

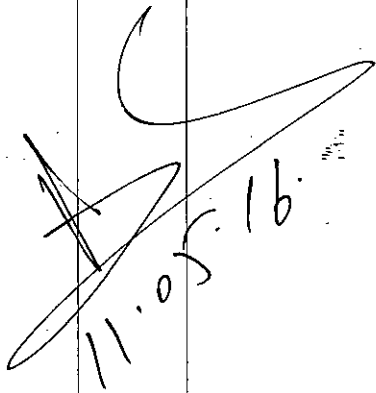
Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	11.05.2016	<p><u>BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR</u></p> <p>Appeal No. 1276/2014</p> <p>Saleem Khan Versus the Provincial Police Officer, KPK Peshawar and others.</p> <p><u>JUDGMENT</u></p> <p><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Appellant with counsel and Mr. Ziaullah, Government Pleader for respondents present.</p> <p>2. Mr. Saleem Khan Ex-constable hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the final order dated 29.08.2014 whereby his departmental appeal against original order dated 02.06.2014 was rejected.</p> <p>3. Brief facts giving rise to the present appeal are that the appellant was appointed as Constable vide order dated 02.06.2006 and while serving so he was charge sheeted for involvement in a criminal case registered vide FIR No. 125, dated 18.04.2010 under Sections 302/324/253/427/ r/w 7-ATA 3/4 Explosive Act and then dismissed from service where-against the appellant preferred Service Appeal No. 1610/2011 which was decided by this Tribunal on 20.12.2013 reinstating the appellant in service with option to the</p>

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respondents for denovo proceedings which were accordingly conducted and appellant compulsorily retired from service vide order dated 02.06.2014 where-against he preferred departmental appeal on 30.6.2014 which was rejected on 29.08.2014 and hence the instant service appeal on 26.09.2014.

4. Learned counsel for the appellant has argued that proceedings during denovo enquiry were not conducted in the prescribed manners as neither appellant was associated with the enquiry nor evidence recorded in the prescribed manners or chance of cross-examination extended to the appellant. He further argued that neither any association of the appellant with the alleged miscreant namely Khalid Usman was established nor any record regarding the involvement of the said Khalid Usman in any illicit activity was procured by the enquiry officer. That even opportunity of personal hearing and defence was not extended to the appellant. Learned counsel for the appellant has placed reliance on case-law reported as 2009-PLC(C.S) 19 (Supreme Court) and 2012-PLC(C.S)166 (Federal Service Tribunal).

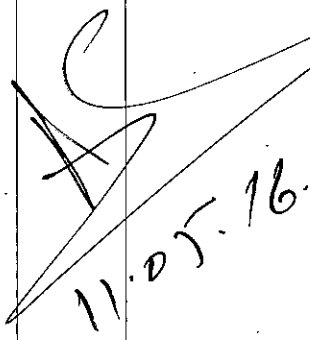
5. Learned Government Pleader argued that the enquiry was conducted in the prescribed manners and appellant was fully associated with the same and that the charges attributed to the appellant were established and as such the impugned order of compulsory retirement of the appellant is appropriate and in accordance with the law.

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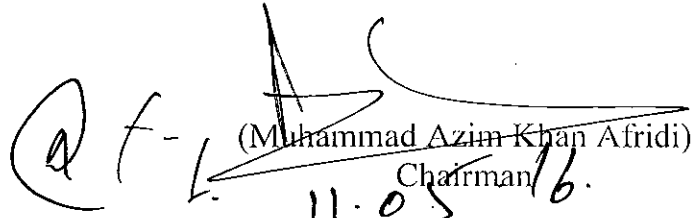
6. We have heard arguments of the learned counsel for the appellant and learned Government Pleader for the respondents and record perused.

7. Record placed before us including record of enquiry proceedings does not contain statement of any witness recorded by the enquiry officer. No material whatsoever is available on record to observe that the alleged miscreant namely Khalid Usman was involved in any criminal activity and that he was given shelter by the appellant. It is also not established from the record that the appellant was afforded any opportunity of cross-examining witnesses during enquiry including opportunity of personal hearing in the manners prescribed.

8. For the above mentioned reasons we are left with no option but to set aside the impugned original order and that of the appellate authority referred to above and as a consequence thereof reinstate the appellant in service, placing the respondents at liberty to conduct departmental enquiry afresh if need be, in the prescribed manners and affording opportunity of hearing including cross examining the witnesses and producing evidence in his defence, if any. The enquiry, if initiated, shall be conducted and concluded within a period of 2 months of the receipt of this judgment. In case the respondents failed to conduct and conclude the enquiry within the specified period of 2 months then the appellant shall be deemed to have been reinstated into service and his period of absence from service shall be deemed to have been

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treated as leave of the kind due. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.


(Muhammad Azim Khan Afridi)
Chairman/6.
11.05.16

(Abdul Latif)
Member

ANNOUNCED
11.05.2016

2009 P L C (C.S.) 19

Regular Enquiry / para 1

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J., Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ

NASEEB KHAN

Versus

DIVISIONAL SUPERINTENDENT, PAKISTAN RAILWAYS, LAHORE and another

Civil Petition for Leave to Appeal No.466 of 2008, decided on 26th May, 2008.

(On appeal from the judgment, dated 23-1-2008 passed by Federal Service Tribunal in Appeal No.397(R) of 2007).

Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---S. 5---Misconduct---Dismissal from service---Non-holding of departmental Enquiry--- Violation of principles of natural justice---Effect---Held, in case of imposing a major penalty, the principles of natural justice required that a regular enquiry was to be conducted in the matter and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

Pakistan International Airlines Corporation v. Ms. Shaista Naheed 2004 SCMR 316 and Inspector-General of Police, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 2007 ref.

Abdul Rehman Siddiqui, Advocate Supreme Court with Arshad Ali Chaudhry, Advocate-on-Record for Petitioner.

Qamar Zaman, Clerk, Litigation Branch for Respondents.

Date of hearing: 26th May, 2008.

JUDGMENT

IJAZ-UL-HASSAN KHAN, J.--- Through instant petition under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, Naseeb Khan, petitioner, seeks leave against judgment, dated 23-1-2008 of learned Federal Service Tribunal, Islamabad, whereby appeal of the petitioner, challenging his dismissal from service, has been dismissed, in limine, being barred by time.

2. Precisely stated facts of the case as gathered from the record are, that petitioner joined service of respondent-Department as Junior Commercial Assistant Booking (BS-5) on 26-3-1998 and

as such for 14 years. On 10-11-2001 due to demise of his wife, petitioner proceeded on leave. Petitioner was on leave when his father expired on 31-12-2001. According to the petitioner on 26-5-2002, he reported back but he was not allowed to resume duty and was issued a show-cause notice along with statement of allegations for remaining absent from duty without prior permission. The petitioner preferred representation/appeal which was rejected vide order, dated 13-5-2006. Feeling aggrieved, petitioner filed appeal before the Federal Service Tribunal, Islamabad which has been dismissed in limine, as stated above vide judgment impugned herein.

3. Mr. Abdur Rehman Siddiqui, learned Advocate, appearing for the petitioner argued that learned Tribunal has overlooked the settled law regarding limitation against a void order while dismissing petitioner's appeal as time-barred particularly when petitioner's departmental representation was not rejected on the question of limitation and that major penalty of dismissal from service has been imposed upon the petitioner without holding regular inquiry into the matter and without affording opportunity of defence to the petitioner.

4. We find substance in the submissions of learned counsel for the petitioner. It has been contemplated under section 5 of the Removal from Service (Special Powers) Ordinance, 2000 that in case of charge of misconduct as stipulated in section 3 of the Ordinance, a full fledge enquiry is to be conducted in order to give an opportunity to the civil servant to clarify his position. Section 5 of the Ordinance is reproduced below for facility sake:---

"Power to appoint an Inquiry Officer or Inquiry Committee.---(1) Subject to the provisions of subsection (2), the competent authority shall, before passing an order under section 3, appoint an Inquiry Officer or Inquiry Committee to scrutinize the conduct of a person in Government service or a person in corporation service who is alleged to have committed any of the acts or omissions specified in section 3. The Inquiry officer or as the case may be, the Inquiry Committee shall---

(a) communicate to the accused the charges and statement of allegations specified in the order of inquiry passed by the competent authority;

(b) require the accused within seven days from the day the charge is communicated to him to put in written defence;

(c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him; and

(d) hear the case from day to day and no adjournment shall be given except for special reasons to be recorded in writing and intimated to the competent authority.

(2) Where the Inquiry Officer or as the case may be, the Inquiry Committee is satisfied that the accused is hampering, or attempting to hamper, the progress of the inquiry he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as he, or it, deems proper in the interest of justice.

(3) The Inquiry Officer or as the case may be the Inquiry Committee shall submit his or its findings and recommendations to the competent authority within twenty-five days of the initiation of inquiry.

(4) The competent authority may dispense with the inquiry under subsection (1) if it is in possession of sufficient documentary evidence against the accused, or for reasons to be recorded in writing, it is satisfied that there is no need of holding an inquiry.

(5) Where a person who has entered into plea bargaining under any law for the time being in force, and has returned the assets or gains acquired through corruption or corrupt practices voluntarily, the inquiry shall not be ordered:

Provided that show-cause notice shall be issued on the basis of such plea bargaining to such person informing of the action proposed to be taken against him and the grounds of such action requiring him to submit reply within fifteen days of the receipt of the notice. On receipt of the reply, the competent authority may pass such orders as it may deem fit."

5. In case of imposing a major penalty, the principle of natural justice requires that a regular enquiry is to be conducted in the matter and opportunity of defence and personal hearing is to be provided to the civil servant proceeded against as held by this Court in the case of Pakistan International Airlines Corporation v. Ms. Shaista Naheed 2004 SCMR 316 and Inspector-General of Police, Karachi and 2 others v. Shafiqat Mehmood 2003 SCMR 2007.

6. Keeping in view the facts and circumstances of the case, we find that petitioner has been condemned unheard and major penalty of dismissal from service has been imposed upon him without adopting the required and mandatory procedure, resulting in manifest injustice.

7. In view of the above, this petition is converted into appeal and allowed accordingly. The impugned judgment of the Service Tribunal, Islamabad, is set aside and petitioner is reinstated in service. However, his intervening period shall be treated as leave without pay. The department may conduct a regular inquiry into the charges against the appellant, if so desired. No order as to costs.

H.B.T./N-9/SC

Order accordingly.

In case of major penalty, regular enquiry must. 1

2008 SCMR 130

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C. J., Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ

NASEEB KHAN----Petitioner

Versus

DIVISIONAL SUPERINTENDENT, PAKISTAN RAILWAYS, LAHORE and another---
Respondents

Civil Petition for Leave to Appeal No.466 of 2008, decided on 26th May, 2008.

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Abdul Rehman Siddiqui, Advocate Supreme Court with Arshad Ali Chaudhry, Advocate-on-
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Date of hearing: 26th May, 2008.

JUDGMENT

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(5) Where a person who has entered into plea bargaining under any law for the time being in force, and has returned the assets or gains acquired through corruption or corrupt practices voluntarily, the inquiry shall not be ordered:

Provided that show-cause notice shall be issued on the basis of such plea bargaining to such person informing of the action proposed to be taken against him and the grounds of such action requiring him to submit reply within fifteen days of the receipt of the notice. On receipt of the reply, the competent authority may pass such orders as it may deem fit."

5. In case of imposing a major penalty, the principle of natural justice requires that a regular

enquiry is to be conducted in the matter and opportunity of defence and personal hearing is to be provided to the civil servant proceeded against as held by this Court in the case of Pakistan International Airlines Corporation v. Ms. Shaista Naheed 2004 SCMR 316 and Inspector-General of Police, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 2007.

6. Keeping in view the facts and circumstances of the case, we find that petitioner has been condemned unheard and major penalty of dismissal from service has been imposed upon him without adopting the required and mandatory procedure, resulting in manifest injustice.

7. In view of the above, this petition is converted into appeal and allowed accordingly. The impugned judgment of the Service Tribunal, Islamabad, is set aside and petitioner is reinstated in service. However, his intervening period shall be treated as leave without pay. The department, may conduct a regular inquiry into the charges against the appellant, if so desired. No order as to costs.

H.B.T./N-9/SC

Order accordingly.

[Federal Service Tribunal]

Before Sayed Mehar Hussain Shah and M.A. Aziz; Members Syed ZAHIR SHAH

Versus

DIVISIONAL SUPERINTENDENT,

PAKISTAN RAILWAYS, KARACHI and 2 others .

Appeal No.330(K)(CS) of 2003, decided on 26th February, 2011.

