

29.03.2016

Counsel for the appellant and Mr. Khalid Mehmood, H.C alongwith Assistant A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 18.7.2016.

  
Chairman

18.07.2016

Counsel for the appellant and Mr. Muhammad Ghani, SI alongwith Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for time to file rejoinder. To come up for rejoinder and final hearing on 18.11.2016.

  
Member

  
Member

18.11.2016


Counsel for the appellant and Mr. Muhammad Ghani, S.I alongwith Mr. Kabirullah Khan Khattak, Assistant Advocate General for respondents present. Learned counsel for the appellant submitted that grievance of the appellant has been redressed by the respondents and there is no more need to pursue this appeal. He requested that the same may be dismissed as withdrawn. His signature obtained on margin of the order sheet. The appeal stand dismissed as withdrawn. File be consigned to the record room.

ANNOUNCED  
18.11.2016

  
(ABDUL LATIF)  
MEMBER

  
(PIR BAKHSH SHAH)  
MEMBER

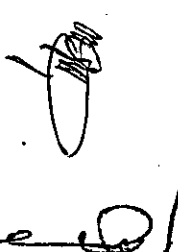
*As per decision of my client  
I want to withdraw this petition*

  
18/11/2016

22.09.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving SHO PS Sher Garh when subjected to inquiry and dismissed from service vide impugned order dated 5.5.2015 regarding which he preferred departmental appeal on 7.5.2015 which was allowed and the punishment modified from dismissal of service to that of stoppage of three increments with cumulative effect and converting the period of absence as leave without pay vide order dated 11.8.2015 and hence the instant service appeal on 4.9.2015.

Appellant Deposited  
Security & Process Fee



That the inquiry officer ignored charge sheet during the inquiry proceedings and, moreover, no evidence regarding allegations of theft collected nor any show cause notice served on appellant. That the inquiry proceedings were not conducted in the prescribed manners.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 1.12.2015 before S.B.

21-9-55

  
Chairman

01.12.2015

Appellant with counsel and Mr. Muhammad Ghani, S.I alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 29.3.2016 before S.B.

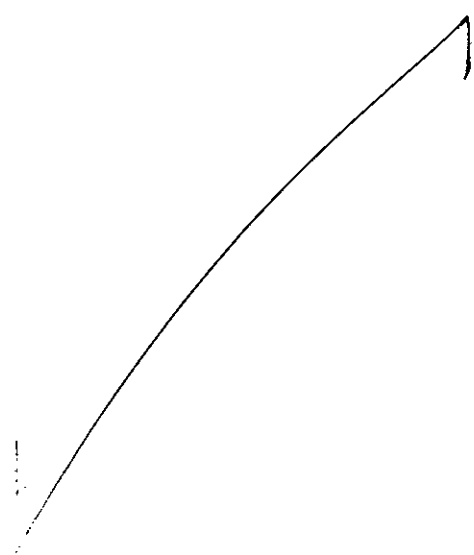
  
Chairman

FORM-A

FORM OF ORDER SHEET

Court \_\_\_\_\_

Case No. 1005/2015

	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	09.09.2015	<p>The appeal of Mr. Muhammad Ayub resubmitted to-day by Mr. Shahid Qayum Khattak, Advocate, may be entered in the institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p> <p>This case be put up before the S.Bench for preliminary hearing on <u>22-9-15</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p> 

The appeal of Muhammad Ayub received to-day i.e. on 4.09.2015, is incomplete on the following scores, which is returned to him for completion and resubmission within 15 days:-

1. Enquiry report annexed with the appeal is incomplete. Complete copy of enquiry report may be placed on file.


No. 1369/ST

Dated 04/09 2015

  
REGISTRAR  
KPK SERVICE TRIBUNAL,  
PESHAWAR.

Mr. Shahid Qayum Khattak, Advocate

As per directions of this Honble Tribunal appellant  
has best to procure the desired copies of documents  
but respondent NO. 3 refused to delivered the same  
rather he refused to receive even application, therefore  
appellant send the same application through registered  
post. Copy of application and receipt is attached  
It is therefore, requested that the case  
may please be processed with available documents  
as respondent are not delivering other copies of  
enquiry finding etc  
and case is re-submitted for further n/a  
order please.

