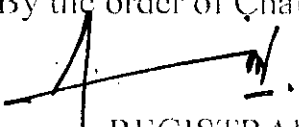


FORM OF ORDER SHEET

Court of _____

Appeal No. 2085/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/10/2023	<p>The appeal of Mr. Masood-ur-Rehman resubmitted today by Mr. Taimur Ali Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshai is given to the counsel for the appellant.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Masood ur Rehman Ex-FC no. 1838 Police station Jaranal Khyber received today i.e on 26.09.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 10 days.

- 1- Check list is not attached with the appeal.
- 2- Appeal has not been flagged/marked with annexures marks.
- 3- Memorandum of appeal is unsigned.
- 4- Annexures of the appeal are unattested.
- 5- Affidavit is not attested by the Oath Commissioner.
- 6- Copies of dismissal order, departmental appeal, rejection order of departmental appeal, revision petition & rejection order of revision petition are not attached with the appeal which may be placed on it.
- 7- All annexures of the appeal are illegible be replaced by legible/better one.
- 8- The documents that are to be provided must be readable/legible.
- 9- Five more copies/sets of the appeal along annexures i.e. complete appeal packet may also be submitted with the appeal.

No. 3307 /S.T,

DL 27/9 /2023.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv.
High Court at Peshawar

Respected Sir,

1- Removed

2- Removed

3- Removed

4- Removed


5- Removed

6- copies of dismissal order, rejection order of departmental appeal and rejection order of revision are attached at page-10, 11 and 12 respectively, while copies of departmental appeal and revision are not available with appellant, therefore unable to annex, which may be filed by the respondents in their comments.

⑧ Removed

⑨ Removed

Resubmitted after comp.


10/10/2023

Sir,

Objection no. 6 still stands and the counsel for the appellant requested for playing it before bench. Submitted for an appropriate order, please.

A
10/10/23

Hon'ble Chairman

*Check
But appellant
request for
15/11/23*

11/11/23

17

3382
11/10/23

Respected Sir,

The appellant tried to receive departmental appeal and revision from department but department did not provide it to the appellant and now the appellant filed application to RTI ^{on 17/10/2023} for provision of departmental appeal and revision, which require some time for provision of those documents. therefore it is requested to grant some time for submission of required documents.

[Signature]
18/10/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 2085 /2023

Masood Ur Rehman

VS

Police Department

INDEX

S.No.	Documents	Annexure	P. No.
1	Memo of Appeal	-----	01-04
2	Affidavit	-----	05
3	Copy of order 10.05.2010	A	06
4	Copy of charge sheet	B	07-08
5	Copies of FIR	C	09
6	Copies of order dated 31.08.2021, 29.07.2022 and 28.08.2023	D,E&F	10-12
7	Copy of judgment dated 28.11.2022	G	13-19
8	Vakalat Nama	-----	20

THROUGH:

APPELLANT



TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

Cell# 0333-9390916

(P)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

SERVICE APPEAL NO. 2085 /2023

Khyber Pakhtunkhwa
Service Tribunal
Peshawar
7973
26-09-22

Masood Ur Rehman, Ex-FC No.1834,
Police Station Jamurad, Khyber.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The District Police Officer, Khyber.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 31.08.2021, WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE, AGAINST THE ORDER DATED 29.07.2022, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS REJECTED AND AGAINST THE ORDER DATED 28.08.2023, WHEREBY THE REVISION OF THE APPELLANT WAS ALSO REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 31.08.2021, 29.07.2022 AND 28.08.2023 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO HIS SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS HONORABLE TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was initially appointed as Khassadar in Khyber Khassadar Force vide order dated 10.05.2010 and was then absorbed in Police Department after 25 amendment of the Constitution of Pakistan and the appellant since his appointment has performed his duty with great devotion and honesty, whatsoever assigned to him and no complaint has been filed against him regarding his performing. **(Copy of order dated 10.05.2010 is attached as Annexure-A)**
2. That the appellant while performing his duty in the same capacity charge sheet was issued to the appellant in which it was mentioned that as per source reports you remained involved in facilitating drug peddlers while performing duty at PS Jamrud along with other malpractice. **(Copy of charge sheet is attached as Annexure-B)**
3. That the appellant was not associated in the inquiry proceeding, if so conducted, against the appellant on the basis of above baseless allegation. Even the inquiry report was not provided to the appellant.
4. That the appellant was falsely implicated in criminal vide FIR No.605, dated 30.08.2021 u/s 11 B-GNSA PS Lahor District Swabi and was arrested on spot, however, he was later released on bail by the competent court of law. **(Copy of FIR is attached as Annexure-C)**
5. That on the basis of above baseless allegation and criminal case the appellant was dismissed from service on 31.08.2021 under Khyber Pakhtunkhwa E&D Rules 2011 without conducting proper and regular inquiry, the appellant filed departmental appeal which was rejected on 29.07.2022, the appellant then filed revision which was also rejected on 28.08.2023 for no good ground, however he did not keep the copy of departmental appeal and revision which may be requisite from the department. **(Copies of order dated 31.08.2021, 29.07.2022 and 28.08.2023 are attached as Annexure-D,E&F)**
6. That the appellant has no other remedy except to file the instant appeal in this Honorable Tribunal for redressal of his grievance on the following grounds amongst others.

GROUND:

- A) That the impugned orders dated 31.08.2021, 29.07.2022 and 28.08.2023 are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.

- B) That the appellant was not associated with the inquiry proceeding, if so conducted, against the appellant because no opportunity of defense was provided to the appellant as neither statements were recorded in the presence of the appellant nor gave him opportunity of cross examination, which is violation of law and rules and such the impugned order is liable to be set aside on this ground alone.
- C) That no show cause was issued to the appellant before passing the impugned order of dismissal from service, which is against the norms of justice and fair play.
- D) That in charge sheet it was mentioned that as per source report the appellant remained involved in facilitating drug peddler while performing his duty at PS Jamrud without specification of any occurrence which show the involvement of the appellant which means that the appellant was punished on presumption basis which is not permissible under the law.
- E) That the appellant was falsely implicated in criminal case and should be placed under suspension till the conclusion of criminal case pending against the appellant under Police Rules 1934 and CSR-194-A, but he was dismissed from service before conclusion of his criminal case pending against him, which is clear violation of Police Rules 1934 and CSR-194-A and as such the impugned orders are liable to be set aside.
- F) The one of the reason the dismissal of the appellant was involvement in criminal case vide FIR No.605, dated 30.08.2021 u/s 11 B-CNSA PS Lahor District Swabi, but he acquitted by the competent court of law on 28.11.2022 in that criminal case, therefore, there remain no ground to penalize the appellant on the basis of that criminal case. **(Copy of judgment dated 28.11.2022 is attached as Annexure-G)**
- G) That the appellant was dismissed from service by Khyber Pakhtunkhwa E&D Rules 2011, which means that the appellant was dismissed from service on wrong law and as such the impugned order is coram-non-judice and liable to be set aside on this ground alone.
- H) That the appellant has not been treated in accordance with law and rules and has been condemned unheard throughout.
- I) That the appellant seeks permission of this Honorable Tribunal to advance others grounds and proofs at the time of hearing.

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2023

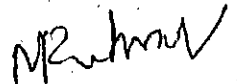
Masood Ur Rehman

VS

Police Department

AFFIDAVIT

I, Masood Ur Rehman, Ex-FC No.1834, Police Station Jamurad, Khyber, (Appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this Honorable Tribunal.


DEPONENT

It is, therefore most humbly prayed that on the acceptance of this appeal, the order dated 31.08.2021, 29.07.2022 and 28.08.2023 may kindly be set aside and the appellant may be reinstated into his service with all back and consequential benefits. Any other remedy, which this honorable tribunal deems fit and appropriate that, may also, be awarded in favour of appellant.

M. Rehman

APPELLANT
Masood Ur Rehman

THROUGH:

Taimur Ali Khan

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

(OFFICE ORDER)

Masood ur Rehman s/o Abdul Manan, Sher Khan Khel, Kuki-Khel, is hereby enlisted as Khassadar in Khyber Khassadar Force with effect from 04.05.2010(FN) against the vacancy caused due to the retirement of his nephew Khassadar, Daud Khan, on the terms and conditions laid down in Khassadar's Service Rules, 2006. He has been declared physically & medically fit for Khassadari service by the M.S. AHQ Hospital, Landikotal vide his certificate dated 03.05.2010. His date of birth is 01.04.1965.