Removal From Service (Special Powers) Ordinance (XVII of 2000)---

---Ss. 3, 5, 6 & 10---Service Tribunals Act (LXX of 1973), S.4---Removal from service---Major penalty of removal from service was imposed upon the appellant without issuing show-cause notice or holding a regular departmental inquiry---Ex parte action was taken against the appellant, whereby major penalty of removal from service was imposed upon him---Validity---Before awarding major penalty upon a delinquent employee, a regular departmental inquiry was necessary, where accused/employee was to be provided full chance of defence as enshrined in the maxim "audi alteram partem"; which was lacking in the case---Impugned order imposing major penalty of removal from service upon the appellant was set aside; he was ordered to be reinstated in service, with direction to the department to initiate and hold de novo departmental proceedings against the appellant by providing full chance to him to cross-examine the witnesses and to defend himself properly---Such proceedings would be initiated and completed within a period of 120 days--- Question of back benefits would depend upon the outcome of such proceedings.

2000 PLC (C.S.) 2044; PLD 2001 SC 980; 1980 SCMR 850; 1999 SCMR 841; 2002 SCMR 57 and 2003 PLC (C.S.) 395/514 ref.

Sanaullah Noor Ghouri for Appellant.

Ms. Sayeeda Bilquis for Respondents.

Date of hearing: 20th December, 2010.

JUDGMENT

SAYED MEHAR HUSSAIN SHAH, (MEMBER).--- The appellant through this appeal has challenged the order dated 30-7-2002 whereby major penalty of removal from service was imposed upon the appellant under the Removal from Service (Special Powers) Ordinance, 2000. Against the said penalty, appellant preferred a departmental appeal on 12-8-2002 which was rejected on 12-10-2002 and allegedly-obtained by the appellant on 1-10-2003; hence, this appeal. An application under section-5 of the Limitation Act has also been filed along with the appeal.

2. The main thrust of the arguments of learned counsel for the appellant was that major penalty of removal from service was imposed upon the appellant without issuing show cause notice or holding a regular departmental inquiry, which is not-legal and in support of his arguments, learned counsel relied on 2000 PLC (C.S.) 2044, PLD 2001 SC 980, 1980 SCMR 850, 1999 SCMR 841, 2002 SCMR 57 and 2003 PLC (C.S.) 395/514.

3. Learned counsel appearing for the respondents did not contest the above arguments, advanced on behalf of the appellant's side and left the matter before the Tribunal to decide the same in accordance with law.

4. We have heard the arguments of both sides and have carefully perused the material placed on record. So far as the point of limitation is concerned, we like to reproduce hereunder order recorded in diary of this Tribunal dated 5-4-2006:---

"5/4/2006.

Before: Qazi Muhammad Hussain Siddiqui and Mr. Rashid Ali Mirza, Members.

Present: Mr. Sanaullah Noor Ghouri, Advocate for the appellant. Syeda Bilquees, Advocate for the respondents.

Advocate for the parties are present. Heard them and perused the record. The contentions of the Learned Counsel for the appellant is that the appellant was removed from service vide order dated 30-7-2002. He had filed departmental appeal against said order well within time on 12-8-2002. His departmental appeal was rejected vide order dated 12-10-2002 a copy of the rejection order was 'conveyed' to him on 1-10-2003 when the appellant visited the office of the respondent No. 1.

It is not known why for more than one year the rejection order of the departmental appeal was not conveyed to the appellant, but then in the written comments, in para-11, the respondents themselves had admitted that - the appellant had attended the office on 1-10-2003 and had received the order of rejection of his departmental appeal. The respondents have not stated, if during the intervening period, they had sent a copy of the said rejection order to the appellant.

Under the circumstances, the appeal cannot but be declared to be within time. The appeal is within jurisdiction of the Tribunal. It is, therefore, admitted. Security Adjourned to 7-9-2006.

Sd/
MEMBER

Sd/-
MEMBER"

Since a Bench of this Tribunal had earlier took up the issue and admitted the appeal to be within time, therefore, issue of limitation has already been decided.

5. It has been stated in the memo. of appeal that appellant was granted leave, which was denied by the respondents in their comments, and being a controversial issue this could have been decided only when a regular departmental inquiry would have been conducted, which has not been done in this case. The ex parte action was taken against the appellant whereby major penalty of removal was imposed upon him. It has by now a well settled principle of law that before awarding major j penalty upon a delinquent employee, a regular departmental inquiry is necessary where the accused was to be provided full chance of defence as enshrined in the maxim 'audi alteram partem' which is lacking in this case.

6. The upshot of the above discussion is that the impugned order dated 30-7-2002 imposing major penalty of removal from service upon the appellant is set-aside as well as the appellate rejection order dated B 12-10-2002. The appellant is ordered to be reinstated in service. However, the respondent -- department is directed to initiate and hold de novo departmental proceedings against the appellant by providing full chance to the appellant to cross-examine the witnesses and to defend himself properly. Such proceedings shall be initiated and completed B within a period of 120 days from the date of receipt of a copy of this judgment. The question of back benefits shall depend upon the outcome of such fresh proceedings. No order as to costs.

7. Parties be informed accordingly.

H.B.T./S/FST

Order accordingly.

Regular inquiry

2007 S C M R 1643

[Supreme Court of Pakistan]

Present: Javed Iqbal, Actg. C.J. and Sardar Muhammad Raza Khan, J

Syed SAJJAD HAIDER KAZMI---Appellant

Versus

DIRECTOR-GENERAL (S&GAD) WAPDA and another---Respondents

Civil Appeal No.2745 of 2006, decided on 31st May, 2007.

(On appeal from the judgment, dated 12-10-2006 in Appeal No.228(L)(C.S.) of 2003 passed by Federal Service Tribunal, Islamabad).

(a) Punjab Removal from Service (Special Powers) Ordinance (IV of 2000)---

---Ss. 3, 5 & 10---Constitution of Pakistan (1973), Art.212(3)---Compulsory retirement from service---Negligence, charge of---Retirement of civil servant from service w.e.f. 9-10-2006 on attaining age of superannuation---Judgment of Service Tribunal, dated 12-10-2006 directing holding of de novo inquiry against civil servant---Validity---Supreme Court granted leave to appeal to consider, inter alia, contention of civil servant that after his retirement from service, Service Tribunal was not justified in directing holding of de novo inquiry against him.

Abdul Wali v. WAPDA 2004 SCMR 67 ref.

(b) Punjab Removal from Service (Special Powers) Ordinance (IV of 2000)---

---Ss. 3, 5 & 10---Compulsory retirement from service---Breaking out fire in hospital---Civil servant was charged to be responsible for faulty functioning of Fire Alarm System in hospital---Imposition of such penalty after dispensing with regular inquiry---Retirement of civil servant from service w.e.f. 9-10-2006 on attaining age of superannuation---Service Tribunal on 12-10-2006 partly accepted appeal of civil servant directing holding of de novo inquiry against him---Validity---Copy of report of preliminary inquiry had not been made available to civil servant, due to which he remained ignorant of exact nature of accusation and incriminating material relied upon therein---Civil servant had not been provided personal opportunity of hearing---Preliminary inquiry could not be equated to that of a regular inquiry---Regular inquiry should not have been dispensed with in view of contentions and controversial issues raised by civil servant in reply to show-cause notice---Competent authority had not examined such reply with diligent application of mind---Civil servant had since been retired, holding of de novo inquiry against him in absence of any lawful justification, would be of no use---Supreme Court set aside impugned judgment in circumstances.

Abdul Wali v. WAPDA 2004 SCMR 67 ref.

Ghulam Muhammad Khan v. Prime Minister of Pakistan and others 1996 PLC (C.S.) 868; Nawaz Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC 222; Basharat Ali v. Director Excise and Taxation Lahore 1997 SCMR 1543=1997 PLC (C.S.) 817; Syed Yaqoob Shah v. Xen PESCO (WAPDA) Peshawar PLD 2002 SC 667; Abdul Qayyum v. D.G. Project Manager Organization 2003 SCMR 1110 rel.

Mian Mahmood Hussain, Advocate Supreme Court for Appellant.

Ch. Muhammad Sharif, Advocate Supreme Court for Respondents Nos. 1 and 2.

Date of hearing: 31st May, 2007.

JUDGMENT

JAVED IQBAL, ACTG. C.J.--- This appeal with leave of the Court is directed against the judgment dated 12-10-2006, passed by learned Federal Service Tribunal (Lahore Bench) whereby the appeal preferred on behalf of appellant, has been partly accepted with the direction that de novo proceedings may be initiated against the appellant.

2. Briefly stated, the facts of the case are that "the appellant was posted as Caretaker of WAPDA Hospital Complex, Lahore. On 13-11-2002, a fire broke out on the 3rd Floor of the said Hospital and caused considerable damage besides resulting in the death of two patients. An inquiry Committee was set up to in the responsibility upon the officers/officials responsible for the tragic accident. The Inquiry Committee reached the conclusion that the appellant along with others were responsible for the faulty functioning of the fire alarm system" installed in the Hospital. On the basis of this Preliminary Inquiry Report, the appellant was served with a show-cause notice on 17-1-2003, under Removal from Service (Special Powers) Ordinance, 2000 on the following allegations:---

"A fire broke out on 3rd Floor of WAPDA Hospital Complex, Lahore on 13-11-2002, due to some electric short circuit in the fresh air blower system of AC circuit, due to which WAPDA sustained a tentative loss of Rs.16,00,000. The fire alarm system installed in WAPDA Hospital Complex, Lahore was not functioning properly-for which, he Syed Sajjad Haider Kazmi Sub-Engineer/Caretaker is responsible, as he failed to operate fire alarm system at the time of incident. "

The show-cause notice further stated that a formal inquiry had been dispensed with under section 5(4) of the Ordinance *ibid*. In his defence reply the appellant denied the allegations levelled against him and pleaded that the fire alarm system had been out of order since April, 2001 and that he had made several attempts to get it rectified through the authorities concerned, and further pointed out that there were fundamental faults in the design and installation of the said system. However, the Competent Authority did not accept the defence version and vide order dated 4-2-2003, imposed upon the appellant the major penalty of compulsory retirement from service. The appellant filed a departmental appeal dated 18-2-2003, before the General Manager (Admn.), WAPDA House, Lahore which was rejected vide order date 29-3-2003." The appellant approached the learned Federal Service Tribunal by way of appeal which has been partly accepted, hence this appeal.

3. Leave to appeal was granted by means of order dated 20-12-2006, which is reproduced hereinbelow for ready reference:---

"The learned counsel argued that the petitioner had already retired from service w.e.f. 9-10-2006, on attaining the age of superannuation and the office order dated 17-11-2006, was also issued by WAPDA (Establishment Directorate) accordingly. Therefore, the disciplinary proceedings could not be taken against him as laid down by this court in the case of Abdul Wali v. WAPDA 2004 SCMR 678. The Service Tribunal was not justified in directing the holding of a de novo inquiry against him.

(2) Leave to appeal is granted to consider the above and the other submissions. Since short

points are involved, office is directed to fix the main appeal for final hearing, on its present record, within a period of one year. However, parties may file additional documents with the leave of the court.

C.M.A. No. 1794/2006 (STAY MATTER)

Subject to notice, meanwhile further de novo proceedings shall remain stayed.

4. It is inter alia contended by the learned Advocate Supreme Court on behalf of appellant that disciplinary proceedings under the Punjab Removal from Service (Special Powers) Ordinance, 2000 cannot be initiated against a retired government employee and, therefore, the learned Federal Service Tribunal has erred while granting permission for de novo proceedings to the competent authority. It is next contended that the legal and factual aspects of the controversy have not been shared upon and decided by the learned Federal Service Tribunal which resulted in serious miscarriage of justice. It is also contended that in view of various controversial questions the regular inquiry could not have been dispensed with as it was essential to make a thorough probe which was not possible without having recorded the evidence. It is next contended that the appellant cannot be held responsible to keep the Fire Alarm System functional as it was neither his duty nor he was qualified to do so.

5. (i) Muhammad Sharif, learned Advocate Supreme Court entered appearance for respondent and supported the judgment impugned for the reasons enumerated therein with the further submission that the appellant was responsible to keep Fire Alarm System functional and his negligence resulted in a heavy loss and the appellant has rightly been held responsible after having a full-fledged inquiry. It is also argued that de novo proceedings could have been initiated against the appellant.

