispose off departmental appeal under Rule 11-a of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Driver, Constable Tawab Khan No 1269 of Bannu District Police against the Punishment order i.e dismissed from service passed against the appellant by DPO/Bannu vide his order Book No. 1463 dated 31.12.2013.

In the light of recommendations of Appeal Board meeting held on 30.07.2015, the board examined the enquiry in detail & other relevant documents. It revealed that the appellant was served with Charge Sheet/Statement of Allegations and punishment order was announced on the basis of reply to the Charge Sheet and Statement of Allegations.

The appellant was also heard in person. The board decided that denovo enquiry be conducted against him by DPO/Bannu as directed by KPK Service Tribunal Peshawar. He is provisionally re-instated in service. The period he remained out of service is treated as leave without pay. However, the period during pendency of appeal from 08.01.2015 be treated as kind leave.

Order announced in the presence of appellant.

Sd/-  
NASIR KHAN DURRANI  
Inspector General of Police,  
Khyber Pakhtunkhwa  
Peshawar

No. 9733-37 /E-IV dated Peshawar the 11-1-15 2015

Copy of above is forwarded to the:-

1. Deputy Inspector General of Police, Bannu Region.
2. District Police Officer, Bannu. The service Roll, Fauji Missal and Enquiry File of the above named official are returned herewith.
3. PSO to IGP/Khyber Pakhtunkhwa Peshawar.
4. PA to Addl: IGP/HQrs Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs Khyber Pakhtunkhwa, Peshawar.

*De*  
*12/1/15*

*Syed Fida Hassan Shah*  
(SYED FIDA HASSAN SHAH)  
AIG/Establishment  
For Inspector General of Police  
Khyber Pakhtunkhwa Peshawar

*No. 1250 B.C.*  
*D.O. 2013-115*

*DPO - Bannu In a folder*

*Bannu Region*  
*12/1/15*



account of alleged refusal to accept the change in duty pattern, she was directed to tender her unconditional apology, otherwise disciplinary proceedings would be initiated against her and it was further stated in the said letter that she will remain removed from all international flights till finalization of the case. The appellant challenged the same through a constitutional petition which was dismissed, vide the order impugned dated 2-3-2010. A

3. The counsel for the parties have been heard and record perused.

4. The guaranteed counsel for the petitioner contends that being deprived of international flights causes pecuniary disadvantage to the appellant who has been punished without any hearing or inquiry. The counsel for the respondents states that all Air Hostesses are subjected to transfer from international to domestic flights and vice versa. It is further contended by the learned counsel for the respondents that an inquiry is being initiated against the appellant which should not be interfered with.

5. This Court is not persuaded to interfere with the inquiry proceedings which is being initiated by the respondents in this behalf nor is this Court persuaded to interfere in the management of the respondent Corporation regarding transfer from a particular flight to another. However, the appellant cannot be punished by being deprived of international flights without such inquiry being concluded. B

6. In this view of the matter, this appeal is disposed of with the instruction that the appellant shall be dealt with strictly in accordance with law and not be punished by being deprived of international flights without the inquiry being concluded. However, nothing in this order shall interfere with the regular or ordinary transfer policy of the Corporation in this behalf. C

H.B. T/S-90/L

Order accordingly.

2010 P L C (C.S.) 725

[Lahore High Court]

Before Syed Sajjad Hussain Shah, J

SAMEEN ASGHAR

versus

FEDERATION OF PAKISTAN  
through Principal Secretary to the Prime Minister  
and 12 others

Writ Petitions Nos.903, 904 and 912 of 2007, decided on 6th June, 2007.

10

**(a) Constitution of Pakistan (1973)---**

----Art. 199---Constitutional petition---Civil service---Promotion policy---Violation of---Effect---Petitioner, being qualified and eligible for promotion for the post from BPS-19 to BPS-20 were superseded by their juniors, having less merits, had challenged the promotion on the ground that respondents were promoted in violation of Promotion Policy by the Central Selection Board---Petitioner contended that his promotion was withheld on the ground of adverse reports of unspecified intelligence agency which were neither communicated nor confronted with the same---Validity---Petitioner was superseded by the Central Selection Board merely because of the reports of the Intelligence Agencies, but admittedly neither these reports were communicated to him nor was he confronted with the same---Neither details of reports were found in the proceedings of the Central Selection Board nor the same were in the comments submitted by them---High Court allowed the constitutional petition and disposed of the same in terms of its earlier constitutional petitions whereunder the reports of the Intelligence Agencies were declared as without lawful authority and directed Central Selection Board to reconsider the case of the petitioner strictly in accordance with the terms of the said judgments. [pp. 727, 728] A, B, C, D, F & G

Muhammad Akbar Khan Hoti v. Federation of Pakistan 2006 PLC (C.S.) 619 and Muhammad Zafeer Abbasi, Deputy Secretary, Ministry of Kashmir Affairs and Northern Areas and Saifur Government of Pakistan, Pak. Secretariat, Islamabad 2003 PLC (C.S.) 503 ref.