Political Agent, Khyber.

No. 1854-57 /SKC dated Peshawar the 10 / 05 /2010.
Copy to :-

1. The Assistant Political Agent, Jamrud w/r to his endst. No. 1478/APA-Jamrud, dated 26.04.2010.
2. The Political Tehsildar, Jamrud.
3. The Agency Accounts Officer, Khyber at Jamrud.
4. The Subedar Major, K.K.F. at Bara.


For information and necessary action.

Political Agent, Khyber.

B (B) (7)

OFFICE OF
THE DISTRICT POLICE OFFICER
KHYBER

(G)



CHARGE SHEET U/S 6(1) (A) POLICE RULES 1975

You Constable Masood Rehman s/o Abdul Manan Kuki Khel of PS Jamrud while on duty at PS Jamrud district Police Khyber is hereby charged for committing the following omission/commissions:-

"That as per source reports you remained involved in facilitating drug peddlers while performing duty at PS Jamrud along with other malpractices. Being member of a discipline force, this is a gross misconduct on your part liable to be dismissed from service."

You mentioned above are hereby called upon to submit your written defense against the above charges before the Enquiry Officer.

Your reply should reach the Enquiry Officer within seven (3) days from the date of receipt of this charge Sheet, failing which ex-parte action shall be taken against you.

Summary of allegations is enclosed herewith.

C

DISTRICT POLICE OFFICER,
KHYBER

8

THE DISTRICT POLICE OFFICER
KHYBER



ORDER

UNDER SUB-SECTION-3 & SECTION 5 OF POLICE RULES, 1975.

I, District Police Officer, Khyber as competent authority, charge you FC Masood Rehman s/o Abdul Manan as prima facie guilty of the following acts to be dealt with u/s 5 (3) of the NWFP, (now Khyber Pakhtunkhwa) Police Rules, 1975.

"That as per source reports you remained involved in facilitating drug peddlers while performing duty at PS Jamrud along with other malpractices. Being member of a discipline force, this is a gross misconduct on your part liable to be dismissed from service."

The act of delinquent official falls within the ambit of gross misconduct and are liable to be proceeded under the NWFP (now Khyber Pakhtunkhwa) Police Rules 1975.

For the purpose of scrutinizing the conduct of the said defaulters with reference to the above allegations, I, District Police Officer, Khyber being authorized officer hereby nominate Enquiry Officer as below to enquire into the charges within the meaning of 2 (iii) under the NWFP (now Khyber Pakhtunkhwa) Police Rules, 1975.

Mr. Muhammad Nawaz (DSP Headquarters) Khyber

The enquiry officer after completing all enquiry proceedings, should submit findings to the undersigned within stipulated period of (7) days per u/s 6 (5) of Police Rules.

Charge Sheet and Statement of Allegations are Issued against the defaulter officers separately. Reply should submit before the Enquiry Officer within the period of (03) days from the date of receipt.

DISTRICT POLICE OFFICER,
KHYBER

No. 293-96 /PSO-Khyber, dated Peshawar, the 27/01 /2021.

Copy to:-

1. DSP/Hqs Khyber for initiating proceedings against defaulter under the provisions of the Police Rules 1975.
2. FC Masood Rehman with the direction to appear before the Enquiry Officer on the date, time and place fixed by the Officer.

Received Charge sheet 293-96

Name Masood Rehman

Signature M. Rehman

21 10 2021

ابتدائی اطلاعی رپورٹ

(فائل) ابتدائی اطلاعی رپورٹ نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