6. We have carefully examined the respective contentions as agitated on behalf of appellant and respondent in the light of relevant provisions of law and record of the case. We have minutely perused the judgment impugned. After having gone through the entire record we are of the view that various glaring illegities have been committed and the mandatory requirements as contemplated in the Punjab Removal from Service (Special Powers) Ordinance, 2000 have not been adhered to which resulted in serious miscarriage of justice. For instance in view of the conditions and controversial issues the regular inquiry should have not been dispensed with, even otherwise the copy of report of preliminary inquiry was never made available to the appellant and, therefore, he was not aware regarding the exact nature of accusation and the incriminating material relied upon in the inquiry report. Besides that personal opportunity of hearing was never afforded to the appellant. It is worth-mentioning that the learned Advocate Supreme Court on behalf of respondent had admitted before the Federal Service Tribunal that copy of preliminary inquiry was not made available to the appellant. It was also conceded that personal opportunity of hearing was not afforded which is not only in the violation of well-entrenched principles of natural justice but the law laid down by this Court in various judgments i.e. Ghulam Muhammad Khan v. Prime Minister of Pakistan and others 1996 P.L.C. (C.S.) 868, Nawaz Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others P.L.D. 1994 SC 222 concerning the principle of audi alteram partem and reasonable opportunity of hearing. As mentioned herein above a preliminary inquiry cannot be equated to that of a regular inquiry which was quite inevitable in view of the nature of accusation. In this regard we are fortified by the dictum laid down in case Basharat Ali v. Director Excise and Taxation, Lahore, 1997 SC MR 1543, 1997 P.L.C. (C.S.) 817, Zahoor Ahmed v. WAPDA 2001 SC MR 1560, Syed Iqbal Masih v. Xco P.L.S.C. (WAPDA) Peshawar P.L.D. 2002 SC 667, Abdul Qayyum v. D.C. Project Manager (Organization 2003 SC MR 1110).

7. In the same wake of events it has been observed that reply to show-cause notice has not been

examined with diligent application of mind by the competent authority. The following points ought to have been considered as mentioned in reply of show-cause notice submitted by the respondent:-

(2) Since we have no expertise for the repair/maintenance of this fault, therefore, we have been repeatedly requesting the Director (Security), WAPDA House, who were handling maintaining the similar Fire Alarm System at WAPDA House, to render the services of his office in order to check and repair the Fire Alarm System of WAPDA Hospital Complex Lahore. (Copies attached at Annexures 2 and 3), in which M.S. WAPDA Hospital Complex had also requested the Director Security to make necessary arrangements to deploy the concerned skilled staff to visit the WAPDA Hospital at regular intervals for the reliable and safe operation/maintenance of this vital system, but nothing was done practically in this regard from their end.

(3) Sir, it is also regretted to mention that we have shown our concern regarding non operation of this alarm system which could lead to any accident or loss to authority vide letter No. Hosp/30600/59/2298-2300 dated 22-8-2001. (Copy attached at Annexure "4").

(4) Sir, later on, as per advice of Director Security, WAPDA, we have contacted the Chief Engineer (ESC) WAPDA, Faisal Town, Lahore for help or to arrange the repair of this Fire Alarm System, vide letter No. Hosp/30600/59/8668-70 dated 3-9-2001. (Copy attached at annex-5, but they did not bother at all.

(5) As no wiring diagram/maintenance manual was handed over to WAPDA Hospital (Complex) Lahore by the Building Circle/Contractor. We also requested the concerned office vide letter No. Hosp/30600(59)875 dated 7-2-2002. (Copy attached at Annexure "6"), so that we could arrange the repair of this system from any other firm, but nothing has been provided up till now.

(11) It is worth-mentioning here that all the power cables/wiring is running openly in the false ceiling, whereas all the cables/wires should have been properly fixed running in the metallic conduits, as per standard Electrical Wiring Design. Similarly, Oxygen Gas Supply line (of copper) is also running openly with the electrical wires, which is a live fire hazard to ignite the fire/flame and, moreover the false ceiling made of wood and chipboard, which added fuel to the fire.

(12) It is very surprising to mention here that the Electrical Staff working under the Sub-Engineer (Electrical) who were operating/maintaining all the electrical system in WAPDA Hospital Complex, Lahore have been "outrageously put aside in by the inquiry Committee. Whereas the sub-standard wiring/cables system and their poor installation/maintenance was root cause of this said incident.

(13) Sir, it is also important to mention here that the Alarm System of WAPDA Hospital has its sensors installed in the corridor (in the same false ceiling) linked with the open Wires to the main signal processing panel installed in the telephone exchange in basement.

(15) Since, all these sensors are linked with the main processing panel at basement, so to give the signal through the electrical wires running in the same false ceiling haphazardly, this signal is processed in by the main processing panel, which, in return gives the signal to the concerned bell installed at the particular floor/area."

8. We are of the considered view that case of appellant has been mishandled and various glaring illegalities have been committed. The prescribed procedure has not been followed but on the

contrary action has been taken in a whimsical and arbitrary manner which cannot be appreciated. It is worth-mentioning that appellant has since been retired and, therefore, it would be of no use to initiate de novo proceedings without any lawful justification which is lacking in this case.

In sequel to above mentioned discussion, we are inclined to accept this appeal and resultantly the judgment of learned Federal Service Tribunal, up to the extent of holding de novo proceedings, is set aside.

S.A.K./S-36/SC

Appeal accepted.

13/1/16

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

Service Appeal No. __1276 /2014

Mr. Saleem Khan

V/S

Police Department.

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-5) All objections raised by the respondents are incorrect. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Incorrect. The service record of appellant is good which are available in office of the appellant.
- 2 Admitted correct by the respondents, so no comments.
- 3 Admitted correct by the respondents, so no comments.
- 4 Incorrect. The contents of Para-4 of appeal are correct.
- 5 Incorrect. The reply to the charge sheet of the appellant has already been attached with the appeal which is sufficient for proof.

- 6 Incorrect. The contents of Para-6 of appeal are correct.
- 7 Incorrect. All allegations against the appellant were baseless, therefore, the appellant denied all the allegations.
- 8 Incorrect. the penalty of compulsory retirement from service was imposed upon the appellant under police rules 1975 without chance of personal hearing, which is the violation of law and rules.
- 9 The rejection order was passed by the respondent department was not good faith.
- 10 Incorrect, while Para-10 appeal is correct.

GROUND:

- A) Incorrect. The impugned order dated 02.06.2014 and 29.08.2014 was passed in violation of law, rules and norms of justice.
- B) Incorrect, while Para-B of the Ground of Appeal is correct.
- C) Incorrect, while Para-C of the Ground of Appeal is correct.
- D) Incorrect. The contents of Para-D of the Ground of Appeal are correct.
- E) Incorrect. The appellant has not been treated under proper law of E&D Rules, 2011, despite he was a civil servant of the province.
- F) Incorrect. The penalty of compulsory retirement is very harsh which is against the law and rules.
- G) Incorrect. The appellant has already been acquitted in case of FIR, on the basis of which he was dismissed from service and subsequently he was compulsory retired.

H) Legal.

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

APPELLANT
Saleem Khan

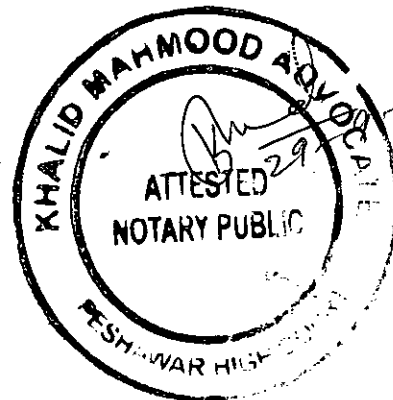
Through:



(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

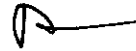

DEPONENT

Appeal No. 1276/2014
Mr. Saleem Khan.

5.

23.04.2015

Appellant in person and Mr. Arif Saleem, Constable
alongwith Asstt. AG for the respondents present. Written
reply/comments submitted. The appeal is assigned to D.B for
rejoinder and arguments on 30.09.2015 before D.B.

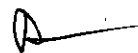


Member

30.09.2015

Appellant in person and Mr. Arif Saleem, HC alongwith Mr.
Muhammad Jan, GP for respondents present. Arguments could
not be heard due to learned Member (Judicial) is on official tour
to D.I. Khan, therefore, case is adjourned to

13-1-16 for arguments.



Member

13.01.2016

Counsel for the appellant and Mr. Arif Saleem, ASI alongwith
Addl: A.G for respondents present. Since the learned Member
(Judicial) is on leave therefore, case is adjourned to 11-5-16
for the same.



Reader

Appeal No. 1276/2014
Mr. Saleem Khan

3

Reader Note:

21.01.2015

Since 20th January has been declared as public holiday by the provincial government, therefore, case is adjourned to 02.03.2015 for the same.


Reader

02.03.2015

Appellant deposited Process fee & Security.



Counsel for the appellant present. Preliminary arguments heard and case file perused. Appellant was charge sheeted for being involved in FIR No. 125 dated 18.04.2014. that the appellant was dismissed from service on the basis of that charge sheet, against which the appellant filed appeal No. 1610/2011 in the august Tribunal and the same was decided on 20.12.2013 and the appellant was reinstated with the option to respondents for denovo enquiry. That on the basis of denovo enquiry charge sheet and statement of allegation were served to the appellant. The appellant was also asked to file reply after charge sheet was served on the appellant under Police Rules 1975. Appellant submitted his detailed reply to the charge sheet in time and denied all allegations in the reply to the charge sheet. That then again one sided inquiry was conducted in violation of Service Tribunal judgment and none of the statement was recorded or record examine in presence of the appellant. That on 02.06.2014 the penalty of compulsorily retirement from service imposed upon appellant under Police Rules, 1975 without chance of personal hearing. Appellant preferred departmental appeal on 30.06.2014 which was turned down vide order dated 29.08.2014 and hence the present instant appeal on 26.09.2014

Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 23.04.2015.




Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1276/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	27/10/2014	<p>The appeal of Mr. Saleem Khan resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	29-10-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>20-1-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Saleem Khan No. 734 Ex-Constable Distt. Police Kohat received today i.e. on 26.09.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Copy of Judgment mentioned in para-3 of the memo of appeal (Annexure-A) is not attached with the appeal which may be placed on it.
- 4- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1434 /S.T,

Dt 29/9 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR. 29/9/14

Mr. M.Asif Yousafzai Adv. Pesh.

Re-submitted after doing needful.

objections

Ju - Jai

1. Removed
2. Removed
3. Removed
4. Removed

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1276/2014

Saleem Khan

V/S

Police Deptt:

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S.NO.	DOCUMENTS	ANNEXURE	PAGE
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3.	copy of Service Tribunal judgment	B	6-9
4.	Copy of reinstatement order	C	10
5.	Copy of charge sheet	D	11
6.	Copy of statement of allegations	E	12
7.	Copy of reply to charge sheet	F	13-14
8.	Copy of final show cause notice	G	15
9.	Copy of reply to final show cause notice	H	16-17
10.	Copy of order dated 2.6.2014	I	18
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12.	Copy of rejection order	K	20
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Saleem Khan
APPELLANT
Saleem Khan

THROUGH:

M. Asif Yousafzai
M.ASIF YOUSAFZAI

Taimur Ali Khan
TAIMUR ALI KHAN

(ADVOCATES, PESHAWAR)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1276 /2014

Saleem khan No.734, Ex- constable

District Police, Kohat.

(Appellant)

VERSUS

~~1223~~
~~26/9/2014~~

1. The Provincial Police Officer, KPK, Peshawar.
2. The Dy, Inspector General of Police Kohat Region Kohat.
3. District Police Officer, Kohat.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 29.08.2014, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 02.06.2014 HAS BEEN REJECTED FOR NO GROUNDS.

PRAYER:

~~29/9/14~~

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 29.08.2014 AND 02.06.2014 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.

re-submitted to the
and filed.

