

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 190/2015

Date of institution ... 06.03.2015

Date of judgment ... 09.12.2016

Naseem Ullah, Ex-Constable No. 241 S/O Hikmat Shah,
R/O Kushegi Payyan, District Nowshera.

... (Appellant)

VERSUS

1. The District Police Officer, Nowshera
2. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER DATED 02.03.2015 PASSED BY RESPONDENT NO.2 WHEREBY HE MAINTAINED THE ORDER DATED 12.12.2014 PASSED BY RESPONDENT NO. 1.

Mr. Rizwanullah, Advocate.

.. For appellant.

Mr. Kabirullah Khattak, Assistant Advocate General

.. For respondents.

MR. MUHAMAMD AAMIR NAZIR

.. MEMBER (JUDICIAL)

MR. ASHFAQUE TAJ

.. MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: Naseem Ullah, Ex-Constable No. 190, hereinafter referred to as appellant, through the instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, has impugned order dated 12.12.2014 vide which the appellant was awarded major punishment of dismissal from service with immediate effect. Against the impugned order, appellant filed a departmental appeal but the same was also turned down by the appellate authority vide order dated 02.03.2015.

2. Brief facts of the case giving rise to the instant appeal are that the appellant was initially appointed as Constable in the year 2007 in Police Force of District Nowshera. That the

09.12.16

appellant performed his duties to the entire satisfaction of his superiors and there was no complaint or inquiry pending against him. That on 10.12.2014 the appellant was on his duty and met his friend namely Sher Mohammad who paid him his due amount of Rs. 500/- on demand of the appellant. That the return of due amount of Rs. 500/- was captured on a video camera by someone, and was uploaded on Social Media and show it as an act of bribery. That respondent No. 1 on 12.12.2014 suspended the appellant and on the same date he was served with a show cause notice with the directions to submit the reply within seven days. However, the appellant was compelled to submit the reply on the same and the respondent No.1 without giving opportunity of personal hearing, dismissed him from service vide impugned order dated 12.12.2014. That against the impugned order appellant filed departmental appeal which was turned down by the appellate authority vide order dated 02.03.2015, hence the instant appeal.

3. Learned counsel for the appellant argued before the court that the appellant has friendship with on Sher Mohammad who has secured Rs.1000/- as loan from the appellant. That on 10.12.2014 the appellant demanded the return of due amount and Sher Mohammad paid him Rs. 500/-. That someone captured that incident on camera and uploaded it on Social Media to show it as an act of bribery. That respondent No.1 without enquiring into the matter and without recording the statements of the said Sher Mohammad placed the appellant under suspension and there-after issued a show cause notice on the same day and compelled the appellant to submit the reply. That respondent No.1 in a hasty way passed the impugned order on the same very day dated 12.12.2014 vide which the enquiry was dispensed with and the appellant was dismissed from service even without giving him opportunity of personal hearing. Learned counsel for the appellant argued that it was mandatory upon the respondents to have served the charge sheet and there-after conducted a proper enquiry so that the appellant should have provided opportunity of fair trial as enshrined in the constitution. That this very act with the appellant is based on malafide and the impugned order has no validity in the eyes of law. That the appellant was also charged for the same act vide FIR No.2 under Anti Corruption Law but subsequently appellant got acquitted due to lack of evidence. Hence by accepting the

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instant appeal the impugned orders be set aside and the appellant be reinstated into service with all back benefits.

4. Learned Assistant A.G on the contrary argued before the court that since the appellant was involved in taking bribery and this act of the appellant was filmed and was uploaded in Social Media therefore, there was no justification to conduct any enquiry into the matter. That the respondents have rightly awarded major punishment to the appellant by dispensing with the enquiry as per Police Rules. That the instant appeal is devoid of any merits, hence be dismissed.

5. We have heard arguments of learned counsel for the appellant and learned Asst: A.G for the respondents and have gone through the record available on file.

6. Perusal of the case file reveals that the appellant while on duty as a rider squad at Nowshera Cloth Market was filmed when he was taking Rs. 500/- from a cloth merchant namely Sher Mohammad. The video was later on uploaded on Social Media and also displayed on Khyber News TV Channel. As a consequence of which a show cause notice was issued to the appellant on 12.12.2014 and on the same day upon the receiving the reply of the appellant, he was awarded major punishment of dismissal from service by the competent authority/ respondent No.1 by dispensing with enquiry under Rule-5(3) of Khyber Pakhtunkhwa Police Rules, 1975. Though the appellant in his written reply claimed that he had given loan to his friend Sher Mohammad and at the relevant time the Sher Mohammad was returning to him the due amount, however this incident was filmed by someone and uploaded on social media for ulterior motives. The said Sher Mohammad also submitted affidavit supporting the claim of the appellant but the matter was not enquired by the respondents and the appellant was awarded major punishment of dismissal from service in a hasty way without adopting proper procedure. In case of imposing major penalty, principles of natural justice required that regular enquiry should be conducted in the matter and opportunity of defense and personal hearing should be provided to a civil servant proceeded against, otherwise the civil servant would be condemned

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09.12.16

unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. Reliance in this respect ^{is} placed on 2008 SCMR 1369, 2009 SCMR 412. Similarly, mere issuance of show cause notice and affording an opportunity of personal hearing was not sufficient and the order of dismissal from service in these circumstances was without lawful authority. Reliance placed on 2015 PLC(C.S)381. Furthermore, where the civil servant was not afforded a chance of personal hearing before passing of termination order, such order would be void ab-initio as laid down in 2003 SCMR 1126. Apart from the above, the appellant was also charged in a case FIR No. 2 dated 09.02.2016 u/s 161/162/163/164 of PPC read with section 5(2) of prevention of Corruption Act for the said incident and after facing the trial the appellant got acquitted under Sec-249-A Cr.PC, wherein it was held by learned Judge Anti Corruption:-

"In these circumstances where the video clip forming the very basis of this case, has not been seized either by the inquiry officer or the investigating officer as a case property; where Pervez Khan who had allegedly filmed the questioned incident has been abandoned by the prosecution as he was not supporting the prosecution version; where the said Perves Khan had submitted an affidavit categorically denying the factum of filming the question incident or its telecast on the Khyber News or any other news channel; where no video clip, cloth or case amount was seized by the inquiry or investigating officer as case property to support the plea of prosecution to connect the accused with the commission of offence and where no one has been examined during the inquiry or investigation to even alleged that the transaction, if any, taking place between the accused was that of illegal gratification, there seems to be no probability of the accused being convicted of any offence even if the remaining evidence of the prosecution is recorded."

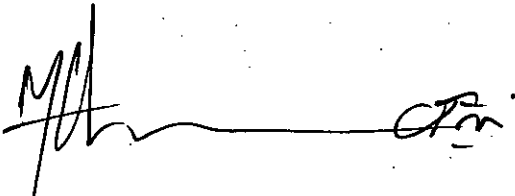
Hence on the above stated circumstances, we are constrained to accept the instant appeal by setting aside the impugned order dated 12.12.2014 and reinstate the appellant into service. The respondents are however at liberty to conduct a de-novo enquiry if they deemed appropriate within the span of sixty days. If the inquiry is not conducted within stipulated period appellant

JK
09.12.16

would be deemed to have been reinstated with all back benefits. Appeal is accepted on the above terms. Parties are left to bear their own costs. File be consigned to the record room.

7. This judgment will also dispose of other connected Appeal bearing No.191/2015 by Talib Jan, involving common question of law, in the same manner.