ضلع: صوابی

پولیس اسٹیشن: لاہور

تاریخ و وقت وقوعہ 30/08/2021 بوقت بجے

حالت نمبر 605

1	تاریخ و وقت رپورٹ	30/08/2021 بوقت 17:20	چاکیدگی	پرچہ
		30,08:2021 بجے		
2	نام و سکونت اطلاع دہندہ و مستغیث	اکبر علی خان انسپکٹر		
3	مختصر کیفیت جرم (معہ دفعہ) مال اگر کچھ لیا گیا ہو	11-B CNSA		
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت	صوابی انٹر چینج اسلام آباد فاصلہ 5/6 کلومیٹر جانب		
5	نام و سکونت ملزم	مسعود الرحمان ولد عبد المنان (2) شعیب خان ولد نواب خان		
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو۔	برسیدگی مراسلہ بہ مقدمہ درج رجسٹرڈ کیا گیا		
7	تھانہ سے روانگی کی تاریخ و وقت	بہ سبیل ڈاگ		

ابتدائی اطلاع نیچے درج کرو: مراسلہ منجانب مستغیث خانہ نمبر 2 کاشف 1184 موصول ہو کر درج ذیل ہے

بخدمت جناب ایس ایچ اوصاحب تھانہ NET صوابی بمعہ NE T سکوڈ امجد خان ASI عبدالعزیز ASI، کاشف 1184 سجات 1051 البواری گاڑی بہ کاری نمبری A-A 4775 بشمول ڈرائیور بسلسلہ ناکہ بندی بمقام جائے وقوعہ بالا موجود تھے کہ سوزوکی نمبری B-B- 8117 کو بناء شک کھڑا کر کے ڈرائیور سیٹ پر بیٹھے ہوئے شخص نے اپنا نام مسعود الرحمان ولد عبد المنان جبکہ پچھلے سیٹ میں بیٹھے ہوئے دو کسان نے اپنا اسمائے بالترتیب شعیب خان ولد نواب خان، غالب گلاب گل ساکنان جرود ضلع خیبر اور ساتھ ہی خود کو جرود لیویز کیے گئے۔ ہر سہ کسان کو کیری ڈبہ سے اتار کر بالترتیب جامہ تلاشی لی جا کر کوئی غیر قانونی اشیاء برآمد نہ ہوئی۔ البتہ کیری ڈبہ کی تلاشی کرتے ہوئے کیری ڈبہ کے سوچ بورڈ پر برنگ ڈارک براون میں لپٹی ہوئی دائیں ہاتھ کی پلاسٹک کی مصنوعی ہاتھ برنگ اٹھائی جا کر پڑتال پر سفید پلاسٹک شاپر میں آئس برآمد ہو کر بذریعہ ڈیجیٹل سکیل وزن کر کے 200 گرام نکلی۔ آئس برآمد شدہ کو قبضہ پولیس میں کر کے (1) گرام آئس تجزیہ FSL پشاور جبکہ بقایا 199 گرام آئس بمعہ مصنوعی ہاتھ کو کاغذات ملکیتی معہ ملزمان بالا کو بروئے فرد قبضہ پولیس میں کر کے حسب ضابطہ گرفتار کر کے مراسلہ بجرم بالا ضبط تحریر میں لا کر بدست کاشف 1184 تھانہ ہے مقتدمہ قائم کر کے تفتیش کیا جائے۔ دستخط انگریزی اکبر علی خان انسپکٹر انچارج صوابی مورخہ 30/08/2021 پس آمدہ مراسلہ حرف بہ حرف درج بالا ہو کر نقول ایف آئی آر بمراد تفتیش حوالہ شعبہ تفتیش کیے جاتے ہیں پرچہ گزارش ہے۔

OFFICE OF THE
DISTRICT POLICE OFFICER
KHYBER



ORDER

Constable Masood Rehman s/o Abdul Manan of Police Station Jamrud District Police Khyber remained involved in illegal activities due to which he was suspended and closed to Police Lines. Later on he was arrested by Swabi Police Lahore Police Station with ICE and a proper FIR was registered against him vide No. 605, dated 30/08/2021, w/s 11BCNSA. The undersigned being a competent authority under Govt. Servants Service & Efficiency Rules 2011 issued a Show Cause Notice with the opportunity to be heard in person which the defaulter official did not avail.

In reply of the Show Cause notice the defaulter constable failed to submit any cogent reason/reply regarding the allegations leveled against him consequently a comprehensive ground check was conducted which revealed that the defaulter constable is deeply involved in drugs peddling which was confirmed by his arrest by Swabi Police. The undersigned is satisfied that the allegation leveled against him are factual.

