

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.318/2016

Date of Institution ... 30.03.2016  
Date of Decision ... 07.07.2021

Mr. Mohammad Saleem, Head Constable No.12, Police Line, Dir Upper.  
... (Appellant)

**VERSUS**

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and  
two others. ... (Respondents)

**Present:**

Noor Muhammad Khattak,  
Advocate ... For appellant.

Riaz Khan Paindakheil,  
Assistant Advocate General ... For respondents

SALAH-UD-DIN, ... MEMBER (J)  
ROZINA REHMAN ... MEMBER (J)  
ATIQU-UR-REHMAN WAZIR ... MEMBER (E)

**JUDGMENT**

**ROZINA REHMAN, MEMBER (J):** Briefly stating the facts necessary for the disposal of the lis in hand are that appellant was initially inducted in the Police Department as Constable. He was promoted to the post of Head Constable and he while serving as Head Constable in the Police Department, in Police Station Wari District Dir Upper, was served with show cause notice on the allegation of gross misconduct. Major punishment of compulsory retirement was imposed upon the appellant by the District Police Officer, Dir Upper. He filed departmental appeal which was rejected. He then filed service appeal and vide judgment dated 10.06.2015, appellant was reinstated in service and the Department was directed for fresh departmental inquiry against the appellant strictly in accordance with law. Back benefits were subject to

the outcome of fresh proceedings. Appellant was reinstated into service on 27.07.2015 for the purpose of de-novo inquiry. The inquiry committee recorded the statements of all concerned officers/officials, where-after, the inquiry committee submitted findings/report, whereby, the appellant was exonerated from the charges leveled against him. On the recommendation of the inquiry committee, impugned order dated 07.09.2015 was passed by the D.P.O Dir Upper whereby the appellant was reinstated into service and the period he spent out from 23.12.2013 to 03.08.2015 was treated as leave of the kind due. Feeling aggrieved, the appellant filed departmental appeal which was rejected, where-after, present service appeal was filed. Case was heard by a Division Bench of this Tribunal on 03.12.2019 and was disposed of, however, the learned members differed in their respective opinions, a Larger Bench was, therefore, constituted which heard the case on 07.07.2021.

2. Learned counsel for the appellant opened the case by reading both the judgments handed down by the Honourable Members, respectively.

3. In the judgment Honourable Member (Mr. Ahmad Hassan) held entitled the appellant to the back benefits and the impugned order dated 07.09.2015 was modified to the extent that the back benefits may be granted to the appellant from 23.12.2013 to 03.08.2015.

4. On the other hand, Honourable Member (Mr. Muhammad Hamid Mughal) was pleased to dismiss the appeal. It was held that despite the fact that the appellant was exonerated due to insufficiency of evidence

and there is no finding that the action against the appellant was arbitrary or actuated with malice, the appellant was awarded back benefits in the shape of treating out of service period as leave of the kind due. It was further held by the Hon'ble Member that practice of bringing outside political pressure by civil servant over the authorities, in the matter of posting transfer has become common practice. Consequently, service appeal was dismissed.

5. We are of the considered view that allegation leveled against the appellant was that he while posted in P.S Wari was guilty of misconduct for attempting to bring political and outside influence directly to bear on District Police and unwarranted interference in financial matters of District Police. On acceptance of his service appeal, the matter was sent back to the Department for de-novo inquiry and accordingly, he was issued charge sheet alongwith statement of allegations. An inquiry committee was constituted and Mr. Khan Akbar Khan S.P Investigation and Mohy ud Din Reserve Inspector Police Lines, were appointed as inquiry officers. Inquiry committee conducted fresh departmental inquiry and recorded the statements of all concerned, where-after, submitted report wherein they recommended filing of the inquiry and accordingly vide order dated 07.09.2015 of the District Police Officer, Dir Upper, appellant was exonerated from the charges leveled against him and inquiry was accordingly filed. However, the period he spent out from 23.12.2013 to 03.08.2015 was treated as leave of the kind due. As per record, the present appellant was initially awarded punishment of compulsory retirement but on acceptance of his service appeal, he was reinstated into service for the purpose of de-novo inquiry and now


he has been exonerated from the charges. An employee i.e. civil servant whose wrongful dismissal, removal or compulsory retirement has been set aside, goes back to his service as if he was never dismissed, removed or retired from service. The restitution of employee means that there has been no discontinuance in his service and for all purposes, he had never left his post. He is, therefore, entitled to arrears of pay for the period he was kept out of service for no fault of his own.

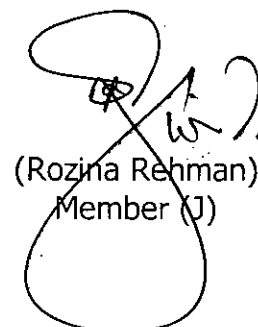
6. We, therefore, hold that civil servant on unconditional reinstatement/exoneration from all charges is to be given all back benefits and the only exception justifying part of withholding of back benefits could be that he accepted gainful employment/engaged in profitable business during the intervening period which is not the case here, therefore, this case is disposed of in terms that intervening period from 23.12.2013 to 03.08.2015 be considered as if the appellant was on duty and accordingly he is entitled to all back benefits. Reliance is placed on 1999 SCMR 1873; 2010 PLC (C.S) 151 AND 2006 SCMR 421.

7. With the observations herein-above, the appeal in hand is accepted and the appellant is held entitled to the benefits of period from 23.12.2013 to 03.08.2015. Parties are left to bear their own costs. File be consigned to the record room.



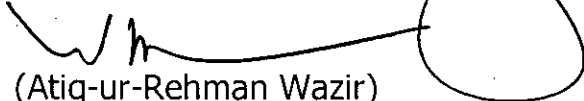
ANNOUNCED.  
07.07.2021

  
(Salah-ud-Din)  
Member (J)

  
(Atiq-ur-Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)


Service Appeal No. 318/2016

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	07.07.2021	<p><u>Present:</u></p> <p>Noor Muhammad Khattak, Advocate ... For Appellant</p> <p>Riaz Khan Paindakheil, Assistant Advocate General ... For respondents</p> <p>Vide our detailed judgment of today of this Tribunal placed on file, the appeal in hand is accepted and the appellant is held entitled to the benefits of period from 23.12.2013 to 03.08.2015. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><u>ANNOUNCED.</u> 07.07.2021</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">               (Salah-ud-Din)              Member (J)         </div> <div style="text-align: center;">               (Rozina Rehman)              Member (J)         </div> </div> <div style="text-align: center; margin-top: 20px;">               (Atiq-ur-Rehman Wazir)              Member (E)         </div>


09.03.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak, learned Addl. AG for respondents present.

Former requests for adjournment as learned senior counsel for the appellant is indisposed due to chest infection. Adjourned to 29.06.2021 for hearing before the Larger Bench.

  
(Atiq Ur Rehman Wazir)  
Member (E)

  
Chairman


  
(Mian Muhammad)  
Member (E)

29.06.2021

Mr. Said Khan, junior of learned counsel for the appellant present. Mr. Zewar Khan, Inspector (Legal) alongwith Mr. Riaz Ahmad Painsdakheil, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant has proceeded to home <sup>due to</sup> for some domestic engagements. Adjourned. To come up for arguments before the Larger Bench on 07.07.2021.

  
(ROZINA REHMAN)  
MEMBER (JUDICIAL)

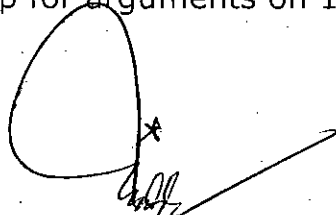
  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

  
(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

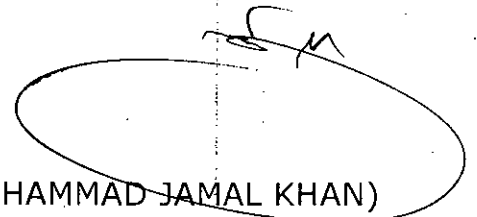
03.12.2020

Mr. Mir Zaman Safi, Advocate, for appellant is present. Mr. Muhammad Jan, Deputy District Attorney and Mr. Javed, ASI (Legal), for the respondents are also present.

Learned counsel representing appellant requested for adjournment for not preparing the brief. Request is allowed with the direction to prepare the brief well before the next date. File to come up for arguments on 11.02.2021 before Larger Bench.



(MIAN MUHAMMAD)  
(MEMBER EXECUTIVE)



(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

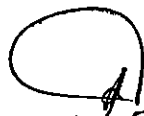


(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

11.02.2021

Counsel for the appellant and Mr. Noor Zaman Khattak, District Attorney for the respondents present along with Hidayatullah, ASI.

