

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No 742/2016

Date of Institution... 21.07.2016

Date of decision... 06.11.2017

Aziz Ahmad, Ex-Constable No. 2658, Javed Iqbal Shaheed Police Lines, District Swat. ... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

MR. IMDADULLAH,
Advocate

... For appellant.

MIAN AMIR QADAR,
District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on 09.01.2015. The charge against the appellant was desecration of Holy Quran. A criminal case was also registered against the appellant and the appellant was arrested in that criminal case in December, 2013. During the pendency of the criminal case, the department initiated departmental proceedings by appointing enquiry officer and finally dismissing the appellant. In the criminal case, the appellant was acquitted by the Worthy Peshawar High Court on 03.05.2015. After the release from the Prison, the appellant filed a departmental appeal bearing no date, however, the same was

rejected on 01.07.2016 and thereafter, the appellant filed the present service appeal on 21.07.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant has been acquitted by the Worthy Peshawar High Court as no proof was forthcoming against the appellant. That the whole departmental proceedings against the appellant are illegal as at the time when the alleged charge sheet and statement of allegations were issued, the appellant was in jail in criminal case. That this fact has been admitted by the enquiry officer in his enquiry report. That when the appellant was behind the bar how he could be associated in the enquiry proceedings. He further argued that no limitation would run against the appellant as he was in prison and no communication of even final order was made to the appellant.

4. On the other hand the learned District Attorney argued that there is no proof of the fact that the appellant was in jail at the time when the enquiry proceedings were initiated and concluded that the allegation of desecration of Holy Quran was proved against the appellant.

CONCLUSION

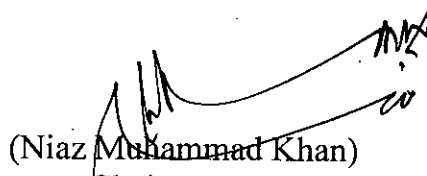
5. In the report of the enquiry officer it is clearly written that the appellant was arrested on 12.12.2013 and thereafter his application for bail was rejected on 19.12.2013. In the order of the Worthy Peshawar High Court it is clearly mentioned at the end that the appellant be '*set free*' which means that the appellant was in the custody till 03.05.2016. There is no proof of any communication of the charge sheet and statement of allegations to the appellant nor the appellant was associated with the enquiry as he was in jail. But this is also an admitted position of law that acquittal in criminal case *per se* is no ground for setting aside the

departmental penalty because under the well established jurisprudential principles of administrative law the findings of the criminal case has got no bearing on the departmental proceedings. In this regard, reliance is placed on 1972-SLR-Supreme Court-355, 1978- ALR 1963-Supreme Court-1723, 1978- SLR-Supreme Court-46 and PLD 1990-Supreme Court-951. This Tribunal, therefore, cannot give clear chit to the appellant on the ground that the Worthy Peshawar High Court has acquitted the accused, however, the departmental proceedings are defective as discussed above.

6. In the light of the above discussion, this Tribunal set aside the impugned order of the departmental authority and direct the authority to hold denovo enquiry in accordance with law and rules and to conclude the same within a period of four months from the date of receipt of this judgment, failing which the appellant shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Hamid Mughal)
Member



(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

ANNOUNCED
06.11.2017

08.08.2017

Clerk of counsel for the appellant and Mr. Muhammad Zubair, District Attorney alongwith Mr. Khawas Khan, SI (Legal) for the respondents present. Clerk of counsel for the appellant seeks adjournment as his counsel is not in attendance due to strike of the bar. Adjourned. To come up for arguments on 6.11.2017 before the DB at camp court, Swat.

Member

Chairman
Camp court, Swat

06.11.2017

Counsel for the appellant and Mian Amir Qadar, District Attorney alongwith Khawas Khan, S.I(Legal) for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.

Member

Chairman
Camp Court, Swat

ANNOUNCED

06.11.2017

11.11.2016

Counsel for the appellant and Mr. Khawas

~~Khan, SI (Legal) alongwith Mian Amir Qadar GP~~

~~for the respondents present. Requested for
adjournment. To come up for written
replies/comments on 05.01.2017 before S.B at camp
court Swat.~~

~~Chairman~~

~~Chairman
Camp Court Swat~~

05.01.2017

Appellant in person and Mr.Imranullah, SI (Legal) alongwith Mr. Muhammad Zubair, Sr.GP for the respondents present. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 09.03.2017 before S.B at camp court, Swat.

Chairman
Camp court, Swat

09.03.2017

Appellant in person and Mr. Imranullah, Inspector (Legal) alongwith Mian Amir Qadar, GP for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 08.08.2017 at camp court, Swat.

Chairman
Camp Court, Swat

03.08.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when a criminal case under section 295(b) PPC vide FIR No. 287 dated 10.12.2013 in P.S Saidu Sharif Swat was registered against him. That the learned trial court convicted the appellant to suffer life imprisonment vide judgment dated 16.07.2016 where-against the appellant preferred criminal appeal 187-M/2014 in the august Peshawar High Court, Mingora Bench wherein the appellant was acquitted from the charges vide judgment dated 03.05.2016. That on the same charges the appellant was proceeded against and dismissed from service vide impugned order dated 09.01.2015 where-against departmental appeal preferred by the appellant after his release on 01.7.2016 which was rejected on 01.07.2016 and communicated to the appellant on 14.07.2016, hence the instant service appeal on 21.07.2016.

That the enquiry was conducted within the days of the confinement of the appellant and that neither any opportunity of hearing was extended to the appellant nor conducted in the mode and manners prescribed by law.

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/comments for 11.11.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

Camp court, Swat.

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 742/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21/07/2016	<p>The appeal of Mr. Aziz Ahmad presented today by Mr. Aziz-ur-Rehman Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>Abdul</i> REGISTRAR</p>
2-	25-07-2016	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on. <u>03-08-2016</u></p> <p style="text-align: right;"><i>DL</i> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 742 of 2016

Aziz Ahmad Ex-Constable No. 2658 Javed Iqbal Shaeed Police Lines, District Swat.

...Appellant

VERSUS

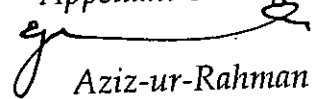
The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and Others.

...Respondents

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Appellant Through


Aziz-ur-Rahman

Advocate Swat

Office: Khan Plaza, Gulshone Chowk,
Mingora Swat, Cell 0300-907 0671



①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 742 of 2016

Aziz Ahmad Ex-Constable No. 2658 Javed Iqbal Shaeed
Police Lines, District Swat.

...Appellant **Khyber Pakhtunkhwa
Service Tribunal**

VERSUS

Diary No. 740

Dated 21-7-2016

1. The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar.
2. The Regional Police Officer Malakand Range at
Saidu Sharif, District Swat.
3. The District Police Officer Swat at Gulkada,
District Swat.

...Respondents

Filed to-day

Registrar

21/7/16

APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER O.B. NO. 07 DATED 09-01-2015,
WHEREBY THE MAJOR PENALTY OF
DISMISSAL FROM SERVICE WAS
IMPOSED UPON THE APPELLANT
AGAINST THE LAW, RULES AND
FACTS AND IS LIABLE TO BE SET
ASIDE. FEELING AGGRIEVED OF THE
SAID ORDER THE APPELLANT
PREFERRED A DEPARTMENTAL
APPEAL, UPON HIS RELEASE WHEN
HE GOT THE KNOWLEDGE OF THE
SAME, WHICH APPEAL WAS ALSO
REJECTED IN SUMMARY AGAINST
THE LAW, RULES AND FACTS VIDE
ORDER NO. 5704/E DATED 01-07-2016,
COMMUNICATED ON 14-07-2016,

②

HENCE BOTH THE ORDERS ARE
LIABLE TO BE SET ASIDE BEING NOT
MAINTAINABLE AND VOID AB
INITIO.

PRAYER:

That on acceptance of this appeal both the orders impugned dated 09-01-2015 and 01-07-2016 may very kindly be set aside and the appellants reinstated back into service with all back/consequential benefits.

Respectfully Sheweth:

Facts:

- i. *That the appellant joined the Police Force in the year 2009 as constable and since then regularly performed his duties with great zeal, vigor and punctuality to the satisfaction of the authorities, without any objections either from the authorities or the public.*
- ii. *That the appellant while performing his duties that he was falsely inducted in case FIR No. 687 dated 10-12-2013 under section 295 (b) PPC Police Station Saidu Sharif.*
- iii. *That the appellant was arrested from his place of duty and the trail started against the appellant.*
- iv. *That after arrest a shame departmental inquiry was conducted against the appellant wherein no chance of defence was ever afforded to the*

appellant neither was the due course of law adopted and resultantly major penalty of dismissal from service was imposed upon the appellant against the law, rules and facts vide O.B. No. 07 dated 09-01-2015, which is never sustainable and is liable to be set aside. Copy of the order is enclosed as Annexure "A".