  
09/09/2015



BEFORE THE SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. *1005* /2015

Muhammad Ayub ..... Appellant

Versus

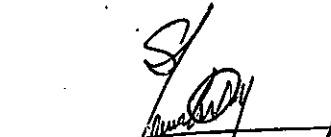
Provincial Police Officer and others..... Respondents

INDEX

S.No.	Description of Documents	Annex	Pages
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2.	Address of the parties		7
3.	Charge Sheet	A	8-9
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6.	Copy of impugned order of Respondent No. 3	D	13
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8.	Copy of Impugned order of Respondent No. 2	F	18
9.	Wakalat Nama		19

  
Appellant

Through

  
Shahid Qayum Khattak  
Advocate, High Court  
Peshawar  
Mob No. 0333-9195776

Dated: *04*/09/2015

ground taken in the representation may please be considered as an integral part of this appeal ( Copy of the Representation and order are attached as Annexure " E" , "F" respectively)

7. That the appellant feeling aggrieved from the above orders hence, filling this appeal on the following amongst other grounds inter alia

GROUND:

- a. That both the impugned orders of the respondents are illegal, unlawful, without authority, based on mala fide intention, against the nature justice, violative of the Constitution and Service Law and equally with out jurisdiction, hence the same are liable to be set aside in the best interest of justice.
- b. That both the impugned orders passed by respondent are very much harsh, without any evidence based on surmises & conjectures and is equally against the principle of natural justice.
- c. That respondent No. 3 has not taken into consideration the detail and plausible reply to the charge sheet but brushed aside it without any reason and grounds. Furthermore respondent No. 2 has not adopted proper procedure for disposal of departmental appeal/ representation thus the impugned orders are nullity in the eyes of law and are liable to be set aside.
- d. That the whole departmental file against appellant has been prepared in violation of law and rules as the enquiry officer has based his finding on assessment and speculations. The findings have not been based on sound reasons and any solid, material and cogent evidence.
- e. That the allegation leveled against the appellant are baseless, without any proof and cogent evidence and the allegation leveled against appellant is based on malafide intention and are concocted one. No proper opportunity of personal hearing has been provided to appellant. The enquiry officer has not adopted proper procedure nor any statement of any witness is recorded in presence of appellant nor he has been provided any opportunity of cross examination of any witness.

- f. That appellant in his departmental appeal raised number of material grounds and his progress (the same may please be taken as integral part of this appeal too) but the same has not been taken into consideration at all.
- g. That the impugned orders has been passed in violation of law and rules of disciplinary proceedings and principles of natural justice. The authority wrongly and malafidly based the impugned orders on assessments and speculations, therefore the impugned order is bad in law.
- h. That the enquiry proceedings against appellant suffered from gross infirmities, illegalities and irregularities as no evidence what so ever has been produce or cited in the enquiry report nor any witness has been examined before the appellant.
- i. That the learned respondent has not taken into consideration that the rules under which the appellant has been charged are not applicable on him which clearly shows that the act of respondent is totally based on discrimination undue victimization beside that the impugned order is suffered from gross infirmities, illegality, based on no evidence totally contradictory to the enquiry.
- j. That both the impugned orders are contrary to each other and with out the support and backing of any concrete evidence and admissible evidence.
- k. That respondent No. 2 has not decided the departmental appeal / representation in accordance to the rules and regulation which clearly shows mala fide intention thus, has no sanctity in the eyes of law thus the act of respondent No. 2 and 3 is totally based on male fide intention which clearly shows discrimination and undue victimization.
- l. That enquiry officer has wrongly assessed that appellant is involved with Non-custom paid vehicle smugglers. Actually appellant was posted SHO Police Station Sher Garh for a period of about 08 months and during this short period 26 non-custom paid vehicles or other vehicle has been taken into



5

possession. The progress mentioned above clearly shows the commitment of appellant with his job but now his this good progress became a menace for him. Therefore, the appellant request for mercy of this court. Similarly regarding other allegations no complaint or report was made by any person then how the appellant can be blame for the same. No body came forward to file any petition against appellant in any court of law which clearly shows his innocence.

