

Appeal No. 289/2015  
M. Arif vs Police Deptt:

01.12.2016

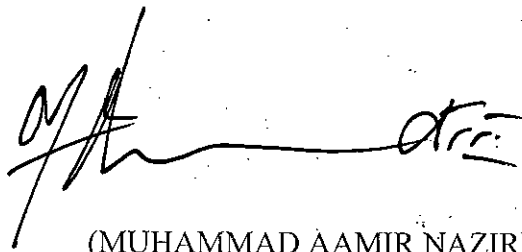
Counsel for the appellant and Muhammad Adeel Butt,

Additional Advocate General for respondents present.

Vide our detailed judgment of to-day in the connected service appeal No. 691/2012 titled "Majid Khan -vs- Deputy Inspector General of Police, Mardan Region-I, Mardan and other", this appeal is also decided as per detailed judgment referred above. File be consigned to the record room.

ANNOUNCED

01.12.2016



(MUHAMMAD AAMIR NAZIR)  
MEMBER



(MUHAMMAD AZIM KHAN AFRIDI)  
CHAIRMAN

08.02.2016


Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 2.6.2016.

  
Member

  
Member

2.6.2016

Counsel for the appellant and Mr. Muhammad Fayaz, HC alongwith Ziaullah, GP for respondents present. From the perusal of the record, it transpired that the complete inquiry proceedings are not before the court, therefore, representative of the respondents is directed to produce the entire inquiry proceedings before the date fixed. To come up for arguments on 29.8.2016.

  
Member

  
Member

29.08.2016

Counsel for the appellant and Mr. Fayaz, H.C alongwith Mr. Usman Ghani, Sr.GP for respondents present. Representative of the respondents seek adjournment for production of the record. Adjourned for submission of record and final hearing to 01.12.2016 before D.B.

  
Member

  
Chairman

3

13.04.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was appointed as Constable in Police Department in the year 2009 and after putting in five years service charge sheeted for illegal gratification from two truck drivers and dismissed from service vide impugned order dated 20.2.2015 regarding which departmental appeal was preferred on 25.2.2015 which was rejected on 25.3.2015 and hence the instant service appeal on 6.4.2015.

That neither the appellant was associated with the inquiry nor the allegations of illegal gratification were substantiated nor the inquiry conducted in the prescribed manners.

Points urged need consideration. Admit ~~the appeal~~. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 2.7.2015 before S.B.

Appellant Deposited  
Security & Process Fee



  
Chairman

4

02.07.2015

Appellant with counsel 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 before S.B.

  
Chairman

14.10.2015



Appellant with counsel and Mr. Wisal Ahmed, Inspector (legal) alongwith Assistant A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 8.2.2016.

  
Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No. 289/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	06.04.2015	<p>The appeal of Mr. Muhammad Arif presented today by Mr. Rizwanullah 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> <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>13-4-15</u></p> <p style="text-align: right;"> CHAIRMAN</p>

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

Service Appeal No. 289 /2015

1. Muhammad Arif, (Ex-Constable-cum-Driver), S/O Muhammad Askar, R/O Khat Kaley, Post Officer Khat Kaley, Mohallah Bazar Kaley, District Nowshera.

**APPELLANT**

**VERSUS**

1. The Deputy Inspector General of Police, Mardan Region-I, Mardan, and others.

**I N D E X**

S.No	Particulars	Annexure	Pages #
1	Service Appeal	-	1-7
2	Affidavit	-	8
3	Copy of report	A	9
4	Copy of charge sheet alongwith statement of allegations	B & C	10-11
5	Copy of reply to charge sheet.	D	12
6	Copy of inquiry report	E	13-14
7	Copy of show cause notice and its reply	F & G	15-16
8	Copy of impugned order	H	17
9	Copy of departmental appeal & its rejection order	I & J	18-19
10	Copy of report of Incharge Custom Squad	K	20
10	Wakalatnama	-	-

*M. Arif*  
Appellant

Through

*Rizwanullah*  
Rizwanullah  
M.A. LL.B

Advocate High Court, Peshawar

Dated: 6-4-2015

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

Service Appeal No. 289 /2015

**N.W.F. Province  
Service Tribunal**

**Diary No. 306**

**Dated 06-4-2015**

Muhammad Arif, (Ex-Constable-cum-Driver), S/O Muhammad Askar, R/O Khat Kaley,  
Post Officer Khat Kaley, Mohallah Bazar Kaley, District Nowshera.

**APPELLANT**

**VERSUS**

1. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
2. The District Police Officer, Nowshera.

**RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE  
IMPUGNED ORDER NO. OB-281 DATED  
20-2-2015 PASSED BY THE DISTRICT  
POLICE OFFICER NOWSHERA  
(RESPONDENT NO.2) AGAINST WHICH  
DEPARTMENTAL APPEAL WAS FILED  
ON 25-2-2015 BUT THE SAME WAS  
DISMISSED ON 25-3-2015.**

Filed to-  
6/4/15

**Prayer in Appeal**

By accepting this appeal, the impugned order No. OB-281 dated 20-2-2015 passed by the District Police Officer, Nowshera (respondent No.2) may very graciously be set aside and the appellant may kindly be re-instated in service with full back wages and benefits.