- v. That the appellant got convicted by the learned trial court, but was acquitted by the August Peshawar High Court, Mingora Bench vide judgement dated 03-05-2016. Copy of the judgment is enclosed as Annexure "B".
- vi. That subsequently the appellant got released from the judicial lock up and after release when reported for duties, he was informed of his dismissal, where after he got the copy of the order impugned and preferred departmental appeal. Copy of the appeal is enclosed as Annexure "C".
- vii. That the appeal of the appellant was rejected summarily and without adopting the due course of law. The appeal was rejected vide order No. 5707/E dated 01-07-2016, which was communicated to the appellant on 14-07-2016. Copy of the order is enclosed as Annexure "D".
- viii. That feeling aggrieved and having no other option the appellant approached this Honourable Tribunal on the following grounds.

Grounds:

4

- a. That under the law and rules the respondents were duty bound to conducted proper inquiry and have given proper opportunity of defence to the appellant, but all no proper departmental inquiry was ever conducted neither the appellant given any chance of defence and all the activity was done at the back of the appellant, thus the due course of law has not been adopted and the appellant has not been treated in accordance with the law.
- b. That mandatory provisions of law have not been adopted which makes the penal action nullity in the eyes of law.
- c. That the respondents have misused their official authority in a very colorful and mechanical manner, which is never approved by the law.
- d. That the appellant has been condemned as unheard.
- e. That the appellant has not committed any act of commission or omission which may constitute any offence under any law.
- f. That the appellant has remained in judicial custody and was never employed in any gainful service and business.

It is, therefore, very respectfully prayed that on acceptance of this appeal both the orders impugned may very kindly be set being void and the appellant reinstated back into service with all back/ consequential benefits.

Any other relief deemed appropriate in the

circumstances and not specifically prayed for may

also very kindly be granted.

Appellant

Aziz Ahmad

Through Counsels,

Aziz-ur-Rahman

Imdad Ullah

Advocates Swat

(6)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____ of 2016

Aziz Ahmad Ex-Constable No. 2658 Javed Iqbal Shaeed
Police Lines, District Swat.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

...Respondents


AFFIDAVIT

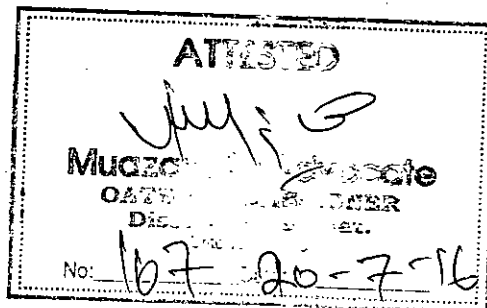
It is solemnly stated on Oath that all the contents of
this service appeal are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.

Deponent


Aziz Ahmad

Identified By:


Imdad Ullah
Advocate Swat



(7)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____ of 2016

*Aziz Ahmad Ex-Constable No. 2658 Javed Iqbal Shaeed
Police Lines, District Swat.*

...Appellant

VERSUS

*The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.*

...Respondents

ADDRESSES OF THE PARTIES

Appellant:

*Aziz Ahmad Ex-Constable No. 2658 Javed Iqbal Shaeed
Police Lines, District Swat.*

Respondents:

- 1. The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar.*
- 2. The Regional Police Officer Malakand Range at
Saidu Sharif, District Swat.*
- 3. The District Police Officer Swat at Gulkada,
District Swat.*

*Appellant
Through Counsel,*

*Aziz-ur-Rahman
Advocate Swat*

ORDER

This order will dispose off the departmental enquiry against Constable Aziz Ahmad No.2658 that he while posted to JIS Police Lines, Swat has involved in Case vide FIR No.687, dated 10-12-2013 U/S 395-B PPC Police Station Saidu Sharif, Swat.

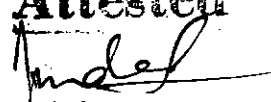
He was issued Charge Sheet alongwith statement of Allegations and SDPO/Matta Circle was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent officer Constable Aziz Ahmad No.2658 and recorded the statements of all concerned officers. He has provided ample opportunity to the delinquent officer to defend the charges leveled against him. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended the delinquent Officer for Major punishment of dismissal from service.

Foregoing in view the undersigned is of considered opinion that there are no chances that Constable Aziz Ahmad No.2658 can become an efficient Police Officer. His further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I; Sher Akbar, S.SI, P.S.P, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of Dismissal from Service.

Order announced.


District Police Officer, Swat

O.B. No. 07
Dated 9.1 /2015.

Attested

Advocate

19970417

19970417

19970417

ANNEXURE B

9

BEFORE THE PESHAWAR HIGH COURT,
BENCH MINGORA/DAR-UL-QAZA-SWAT



Criminal Appeal No 187-M of 2014

Aziz Ahmad son of Ahmad Resident of Islampur, Tehsil
Babuzai, District Swat, Presently at Timergara Jail,
District Dir LowerAppellant

VERSUS

- 1) State through Additional Advocate General.
 - 2) Shah Room Khan Si Chowki Kokrai, District Swat.
-Respondents

Case FIR No: 687, dated 10-12-2013,

Under section: 295-B.PPC

Police Station: Saidu Sharif, District Swat

Appeal under section 410 Cr.P.C / read with
Paragraph 10 (8) of Nizam-e-Adl Regulation, 2009
against the order / judgment dated 16-07-2014 of
conviction passed by the Additional Sessions
Judge I / Izafi Zilla Qazi Swat vide which the
learned Trial Court convicted and sentenced the
Appellant u/s 295-B life imprisonment.

FILED TODAY

Additional Registrar

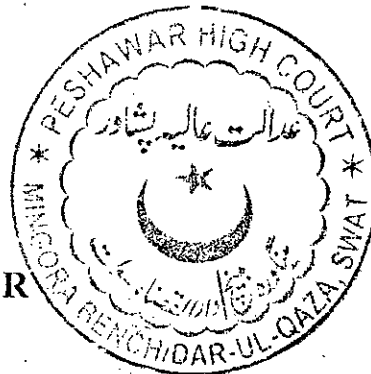
21 JUL 2014

JUDGMENT SHEET
PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA) SWAT.

(Judicial Department)

Cr.A. No. 187-M of 2014

AZIZ AHMAD
VS
THE STATE & 1 ANOTHER



JUDGMENT

Date of hearing: **03.5.2016.**

Appellant: **(Aziz Ahmad) by Mr. Sajjad Anwar,**
Advocate.

Respondents: **(The State & one another) by**
Mr. Rafiq Ahmad, Asstt: Advocate
General.

MUHAMMAD YOUNIS THAHHEEM, J:- Impugned herein is the judgment dated 16.07.2014 passed by learned Additional Sessions Judge/ Izafi Zila Qazi- I, Swat, whereby the accused/ appellant Aziz Ahmad, involved in case FIR No. 687 dated 10.12.2013, registered at Police Station Saidu Sharif, District Swat, was convicted and sentenced under section 295 (B) PPC to life imprisonment.

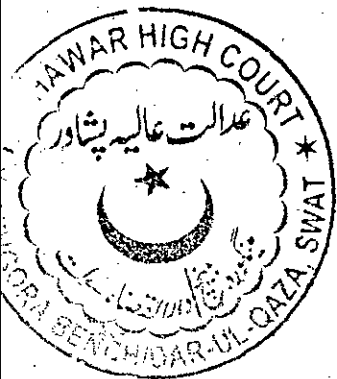
2. The prosecution case disclosed in the F.I.R. Ex. PA, which has been registered on the basis of Murasila, Ex. PA/1, may briefly be narrated as under:-

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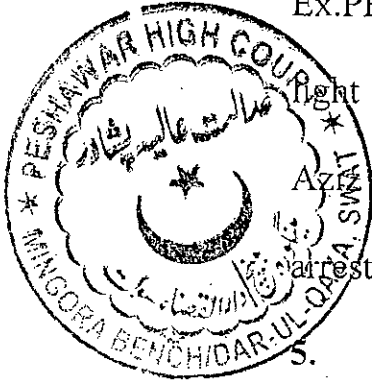
3. On 10.12.2013, Shah Rome, SI, PW-4, heard some rumours that at village Islampur torn pages of Holy Qur'an were

desecrated and thrown at unholy places, so, for confirmation and other legal formalities when reached to village Islampur, he found desecrated/torn pages of Holy Qur'an in landed property of Mir Salam Khan. Besides one Eitebar Zada resident of Islampur also gave him same torn pages of Holy Qur'an and clarified that the same were lying in a thoroughfare. These damaged/ desecrated pages of Holy Qur'an were taken into possession by the police, which were thrown at dirty places by some unknown accused in order to willfully desecrate the Holy Qur'an. *Murasila* was drafted and sent to PS concerned through Constable Aziz Ahmad 1449 for registration of case, which culminated into F.I.R. *ibid* Ex. PA and the case was forwarded to Investigation Department.