Former requests for adjournment as he is over occupied in different cases today. Adjourned to 09.03.2021 for hearing before the Larger Bench.



(Rozina Rehman)  
Member(J)



Chairman

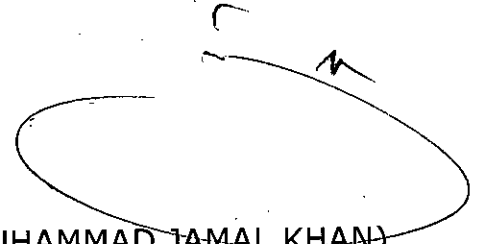


(Atiq-ur-Rehman Wazir)  
Member(E)

10.11.2020

Nemo for the appellant. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is present.

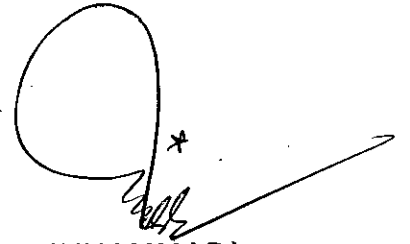
Since the Members of the High Court as well as of the District Bar Associations, Peshawar, are observing strike today, therefore, learned counsel for appellant is not available today. Adjourned to 03.12.2020 on which date to come up for arguments before the Larger Bench.



(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)



(ROZINA REHMAN)  
MEMBER (JUDICIAL)



(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)



14.07.2020

~~Counsel for the appellant Zaid M. Jaman Chani District  
Attorney for the respondents present.~~

~~Learned counsel for the appellant requests for  
adjournment to prepare the brief. Adjourned to 02.09.2020 for  
arguments before the Larger Bench.~~

  
(Rozina Rehman)  
Member

  
Chairman

(Mian Muhammad)  
Member(E)

02.09.2020

Mr. Muhammad Khattak, Advocate on behalf of learned  
counsel for the appellant and Mr. Muhammad Riaz Khan  
Paindakhel, Asstt. AG alongwith Javed, ASI for the  
respondents present.

Former requests for adjournment as learned counsel for  
the appellant is engaged before the Honourable High Court  
~~today~~ in various cases today.

Adjourned to 10.11.2020 before the Larger Bench.

  
(Rozina Rehman)  
Member(J)

  
Chairman

  
(Mian Muhammad)  
Member(E)

318/2016

20/12/2019

Be laid before a larger bench minus the hon'ble members having the difference of opinion. To come up for further proceeding/arguments on 06/02/2019<sup>20</sup>.

Notices to the parties be issued accordingly.

  
Chairman

06.02.2020

Counsel for the appellant and Addl. AG for the respondents present.

The Worthy Chairman is on leave, therefore, the matter is adjourned to 14.04.2020 for arguments before the Larger Bench.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

14.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 14.07.2020 before Larger Bench.

  
Reader

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	03.12.2019	<p style="text-align: center;"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b>  <b><u>At Camp Court, Swat.</u></b>  <b>Service Appeal No. 318/2016</b></p> <p style="text-align: right;">Date of Institution ..... 30.03.2016  Date of Decision ..... 03.12.2019</p> <p>Mr. Muhammad Salim, Head Constable No.12, Police Line, Dir Upper.  <p style="text-align: right;"><b>Appellant</b></p> <p style="text-align: center;"><b>Versus</b></p> <ol style="list-style-type: none"> <li>1. The inspector General of Police, Khyber Pakhtunkhwa Peshawar.</li> <li>2. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif Swat.</li> <li>3. The District Police Officer, District Dir Upper.</li> </ol> <p style="text-align: right;"><b>Respondents</b></p> <p>Mr. Muhammad Hamid Mughal-----Member(J)  Mr. Ahmad Hassan-----Member(E)</p> <p style="text-align: center;"><b><u>JUDGMENT</u></b>  <b><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></b> Learned counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General present.</p> <p>2. The appellant (HC) has filed the present service appeal being not satisfied with the order dated 07.09.2015 whereby District Police Officer Dir Upper.(respondent No.3) exonerated him from the charges, filed the inquiry against him while</p> </p>

3.12.2019

treating the period during which the appellant remained out of service as leave of the kind due.

3. Learned counsel for the appellant argued that the appellant joined the Police Department as Constable in the year 2002 and was promoted to the post of Head Constable; that vide order dated 23.12.2013, major punishment of compulsory retirement was imposed upon the appellant on the allegations as mentioned in the said order; that vide judgment dated 10.06.2015 passed in Service Appeal No.197/2014, the appellant was reinstated in service and the department was directed for fresh departmental inquiry against the appellant and it was further added in the said judgment that back benefits would be subject to the outcome of fresh proceedings; that consequently respondent department reinstated the appellant into service for the purpose of de-novo inquiry vide order dated 27.07.2015; that fresh inquiry was conducted and on the recommendation of inquiry committee, the District Police Officer issued the impugned order dated 07.09.2015 whereby the appellant was exonerated from charges; that inspite of exoneration of the appellant from the charges, back benefits were not allowed; that the appellant also filed departmental appeal against the order dated 07.09.2015 but the same was also rejected vide order dated 03.03.2016; that the respondents have acted in arbitrary and malafide manner and while not allowing back benefits to the appellant, violated the law, rules

3.12.2019

and the provisions of the constitution. In support of the present service appeal, learned counsel for the appellant referred to the judgments reported in 1999 SCMR page 1873, 2003 SCMR page 726, 2006 SCMR page 421 and 2010 PLC (C.S) page 151.

4. As against that learned AAG while defending the impugned order, argued that in compliance of the judgment dated 10.06.2015 of this Tribunal, passed in Service Appeal No.197/2014 filed by the appellant, fresh inquiry was conducted against the appellant and respondent No.3 while endorsing the report of inquiry committee, treated the intervening period as leave of the kind due; that the appellant was treated in accordance with law and rules and no violation of constitution has been committed by the respondents.

5. Arguments heard. File perused.

6. Allegations leveled against the appellant are that while posting in P.S Wari the appellant committed misconduct while attempting to bring political and outside influence directly to bear on District Police and unwarranted interference in the financial matters of District Police. He also brought perpetual/unending political and outside influence to directly bear on the District Police Officer, for the getting himself re-posted as TA Clerk of the District Police Upper. He malafidely, vindictively & criminally deleted the computerized database (for pay purposes) of the entire Constabulary from the Pay

3.12.2019

Branch.

7. District Police Officer (respondent No.3) in his order dated 23.12.2013 while observing that the case of the appellant is fit for dismissal, awarded him punishment of compulsory retirement by taking lenient step in view of his long service and poor family background.

8. Consequent upon the judgment dated 10.06.2015 passed in Service Appeal No.197/2014, the appellant was reinstated in service vide order dated 27.07.2015.

9. It may be mentioned that when the fresh inquiry proceedings commenced, the District Police Officer upon whom the appellant allegedly brought political and outside influence, was already transferred out from District Dir Upper. It is but natural that transfer of the concerned/aggrieved District Police Officer, benefitted the appellant and findings in the inquiry report tilted in his favor. Successor in office of the District Police Officer also endorsed the finding of the inquiry committee and accordingly filed inquiry against the appellant while treating the out of service period as leave of the kind due.

10. The appellant has considerable length of service, as such sufficient leaves would be deemed available in his leave account. In the given circumstances, when out of service period has not been treated as leave without pay rather the same has been treated as leave of the kind due, monetary/financial back benefits have been given to the appellant vide impugned order.

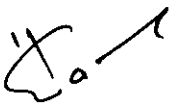
3.12.2019

11. Despite the fact that the appellant was exonerated due to insufficiency of evidence and there is no finding that the action against the appellant was arbitrary, or actuated with malice, the appellant was awarded back benefits in the shape of treating out of service period as leave of the kind due.

12. Practice of bringing outside political pressure by the civil servants over the authorities, in the matter of posting transfer has become common practice.

13. As a sequel to above the impugned orders do not call for any interference. Consequently the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Ahmad Hassan)  
Member  
(Dissenting Note Attached)

  
(Muhammad Hamid Mughal)  
Member  
Camp Court, Swat

ANNOUNCED  
03.12.2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR  
AT CAMP COURT SWAT.

Service Appeal No. 318/2016

Date of Institution ... 30.03.2016

Date of Decision ... 03.12.2019

Mr. Muhammad Salim, Head Constable no. 12, Police Line, Dir Upper.  
... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and two others.  
... (Respondents)

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MR. NOOR MUHAMMAD, Advocate	---	For appellant.
MR. M. RIAZ KHAN PAINDAKHEL, Assistant Advocate General	---	For respondents no. 1 to 3
MR. AHMAD HASSAN, MR. MUHAMMAD HAMID MUGHAL	---	MEMBER(Executive) MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS.