It is therefore, his involvement in illegal activities/drugs peddling and to eliminate the criminals within Police Department, the defaulter constable is hereby awarded major punishment of dismissal from service under Khyber Pakhtunkhwa E&D Rules 2011 (Section 7) with immediate effect.


DISTRICT POLICE OFFICER,
KHYBER

No. 2211 /PSO Khyber, dated Khyber

Copies to all concerned for further necessary action.

31/8/2021



OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

11

ORDER.

This order will dispose of the departmental appeal preferred by Ex-Constable Masood Rehman No. 1834, who was awarded the major punishment of "Dismissal from service" under KP PR-1975 (amended 2014) by DPO Khyber vide order No. 2811/PSO, dated 31.08.2021.

2- Short facts leading to the instant appeal are that the appellant while posted at Police Station Jamrud Khyber was served with Show Cause Notice on the charges of his involvement in illegal activities and absence from his lawful duty. Later on he was also arrested by District Police Swabi, Police Station Lahore with case FIR No. 605, dated 30.08.2021 u/s 11B-CNSA Police Station Lahore, District Swabi was registered against him.

3- He was issued Show Cause Notice on the above allegations by DPO Khyber to which he replied but the same was found unsatisfactory, hence awarded the above major punishment.

4- He was heard in person in O.R and the relevant record along with his explanation perused. During personal hearing the appellant failed to submit any plausible explanation in his defence. He also failed to produce any proof in his defence. Therefore, his appeal for setting aside the punishment awarded to him by DPO Khyber vide order No.2811/PSO Khyber, dated 31.08.2021 is hereby rejected/filed being also time barred for 06 months and 26 days.

(MUHAMMAD IJAZ KHAN) PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 2513-17/PA dated Peshawar the 29/07/2022

Copies for information and necessary action to the:-

1. District Police Officer Khyber alongwith complete inquiry file.
2. DSP HQrs: Khyber.
3. Accountant & OASI Khyber.
4. Official Concern.

Better Copy

D (10)

OFFICE OF THE
DISTRICT POLICE OFFICER
KHYBER

ORDER

Constable Masood Rehman S/o Abdul Mannan of Police Jamrud District Police Khyber remained involved in illegal activities due to which he was suspended and closed to Police Line. Later on he was arrested by Swabi Police Lahore Police Station with ICE and a proper FIR was registered against vide No. 605, dated 30.08.2021 u/s 11BCNSA. The undersigned being a competent authority under Govt Servant Service and efficiency Rules 2011 issued a Show Cause Notice with the opportunity to be heard in person which the defaulter official did not avail.

In reply of the Show Cause Notice the defaulter constable failed to submit any cogent reply regarding the allegations leveled against him consequently a comprehensive ground check was conducted which revealed that the defaulter constable is deeply involved in drugs peddling which was confirmed by his arrest by Swabi Police. The undersigned is satisfied that the allegations leveled against him are factual.

It is therefore, his involvement in illegal activities drugs peddling and to eliminate the criminals within Police Department, the defaulter constable is hereby awarded major punishment of dismissal from service under Khyber Pakhtunkhwa E&D Rules 2011 (Section 71 with immediate effect.

DISTRICT POLICE OFFICER
KHYBER

No. 2811/PSO Khyber, dated Khyber 31.08.2021.

Copies to all concerned for further necessary action



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

E
12

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted Ex-FC Masood Ur Rehman No. 1834. The petitioner was dismissed from service by DPO Khyber vide Order Endst: No. 2811/PSO, dated 31.08.2021 on the allegations he while posted at Police Station Jamrud Khyber was involved in illegal activities and absence from his lawful duties. Later on, he was also arrested by District Police Swabi, PS Lahore with ICE & case FIR No. 605, dated 30.08.2021 u/s 11 B-CNSA PS Lahore District Swabi. He was acquitted from the said FIR vide ASJ-II Lahor Swabi, vide judgment dated 28.11.2022. CCPO Peshawar rejected and filed his appeal vide Order Endst: No. 2313-17/PA, dated 29.07.2022.

Meeting of Appellate Board was held on 17.08.2023 wherein petitioner was heard in person. Petitioner contended that the allegations are baseless.