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

**Respectfully Sheweth,**

**Short facts giving rise to the present appeal are as under:-**

1. That the appellant joined the service of Police Department as Constable on 1-8-2009. He had 6 years unblemished service record to his credit.
2. That the appellant was performing his duty with great zeal, zest and devotion, but strangely, Tariq Iqbal Deputy Superintendent of Police, Akora Circle District Nowshera made a report to the District Police Officer Nowshera (respondent No.2) that the appellant and Majid Khan Constable had stopped the two trailers Nos. 33584/KBL and 11173/KBL and demanded Rs.1000/- as illegal gratification from their drivers namely, Rehmatullah and Gul Nabi. He further alleged that both the above officials were caught red handed. **(Copy of report is appended as Annex-A).**
3. That on the basis of above report, the appellant was served with a charge sheet alongwith statement of allegation wherein same allegations were reiterated as enumerated in the said report. **(Copy of charge sheet and statement of allegations are appended as Annex-B & C).**
4. That the appellant submitted reply and denied the allegations by stating that there was an "altercation" between the Custom Squad and the drivers of trailers. The Incharge of the said Squad asked the appellant for his help and as such the drivers were directed to produce necessary papers to the Custom Squads. He further stated that he had neither demanded a single penny from the concerned drivers but they only annoyed that why he had helped the Custom Squads. He therefore, termed the allegations as fallacious, malicious and misconceived. He prayed that he may kindly be exonerated of the charges/allegations leveled against him in the charge sheet. **(Copy of reply is appended as Annex-D).**

5. That the aforesaid reply was not found satisfactory and as such inquiry Committee was constituted to probe into the allegations leveled against the appellant in the charge sheet. The inquiry Committee neither examined any witness in presence of the appellant nor he was provided any opportunity of cross examination. He was also not provided any chance to produce his defence. But the said Committee, on the basis of bald and naked evidence, held the appellant guilty of the charges/allegations and recommended for major punishment **(stoppage of increments)**. **(Copy of inquiry report is appended as Annex-E)**.
6. That the appellant was served with a show cause notice. He furnished reply, denied the allegations and termed the inquiry as farce and mockery in the eye of law **(Copy of show cause notice and its reply are appended as Annex- F & G)**.
7. That thereafter, the appellant was awarded major penalty of dismissal from service illegally by an order dated 20-2-2015 passed by the District Police officer, Nowshera (respondent No.2) **(Copy of impugned order is appended as Annex-H)**.
8. That the appellant felt aggrieved by the aforesaid order, filed a departmental appeal with the Deputy Inspector General of Police, Mardan Region-I, Mardan, (respondent No.1) on 25-2-2015 within the statutory period of law. But the same was dismissed on 25-3-2014 **(Copies of departmental appeal and its rejection order are appended as Annex-I & J)**.
9. That the appellant is jobless since his dismissal from service.
10. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds:-

#### GROUNDS OF APPEAL

- A. That no fair and impartial inquiry was conducted against the appellant in order to substantiate his guilt in respect of the allegations leveled against him in the charge sheet. The inquiry



officer neither examined any witness in the presence of appellant nor he was provided any chance to cross-examine the prosecution witnesses appeared against him in the so-called enquiry. Similarly, the appellant was also not provided any opportunity to produce his defence in support of his version. Thus, the appellant has been condemned/penalized without being heard, contrary to the basic principle of natural justice known as "**Audi Alteram Partem**". Therefore, the impugned order is against the spirit of administration of justice.

- B.** That the Inquiry Committee was under statutory obligation to have examined the complainants (drivers) in order to prove the allegations against the appellant regarding illegal gratification of Rs.1000/- from them. But they failed to do so. Therefore, the impugned order has no sanctity in the eye of law.
- C.** That similarly, the said Committee was also legally bound to have examined Tariq Iqbal Deputy Superintendent of Police, Akora Circle District Nowshera (ocular witness) to confirm his report against the appellant. But he was also not produced. Thus, the impugned order is bad in law.
- D.** That the Inquiry Committee was required to summon Malik Sher Afzal, Inspector/Incharge Custom Squad through Registered post in order to confirm the stance of the appellant. But they failed to do so and stated in their report that the above official was informed by mobile phone but he did not appear in the inquiry. The said Committee neither included the phone data nor summoned any person of the said mobile company in support of his version. Mere verbal assertion regarding informing the said official through mobile phone is not sufficient without any cogent evidence and documentary proof. Therefore, the findings of the Committee are perverse and are not sustainable in the eye of law.
- E.** That the appellant duly produced the report of Incharge Custom Squad before the committee wherein the said official has categorically admitted that the appellant had provided them legal assistance to check the documents of the disputed trailers and that

he had committed no illegality or irregularity. But the Inquiry Committee has discarded this important piece of documentary proof without any cogent and valid reasons. Thus, the impugned order passed on the basis of such report is illegal and improper under the law **(Copy of report of Incharge Custom Squad is appended as Annex-K).**

**F.** That the Inquiry Committee has drawn adverse presumption regarding the guilt of appellant which is certainly against the legal norms as accused official is stated to be a favourite child of law and he is presumed to be innocent unless proved otherwise and the benefit of doubt always goes to the accused and not to the prosecution as it is for prosecution to stand on its own legs by proving all the allegations to the hilt against the accused. In the instant case, the respondent department failed to prove the allegations against the appellant through cogent and reliable evidence as neither complainants (drivers) nor the ocular witness (DSP) were examined in the inquiry. Thus, there was not iota of evidence to connect the appellant with the commission of alleged misconduct. Therefore, the impugned order is not warranted under the law.

**G.** That it is crystal clear from the inquiry report that the Committee has recommended major punishment of stoppage of increments to the appellant. But the Competent Authority (respondent No.2) imposed harsh and extreme penalty of dismissal from service, without taking into consideration the recommendation of the said Committee. If authority was not inclined to agree with findings of said Committee, it was required to record proper reasons for doing so after notice to affected civil servant. It may be added that Public power cannot be exercised arbitrarily or capriciously as per law laid down by august Supreme Court of Pakistan in various judgments. Hence, the impugned order has no sanctity in the eye of law.