**(b) Constitution of Pakistan (1973)---**

----Art. 199---Constitutional petition---Maintainability---Civil Service---Appeal not competent before Service Tribunal---Remedy---Case of petitioner did not fall in the terms and conditions of civil servant merely because against the decisions/orders of departmental authorities regarding fitness or otherwise of the petitioner for promotion to a higher post, no appeal was competent before the Service Tribunal---Constitutional petition was maintainable. [p. 727] E

Shafi Muhammad Mughal v. Secretary Establishment Division and others 2001 SCMR 1446 rel.

Abdul Raheem Bhatti for Petitioners:

Raja Muhammad Irshad, D.A.-G. for the Federation of Pakistan.

11

## ORDER

SYED SAJJAD HUSSAIN SHAH, J.--- This order shall dispose of Writ Petition No. 903 of 2007, Writ Petition No. 904 of 2007 and Writ Petition No. 912 of 2007, as common questions are involved in them.

2 The petitioners in all the writ petitions being officers in BS-19 Pakistan Audit and Accounts Service are aggrieved of their supersession by the Central Selection Board by terming them unsuitable for promotion while juniors to them having less merit, as mentioned in the writ petitions have been promoted vide the impugned notification in violation of the promotion policy including seniority, length of service with reference to some reports collected by the Intelligence Agencies. A

3 The case of the petitioners is that they along with other officers were to be considered for promotion from BPS-19 to BPS-20 and in this regard a meeting of Central Selection Board-respondent No.2 was convened but they were superseded in the previous meeting by the Central Selection Board on the basis of some special reports of the Intelligence Agencies. B

4 Learned counsel for the petitioners contends that the petitioners were fully qualified, eligible and fit for promotion for the said post but they were superseded on the adverse report of unspecified intelligence agency in respect of their integrity which were neither communicated nor confronted them with the same. Therefore in such an eventuality, their promotion cannot be withheld on the basis of such reports. In this regard reliance has been upon the cases of Muhammad Akbar Khan Hoti v. Federation of Pakistan 2006 PLC (C.S.) 619 and Muhammad Zafeer Abbasi, Deputy Secretary, Ministry of Kashmir Affairs and Northern Areas and Safron, Government of Pakistan, Pak. Secretariat, Islamabad 2003 PLC (C.S.) 503. C

5 In the report and parawise comments submitted by the respondents, it has been stated that the writ petitions are not maintainable. Beside, they took an explicit stand that the petitioners have not been considered for promotion because of reports of the concerned intelligence agency to the effect that they are not enjoying good reputation. D

6 So far as the objection regarding maintainability of these petitions is concerned suffice it is to say that the case of the petitioners does not fall in the terms and conditions of a civil servant merely because against the decisions/orders of departmental Authorities E

regarding the fitness or otherwise of the petitioners for promotion to a higher post no appeal is competent before the Service Tribunal. Therefore, the writ petitions are maintainable. In this behalf, reference can be made to the case reported as Shafi Muhammad Mughal vs. Secretary Establishment Division and others 2001 SCMR 1446.

7 The petitioners were superseded by the Central Selection Board merely because of the reports of the Intelligence Agencies, but admittedly neither these reports were communicated to them nor were they confronted with same. Even the details whereof were neither given in the proceedings of the Central Selection Board nor in the comments submitted by the respondents. In alike circumstances, this Court vide orders dated 21-3-2006 and 19-3-2007 passed in Writ Petition No. 195 of 2006 and Writ Petition No. 11 of 2007, the reports of the intelligence agencies were declared as without lawful authority, supersession made on their basis was set aside and the Central Selection Board was directed to consider the case of the petitioner without being influenced by the report of any intelligence agency. As a matter of fact, no appeal was preferred by the respondents, therefore, the orders of this Court passed in both the aforesaid cases had attained finality.