ANNOUNCED
09.12.2016



(MUHAMMAD AAMIR NAZIR)
MEMBER



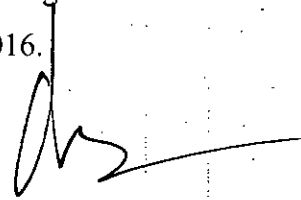
(ASHFAQUE TAJ)
MEMBER

23.09.2016

Appellant in person and Addl: AG for respondents present.
Arguments could not be heard due to general strike of the Bar. To
come up for arguments on 09.12.2016.



Member



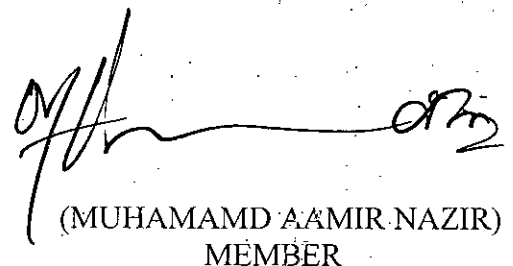
Member

09.12.2016

Counsel for the appellant and Mr. Kabirullah Khattak,
Assistant Advocate General for respondents present.

Vide our detailed judgment of today consists of five pages
placed on file, we are constrained to accept the instant appeal by
setting aside the impugned order dated 12.12.2014 and reinstate
the appellant into service. The respondents are however at liberty
to conduct a de-novo enquiry if they deemed appropriate within
the span of sixty days. If the inquiry is not conducted within
stipulated period appellant would be deemed to have been
reinstated with all back benefits. Appeal is accepted on the above
terms. Parties are left to bear their own costs. File be consigned to
the record.

Announced
09.12.2016



(MUHAMAMD AAMIR NAZIR)
MEMBER



(ASHFAQUE TAJ)
MEMBER

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27.07.2015

Appellant in person and Mr. Wisal Ahmed, Inspector (legal) alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 14.10.2015.


Chairman

14.10.2015

Appellant with counsel and Mr. Wisal Ahmed, Inspector (legal) alongwith Assistant A.G for respondents present. Para-wise reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 9.2.2016.


Chairman

09.02.2016

Clerk to counsel for the appellant and Asst: AG for respondents present. Fresh Wakalat Nama submitted which is placed on file. Clerk to counsel for the appellant requested time for rejoinder and arguments. To come up for arguments on 5-5-2016


MEMBER


MEMBER

05.05.2016

Counsel for the appellant and Mr. Usman Ghani, Sr.GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 23.09.2016.


Member


Member

3,

15.04.2015

Mr. Fazal Maabood, Advocate on behalf of counsel for the appellant present. Senior counsel for the appellant is stated to have gone abroad for performing Umra. Adjourned to 15.04.2015 before S.B.


Chairman

4,

15.04.2015

Counsel for the appellant is not in attendance due to strike of the Bar. Adjourned for preliminary hearing to 28.04.2015 before S.B.



Chairman

5. 28.04.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when vide impugned order dated 12.12.2014 dismissed from service on the ground of taking illegal gratification on 10.12.2014. That the appellant preferred departmental appeal which was rejected on 2.3.2015 and hence the instant service appeal on 6.3.2015.

That no inquiry including show cause notice etc were issued in the prescribed manners and no opportunity of hearing was extended to the appellant as the entire exercise was undertaken and completed in one day.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 27.7.2015 before S.B.

Appellant Deposited
Security & Process Fee


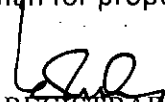


Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 190/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	06.03.2015	<p>The appeal of Mr. Naseem Ullah presented today by Mr. Muhammad Arif Jan Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	9-3-15	<p>This case is entrusted to Bench <u>E</u> for preliminary hearing to be put up thereon <u>26-3-15</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No.....190...../2015

Naseem UllahAppellant

VERSUS

District Police Officer & others..... Respondents

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6.	Copy of show cause notice	C	9-10
7.	Copy of reply to show cause notice	D	11-12
5.	Copy of Dismissal order dated 12-12-2014	E	13
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Appellant

Through


Muhammad Arif Jan
Advocate Peshawar

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No.....190.....2015

A.W.F. Province
Service Tribunal

Diary No. 199

Dated 06-3-2015

Naseem Ullah Ex-Constable No. 241 S/o Hikmat Shah R/o Kushegi
Payyan, District NowsheraAppellant

VERSUS

1. District Police Officer Nowshera
 2. Deputy Inspector General of Police Mardan Region -1, Mardan
 3. Provincial Police Officer Khyber Pakhtunkhwa Peshawar
-Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED
02.03.2015 PASSED BY RESPONDENT NO.2 WHEREBY HE
MANTAINED THE ORDER DATED 12.12.2014 PASSED BY
RESPONDENT NO1.

Prayer in Appeal:

On acceptance of the instant service appeal, the impugned
Orders dated 02.03.2015 passed by respondent No.2 and the order
dated 12.12.2014 passed by respondent No.1 may graciously be set
aside and the appellant may kindly be restored /re-instate in service
with all back benefits.

Any other remedy which deems fit by his Hon'ble Tribunal in the
interest of justice, may also be granted in fever of appellant.

Filed to-day
76/3/15
Respectfully Sheweth:

1. That the appellant was initially appointed as Constable No.241 on 13.10.2007 in Police Force, Police Department Khyber Pakhtunkhwa and was posted at District Nowshera.
2. That the appellant performed his duties to the entire satisfaction of his superiors and there is/was no complaint or inquiry pending against him.
3. That on 10.12.2014 the appellant was on his duty as a rider squad at Nowshera Cloth Market where he meets with his friend namely Sher Muhammad S/o Malak Sharbat R/o Afghan Muhajar Camp Azakhel District Nowshera and paid him his due amount of Rs.500/- on the demand of appellant.
4. That the movement of the return of the due amount Rs.500/- of debt was captured on a video camera by someone, and was uploaded on Social Media to presume this as an act of bribery.
5. That the Respondent No.1 taking a suo-moto action against the appellant on 12.12.2014 by passing the suspension order which is **annex -A** and closed the appellant to police line then vide naqal mad 7 dated 12.12.2014 which is **annex-B**, the appellant was enclosed to quarter guard and further inside the quarter guard the appellant served with a show cause notice on dated 12.12.2014 which is **annex-C** and reply was asked within 7 days which is **annex-D**.
6. That the appellant was compelled for the reply of the show cause notice, thus he submitted the same with the facts mentioned therein but the respondent No -1 ignored the written reply of the show cause notice without giving the opportunity of personal hearing and inquiry etc, the appellant was dismissed from service in hasty manner by respondent No-1 vide order dated 12.12.2014 which is **annex-E**.