**H.** That the Competent Authority (respondent No.2) was under statutory obligation to examine the record of inquiry in its true perspective and in accordance with law and then to apply his independent mind to the merits of the case but he failed to do so and

awarded major penalty of dismissal from service despite the fact that the allegations of illegal gratification as contained in the charge sheet had not been proved against him in the so-called inquiry. Thus, the impugned order is liable to be set aside on this count alone.

- I. That the appellant was not provided any opportunity of “**personal hearing**” before imposition of Major Penalty of dismissal from service being the requirement of law as laid down by **august Supreme Court of Pakistan in case reported in 2006-SCMR-1641 (citation-c)**. The relevant citation is mentioned below:-

**(c) Government Servants (Efficiency and Discipline) Rules, 1973---**

**---Rr. 4(b), 5 & 6--Inquiry proceedings---  
Major penalty, imposition of---Personal  
hearing to civil servant, opportunity of---  
Scope---Such opportunity must be  
afforded by the authority competent to  
impose major penalty or his delegatee.**

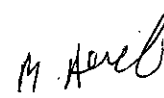
But despite thereof, the Competent Authority has failed to honour the above dictum of august Supreme Court of Pakistan. Hence, the impugned order is against the spirit of law.

- J. That the Competent Authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice. Therefore, the impugned order is not tenable under the law.
- K. That the order in question is suffering from legal infirmities and as such it has caused grave injustice to the appellant. Thus, the impugned order has no sanctity under the law.
- L. That the impugned order is based on conjectures and surmises. Hence, the same is against the legal norms of justice.

M. That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order No. OB-281 dated 20-2-2015 passed by the District Police Officer, Nowshera (respondent No.2) may very graciously be set aside and the appellant may kindly be re-instated in service with full back wages and benefits.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.



Appellant

Through



**Rizwanullah**

M.A. LL.B

**Advocate High Court, Peshawar**

Dated: 6-4-2015

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

Service Appeal No. \_\_\_\_\_/2015

1. Muhammad Arif, (Ex-Constable-cum-Driver), S/O Muhammad Askar, R/O Khat Kaley, Post Officer Khat Kaley, Mohallah Bazar Kaley, District Nowshera.

**APPELLANT**

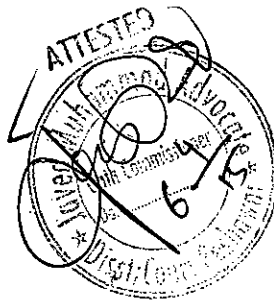
**VERSUS**

1. The Deputy Inspector General of Police, Mardan Region-I, Mardan, and others.

**RESPONDENTS**

**AFFIDAVIT**

I, Muhammad Arif, (Ex-Constable-cum-Driver), S/O Muhammad Askar, R/O Khat Kaley, Post Officer Khat Kaley, Mohallah Bazar Kaley, District Nowshera, District Mardan do hereby solemnly affirm and declare that the contents of the accompanied service appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



*M. Arif*  
**Deponent**

Annex-A

9



**DEPUTY SUPERINTENDENT OF POLICE**

**AKORA CIRCLE, DISTRICT NOWSHERA**

Phone: 0923-561619

No. 2272 IS.

Dated AKORA the 13/08/2014

To : The District Police Officer,  
NOWSHERA.

Subject: INDUCEMENT ON ROAD BY 7-2 MOBILE (DRIVER MUHAMMAD ARIF NO. 1314 & CONSTABLE MAJID KHAN NO. 699).

Sir:

The under signed was on routine patrol in the area of PS Akora. On main G.T road near Iraq Abad It was noticed that two Trailers Nos. 33584/KBL & 11173/KBL have been stopped by 7-2 Mobile. On enquiry the drivers of Trailers namely Rehman Ullah s/o Gul Nabi r/o Afghanistan Mobile No. 0323-5838433 & Mewa Gul s/o Haji Muhammad Din r/o Afghanistan Mobile No. 0321-9063944 informed that the police has stopped us and demanding for Rs. 1000/- rupees cash as inducement.

It was found that driver Muhammad Arif No.1314 along with constable Majid Khan No. 699 has followed the trucks from P.P Surya Khel while the Incharge IIC Ifikhar went to perform Zuhar Prayer. The driver & constable beside clear instruction from high ups have indulged in male practice and were caught red handed. They not only stopped the trailers for illegal gain but also took the mobile without officer incharge on duty. Their conduct is a great violation of law, rules and instructions issued by Worthy PPO which mounts to strict disciplinary action.

It is therefore requested that driver Muhammad Arif No. 1314 & constable Majid Khan No. 699 may be closed to lines and proceeded departmentally.

Report is submitted for your perusal and necessary action please.

(TARIQ IQBAL)

Deputy Superintendent of Police,  
AKORA Circle, District NOWSHERA

**ATTESTED**

*shw*  
15/8/14

*Suspended / closed to lines. liable departmental enquiry.*

CHARGE SHEET

Nowshera, competent authority, hereby charge Driver  
Constable Muhammad Arif No. 1314 per Statement of  
Allegations enclosed.

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

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

3. Your written defense, if any should reach the Enquiry Committee 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.

4. Intimate whether you desire to be heard in persons.

*W*  
District Police Officer,  
Nowshera.