~~29/10/14~~

R. SHEWETH:

1. That the appellant joined the police force on 2.6.2006 and completed all his due training etc and also have good service record throughout.
2. That the appellant was charge sheeted for being involved in Fir No.125, dated 18.04.2010 u/s 302/324/353/427/7ATA/3/4 Exp.Act. The appellant was dismissed from service on the basis of that charge sheet, against which the appellant filed Appeal No.1610/2011 in this august Tribunal and the same was decided on 20.12.2013 and the appellant was reinstated with the option to respondents for denovo proceedings.(Copies of charge sheet and judgment are attached as Annexure – A & B)
3. That on the basis of Hon'able Tribunal judgment the appellant was reinstated vide order dated 12.2.2014. (Copy of the reinstatement order is attached as Annexure-C)
5. That on the basis of denovo proceedings charge sheet and statement of allegations were served to the appellant. The appellant was also asked to file reply after charge sheet was served on the appellant under police rules 1975. (Copy of charge sheet and statement of allegation are attached as Annexure D&E).
6. That the appellant submitted his detailed reply to the charge sheet in time and denied all allegations in the reply to the charge sheet. (copy of reply to the charge sheet is attached as Annexure-F)
7. That then again one sided inquiry was conducted in violation of Service Tribunal judgment and none of the statement was recorded or record examine in presence of the appellant. Even then the appellant was held responsible by the inquiry officer, but no penalty was proposed for the appellant in his report.
8. That final show cause notice was served to appellant and the appellant submitted his detailed reply to the final show cause notice in time and denied all allegations in the reply to the final show cause notice. (Copy of final show cause notice and of reply to final show cause notice are attached as Annexure- G&H)

9. That on 02.06.2014 the penalty of compulsorily retirement from service was imposed upon appellant under police rules 1975 with out chance of personal hearing.(copy of order is attached as Annexure-I)
10. That against the order dated 02.06.2014 the appellant filed departmental appeal on dated 30.06.2014 but the same was also rejected for no good ground on 29.08.2014. (Copies of departmental appeal and rejection order are attached as Annexure J&K)
11. That now the appellant comes to this august Tribunal on the following grounds amongst others.

GROUNDS:

- A) That the impugned order dated 02.06.2014 and 29.08.2014 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 has been condemned unheard and has not been treated according to law and rules.
- C) That neither the appellant was associated with the enquiry proceedings nor has any statement of witnesses been recorded in the presence of appellant. Even a chance of cross examination was also not provided to the appellant which is violation of norms of justice.
- D) That the appellant was reinstated by the august Tribunal, but the respondent department again imposed penalty of compulsory retirement on appellant for the same allegations on which he was previously dismissed from the service
- E) That the appellant has not been treated under proper law of E&D Rules 2011, despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.

- F) That the penalty of compulsory retirement is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- G) That the appellant has already been acquitted in case of FIR, on the basis of which the appellant was dismissed from service, and now compulsory retired. Thus there remained no grounds for imposing penalty on appellant and as such the penalty order is liable to be set aside. (Copy of judgment of ATC is attached as Annexure-L)
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

Saleem Khan
APPELLANT
Saleem Khan

THROUGH:

M. Asif Yousafzai
M.ASIF YOUSAFZAI

Taimur Ali Khan
&
TAIMUR ALI KHAN

(ADVOCATES, PESHAWAR)

SERVICE

A

5

6-A

Better Copy

CHARG SHEET

I MUBARAK ZEB, DISTRICT POLICE OFFICER, KOHAT as competent authority, hereby charge you Constable Saleem Khan No. 731 committed the following irregularities:

Being involved and arrested in case FIR No. 125 dated 18/04/2010 U/S 302/324/353/427/7 ATA /3/4 Exp: Sub: Act/ 40A P PS Billitang

Your above act amounts to gross misconduct on you part punishable under the Removal from Service (Special Powers) Ordinance 2000.

And I, hereby direct you further as laid down in section- 60 of the said Ordinance to put in a written defence with in 7 days of the receipt of this charge sheet as to why you should not be awarded with one or more Major Punishment including Removal from Service as defined under section 3 (l) (c) of the said Ordinance and also stating at the same time as to whether you desire to be heard in person.

Your written defence, if any should reach to the Enquiry Officer/ Committees within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

A statement of allegation is enclosed.

Saleem Khan

ATTESTED TO BE TRUE COPY

DISTRICT POLICE OFFICER,
KOHAT

ATTESTED

B. ⑥

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1610/2011

Date of institution ... 23.9.2011
Date of judgment ... 20.12.2013

Saleem Khan S/o Sher Khan,
R/o Bora Ghari Police Station Bilitang,
District Kohat..... (Appellant)

VERSUS

1. District Police Officer, Kohat.
2. Deputy Inspector General of Police, Kohat Region, Kohat.
3. Home Secretary Govt. of Khyber Pakhtunkhwa, Peshawar (Respondents)

APPEAL AGAINST THE ORDER DATED 27/08/2011 PASSED BY
RESPONDENT NO. 2 VIDE WHICH THE APPEAL/REPRESENTATION OF
THE APPELLANT HAS BEEN REJECTED AND AGAINST THE ORDER
DATED 18/04/2011 PASSED BY RESPONDENT NO. 1 BY WHICH THE
APPELLANT HAS BEEN DISMISSED FROM SERVICE.

Mr. Muhammad Asif Yousafzai,
Advocate.

For appellant

Mr. Muhammad Adeel Butt,
Addl: Advocate General

For respondents

Mr. Qalandar Ali Khan
Mr. Muhammad Aamir Nazir

Chairman
Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:-

Saleem Khan, appellant, was

Constable in the Police Department, District Kohat, since 2.6.2006; and on 29.01.2011 he was served with charge sheet and statement of allegations, containing the charge of his involvement and arrest in case FIR No.125 dated 18.4.2010 under sections 302/324/353/427/7ATA/3/4 Exp:Sub: Act/40 AP P.S Bilitang. The charge sheet and statement of allegations were issued by the District Police Officer, Kohat i.e the competent authority (Respondent No.1); to which the appellant submitted reply in detail, therein taking the plea that army had arrested Khalid Usman during operation in the village but he was arrested from common *Hujra* of the village and not from the house of the appellant. The departmental/inquiry proceedings conducted through the Inquiry Officer (Mr.Ashraf Khan, SDPO Lachi), led to the final show cause notice

ATTESTED

and enthusiasm.

performing his duty

dated 21.3.2011 and impugned order of the competent authority (Respondent No.1) dated 18.4.2011 whereby the penalty/punishment of dismissal from service with immediate effect was imposed upon the appellant. The appellant preferred departmental appeal to the Deputy Inspector General of Police, Kohat Region, Kohat (Respondent No.2) on 27.4.2011 which too was rejected by the appellate authority vide order dated 23.8.2011, conveyed to the appellant vide endorsement dated 27.8.2011; hence this appeal on 23.9.2011, inter-alia, on the grounds that the appellant has been condemned unheard as a result of departmental/inquiry proceedings conducted in total violation of the prescribed law/rules as well as principles of natural justice. The appellant alleged that he was not directly charged in the FIR and there was no direct evidence against him but before the decision of the Criminal Court, he was held responsible for the charges in an arbitrary manner without taking into consideration his previous service record.

2. The appeal was resisted by the respondents who submitted their written reply/comments, wherein several legal and factual pleas were raised including that during service the appellant was awarded penalties/punishments on thirteen occasions besides the penalty/punishment of dismissal from service. The respondents defended the impugned action against the appellant on the ground that they exercised lawful authority as envisaged in law/rules and that after establishment of gross mis-conduct on the part of the appellant, he was awarded the penalty and further that the appellant was afforded opportunity to defend himself and he was also heard in person. They claimed that it was immaterial that the FIR did not contain name of the appellant and that he was charged subsequently which was quite lawful and also that his nexus with the militants/miscreants has also been proved/established.

3. The appellant filed rejoinder to the written reply/comments of the respondents, and also brought on record, alongwith rejoinder, copy of judgment of Judge, Anti Terrorism Court, Kohat dated 2.4.2012 whereby the appellant was acquitted of the charges levelled against him in the FIR.

ATTESTED

and enthusiasm.

he performing his duty

4. Arguments of the learned counsel for the appellant and learned AAG heard, and record perused.

5. The perusal of record would reveal that the appellant was charged, in the charge sheet & statement of allegation, for his involvement and arrest in case FIR No.125 dated 18.4.2010 under sections 302/324/353/427/7ATA/3/4 Exp:Sub: Act/40 AP P.S Billitang; but the impugned order of the competent authority dated 18.4.2011 shows his dismissal from service on the ground that "while posted at PP Darmalak PS Lachi Kohat, during an operation by the Army on 30.12.2010, an active miscreant namely Khalid Usman s/o Pio Khan R/O Darra Adam Khel was arrested from the house of above named defaulter constable and he was also arrested by the army authority but due to the member of this District Police Force later-on he was handed over to this district."

It is thus clear that the competent authority fell into a serious and fatal error while taking into consideration a charge which was not levelled specifically against the appellant in the charge sheet and statement of allegations served upon the appellant by him i.e. the competent authority. Likewise, the appellate authority i.e. D.I.G of Police, Kohat Region, Kohat (Respondent No.2) committed the same illegality/irregularity by taking into consideration that charge which was never communicated to the appellant in the charge sheet and statement of allegations. This illegality/irregularity would certainly render departmental/inquiry proceedings against the appellant not sustainable in the eyes of law.


6. Moreover, appellant has been acquitted of the criminal charges vide FIR No.125 dated 18.4.2010 under sections 302/324/353/427/7ATA/3/4 Exp:Sub: Act/40 AP P.S Billitang by the Judge Anti Terrorism Court, Kohat vide his order/judgment dated 02.4.2012. Since the appellant was charged only for his involvement and arrest in the case, his acquittal from a competent court of law would render the charge no more available against him. Needless to say that if the respondent-department was in possession of evidence/proof with regard to involvement of the appellant with militants/miscreants, the respondent-department should have specifically charged the appellant

~~ATTESTED~~


with those charges and should have then proceeded to prove the charges in the departmental proceedings for holding him guilty of the said charges. In short, neither the appellant was charged with having nexus with the militants/ miscreants nor, as such, provided opportunity to defend himself against the said charges.

7. Consequently, on the acceptance of the appeal, the impugned orders dated 18.4.2011 and 23.8.2011 are set aside, and appellant reinstated in service with consequential benefits; of course, with the remarks that the respondent-department would be at liberty to proceed against the appellant afresh, but strictly in accordance with law/rules, under the specific charge of having nexus with the militants/miscreants, and in that case also provide opportunity to the appellant to defend himself against the charges. There shall, however, no order as to costs.

ANNOUNCED
20.12.2013


(MUHAMMAD AAMIR NAZIR)
MEMBER


(QALANDAR ALI KHAN)
CHAIRMAN


ATTESTED

enthusiasm. hereafter he performing as constable

ORDER

Ex-Constable Saleem Khan No. 734 is hereby reinstated in service with immediate effect. In compliance of the judgment of apex Service Tribunal KPK dated 20.12.2013. De-novo departmental enquiry is hereby ordered to be conducted by DSP Legal Kohat in to the matter.


**DISTRICT POLICE OFFICER,
KOHAT**

OB No. 207

Date 12-2 /2014

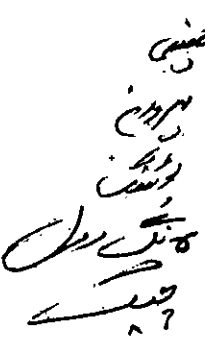
OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT.

No. 825-27/PA dated Kohat the 12-2 2014.

1. Copy of the above is forwarded to the DSP Legal Kohat.
2. PA/Reader/OASI for necessary action.


**DISTRICT POLICE OFFICER,
KOHAT**

689



No. 689
New

D = 11

-1-

CHARGE SHEET.

1. I **MUHAMMAD SALEEM, DISTRICT POLICE OFFICER, KOHAT**, as competent authority, hereby charge you **Ex-Constable Saleem Khan No. 734** Under Disciplinary Police Rules, 1975 as you have committed the following illegal act.

As per report of Headquarter 9 Division Kohat Cantt letter No. 0251/39/GS (Intelligent) dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Dara Adam Khel has been arrested by the Army from your house alongwith 02 pistols of different bore.

Your above act not only speaks of In-league with the miscreants but also indicates of providing assistance in their illegal activities.

2. By reasons of the above, you appear to be guilty of misconduct as defined in Rule 2 (iii) of Police Disciplinary Rules, 1975 and have rendered yourself liable to all or any of the penalties explained in rule 04 of the said rules.