7. That the appellant being aggrieved filed a departmental representation on 23.12.2014 which is **annex-F** before the respondent No.2 which was too dismissed on 02.03.2015 which is **annex-G**.
8. That the appellant is being aggrieved from the impugned orders, hence the instant appeal on the following amongst other grounds ;

GROUNDS

- A. That the acts, commissions and omissions of respondent No.1 & 2 (hereinafter impugned) are patently illegal, un-lawful, without lawful authority, of no legal effect hence having no value in the eyes of law thus be set aside and the appellant may be restored/reinstated in his service with all back benefits.
- B. That no proper departmental enquiry what so ever be conducted in proper manner against the appellant, moreover the appellant was also kept in detention and astonishingly the whole proceedings were conducted in a single day i.e 12.12.2014 which amounts to abuse of law and shows the personal grudges of the respondent No- 1 with the appellant.
- C. That the respondent No.1 & 2 are badly failed to follow the existing policies, rules and regulations.
- D. That the respondent's No.1&2 only relied on the video clip of social media which is common technique of blackmailing and rivalry in today's society and which can be easily edited by the professionals.
- E. That surprisingly the respondent No.1 knowing the facts also charge the appellant in a criminal case FIR No. 378 dated 14.12.2014 for the same offence and this act of the respondents is a clear violation of

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natural justice, hence needs consideration of this Hon'ble Tribunal.
(Copy of FIR is **annex-H**)

- F. That the respondents No- 1 & 2 also ignored the volume of service of the appellant while awarding the major penalty.
- G. That the Sher Muhammad S/o Malak Sharbat also solemnly affirms and declared on oath that the mistaken amount of bribe was the debt and was not the bribery money which is **annex-J**.
- H. That no charge sheet, personal hearing and no explanation been conducted/served against appellant, which is against the laid down rules and regulations and thus this act of the respondents is amounts to abuse of law.
- I. That the impugned orders are very harsh and do not commensurate with the facts and law and other circumstances of the case.


It is therefore most humbly prayed that on acceptance of the instant service appeal, the impugned Orders dated 02.03.2015 passed by respondent No.2 and the order dated 12.12.2014 passed by respondent No.1 may graciously be set aside and the appellant may kindly be restored /re-instate in service with all back benefits.

Any other remedy which seems fit by his Hon'ble Tribunal in the interest of justice, may also be granted in fevor of appellant.

Through

Dated: 6-3-2015


Appellant


Muhammad Arif Jan
Advocate Peshawar

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**BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR**

Service Appeal No...../2015

Naseem UllahAppellant

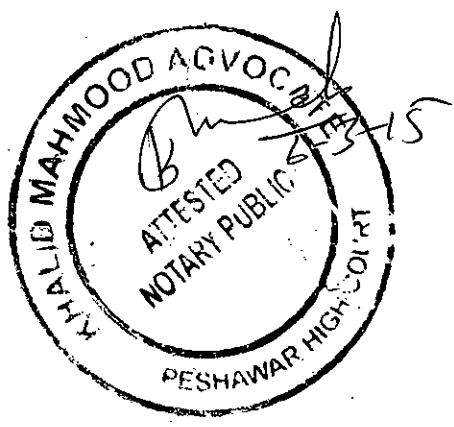
VERSUS

District Police Officer Nowshera.....Respondents

AFFIDAVIT

I Naseem Ullah Ex Constable No. 241 S/o Hikmat Shah R/o Kushegi Payyan, Distt .Nowshera do hereby solemnly affirm and declares on oath that the contents of the accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Naseem Ullah
DEPONENT



6

**BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR**

Service Appeal No...../2015

Naseem UllahAppellant

VERSUS

District Police Officer Nowshera.....Respondents

ADDRESSES OF PARTIES

APPELLANT

Naseem Ullah Ex-Constable No. 241 S/o Hikmat Shah R/o Kushegi
Payyan, District Nowshera

RESPONDENTS

1. District Police Officer Nowshera
2. Deputy Inspector General of Police Mardan Region -1, Mardan
3. Provincial Police Officer Khyber Pakhtunkhwa Peshawar

Appellant

Through



M Arif Jan & Khizar Hayat Khan

Advocates Peshawar

(7)

Annex-A

ORDER

The following Constables are hereby placed under suspension and closed to Police Lines Nowshera with immediate effect, being found them involved in taking illegal gratifications:.

- 1. FC Talib Jan No. 521
- 2. FC Naseemullah No.241

OB No. 1536

Dated 12-12-2014

[Signature]
**District Police Officer,
 Nowshera**

No. 3112-35 /PA, dt. Nowshera the 12-12-2014.

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

- 1. DSsP Cantt: and Hqs: Nowshera.
- 2. PO/EC/OHC/FMC

Attested
[Signature]

(8)

Amma-B

12/14 7 12/14 7

دستور العمل
10
12-12-14
کامیابی
مقام

12-12-14

Attest
[Signature]

(9) Annex-12

OFFICE OF THE DISTRICT POLICE OFFICER, NOWSHERA

SHOW CAUSE NOTICE

(Under Rule 5 (3) KPK Police Rules, 1975)

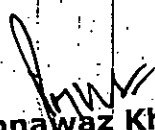
1. That you FC Naseem Ullah No. 241 while posted to Police Station, Nowshera Cantt. have rendered yourself liable to be proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for the following misconduct:-


Found you involved in taking illegal gratifications from cloth merchants of Nowshera Cantt., the video of which was uploaded on face book and relayed on Khyber News TV channel. Your this act has stigmatized the department and destroyed the good image of Police Force in the eyes of the general public.

2. That by reason of above, as sufficient material is placed before the undersigned; therefore it is decided to proceed against you in general Police proceeding without aid of enquiry officer;
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force;
4. That your retention in the Police force will amount to encourage inefficiency 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 for the misconduct referred to above.
7. 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.
8. You are further directed to inform the undersigned that you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.

Received by _____

Dated: 12/11/2014


(Rabnawaz Khan)
District Police Officer,
& Nowshera.

Attested


(10)

OFFICE OF THE DISTRICT POLICE OFFICER,
NOWSHERA
GROUND OF ACTION


That you FC Naseem Ullah No. 241 while posted to Police Station, Nowshera Cantt: committed following misconducts:-

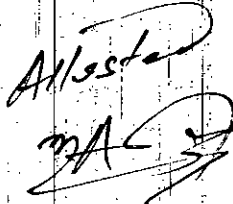
Found you involved in taking illegal gratifications from cloth merchants of Nowshera Cantt:, the video of which was uploaded on face book and relayed on Khyber News TV channal. Your act has stigmatized the department and destroyed the good image of Police Force in the eyes of the general public.

By reasons of above you have rendered yourself liable to be proceeded under Khyber Pakhtunkhwa Police Rules, 1975, hence these grounds of action.

No 183 /PA,

Dated: 12-12 /2014


(Rabnawaz Khan)
District Police Officer,
Nowshera.



حوالہ مشترک نوٹس

11

حصہ عالمی - حوالہ مشترک نوٹس صدر اجودا صدر زیر حج

1) میں تقریباً 3 ماہ سے رجسٹرڈ نوٹس ہونے کی صورت میں فراغت سرانجام دے رہی ہوں

2) میں نے ملازمت (7 سال) کے دوران کسی قسم کا کوئی غلط کام نہیں کیا جو صحت سے بچے چھٹنا و اسی پر حکام کی ہدایت کا باعث ہے۔

3) صدر اسروس و پیاد ڈیٹا و ٹیکسا جے جے کہ جس بات کا شوق ہے کہ میں ریٹائر ہوں

4) جہاں مشترک نوٹس میں لگائی گئی الزام کا تعلق ہے تو اس ضمن میں تفصیل یہ ہے کہ مورخ 14/12/10 کو میں صحت حاصل کر کے رجسٹرڈ ٹیکسا نوٹس کیس ڈیوٹی سرانجام دے رہا تھا کہ (تذکرہ میں بھی صدر ایک دوست شہر محمد ولد ملک شہریت لکھنے والے اہل حال ہیں کہ یہ صدر ہیں صحت کے لیے قرضہ لینا اور لیا جائے اور وہ لیا جائے اس وقت میں نے لیا یا وہم قرضے کا لینا کہ اور انگوٹوں نے بھی رقم کی صورت میں لیا ہے شہریت لکھنے والے یا پھر اس وقت موقع سے فارغ ہو گئے ہیں وہ لیا یا اور بعد میں لیا اور لیا ہے