Perusal of enquiry papers reveals that the allegations leveled against the petitioner have been proved. During hearing, petitioner failed to advance any plausible explanation in rebuttal of the charges. The Board sees no ground and reasons for acceptance of his petition; therefore, the Board decided that his petition is hereby rejected.

Sd/-

AWAL KHAN, PSP

Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. SI/2155-61/23, dated Peshawar, the 28-08-2023.

Copy of the above is forwarded to the:

1. Capital City Police Officer, Peshawar. Complete file alongwith Enquiry File (29 pages) of the above named Ex-FC received vide your office Memo: No. 1136/KD, dated 20.01.2023 is returned herewith for your office record.
2. District Police Officer, Khyber.
3. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-IV CPO Peshawar.

(DR. ZAHID ULLAH) PSP
AIG/Establishment,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.



Court of ASI-II Lahor, Swabi

Present:

- Dy PP Imran Khan for the State
- Accused Shoaib and Ghalib on bail with Asif Ali Adv.

1. The defense counsel filed an application for exemption of third accused Masood-ur-Rehman from appearance before Court for today. The application is allowed for the reasons mentioned therein.
2. The defense then filed an application under S.265-K Cr.P.C. Notice of the same was given to prosecution and arguments heard.
3. This order shall dispose of the said application under S.265-K Cr.P.C filed on behalf of accused Masood-ur-Rehman s/o Abdul Manan, Ghalib s/o Gulab Gul and Shoaib Khan s/o Nawab Khan, all residents of Jamrud Khyber - who are charged in the present case under FIR No. 605 dated 30.08.2021 u/s. 11 (b) KP CNSA of PS, Lahor, Swabi.
4. According to FIR, complainant Akbar Ali Khan Inspector/Incharge NET (PW.02) and his team were present on Naka at Swabi-Interchange Islamabad-in, when a Suzuki carryvan (No.BB/8117-Peshawar) was stopped for checking. Accused Masood was found sitting in the driving seat and the other two accused in the rear seat. All 03 were deboarded and searched, but nothing illegal was recovered from their personal

ATTESTED

Signature
Magistrate
Swabi

10

13

Court of ASI-II Lahor, Swabi

possession. The search of vehicle, however, led to recovery of 01-packet of ice/methamphetamine (weighing 200 grams) from a prosthetic hand lying inside the switch board. A 01-gram sample was separated from the packet for FSL analysis. The recovered substance and vehicle were seized, and the accused were arrested. A murasila was drafted and sent to PS for registration of FIR and investigation.

5. After conclusion of investigation, a complete challan was filed against all 03 accused before this Special Court. Joint charge was framed against them. They pleaded not guilty and claimed trial.

6. The prosecution has examined 05 PWs so far. The gist of their evidence is as follows:

PW.1 is Abdul Aziz ASI, a marginal witness of recovery memo Ex.PW.1/1.

PW.2 is Akbar Ali Inspector/complainant. He deposed in respect of the arrest and recovery proceedings mentioned in

Murasila Ex.PA/1, recovery memo Ex.PW.1/1, card of arrest Ex.PWs.2/1 to Ex.PW.2/3 and application to FSL (Mark-C).

PW.3 is Ayanullah SI, the I.O of the case. He deposed in respect of preparation of site plan (Ex.PB), production of accused before JM for further police custody - which was refused by the

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Murasila Ex.PA/1
recovery memo Ex.PW.1/1
card of arrest
Ex.PWs.2/1 to Ex.PW.2/3
and application to FSL (Mark-C)

Court of ASI-II Lahar, Swabi

JM concerned; placing on file copies of relevant documents (marks A, B, E, F, G).

PW.04 is Fareed No.148. He deposed that he had transmitted the parcel of sample to FSL Peshawar on 31.08.2021.

PW.05 is Maqsood Ali HC. He deposed that he was Moharrir of PS during relevant days and that the complainant had handed over the parcels of case property and the carry-van vehicle with registration documents to him; that he made entries in this respect in register No.19 and dispatched the parcel of sample to FSL.