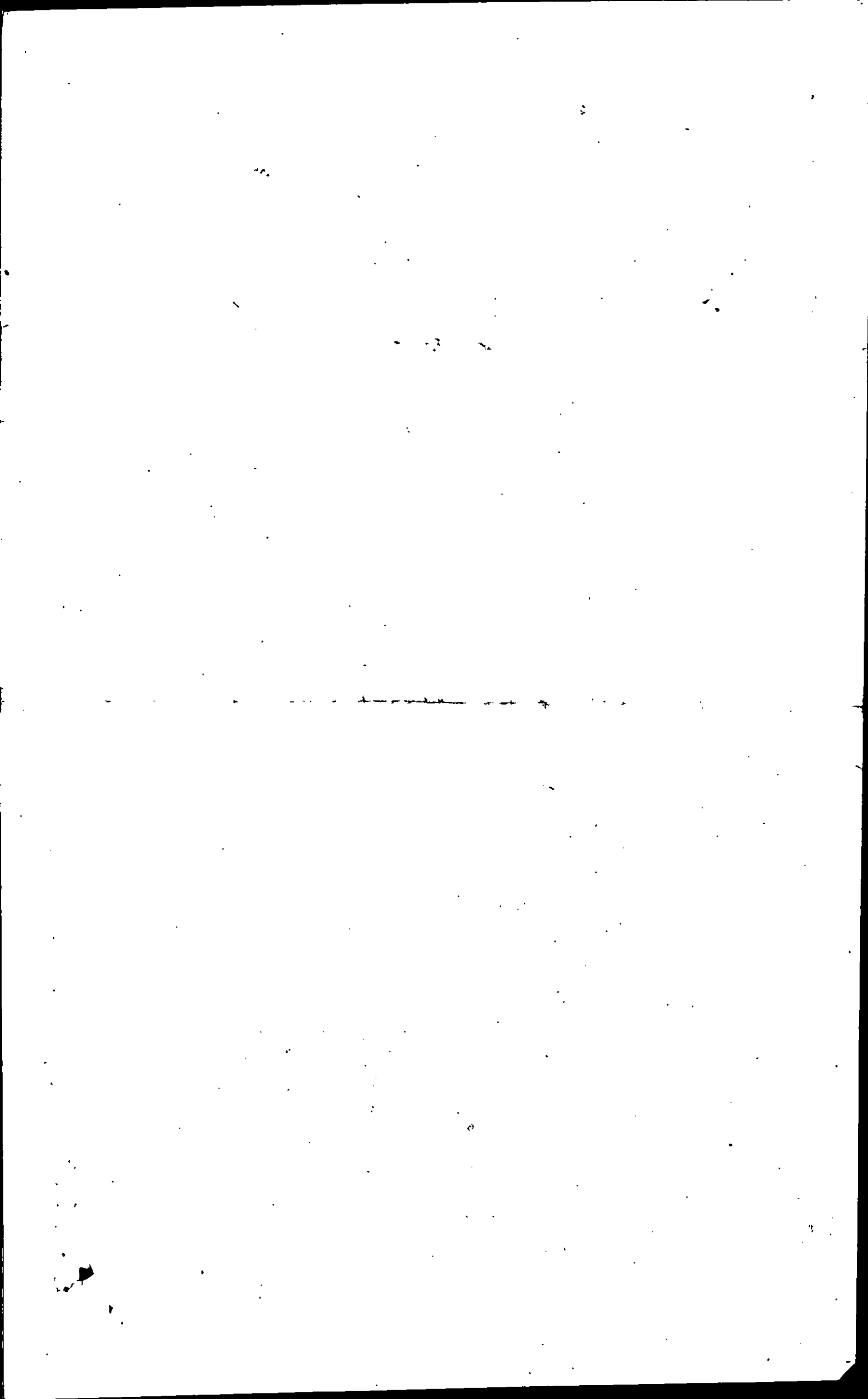
3. You are, therefore, required to submit your written statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

Your written defense if any should reach the Enquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

4. A statement of allegation is enclosed.

ATTESTED

**DISTRICT POLICE OFFICER,
KOHAT**



E
12

DISCIPLINARY ACTION

1. I, **MUHAMMAD SALEEM, DISTRICT POLICE OFFICER, KOHAT**, as competent authority, am of the opinion that you **Ex-Constable Saleem Khan No. 734** have rendered yourself liable to be proceeded against departmentally under Police Disciplinary Rule 1975 as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

As per report of Headquarter 9 Division Kohat Cantt letter No. 0251/39/GS (Intelligent) dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Dara Adam Khel has been arrested by the Army from your house alongwith 02 pistols of different bore.

Your above act not only speaks of In-league with the miscreants but also indicates of providing assistance in their illegal activities.

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations, **Mian Imtiaz Gul DSP Legal, Kohat** is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Disciplinary Rule-1975, provide reasonable opportunity of hearing to the accused official, record its findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

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

**DISTRICT POLICE OFFICER,
KOHAT**

No. 828-28/PA, dated 12-2 /2014.

Copy of above is forwarded to:-

1. **Mian Imtiaz Gul DSP Legal, Kohat**:- The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.
2. **Ex-Constable Saleem Khan No. 734**:- The concerned official/officer's with the directions to appear before the Enquiry officer, on the date, time and place fixed by the enquiry officer, for the purpose of enquiry proceedings.

ATTESTED

Handwritten scribbles and marks, possibly including the number '10' and some illegible characters.

Subject: CHARGE SHEET

R/Sir,

Kindly in connection with the attached charges sheet served upon me containing allegation of arrest of a militant namely Khalid Usman S/o Payo Khan R/o Zahor Kala FR Darra Adam Khel by the Army from Bora Gari on 30/12/2010, recovery of 02 Pistol from his possession and me in league with miscreant, it is respectfully submitted that:-

1. That since my enlistment in the Police Department as constable, I have not committed any irresponsible or objectionable act contrary to the discipline of the force and against the interest of the state.
2. In my village there is a common Hujra, where co-villagers have free access and exchange their view with each other.
3. I admit that Army had arrested Khalid Usman during operation in my village but he was arrested from common hujra of our village and not from my house.
4. That the fact submitted above is strengthened from the fact that the alleged miscreant is not my near or distant relative. In my house there are parda nashin Ladies and thus question of entering, taking my protection and shelter does not arise in view of the prevailing culture, tradition and religion.
5. The arrested miscreant has purchased landed property near my village and construction his house on the said landed property therefore, he comes therefore, he comes there off and on.
6. After the arrest of alleged miscreant I was also taken by the Army and after about six days interrogation handed over to Police and the Police of PS Billitang en-roped me in a case FIR No. 125 dated 18-04-2010 U/S 3/4 Exp Sub Act/302/321/353/42/77 ATA PS Billitang, arrested me in the case. When I was in Hawalat PS Billitang received the previous charge sheet and after re-Instatment I was received the present charge sheet.
7. On the following day I was sent to jail and there from by the orders of learned special judge ATC court I was released on 25-01-2011 on bail.
8. That I have property dispute with my cousins and in order to pressurized me the allegation may be off-shoot of the dispute.

ATTESTED

14

9. That the letter addressed by the Army may be rpid in the light of the facts given above and as such the honorable officers will find no fault on my part. I am innocent, I can not even imagine to have links with the militants. I am fully devoted to my department as will as to the state and would upheld its interest at the risk of my life.

10. I have been acquitted from the charges leveled against me in case FIR No. 125 dated 18-04-2010 U/S 3/4 Exp Sub Act/302/324/353/427/7 ATA PS Billitang on 03-04-2012.

That my departmental appeal before Chairman / Judge Service Tribunal Court was also accepted on 20-12-2013

It is requested that the charge sheet may please be withdrawn and I may please be heard in person. I shall be very much thankful.

Your's Obediently

Saleem Khan

No, 689.

Saleem Khan

Dated: 10-05-2014

ATTESTED

G 15

FINAL SHOW CAUSE NOTICE

1. I, Muhammad Saleem, District Police Officer, Kohat as competent authority under the Police Rule 1975 serve you Ex-Constable Saleem Khan No. 734 as follow:-

The consequent upon the completion of enquiries conducted against you by the Enquiry Officer, Mian Imtiaz Gul DSP Legal, Kohat.

2. On going through the findings and recommendations of the Enquiry Officer, the materials on the record and other connected papers, I am satisfied that the charge against you is proved and you have committed the following acts/omission specified in Police Rule 1975.

As per report of Headquarter 9 Division Kohat Cantt letter No. 0251/39/GS (Intelligent) dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Dara Adam Khel has been arrested by the Army from your house alongwith 02 pistols of different bore.

Your above act not only speaks of In-league with the miscreants but also indicates of providing assistance in their illegal activities.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Rule 1975.

4. You are therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. Copy of finding of the enquiry officer is enclosed.

ATTESTED

No. 2439 /PA

Dated 25-4-2014

DISTRICT POLICE OFFICER,
KOHAT

Subject: CHARGE SHEET

R/Sir,

Kindly in connection with the attached charges sheet served upon me containing allegation of arrest of a militant namely Khalid Usman S/o Payo Khan R/o Zahor Kala FR Darra Adam Khel by the Army from Bora Gari on 30/12/2010, recovery of 02 Pistol from his possession and me in league with miscreant, it is respectfully submitted that:-

1. That since my enlistment in the Police Department as constable, I have not committed any irresponsible or objectionable act contrary to the discipline of the force and against the interest of the state.
2. In my village there is a common Hujra, where co-villagers have free access and exchange their view with each other.
3. I admit that Army had arrested Khalid Usman during operation in my village but he was arrested from common hujra of our village and not from my house.
4. That the fact submitted above is strengthened from the fact that the alleged miscreant is not my near or distant relative. In my house there are parda nashin Ladies and thus question of entering, taking my protection and shelter does not arise in view of the prevailing culture, tradition and religion.
5. The arrested miscreant has purchased landed property near my village and construction his house on the said landed property therefore, he comes therefore, he comes there off and on.
6. After the arrest of alleged miscreant I was also taken by the Army and after about six days interrogation handed over to Police and the Police of PS Billitang en-roped me in a case FIR No. 125 dated 18-04-2010 U/S 3/4 Exp Sub Act/302/324/353/4277 ATA PS Billitang, arrested me in the case. When I was in Hawalat PS Billitang received the previous charge sheet and after re-Instatment I was received the present charge sheet.
7. On the following day I was sent to jail and there from by the orders of learned special judge ATC court I was released on 25-01-2011 on bail.
8. That I have property dispute with my cousins and in order to pressurized me the allegation may be off-shoot of the dispute.


ATTESTED

(15)

(17)

9. That the letter addressed by the Army may be read in the light of the facts given above and as such the honorable officers will find no fault on my part. I am innocent. I can not even imagine to have links with the militants. I am fully devoted to my department as well as to the state and would uphold its interest at the risk of my life.
10. I have been acquitted from the charges leveled against me in case FIR No. 125 dated 18-04-2010 U/S 3/4 Exp Sub Act/302/324/353/427/7 ATA PS Billitang, on 03-04-2012.

That my departmental appeal before Chairman / Judge Service Tribunal Court was also accepted on 20-12-2013

It is requested that the charge sheet may please be withdrawn and I may please be heard in person. I shall be very much thankful.

Your's Obediently

Saleem Khan

No, 689.

Saleem Khan

Dated: 10-05-2014

[Signature]
ATTESTED

I
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18

ORDER

This order is passed on the departmental enquiry against Constable Saleem Khan No. 734 of this district Police under Police Rule 1975.
689

Brief facts of the departmental enquiry are that as per report of Headquarter 9 Division Kohat Cantt letter No. 0251/39/GS (Intelligent) dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Dara Adam Khel has been arrested by the Army from his house alongwith 02 pistols of different bore.


His above act not only speaks of In-league with the miscreants but also indicates of providing assistance in their illegal activities.

He was served with charge sheet/summary of allegations and Mian Imtiaz Gul DSP Legal Kohat was appointed as Enquiry Officer to proceed against him departmentally. The enquiry officer has submitted his findings, and stated that involvement of defaulter official in such like activities is not permissible under the Rules. Being member of police department he is not supposed to have developed relationship with a person who was stated to be involved in anti state activities. As such the allegation has been established against him.

In-Spite of this he was served with Final Show Cause Notice. His reply is perused and found un-satisfactory therefore; the undersigned took a departmental action against him and awarded a major punishment of Compulsory Retirement under Police Rules 1975 with immediate effect.