5) میں ایسا سوچ رہی تھی کہ میں اسے نہ مانگی کہ وہ
میرے حلقہ کی نہ مانگی کہ اس کا منحل نہیں ہو سکتا۔

6) آج تک میرے خدایا کوئی ایسا الزام یاد نہیں کرتی غلط کام کرنے کا
کوئی شائبہ ابھی تک نہیں ہے جو کہ میرا دیا شہزادی کا
شہوت ہے۔

7) اس مسئلہ میں یہ بات بھی ذکر کروں کہ میرے بیٹے کا ایک منہ
ابھی تک نہیں دروازے سے لڑائی کے خدایا ایسے ہی ہر وہ پروگرام
میں صرف ہے جو کہ میں کو دیتے ہیں۔

8) میرے ایک علمیہ بیٹا ہیں جو پولیس کی نوکری کے علاوہ میرے
دوست ہیں دشمن بھی ہیں اور اس لئے دار میں ہو سکتا ہے کہ مجھے
ذاتی نقصان پہنچانے کے لئے اس سے ایسا میں سے کسی نے یہ پروگرام
سورایا ہے۔

9) اسے مانگنا ہے کہ میرے طریق اور قابل کس حوالے
کو مدعا کرنے کے لئے میرے خدایا شوکانہ کو لیا قابل فرمایا
میرا بیٹا ہے

Attest
[Signature]
[Signature] 24/1/2019
[Signature]

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Annex E


ORDER

Constable Naseemullah No. 241 while posted to Police Station, Nowshera Cantt., was found involved in taking illegal gratification from cloth merchants of Nowshera Cantt., the video of which was uploaded on face book & relayed on Khyber News channel. His, this, act has stigmatized the department and destroyed the image of Police Force in the eyes of general public. On account of which he was issued Show Cause Notice. He submitted his written reply which was found unsatisfactory.

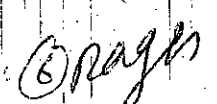
He was called to the office of the undersigned, heard in person and he confessed his guilt. Moreover, sufficient material is placed before the undersigned. Hence, it is decided to proceed against him without aid of enquiry as envisaged under rules 5 (3) of Khyber Pakhtunkhwa Police Rules-1975.

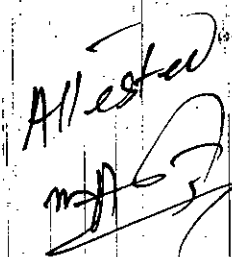
Therefore, in exercise of the powers vested to me under Police Rules, 1975, Constable Naseemullah No.241 is hereby awarded Major punishment of dismissal from service with immediate effect.

OB 1548
Dated 12-12/2014.


District Police Officer,
Nowshera.

No. 4111-14 /PA, dated Nowshera, the 12-12-2014.
Copy for information and necessary action to the:-

- 1. Pay Officer.
- 2. E.C.
- 3. OHC.
- 4. FMC. Encl. 


Attested

IN RESPECT OF :-

DIG MARDAN

**APPEAL AGAINST THE ORDER PASSED BY DISTRICT POLICE OFFICER (DPO)
NOWSHERA NO OB : 1548 DATED :- 12/12/2014 IMPOSING MAJOR PUNISHMENT
OF DISMISSAL FROM SERVICE UNDER SECTION 5(3) OF KHYBER-PAKHTUNKHWA
POLICE RULES -5 1975**

Respected Sir,

The applicant seeks few minutes out of your hectic Schedule to bring few facts to your kind notice

- 1) That, the applicant is the R/O Kheshgi Payan Tehsil and District Nowshera Khyber-Pakhtunkhwa Pakistan and belongs to a respectable family of the area which is known for public welfare oriented outlook.
- 2) That, the applicant's family throughout their existence in the area has remained a law abiding family and has neither given any chance to their superiors to raise their eyebrows regarding their conduct nor been involved in any case of criminal activities.
- 3) That, the applicant is peace loving, law abiding, moderate religious leaning person and is neither involved nor been associated with any fundamentalist or terrorist organization/outfit.
- 4) That, the applicant has served police Department of KPK for a stint of time stretching from since 31/10/2007 and during which he has given maximum output to his parent Department in lieu thereof he was occasionally given pat on the back by his superior but, unfortunately has been served with charge sheet detailed in the title containing following points :-
 - a) *Having been found in taking illegal gratification from cloth merchant of Nowshera Cantt duly video taped and uploaded on social network face book and aired on Khyber News TV Channel thereby stigmatizing the department and destroying good image of Police Force in the eyes of general public*
 - b) *Retention of appellant in police force fraught with encouraging inefficiency and unbecoming of good police officers*
- 5) That, the applicant submitted his reply replying and denying specifically charges leveled but unfortunately same didn't find favor with District Police Officer (DPO) hence, was visited upon major punishment of discipline on the ground of alleged admission of guilt.
- 6) That, the applicant seeks benevolent indulgence of your office to give sympathetic hearing to few following points namely:-
 - a) That, the applicant has become victim of personal vendetta and settling scores on the part of his enemies.
 - b) That, the conditions precedent and procedural safeguard provided under law ensure Rule of law have been thrown to the wolves.
 - c) That, order of dismissal is outcome of hastily given, conjecture and mechanical order because appellant has not admitted guilt as alleged in impugned order as there is no material either written or verbal material on record showing his admission of guilt hence, impugned order liable to be set aside.
 - c) That, the applicant had given debt to one Mr. Sher Muhammad s/o Malik Sherbat Khan CNIC 10510106451 to the tune of Rupees 1000/- of which Rupees 500 had already been received, whereas, remaining amount of Rupees 500 while being received video taped by Local reporter of Khyber News and later on uploaded on social network Face book. This fact is duly confirmed by said debtor i.e. Mr. Sher Muhammad vide his affidavit duly inscribed on stamp paper # 472 /16/12/213. In this regard it is worth

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mentioning that said reported is professional black mailer who is hands in gloves with smuggling mafia of Nowshera Cantt and hell bent to stigmatize and cornering honest police officials who are serving their duties diligently with fear of Almighty Allah in their eyes. The said reported on seeing that appellant is not willing to play according to his tune has played the entire game. Viewed in this context, the entire drama is mala fide and attempt to black mail not only appellant, but, also entire police department and if this trend is not reversed the entire police machinery of District Nowshera would be hostage to professional smuggling mafia and their henchman like said reporter. That, the affidavit of shop keeper annexed separates facts from fiction and shows the exact nature of entire proceedings. Neither newsreporter nor said debtor was examined and allowed to be cross-examined by appellant thereby vitiating entire proceedings as nothing, but, manning and shallow.

- d) That during his entire stint of service he has not given any occasion to his superiors to raise their eyebrows regarding his conduct and was occasionally awarded pat on the back for is meritorious services.
- e) That, in the age of unbridled and unlimited media freedom in rat race amongst media channels to increase their TRP, it has now become a fashion and trend to malign honest Government officials, by throwing unfounded allegations to mar their career in way reminiscent of Mar Carthy era in USA after WW2. hence, trend to be checked with full force to prevent career doom of honest officials
- f) That the applicant has also been facing old enmity in village/family and said enemies can also be behind the whole drama
- g) That, neither applicant was afforded opportunity to cross examined both shop keeper and news reporter of Khyber News Channel nor were they produced; hence, violation of principle of natural justice, and other administrative safeguards. The Impugned order has violated time tested and wisdom principle of administrative law i.e. **NEMO DEBET ESSE JUDEX IN PROPTIA CAUSA** : No man shall be a judge in his own cause, or the deciding authority must be impartial and without bias; and **AUDI ALTER AM PAR TERN** : Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority.