**ATTESTED**  
*H*  
*H*  
*H*

✓  
Annex-B

10

**DISCIPLINARY ACTION**

I, **RABNAWAZ KHAN**, District Police Officer, Nowshera as competent authority of the opinion that **Driver Constable Muhammad Arif No. 1314** has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning of Police Rules, 1975.

**STATEMENT OF ALLEGATIONS**

Whereas **Driver Constable Muhammad Arif No. 1314** while posted at Police Station, Akora, stopped two trailers bearing Nos. 33584/KBL & 11173/KBL on GT Road near Iraq Abad and demanded Rs 1000/ from their drivers namely Rehmanullah s/o Gul Nabi & Mewa Gul s/o Haji Muhammad Din both r/o Afghanistan. Reportedly, the driver followed the trailers from PP Surya Khel while mobile in-charge IHC Iftikhar went to Zuhar prayer. The above driver found indulging in malpractices and was caught red handed. He not only stopped the trailers for illegal gratification but also took the mobile without officer in-charge which amounts to grave misconduct on his part and render him liable for Minor/Major punishment under Police Rules, 1975.

For the purpose to scrutinize the conduct of the said accused with reference to the above allegations, Enquiry Committee of the following officers is constituted:-

1. **Mr. Iftikhar Shah DSP Cantt: Nowshera.**
2. **Inspector Arshad Ahmad OII PS Cantt:.**

The Enquiry Committee shall in accordance with the provision of Police Rules, 1975, provides reasonable opportunity of hearing to the defaulter official, record its findings and make immediate recommendations as to punish or other appropriate action against the defaulter official.

**Driver Constable Muhammad Arif No. 1314** is directed to appear before the Enquiry Committee on the date, time and place fixed by the Enquiry Committee.

*[Signature]*  
District Police Officer,  
Nowshera.

No. 53 /PA,  
Dated 18-8 /2014.

**ATTESTED**  
*[Signature]*

*one copy received*  
*M. Arif*  
*8/18*  
*dt. 18-8-14*



جناب عالی!

والہ خارج والقباطی ہمارو آجی ہری

53+PA (مصر و صحن ہون کہ مورخہ 13<sup>8</sup> 14)

88.14 لکھ ڈرا ہور ڈی جی ہر تھا

سہر ہر خوبا ہیل ڈرا ہور ڈی جی ہر تھا

ہر اے ہزار خوبا ہیل انجارج خوبا ہیل سے

انتر ہوا تھا۔ جید ہم سہر ہر

کھڑے تھے۔ دریں اثنا ہم سے ڈرا

فاجیل ہر دو ٹریلر ورو کے ہر

کم سکواڈ کے ساتھ الجھڑے

تھے۔ ہم نے جا کر ڈرا ہور ہون کو

ڈرا دھکا کر کے کم سکواڈ کو

ساتھ اچھے اور چھپ کر گئے

منع کیا۔

اس دوران جناب SDA صاحب

اکوڑہ سرکل تشہیف لائے تو

ڈرا ہور ہون نے انہیں ہمارے

فلا ف بھوٹ موٹ شکایت

کی ہے۔ ہم نے ڈرا ہور ہون سے

نہ 1000 روپے لے لیے ہیں نہ

خطا لیا گیا ہے۔ بلکہ اصل

معاہدے سے ہے۔

نہ 1000 روپے لے لیے ہیں نہ خطا لیا گیا ہے۔ بلکہ اصل معاہدے سے ہے۔  
نہ 1000 روپے لے لیے ہیں نہ خطا لیا گیا ہے۔ بلکہ اصل معاہدے سے ہے۔  
نہ 1000 روپے لے لیے ہیں نہ خطا لیا گیا ہے۔ بلکہ اصل معاہدے سے ہے۔

ATTESTED

[Signature]

Subject :

FINIDING ENQUIRY AGAINST DRIVER ARIF NO. 1314 AND CONSTABLE MAJID NO.699Brief Facts :

On 13-08-2014 driver constable Muhammad Arif no.1314 along with constable Majid no.699 were on duty at mobile Police Station Akora. They stopped trailers bearing no. 33584/KBL and 11173/KBL on GT road near Irak abad and demanded rupees 1000 from driver namely Rehmanullah s/o Gul Nabi & Mewa Gul s/o Haji Muhammad Din r/o Afghanistan. The above constable found indulging in malpractices and was caught red handed which amounts to grave misconduct on his part and render them liable for Minor/Major punishment under Police Rule 1975. For the purpose to conducts inquiry in to the matter of the above named constables with reverence to the above allegations inquiry committee of the following officer is constituted:

1. Mr: Iftikhar Shah DSP/Nowshera Cantt
2. Mr: Inspector Arshad Ahmed OII PS Cantt.

Proceedings:

In this connection the following Police Officers/ Officials were called. They were heard in person and their statements also recorded which are placed in enquiry file.

1. Driver Constable Muhammad Arif No. 1314.
2. Duty Constable Majid No. 699.
3. SHO Nazam Khan PS Akora.
4. DD report mobile officer IHC Iftikhar.
5. Statement of IHC Iftikhar.

**ATTESTED**Statement of Driver Constable Muhammad Arif No. 1314.

He stated that on 13-08-2014 he was on duty at Akora Mobile i/c IHC was out to pray Zohar prayer, while they were present in mobile. Mean while the custom squad stopped two Trailers and were busy in hot words with each other and the trailers were parked on main GT road. For the purpose to solve the issue went there and the drivers were instructed to end the matter. In the mean time SDPO AKora Circle also reached the place of occurrence where the drivers complained against them of demanding rupees 1,000 which is incorrect. He requested in his statement that he is totally innocent and enquiry papers may be filed. (Statement attached.) (Anex-A)

Statement of Constable Majid No.699.