8 Learned counsel for the petitioners as well as learned Deputy Attorney General submits that in view of the similarity of the facts and circumstances of these cases with the writ petitions, referred to above, the instant writ petitions may be disposed of accordingly.

9 Consequently, for the foregoing reasons, these writ petitions are accordingly allowed and disposed of in terms of the judgments dated 21-3-2006 and 19-3-2007 passed in Writ Petition No. 195 of 2006 and Writ Petition No. 11 of 2007 respectively. The Central Selection Board is directed to re-consider the cases of the petitioners strictly in accordance with the terms of the said judgments especially keeping in view Paras Nos. 13 to 16 thereof.

10 The respondents are further directed that the matter shall be considered by the Central Selection Board in its very first meeting to be convened henceforth. The Board shall also consider the promotion appointment of the petitioners from the date of said earlier supersession in case they are otherwise qualified, eligible and fit for promotion to higher post.

M.U.Y./S-62/L

Order accordingly

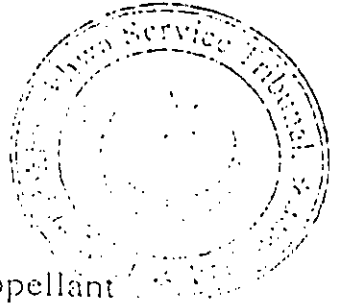
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

سید علی

13

Service Appeal No. 176 /2014

Annex 'B'



Dawar Khan, Ex-ASI,  
District Police, Swat District .....Appellant

Versus

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Dr. W. J. Province  
Swat  
No. 176  
Date 14-2-14

1. The Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police,  
Malakand Region at Saidu Sharif Swat.
3. The District Police Officer,  
District Swat.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 06.02.2014 VIDE WHICH THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE IMPUGNED ORDER DATED 10.12.2013 ISSUED BY RESPONDENT NO.3 WHEREBY THE APPELLANT WAS IMPOSED UPON THE MAJOR PENALTY OF COMPULSORY RETIREMENT WAS REJECTED.

PRAYER:

On acceptance of the instant appeal, the impugned appellate order dated 06.02.2014 passed by Respondent No.2 and the impugned order dated 10.12.2013 passed by Respondent No.3 may graciously be set aside and appellant be re-instated into service with all back benefits.

Dr. W. J. Province

Signature

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Signature

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19.3.2015

Appellant with counsel and Mr. Muhammad Adcel Butt, Addl. AG with Khawas Khan, SI (Legal) for the respondents present. Arguments heard. Record perused. Vide our detailed judgment of to-day in connected Service Appeal No. 172/2014, titled "Khair-ur-Rahman Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc.", This appeal is disposed of as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.

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19.03.2015

Sd Member

Sd Mem.

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Date of order/proceedings      Order or other proceedings with signature of judge or Magistrate.

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 172/2014,  
Khair-ur-Rahman Versus Provincial Police Officer, Khyber  
Pakhtunkhwa, Peshawar etc.

19.03.2015

PIR BAKHSH SHAH, MEMBER.- Appellant with counsel (Mr.

Khalid Rahman, Advocate) and Mr. Muhammad Adcel Butt, Addl. A.G  
with Khawas Khan, S.I (Legal) for the respondents present.

2. In the instant case the same single charge has been levelled  
against the appellants as follows:-

"You have been reported to be allegedly involved in  
corruption, which is a gross mis-conduct on your part."

And the above charge was reproduced to as many as 11 appellants, it is  
therefore, proposed that all the appeals may be disposed of by way of this  
single judgment.

Details of the appellants are as under:-

Sr. No.	Appeal No.	Name of appellant	Designation	Date of C/ Sheet	Impugned Penalty
1.	172/2014	Khair-ur-Rahman	S.I	24.10.2013	Compulsory Retirement.
2.	173/2014	Tahir Usman	S.I	-do-	-do-
3.	174/2014	Shah Dawran,	S.I	-do-	-do-
4.	175/2014,	Sher Muhammad Khan	S.I	-do-	-do-
5.	176/2014,	Dawar Khan	ASI	-do-	-do-
6.	177/2014	Zarin Dad Shah,	ASI	-do-	-do-
7.	178/2014	Saifullah	ASI	-do-	-do-
8.	179/2014	Anwar Badshah Khan	ASI	-do-	-do-
9.	180/2014	Ali Badshah	ASI	-do-	-do-
10.	181/2014	Farman Ali	H.C	-do-	-do-

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4. Arguments heard and record perused.