02. For the sake of brevity, I would like to skip the facts already explained by my learned colleague. My focus would be on legal propositions that go in favour of the appellant. Perusal of de-novo enquiry revealed that charges leveled against the appellant were not proved. The enquiry committee gave him clean chit. Though, he was reinstated in service vide order dated 07.09.2015 but back benefits were denied to him without any rhyme and reason. The record placed before us also established



that he was not gainfully employed during the intervening thus deserved back benefit for the period from 23.12.2013 to 03.08.2015.

03. Every case has its own distinctive features and decisions of departmental authorities without support/backing of law/rules become arbitrary, harsh and unjust. It is also hit by Article-4 of the Constitution 1973. The only logic that comes to mind is that they used their discretion, while deciding the issue of back benefits but not fairly and justly. As such, it is not compatible with the concept of rule of law. Unfettered powers available to the executive are subject to expressed and implied limitations imposed by law. Undoubtedly, claim of the appellant being bonafide and genuine is worth consideration. My view point is backed by case law reported as 1999.SCMR 1873, 2003 SCMR 726, 2006 SCMR 421 and 2010 PLC (C.S) 151.

04. Foregoing in view, the impugned order dated 07.09.2015 is modified to the extent that the back benefits may be granted to the appellant from 23.12.2013 to 03.08.2015. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)  
Member  
Camp court Swat

(MUHAMMAD HAMID MUGHAL)  
Member

Not agreed dissenting note attached

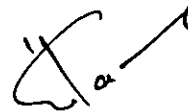
ANNOUNCED  
03.12.2019

03.12.2019

Learned counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General present. Arguments heard and file perused however, members of this Bench could not arrive at a unanimous decision. Hence judgment of the Member (Judicial) while dissenting note of Member (Executive) is placed on file and the case file be submitted before the Hon'ble Chairman for further appropriate orders.



(Ahmad Hassan)  
Member

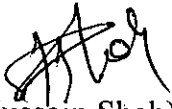



(Muhammad Hamid Mughal)  
Member

ANNOUNCED.  
03.12.2019

08.10.2019


Counsel for the appellant and Mian Amir Qadir, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 06.11.2019 for arguments before D.B at Camp Court Swat.


  
(Hussain Shah)  
Member  
Camp Court Swat

  
(Muhammad Amin Khan Kundi)  
Member  
Camp Court Swat

06.11.2019

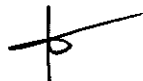
Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned Assistant AG requested for adjournment. Adjourned to 03.12.2019 for arguments before D.B at Camp Court Swat.

  
(Hussain Shah)  
Member  
Camp Court Swat

  
(M. Amin Khan Kundi)  
Member  
Camp Court Swat

02.07.2019

Mr. Mian Amir Qadir learned Deputy District Attorney alongwith Bashir Ahmad Headmaster present and submitted reply. Adjourn. To come up for arguments on 03.09.2019 before D.B at Camp Court Swat.



Member  
Camp Court, Swat



Member  
Camp Court, Swat.

04.09.2019

Learned counsel for the petitioner present Mr. Mian Amir Qadir learned Deputy District Attorney present.

Arguments heard. file perused.

The present application for restoration of service appeal No.318/2016 was filed well within time, hence in the interest of justice and for the reasons mentioned in the instant application, the same is allowed. Consequently Service Appeal No.318/2016 is hereby restored. Adjourn. To come up for further proceedings on 08.10.2019 before D.B at Camp Court, Swat. No order as to costs. File of instant application be consigned to the record room.

Member



Member  
Camp Court, Swat.


07.03.2019


Counsel for the petitioner present. Mian Amer Qadir, District Attorney for respondents present. Notices be issued to the respondents for submission of written reply on application for restoration of appeal on 02.04.2019 before D.B at camp court Swat.

  
Member  
Camp Court, Swat

02.04.2019


Shazullah Yousafzai Advocate appeared on behalf of petitioner. Mr. Mian Amir Qadir learned District Attorney present and seeks adjournment to furnish reply. Adjourn. To come up for reply and arguments on the instant application on 10.06.2019 before D.B at Camp Court Swat.

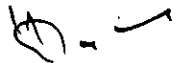
  
(M. Amin Kundi)  
Member  
Camp Court, Swat

  
(M. Hamid Mughal)  
Member  
Camp Court, Swat

10.06.2019

Mr. Mir Zaman Safi, learned counsel for the appellant present. Mian Ameer Qadir learned District Attorney for the respondents present. Representative of the department namely Rasheed Khan, DSP (Legal) is absent. Notice be issued to respondents and absent representative for reply and arguments on the instant application on 02.07.2019 before S.B at Camp Court Swat.



  
(M. Amin Khan Kundi)  
Member  
Camp Court Swat

  
(M. Hamid Mughal)  
Member  
Camp Court Swat

# FORM OF ORDER SHEET


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

Misc. Application No. 468/2018

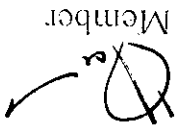
S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20/12/2018	<p>The application for restoration of appeal No. 318/2016 submitted by Mr. Muhammad Salim through Mr. Noor Muhammad Khattak Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This Misc. application be put up before DB-Swat. Bench on <u>07-03-19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-	15-01-19	

06.12.2018

Appellant absent. Learned counsel for the appellant absent. Mr. Usman Ghani learned District Attorney for the respondents present. Case called for several times but no one appeared on behalf of the appellant. Consequently the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.

  
Member

Camp Court Swat


  
Member

ANNOUNCED  
06.12.2018

03.07.2018

Appellant Mr. Muhammad Saleem in person present. Mr. Usman Ghani learned District Attorney for the respondents present. Appellant seeks time on the ground that his counsel is not in attendance. Granted. To come up for arguments on 04.09.2018 before D.B at camp court Swat.

  
Member

  
Chairman  
Camp Court, Swat

04.09.2018

Neither appellant nor his counsel present. Mr. Usman Ghani, District Attorney for respondents present. Case to come up for further proceedings/arguments on 05.11.2018 before D.B at camp court Swat.

  
Member

  
Chairman  
Camp Court Swat

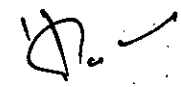
05.11.2018

Due to retirement of the Hon'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 05.12.2018 at camp court Swat.

05.12.2018

Appellant absent. Mr. Usman Ghani learned District Attorney present. Case called but none appeared on behalf of appellant. Adjourn. To come up for arguments on ~~06.11.2018~~ <sup>06.12.2018</sup> before D.B at camp court Swat.

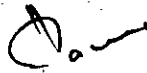
  
Member

  
Member  
Camp Court, Swat




04.1.2018

None present for the appellant. Addl. AG for the respondents present. To come up for arguments on 08.03.2018 before the D.B at camp court, Swat.




Member

  
Chairman  
Camp Court, Swat.

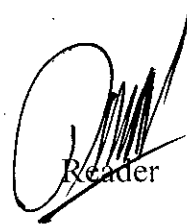
08.03.2018

Appellant present in person and Addl: AG alongwith Muhammad Wasil, SDFO for the respondents present. Counsel for the appellant has not turned up from Peshawar. Seeks adjournment. To come up for arguments on 08.05.2018 before the D.B at camp court, Swat.

  
Chairman  
Camp court, Swat

09.05.2018

The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 03.07.2018 before the D.B at camp court, Swat.

  
Reader

07.03.2017

Counsel for the appellant and Shah Zamin ASI alongwith Mr. Muhammad Zubair, Senior Government Pleader for the respondents present. Learned counsel for the appellant seeks adjournment to prepare rejoinder. To come up for rejoinder and final hearing on 03.07.2017 before the D.B at camp court, Swat.

09. 03.07.2017

Member  
Clerk of counsel for the appellant and Mr. Muhammad Zubair, District Attorney for the respondents present. Counsel for the appellant has sent an application for adjournment. Adjourned. To come up for rejoinder and final hearing on 06.11.2017 before the D.B at camp court, Swat.

Chairman  
Camp court, Swat

Member

Chairman  
Camp court, Swat

06.11.2017

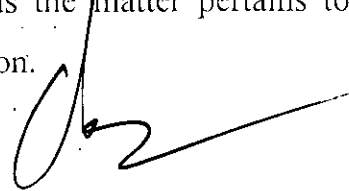
Appellant in person and Mian Amir Qadar, District Attorney alongwith Shah Zamin, ASI for the respondents present. Appellant seeks adjournment. To come up for arguments on 04.01.2018 before the D.B at Camp Court, Swat

Member

Chairman  
Camp court, Swat

20.05.2016

Clerk to counsel for the appellant and Assistant AG present. None present on behalf of respondents. Notice be issued to the respondents for written reply/comments for 3.8.2016 before S.B at Camp Court Swat as the matter pertains to the territorial limits of Malakand Division.