OB No. 714
Date 02-6-2014


**DISTRICT POLICE OFFICER,
KOHAT**


ATTESTED

درخواست بمراد نوکری بحال کرنے و وادرسی

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

- ۱۔ یہ کہ سائل کو مورخہ 16-01-2011 کو بحوالہ علت نمبر 106، ایف، آئی، آر درج شدہ مورخہ 18-04-2010 مجرم
 - 302,324,353,427,PPC/7ATA,3/4 EXP/SA-40A تھانہ ملی تنگ میں ناجائز طور پر ملوث کیا گیا تھا۔
 - ۲۔ یہ کہ سائل کو عدالت کے فیصلہ ہونے سے قبل ٹکٹ سے برخاست کیا گیا تھا۔
 - ۳۔ یہ کہ سائل مورخہ 02-04-2012 کو ATC کوہاٹ سے باعزت طور پر بری ہوا۔ (فیصلہ عدالت لطف درخواست ہذا ہے)
 - ۴۔ یہ کہ سائل نے سروس ٹریبونل خیبر پختونخواہ میں اپیل دائر کی۔
 - ۵۔ سروس ٹریبونل خیبر پختونخواہ نے مورخہ 20-12-2013 کو سائل کو سروس پر بحال کرنے کا حکم صادر فرمایا۔ (فیصلہ عدالت لطف درخواست ہذا ہے)
 - ۶۔ یہ کہ سائل کو مورخہ 14-02-2014 کو سروس پر بحال کیا گیا، سائل نے پولیس لائن کوہاٹ میں حاضری کی رپورٹ کی۔
 - ۷۔ سائل کے خلاف DPO کوہاٹ نے دوبارہ انکوائری کرنے کا حکم کیا، DSP ایگل کو انکوائری افسر مقرر کیا۔
 - ۸۔ یہ کہ انکوائری افسر نے من سائل کو انکوائری میں قصور وار ٹھہرایا۔ اور DPO کوہاٹ نے مورخہ 03-06-2014 کو ملازمت سے جبری ریٹائر کرنے کا حکم صادر کیا۔
 - ۹۔ یہ کہ سائل بالکل بے گناہ ہے، سائل پہلے بھی اس ناکردہ جرم سے انکاری تھا۔ اور اب بھی حلفاً کہتا ہوں کہ میں بے گناہ ہوں۔
- لہذا بذریعہ درخواست استدعا ہے کہ سائل کی غریبی اور لاچاری کو مد نظر رکھتے ہوئے سروس پر بحال کرنے کا حکم صادر فرمایا جائے۔
- سائل تاحیات جناب کی درازی عمر اور اقبال بلندی کے لئے دعا گو رہے گا۔

مورخہ 30 Jun, 2014

ارض

salum Khan
30/6/2014

سابقہ کانسٹیبل سلیم خان
نمبر 689
ڈسٹرکٹ پولیس، کوہاٹ

ATTESTED

ORDER.

K (20)

This order is passed on departmental appeal, moved by Ex-Constable Saleem Khan No. 689 of Kohat district Police against the punishment order of DPO Kohat vide O.B No. 714, dated 02.06.2014, whereby he was compulsory retired from service. The appellant has to set-aside the impugned order and reinstatement in service.

Facts arising of the case are that the appellant was served with charge sheet alongwith statement of allegations to the effect that he was in-league with miscreants and one Khalid Usman miscreant s/o Payo Khan r/o Zor Kalay, Dara Adam-Khel was arrested from his house. The appellant was also arrested and to the court in case FIR No. 125, dated 18.04.2014 U/Ss 3/4-ESA / 302/324/353/427 PPC / 7-ATA, Police Station Billitang Kohat. Proper departmental enquiry was conducted against him which resulted into his dismissal from service vide O.B No. 261, dated 18.04.2011.

Feeling aggrieved, he filed a departmental appeal before this office, which was rejected vide order dated 27.08.2011. Therefore, he approached to KP Service Tribunal. In pursuance of Judgment dated 20.12.2013, he was reinstated in service and proceeded against denove departmentally, which resulted into his compulsory retirement from service vide the competent authority (DPO Kohat) above mentioned order.

Now, the appellant filed the instant departmental appeal against the said order and requested to set-aside the impugned order and reinstatement in service on the grounds of his innocence.

The appellant was called in Orderly Room held in this office on 27.08.2014 through DPO Kohat, but he did not appear.

I have gone through the available record, which indicates that serious allegations containing the charges of his involvement in case FIR No. 125, dated 18.04.2014 U/Ss 3/4-ESA / 302/324/353/427 PPC / 7-ATA, Police Station Billitang Kohat have been leveled and proved against him beyond any shadow of doubt. Regarding his acquittal in the above case, the Judgment of Hon'able Anti-Terrorism Court Kohat indicates that the appellant has not been acquitted honorably. Moreover, the record further indicates that the appellant has also been charged in a moral turpitude case vide FIR No. 260, dated 06.08.2014 U/S 367/377-A/382/109/34 PPC Police Station Billitang Kohat.

In view of the above, I came to the conclusion that the appellant is a criminal and his retention in a disciplined force shall earn a bad name to the department. The DPO Kohat has taken a lenient view despite of appellant's 08-years service, for which he did not deserve, in view of his conduct.

Therefore, I do not seem to interfere into the order passed by the competent authority. Consequently, the appeal of Ex-Const: Saleem Khan No. 689 is hereby rejected and order passed by DPO Kohat is justified and upheld.

(DR. ISHTIAQ AHMAD MARWAT)

By: Inspector General of Police,
Kohat Region, Kohat.

No. 7985-86 /EC, dated Kohat the 29/8 /2014.

Copy to the District Police Officer, Kohat for information and necessary action w/r to his office Memo: No. 12856/LB, dated 22.07.2014. His Fauji Missal is enclosed herewith.

✓ 2.

Appellant Saleem Khan No. 689 r/o Baura Garhi PS Billitang Kohat.

~~ATTESTED~~

Placed entry in...

(DR. ISHTIAQ AHMAD MARWAT)

21

State versus Saleem Ichanete
FIR No - 125 - Date 18/9/2010
U/s - P. 302-304-353-42
3/4 EXP - 257-40A - 7ATA
P. station - Bilal tungc.

(23) 02.04.2012.

Accused Salim Khan on bail while accused Inayatullah in custody along with their counsel and PP for the State present. PW Zulfat Ali Shah ASI, Jama Khan constable, Umer Sadique HC and Aslam Khan inspector present and examined while rest of the PWs were abandoned by prosecution being unavailability.

Learned defence counsel submitted application u/s 265-K Cr. P.C for the acquittal of the accused, notice of the same was given to learned PP for the State for today.

I have heard arguments and have gone through file. Perusal of the report and statements collected during investigation reveals that none was charged or even suspected for the commission of the offence. Chalan against unknown person was submitted when the army personnel picked up accused Salim and one Bilal later on proved to be Kahlid Usman and thereafter Salim was handed over to police with the direction that he was involved in the commission of the offence. There is no scintilla of evidence to connect any person with the commission of offence. No evidence what so ever has been collected that either Salim accused or other were seen near the spot before the occurrence, at the time of occurrence or after the occurrence. It is on record that Inayatullah was confined in police lock up at the time of occurrence. It runs counter to the ordinary human nature that Inayatullah will have put his own life at his stake by



e.T.C
ATTESTED TO BE TRUE COPY

EXAMINER
03-4-12

AGENCY, ANTI-TERRORISM COURT,
KHYBER PAKHTUNKHWA

ATTESTED



22

making a confession either in the PS or in the vicinity of the PS. There is no confession of any of the accused. There is no direct or circumstantial evidence at any stage to warrant conviction of the accused. neither the injured nor the legal heirs of the deceased have come forward to rise finger against any of the accused therefore I have left no option but to accept the application and acquit the accused facing trial of prosecution charges. Accused Salim is on bail and shall be discharged from the liabilities of bail bond while accused Inayatullah is in custody in the present case. He be treated as released in the instant case because he is already sentenced undergone in another case. He be kept behind the bar in that case. There is good prima facie case against absconding accused namely Ajmal s/o Kalam Khan r/o Dhari Banda, Kohat, Dilawar s/o Kalam r/o Dhari Banda, Kohat, Hasam ud Din s/o Nabi Gul r/o Orakzai Banda Kharmatu, Muhammad Janan alias Maju s/o Rahim Gul r/o Orakzai Banda Kharmatu, Fahim s/o Said Habib r/o Bilitang, Kohat. Perpetual NBW of arrest be issued against them and their names be entered in the Register of proclaim Offenders. Case property, if any, be kept intact till the arrest and trial of the absconding accused. file be consigned to R/Room after compilation and completion.

Announced:
02.04.2012

(Anwar Hussain)
Judge, Anti-Terrorism Court,
Kohat

etc
ATTESTED TO BE TRUE COPY
EXAMINER
03-4-12
ANTI-TERRORISM COURT,
KOHAT

ATTESTED

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal, Peshawar

Saleem Khan

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt.

(Respondent)
(Defendant)

I/We Saleem Khan

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate, Peshawar**, ^{by Taimur Ali Khan} to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

Saleem Khan
(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Hyber Bazar Peshawar.
Ph. 091-2211391-
0333-9103240

TAIMUR ALI KHAN
Advocate

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

Service appeal No. 1276/2014

Saleem Khan No. 734 Ex-Constable Appellant.

VERSUS

Provincial Police Officer,
Khyber Pakhtunkhwa and others Respondents.

Parawise comments on behalf of respondents.

Respectively Sheweth:-

Parawise comments on behalf of respondents are submitted as under:-

Preliminary objections:-

1. That the appeal is not maintainable in the present form.
2. That the appellant has got no cause of action.
3. That the appellant has not come to this Hon: Tribunal with clean hands.
4. That the appeal is badly time barred.
5. That the appeal is bad for misjoinder of unnecessary parties and non-joinder of necessary parties.

Reply on Facts:-


1. Pertains to record. However, the service record contains adverse entries.
2. Correct.
3. Correct to the extent of re-instatement and de-novo enquiry.
4. That proper de-novo departmental enquiry was conducted in compliance with the judgment of the honorable Tribunal in which the allegations have established. Copy of charge sheet, finding report, final show cause notice an annexure A, B, C.
5. Pertains to record.
6. Pertains to record.
7. Correct to the extent of Final show cause and reply only. During enquiry the allegations were established.
8. That allegations of serious nature having links with militants were established as a militant was arrested from his house but lenient view of compulsory retirement was taken vide order bearing OB No. 214 dated 02.06.2014. Copy annexure "D".
9. Correct to the extent of rejection of departmental appeal only. Copy annexure "E".
10. That already lenient view has been taken against the appellant.

Grounds:-


- a. Incorrect. Proper de-novo enquiry conducted in which allegations were established. The impugned order is in accordance with law.
- b. Incorrect. The proceedings were conducted in accordance with law and rules.
- c. Incorrect. The appellant was provided opportunity of cross examination during enquiry. All codel formalities fulfilled.

- d. That in compliance with the judgment of honorable Tribunal de-novo enquiry was conducted in which the allegations were established. However, lenient view was taken and punishment of compulsory retirement was awarded vide order bearing OB No. 214 dated 02.06.2014.
- e. Incorrect. The appellant was employee of Police department by Police Rules-1975.
- f. Incorrect. A lenient view has already been taken.
- g. That judicial proceedings and departmental proceedings are distinct from each other and may run parallel.
- h. That the respondents seeks permission to raise additional grounds during arguments.


In view of above, it is prayed that on acceptance of parawise comments, the subject appeal may kindly be dismissed being meritless and time barred.



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



Deputy Inspector General of Police
Kohat Region, Kohat
(Respondent No. 2)



District Police Officer,
Kohat
(Respondent No. 3)

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

Service appeal No. 1276/2014

Saleem Khan No. 734 Ex-Constable

..... Appellant.


VERSUS


Provincial Police Officer,
Khyber Pakhtunkhwa and others

..... Respondents.

COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Court.


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


Dy. Inspector General of Police
Kohat Region, Kohat
(Respondent No. 2)


District Police Officer,
Kohat
(Respondent No. 3)

CHARGE SHEET.

I **MUHAMMAD SALEEM, DISTRICT POLICE OFFICER, KOHAT**, as competent authority, hereby charge you **Ex-Constable Saleem Khan No. 734** Under Disciplinary Police Rules, 1975 as you have committed the following illegal act.

As per report of Headquarter 9 Division Kohat Cantt letter No. 0251/39/GS (Intelligent) dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Dara Adam Khel has been arrested by the Army from your house alongwith 02 pistols of different bore.

Your above act not only speaks of In-league with the miscreants but also indicates of providing assistance in their illegal activities.

2. By reasons of the above, you appear to be guilty of misconduct as defined in Rule 2 (iii) of Police Disciplinary Rules, 1975 and have rendered yourself liable to all or any of the penalties explained in rule 04 of the said rules.

3. You are, therefore, required to submit your written statement within 07 days of the receipt of this Charge Sheet to the enquiry officer.

Your written defense if any should reach the Enquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

4. A statement of allegation is enclosed.


**DISTRICT POLICE OFFICER,
KOHAT**

Saleem Khan

18-2-2014

B

Departmental Enquiry Against Constable Saleem Khan No. 734.