He stated that on 13-08-2014 he was on duty at Akora Mobile i/c IHC was out to pray Zohar prayer, while they were present in mobile. Mean while the custom squad stopped two Trailers and were busy in hot words with each other and the trailers were parked on main GT road. For the purpose to solve the issue went there and the drivers were instructed to end the matter. In the mean time SDPO AKora Circle also reached the place of occurrence where the drivers complained against them of demanding rupees 1,000 which is incorrect. He requested in his statement that he is totally innocent and enquiry papers may be filed. (Anex-B)

Statement SHO Akora SI Naseem Khan.

As per direction worthy DPO during his visit to Police Station Akora on 07-08-2014 the SHO applied a Parwana instruction all the official and drivers to abstain from stopping trailers and tankers. The Parwana was duly got signed by official of police station Akora.

IHC Iftikhar (Mobile Officer) DD Report

The DD report lodged by IHC Iftikhar (Mobile officer) reveals that both the official present in mobile had gone without the permission of mobile officer. He has parked the mobile pickup at PP Surya Khel and had been to offer Zohar prayer. Meanwhile SDPO akora arrived and caught red handed both the officials who were busy in receiving of amount from vehicles and ordered for both the official to put them in quarter guard and to arrange their substitute from police lines.

In connection of inquiry Custom Squad Inspector Sher Afzal was contacted on his cell No. 0321-3712002 to attend this office to confirm the statement of defaulter official as they have mentioned in their statements that the vehicles were stopped by the custom squad. But till date the officer failed to attend this office.

Perusal of record.

From perusal of record it was confirmed that before this incident the District Police officer visited police station Akora on 07-08-2014 in connection with the complaint of oil tankers and container drivers. He briefed Muhammad Naseem Khan SHO AKora to issue notice to all staff officers and mobile drivers to abstain from stopping containers/oil tankers on road as there is a complaint against mobile officers and drivers that they stop oil tankers and containers to take money from them. In compliance of the directives SHO Akora issued a Parwana notice to all mobile officers and drivers, which was signed as noted by all the staff.

Conclusion.

From the perusal of the statements recorded during enquiry and personally hearing the concerned, enquiry committee reached to the conclusion that:-

1. A clear contradiction is found in the statements of both the officials that they were busy in removing of containers from GT road who were stopped by custom squad is totally against the record attached with the enquiry.

The enquiry committee suggest that the allegation leveled against both the official are proved as per the available record and they are recommended for major punishment (stoppage of increments).

(Insp: Arshid Ahmed)  
Officer i/c investigation  
Nowshera Cantt


(Iftikhar Shah)  
Dy: superintendent of police,  
Cantt Circle Nowshera.

*[Handwritten signatures and notes]*  
OFFICER

**FINAL SHOW CAUSE NOTICE**

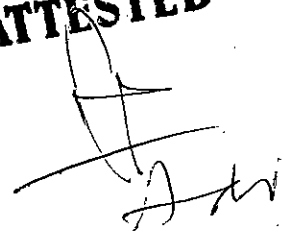
I, **RABNAWAZ KHAN**, District Police Officer, Nowshera as competent authority under the Khyber Pakhtunkhwa Police Rules-1975, do hereby serve you **Driver Constable Muhammad Arif No. 1314** with this final Show Cause Notice, while posted to Police Station, Akora:-

1. That consequent upon the completion of departmental enquiry against you by Mr. Iftikhar Shah DSP. Cantt: Nowshera & Inspector Arshad Ahmad OII PS, Nowshera Cantt:. It has been submitted in the finding that the allegations leveled against you were found proved.
2. I am satisfied that you have committed the above acts/omission as specified in Police Rules-1975.
3. You are, therefore, required to Show Cause as to why the punishment under Police Rules 1975 should not be imposed upon you.
4. If, no reply to this notice is received within 07 days, it will be presumed that you have no defence to put and in that case ex-parte action shall be taken against you.

  
**District Police Officer,  
Nowshera.**

No. 193 /PA,  
Dated 23/12 2014.

**ATTESTED**



جناب عالی

حوالہ حقی شوکار ڈسٹریکٹ 193/PA  
23.12.14

معرضہ میں بیوں نہ میرا وہی جواب ہے کہ

مدرسہ 13<sup>8</sup>/<sub>14</sub> کو جسے حویلی میں ڈیڑھی پر تھا

حویلی میں الحارج برائے نماز اتر گیا

میں سے فاصلے پر حویلی میں سکواڈ میں ڈیڑھی

کے ساتھ ٹریڈرز کے ڈراپورا میں

بیوں تھے جس نے ان کے بیچ بیچ بچاؤ

کیا۔ دریں اثناء 5 PM صبح کو وہ

مذہب شریف لاکر ان کو شریف

ڈراپور نے ہماری طرف

چھوٹی حکایت کی کیونکہ ہم نے

ان کو سرکاری رپیکاروں کے

انجین سے زبردستی منہ کیا تھا۔

یہ قصور بیوں نے علم بیوں

نے کیا۔ راجل و خیر کے

جانے کا حکم صادر فرمایا۔

M. Anis  
13/14  
Pl.

ATTESTED

[Signature]

Amex - H

17

ORDER

This order will dispose off a departmental enquiry under Police Rules-1975 initiated against Driver Constable Muhammad Arif No. 1314, under the allegations that while posted at Police Station, Akora, was found indulging in malpractices by demanding illegal gratifications from trailer drivers on GT Road near Iraq Abad, who were caught red handed by DSP Akora.