7. The crux of arguments of defence was that material contradictions were evident from statements of PWs already examined; and that there was no proof of safe chain of custody of recovered substance. It was argued that serious doubts were evident from available record and that no useful purpose would be served by waiting for the remaining PWs. The Dy PP, on the other hand, was of the view that evidence of all PWs may be recorded before giving any opinion regarding status of its evidence. Arguments considered and record perused.

8. It is admitted by prosecution that the narcotics was not recovered from personal possession of the accused; but that the same was recovered from a prosthetic hand present inside

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Court of ASI-II Lahor, Swabi

vehicle No.BB/8117-Peshawar. It is also admitted by prosecution that the said vehicle did not belong to any of the accused facing trial. The record of the case shows that the said vehicle was handed over to one Shamshad Khan s/o Ayub Khan on Superdari. The said Shamshad Khan is not an accused in the case and no evidence has been brought on record to establish any connection of the accused facing trial with the vehicle in question. The presence of accused in the vehicle from which the narcotics was allegedly recovered has remain doubtful.

The complainant of the case (PW.02) has failed to prove that he was an Authorized Officer in terms of S.2 (c) of KP CNSA. The recovery was allegedly made in the territorial jurisdiction of PS Lahor; however, the prosecution has failed to establish the presence of complainant and his team in the area of occurrence.

No copies of DD of PS Lahor have been brought on record in this respect. The complainant (PW.02) also admitted that a police post of local PS was present adjacent to the spot of occurrence, but that no official from said post was associated with the alleged arrest and recovery proceedings. The complainant further admitted that the signet ring with initials "AF" was neither in his name nor officially allotted to him. According to FIR the parcels were sealed with monograms

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bearing initials "AH". In these circumstances, the sealing of parcels by complainant on the spot as alleged by prosecution has become doubtful.

10. The marginal witness of recovery memo (PW.01) contradicted the complainant and stated that the narcotics was not recovered from Switch board; but that the same was rather recovered from a plastic supporter (sic). He also stated that the recovery memo and Murasila were prepared in the police post, and not on the spot.

11. The IO (PW.03) admitted that he had not been present at the relevant time. He also admitted that he has not tried to

interrogate or examine the owner of vehicle from which the

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Lahor

narcotic was allegedly recovered, despite the fact that he knew the name of the owner.

The narcotics were allegedly recovered from a vehicle which did not belong to any of the accused facing trial. Conscious knowledge of accused regarding presence of narcotics in vehicle remains doubtful. Even it is admitted that all 03 accused were present inside in the vehicle, the prosecution has failed to prove conscious knowledge of any of the accused.

Court of ASI-II Laor, Swabi

bearing initials "AH". In these circumstances, the sealing of parcels by complainant on the spot as alleged by prosecution has become doubtful.

10. The marginal witness of recovery memo (PW-1) contributed the complainant and stated that the aerobics was not recovered from Switch, board, but that the same was rather recovered from a plastic (sic). He also stated that the recovery memo and Mursasila were prepared in the police post, and not on the spot.

11. That I.O (PW-03) admitted that he had not brought on record any at the relevant time. He also admitted that he has not tried to interrogate or examine the owner of vehicle from which the narcotic was allegedly recovered, that facts that he know the name of the owner.

12. The narcotic were allegedly recovered from a vehicle which did not belong to any of the accused facing trail. Conscious knowledge of the accused regarding presence of narcotics in vehicle remains doubtful. Even it is admitted that all 03 accused were present inside in the vehicle, the prosecution has failed to prove conscious knowledge of any of the accused.

13. All the above-mentioned admissions and deficiencies in the prosecution evidence create serious doubt regarding the allegations against the accused facing trial. A single reasonable doubt in prosecution case is considered sufficient for acquittal of accused. Keeping in view the contradictions in the statements of PWs, I do not see any probability of accused facing trial being convicted of the charge leveled against them. No useful purpose would be served by proceeding with the trial any further. The accused cannot be punished with rigors of a prolonged trial, especially when chances of conviction are bleak and rare. The accused are serving in police department; continuing with trial in present circumstances would amount to abuse of process of law.

14. Resultantly, the application u/s 265-K Cr.P.C is accepted and both accused Masood ur Rehman, Ghalib and Sohaib Khan are acquitted of the charge leveled against them in the instant case. The accused are on bail; their sureties discharged from the liabilities of bail bonds.