Member

03.08.2016

None present for the appellant as well as respondents. Notices be issued to the parties. Notices be issued to appellant, his counsel as well as respondents. To come up for written reply/comments on 10.11.2016 before S.B at camp court, Swat.



Chairman  
Camp court, Swat,

10.11.2016

Agent of counsel for the appellant and Mr. Amjad, ASI 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 07.03.2017 at camp court, Swat.



Chairman  
Camp court, Swat

26.4.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Head Constable when subjected to enquiry on the allegations of professional mis-conduct and was compulsorily retired from service vide order dated 23.12.2013 which was challenged before this Tribunal in service appeal No 197/2014 and vide judgment dated 10.6.2015 this Tribunal directed denovo enquiry which was accordingly conducted and appellant exonerated of the charges vide order dated 27.07.2015 but despite the orders of exoneration back benefits of the appellant were withheld where-against he preferred departmental appeal which was rejected 3.3.2016 and hence the instant service appeal on 30.03.2016.

That since the appellant has been reinstated in service due to no fault on his part as such withholding of back benefits from the appellant is an order against facts and law and therefore liable to be set aside.

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 20.05.2016 before S.B.

20.05.2016


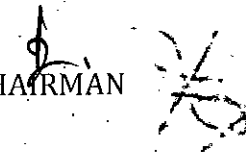

Appellant Deposited  
Security & Process Fee

Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No. \_\_\_\_\_ 318/2016 \_\_\_\_\_

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	30.03.2016	<p>The appeal of Mr. Muhammad Saleem resubmitted today by Mr. Noor Muhammad Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	31-3-16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>12.4.16</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	12.04.2016	<p>Junior to counsel for the appellant present. Seeks adjournment. Adjourned for preliminary hearing to 26.4.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

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

APPEAL NO 318 /2016

**MOHAMMAD SALIM**

**VS**

**POLICE DEPTT:**

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5.	Order	<b>D</b>	10.
6.	Inquiry report	<b>E</b>	11- 12.
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8.	Departmental appeal	<b>G</b>	19
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**APPELLANT**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

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

**APPEAL NO. 318 /2016**

K.W.P. Province  
Service Tribunal  
Diary No 298  
Dated 30-3-2016  
**APPELLANT**

Mr. Mohammad Salim, Head Constable No.12,  
Police Line, Dir Upper .....

**VERSUS**

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Deputy Inspector General of Police, Malakand Region at Saidu Sharif Swat.
- 3- The District Police officer, District Dir Upper.

..... **RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 7.9.2015 WHEREBY THE APPELLANT WAS RE-INSTATED INTO SERVICE BUT WITHOUT BACK BENEFITS AND AGAINST THE APPELLATE ORDER DATED 3.3.2016 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS**

**PARYER:** That on acceptance of this appeal the impugned order dated 7.9.2015 may kindly be modified to the extent of back benefits of the intervening period i.e. from the date of dismissal till re-instatement. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**  
**ON FACTS:**

- 1- That the appellant was initially inducted in the Police Department as Constable vide order dated 02-02-2002. That after appointment as constable the appellant started performing his duty quite efficiently and up to the entire satisfaction of his superiors.
- 2- That during service the appellant was promoted to the post of Head constable. That appellant while serving as Head Constable in the police station Wari District Dir Upper the appellant served with Show Cause Notice vide dated 22-10-2013 on the allegation that the appellant is guilty of gross

1000 10-100  
3/3/16

misconduct for attempting to bring political and out side influence directly to bear on District Police Officer Dir upper. That in response to the said show cause notice the appellant submitted his reply and denied the allegations with proof.

- 3- That vide order dated 23-12-2013 the major punishment of compulsory retirement was imposed on the appellant by the District Police Officer Dir Upper i.e. respondent No.3 without conducting regular inquiry in the matter and under a wrong law i.e. Police Rules 1975. Copy of the order is attached as annexure ..... **A.**
- 4- That feeling aggrieved from the impugned order dated 23-12-2013 the appellant filed Departmental appeal but the same was rejected on no good grounds vide order dated 07-02-2014. That then after the appellant filed service appeal in the Khyber Pakhtunkhwa Service Tribunal Peshawar and vide judgment dated 10-06-2015 the appellant was re-instated in to service and the Department was directed for fresh departmental inquiry against the appellant strictly in accordance with law. That it was further added in the said judgment that the Back benefits etc should be decided after the out come of fresh proceedings. Copies of the Departmental appeal and Service Tribunal Judgments are attached as annexure ..... **B and C.**
- 5- That on 27.7.2015 the appellant was re-instated into service for the purpose of denovo inquiry. That the inquiry committee conducted fresh Departmental inquiry against the appellant and recorded the statements of all concerned officers/ officials. That after conducting denovo inquiry, the inquiry committee submitted findings and conclusion in which the appellant was exonerated from the charges leveled against him. That on the said recommendation of inquiry committee the District Police Officer Dir Upper issued the impugned order dated 7.9.2015 whereby the appellant was re-instated into service but without back benefits. Copies of the order, inquiry report and impugned order are attached as annexure ..... **D, E and F.**
- 6- That appellant feeling aggrieved filed Departmental appeal before the respondent No.2 but the same was rejected by the appellate authority vide impugned appellate order dated 3.3.2016. Copies of the Departmental appeal and rejection order dated 3.3.2016 are attached as annexure ..... **G and H.**
- 7- That the appellant having no other remedy filed the instant appeal on the following grounds amongst others.



**GROUND:**

- A- That not allowing back benefits to the appellant inspite of exoneration is against the law, facts and norms of natural justice.
- B- That the respondents has not been treated the appellant in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and malafide manner while not allowing back benefits to the appellant.
- D- That the inquiry committee in his findings has fully admitted that the appellant is innocent and he has not committed any illegality and is entitle for the back benefits but inspite of that the appellant was ignored from back benefits by the respondent No.3.
- E- That appellant has fully entitle for the grant back benefits of the intervening period in light of the recommendation of the inquiry officer but the respondents ignored the appellant from back benefits.
- F- That the respondents discriminated the appellant on the subject noted above and as such the respondents violated the principles natural justice.
- G- That in similar nature cases the respondents allowed back benefits to other officials but in the case of appellant the respondents are not willing to do the same. Copy of the record is attached as annexure ..... **I.**
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly requested that the appeal of the appellant may be accepted as prayed for.

Dated: 28.3.2016

**APPELLANT**



**MOHAMMAD SALIM**

**THROUGH:**



**NOOR MOHAMMAD KHATTAK  
ADVOCATE**

Attention to Mr. Mahmood ul Hassan DSP  
(Legal)

A-4

**ORDER.**

This order is passed on the Departmental Enquiry against HC Muhammad Saleem No. 540 while posted in Police Station Wari.

Allegations leveled against the above named defaulter HC is that while posted in PS Wari, was guilty of misconduct for attempting to bring political and outside influence directly to bear on District Police and unwarranted interference in the financial matters of District Police. He also brought perpetual / unending political and outside influence to directly bear on District Police Officer, for the getting him-self re-posted as TA Clerk of District Police Upper Dir. He mala fidely, vindictively & criminally deleted the computerized database (for pay purposes) of the entire Constabulary from the Pay Branch.

In order to initiate proper Departmental Enquiry, Charge Sheet and Statement of allegations were served upon him. Dr. Muhammad Khurram Rasheed (PSP) District Police Upper Dir was appointed as Enquiry Officer. The Enquiry Officer in its finding report stated that the defaulter HC is liable / guilty and recommended him for Dismissal.

On the receipt of the finding report and other connected papers the same was perused, he served Final Show Cause Notice vide this Office Endst: No. 3939/EB Dated 22/10/2013, on the receipt of reply. The above named defaulter Official was called and heard in person in Orderly Room, but he could not defend himself. The enquiry papers were perused and his guilt has been proved beyond any shadow of doubt.

The Case in hand is fit for dismissal but keeping in view his long service & poor family background, the under signed is taking a lenient step against the defaulter HC MUHAMMAD SALEEM NO. 540 of this District Police i.e awarded PUNISHMENT COMPULSORY RETIRED with immediate effect. The Kit/other uniform articles shall immediately be deposited from him in the District Godown.

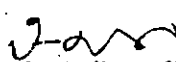
Order announced.

OB No 822

Dt: 23-12 /2013.

**ATTESTED**



  
District Police Officer  
Dir Upper.