5. It was submitted by learned counsel for the appellants that it is a settled principle of law that when a major penalty is awarded then regular enquiry is to be conducted wherein the accused must be associated with the enquiry proceedings but in the instant case no proper enquiry has been conducted; that the allegation levelled against the appellants were general in nature and no specific instance had been shown, thus the charge itself was ambiguous and not warranted under the law. That in case competent authority did not agree with the recommendations of the enquiry officer he must have shown reason for his dis-agreement, however, but no reason has been shown as to why and on which score he did not agree with the report of the enquiry officers? That no final show cause notice had been issued to the appellants which was mandatory under the law. He requested that on acceptance of the appeal, the impugned orders may be set aside and the appellants may be reinstated in service with all back benefits.

6. Conversely, the learned Government Pleader argued before the Tribunal that all codal formalities were complied with before imposition of the impugned penalty; that the appellants had been issued charge sheet/statement of allegations, proper enquiry was conducted, show cause notice was issued to them and as they were found involved in corruption, therefore, they were legally awarded punishment according to law and rules. The learned GP requested that the appeal may be dismissed.

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7. We have heard arguments of both the parties and perused the record with their assistance. In cases of appellants S.I Khairur Rahman and ASIs Dawar Khan, and Anwar Badshah Khan, Mr. Saleem Khan Jadoon, DSP Circle Barikot, was appointed as enquiry officer. The Tribunal has perused his enquiry report wherein, the enquiry officer has concluded that the said officials are innocent and departmental proceedings against them may be filed. Despite this recommendation, major penalty of compulsory retirement has been imposed on these appellants. The record does not show any order of enquiry denovo or orders about change of the enquiry officer. No show cause notice had been given showing reason of dis-agreement with the enquiry officer.

8. In so far as cases of appellants Tahir Usain SI, Sher Muhammad, SI, Zarin Dad Shah, Saifullah, ASI, Ali Badshah, ASI and Farman Ali, H.C are concerned, Mr. Yousaf Ali Khan, DSP/SDPO City Swat had conducted enquiry in their cases. His enquiry report was carefully perused. He had observed that there was no direct or documentary evidence about corruption against those appellants, however, suitable punishment may be awarded to them on the basis of rumours of their involvement in corruption. This is to be specifically mentioned that the enquiry officer had also recommended to keep these appellants under watch for certain time meaning whereby that the enquiry officer had no intension of imposition of major penalty of compulsory retirement which was later on awarded to the appellants.

9. In so far as the case of appellant Shah Dawran SI is concerned, the same DSP City Swat, Mr. Yousaf Ali Khan conducted the enquiry, held

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him innocent and stated that departmental proceedings against him may be filed.

10. From perusal of the entire record, the Tribunal is of the opinion that the charges of corruption levelled against the appellant were not specific. The enquiry officer has not collected any evidence in support of charges of corruption levelled against the appellants. In cases of appellants Khairur Rahman, Dawar Khan, Anwar Badshah and Shah Dawran, the enquiry officers had concluded that the appellants were innocent and that the disciplinary proceedings may be filed against them whereas in cases of the rest of the appellants, the enquiry officer had recommended suitable punishment with provision that the appellants may be kept under watch for some time. It is thus evident in the said situation that despite of imposition of major penalty of compulsory retirement, the competent authority has not agreed with the findings and recommendations of the enquiry officers. The competent authority, however, had not shown any reason as to why and on which score he did not agree with the report of the enquiry officers. No final show cause notice has been issued to any of the appellants so that their reply about imposition of the impugned punishment of major penalty would have come on record. This being so, the Tribunal is of the considered view that opportunity of proper hearing has not been provided to the appellants.

11. In view of the stated situation on record, the Tribunal is of the considered opinion that the impugned orders are not maintainable. The same are therefore, set aside and we remand the case back to the respondent-department for doing fresh departmental proceedings against

the appellants strictly in accordance with law and rules which should be completed within a period of three months of the receipt of this judgment. for which purpose the appellants are reinstated in service. Back benefits etc. will be subject to the outcome of fresh departmental proceedings. All the above appeals are partly allowed in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
19.3.2015

Sd Piv Baksh Shah  
Member

Sd Abdul Latif  
Member

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Ijaz ul Hassan

2008 S C M R 1369

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C. J., Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ

NASEEB KHAN---Petitioner

Versus

DIVISIONAL SUPERINTENDENT, PAKISTAN RAILWAYS, LAHORE and another---  
Respondents

Civil Petition for Leave to Appeal No.466 of 2008, decided on 26th May, 2008:

(On appeal from the judgment, dated 23-1-2008 passed by Federal Service Tribunal in Appeal No.397(R) of 2007).

Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---S. 5---Misconduct---Dismissal from service---Non-holding of departmental Enquiry---Violation of principles of natural justice---Effect---Held, in case of imposing a major penalty, the principles of natural justice required that a regular enquiry was to be conducted in the matter and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

Pakistan International Airlines Corporation v. Ms. Shaista Naheed 2004 SCMR 316 and Inspector-General of Police, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 2007 ref.

Abdul Rehman Siddiqui, Advocate Supreme Court with Arshad Ali Chaudhry, Advocate-on-Record for Petitioner.

Qamar Zaman, Clerk, Litigation Branch for Respondents.

Date of hearing: 26th May, 2008.

### JUDGMENT

IJAZ-UE-HASSAN KHAN, J.--- Through instant petition under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, Naseeb Khan, petitioner, seeks leave against judgment, dated 23-1-2008 of learned Federal Service Tribunal, Islamabad, whereby appeal of the petitioner, challenging his dismissal from service, has been dismissed, in limine, being barred by time.

2. Precisely stated facts of the case as gathered from the record are, that petitioner joined service of respondent-Department as Junior Commercial Assistant Booking (BS-5) on 26-3-1998 and served as such for 14 years. On 10-11-2001 due to demise of his wife, petitioner proceeded on leave. Petitioner was on leave when his father expired on 31-12-2001. According to the petitioner on 26-5-2002, he reported back but he was not allowed to resume duty and was issued a

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show-cause notice along with statement of allegations for remaining absent from duty without prior permission. The petitioner preferred representation/appeal which was rejected vide order, dated 13-5-2006. Feeling aggrieved, petitioner filed appeal before the Federal Service Tribunal, Islamabad which has been dismissed in limine, as stated above vide judgment impugned herein.

3. Mr. Abdur Rehman Siddiqui, learned Advocate, appearing for the petitioner argued that learned Tribunal has overlooked the settled law regarding limitation against a void order while dismissing petitioner's appeal as time-barred particularly when petitioner's departmental representation was not rejected on the question of limitation and that major penalty of dismissal from service has been imposed upon the petitioner without holding regular inquiry into the matter and without affording opportunity of defence to the petitioner.

4. We find substance in the submissions of learned counsel for the petitioner. It has been contemplated under section 5 of the Removal from Service (Special Powers) Ordinance, 2000 that in case of charge of misconduct as stipulated in section 3 of the Ordinance, a full fledged enquiry is to be conducted in order to give an opportunity to the civil servant to clarify his position. Section 5 of the Ordinance is reproduced below for facility sake:---

"Power to appoint an Inquiry Officer or Inquiry Committee.---(1) Subject to the provisions of subsection (2), the competent authority shall, before passing an order under section 3, appoint an Inquiry Officer or Inquiry Committee to scrutinize the conduct of a person in Government service or a person in corporation service who is alleged to have committed any of the acts or omissions specified in section 3. The Inquiry officer or as the case may be, the Inquiry Committee shall---

(a) communicate to the accused the charges and statement of allegations specified in the order of inquiry passed by the competent authority;

(b) require the accused within seven days from the day the charge is communicated to him to put in written defence;

(c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him;

(d) and hear the case from day to day and no adjournment shall be given except for special reasons to be recorded in writing and intimated to the competent authority.

(2) Where the Inquiry Officer or as the case may be, the Inquiry Committee is satisfied that the accused is hampering, or attempting to hamper, the progress of the inquiry he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as he or it deems proper in the interest of justice.

(3) The Inquiry Officer or as the case may be the Inquiry Committee shall submit his or its findings and recommendations to the competent authority within twenty-five days of the initiation of inquiry.

(4) The competent authority may dispense with the inquiry under subsection (1) if it is in possession of sufficient documentary evidence against the accused, or for reasons to be recorded in writing, it is satisfied that there is no need of holding an inquiry.