4. After registration of case, investigation was handed over to Tajbar, SI, PS Saidu Sharif, PW-14. The torn pages of Holy Qur'an produced by one Eitebar Zada resident of Islampur and found in the landed property of Mir Salam Khan near the big stone were taken into possession vide recovery memo Ex. PW-4/1. Similarly on 12.12.2013 during investigation, he produced some torn pages of Holy Qur'an vide recovery memo Ex. PW-4/2 to Investigating Officer Tajbar, which were recovered on 11.12.2013 from the landed property of Bakht Munir situated at village Islampur adjacent to path. Thereafter, Tajbar Khan, SI, PS Saidu Sharif, PW-14 prepared site plan Ex. PB on the pointation of SI Shah Rome/complainant. During investigation, it was disclosed



that accused Aziz Ahmad was posted in the Police Department as constable, so, during search of his residential room on the wooden wall rack recovered torn "Paras" No.23 & 24 of which pages No.459 to 480 were intact, whereas, the remaining torn pages were missing, which "Paras" were taken into possession vide recovery memo Ex. PW-12/1 duly witnessed by Shah Rome SI/complainant and Constable Gul Wali as Ex.P-1. Site plan regarding place of recovery of "Paras" No. 23-24, Ex. PB/1 was prepared. Site plan regarding place of recovery of torn pages Ex.PB/2 was prepared on the pointation of Shah Rome, SI. In the right of the investigation, nomination memo of involvement of Aziz Ahmad as accused Ex. PW-14/1 was issued and vide card arrest memo Ex. PW-14/2, he was arrested.



5. During personal search of the accused/appellant, the police recovered "Chaqoo" (چاقو) Ex. P3. Pictures of the property of Mir Salam Khan were taken into possession as Ex.P4 & Ex. P5, vide recovery memo Ex. PW-13/1. During investigation numerous other pictures of the place of occurrence were taken through official camera, which were placed on record as Ex. P-6 vide recovery memo Ex. PW14/3. During the course of investigation, one torn page of Holy Qur'an was produced by Head Constable Aqal Zarin, which was found to him one week prior to the occurrence from the bathroom situated adjacent to police line, the said parcel No. 5 was taken into possession vide recovery memo

Ex. PW-5/2, parcel No. 5 is Ex. P-7, whereas site plan of recovery of torn page of Holy Qur'an is Ex. PB/3. Likewise, Gul Nawab constable also produced two torn pages of Holy Qur'an, which were found to him two weeks prior to lodging of F.I.R i.e. before 10.12.2013 placed on record as Ex.P8 and were produced to Investigating Officer vide Parcel No. 6, vide recovery memo Ex.PW-5/1, whereas site plan of recovery of two torn pages Ex. PB/4 was prepared on the pointation of said constable Gul Nawab. During investigation two photographs Ex. P-9 were produced by the Shah Rome, SI/complainant on 12.12.2013 and taken into possession vide recovery memo Ex. PW13/3. The Investigating Officer also drafted application Ex. PW14/4 for initiation of departmental proceedings against the appellant to DPO Swat. Statements of PWs were recorded under section 161 Cr.P.C.

The accused/appellant was produced before the Judicial Magistrate ,whereafter, he was sent to judicial lockup.

6. On completion of investigation, complete challan was submitted against the accused by SHO concerned in the Court of learned Izafi Zila Qazi, I Swat, where trial commencement, the learned trial Court after compliance of the legal formalities within the meaning of 265-C Cr.P.C, framed formal charge against the accused/appellant, to which he pleaded not guilty and claimed trial.

7. Prosecution in order to prove its case, examined as many as fourteen (14) witnesses. After close of prosecution evidence, statement of accused under section 342 Cr.P.C was recorded by the learned Trial Court, wherein he pleaded his innocence, however, he neither opted to be examined on oath nor produced any evidence in his defence. Learned Trial Court, after hearing arguments from both the sides, convicted and sentenced the appellant, as stated above, hence, the above referred appeal.

8. Learned counsel for the appellant argued that the prosecution had badly failed to prove its case against the appellant, as admittedly in the first information report none has been charged and the alleged act of desecrating of Holy Qur'an has not been witnessed by anyone coupled with the fact that no independent or impartial witnesses/private residents of the locality were associated by the police with the alleged search of appellant's house and a room therein. He further added that the testimony of prosecution's witnesses is not worth to be relied upon, as they are negating each other on material points in respect of involvement of the accused in the commission of offence and the statements of PW-6 Gul Nawab Constable, PW-11 Aqal Zarin, Head Constable No. 310 and Shah Rome, SI, local police, complainant, PW-4 are based on *mala fide*, as being co-police constables working with the accused/appellant had developed high degree of aspersion and animosity, who



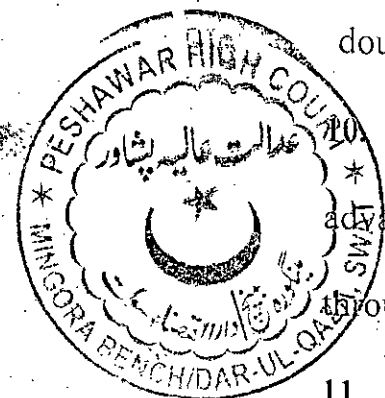
hatched the alleged ugly story against the appellant to settle their own differences, accounts and personal grudges in the garb of present case. He lastly argued that when Gul Nawab, PW-6, who allegedly found two torn pages of Holy Qur'an, 2 weeks ago from the date of recovery memo dated 15.12.2013, then why he had not lodged the report at police station or had informed his police high ups about above stated fact. Moreover, as to whether the alleged finger prints on these torn pages of Holy Qur'an were of the accused/appellant or Shah Rome or Gul Nawab or Aqal Zarin No. 310 or any other private person not belonging to Police Department, which created doubts, as these alleged recoveries of torn pages of Holy Qur'an, especially Ex. PW-12/1 were not sent to F.S.L for verification in respect of forensic test about finger prints, thus, the prosecution has miserably failed to prove its case against the appellant beyond any shadow of doubt and the learned trial court has wrongly and mistakenly assessed the evidence on record, not on legal principles, and had passed the impugned judgment of conviction without any cogent evidence, therefore, the same is liable to be set aside by praying that the appellant be acquitted of the charges by accepting instant appeal.

9. Learned Assistant Advocate General appearing on behalf of the State argued that though the appellant is not directly charged in the FIR, but prosecution has successfully

proved its case against the appellant by producing cogent and trustworthy evidence. He also added that torn pages of Holy Qur'an recovered from the landed properties and residential house of the accused/appellant were compared by the Investigating Officer which were found matched with each other by him, which clearly manifests and proves the involvement of accused in the commission of offence. In the last leg of his arguments, he while vehemently supporting the impugned judgment contended that the prosecution had proved its case against the accused/appellant beyond any shadow of doubt and prayed for dismissal of the appeal.

We have heard and considered the arguments advanced by learned counsel for the parties and have gone through the entire record with their valuable assistance.

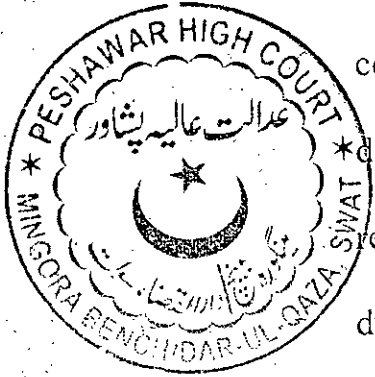
11. It appears from the F.I.R. (Ex. PA) that the law was put into motion by the complainant, Shah Rome, SI, PW-4, who heard some rumours from people of the locality that torn pages of Holy Qur'an were thrown by some unknown accused in the property of Mir Salam Khan. Later on during the course of investigation residential house of the accused/appellant was searched and from wooden wall rack fixed at the wall, PW-14 Tajbar Khan, SI recovered a Holy Qur'an of similar font and size, which was compared with the other torn pages recovered at different places at village Islampur as well as from the



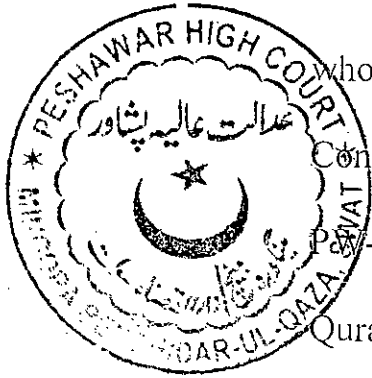
Police Line found by Gul Nawab two weeks ago from 15.12.2013 and after matching/verification, the accused/appellant was nominated as an accused in the case by the I.O. The alleged act of damaging or desecrating the pages of Holy Qur'an has not been witnessed by anyone. Prosecution failed to brought on record some tangible evidence that in whose presence the torn pages found by Constable Gul Nawab and Aqal Zarin were thrown.

12. The star witness of the prosecution case are the complainant Shah Rome, SI when appeared as PW-4 deposed during cross-examination that at the time of preparation of recovery memo Ex. PW-4/1 private people were present and during initial investigation I did not give any clarification in respect of non-associating of the private witnesses at the time of house search or other investigation process, especially regarding preparation of recovery memos of torn pages, which were found either one or two weeks back from the date of lodging of F.I.R.