15. The procedure as laid down in section 516-A Cr.P.C r/w S. 34B (4) of KP-CNSA 2019 was not adopted for the purpose of destruction/disposal of bulk of case property (narcotics) at first instance. The narcotics shall now be disposed of according to

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13. All the above-mentioned admissions and deficiencies in the prosecution evidence create serious doubt regarding the allegations against the accused facing trial. A single reasonable doubt in prosecution case is considered sufficient for acquittal of accused. Keeping in view of the contradictions in the statements of PWs I do not see probability of accused facing trial being convicted of the charge leveled against them. No useful purpose would be served by proceeding with the trial any further. The accused cannot be punished with rigors of a prolonged trial, especially when chances of conviction are bleak and rare. The accused are serving in Police department; continuing with trial present circumstances would amount to abuse of process of law.

14. Resultantly, the application u/s265-K, Cr.P.C is accepted and both accused Masood Ur Rehman, Ghalib and Sohaib Khan are acquitted of the charge leveled against them in the instant case. The accused are on bail their sureties discharged from the liabilities of bail bonds.

15. The procedure as laid down in section 516-A Cr.PC r/w S.34.B (4) of KP-CNSA 2019 was not adopted for the purpose of destruction/disposal of bulk of case property (narcotics) at first instance. The narcotics now be disposed of according to

prevalent procedures, but after final decision of appeal/revision, if any, against this order/judgment.

16. The vehicle (No.BB/8117-Peshawar) involved in the case has already handed over to its owner (Shamshad Khan s/o Ayub Khan) on Superderi vide order of learned ASJ-I, Lahor dated 20.09.2021. The said order shall remain intact till modification or setting aside by a competent forum.
17. Consign this file to record room after proper compilation.

Announced
28.11.2022

Jamal Shah Mahmood
ASJ-II/JSC Lahor Swabi

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prevalent procedures, but after final decision of appeal/revision if any, against this order/judgment.

16. The vehicle (No.BB/8117-Peshawar) involved in the case has already handed over to its owner (Shamshad Khan s/o Ayub Khan) on Superdari vide order of learned ASJ-I Lahore dated 20.09.2021. The said order shall remain intact till modification or setting aside by a competent forum.

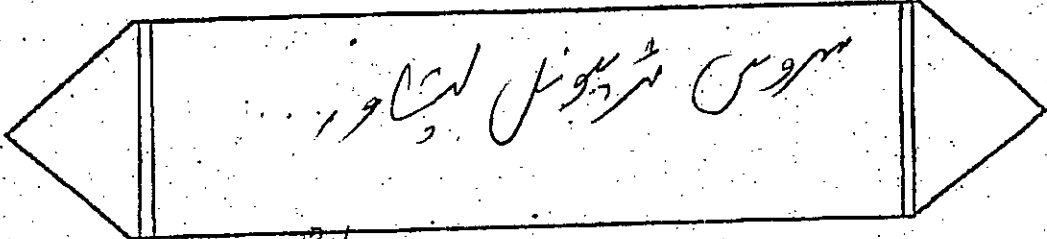
17. Consign this file to record from after proper compilation.

Announced

28.11.2022

Jamal Shah Mehmood
ASJ/JSC Lahor Swabi

بعدالت



مسعود الرحمن 22 مخانبہ
مسعود الرحمن بنام محکمہ پولیس

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام لہذا اور کیلئے سروس ٹریڈ ہونسل (سروس ٹریڈ ہونسل)
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دینے جو جواب دہی اور اقبال دعویٰ اور
بمسورت ڈگری کرنے اجراء اور وصولی چیک دروپیدہ عرضی 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
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی دہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا سا
پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو فرجیدہ ہر جائتہ التوائے مقدمہ کے سبب سے
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو وکیل صاحب پابند ہوں گے۔ کہ یہ
مذکورہ کریں۔ لہذا وکالت نامہ لکھد یا کہ مندر ہے۔

Accepted
&
Attestation

المقوم _____ ماہ _____ 20____

العبد _____ واہ العبد _____

کے لئے منظور ہے۔

مقام
MR. J. J. J.