(5) Where a person who has entered into plea bargaining under any law for the time being in force, and has returned the assets or gains acquired through corruption or corrupt

practices voluntarily, the inquiry shall not be ordered:

Provided that show-cause notice shall be issued on the basis of such plea bargaining to such person informing of the action proposed to be taken against him and the grounds of such action requiring him to submit reply within fifteen days of the receipt of the notice. On receipt of the reply, the competent authority may pass such orders as it may deem fit."

5. In case of imposing a major penalty, the principle of natural justice requires that a regular enquiry is to be conducted in the matter and opportunity of defence and personal hearing is to be provided to the civil servant proceeded against as held by this Court in the case of Pakistan International Airlines Corporation v. Ms. Shaista Naheed 2004 SCMR 316 and Inspector-General of Police, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 2007.

6. Keeping in view the facts and circumstances of the case, we find that petitioner has been condemned unheard and major penalty of dismissal from service has been imposed upon him without adopting the required and mandatory procedure, resulting in manifest injustice.

7. In view of the above, this petition is converted into appeal and allowed accordingly. The impugned judgment of the Service Tribunal, Islamabad, is set aside and petitioner is reinstated in service. However, his intervening period shall be treated as leave without pay. The department, may conduct a regular inquiry into the charges against the appellant, if so desired. No order as to costs.

H.B.T./N-9/SC

Order accordingly.

2012 P.L.C (C.S.) 166

[Federal Service Tribunal]

Before Sayed Mehar Hussain Shah and M.A. Aziz; Members Syed ZAHIR SHAH.

Versus

DIVISIONAL SUPERINTENDENT,

PAKISTAN RAILWAYS, KARACHI and 2 others ..

Appeal No.330(K)(CS) of 2003, decided on 26th February, 2011.

Removal From Service (Special Powers) Ordinance (XVII of 2000)---

---Ss. 3, 5, 6 & 10---Service Tribunals Act (I.XX of 1973). S.4---Removal from service---Major penalty of removal from service was imposed upon the appellant without issuing show-cause notice or holding a regular departmental inquiry---Ex parte action was taken against the appellant, whereby major penalty of removal from service was imposed upon him---Validity---"Before awarding major penalty upon a delinquent employee, a regular departmental inquiry was necessary, where accused/employee was to be provided full chance of defence as enshrined in the maxim "audi alteram partem", which was lacking in the case---Impugned order imposing major penalty of removal from service upon the appellant was set aside; he was ordered to be reinstated in service, with direction to the department to initiate and hold de novo departmental proceedings against the appellant by providing full chance to him to cross-examine the witnesses and to defend himself properly---Such proceedings would be initiated and completed within a period of 120 days---Question of back benefits would depend upon the outcome of such proceedings.

2000 PLC (C.S.) 2044; PLD 2001 SC 980; 1980 SCMR 850; 1999 SCMR 841; 2002 SCMR 57 and 2003 PLC (C.S.) 395/514 ref.

Sanaullah Noor Ghouri for Appellant.

Ms. Sayeeda Bilquis for Respondents.

Date of hearing: 20th December, 2010.

#### JUDGMENT

SAYED MEHAR HUSSAIN SHAH, (MEMBER).--- The appellant through this appeal has challenged the order dated 30-7-2002 whereby major penalty of removal from service was imposed upon the appellant under the Removal from Service (Special Powers) Ordinance, 2000. Against the said penalty, appellant preferred a departmental appeal on 12-8-2002 which was rejected on 12-10-2002 and allegedly-obtained by the appellant on 1-10-2003; hence, this appeal. An application under section-5 of the Limitation Act has also been filed along with the appeal.

2. The main thrust of the arguments of learned counsel for the appellant was that major penalty of removal from service was imposed upon the appellant without issuing show cause notice or holding a regular departmental inquiry, which is not-legal and in support of his arguments, learned counsel relied on 2000 PLC (C.S.) 2044, PLD 2001 SC 980, 1980 SCMR 850, 1999 SCMR 841, 2002

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order dated B 12-10-2002. The appellant is ordered to be reinstated in service. However, the respondents department is directed to initiate and hold de novo departmental proceedings against the appellant by providing full chance to the appellant to cross-examine the witnesses and to defend himself properly. Such proceedings shall be initiated and completed B within a period of 120 days from the date of receipt of a copy of this judgment. The question of back benefits shall depend upon the outcome of such fresh proceedings. No order as to costs.

7. Parties be informed accordingly.

H.B.T./5/FST

Order accordingly.



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1690 /ST

Dated 13 / 10 / 2016

To


The D.P.O,  
Bannu.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 20.9.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.