13. PW-4 further deposed that I did not record the statements of Mir Salam Khan and Bakht Munir, from whose landed properties the torn pages of Holy Qur'an were first found by him and produced to I.O. on 12.12.2013, but this witness did not mention the time and specific place and person in whose presence first of all he found alleged pages on 11.12.2012 two days after lodging of the F.I.R. Similarly



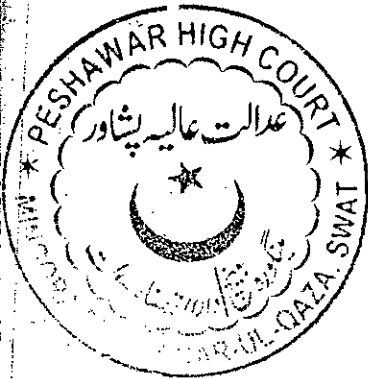
Amir Zaib, SI, PW-5 stated during cross-examination that I did not see the accused/appellant while throwing the torn pages of Holy Qur'an. Same is the deposition of PW-6, Gul Nawab, Head Constable. Likewise, Aziz Ahmad, Constable, Police Chauki Kokrai, PW-7 deposed during cross-examination that I did not remember that at what time recovery memo Ex. PW-4/1 was prepared. Eitebar Zada appeared as PW-8, during cross-examination this witness deposed that he is unaware that who thrown the torn pages of Holy Qur'an. Aqal Zarin, Constable No. 310 is marginal witness of recovery memo Ex. PW-5/2 vide which he found one page of red colour torn Quranic pages one week ago from 15.12.2013 near the washroom of Police Line Mosque, this witness appeared as PW-11, who deposed during cross-examination that he has no knowledge that who had thrown the torn pages of Holy Qur'an and at the time of preparation of site plan of recovery of alleged torn Holy Qur'an, accused/appellant was not present in his house. Mst. Shazia Karam, Constable, PW-12 deposed during cross-examination that neither elders of the locality nor private persons were associated at the time of house search of the accused/appellant, rather all the recovery witnesses were police officials. Thus, it was observed that except police officials, who were colleagues of accused none else from the housemates were associated with the house search proceedings, rather his brother



(18)

Rahmat Ali and mother were confined to the lawn of their house.

14. Investigating Officer of the present case, Tajbar, appeared as PW-14, who deposed during cross-examination that at the time of search of the house of accused/appellant his brother Rahmat Ali and mother were present. Here the question arises, that why the I.O had not recorded statements of housemates of accused in order to substantiate his alleged recovery about so much serious and sensitive allegation in respect of torning of Holy Qur'an. He further deposed that I did not record statements of neighbourers as well as that of Bakht Munir from whose landed property alleged torn pages of Holy Qur'an were found by Shah Rome, SI on 11.12.2013. He also stated that during investigation this fact came on the surface that the accused/appellant has been seen by many inhabitants of the locality while throwing the torn pages of Holy Qur'an, but according to him nobody came forward to record his statement, he being police officer and I.O of the cases did not take legal action against the persons not cooperating the police and were not ready to record their statements. In such like cases, it is necessary that all the recovered pages should have been sent to F.S.L for obtaining report about finger prints and actual date of damaging, as one witness Aqal Zarin, Head Constable stated that he found one torn red page one week ago from 15.12.2013



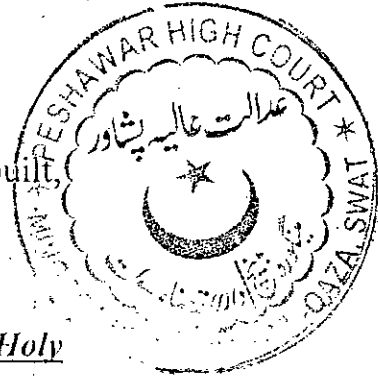
(Ex: PW-5/2), while Gul Nawab, Constable found torn pages two week ago from 15.12.2013 (Ex. PW-5/1), but both constables did not report the matter to Police Line Incharge or other high ups of the Police Department or at concerned PS being ordinary citizens:



From the above glimpses of the depositions of prosecution's witnesses, it is crystal clear that none has seen the accused/appellant while committing the alleged commission of the offence i.e. damaging or distorting of pages of Holy Qur'an or throwing of same in the landed property of Mir Salam Khan and Bakht Munir, besides, all the PWs are negating each other on material particulars especially in respect of recovery of torn pages of Holy Qur'an from the residential house of the accused/appellant coupled with the fact that the alleged house search was effected without acting on law themselves bypassing provisions contained under section 103 of Cr.P.C but astonishingly neither any inhabitants from the locality nor even from the housemates of accused/appellant were associated with the alleged recovery process, but the witnesses are police officials, so, the element of ill-will, *mala fide* and conspiracy on the part of co-professionals could not be ruled out.

16. Moreover, the reasoning of learned trial Court to the effect that accused/appellant has not taken any plea of mental illness during Court proceedings or even in his statement recorded under section 342 Cr.P.C, the same arguments could have been used in *juxta* position in favour of the defence on the pretext that the accused/appellant was so firm in his belief and convictions that he did not commit the alleged act of desecrating/damaging of pages of Holy Qur'an, then there is no need to claim or raise the plea of mental disorder in order to save his skin or get temporary relief in the garb of lunacy, so, it could not be considered a proof for commission of crime having capital punishment.

17. In the case in hand, the pivotal point, which escaped notice of the Court below i.e. the applicability of provisions of section 295-B PPC and the element of "mens rea" in context of the present case, wherein as stated earlier, the accused/appellant since his indictment as an accused in the case till completion of trial in an unequivocal terms categorically denied his involvement in the present case and even same was his view in his statement recorded under section 342 Cr.P.C, so, before giving any findings in respect of the above-referred legal aspect of the case, it would not be out of place to reproduce the very law on which the entire



super structure of the prosecution's case has been built, which is given as below:-

Section 295-B PPC defining, etc of copy of Holy Qur'am

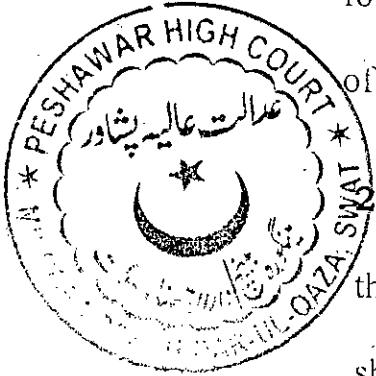
Whoever willfully defies, damages or desecrates a copy of the Holy Qur'an or of an extract therefrom or uses it in any derogatory manner or for any unlawful purposes shall be punishable with imprisonment for life.

18. A bare look of the above-referred provisions of law would reveal that in order to attract the provisions of section ibid, the legal term "willful" has an important role to play, which means deliberate, intentional and conscious application of mind to damage, desecrates or distort the pages of Holy Qur'an and if such objective intention is missing then offence charge with would not constitute.

19. The word "mens rea" means a sort of intent or mental state of mind, which must concur with the act done and the consequences achieved, that too had to be proved through coherent and confidence inspiring evidence on record.

20. If one could look into *juxta* position the above-referred legal provisions of law with regard to applicability of section 295-B PPC to the accused/appellant and facts and circumstances of the present case, wherein admittedly the

accused/appellant is a Muslim by religion and has no previous history at his credit to be involved in such like offences before, coupled with the fact that when the accused/appellant had denied the charges since inception of the case, then the prosecution has left with no other option, but to prove its case through cogent, trustworthy and unimpeachable evidence, which is not the case here, rather the whole super structure built on the wrong edifice would be crumbled down if erected on an unlawful and illegal foundation. In this respect wisdom is derived from the case of "Abdul Ahad vs. The State" (PLD 2007 Peshawar 83).

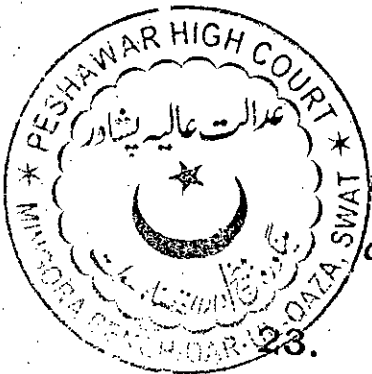


21. Now it has been settled by the Hon'ble apex court that for giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts but a single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitle to its benefit not as a matter of grace and concession, but as of right. Reliance is placed on the case of "Muhammad Akram vs. the state" 2009 SCMR 230.

22. It has now also been settled that conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case must be resolved in favour of the accused. Reliance in this regard is

24

placed on case Muhammad Khan and another vs. The State, 1999 SCMR 1220. Similar principle of law has been enunciated by the Hon'ble Supreme Court of Pakistan in case titled as "Muhammad Zaman vs The State and others" (2014 SCMR 749), wherein their Lordships held as under:



"that even a single doubt if found reasonable, was enough to warrant acquittal of the accused."

Resultantly, while extending the benefit of doubt to the accused/appellant, we accept the appeal filed by him by setting aside his conviction and sentence and acquit him of the charge leveled against him. He be set free forthwith, if not required in any other case.

These are the reasons of our short order of even date.

Announced
Dt: 03.5.2016

S.No. 2365
Name of Applicant P. Khan
Date of Presentation of Applicant 28/5/16
Date of Completion of Copies 28/5/16
No of Copies 10
Urgent Fee
Fee Charged 22/-
Date of Delivery of Copies 28/5/16

Certified to be true copy

EXAMINER

Peshawar High Court, Muzaffargarh Bench, Dera Ismael Khan, Swat
Authorized Under Article 07 of Qanoon-e-Shahadat Order 1984.

28/5/16

6/05/16

295 (5) 10/12/2013
187
10/12/2013
10/12/2013

Attested
Advocate

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Handwritten text in Urdu script, appearing to be a signature or name.