- d) That, as per Superiors courts case law on enquiry and othe procedural safeguards the impugned order has overlooked and ignored following important wisdom spawning guidelines/points :-

a) The adjudicating authority must give an opportunity to the party concerned to rebut the evidence and material placed by the other side, the adjudicating authority must disclose the evidence which it wants to utilize against the person concerned and also give him an opportunity to rebut the same if hearing is not given by the adjudicating authority to the person concerned and the principles of natural justice are violated the order is void and it cannot be justified on the ground that hearing 'would make no difference the right to appear through a counsel has been recognized in administrative law.

b) There is no dispute that the principles of natural justice are binding on all the courts, judicial bodies and quasi-judicial authorities. It is beyond doubt that there are certain canons of judicial conduct to which all tribunals and persons who have to give judicial or quasi-judicial decisions ought to conform. The principles on which they rest are, we think, implicit in the rule of law. Their observance is demanded by our notional sense of justice

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notional sense of justice

- c) The conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.**
- d) The compulsion of hearing before passing the order implied in the maxim 'audi alteram partem' applies only to judicial or quasi-judicial proceedings. It is now well settled that a statutory body, which is entrusted by statute with a discretion, must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial on the one hand, or as administrative on the other hand**
- h) That, the applicant has got no alternate source of income to feed mouths of members of family hence, living miserable life from hand to mouth.
- i) That, the applicant wants to serve police department in this time of avalanche of suicidal bomber attacks upon police convoys, FC and innocent citizens of Pakistan by the ruthless and fundamentalist religious outfits which has deterred many people to join police force
- j) That, Pakistan was created by our great leader Quid-i-Azam to show to the world as symbol of Modern Islamic State to the world, but, due to attacks upon Pakistanis and police personal by religious/smuggling elements the said intended image has badly suffered which demands that all citizens of Pakistan and ex-police employees should devote their whole energy and resources to serve Pakistan which is not only in line with the religious duty, but, also need of hour of time.
- k) That we are living in the era of judicial activism where due to active and bold Judiciary the Government department are waking out of deep slumber to provide relief and justice to the public as was reflected by its landmark Judgment in famous Sheela Zia case has expanded the concept and stretch of human rights as reported in PLD Sc 1994 P/ 693. In fact this case has expanded the concept of Fundamental right of down trodden and weaker segments of society. Furthermore it was Supreme court which due to its suo motto timely action in split second manner gave sense of direction to unruly horse of Karachi police and semblance of rule of law.
- l) That, the applicant is of the view that not only his but his entire family life to the last drop if is used in the service of Pakistan, he would be considering himself lucky and would find peace not only in this World, but, also in the other world as explained by Holy Prophet Muhammad (PBUH) and Holy Quran.
- m) That Pakistan is an Islamic State as per Articles 2, 2A and 3 of Constitution of Pakistan, 1973 wherein officials of State and Government are expected to provide justice and relief to the deserving cases. The said Articles of Constitution are reproduced ad-verbatim as under :-

2. Islam shall be the State religion of Pakistan. **2A.** The principles and provisions set out in the objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly. **3.** The State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work.

n) That, Article 10-A of Constitution of Pakistan, 1973 duly interpreted by Constitution in memo gate ensures right of fair trial and reproduced as under :-

10A. Right to fair trial: For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

o) That right of equal and fair treatment in accordance with law given by Article 4 of Constitution of Pakistan, 1973 and reproduced ad-verbatim has been violated :-

4. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan; (2) In particular :- (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law; (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not require him to do.

d) That by notice is violation applicant's Fundamental Right given in Article 25 of Constitution of Pakistan, 1973 known as " Rule of Law " is being violated reproduced ad-verbatim has been violated :-

25. (1) All citizens are equal before law and are entitled to equal protection of law (2) There shall be no discrimination on the basis of sex alone.

P) That said act is grave violation of Article 8 of Constitution which prohibits Government and any other authority to act against the guarantees provided in Chapter 1 of part relating to fundamental rights. The said carefully crafted Article of Constitution is reproduced as under :-

(1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void. (2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

13) That I ensure to abide by all relevant rules and regulation applicable for the said purposes

IT IS THEREFORE, RESPECTFULLY SUBMITTED THAT IN THE CONTEXT OF APPLICATION IN HAND IMPUGNED ORDER OF DISMISSAL FROM SERVICE MAY KINDLY BE WITHDRAWN AND APPLICANT BE ALLOWED TO CARRY ON UN-HINDERED HIS DUTIES WITH ALL FRINGE BENEFITS.

THANKING YOU IN ANTICIPATION

Naseemullah No 241

Signature: Naseemullah

Attested
[Signature]

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Annex 'G' ①

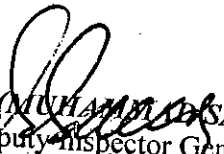
ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Naseem Ullah No. 241 of Nowshera District Police against the order of District Police Officer, Nowshera, wherein he was dismissed from service vide District Police Officer, Nowshera OB No. 1548 dated 12.12.2014.

Brief facts of the case are that he while posted to Police Station, Nowshera Cantt: was found involved in taking illegal gratification from cloth merchants of Nowshera Cantt: the video of which was recorded and uploaded on Facebook & relayed on Khyber News channel. His this act has stigmatized the department and destroyed the image of Police Force in the eyes of general public. On account of which he was issued Show Cause Notice. He submitted his written reply which was found unsatisfactory. He was called to office of the District Police Officer, Nowshera, heard in person and he confessed his guilt. Moreover, sufficient material is placed before the District Police Officer, Nowshera. Hence it is decided to proceed him against without aid of enquiry as envisaged under Rules 5(3) Khyber Pukhtunkhwa Police rules 1975, therefore he was dismissed from service.

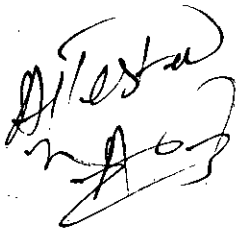
I have perused the record and also heard the appellant in Orderly Room held in this office on 18.02.2015, but he failed to justify his innocence and could not produce any cogent reason about his innocence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

ORDER ANNOUNCED.


(MUHAMMAD SAEED) PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

No. 1339 /ES, Dated Mardan the 2-03- /2015.