بخدمت جناب DIG صاحب ملاکنڈ بمقام سید و شریف سوات۔

B-(5)

(اپیل برخلاف حکم جناب DPO صاحب دیر بالا بحوالہ OB نمبر 822

مورخہ 23.12.2013 جسکی رو سے من سائل اپیلنٹ محمد سلیم نمبر 540/HC کو

جبری ریٹائرمنٹ کی سزا سنائی گئی۔)

استدعا:- بمظوری اپیل ہذا حکم جناب DPO صاحب دیر بالا منسوخ و کالعدم قرار دیا جا کر سائل کو

مورخہ 23.12.2013 سے اپنے عہدہ پر بحال کرنے کا حکم صادر فرمایا جائے۔

جناب عالی! گزارش حسب ذیل ہے۔

1- یہ کہ سائل بمورخہ 2.2.2002 کو بحیثیت کنسٹیبل بھرتی ہو کر تاحال اپنے فرائض منصبی نہایت

ایمانداری سے انجام دی ہے۔ اور کبھی بھی سائل کے خلاف کوئی شکایت وغیرہ نہیں ہوئی ہے۔

2- یہ کہ سائل کو بحوالہ حکم نمبر 33/E-8931 مورخہ 26.9.2013 ضلع دیر بالا سے ضلع چترال تبادلہ کا

حکم جاری کیا گیا مگر سائل کو Relieve نہیں کیا گیا اور مورخہ 03.10.2013 کو شوکا ز نوٹس دیا گیا۔

3- یہ کہ سائل کو بمورخہ 10.10.2013 دفتر DPO صاحب نے بذریعہ فون آگاہ کیا کہ کل

11.10.2013 کو جناب DPO صاحب کو پیشی ہے۔ مگر جب سائل دفتر DPO صاحب کو بمورخہ

11.10.2013 پہنچا تو معلوم ہوا کہ DPO صاحب رات کے وقت تبادلہ کی صورت میں مانسہرہ

تشریف لے جا چکے ہیں اور اس طرح سائل کی DPO صاحب کو پیشی نہ ہو سکا۔ تو سائل نے شوکا ز نوٹس کا جواب

دفتر ہیڈ کلرک میں جمع کرایا۔

4- یہ کہ حکم جناب DPO صاحب محرزہ 23.12.2013 سے معلوم ہوا کہ سائل کے خلاف یکطرفہ انتقامی

کارروائی کی گئی ہے اور یہ امر واضح ہے کہ سابقہ DPO صاحب نے مورخہ 12.10.2013 کو فائینڈنگ

رپورٹ میں سائل کو گناہ گزار قرار دیا ہے حالانکہ DPO صاحب متذکرہ مورخہ 10.10.2013 کو DPO دیر

بالا کا چارج چھوڑ چکے تھے۔ (نقل چارج رپورٹ DPO صاحب لف ہے)۔ اس طرح حکم معترضہ میں سائل کو

ATTESTED

5- چارج شیٹ دینے کا ذکر ہے حالانکہ سائل کو کوئی چارج شیٹ موصول نہیں ہوا اور ایک فرضی نمبر دیا گیا ہے۔ یہ کہ سائل کو موجود DPO صاحب نے مورخہ 24.12.2013 کو پیشی کے لئے بلایا۔ سائل بوقت 15:30 بجے جناب DPO صاحب پیش ہو کر اپنے معروضات سے آگاہ کیا بعد میں معلوم ہوا کہ سائل کو مورخہ 23.12.2013 کو جبری ریٹائرمنٹ کی سزا پہلے سے سنائی گئی ہے۔ جو کہ قانون کی کھلی خلاف ورزی ہے اور سائل کو اپنا موقف پیش کرنے کا کوئی موقع نہیں دیا گیا۔

6- یہ کہ سائل کے خلاف جو الزامات لگائے گئے ہیں وہ سراسر منگھڑت غلط اور بے بنیاد ہیں۔ کیونکہ سائل کو بحوالہ آرڈر بک نمبر 439 مورخہ 6-8.2013 کو بے برانچ سے تھانہ واڑی تبدیل ہوا تھا سائل نے مورخہ 7.8.2013 کو اپنے جائزے تعیناتی پر حاضری کی رپورٹ دی ہے۔ اور بے برانچ میں تعیناتی کے دوران سائل کے خلاف اس قسم کا کوئی الزام نہیں تھا اور نہ بدوران انکوائری ایسی کوئی شہادت پیش کی گئی ہیں کہ سائل نے کوئی کوتاہی کی ہو۔

7- یہ کہ سائل کے خلاف کسی قسم کی کوئی انکوائری سرے سے نہیں کی گئی ہے بلکہ سابقہ DPO صاحب نے خود سائل کے خلاف الزامات لگا کر خود ہی اپنے آپ کو انکوائری آفیسر مقرر کر کے فائنڈنگ رپورٹ فرضی طور پر مرتب کی ہے۔ حالانکہ مورخہ 12.10.2013 صاحب موصوف بطور DPO ماہنامہ تعینات تھے نہ کہ DPO دیر بالا۔ مزید برآں مورخہ 12.10.2013 کو ہفتے کا دن اور چھٹی بھی تھی۔

یہ کہ سائل بالکل بے قصور ہے اور سائل کے مخالفین نے سابقہ DPO صاحب کے کان بھر کر سائل کے خلاف غیر قانونی طور پر برخلاف قانون انتظامی کارروائی عمل میں لائی گئی ہے۔ اور الزامات کے ثبوت کے طور پر کسی بھی قسم کی شہادت نہیں لی گئی ہے۔

لہذا استدعا ہے کہ منظور ری ایبل ہذا حکم جناب DPO صاحب مورخہ 23.12.2013 منسوخ قرار دیا جائے اور سائل کو اس تاریخ سے بمعہ جملہ مراعات اپنے عہدہ پر بحال کرنے کا حکم صادر فرمایا جائے۔  
تاحیات دعا گور ہوگا۔

العارض۔

سائل محمد سلیم ولد عرب خاں (مترجم) سابقہ HC سکنہ کاشن تھانہ گنڈاپار ضلع دیر بالا۔

ATTESTED



C-7

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
---------	----------------------------	--

1

2

3

1.

10.06.2015

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

Appeal No. 197/2014

Muhammad Saleem Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar etc.

JUDGMENT

PIR BAKHSH SHAH, MEMBER.- Appellant with

counsel (Mr. Noor Muhammad Khattak, Advocate) and Government Pleader (Mr. Muhammad Jan) for the respondents present. Arguments already heard.

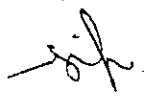
2. This appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 is against the impugned order dated 23.12.2013 of the competent authority whereby the appellant has been compulsorily retired from service and against the order dated 07.02.2014, whereby his departmental appeal has been rejected by the appellate authority.

3. According to record, charge sheet dated 04.10.2013 was issued to the appellant containing the following charges:-

"You Head Constable Muhammad Saleem No. 540 while posted in Police Station Wari were allegedly guilty of misconduct for attempting to bring political and outside influence directly to bear on District Police and unwarranted interference in the financial matters of District Police. This shows gross misconduct & prima facie malafide intent on your part."

**ATTESTED**

**ATTESTED**



\* 18\*

Charge sheet was also accompanied by statement of allegations which shows that Khurram Rashid (PSB) District Police Officer was appointed as enquiry officer who conducted the enquiry and submitted his enquiry report dated 12.10.2013, recommending therein that the appellant may be dismissed from service.

4. The learned counsel for the appellant submitted that the entire proceedings are against the spirit of law and natural justice for the reason that the competent authority who charge sheeted the appellant also conducted enquiry against the appellant. It was further submitted that on his transfer from the district, the enquiry officer relinquished charge on 12.10.2013 whereas the enquiry report was submitted after relinquishment of charge. It was also submitted that no evidence was collected by the enquiry officer and charges against the appellant are never proved. He submitted that the punishment is too harsh, therefore, the impugned orders may be set aside and the be reinstated into service.

5. The learned Government Pleader resisted the appeal on the ground that all codal formalities have been fulfilled and the impugned order shows that as the enquiry report was received by D.P.O Dir lateron, therefore, the same enquiry report cannot be discarded merely on this ground. He submitted that the appeal may be dismissed.

6. Arguments already heard. Record perused.

ATTESTED

*Signature*

ATTESTED

*Signature*

7. From careful perusal of the record, we have observed that charge sheet, statement of allegations as well as enquiry was conducted by one and the same officer and that also in a hurry. Hence, requirement of spirit of natural justice and law has been mutilated. The enquiry report does not show that statement of any witness has been recorded. It is evident from perusal of the record that no instance of political influence or corruption has been cited and the charges thus seems to be vague and unspecific nor substantiated through any evidence or probe. The record further reveals that after the impugned order of the competent authority, the appellant has made a well-pleaded appeal with cogent reasons and the appellate authority has not shown the reasons as to why departmental appeal of the appellant was not acceptable.