In this connection, he was placed under suspension vide OB No. 1023 dated 18.08.2014 and proceeded him against departmentally through Enquiry Committee, comprising of Mr. Iftikhar Shah DSP Cantt: Nowshera and Inspector Arshad Ahmad I/C Investigation, Nowshera Cantt: vide this office No. 53/PA, dated 18.08.2014, who after completing necessary process, submitted their finding report to undersigned, holding responsible the delinquent Driver Constable of the allegations leveled against him and recommended him for major punishment.

In the light of recommendations of Enquiry Committee, he was served with Final Show Cause Notice, vide this office No. 193/PA dated 23.12.2014, to which, his reply was received and found unsatisfactory.

Being member of a disciplined force, his involvement in such like illegal activities, brought a bad name for whole Police Force, therefore I am of the considered opinion that his further retention in the force will badly affect his colleagues, therefore Driver Constable Muhammad Arif No. 1314 of Police Lines, Nowshera is hereby awarded Major punishment by dismissing from Police Force with immediate effect, in exercise of the powers vested to me under Police Rules, 1975.

OB 261


Dated 20.2 /2015.

  
(RABNAWAZ KHAN)  
District Police Officer,  
Nowshera.

No. 576-80/PA, dated Now shera, the 20.2 /2015.

Copy for information and necessary action to the:-

1. DSP Hqrs: Nowshera.
2. Pay Officer.
3. E.C.
4. OHC.
5. FMC with enquiry file.

**ATTESTED**  
  
A. Arif

Annex-I

18

To:-

The Deputy Inspector General of police,  
Mardan Region-1, Mardan.

Subject:

APPEAL AGAINST THE ORDER OF THE DPO NOWSHERA AWARDDING  
PUNISHMENT OF DISMISSAL FROM SERVICE.

R/Sir,

With profound respect it is submitted that the appellant has been awarded the punishment of dismissal from service be the District Police Officer Nowshera vide OB No. 281 dated 20.02.2015(Copy attached).

1. That the appellant has not indulged in the commission of the alleged offence of Corruption.
2. That on 13.08.2014, during Mobile Gusht at G.T Road near Iraq Abad, Custom officials were on duty called Patrolling Mobile. Incharge mobile was easing him while the driver rushed to the spot where he found that 02 trailer were stopped for checking. The drivers of the trailers were grappling with Custom officials. The matter was patched up and the trailer drivers were allowed by Custom officials. In the mean time, DSP Akora arrived to the spot and asked the trailers drivers about the incident. They told him that the Police demanding illegal gratification but at that time, the Custom officials had slipped away on seeing DSP Akora. The DSP ordered the driver and me (the appellant) to report at Police Lines, Nowshera.
3. In compliance of the order of DSP Akora, he reported his arrival at Police Lines, Nowshera. Later on, both the officials were placed under suspension and issued charge sheet/ statement of allegations and DSP Nowshera Cantt: was nominated as enquiry officer. During enquiry proceedings, he summoned the concerned Custom placed on enquiry file, I was awarded Major punishment of dismissal by the competent authority which is in justice.
4. I solemnly affirmed that I have neither stopped trailers nor got illegal gratification from them.

It is, therefore, entreated that in view of the above mentioned facts, I may very kindly be reinstated in service & obliged please.

Yours Obediently,

*M. Arif*  
(Muhammad Arif)

Ex-constable No.1314.

25/2/2015

**ATTESTED**

*[Signature]*  
*[Signature]*

محمد زبیر  
اسٹنٹ ڈائریکٹر سیکرٹری

اصناف خدمات ع 3

بالمقابل سی سی پی ٹی - جوڈیشل کمپلیکس سٹار  
۰۳۱۳۹۹۰۰۱۶۴



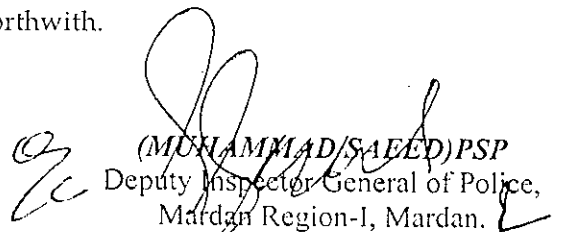
ORDER.

This order will dispose-off the appeal preferred by Ex- Driver Constable Muhammad Arif No. 1314 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. 281 dated 20.02.2015

Brief facts of the case are that he while posted at Police Station Akora was found indulging in malpractices by demanding illegal gratifications from trailer drivers on GT Road near Iraq Abad, who was caught red handed by Deputy Superintendent of Police Akora, District Nowshera. In this connection he was placed under suspension and proceeded him against departmentally through enquiry committee comprising of the then Deputy Superintendent of Police Nowshera Cantt & Incharge Investigation, Nowshera Cantt, who after completing necessary process, submitted their findings report to District Police Officer, Nowshera, holding responsible the delinquent appellant of the allegations leveled against him and recommended him for major punishment, in the light of recommendations of enquiry committee he was served with Final Show Cause Notice, to which his reply was received and found unsatisfactory. Being member of disciplined force, his involvement in such like illegal activities brought a bad name for whole Police Force, therefore his further retention in the force will badly affect his colleagues, therefore he was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 18.03.2015, 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.

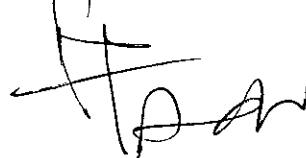
  
(MUHAMMAD/SAEED)PSP  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan.

No. 1844 /ES, Dated Mardan the 25/03 /2015.