Copy to District Police Officer, Nowshera for information and necessary action w/r to his office Memo: No. 455/PA dated 10.02.2015. His service roll & Fuji Missal is returned herewith for record in your office.
(*****)



فارم نمبر 15-12-14

ٹاؤنکس فائیل

Annex ابتدائی اطلاع رپورٹ

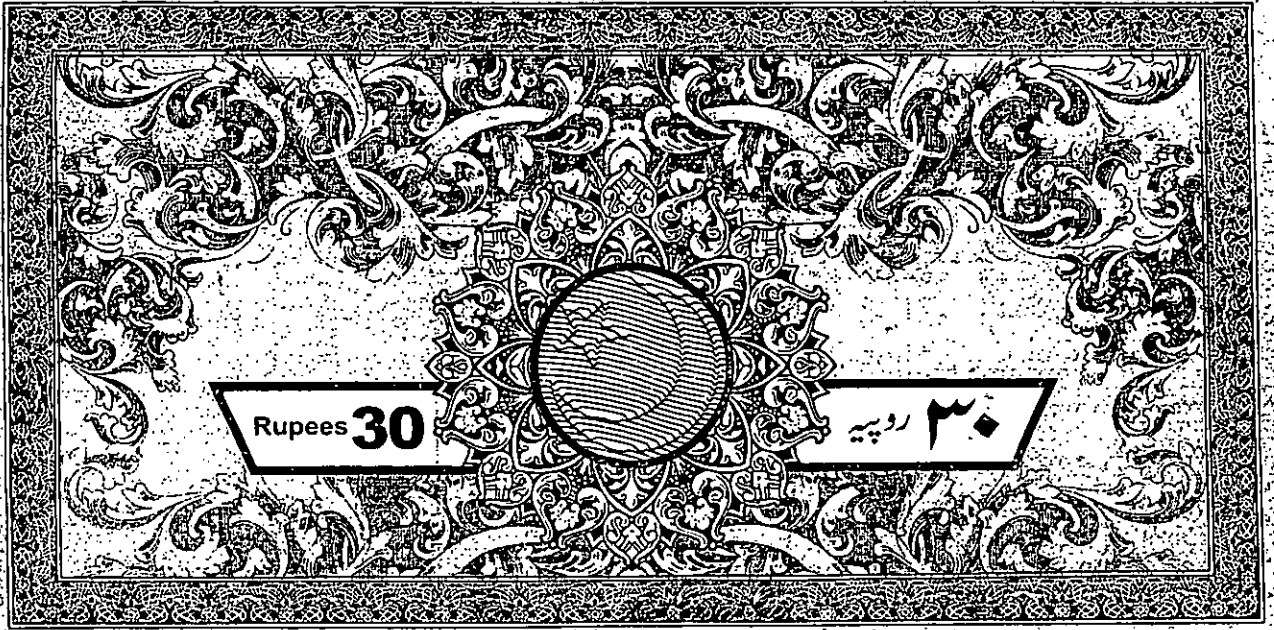
ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 152 مجموعہ ضابطہ نو جداری

ذبح	نوشہ خانہ
تاریخ وقوع	تاریخ وقوع
378	3
تاریخ وقت رپورٹ	تاریخ وقت رپورٹ
نام و سکونت اطلاع دہندہ مستغنیث	نام و سکونت ملزم
مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔	تاریخ وقوع فاصلہ تھانہ سے اور سمت
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرتے میں وقف ہوا ہو تو وجہ بیان کرو	تھانہ سے روانگی کی تاریخ و وقت

ابتدائی اطلاع نیچے درج کرو سولہ ماہ گذر چکا ہے کہ خلاف جرم قبل 12/12/14
 ہو گیا وہ نسیم کی کراچی میں رہتی تھی کہ ملزمان بالائے مقام جائے دستگیر کیے اور کینیڈا کی طرف فرار ہو گئے۔
 نہ جرم کیے گئے کی تا جا کر نسیم کی گرفت اور جگہ سے دوسری جگہ سے لایا گیا اور پھر گرفت میں لیا گیا۔
 کہ وہیں ہے۔ جسکا اسی وقت نامعلوم میردینز اور پوسٹر جسیر میردینز وہاں پہنچے اور نسیم کی گرفت میں لیا گیا۔
 جس میں تاخیر نہ ملنے کی کوئی باتوں رہنمائی و سرکاری وقت ظاہر کیا گیا۔ وہاں نسیم کی گرفت میں لیا گیا۔
 بالائے خلاف معدوم ہوا اور 12/12/14 کو معدوم ہوا۔ نسیم کی گرفت میں لیا گیا۔
 خلیفہ گرفتار کر کے بعد سے حالات کا نام لیا گیا۔ جس کے نام سے ملزمان جسٹس نے رپورٹ پیش کی کہ گرفتار ہوئے۔
 کہ کئی حالات و واقعات سے صحت جرم بالائے باقی جا کر قبول ہو جائے لیکن تفتیش حوالہ نسیم حادہ خان 241
 متعلقہ تفتیش لیا جائے۔ میر جگتھار شہ

SHO. Ps. N. Cant
 14-12-14

Allected
 [Signature]



پہنچا حلفی

منہ سے شہر محمد ولہ ملک شہرت ساکن حال ارفقہ لکھا ہے کہ یہ ارفاقہ حلی
 تحصیل و ضلع نوشہرہ گاؤں حلقہ بیان کرنا ہوں کہ میرا نسیم اللہ ولد حکمت مسابہ
 ساکن جو شگل باہان تحصیل و ضلع نوشہرہ کے ساتھ دوستانہ تعلقات تھے اور میں نے
 نسیم اللہ مذکورہ سے مبلغ ایک ہزار روپے قرض سنا تھا جس سے مبلغ
 =/500 روپے چند دن پہلے دیا ہے اور بقایا رقم مبلغ =/500 روپے آج مبلغ $\frac{18}{16}$ کو
 دے دیا ہے۔ دوستانہ تعلقات کے علاوہ میرا نسیم اللہ کے ساتھ کوئی لین دین
 نہ ہے حلقہ بیان کرنا ہوں کہ حکم ماتہا باہم درست اور سچ ہے لکھا چند
 طور پر تحریر کر دیں تاکہ سند ہے

16 $\frac{12}{14}$ 14

511 10510106451

ATTESTED

شہر محمد احمد

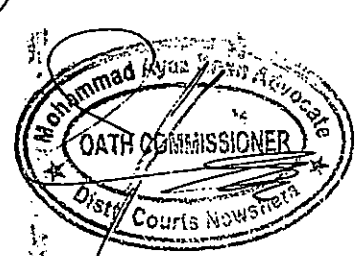
گواہ: بی بی علیہ و بی بی وحیدت خان شہرہ پوری
 تحصیل و ضلع نوشہرہ

17201-0320091-7

Beut



Attested
 [Signature]



گواہ: نسیم اللہ ولد حکمت مسابہ
 17201-1108951-1

WAKALATNAMA

BEFORE THE HON'BLE Chairman KP Service Tribunal, Pesh

Naseemullah (Petitioner)
(Plaintiff)
(Applicant)
(Complainant)
(Decree Holder)

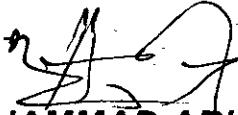
VERSUS

DPO. Nowshera J. Khan (Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

Case Src - Appeal - 15

I / We, Naseemullah do hereby appointed and constitute **MUHAMMAD ARIF JAN ADVOCATE HIGH COURT PESHAWAR** to, appear, plead, act, compromise, withdraw, or refer to arbitration to me / us as my / our Counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate / Counsel at my / our matter.

Attested and Accepted


MUHAMMAD ARIF JAN
Advocate, High Court, Peshawar
Office No-210 Al-Mumtaz Hotel
Hashtnagri G.T road, Peshawar.
Mobile: 0333 221 2213

CLIENT/ S
T. Khan
Naseemullah

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 190/2015

Naseemullah Ex-Constable No. 241, S/O Hikmat Shah r/o Kheshgi Payan,
District Nowshera.

.....Appellant

V E R S U S

1. District Police Officer, Nowshera.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

PARAWISE REPLY ON BEHALF OF RESPONDENTS No. 1,2& 3

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action.
2. That the appeal is badly time-barred.
3. That the appellant has been estopped by his own conduct to file the appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Honourable Tribunal with clean hands.