8. For the afore-stated reasons, the impugned orders dated 23.12.2013 and 07.2.2014 cannot be maintained. The same are set aside. The appellant is reinstated into service. The case is remitted to the respondent-department for fresh departmental enquiry against the appellant strictly in accordance with law. Back benefits etc. will be subject to the outcome of fresh proceedings. The appeal is disposed of accordingly in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
10.06.2015

Sd  
PIRBAKSH SHAH)  
MEMBER

Sd  
(ABDUL LATIF)  
MEMBER

**ATTESTED**

19-6-2015  
19-6-2015  
19-6-2015  
14-0-0  
19-0-0  
19-0-0  
19-6-2015

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**ORDER.**

D = (10)

HC Mohammad Saleem No. 540 was awarded punishment compulsory retire from service vide this office OB No. 822 Dated 23.12.2013. He made appeal to the competent authority and the competent authority rejected his appeal. Ex- HC Mohammad Saleem gone on appeal to the Honorable KPK Service tribunal Peshawar. On 10.06.2015 the Honorable tribunal ordered in the detail judgment that the afore- stated reasons the impugned orders dated 23.12.2013 and 07.02.2014 cannot be maintained. The same are set aside. The appellant is re-instated into service. The case is remitted to the respondent-department for fresh departmental enquiry against the appellant strictly in accordance with law. Back benefits etc. will be subject to the outcome of fresh proceedings. The appeal is disposed of accordingly in the above terms. In response of the judgment of Honorable tribunal HC Mohammad Saleem is hereby re-instated into service with immediate effect and separate fresh departmentally enquiry will be initiated against him shortly.

OB No. 605 <sup>H</sup>  
Dated 27/7 /2015.

*[Signature]*  
District Police Officer,  
Upper Dir. *[Signature]*

No. \_\_\_\_\_ /GB,

Copy of above is submitted to the:-

- (1) Worthy Regional Police Officer, Malakand at Saidu Sharif Swat for favor of information with reference to his office Endst: No. 5685/E, Dated 15.07.2015.
- (2) Copy to PA with the direction that a fresh enquiry may be initiated, SP Investigation Khan Akbar Khan and RI Inspector Mohy Ud Din appointed as enquiry Officer's.

**ATTESTED**

*[Signature]*  
District Police Officer,  
Upper Dir. *[Signature]*

OB NO. 105



NU 49 Ri Du (4)

350

E-11

Date: 26-8-15 فائنڈنگ رپورٹ

موضوع: ریسرچر ڈیپارٹمنٹ  
انٹرنیٹ سروسز ریسرچ ڈیپارٹمنٹ  
جناب عالی!

چارج شیٹ نمبری 87/SB-2386 مورخہ 29-7-2015 بر خلاف محمد سلیم HC معروض خدمت ہوں۔  
مذکورہ بحوالہ آرڈر بک نمبری 822 مورخہ 23-12-2015 کو محکمہ پولیس سے اس وجہ سے جبری ریٹائر کیا گیا۔ کہ بدوران تعیناتی بطور TA کلرک دفتر پے برانچ سے اس نے ماہانہ تنخواہ دیگر مرعات جملہ پولیس اہلکاران ضلع ہذا کمپیوٹر سے واش کیا۔ اور دفتر پے برانچ سے تھانہ واٹری ٹرانسفر ہونے کے بعد دوبارہ TA کلرک تعیناتی کیلئے آفسران بالا پر سیاسی سفارش کے ذریعے اثر سوخ استعمال کیا۔  
حکم مندرجہ بالا کے برخلاف اپیل پر عدالت عالیہ سروس ٹریبونل پشاور نے ہیڈ کنسٹیبل کے حق میں احکامات جاری کرتے ہوئے دوبارہ سروس پر بحال کرنے اور ساتھ ہی دوبارہ محکمانہ انکوائری کے حکم جاری کرنے جناب DPO صاحب نے من SP/INV صاحب دیر بالا RI صاحب پولیس لائن دیر بالا انکوائری مارک کیا۔

انکوائری میں محمد سلیم HC/540 کا بیان لیا جا کر جس نے اپنے بیان میں واضح کیا۔ کہ اسکا تبادلہ دفتر پے برانچ سے مورخہ 06-08-2013 کو تھانہ واٹری ہو کر احکامات کی تعمیل کرتے ہوئے اس نے مورخہ 07-08-2013 کو اپنی حاضری کی رپورٹ تھانہ واٹری میں کی۔ اور اس نے اپنی ٹرانسفر آرڈر کنسل کروانے کیلئے کسی سیاسی سفارش کا سہارا نہیں لیا ہے۔ بلکہ ٹرانسفر آرڈر کے دوسرے ہی دن اس نے حاضری کی رپورٹ تھانہ واٹری کی تھی۔ اور اس کا تبادلہ ٹینور پورا ہونے کے بعد دیگر کئی پولیس اہلکاران کے ایک ساتھ روٹین کے مطابق کیا گیا تھا۔ اور نہ ہی اس نے ملازمین کی تنخواہ دیگر مرعات کا ریکارڈ کمپیوٹر سے واش کیا ہے۔ اور نہ اس کے خلاف پے آفسر کی طرف سے کوئی شکایت تھی۔ جبکہ مدت ملازمت بارہ سال اس نے نہایت ایمانداری سے انجام دی ہے۔

اسی طری عبدالرشید جو اس وقت بحثیت پے آفسر تعینات تھا۔ اپنے بیان میں ایسے کسی بھی واقع سے لاعلمی ظاہر کی۔ جس میں پولیس اہلکاران کی ماہانہ تنخواہ کمپیوٹر سے واش کرنے کا ذکر موجود ہو۔ بلکہ اپنے بیان میں ہیڈ کنسٹیبل محمد سلیم 540 کو اپنے ایمانداری سے ڈیوٹی انجام دینے کا اقرار کیا ہے۔

S.C محمد نواز نے اپنے بیان میں بطور TA کلرک دفتر پے برانچ ٹرانسفر ہونے کے بعد اپنی حاضری کو جائے تعیناتی پر بروقت کرنے جبکہ HC محمد سلیم نے اپنی حاضری کی رپورٹ تھانہ واٹری میں کرنے کا بیان کیا۔ اور ملازمین کو مقررہ وقت پر تنخواہ کی ادائیگی کرنے کا اقرار کرتے ہوئے کمپیوٹر سے تنخواہ کے متعلق ریکارڈ ختم کرنے سے لاعلمی ظاہر کی۔

محمد دیار HC/192 متعہ دفتر پے برانچ نے بھی S.C محمد نواز کی بیان کی تائید کرتے ہوئے ملازمین کو بروقت تنخواہ اور دیگر مرعات کی ادائیگی کا اظہار کیا ہے۔ اور کمپیوٹر سے تنخواہ کے متعلق مواد ختم کرنے سے لاعلمی ظاہر کرتے ہوئے برطابق ڈسٹری بیوش رجسٹر درست طور پر تنخواہ تقسیم کرنے کا موقف اپنایا۔

ہیڈ کنسٹیبل، شاہانہ نمبر 219، دفتر ریجنل ایف ڈی، ایم ایچ آر، راولپنڈی، 2013

ATTESTED

B

تخوآہ کی ادائیگی سمیت دفتر پے برانچ کے کمپیوٹر سے ماہانہ تخوآہ دیگر مرعات کا ڈیٹا وااش کرنے کو حقیقت کے برعکس قرار دیا۔  
 انکوآئیری کاغذات اور گواہان کے بیانات سے پایا گیا۔ کہ ہیڈ کنسٹیبل محمد سلیم 540 کا تبادلہ دفتر TA کلرک سے تھانہ وااشی مورخہ 6-08-2013 کو ہو کر ہیڈ کنسٹیبل نے حکم کے ایک دن بعد مورخہ 07-08-2013 کو حاضری کی رپورٹ تھانہ وااشی میں کی۔ جس سے ظاہر ہوتا ہے۔ کہ اس نے کسی ٹال مٹول سے کام نہیں لیا ہے۔ اور نہ سروس ریکارڈ اور انکوآئیری فائل میں کوئی ایسی واضح شہادت موجود ہے۔ جس سے نتیجہ اخذ کیا جاسکے۔ کہ اس نے دوبارہ بطور TA کلرک تعینات ہونے کیلئے اپنا سیاسی اثر سوخ استعمال کیا۔ اسی طرح ہیڈ کنسٹیبل کے خلاف دیگر الزامات میں کمپیوٹر سے اہلکاران پولیس کی ماہانہ تخوآہ تقسیم کرنے کا مواد وااش کرنے کے متعلق الزامات کی بھی حقیقت سامنے نہیں آئی۔ کیونکہ پے آفسر عبدالرشید، محمد دیار 192، S.C، محمد نواز، اور ہیڈ کنسٹیبل شاہ خالد نے اپنے الگ الگ بیانات میں تمام پولیس اہلکاران کو ان کی ماہانہ تخوآہ بروقت حوالہ کرنے کا بیان دیا ہے۔