Copy to District Police Officer, Nowshera for information and necessary action w/r to his office Memo: No. 759/PA dated 04.03.2015. His service roll is returned herewith for record in your office.

(\*\*\*\*\*)

**ATTESTED**



میان ان ان اینٹیں <sup>کھنڈ</sup> افضل خان کیم سکوان

صفحہ 13/8 کو مضافی زمین کو خراج حسب معمول لایا گیا ہے جس کی وجہ سے

نزد موریہ قبیلہ کی موجودگی کے احکامات کے تحت اجراء دیا گیا ہے۔  
KBI 33584 KBI 11173

لداخ میں اس قبیلہ کی خالص ملکیت کے تحت اس قبیلہ کے تمام زمینداروں کو

مقررہ نام کے راجہ کے اشارے کی تعمیل کے لئے تمام زمینداروں کو

مقررہ نام کے راجہ کے اشارے کے تحت اس قبیلہ کے تمام زمینداروں کو

مقررہ نام کے راجہ کے اشارے کے تحت اس قبیلہ کے تمام زمینداروں کو

مقررہ نام کے راجہ کے اشارے کے تحت اس قبیلہ کے تمام زمینداروں کو

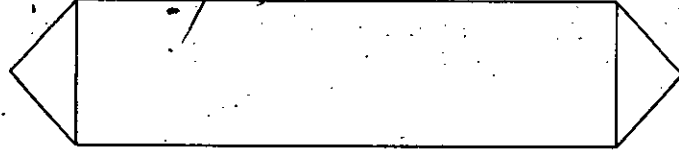
15/9/14

0321-5712002  
0300-5872934

ATTESTED

[Signature]

بعدالت جانب چیمبر میں مدعا و سٹیمپ قبول کیا گیا



## Service Appeal

مورخہ  
مقدمہ  
دعویٰ  
جرم

2015ء مخانب ایڈوکیٹ  
بنام  
Muhammad Arif  
vs  
DIC, Jordan etc

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام بخار کیلئے سوان البدا و سوان  
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 تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے  
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے  
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے  
سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا جد سے باہر ہو تو وکیل صاحب پابند ہوں  
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم 3 ماہ 2015ء

ایم جی

العبد گواہ العبد  
مقام کے لئے منظور ہے

M. Arif  
ACCEPTED

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

Service Appeal No. 289/2015

Mohammad Arif Ex-Constable No. 1314, S/O Mohammad Askar,  
R/O Khat Kali, District Nowshera.

.....Appellant

**V E R S U S**

1. Deputy Inspector General of Police, Mardan Region-I, Mardan.
2. District Police Officer, Nowshera.

.....Respondents

**PARAWISE REPLY ON BEHALF OF RESPONDENTS No. 1&2**

**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 to the extent of enlistment of appellant in Police Department pertains to record, needs no comments, while rest of the para is not related hence, denied.
2. Para to the extent of performing duty with zeal, zest and devotion by the appellant is incorrect hence, denied while rest of the para is also incorrect because on 13-08-2014 the appellant alongwith Ex-Constable Majid Khan were on mobile gush of Police Station, Akora Khattak during which they stopped trailers bearing registration No. 33584/KBL and 11173/KBL on main G.T road near Iraqabad and demanded Rs. 1000/- from the drivers. Resultantly, both of them were caught red handed.
3. As the appellant was found indulged in malpractices and was caught red handed due to which proper departmental enquiry was initiated.
4. Incorrect. The appellant submitted his reply to the charge sheet and denied the allegations wherein he took a plea that there was an altercation between the custom squad and drivers due to which incharge custom squad asked the appellant for help. It is pertinent to mention here that the said trailers were stopped by the appellant and Ex-Constable Majid Khan for taking illegal gratification due to which SDPO Akora Circle caught the appellant and above named driver Constable red handed, hence, the story propounded by the appellant is cooked and after thought which is not appeal-able to a prudent mind.

5. Para to the extent of constitution of enquiry committee is correct, needs no comments, while rest of the para is incorrect, hence, denied. The appellant was charge sheeted and statement of allegation was also issued whereupon a proper departmental enquiry was initiated during the course of which all legal and codal formalities were fulfilled and worthy of credence evidence was brought on record, resultantlly, the guilt of appellant was proved to the hilt. Therefore, appropriate punishment order was passed, which does commensurate with the gravity of his misconduct.
6. Para already explained, needs no comments.
7. Para incorrect. The punishment order passed by the competent authority is in consonance with law and rules.
8. That the appellate authority while disposing the appeal perused the entire record and also heard the appellant personally but he could not produce any cogent reason regarding his innocence, hence, his appeal was filed.
9. Para not related, needs no comments.
10. That the appeal of the appellant is worth to be filed inter alia on the following grounds: -

#### On grounds

A. Para incorrect. In order to bring home guilt of the accused, a proper departmental enquiry was initiated. During the course of which all codal formalities were fulfilled and the appellant was provided impute opportunities for defending himself but in fiasco. Therefore, a tailored one plea was taken by the appellant to save his skin.

B. Incorrect. The enquiry committee recorded the statements of drivers who supported the version of the SDPO Akora Circle.

C. Incorrect. The Deputy Superintendent of Police, Akora Circle, District Nowshera through attached report requested the competent authority for initiation of departmental action against the appellant and Ex-Constable Majid Khan because he caught both of them red handed while they were demanding Rs. 1000/- from the drivers of the trailers stopped by them on G.T. road near Iraq Abad. As the said enquiry was initiated upon the above mentioned report, therefore, confirmation from the said Circle Officer regarding his report is out of question.