- m. That the bias of the enquiry officer is very much clear from this report which clearly shows that he travel beyond the charges leveled in the charge sheet. Thus the impugned orders based on such unfolded enquiry report are liable to be set aside in the best interest of justice.
- n. That respondent No. 3 has not issue any show cause notice nor any proper opportunity of hearing has been provided to appellant but this aspect has not been taken by learned respondent No. 2 at all thus the impugned orders are nullity in the eyes of law and is liable to be set aside.
- o. That respondent have not taken into consideration the clear cut directions of the government that any proceeding on any anonymous, pseudonymous letters/ complaints has to be entertained in any government department but still appellant has been make escape goat on the basis of anonymous SMS.
- p. That the enquiry report and impugned orders are based on mala fide, political reveries an professional jealousy.


It is, therefore, most humbly prayed that on accepting this service appeal, the punishment awarded to the appellant through impugned orders may graciously be set aside by declaring it illegal, void, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable and the appellant is entitled for all back benefits of pay and service.

6

Any other relief not specifically prayed for but deem appropriate in the circumstances of the case may also be granted.


  
Appellant

Through

  
Shahid Qayum Khattak  
Advocate, High Court  
Peshawar


Dated: /09/2015

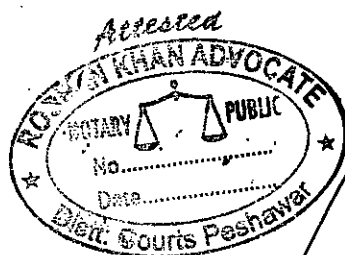
Certified that as per instruction of my client no such appeal has been filed before this Hon'ble Forum.

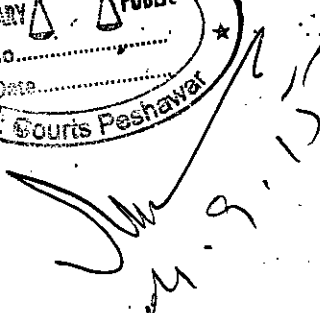
  
Advocate

Affidavit

I, Muhammad Ayub S/o Haleem Gul R/o Dhagi Near Government College No. 2, Mardan do hereby solemnly affirm and declare on Oath that the contents of the above appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.

  
Deponent



  
24.9.15

8

Annexure - "A"

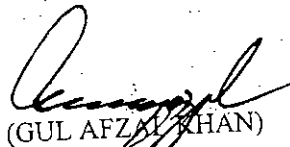
CHARGE SHEET UNDER KPK POLICE RULES 1975

I, Gul Afzal Khan District Police Officer, Mardan as competent authority hereby charge you ASI Ayub, as follows.

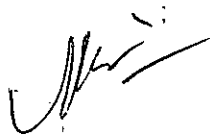
That you ASI, while posted as SHO Police Station Sher Garh, is recommended for departmental proceeding for your inefficiency, corrupt practices, and involvement with smugglers of NCP vehicles.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense within seven days of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.

  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan.

Attached to be True Copy



(9)

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 862 /R/D.A-P.R-1975.

Dated 01-4 /2015

DISCIPLINARY ACTION UNDER KPK POLICE RULES - 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority am of the opinion that **ASI Ayub**, himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.

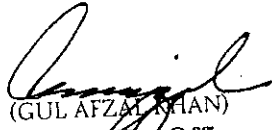
STATEMENT OF ALLEGATIONS

That **ASI Ayub** while posted as SHO Police Station Sher Garh, is recommended for departmental proceeding for his inefficiency, corrupt practices, and involvement with smugglers of NCP vehicles.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Mian Imtaiz Gul DSP/Legal Mardan** is appointed as Enquiry Officer.

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

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

  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan.

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN.

No. \_\_\_\_\_ /R, dated Mardan the \_\_\_\_\_ /2015.