کيا جائے جو ڈیٹیل حوالات میں قید رہا اور مذکورہ فوٹو پر
مذبح میں من ایبلانٹ کو لپٹا جا۔ ایڈیشنل سٹیشن جی ماہی
ضلع سوات فی دہریہ ۲۰۱۶ کا کوئی قید کا سراپا کیا اور من ایبلانٹ
نے مذکورہ قلم کے خلاف بیلابیل عالمہ لٹاور مائیگورج بیج سیکورہ
دار الفقہاء اپیل گزری اور مذبح ۲۰۱۶ کو ۳۵ کو من ایبلانٹ کو قید
کيا گیا ہے۔ (قتل صحیح عدالت لٹ ہے)۔

۴۔ من ایبلانٹ / سائل جوتہ جو ڈیٹیل حوالات میں
قید تھا۔ اور مذکورہ قیدی بنیاد پر ڈیوان سے لڑتا ہے مگر
من ایبلانٹ کو ۵۲۵ صواب سوات / ریاست مذبح نے برسر
۲۰۱۶ ۲۶ نومبر ۲۰۱۶ کو عدالت سے برخاست کیا گیا
ہے۔ (قتل صحیح لٹ ہے)

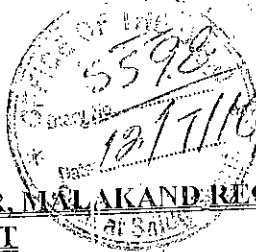
۵۔ من ایبلانٹ کو غیر حاضر لے کر بائٹ قلم پر قاضی
سے قلم کھینچ کا شوکا ڈیو لٹا دیا گیا ہے اور
من ایبلانٹ / بائٹ کو جواب کا حدفقہ دیا گیا ہے

۶۔ من ایبلانٹ کی غیر حاضر قید قلم
قلم مذبح من ایبلانٹ ایڈیشنل فوٹو لٹا دیا گیا ہے
ملیت کیا جائے جو ڈیٹیل حوالات میں قید تھا۔ اور
لٹا میں مذکورہ قلم میں برسر قلم عدالت عالمہ لٹا دیا
مائیگورج دار الفقہاء برسر کیا گیا ہے

Attested
Indeal
Advocate

۷۔ من ایبلانٹ نے ہمیشہ اپنی دلایا ایبلانٹ
دیا انداز اور عدالت لٹا دیا ہے

ANNEXURE...D



28

**OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND REGION,
AT SAIDU SHARIF SWAT**

ORDER:

This order will dispose off appeal of Constable Aziz Ahmad No. 2658 of Swat District for reinstatement in service.

Brief facts of the case are that Constable Aziz Ahmad No. 2658 while posted to JIS Police Lines, Swat involved in criminal Case vide FIR No. 687 dated 10/12/2013 U/S 395-B PPC PS Saidu Sharif, Swat. He was issued Charge Sheet alongwith statement of allegations and SDPO/Matta Circle was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent officer, recorded statements of all concerned and submitted his finding report wherein he recommended the appellant for major punishment i.e dismissal from service. Being found guilty of the charges the District Police Officer, Swat dismissed him from service under Police Disciplinary Rules 1975 2(III) vide OB No. 7 dated 09/01/2015.

He was called in Orderly Room on 01/07/2016 and heard him in person. The appellant could not produce any cogent reason in his defence. Therefore, his appeal is rejected.

Order announced

(AZAD KHAN) TSt, PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat

No. 5707 /E,

Dated 21-07-2016 ✓

Copy to District Police Officer, Swat for information and necessary action with reference to his office Memo: No. 7046/E, dated 17/06/2016. His service record is returned herewith for record in your office.

End) S-Roll
F-Missal.

EC
for n. action

Zameer
DPO Swat

Att

the matter of:-

Aziz Ahmad

Appellant

VERSUS

The PPO K.P. and Others

Respondent

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

AZIZ-UR-RAHMAN and IMDAD ULLAH

Advocates High Court

To be the advocate for the Appellant in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this ____ day of ____ 2014.

(Signature or thumb impression)

(Signature or thumb impression)

(Signature or thumb impression)

Accepted subject to terms regarding fees

(AZIZ-UR-RAHMAN)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk
G.T. Road Mingora, District Swat.
Cell No. 0300 907 0671

(IMDAD ULLAH)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk,
G.T. Road, Mingora, District Swat
Cell No. 0333 929 7746

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No.742/2016

Aziz Ahmad Ex Constable No. 2658 Javid Iqbal Shaheed Police Lines Swat

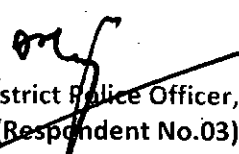
..... (Appellant)

VERSUS

- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 2) Regional Police Officer, Malakand Region at Saidu Sharif Swat
- 3) District Police Officer, Swat

..... (Respondents)

S.No.	Description of document	Annex	Page
1	Parawise comments		1-2
2	Affidavit		3
3	Authority Letter		4
4	Charge Sheet	A	5
5	Statement of Allegation	B	6
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7	Final Order	D	9
8	Enquiry Papers	E	10-16


District Police Officer, Swat
(Respondent No.03)

District Police Officer,
Swat

①

Before the Khyber Pakhtunkhwa Service Tribunal
Peshawar

Service Appeal No.742/2016

Aziz Ahmad Ex- Constable No. 2658 Javid Iqbal Shaheed Police Lines, Swat

..... (Appellant)

VERSUS

1. The Provincial Police Officer, KhyberPakhtunkhwa, Peshawar
2. The Regional Police Officer, Malakand Region at Saidu Sharif Swat
3. The District Police Officer, Swat

.....(Respondents)

Parawise Comments on behalf of Respondents

Respectfully Shewith.

Preliminary Objections.

1. That the Service Appeal is time barred.
2. That the Service Appeal is not maintainable.
3. That the appellant has concealed material facts from this August Tribunal.
4. That the appellant has not come to this August Tribunal with clean hands.
5. That the appellant has got no cause of action or locus Stand to file the present Appeal.
6. That the Criminal and departmental proceeding can go side by side and one has no bearing on the other.

ON FACTS:

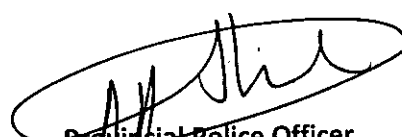
- i. Para No. 1 relates to the Service record of the appellant, therefore needs no comments.
- ii. Incorrect. There was sufficient material on record leading towards registration FIR against the appellant, where after he was convicted, whereas acquitted by the appellate Court.
- iii. Correct.
- iv. Incorrect. Proper departmental enquiry was conducted against the appellant and he was proven guilty of charges leveled against him in the charge Sheet. Due course of Law was gone through while proceeding against the appellant departmentally.
- v. Correct.
- vi. Correct to the extent of release from lockup, and departmental Appeal, the rest is denied.
The fact (dismissal from Service)
- vii. Correct to the extent rejection of departmental Appeal. His appeal was rejected by the respondent No. 2 because his appeal was meritless, without substance and devoid of cogent reasons.
- viii. The appellant has got no good ground to prefer the present appeal.


Grounds:

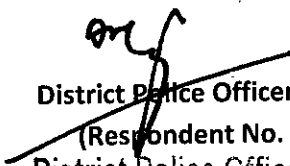
- a. Incorrect. Proper departmental enquiry was conducted against the appellant. He was issued with charge Sheet, statement of allegation and all codal formalities were being fulfilled. The appellant was associated with departmental enquiry and he also recorded his statement. Vide copies of charge Sheet, statement of allegations, finding report, final Order and enquiry papers as annex-"A", "B", "C", "D", and "E" respectively.
- b. Incorrect. All legal and codal formalities have been fulfilled while awarding penalty of dismissal to appellant.
- c. Incorrect. The respondents have never misused their authority in case of the appellant.
- d. Incorrect. The appellant has not been condemned unheard. He recorded his statement and heard him in person by the appellate authority as well, but he couldn't produce any cogent reason in his defense.
- e. Incorrect. The appellant was charged in case FIR No. 687 dated 10-12-2013 for the commission of offence under section 295-B PPC. It was alleged that the appellant defiled, distorted and desecrated pages of holy Quran, who was sentenced by the Court, but at appellate stage he was acquitted.
- f. Needs no comments.

Prayer:

In view of the above comments on facts and grounds it is humbly prayed that appeal of the appellant may be dismissed with costs.


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


 Regional Police Officer
 Malakand Region at Saidu Sharif Swat
 (Respondent No. 2)
Regional Police Officer,
 Malakand, at Saidu Sharif Swat.


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

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No.742/2016

Aziz Ahmad Ex Constable No. 2658 Javid Iqbal Shaheed Police Lines Swat

..... (Appellant)

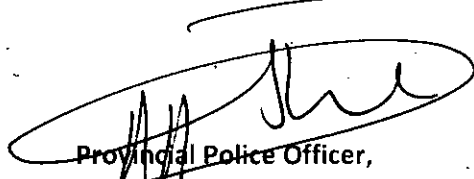
VERSUS

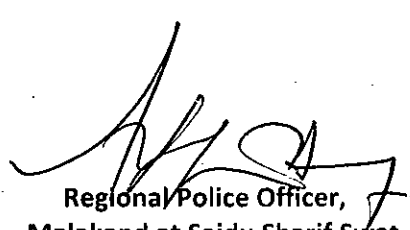
1. Provincial Police Officer of Peshawar.
2. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat
3. The District Police Officer, Swat

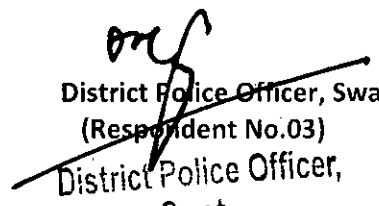
..... (Respondents)

AFFIDAVIT

We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/behalf and nothing has been kept secret from the August Tribunal.