لہذا ہیڈ کنسٹیبل محمد سلیم 540 کے خلاف کوئی ٹھوس شہادت موجود نہ ہے۔ اور اس طرح سابقہ انکوآئیری ملاحظہ ہو کر جس کے مطابق آفسران بالا پر ہیڈ کنسٹیبل محمد سلیم 540 کے طرف سے کسی طرح سیاسی اثر سوخ کے واضح ثبوت عدم موجود پائے گئے۔ نقولات سابقہ انکوآئیری لف بند ہے۔

لہذا انکوآئیزی برخلاف ہیڈ کنسٹیبل محمد سلیم 540 فائل کرنے کی سفارش کی جاتی ہے۔

محمد الدین

ار۔ آئی پولیس لائن

خان اکبر خان

ایس۔ پی انوسٹی گیشن دیر بالا

ATTESTED



OFFICE OF THE  
DISTRICT POLICE OFFICER,  
UPPER DIR

\*\*\*\*\*

F - (13)

ORDER


This order is passed on the fresh Departmental Enquiry against Head Constable Mohammad Salim No. 12 of District Dir Upper in the light of Service Tribunal Appeal No. 197/2014 received from Registrar Khyber Pakhtunkhwa service Tribunal. The case was remanded back to District Police Officer, Dir upper for fresh Departmental Enquiry in connection with punishment awarded to the above named Head constable Mohammad Salim No. 12 while posted at Police Station PS Wari to be alleged for attempting to bring political and outside influence directly to bear on District Police and unwarranted interference in the financial matters of District Police Office, Upper Dir. He also brought perpetual / unending political and outside influence to directly bear on the District Police Officer, Upper Dir, for getting him-self re-posted as TA Clerk of District Police Upper Dir. He mala fidely, vindictively deleted the computerized database (for pay purpose) of entire constabulary from the PAY BRANCH.

He was issued Charge Sheet along-with statement of allegations Mr. Khan Akbar Khan SP/Investigation & Mr. Mohy Ud Din Reserve Inspector, Police Lines were appointed as Enquiry Committee. The Enquiry Committee conducted fresh departmental enquiry against the delinquent official and recorded the statements of all concerned officers. He has provided an ample opportunity to the delinquent official to defend the Charges level against him. After conducting proper departmental enquiry, the Enquiry Committee has submitted findings whereir they recommended filing the Enquiry Papers back benefits.

The finding report and enquiry papers have been perused, the defaulter head Constable Salim No. 12 has been heard in Orderly Room.

Therefore, I Mr. Sayed Israr-Ud-Din P.S.P District Police Officers, Upper Dir in exercise of power vide Rules 2 (iii) of Police Disciplinary Rules - 1975, exonerated him from the charges leveled against Head Constables Mohammad Salim No. 12 and enquiry against him is hereby filed. The period he spent out from 23.12.2013 to 03.08.2015 be treated as leave as kind due strictly in compliance to the order of Honorable Khyber Pakhtunkhwa Service Tribunal bated 10.06.2015.

Order announced.

  
District Police Officer  
Dir Upper.

ATTESTED

OB No. 703

Dated:- 7-9-2015.



**GOVERNMENT OF KHYBER PAKHTUNKHWA, OFFICE OF THE  
REGIONAL POLICE OFFICER, MALAKAND REGION,  
AT SAUD SHARIF SWAT**

H-20

From : The Regional Police Officer,  
Malakand, at Saidu Sharif, Swat.

To : The Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar,

No. 2203 /E, dated Saidu Sharif, the 3-3 /2016.

Subject: DETAIL OF ORDERLY ROOM HELD AT REGION OFFICE  
MALAKAND AT SAIDU SHARIF SWAT

Memorandum:

Detail of orderly room held in this office on 1<sup>st</sup> March, 2016 is submitted below, please:-

S. No	Name and Rank	District / Unit	Purpose of appearance	Order of the undersigned
1.	Inspector Shah Nadir Khan	Dir Upper	Application for transfer to Chitral District	Request is being considered ✓
2.	Inspector Bakht-e-Aqil	PTS Swat	Application for transfer back to Shangla Distt:	Kept pending till arrival of his transfer order from CPO Peshawar
3.	SI Farid Khan No. 440/M	Inv: Swat	Application for confirmation / promotion as Inspector	Deferred by the DPC held on 19/01/2016 being not completed the specific period prescribed for confirmation as SI
4.	SI Sultan Khan	Chitral	Appeal for restoration of increment	Appeal rejected
5.	ASI Usmani Gul	Shangla	Appeal for restoration of one year approved service.	Enquiry file is requisitioned.
6.	ASI Amin Khan	Dir Upper ✓	Appeal for restoration of annual increment	Punishment reduced to Censure.
7.	JC Aftab	Shangla	Request for transfer to Swat District	Request not accepted being transferred on complaint
8.	HC Muhammad Salim No. 12	Dir Upper	Appeal for back benefits	Appeal rejected
9.	HC Fazal Ayaz No. 952	Inv: Swat	Application for Ex-Pakistan Leave	Application will be considered on production of Visa
10.	Ex-HC Hamid Ullah No. 1564 (one Step promottee)	Swat	Appeal for reinstatement in service	Appeal rejected ✓

**ATTESTED**



11.	Constable Ibadullah No. 1002	Chitral	Appeal for seniority / Pay Scale	Punishment reduced to stoppage of 02 annual increments with accumulative effect.
12.	Ex-Constable Zahid Iqbal No. 2475	Swat	Appeal for reinstatement in service	Appeal rejected
13.	Ex-Constable Amir Rahman No. 2853	Swat	Appeal for reinstatement in service.	Case sent to SDPO Saidu Sharif for verification
14.	Constable Tariq Khan No. 2348	Swat	Appeal for restoration of one annual increment.	Appeal rejected

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

No. 2204-9 /E.

Dated 3-3- /2016.

Copy for information to the:-

1. District Police Officers, Swat, Shangla, Dir Upper and Chitral
2. Head of Investigation Swat.
3. Principal Police Training School, Malakand Swat.

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

**ATTESTED**

ORDER

My this Order will dispose off 05 denovo departmental enquiries of the same nature against the following Police officers/officials of this district Police:-

1. SI Mohib Ullah
2. ASI Inayat Zaman
3. HC Shaheed Ur Rehman
4. HC Sartaj Hussain
5. HC Wali Bat Khan

Facts are that the above named officers/officials had been compulsory retired on the allegations that they carry bad reputation for corruption and their service records carry numerous bad entries.

The above named officers/officials filed departmental appeals before the worthy Dy: Inspector General of Police Kohat Region Kohat for set-aside major punishment of compulsory retirement. Their major punishment of compulsory retirement had been converted into major punishment of demotions to their one step lower ranks vide Worthy Dy: Inspector General of Police Kohat Region Kohat orders even No. & date place on file.

Later on they knocked the door of Service Tribunal Khyber Pakhtunkhwa Peshawar. The Service Tribunal Khyber Pakhtunkhwa Peshawar vide his Order issued on the service appeals No. 756, 757, 758, 869 and 870 of the year 2014 announced dated 07.09.2015 and approval of Inspector General of Police Khyber Pakhtunkhwa Peshawar vide Memo: No. 5043/legal, dated 18.09.2015, the above named officers/officials have been reinstated in their next higher rank for conducting denovo enquiries.

Mr. Muhammad Ashraf, DSP Banda Daud Shah was appointed as enquiry officer to conduct denovo enquiries against the above mentioned Police officers/officials.

The Enquiry Officer submitted his finding reports and reported that the allegations regarding bad reputation for corruption had been established as a rumour which is found baseless and the allegations against the defaulter officers/officials have not been proved, placed on file. The Enquiry Officer recommended them for exoneration.

They were called and heard in persons in the Orderly Room held in this office.

From the perusal of finding reports of Enquiry Officer, facts on files and available record and adopted all codal formalities, recommendations of Enquiry Officer, the instant enquiries are hereby filed and they are exonerated from the charges leveled against them subject to provision of all back benefits etc.