Copy of above is forwarded to the:

1. DSP/Legal Mardan for initiating proceedings against the accused official / Officer namely **ASI Ayub**, Police Rules, 1975.
2. **ASI Ayub**, 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 to be True Copy



133-LB  
1-4-15

A

(10)

Annexure - B

BEFORE THE DISTRICT POLICE OFFICER, MARDAN

Subject: REPLY TO THE CHARGE SHEET+STATEMENT OF ALLEGATION NO.862/R DATED 01-04-2015

Respected Sir,

Your Honour had issued the subject charge sheet/ statement of allegation against the petitioner with the following allegations, which was handed over to the petitioner on 02-04-2015:-

"That ASI Ayub while posted as SHO Police Station Sher Garh, is recommended for departmental proceeding for his inefficiency, corrupt practices and involvement with smugglers of NCP vehicles" ( Copy of charge sheet is annexed as Annexure "A" ).

Brief facts of the issuance of the subject charge sheet are that on 21-03-2015, some unknown person send SMS to worthy IGP KPK Peshawar, regarding the alleged involvement of the petitioner with smugglers of NCP vehicles. Beside the said allegation, the petitioner was also blamed for inefficiency and corrupt practices. The petitioner do-heréby submits Para wise reply to the allegations leveled in the charge sheet

a) INEFFICIENCY:

This allegation is incorrect. The petitioner had joined Police Department on 15-09-1991 as Constable and after passing Departmental examination, he was promoted to the rank of ASI . Due to his professional skills, he remained posted at different responsible jobs and completed his tenure up to the entire satisfaction of his superiors, which is on Record. If the petitioner was inefficient , then the competent authorities would never post him in the police stations, which is a job of higher responsibilities. The competent authorities had remarked the Petitioner as "EFFICIENT POLICE OFFICER" in his ACRs, which is evident from his Service Record. It would not be out of place to mention here that the Petitioner had not been awarded any major/minor punishment regarding inefficiency during his 23 years of service. It is also added that the Petitioner had gained numbers of commendation certificates issued by DPO, DIG and IGP for his efficient performance in different cases which is evident from the petitioner service record. In the light of the best performance and efficiency, the worthy DPO Mardan promoted the petitioner as Sub inspector and on 03-08-2014 posted him as SHO PS Sher Ghar. During this period, the petitioner had recovered contraband, illicit Arms and ammunitions and arrested Pos wanted in heinous offences with the following details:

Arrest of Pos	Explosives	Narcotics Chars	Arms & Ammunitions	
			KK Pistols	Rounds
46	200KG	14 KG	7	29 500

b) CORRUPTION:

This allegation are also false and baseless. During the Appellant's lengthy period of service, no complaint of corruption was received from any person, source or institution. The Petitioner has not been remarked as "CORRUPT" by the Reporting Officer in his ACRs throughout his service. during his prolong service. Having no

Attached to be True Copy

(11)

complaint of corruption, the allegation of corruption leveled against the Petitioner in the charge sheet is beyond understanding / justice.

c) Involvement with smugglers of NCP vehicles:

The petitioner had never been involved in such like practices throughout his entire service. No verbal / documentary complaint was made against the petitioner by any one and this fact is also evident from the petitioner service record. Similarly no reporting officer had remarked the petitioner to be of such category. During the short period of 08 months as SHO Sher Ghar, the petitioner succeeded to recover 26 vehicles of different kinds ( NCP ) from the possession of smugglers which is annexed as annexure "B".

CONCLUSION:

1. The sender of the SMS is unknown and hence the complaint is anonymous. According to the Government of NWFP ( now KPK ), services and general administration department ( Regulation wing ) No. SOR-II. ( S&GAD ) 5 (29) 97 vol: II dated 15-11-1999. That anonymous complaint should not be entertained in any Govt Department / Office in future. The same directives of the govt has already been conveyed by the office of worthy IGP KPK vide letter No. 2059-94/ c.cell dated 17-11-1999. ( Copy of Govt order is annexed as annexure "C" ).
2. The allegations leveled against the petitioner are false, baseless, suspicious, supposition and here say. According to the supreme court of Pakistan PLD 1989 SC 335 , it has been established that suspicious supposition and here say are not the proof of any act.