FINDINGS:

1. This departmental inquiry has been initiated against constable Saleem Khan No. 734 as ordered by Hon Service Tribunal KPK Peshawar in its judgment dated 20.12.2013.
2. The charges leveled against the defaulter official are that "as per report of Head quarter 9 Division Kohat Cantt letter No. 0251/39/GS/Intelligence dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Darra Adam Khel has been arrested by the army from your house alongwith 02 Pistols of different bore".
3. On the basis of said charges, he was issued charge sheet with summary of allegation by W/DPO and vide office Endst: No. 828-29/PA dated 12.02.2014, I was appointed as enquiry officer.
4. On receipt of enquiry papers defaulter official was summoned. He was delivered charge sheet with summary of allegation, in response to which he submitted reply which has been placed on file.
5. In order to prove the allegation against the defaulter official, I deemed it proper to examine Muhammad Aslam Khan inspector who had arrested him in case FIR No. 125 dated 18.04.2010 u/s 302/324/353/427/3/4 Exp Sub Act/25 T. Act /7ATA PS Bilitang. Accordingly he was summoned and his statement was recorded in presence of defaulter official. Muhammad Aslam Inspector stated that the alleged miscreant Khalid Usman, had stayed in the "Battak" of present defaulter official and from there he (Khalid Usman) alongwith present defaulter official was taken into custody. Later on Saleem Khan (the present defaulter official) was handed over to local Police officers and he was arrested in the said case.
It has been stated by the said inspector that defaulter official was having friendship relation with Khalid Usman. He has also given reference to a statement of one Munawar Khan r/o Kot which was recorded u/s 164 CrPC in court wherein he had mentioned that Khalid Usman had stayed with Saleem Khan (the present defaulter official).
6. Thereafter statement of defaulter official was recorded. He has denied all the allegation leveled against him. He did not produce any evidence in his favor to show that Khalid Usman was not taken from his Battak. He only submitted that he has been acquitted in the said criminal case. It is deemed proper to mention herein that his acquittal in the criminal case has got no effect on the present departmental enquiry because there is difference between criminal and departmental proceedings. Each is to be decided on its own merits.
It came to light during course of enquiry that defaulter official had friendly relationship with Khalid Usman and he had provided shelter/protection to him in his Battak for about 3/4 months who was ultimately taken into custody by security forces and his whereabouts are still not known.

7. From the available record, it has been established that the defaulter official had developed friendly relationship with a person who was involved in anti state activities. Involvement of defaulter official in such like activities is not permissible under the Rules. Being member of Police department he is not supposed to have developed relationship with a person who was stated to be involved in anti state activities. As such the allegation has been established against him.
8. Submitted please.



Enquiry Officer,
DSP Legal Kohat

C

FINAL SHOW CAUSE NOTICE

1. I, Muhammad Saleem, District Police Officer, Kohat as competent authority under the Police Rule 1975 serve you Ex-Constable Saleem Khan No. 734 as follow:-

The consequent upon the completion of enquiries conducted against you by the Enquiry Officer, Mian Imtiaz Gul DSP Legal, Kohat.

2. On going through the findings and recommendations of the Enquiry Officer, the materials on the record and other connected papers, I am satisfied that the charge against you is proved and you have committed the following acts/omission specified in Police Rule 1975.

As per report of Headquarter 9 Division Kohat Cantt letter No. 0251/39/GS (Intelligent) dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Dara Adam Khel has been arrested by the Army from your house alongwith 02 pistols of different bore.

Your above act not only speaks of In-league with the miscreants but also indicates of providing assistance in their illegal activities.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Rule 1975.

4. You are therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. Copy of finding of the enquiry officer is enclosed.

No. 2438 /PA
254

Muhammad Saleem
5/5/2014

DISTRICT POLICE OFFICER,
KOHAT

D

ORDER

This order is passed on the departmental enquiry against Constable Saleem Khan No. 734 of this district Police under Police Rule 1975.
689

Brief facts of the departmental enquiry are that as per report of Headquarter 9 Division Kohat Cantt letter No. 0251/39/GS (Intelligent) dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Dara Adam Khel has been arrested by the Army from his house alongwith 02 pistols of different bore.

His above act not only speaks of In-league with the miscreants but also indicates of providing assistance in their illegal activities.

He was served with charge sheet/summary of allegations and Mian Imtiaz Gul DSP Legal Kohat was appointed as Enquiry Officer to proceed against him departmentally. The enquiry officer has submitted his findings, and stated that involvement of defaulter official in such like activities is not permissible under the Rules. Being member of police department he is not supposed to have developed relationship with a person who was stated to be involved in anti state activities. As such the allegation has been established against him.

In-Spite of this he was served with Final Show Cause Notice. His reply is perused and found un-satisfactory therefore; the undersigned took a departmental action against him and awarded a major punishment of Compulsory Retirement under Police Rules 1975 with immediate effect.

OB No. 714
Date 02-6-2014

**DISTRICT POLICE OFFICER,
KOHAT**

3.6.14
[Handwritten signatures and initials]

E

ORDER.

This order is passed on departmental appeal, moved by Ex-Constable Saleem Khan No. 689 of Kohat district Police against the punishment order of DPO Kohat vide O.B No. 714, dated 02.06.2014, whereby he was compulsory retired from service. The appellant has to set-aside the impugned order and reinstatement in service.

Facts arising of the case are that the appellant was served with charge sheet alongwith statement of allegations to the effect that he was in-league with miscreants and one Khalid Usman miscreant s/o Payo Khan r/o Zor Kalay, Dara Adam Khel was arrested from his house. The appellant was also arrested and to the court in case FIR No. 125, dated 18.04.2014 U/Ss 3/4-ESA / 302/324/353/427 PPC / 7-ATA, Police Station Billitang Kohat. Proper departmental enquiry was conducted against him which resulted into his dismissal from service vide O.B No. 261, dated 18.04.2011.

Feeling aggrieved, he filed a departmental appeal before this office, which was rejected vide order dated 27.08.2011. Therefore, he approached to KP Service Tribunal. In pursuance of Judgment dated 20.12.2013, he was reinstated in service and proceeded against denove departmentally, which resulted into his compulsory retirement from service vide the competent authority (DPO Kohat) above mentioned order.


Now, the appellant filed the instant departmental appeal against the said order and requested to set-aside the impugned order and reinstatement in service on the grounds of his innocence.

The appellant was called in Orderly Room held in this office on 27.08.2014 through DPO Kohat, but he did not appear.

I have gone through the available record, which indicates that serious allegations containing the charges of his involvement in case FIR No. 125, dated 18.04.2014 U/Ss 3/4-ESA / 302/324/353/427 PPC / 7-ATA, Police Station Billitang Kohat have been leveled and proved against him beyond any shadow of doubt. Regarding his acquittal in the above case, the Judgment of Hon'able Anti-Terrorism Court Kohat indicates that the appellant has not been acquitted honorably. Moreover, the record further indicates that the appellant has also been charged in a moral turpitude case vide FIR No. 260, dated 06.08.2014 U/S 367/377-A/382/109/34 PPC Police Station Billitang Kohat.

In view of the above, I came to the conclusion that the appellant is a criminal and his retention in a disciplined force shall earn a bad name to the department. The DPO Kohat has taken a lenient view despite of appellant's 08-years service, for which he did not deserve, in view of his conduct.

Therefore, I do not seem to interfere into the order passed by the competent authority. Consequently, the appeal of Ex-Const. Saleem Khan No. 689 is hereby rejected and order passed by DPO Kohat is justified and upheld.


(DR. ISHTIAQ AHMAD MARWAT)
By: Inspector General of Police,
Kohat Region, Kohat.

No. 7985-86 /EC, dated Kohat the 29/10 /2014.

Copy to the District Police Officer, Kohat for information and necessary action w/r to his office Memo: No. 12856/LB, dated 22.07.2014. His Fauji Missal is enclosed herewith.

2. Appellant Saleem Khan No. 689 r/o Baura Garhi PS Billitang Kohat.


(DR. ISHTIAQ AHMAD MARWAT)
By: Inspector General of Police,

BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR.

Service appeal No. 1276/2014

Saleem Khan No. 734 Ex-Constable Appellant.

VERSUS

Provincial Police Officer,
Khyber Pakhtunkhwa and others Respondents.

Parawise comments on behalf of respondents.

Respectively Sheweth:-

Parawise comments on behalf of respondents are submitted as under:-

Preliminary objections:-

1. That the appeal is not maintainable in the present form.
2. That the appellant has got no cause of action.
3. That the appellant has not come to this Hon: Tribunal with clean hands.
4. That the appeal is badly time barred.
5. That the appeal is bad for misjoinder of unnecessary parties and non-joinder of necessary parties.

Reply on Facts:-

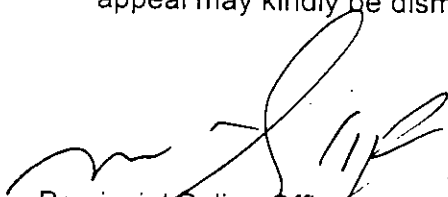
1. Pertains to record. However, the service record contains adverse entries.
2. Correct.
3. Correct to the extent of re-instatement and de-novo enquiry.
4. That proper de-novo departmental enquiry was conducted in compliance with the judgment of the honorable Tribunal in which the allegations have established. Copy of charge sheet, finding report, final show cause notice an annexure A, B, C.
5. Pertains to record.
6. Pertains to record.
7. Correct to the extent of Final show cause and reply only. During enquiry the allegations were established.
8. That allegations of serious nature having links with militants were established as a militant was arrested from his house but lenient view of compulsory retirement was taken vide order bearing OB No. 214 dated 02.06.2014. Copy annexure "D".
9. Correct to the extent of rejection of departmental appeal only. Copy annexure "E".
10. That already lenient view has been taken against the appellant.


Grounds:-


- a. Incorrect. Proper de-novo enquiry conducted in which allegations were established. The impugned order is in accordance with law.
- b. Incorrect. The proceedings were conducted in accordance with law and rules.
- c. Incorrect. The appellant was provided opportunity of cross examination during enquiry. All codel formalities fulfilled.

- d. That in compliance with the judgment of honorable Tribunal de-novo enquiry was conducted in which the allegations were established. However, lenient view was taken and punishment of compulsory retirement was awarded vide order bearing OB No. 214 dated 02.06.2014.
- e. Incorrect. The appellant was employee of Police department by Police Rules-1975.
- f. Incorrect. A lenient view has already been taken.
- g. That judicial proceedings and departmental proceedings are distinct from each other and may run parallel.
- h. That the respondents seeks permission to raise additional grounds during arguments.

In view of above, it is prayed that on acceptance of parawise comments, the subject appeal may kindly be dismissed being meritless and time barred.


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


Deputy Inspector General of Police
Kohat Region, Kohat
(Respondent No. 2)


District Police Officer,
Kohat
(Respondent No. 3)

BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR.

Service appeal No. 1276/2014


Saleem Khan No. 734 Ex-Constable Appellant.

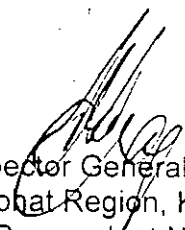
VERSUS


Provincial Police Officer,
Khyber Pakhtunkhwa and others Respondents.

COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Court.


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


Dy: Inspector General of Police
Kohat Region, Kohat
(Respondent No. 2)


District Police Officer,
Kohat
(Respondent No. 3)

- 1 -

A

CHARGE SHEET.

1. I **MUHAMMAD SALEEM, DISTRICT POLICE OFFICER, KOHAT**, as competent authority, hereby charge you **Ex-Constable Saleem Khan No. 734** Under Disciplinary Police Rules, 1975 as you have committed the following illegal act.

As per report of Headquarter 9 Division Kohat Cantt letter No. 0251/39/GS (Intelligent) dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Dara Adam Khel has been arrested by the Army from your house alongwith 02 pistols of different bore.

Your above act not only speaks of In-league with the miscreants but also indicates of providing assistance in their illegal activities.

2. By reasons of the above, you appear to be guilty of misconduct as defined in Rule 2 (iii) of Police Disciplinary Rules, 1975 and have rendered yourself liable to all or any of the penalties explained in rule 04 of the said rules.

3. You are, therefore, required to submit your written statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

Your written defense if any should reach the Enquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

4. A statement of allegation is enclosed.


**DISTRICT POLICE OFFICER,
KOHAT**

Saleem Khan
18-2-2014


B

Departmental Enquiry Against Constable Saleem Khan No. 734.