On Facts

1. Para pertain to record.
2. Para incorrect. The service record of the appellant is tainted with red entries hence, plea taken by the appellant is false and baseless.
3. Para incorrect. The appellant while posted to Police Station, Nowshera Cantt: was found involved in taking illegal gratification from cloth merchants of Nowshera Cantt: who was caught red handed through video which was uploaded on Facebook and release on Khyber News TV channel.
4. Para incorrect. The appellant was caught red handed while taking illegal gratification from cloth merchants, the video of which was recorded hence, plea taken by the appellant regarding the outstanding amount, which was due to his friend is totally concocted rather a tailored one just to save his skin.
5. Incorrect. As the appellant was caught red handed while taking illegal gratification from cloth merchants of Nowshera Cantt: the video of which was recorded and uploaded on Facebook and relayed on Khyber News TV channel. This act of the appellant has stigmatized the department and destroyed the image of Police force in the eyes of general public. Therefore, he was issued show cause notice.

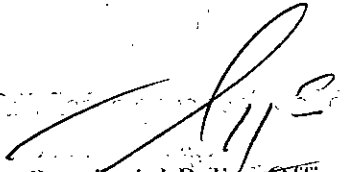
6. Para incorrect. As per law the appellant was issued show cause notice wherein he was asked to submit his reply within 07 days. He submitted his written reply which was found unsatisfactory. He was also called and heard in person who confessed his guilt. Hence, the punishment order passed by the competent authority is in accordance with law and rules which does commensurate with the gravity of his misconduct.
7. The appellant authority after perusal the entire record also provided the opportunity of personal hearing in orderly room held on 18-02-2015 but the appellant failed to justify his innocence and could not produce any cogent reasons about his innocence. Meaning thereby that he has no solid proof/reason to advance in his favour, therefore, after taking into consideration the entire material the appeal of the appellant was rejected.
8. Para not related needs no comments.

On grounds

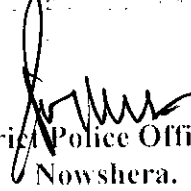
- A. Para incorrect. The orders passed by the respondents are lawful, legal and speaking one, hence, liable to be maintained.
- B. Para incorrect. After taking into consideration the sufficient material available against the appellant, confessing his guilt in opportunity of personal hearing the appellant was bitterly failed to prove his innocence. Moreover, the respondents have no grudges therefore, the punishment order passed by competent authority is in accordance with the rules.
- C. Para incorrect. The respondents have completely followed the existing rules and after taking into consideration the entire material the punishment order was passed which does commensurate with the gravity of misconduct.
- D. Para incorrect. The appellant was not aware of the fact that he was being filmed and when he was shown the clip in the orderly room he confessed his guilt. Moreover, video clip is a concrete proof to prove them guilty. Hence, plea taken by the appellant is completely concocted one.
- E. As act of the appellant also falls within the domain of criminal law therefore, he was booked under the substantive law. Moreover, case of the appellant has also been referred to Anti Corruption Establishment for further necessary action which is under process. Hence, stance taken by the appellant being devoid of legal footing is not tenable in the eyes of law. However, criminal proceedings in a court and Departmental proceedings are two different things and can run side by side.
- F. Para incorrect. The respondents after taking into consideration have passed the punishment order which is in consonance with the norms of natural justice.
- G. Para incorrect. If the appellant had any witness he should have produced him/them during the enquiry proceedings which he bitterly failed to do so meaning thereby that he has arranged the alleged witness after thought just to save his skin from the agonies of departmental as well as criminal proceedings.

- H. Para incorrect. The appellant was provided full fledged opportunity of defending himself rather he has confessed his guilt before the proper forum.
- I. Para not related needs no comments.
- J. Para incorrect. The punishment order passed by the competent authority does commensurate with the law, facts and other circumstances of the case which is liable to be maintained.

It is, therefore, most humbly prayed that keeping in view the above submissions, appeal of the appellant may very graciously be dismissed with cost.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
Respondent No. 3


Deputy Inspector General of Police,
Mardan Region-I, Mardan.
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No. 01

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 190/2015

Naseemullah Ex-Constable No. 241, S/O Hikmat Shah r/o Kheshgi Payan,
District Nowshera.

.....Appellant

V E R S U S


1. District Police Officer, Nowshera.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

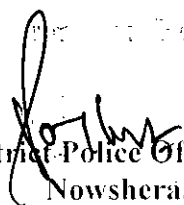
.....Respondents

AFFIDAVIT

We the respondents No. 1,2&3 do hereby solemnly affirm and declare on Oath that the contents of parawise comments to the appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the Honourable tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
Respondent No. 3


Deputy Inspector General of Police,
Mardan Region-I, Mardan
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No. 01

تہیت
10 روپے

Attested & accepted



38839

ایڈووکیٹ اور قاضی
بار کونسل اہلکار ایسوسی ایشن
راہیلہ نمبر: 0300-596-5843

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

منجانب:		
 NASEEM LILLA District Police Officer & Others	دعوی: SERVICES APPEAL علت نمبر: Nil مورخہ: 25-08-2015 جرم: Nil تھانہ: Nil	
	بابت تحریر آنکہ	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

ان مقام پیشاوردہ کے لئے حضور اللہ تعالیٰ کا حکم کو کومیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقررات فیصلہ برطرف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں مدد تخطا کرنے کا اختیار ہوگا، نیز ضرورت میں پیروی تمام کی جائے گی یا اپیل کی یا آمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظریاتی و پیروی کرنے کا مختار ہوگا اور ضرورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا سامنے برداشت منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف و متول کے کار حقدار ہوگا کوئی تاریخ پیشی مقام دورہ یا احد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی میں مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: 25 دسمبر 2015

العبد _____ واہ شد _____ العبد

مقام پیشاوردہ کے لئے منظور ہے۔

Handwritten signature/initials

تہیت
10 روپے



38838

ایڈووکیٹ/دستخط:
بارکوسل ابار ایسوسی ایشن
13-4429
رابطہ نمبر: 5833960775

پشاور بار ایسوسی ایشن، خیبر پختونخوا

بعدالت جناب: جنرل سرولس کٹر و سولس فیسر پختونخوا پشاور

منجانب:	دعویٰ: Service appeal
 Nasir Ullah بنام DPO & Others	علت: NIC
	موضوع: کس
	جرم: NIC
	تھانہ: Peshawar

بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام پشاور کے محترم ایڈووکیٹ محمد عامر ابرو کو ذیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقررات و فیصلہ برطاعت دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں مدد مستحکم کرنے کا اختیار ہوگا، نیز ضرورت عدم پیروی یا تاخیر کی صورت میں یا اپیل کی تاخیر اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و پیروی کرنے کا اختیار ہوگا اور ضرورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کارروائی کے واسطے اور ذیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا بااختیار مدد اخذ منظور و قبول ہوگا دوران مقدمہ
 میں جو خرچہ ہر جہان اتوائے مقدمہ کے حساب سے ہوگا وہ ذیل موصوف و ذیل کے کار ختم ہوگا کوئی تاریخ پیشی مقام
 دورہ یا بعد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی یا مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: 25 دسمبر 2015

الع شد گ واہ شد الع شد

مقام پشاور کے لئے منظور ہے۔

Nasir Ullah
بنام

①

For Appellate

1

In the Court of Special Judge, Anti-Corruption, (Provincial), Khyber Pakhtunkhwa,
Peshawar.