 Provincial Police Officer,
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No. 01)


 Regional Police Officer,
 Malakand at Saidu Sharif Swat
 (Respondent No.02)
 Regional Police Officer,
 Malakand, at Saidu Sharif Swat.


 District Police Officer, Swat
 (Respondent No.03)
 District Police Officer,
 Swat

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No.742/2016

Aziz Ahmad Ex Constable No. 2658 Javid Iqbal Shaheed Police Lines Swat

..... (Appellant)

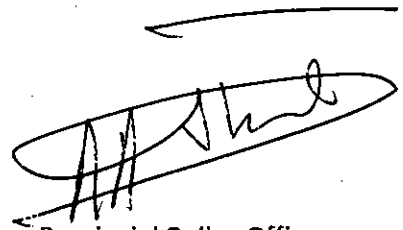
VERSUS

- 1. Provincial Police Officer of Peshawar.
- 2. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat
- 3. The District Police Officer, Swat

..... (Respondents)

AUTHORITY LETTER

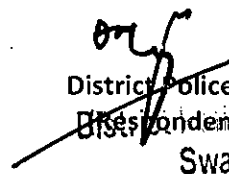
We the above respondents do hereby authorize Mr. Khawas Khan SI Legal Swat to appear in the Service Tribunal on our behalf on each date fixed in connection with titled Service Appeal and do whatever is needed.



Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)



Regional Police Officer,
Malakand at Saidu Sharif Swat
(Respondent No.02)
Regional Police Officer,
Malakand, at Saidu Sharif Swat.



District Police Officer, Swat
Respondent No.03,
Swat

CHARGE SHEET

5 Amr 2014

I Mr. Sher Akbar S.St. P.S.P. District Police Officer, Swat as competent authority hereby charge you, Constable Aziz Ahmad No.2658 while posted to JIS Police Lines as follows:-

It has been reported that you committed the following act / acts, which is / are gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules 1975.

You Constable Aziz Ahmad No.2658 while posted to Javed iqbal Shaheed Police Lines are involved in Case FIR No.687 dated 10-12-2013 u/s 295-B PPC Police Station Saidu Sharif as per report of Superintendent of Police, investigation Wing, Swat Memo: No.295-96/GB, dated 23-01-2014.

2. By reasons of the above, you appear to be guilty of misconduct and rendered yourself liable to all or any of penalties specified in Rule-4 of the Disciplinary Rules 1975.
3. You are, therefore, required to submit your written reply within seven (7) days of the receipt of this Charge Sheet to the Enquiry officer.
4. Your written reply, 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 ex-parte action shall follow against you.
5. Intimate as to whether you desire to be heard in person or not.
6. A statement of allegations is enclosed.


District Police Officer, Swat

No. 48 /E,
Dated: 6-3 /2014.

6 Annex B

DISCIPLINARY ACTION

In opinion that he **Mr. Sher Akbar S.St. P.S.P. District Police Officer, Swat** as competent authority, is of the opinion that he **Constable Aziz Ahmad No.2658** while posted to **JIS Police Lines** has rendered himself liable to be proceeded against departmentally as he has committed the following acts/omissions as defined in Rule 2 (iii) of Police Rules 1975, as per Provincial Assembly of Khyber Pakhtunkhwa Notification No. PA/Khyber Pakhtunkhwa/ Bills/ 2011/ 44905 dated 16/09/2011 and C.P.O, K.P.K Peshawar Memo: No. 3037-52/Legal, dated 19/11/2011.

STATEMENT OF ALLEGATIONS

It has been reported that he while posted to **JIS Police Lines** committed the following act / acts, which is / are gross misconduct on his part as defined in Rules 2 (iii) of Police Rules 1975.

That he **Constable Aziz Ahmad No.2658** while posted to **Javed Iqbal Shaheed Police Lines** is involved in Case FIR No.687 dated 10-12-2013 u/s 295-B PPC Police Station Saidu Sharif as per report of Superintendent of Police, Investigation Wing, Swat Memo: No.295-96/GB, dated 23-01-2014.

2. For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, **SDPO/Matta Circle Swat** is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused officer, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

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


District Police Officer, Swat

No. 48 /EB, Dated Gulkada the, 6-3 2014.

Copy of above is forwarded to the:-

1. **SDPO/Matta Circle Swat** for initiating proceeding against the accused Officer/ Official namely **Constable Aziz Ahmad No.2658** under Police Rules, 1975.
2. **Constable Aziz Ahmad No.2658 JIS Police Lines:-**
With the direction to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer for the purpose of enquiry proceeding.

خلاصہ الزام:

کنشیل عزیز احمد نمبر 2658/FC جو کہ بحوالہ مقدمہ علت 687 مورخہ 10-12-013 جرم 295/B
تھانہ سید و شریف میں چارج ہو کر جناب DPO صاحب نے اس حرکت کی بناء پر چارج شیٹ نمبر 48/E محررہ
06-03-014 جاری کر کے من SDPO منہ کو انکوائری آفیسر مقرر کیا۔

تفصیل تحقیق:

کنشیل عزیز احمد نمبر 2658 کو بغرض قلمبندی بیان محرر جاوید اقبال شہید پولیس لائن جاری کر کے جس پر
محرر محمد زبیر MASI جاوید اقبال شہید پولیس لائن نے ایک تحریری بیان پیش کی جس میں وہ بیانی ہے کہ کنشیل عزیز احمد نمبر
2658/FC جو کہ بحوالہ آرڈر بک نمبر 154 محررہ 23-09-013 سے پولیس لائن جاوید اقبال شہید میں تعینات تھا مذکورہ
پر بحوالہ مقدمہ علت 657/13 جرم 295/B تھانہ سید و شریف میں چارج ہو کر اس سلسلے میں کنشیل مذکورہ بحوالہ نمبر 14
روز نامہ 12-12-13 برائے تفتیش زیر نگرانی یوسف CDI دفتر جناب SDPO صاحب سید و سرکل بھیجوا یا گیا تھا۔ بعد میں
بحوالہ نمبر 83 روز نامہ 13-12-13 ایڈیشنل محرر تھانہ سید و شریف محمد حنیف نے اطلاع دی کہ مذکورہ مقدمہ عنوان جرم بالا
میں گرفتار ہو کر عدالت مجاز کو پیش کر کے جس کو جرم بالا عدالت مجاز نے جوڈیشل حوالات تیسر گرہ بھیجوا یا گیا ہے۔ دوران
انکوائری کیس کے پوزیشن کے متعلق محررانوٹی گیشن سید احمد شاہ تھانہ سید و شریف سے رابطہ کر کے جس نے کہا کہ CIO نے
مقدمہ ہذا میں پراگرس رپورٹ تحریر کیا ہے۔ پراگرس رپورٹ کو دفتر ہذا پیش کر کے تحریر ہے۔ کہ مقدمہ ہذا شاہ روم خان SI
کے تحریری مراسلہ پر برخلاف ملزم ناملزمان نامعلوم درج رجسٹر ہو کر میں تاجر خان SI بحیثیت CIO نے مقدمہ ہذا کی تفتیش
شروع کی۔ دوران تفتیش اطلاعات مل رہے تھے کہ وقوع ہذا پولیس کنشیل عزیز احمد ساکن اسلام پور نے سرزد کیا ہے۔

اندریں سلسلہ میں مورخہ 12-12-13 پر منصوبہ بندی بنا کر SDPO سرکل سید و شریف رشید اقبال خان ہمراہ
لیڈی کنشیل خانہ عزیز احمد واقع اسلام پور جا کر کمرہ رہائشی عزیز احمد کی تلاشی کی دوران دیوار پر لگے ہوئے تختے کے اوپر پڑے
ہوئے قرآن پاک پھاڑ شدہ صرف پارہ نمبر 23، 24، 459 تا 480 کو موجود پا کر بروئے فرد قبضہ پولیس کی گئی۔
قرآن پاک کے بقایہ حصہ برآمد شدہ صفحے سے عدم موجود پھاڑ شدہ پایا۔ اسی روز شاہ روم خان SI کے پیش کردہ قرآن پاک
کے پھاڑ شدہ اوراق جو اس نے اراضی بخت منبر کے پوست خالی جگہ واقع اسلام پور سے مورخہ 11-12-13 پر اٹھائی
تھی۔ بروئے فرد قبضہ پولیس کر کے عزیز احمد کے کمرے سے پھاڑ شدہ قرآن پاک کو مقدمہ ہذا میں اصل ملزم کے حیثیت سے
نامزد کر کے مورخہ 12-12-13 پر مقدمہ ہذا میں گرفتار کیا گیا ہے۔