FINDINGS:

1. This departmental inquiry has been initiated against constable Saleem Khan No. 734 as ordered by Hon Service Tribunal KPK Peshawar in its judgment dated 20.12.2013:
2. The charges leveled against the defaulter official are that "as per report of Head quarter 9 Division Kohat Cantt letter No. 0251/39/GS/Intelligence dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Darra Adam Khel has been arrested by the army from your house alongwith 02 Pistols of different bore".
3. On the basis of said charges, he was issued charge sheet with summary of allegation by W/DPO and vide office Endst: No. 828-29/PA dated 12.02.2014, I was appointed as enquiry officer.
4. On receipt of enquiry papers defaulter official was summoned. He was delivered charge sheet with summary of allegation, in response to which he submitted reply which has been placed on file.
5. In order to prove the allegation against the defaulter official, I deemed it proper to examine Muhammad Aslam Khan inspector who had arrested him in case FIR No. 125 dated 18.04.2010 u/s 302/324/353/427/3/4 Exp Sub Act/25 T. Act /7ATA PS Bilitang. Accordingly he was summoned and his statement was recorded in presence of defaulter official. Muhammad Aslam Inspector stated that the alleged miscreant Khalid Usman, had stayed in the "Battak" of present defaulter official and from there he (Khalid Usman) alongwith present defaulter official was taken into custody. Later on Saleem Khan (the present defaulter official) was handed over to local Police officers and he was arrested in the said case.
It has been stated by the said inspector that defaulter official was having friendship relation with Khalid Usman. He has also given reference to a statement of one Munawar Khan r/o Kot which was recorded u/s 164 CrPC in court wherein he had mentioned that Khalid Usman had stayed with Saleem Khan (the present defaulter official).
6. Thereafter statement of defaulter official was recorded. He has denied all the allegation leveled against him. He did not produce any evidence in his favor to show that Khalid Usman was not taken from his Battak. He only submitted that he has been acquitted in the said criminal case. It is deemed proper to mentioned herein that his acquittal in the criminal case has got no effect on the present departmental enquiry because there is difference between criminal and departmental proceedings. Each is to be decided on its own merits.
It came to light during course of enquiry that defaulter official had friendly relationship with Khalid Usman and he had provided shelter/protection to him in his Battak for about 3/4 months who was ultimately taken into custody by security forces and his whereabouts are still not known.

7. From the available record, it has been established that the defaulter official had developed friendly relationship with a person who was involved in anti state activities. Involvement of defaulter official in such like activities is not permissible under the Rules. Being member of Police department he is not supposed to have developed relationship with a person who was stated to be involved in anti state activities. As such the allegation has been established against him.
8. Submitted please.



Enquiry Officer,
DSP Legal Kohat

C

FINAL SHOW CAUSE NOTICE

1. I, **Muhammad Saleem, District Police Officer, Kohat** as competent authority under the Police Rule 1975 serve you **Ex-Constable Saleem Khan No. 734** as follow:-

The consequent upon the completion of enquiries conducted against you by the Enquiry Officer, **Mian Imtiaz Gul DSP Legal, Kohat.**

2. On going through the findings and recommendations of the Enquiry Officer, the materials on the record and other connected papers, I am satisfied that the charge against you is proved and you have committed the following acts/omission specified in Police Rule 1975.

As per report of Headquarter 9 Division Kohat Cantt letter No. 0251/39/GS (Intelligent) dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Dara Adam Khel has been arrested by the Army from your house alongwith 02 pistols of different bore.

Your above act not only speaks of In-league with the miscreants but also indicates of providing assistance in their illegal activities.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Rule 1975.

4. You are therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. Copy of finding of the enquiry officer is enclosed.

No. 2439 /PA

Saleem Khan

5/5/2014

[Signature]
DISTRICT POLICE OFFICER,
KOHAT

D

ORDER

This order is passed on the departmental enquiry against Constable Saleem Khan No. 734 of this district Police under Police Rule 1975.
689

Brief facts of the departmental enquiry are that as per report of Headquarter 9 Division Kohat Cantt letter No. 0251/39/GS (Intelligent) dated 01.01.2011 that on 30.12.2010 during an operation by Army an active miscreant namely Khalid Usman s/o Payo Khan r/o Zhor Kale Dara Adam Khel has been arrested by the Army from his house alongwith 02 pistols of different bore.

His above act not only speaks of In-league with the miscreants but also indicates of providing assistance in their illegal activities.

He was served with charge sheet/summary of allegations and Mian Imtiaz Gul DSP Legal Kohat was appointed as Enquiry Officer to proceed against him departmentally. The enquiry officer has submitted his findings, and stated that involvement of defaulter official in such like activities is not permissible under the Rules. Being member of police department he is not supposed to have developed relationship with a person who was stated to be involved in anti state activities. As such the allegation has been established against him.

In-Spite of this he was served with Final Show Cause Notice. His reply is perused and found un-satisfactory therefore; the undersigned took a departmental action against him and awarded a major punishment of Compulsory Retirement under Police Rules 1975 with immediate effect.

OB No. 714
Date 02-6-2014


DISTRICT POLICE OFFICER,
KOHAT

- E

ORDER.

This order is passed on departmental appeal, moved by Ex-Constable Saleem Khan No. 689 of Kohat district Police against the punishment order of DPO Kohat vide O.B No. 714, dated 02.06.2014, whereby he was compulsory retired from service. The appellant has to set-aside the impugned order and reinstatement in service.

Facts arising of the case are that the appellant was served with charge sheet alongwith statement of allegations to the effect that he was in-league with miscreants and one Khalid Usman miscreant s/o Payo Khan r/o Zor Kalay, Dara Adam Khel was arrested from his house. The appellant was also arrested and to the court in case FIR No. 125, dated 18.04.2014 U/Ss 3/4-ESA / 302/324/353/427 PPC / 7-ATA, Police Station Billitang Kohat. Proper departmental enquiry was conducted against him which resulted into his dismissal from service vide O.B No. 261, dated 18.04.2011.

Feeling aggrieved, he filed a departmental appeal before this office, which was rejected vide order dated 27.08.2011. Therefore, he approached to KP Service Tribunal. In pursuance of Judgment dated 20.12.2013, he was reinstated in service and proceeded against denove departmentally, which resulted into his compulsory retirement from service vide the competent authority (DPO Kohat) above mentioned order.

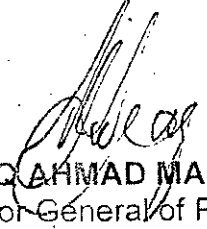
Now, the appellant filed the instant departmental appeal against the said order and requested to set-aside the impugned order and reinstatement in service on the grounds of his innocence.

The appellant was called in Orderly Room held in this office on 27.08.2014 through DPO Kohat, but he did not appear.

I have gone through the available record, which indicates that serious allegations containing the charges of his involvement in case FIR No. 125, dated 18.04.2014 U/Ss 3/4-ESA / 302/324/353/427 PPC / 7-ATA, Police Station Billitang Kohat have been leveled and proved against him beyond any shadow of doubt. Regarding his acquittal in the above case, the Judgment of Hon'able Anti-Terrorism Court Kohat indicates that the appellant has not been acquitted honorably. Moreover, the record further indicates that the appellant has also been charged in a moral turpitude case vide FIR No. 260, dated 06.08.2014 U/S 367/377-A/382/109/34 PPC Police Station Billitang Kohat.

In view of the above, I came to the conclusion that the appellant is a criminal and his retention in a disciplined force shall earn a bad name to the department. The DPO Kohat has taken a lenient view despite of appellant's 08-years service, for which he did not deserve, in view of his conduct.

Therefore, I do not seem to interfere into the order passed by the competent authority. Consequently, the appeal of Ex-Const: Saleem Khan No. 689 is hereby rejected and order passed by DPO Kohat is justified and upheld.


(DR. ISHTIAQ AHMAD MARWAT)
Dy: Inspector General of Police,
Kohat Region, Kohat.

No. 7985-86 /EC, dated Kohat the 29/8 /2014.

Copy to the District Police Officer, Kohat for information and necessary action w/r to his office Memo: No. 12856/LB, dated 22.07.2014. His Fauji Missal is enclosed herewith.

2.

Appellant Saleem Khan No. 689 r/o Baura Garhi PS Billitang Kohat.


(DR. ISHTIAQ AHMAD MARWAT)
Dy: Inspector General of Police,

- 6 Incorrect. The contents of Para-6 of appeal are correct.
- 7 Incorrect. All allegations against the appellant were baseless, therefore, the appellant denied all the allegations.
- 8 Incorrect. the penalty of compulsory retirement from service was imposed upon the appellant under police rules 1975 without chance of personal hearing, which is the violation of law and rules.
- 9 The rejection order was passed by the respondent department was not good faith.
- 10 Incorrect, while Para-10 appeal is correct.

GROUND:

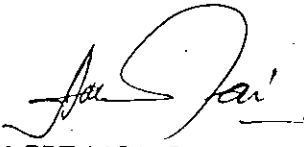
- A) Incorrect. The impugned order dated 02.06.2014 and 29.08.2014 was passed in violation of law, rules and norms of justice.
- B) Incorrect, while Para-B of the Ground of Appeal is correct.
- C) Incorrect, while Para-C of the Ground of Appeal is correct.
- D) Incorrect. The contents of Para-D of the Ground of Appeal are correct.
- E) Incorrect. The appellant has not been treated under proper law of E&D Rules, 2011, despite he was a civil servant of the province.
- F) Incorrect. The penalty of compulsory retirement is very harsh which is against the law and rules.
- G) Incorrect. The appellant has already been acquitted in case of FIR, on the basis of which he was dismissed from service and subsequently he was compulsory retired.

H) Legal.

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

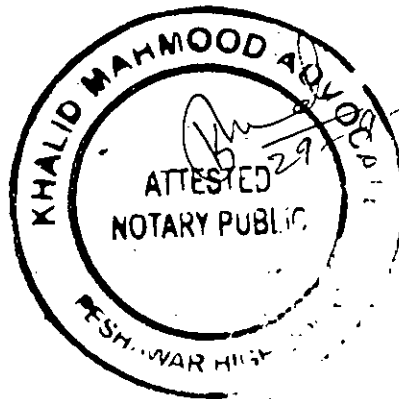
APPELLANT
Saleem Khan

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.




DEPONENT

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

Service Appeal No. __1276 /2014

Mr. Saleem Khan

V/S

Police Department.

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-5) All objections raised by the respondents are incorrect. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Incorrect. The service record of appellant is good which are available in office of the appellant.
- 2 Admitted correct by the respondents, so no comments.
- 3 Admitted correct by the respondents, so no comments.
- 4 Incorrect. The contents of Para-4 of appeal are correct.
- 5 Incorrect. The reply to the charge sheet of the appellant has already been attached with the appeal which is sufficient for proof.

- 6 Incorrect. The contents of Para-6 of appeal are correct.
- 7 Incorrect. All allegations against the appellant were baseless, therefore, the appellant denied all the allegations.
- 8 Incorrect. the penalty of compulsory retirement from service was imposed upon the appellant under police rules 1975 without chance of personal hearing, which is the violation of law and rules.
- 9 The rejection order was passed by the respondent department was not good faith.
- 10 Incorrect, while Para-10 appeal is correct.

GROUND:


- A) Incorrect. The impugned order dated 02.06.2014 and 29.08.2014 was passed in violation of law, rules and norms of justice.
- B) Incorrect, while Para-B of the Ground of Appeal is correct.
- C) Incorrect, while Para-C of the Ground of Appeal is correct.
- D) Incorrect. The contents of Para-D of the Ground of Appeal are correct.
- E) Incorrect. The appellant has not been treated under proper law of E&D Rules, 2011, despite he was a civil servant of the province.
- F) Incorrect. The penalty of compulsory retirement is very harsh which is against the law and rules.
- G) Incorrect. The appellant has already been acquitted in case of FIR, on the basis of which he was dismissed from service and subsequently he was compulsory retired.

H) Legal.

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

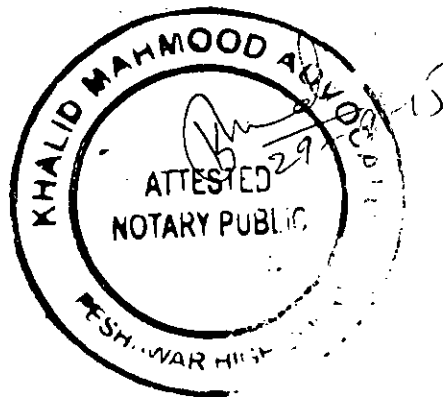
APPELLANT
Saleem Khan

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.




DEPONENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 845 /ST

Dated 20 / 5 / 2016

To


The DPO,
Kohat.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 11 .5.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.