13

Case No.31 of 2016.

Date of Institution. 13.06.2016.

Date of Decision.27.09.2016.

State..... Versus.

- 1) Talib Jan S/o Misal Khan R/o Azakhel Bala, Ex-Police constable.
- 2) Naseemullah S/o Hikmat Shah R/o Khewshki Payan, Ex-Police constable.
- 3) Ayub khan S/o Akbar khan R/o Haji Abad Shaidu District Nowshera.
- 4) Sher Muhammad alias (chotey), S/o Malik Sharbat R/o Jameel chowk, Phandu, Peshawar (Afghan National).

Case FIR No.02 dated 09.02.2016 of P.S. ACE, Nowshera, u/s 161/162/163/164 of PPC read with
Section 5(2) of Prevention of Corruption Act.

ORDER.

1) Vide FIR No.2 dated 09.02.2016, accused 1) Talib Jan S/o Misal Khan, 2) Naseemullah S/o Hikmat Shah 3) Ayub khan S/o Akbar khan & 4) Sher Muhammad alias (chotey), S/o Malik were charged and their case was sent to this court for trying them for the offences punishable u/s 161/162/163/164 of PPC read with section 5(2) of Prevention of Corruption Act.

2) According to the contents of the FIR in brief, Haji Muhammad SHO, Nowshera cantt: learnt that a few days ago a video clip was publicized in which two police constables namely Talib Jan No.521 and Naseemullah No.241 were getting illegal gratification. The said clip was filmed by Pervez khan reporter of Khyber News and made public through face book. In the

video both the constables were shown receiving bribe. In the light of the said video clip the case was registered against the said constables vide FIR No.378 dated 14.12.2014 at P.S.

EXAMINER

Court Of Special Judge
Anti Corruption KPK Peshawar

Nowshera Cantt for the commission of offences punishable u/s 161/162/163 & 164 of PPC section 5(2) of the Prevention of Corruption Act. Later on in the light of the legal opinion of the District Public Prosecutor Nowshera, the case was sent to Anti-Corruption

Establishment whereupon the Director Anti-Corruption Establishment initiated open inquiry and the statements of all concerned were recorded. It was found from the said inquiry that constable Talib had received an amount of Rs.500/- from Ayub and Naseemullah had received Rs.1000/- from Sher Muhammad as bribe and let both of them go with the smuggled cloth. In view of said inquiry the registration of case was ordered vide letter No.1453/ACE dated 02.02.2016, hence the case was registered against all the four accused vide the aforementioned FIR and the investigation commenced

JUDGE
Peshawar

27/9/2016

- 3) After completing the investigation the challan was submitted. Charge was framed against the accused to which they pleaded not guilty and claimed trial.
- 4) In support of its case on 26.09.2016, the prosecution produced one Haji Muhammad khan S.I. PTC Hangu, the then SHO Nowshera, who was cross examined by the learned defence counsel . On the same day the learned Public Prosecutor abandoned PW Pervez khan as, according to him, he was not supporting the plea of prosecution. Soon thereafter the learned counsel for all the four accused facing trial submitted an application for their acquittal u/s 249-A of Cr.PC.
- 5) Notice of the application was given to the Public Prosecutor. Arguments of learned counsel for accused and of learned Public Prosecutor heard and file perused with their assistance.
- 6) Learned counsel for the accused contended that the video clip, the cloth and the cash amount which were important pieces of evidence had not been taken into possession as case property; that Pervez khan who had allegedly filmed the incident had disowned the same through an affidavit and was therefore abandoned by the prosecution being not supporting the prosecution version; that the inquiry and the investigation was not completed within stipulated period and that no independent witness had supported the prosecution version, hence there was no probability of the accused being convicted of any offence even if the remaining evidence of the prosecution was recorded. He therefore requested that the accused be acquitted by invoking the provisions of section 249-A of Cr.PC.
- 7) Learned Public Prosecutor opposed the said contentions and stated that the case may be decided on merits after recording the entire evidence of the prosecution.
- 8) Record of the case would reflect that the video clip which was the most important and crucial piece of evidence as the entire case exclusively rested upon it, had not been taken into possession by the I.O. or by the PW-1 the then SHO Nowshera who had registered the initial FIR in this case as was admitted by him in his cross examination. In fact the inquiry and investigation record would show that the said video clip was never taken into possession by anyone during the inquiry or investigation of this case and therefore practically the said video clips did not exist for its production before the court. The said PW had admitted in cross examination that he had made no effort to get the said video clip. Although it has been mentioned in the FIR that the incident of giving and taking bribe amongst the accused had been filmed by Mr. Pervez khan, the news reporter of Khyber TV, however, the said Pervez khan had submitted an affidavit during the open inquiry of the case in which he had completely disowned the said video clip and categorically denied the truthfulness thereof in the clearest possible terms. Similarly in the said affidavit he had also denied that the same had been telecasted in any news bulletin. On the contrary he had stated that both the constables were honest. The factum and contents of said affidavit have also been referred by the I.O. in his report dated 11.01.2016. It may be mentioned here that even according to the concluding paragraph of final report dated 06.05.2015 of S.I. ACE Nowshera neither during inquiry nor during investigation the video film, the cash amount or the cloth had been taken into possession by the inquiry or investigating officer.

ATTESTED

EXAMINER
 Court of Special Judge
 Anti Corruption KPK
 Peshawar

SPECIAL JUDGE
 Anti Cor.
 Khyber Pakhtunkhwa Peshawar

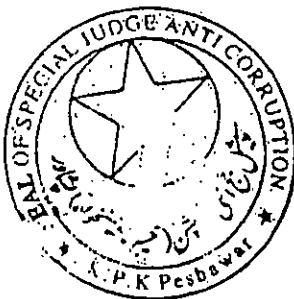
22/9/16

14

[9] In these circumstances where the video clip forming the very basis of this case, has not been seized either by the inquiry officer or the investigating officer as a case property; where Pervez khan who had allegedly filmed the questioned incident has been abandoned by the prosecution as he was not supporting the prosecution version; where the said Pervez khan had submitted an affidavit categorically denying the factum of filming the question incident or its telecast on the Khyber News or any other news channel; where no video clip, cloth or cash amount was seized by the inquiry or investigating officer as case property to support the plea of prosecution to connect the accused with the commission of offence and where no one has been examined during the inquiry or investigation to even alleged that the transaction, if any, taking place between the accused was that of illegal gratification, there seems to be no probability of the accused being convicted of any offence even if the remaining evidence of the prosecution is recorded.

- 10) In the circumstances, while invoking the provision of section 249-A Cr.PC, all the four accused are acquitted of the charges leveled against them. Being on bail they and their sureties are absolved of their liabilities under the bail bonds.
- 11) The case property, if any, should be kept intact till the expiry of the period of limitation prescribed for appeal/revision and should be disposed of according to law if no appeal is preferred.
- 12) File of the case be consigned to the record room after putting it in order in accordance with rules.

Announced.
Peshawar.
27.09.2016.



(Signature)
27.9.2016
(Muhammad Bashir)
Special Judge,
Anti-Corruption (Provincial),
Khyber Pukhtunkhwa, Peshawar.

ATTESTED

(Signature)
EXAMINER
Court Of Special Judge
Anti Corruption P.K. Peshawar

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2108 /ST

Dated 19 / 12 / 2016

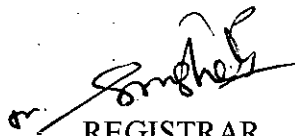
To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Nowshera.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 9.12.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.