برآمد SDPO صاحب سرکل سید و شریف اور SHO تھانہ سید و شریف انٹارویٹ کر کے پاگل پن کا مظاہرہ
کرتے ہوئے 05 یوم حراست پولیس کی استدعا کی مگر عدالت مجاز نے جیل بھیجوانے کا حکم سنا کر حوالات جوڈیشل تیسر گرہ
بھیجوا یا گیا ہے۔

جامہ تلاشی ملزم عزیز احمد سے ایک عدد چاقو، بٹا، نقد رقم 420 روپے، بیگریٹ کا ڈبہ، 1 عدد موبائل اور ترانگ کے
چاپ شدہ کاغذ میں لپٹا ہوا پان برآمد کر کے بروئے فرد قبضہ پولیس کی ہے۔ دوران تفتیش کنشیل عزیز احمد نمبر 2658 جو کہ
JISPI میں فلنگ ڈیوٹی پر امور تعینات بیان ہو کر جاوید اقبال شہید پولیس لائن جا کر وہاں دو جگہ جائے پیشاب سے برآمد
بدہ فرمان پاک کے اوراق ملانمان پولیس نے پیش کر کے بروئے فرد قبضہ پولیس کی گئی۔ بعد میں جس نواب 860/HC
اچارج رجسٹریٹل سٹور سے 2 اوراق پھاڑ شدہ پیش کر کے ملزم کے کمرہ رہائشی سے ملے ہوئے اوراق سے مکمل مطابقت رکھتے

ہے۔ دوران تفتیش جملہ ضروری اشیاء کے فوٹو گرائی اپنے سرکاری کیمرہ سے کئے ہیں۔ اور اسی طرح کل 12 عدد تصاویر صاف شدہ مشل مقدمہ میں ناخیزہ علیحدہ کاغذ پر چسپاں اور ہر ایک کے تفصیل تحریر کی ہے۔ دوران تفتیش ملزم نے ضمانت کے درخواست عدالت مجاز کو دہرائے کہ جو مورخہ 13-12-19 کو عدالت مجاز نے درخواست کو مسترد کیا ہے۔

نتیجہ تحقیق:

بعد از انٹرویو میں اس نتیجے پر پہنچ چکا ہوں کہ کنشیل عزیز احمد نمبر 2658/FC کا یہ فعل خلاف قاعدہ اور قانون ہے۔ اور قرآن پاک کی بے حرمتی ایک مسلمان اور پھر پولیس آفیسر ہوتے ہوئے کرنا ایک ناقابل برداشت اور ناقابل معافی فعل ہے۔ اور تہدید یہ کہ محکمہ پولیس کی بدنامی کا سبب ہے۔ کنشیل مذکورہ کا محکمہ پولیس میں رہنا محکمہ پولیس کے لیے ایک بدنامی داغ ہے۔ لہذا اگر اتفاق ہو تو کنشیل مذکورہ کو محکمہ پولیس سے برطرف کرنے کی پُر زور سفارش کی جاتی ہے۔ فائینڈنگ رپورٹ بمبراد ملاحظہ مرتب ہو کر گزارش ہے۔


مظفر خان

سب ڈویژنل پولیس آفیسر
سرکل نمبر

ANNEXURE..

12 " 9
Amended

ORDER

This order will dispose off the departmental enquiry against Constable Aziz Ahmad No.2658 that he while posted to JIS Police Lines, Swat has involved in Case vide FIR No.687, dated 10 12-2013 U/S 395-B PPC Police Station Saidu Sharif, Swat.

He was issued Charge Sheet alongwith statement of Allegations and SDPO/Matta Circle was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent officer Constable Aziz Ahmad No.2658 and recorded the statements of all concerned officers. He has provided ample opportunity to the delinquent officer to defense the charges leveled against him. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended the delinquent Officer for Major punishment of dismissal from service.

Foregoing in view the undersigned is of considered opinion that there are no chances that Constable Aziz Ahmad No.2658 can become an efficient Police Officer. His further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, Sher Akbar, S.S.I, P.S.P, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of Dismissal from Service.

Order announced.

District Police Officer, Swat

O.B. No.

07

Dated

9.1

2015.

Attested

Indel
Advocate

ای ای ای کاٹل عزیز احمد 2658

2658

عزیز احمد ولد احمد کہ اسلام پور ضلع سوات حال
ملازم محمد کیم پوٹل صاحب سوات ضلع سوات
کہ وقوعہ کے احاطہ میں پوٹل صاحب سوات ضلع سوات
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138

عزیز احمد ولد احمد کہ
اسلام پور ضلع سوات حال
محمد خوالا سوات ضلع سوات
7-47747-0246-602

Attested
SDPO Circle
Katta Swat

بقان ازان في ذريه خان 3 سر ولس ازان سراب دفعه كغيره تفيشل سراب
 حواله B نم 154 مورخ 23/09/013 سے ازان میں تفيشل حقا فنزورہ پر
 حواله مقدمہ عد 687 رقم 10/12/013 قسم B-295 گمانہ سراب تفيشل سراب
 چاروں پوچھ اسچل سے تفيشل فنزورہ کو حوالہ عد 14 مورخ 12/12/013
 برائے تفيشل ازان بگانی يوسف ادي دفتر صاحب SDPO وہ سراب
 کھجوانا گیا تھا عد میں حوالہ عد 83 مورخ 13/12/013 تفيشل سراب
 سراب سراب في عدیفان اظہار دی کہ فنزورہ مقدمہ عد 83 مورخ 13/12/013
 رقم فنزورہ عدالت عازلہ میں نہ صیدہ جسم مالو عدالت عازلہ
 کے جیل سمیٹ کر شفٹ کر کے صیدہ لفت حوالہ عد 83 مورخ 13/12/013
 اظہار از طرف تفيشل سراب گمانہ سراب تفيشل سراب دفعہ عد 83 مورخ 13/12/013
 پر وقت افسران مالوہ نوٹس میں لایا گیا اور مع عدالت
 لکھی گئی اور عدلیہ سے افسران مالوہ نوٹس میں لکھی گئی

M. Asi. PL Sweet
 30-03-014

Attest

 SDPO Circle
 Malo

Amended E

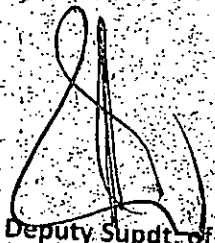
REFERENCE ATTACHED

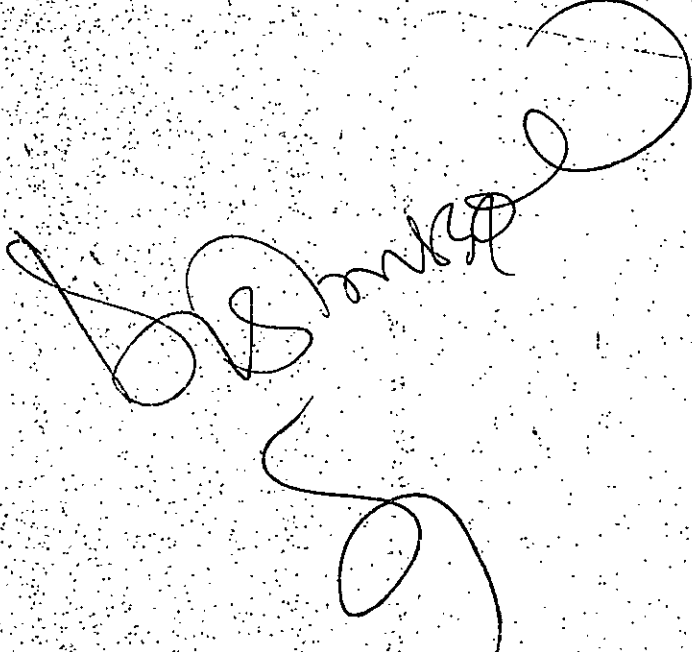
This is departmental enquiry against Constable Aziz Ahmad No. 2658 on the basis of allegation vide FIR No. 687 dated 10-12-2013 of Ps Saidu Sharif that the above named Constable had torn away page 459 to 480 of PARA No. 23 and 24 of Holy Quran in a derogatory manner because torn pages were recovered from the place meant for making water.

The enquiry officer after completion of enquiry has recommended that the act of defaulter Constable is intolerable and unforgivable who is a black spot on the forehead of police. The enquiry officer has recommended that accused constable be dismissed from service.

Submitted please.

Worthy District Police Officer, Swat.