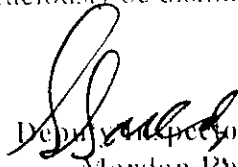
D. Incorrect. The enquiry committee during the course of enquiry contacted Inspector Sher Afzal of custom squad on his cell No. 0321-5712002 for recording his statement but he did not appear, hence, plea taken by the appellant is not tenable in the eyes of law.


E. Para to the extent of production of report of incharge custom squad, is not related needs no comments, while rest of the para is incorrect. The appellant was required to produce the said incharge before the enquiry committee which they bitterly failed to do so, rather, the enquiry committee contacted the said

official for recording his statement during the enquiry proceedings but to no avail, hence, plea taken by the appellant is not plausible in the eyes of law.

- F. Para incorrect. A proper departmental enquiry was initiated during the course of which the allegations have been proved to the hilt, hence, stance of the appellant is not tenable in the eyes of law. Moreover, during enquiry proceedings statements of the trailer drivers were recorded, who also supported the report of DSP Akora Circle. As prima facie the accused official/appellant was connected with the commission of offence, hence, the punishment order was passed which does commensurate with the gravity of misconduct of appellant. (Copy of statements of trailer drivers are annexed).
- G. Para to the extent of report of enquiry committee, pertain to record, needs no comments, while rest of the para is incorrect, hence, denied. The appellant alongwith Ex-Constable Majid Khan were caught red handed by demanding illegal gratification from trailer drivers whereupon both of them were proceeded departmentally, after conclusion of which they were recommended for major punishment, hence, the competent authority on the receipt of findings of the enquiry officer awarded the appellant suitable punishment under Police Rules 1975, which does commensurate with the gravity of his misconduct.
- H. Para incorrect. The competent authority after perusal and examination of entire enquiry report and record, decided the case of appellant on merits, because the competent authority had no grudge against the appellant, moreover, during the course of enquiry, the allegations have been proved to the hilt, hence, the order passed by the competent authority is liable to be maintained.
- I. Incorrect. Para already explained.
- J. Para incorrect. The competent authority after taking into consideration, the entire material passed the punishment order which is a speaking one and in consonance with principle of natural justice.
- K. Incorrect. Para already explained, needs no comments.
- L. Incorrect. Para already explained, needs no comments.
- M. That the respondents seek permission of this Honourable Tribunal to adduce additional grounds at the time of arguments.

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

  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan  
Respondent No. 01

  
District Police Officer,  
Nowshera,  
Respondent No. 02

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 289/2015

Mohammad Arif Ex-Constable No. 1314, S/O Mohammad Askar,  
R/O Khat Kali, District Nowshera.

.....Appellant


**V E R S U S**


1. Deputy Inspector General of Police, Mardan Region-I, Mardan.
2. District Police Officer, Nowshera.

.....Respondents

AFFIDAVIT

We the respondents No. 1&2 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.

  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan  
Respondent No. 01

  
District Police Officer,  
Nowshera.  
Respondent No. 02

بیان اذکار رحمت اللہ و لدقل فی سکنہ افغانستان

میں سے رحمت اللہ و لدقل فی سکنہ افغانستان بدیافت بیان کیا کہ میں اپنی  
 ڈیپوٹ نمبر 33584 میں سڈیپ طور ہم سے لڑ کر ڈرون کے جا رہا تھا میرے  
 ساتھ دوسرا ڈیپوٹ نمبر 11173 بھی تھا دونوں آٹو کے نزدیک تھے تو اسی  
 دوران ایک عوبائل ڈیپوٹ اور کنسل نے مجھے اشارہ کیا میں نے گاڑی  
 روک دیا تو وہ لوگوں کو آگے لے گیا کہ روٹ پر ہٹ دے دیے ورنہ  
 ہم نے 50/50 روپے دے دیا تھا تو اسی دوران دوسرا سفیر عوبائل  
 آیا اور اسے میں میرے خیال میں کوڑے آفسر کا لوگوں نے  
 عوبائل ڈیپوٹ اور کنسل کو باتیں کئے اور کچھ لیفر پیسوں کے  
 لکھوڑے

یہی میرا بیان ہے

606155

رحمت اللہ و لدقل فی سکنہ افغانستان

تقریباً 13/8/2014

03235838433

ڈیپوٹ اور کنسل کے لالچور و فائدہ



بیان از ان ڈی اے کی بیوی کے والد صاحب محمد دین سلنگ افغانستان

x - x - x - x

میں سے بیوی کے والد صاحب محمد دین سلنگ افغانستان بددیانت بیان کیا

کہ میں اپنی ڈی اے کی بیوی کے والد صاحب 1173 میں سٹیٹ بینک ٹورنٹو سے لوڈ کر ڈروٹ نے

جا رہا تھا جس آڈیو کے نزدیک پہنچی تو اسی دوران ایک

جو بائل ڈرائیور اور کیشن نے مجھے اشارہ کیا میں نے گاڑی کے

دیا تو وہ لوگوں کو اکٹوں نے کیا کہ روٹ پیٹ دے دیتے ہیں

1000 روپے دے دیے تو میں نے 500 روپے دے دیا تھا تو اسی دوران

دوسرا سفید جو بائل آیا اور اسے میرے خیال میں کوٹے آفسر کا

تو جو بائل ڈرائیور اور کیشن کو باتیں کئے اور پھر مجھے بغیر پیسوں کے

لے گیا بیان ہے

بیوی کے والد صاحب محمد دین سلنگ افغانستان

138  
2014

212721-0321-9063964

صرف اور اس کے والد صاحب افغانستان