OB No. \_\_\_\_\_

Dated: \_\_\_\_ / \_\_\_\_ /2016

District Police Officer, Karak

**OFFICE OF THE DISTRICT POLICE OFFICER, KARAK**

No. \_\_\_\_\_ /PA (Enq), dated Karak the \_\_\_\_ /2016

Copy of above is submitted for favour of information to:-

1. The Dy: Inspector General of Police Kohat Region Kohat.
2. The District Police Officer Kohat for necessary action.

District Police Officer, Karak

**ATTESTED**



I-22

10

23

OFFICE OF THE DEPUTY INSPECTOR GENERAL OF POLICE,  
CHARSADDA

ORDER

On perusal of de novo enquiry findings and recommendations of the enquiry officer, declared as innocent, the following officers have been reinstated in service vide this office finding No. 517-20/1.B, dated 11/03/2015. The arrears of pay and back benefits with immediate effect.

1. ASI Bahar Khan.
2. ASI Mukhtiar Khan.
3. ASI Tariq Mahmood.

OB No. 561  
Dated 26/06/2015

*[Signature]*  
Deputy Inspector General of Police  
Charsadda

No. 6615/18 P.A. dated Charsadda the 27/06/2015

Copy for information and necessary action to be

1. Deputy Inspector General of Police, Adm. & Gen. Secy. Charsadda
2. Ptg. Officer
3. BCO/SM

**ATTESTED**

*[Signature]*



(24)

(11)

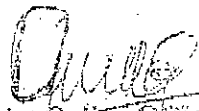
ORDER

In pursuance to the Hon'ble Khyber Pakhtunkhwa Services Tribunal Order dated 12.06.2014, coupling with unfitness of CPLA against the afore-stated order by the law committee vide observation dated 08.08.2014.

The following officials are hereby reinstated against their post with immediate effect.

1. ASI Bahar Ali.
2. ASI Mukhtiar Ahmad.
3. ~~Asst~~ Tariq Mehmood. - 188.

Denovo enquiry is being initiated vide separate order and question of back benefits shall be decided/considered after completion of denovo proceeding and seeking opinion from the DSP Legal as directed by the Hon'ble Services Tribunal in the above stated order dated 12.06.2014.

  
District Police Officer,  
Charsadda

No. S17-2015, dated Charsadda the 13/08/2014.

Copy for information and necessary action to the:

- 1) EC/Pay Officer.
- 2) All concerned.

**ATTESTED** *OB No. 1149*

*dated 15-8-014*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

Service Appeal No. 318/2016.

Ex. HC Muhammad Salim No. 12 r/o Upper Dir ..... Appellant.

**VERSUS**

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

**PARA WISE REPLY ON BEHALF OF RESPONDENTS.**

Respectfully Sheweth:

**PRELIMINARY OBJECTIONS.**

- 1) That the present service appeal is not maintainable in its form.
- 2) That the appellant has not come to this August Tribunal with clean hands.
- 3) That the present appeal is badly time barred.
- 4) That this Honorable Service Tribunal has no jurisdiction to entertain the present service Appeal.
- 5) That the appellant has got no cause of action.
- 6) That the appellant has suppressed the material facts from this Honorable Tribunal.

**ON FACTS:**

1. Pertains to record and needs no comments.
2. Pertains to record and needs no comments.
3. Incorrect. Proper departmental inquiry has been initiated against the appellant and all the proceedings have been conducted according to Law and Rules.
4. Pertains to record and needs no comments.
5. Incorrect, in compliance with the order/judgment of Service Tribunal dated 10.06.2015, a denovo inquiry was conducted against the appellant. The finding report of inquiry officer was endorsed by Respondent No. 03. The Respondent No. 03 rightly treated the intervening period i.e from 23.12.2013 to 03.08.2015 as leave. (Copy of inquiry report as annex "A" while reinstatement order is annex "B")

6. *Incorrect, the respondents rightly rejected the application of appellant as there was no iota of evidence for accepting the application.*
7. *Incorrect, the reply on the grounds are as under.*

**ON GROUND**

- (A). *Incorrect, the proceedings have been carried out in accordance with Law and based on natural Justice. As he has performed no duty, so not entitled for any salary.*
- (B). *Incorrect, the appellant has been treated in accordance with Law and Rules and thus no such violation has been committed by the respondents at all.*
- (C). *Incorrect, the respondents acted in accordance with Law and no malafide intention involved in the whole proceedings.*
- (D). *Incorrect. The competent authority is not bound to the recommendations of the inquiry officer.*
- (E). *Incorrect, the Appellant was re-instated into Service and the period spent out on enquiry is treated as leave without pay in accordance with Order of Honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar.*
- (F). *Incorrect, no such discrimination was done by respondents with Appellant nor violated the Principles of natural justice. All the proceedings have been conducted in accordance with Law and Rules.*
- (G). *Incorrect. Each and every case is to be decided on its own merits as per 2010 PLCCC.s 924.*
- (H). *The respondents also seeks leave of this Honourable Tribunal to rely on additional grounds at the time of arguments/hearing.*

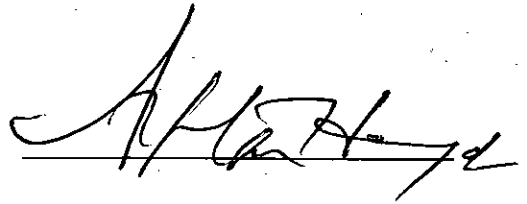
**PRAYER:**

It is therefore humbly prayed that on acceptance of this Para-wise reply the service appeal may graciously be dismissed along with costs.

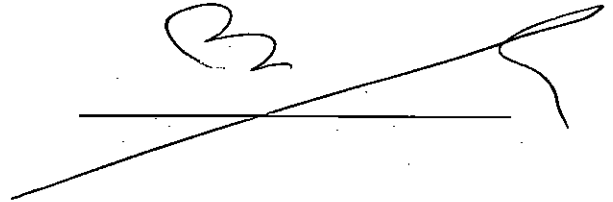
**Provincial Police Officer,**  
Khyber Pakhtunkhwa Peshawar.



**Regional Police Officer,**  
Malakand at Saidu Sherif, Swat.



**District Police Officer,**  
Dir Upper.



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

Service Appeal No. 318/2016.

Ex. HC Muhammad Salim No. 12 r/o Upper Dir ..... Appellant.

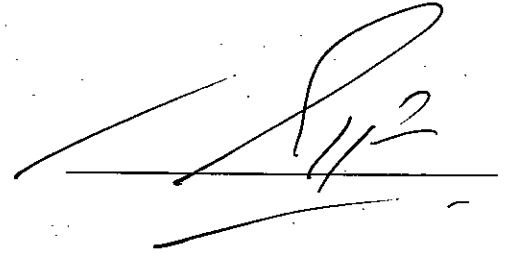
**VERSUS**

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

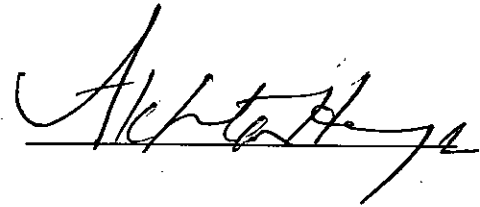
**AFFIDAVIT**

I, Amjad Khan ASI Legal Dir Upper , do hereby solemnly affirm and declare on oath that the contents of para-wise comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Tribunal.

**Provincial Police Officer,**  
Khyber Pakhtunkhwa Peshawar.



**Regional Police Officer,**  
Malakand at Saidu Sherif, Swat.



**District Police Officer,**  
Dir Upper.



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.**

Service Appeal No. 318/2016.

Ex. HC Muhammad Salim No. 12 r/o Upper Dir ..... Appellant.

**VERSUS**

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

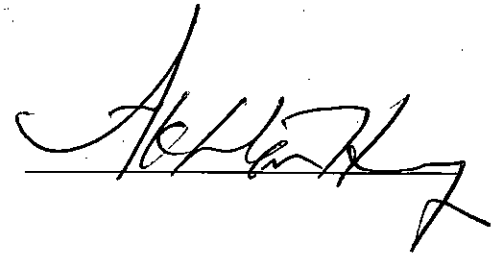
**POWER OF ATTORNEY**

We the undersigned do hereby appoint Mr. Amjad Khan ASI Legal Dir Upper to file para wise reply in the above mentioned case and pursue the case on each and every date. He is also authorized to file the relevant documents in connection with the subject case.

**Provincial Police Officer,**  
Khyber Pakhtunkhwa Peshawar.



**Regional Police Officer,**  
Malakand at Saidu Sherif, Swat.



**District Police Officer,**  
Dir Upper.