Deputy Supdt. of Police,
Legal Swat.
19/12



خانہ سپردوشہ
2 + -

فقہہ ①

مہنت پرائرس رپورٹ

بقلمہ عکلت نمبر 687 جیم 295: B خانہ سپردوشہ

10/12/2013

بذریعہ - شاہ روم ایڈیٹور جرنل کورٹ

نیا 5 - عزیز احمد ولد احمد سائن اسلام پور پولیس سٹیشن نمبر 2658

مستحقہ پولیس آفیسر
جاوید امجد شہید

تاریخ وقوعہ نامعلوم

تاریخ وقوعہ رپورٹ 12-10
10/12/2013
حالیگی پرچہ 1300
10/12/2013

جائے وقوعہ - خانہ آغا فیضی مسلم خان واقع اسلام پور تحصیل 10/12/2013
جنوب آغا خان

خبر عالی

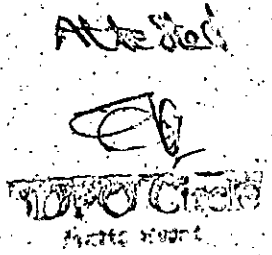
حوالہ مشورہ نقل FIR مافی مقدمہ عنوان جیم 295: B معروف خدمت میں کہ آرم
خدا شاہ روم ایڈیٹور کے عہدہ پر ہر خلاف علم ازمانہ آسماء مسکن
درج رحمت سولر بحیثیت 10/12 میں نے مقدمہ خدا کی تعینت شروع بڑے دور
تعیینت پر اطلاعات مل رہی تھیں کہ وقوعہ خدا پولیس سٹیشن عزیز احمد سائن
اسلام پور نے بذات خود کیا ہے

Attested
SDPO Circle
Matta Subd

آندریس سلسلہ مورخہ 12-10-2013 پر منقولہ بذریعہ بتا کر SDPO سرکل سپردوشہ
رشد امجد خان بھی پورا لٹریچر سٹیشن خانہ عزیز احمد واقع اسلام پور چاکر کر
رہا تھا عزیز احمد کی تلاش کے دوران چلواری پر لگے ہوئے تختے کے اوپر مذکور
ہوئے قرآن پاک عطا شدہ عرفہ پارہ نمبر 23، 24 صفحات 459 تا 480 مورخہ
یا کر برڈے فرد جیف پولیس سٹیشن قرآن پاک کی بنیاد پر آرم شدہ حصے سے
عدم موجود عطا شدہ پایا۔ ایسی روز شاہ روم ایڈیٹور کے لیکچرہ قرآن پاک
کے عطا شدہ دوران جو اس نے آرمی بخت موہن کے پیوستہ خالی جگہ واقع اسلام پور
میں مورخہ 11-12-2013 برڈے فرد جیف پولیس آفیسر عزیز احمد کے نمبر

کو مقدمہ تھا جس میں اصل مقدمے کے حقیقت سے باخبر نہ رہے اور اس کے مورخہ 12
 مقدمہ تھا جس میں حسب ضابطہ "ریفرنس" لایا گیا اور SDOs صاحب سرکاری مقدمہ
 اور SDOs خانہ سپر وٹریف انٹار وٹریٹ کے بائیلین کا مظاہرہ کرتے ہوئے
 تاریخ 19 جمادی الثانی 1432ھ کو مقدمہ نمٹا کر اس کے عدالت نے جیل بھجوانے کا حکم
 صادر فرمایا۔ حالات جو پیش کیے گئے ہیں وہ حتمی طور پر اس مقدمہ سے ایک مقدمہ
 حاقہ ہوا مقدمہ مبلغ 4200 روپیہ سسٹریٹ کا ڈیوٹی۔ ایک عورت جو بائیل اور
 ٹرنڈ کے چھاپ شدہ کاغذ میں لپیٹا ہوا یا ان کے راز میں سے اس کے خلاف مقدمہ چل گیا
 کیسٹریٹ کے دوران تفتیشی کمیشنل عہدہ پر 2650 جو کہ اس کے لئے
 سندہ میں پیش کی گئی تھی مامور تفتیشات بیان ہو کر اس لئے سندہ جاکر وہاں
 ڈوگڈ جاتے لیٹاب سے راز میں شدہ کو ان بائیل کے اور ان کے ممبران کو اس
 نے پس کر کے روٹے فرد جمعہ کو اس کیسٹریٹ کے۔ اس میں بھی ایک مقدمہ
 کے لئے لیٹاب سے پر آمرو اور لپیٹ شدہ شکل کو اب 060 کے بارے میں جسٹس اور
 دو اور اق کا ڈوگڈ۔ مقدمے کے لئے رہائش سے ملے ہوئے اور ان کے لئے
 رعایت رکھی گئی۔

دوران تفتیشی بر وقت جملہ ضروری اشیاء کی فوٹو گرافی ہو
 اپنے سرکاری پتہ سے کی ہے۔ اور رہائش کے محل بارہ طور تصاویر عطا شدہ ہیں
 میں کلچرہ کلچرہ کاغذ میں جیسا کہ اور جو آئیڈ کو تفصیلی تحریر کی گئی ہے
 دوران تفتیشی مقدمے کے تحت کی درخواست عدالت میں دیکھ کر جو مورخہ
 19 جمادی الثانی 1432ھ میں عدالت JM II صاحب محمد طیب جہاں نے مقدمہ کا عدالت درخواست نمٹا
 لیا ہے۔ اور فیصلہ میں تحریر لیا ہے کہ "در اصل مقدمہ پر موجود تصاویر سے نمایاں ہے کہ
 مقدمہ کا مقدمہ خود سے حاصل تعلق ہے۔ اور عہدیداروں سے خارج نہیں کیا گیا ہے
 مقدمہ میں تفتیشی و تکمیل تم ہوئے پر مورخہ 24 12 2013 SDOs صاحب نے حالانکہ
 منسلک دیا ہے۔
 مقدمہ اس طرح سے تھا کہ آنٹیکل نوٹس کرنے پر یہ تفتیشی تو ان کا مقصد ہے اور
 جس میں رشید وصال SDOs سرکار سپر وٹریٹ کے لئے تعاون شامل ہے۔ حوصلہ افزائی کیے
 سرٹیفیکیٹ اور مناسب اہتمام کی سندہ کے لڑائیوں۔ لڑائیوں میں اس کے لئے راز میں
 تھا کہ



2658

16 Nov 2011

نقلمبر 18 روزنامہ 03/11

نقلمبر 18 روزنامہ

نقلمبر 18 روزنامہ 03/11
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نقلمبر 18 روزنامہ 03/11

03-12-2011

07.12.11

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 742 of 2016

Aziz Ahmad Ex-Constable.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa and
Others.

...Respondents

REJOINDER ON BEHALF OF THE APPELLANT.

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, baseless, against the law, rules and facts and based on misstatements and concealment of facts, hence are denied specifically. Moreover the appellant has got a prima facie case in his favour and has approached this Honourable Tribunal well within time and this Honourable Tribunal has got the jurisdiction to adjudicate upon the same.

On Facts:

- i. Para 1 of the comments needs no comments.
- ii. Para 2 of the comments as drafted is self-contradictory hence needs no comments.
- iii. Para 3 of the comments also needs no reply as is amounting to admission.

6-11-17

- iv. *Para 4 of the comments as drafted is incorrect and against the material available on record. Moreover the appellant was never given the chance of neither any personal hearing nor self defence, thus the para is specifically denied.*
- v. *Para 5 of the comments also needs no comments, as amounting to admission.*
- vi. *Para 6 of the comments as drafted is incorrect and evasive, thus needs no reply as is amounting to admission.*
- vii. *Para 7 of the comments being admission, hence needs no comments.*
- viii. *Para 8 of the comments is vague and evasive, thus amounting to admission.*

On Grounds:

- a. *Ground A of the comments as drafted is against the facts and record, as none of the charge sheet, statement of allegation or show cause were ever issued and delivered to the appellant, thus the para is specifically denied. Moreover the appellant was neither afforded any opportunity to defend himself nor any chance of personal hearing and has been condemned as unheard.*
- b. *Ground B of the comments as drafted is incorrect, vague and in need of proof, thus the para is denied.*

- c. Ground C of the comments as drafted is incorrect as is evident from the record, thus the para is denied.
- d. Ground D of the comments as drafted is incorrect and against the facts and material available on record. The appellant was in judicial custody since 2013 and he has never been associated by any person with regards the departmental inquiry, thus the para is specifically denied.
- e. Ground E of the comments as drafted needs no comments as is self-contradictory and furthers the stance of the appellant.
- f. Ground F of the comments being vague and evasive amounts to admission, hence no reply.

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be decided as prayed for originally.

Appellant
AU
Aziz Ahmad
Through Counsel,
Imdad
Imdad Ullah
Advocate Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 742 of 2016

Aziz Ahmad Ex-Constable.

...Appellant

VERSUS

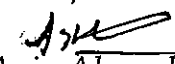
The Provincial Police Officer Khyber Pakhtunkhwa and
Others.

...Respondents


AFFIDAVIT

It is solemnly stated on Oath that all the contents of
this rejoinder are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.

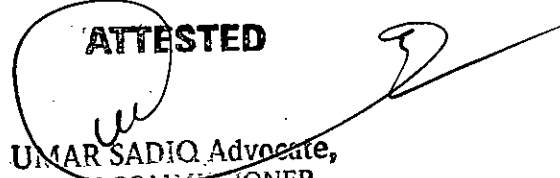
Deponent


Aziz Ahmad

Identified By:


Imdad Ullah
Advocate Swat

ATTESTED


UMAR SADIQ, Advocate,
OATH COMMISSIONER
Distt: Courts Swat.

No. 513

Date 6/11/16

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 2435/ST.

Dated 14/11/2017


To

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

Subject: **JUDGEMENT IN APPEAL NO. 742/16, MR.AZIZ AHMAD.**

I am directed to forward herewith a certified copy of Judgment dated 06/11/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.