Keeping in view of the facts and circumstances mentioned above, it is humbly requested that the Charge sheet + statement of allegation may kindly be filed please and the petitioner may be re-instated in service from the date of suspension.

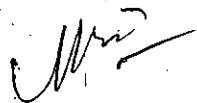
Yours Obediently,



ASI (Ayub)

Police lines Mardan

**Attested to be True Copy**



This Departmental Enquiry has been conducted against ASI Ayub, the then SHO PS Sher Garh, in accordance with provisions of Khyber Pakhtunkhwa Police Disciplinary Rules 1975 on below mentioned charges:-

That you ASI Ayub while posted as SHO PS Sher Garh, is recommended for departmental proceeding for his inefficiency, corrupt practices and involvement with smugglers of N.C.P vehicles.

On the basis of said allegation, he was issued charge sheet and I was appointed as Enquiry Officer vide office Endst: No. 862/R dated 01.04.2015.

On receipt of enquiry papers, I summoned defaulter official and on his attendance, I handed over charge sheet with summary of allegation to him who submitted reply to it.

During course of enquiry it was informed through secret sources that during his posting as SHO PS Sher Garh, some unknown thieves had committed theft at night time in different houses but no FIR was lodged by him. In order to verify it, I summoned the concerned owners of respective houses who attended this office. They are Sartaj, Sher Zada, Afzal Khan, Rehmat Gul, Akhtar, Rafique and Muhammad Siddique and recorded their statements wherein they categorically stated that thefts were committed from their houses by unknown accused at night time.

It has been confirmed by Head Constable Niaz Ali No. 1400 Police Post Akbar Banda who stated in his statement that when he came to know about commission of theft from the houses of Sher Zada and Sartaj, he met with them but they were not going to lodge report. However, he brought it into the notice of SHO Ayub at that time.

Thereafter, I recorded statement of defaulter official who stated that his previous statement given by him in response to charge sheet may be considered as his statement.

:- (i). From the enquiry conducted so far it revealed that thefts were committed in the limits of PS Sher Garh during his posting as SHO from about seven houses at night time by unknown thieves/criminals. One of the effected person amongst those persons is Afzal Khan who is Associate Professor in Govt College Takht Bhai. Defaulter official was having knowledge of those thefts as he was informed by H.C Niaz Ali about commission of theft from the houses of Sher Zada and Sartaj while regarding commission of theft from the houses of Rehmat Gul and Muhammad Siddique, Police Station Sher Garh was informed by the said persons but no action was taken on it as neither real accused were traced nor the alleged stolen articles were recovered which clearly indicates inefficiency on the part of defaulter official.

(ii). As far as involvement of defaulter official with smugglers of NCP vehicles is concerned, in this regard it is submitted that defaulter official had seized 06 vehicles during his posting while as a whole during his posting 26 NCP vehicles were seized. It is pertinent to note that on one hand he used to seize N.C.P vehicles while on the other hand he used to facilitate the concerned smugglers of NCP vehicles in getting released on bail/superdari those vehicles from court because it has been found that many of the NCP vehicles have been returned to the persons on bail/superdari to the satisfaction of SHO or directly by court, from whom the same were recovered but it is not known as in how much cases the defaulter official as SHO PS Sher Garh had preferred application/revision for cancellation of bail/superdari order of lower court with regard to return of those N.C.P vehicles. To this effect he only produced a copy of one application (Shaukat Khan) vide which order of lower court regarding return of NCP vehicle on bail/superdari has been challenged while in no other case he produced copy of any such application. It shows that he had secret links with them. Although no one in this regard deposed against him directly but from the circumstances of the case and secret enquiry it has been established that he had links with smugglers of N.C.P vehicles.

Attended to be True Copy

*[Handwritten Signature]*

POLICE DEPARTMENT

MARDAN DISTRICT

Annexure -D

(13)

**ORDER**

This order will dispose of departmental inquiry, which has been conducted against ASI Ayub Khan, on the allegation that he while posted as SHO at Police Station Sher garh, was recommended for departmental proceeding for his inefficiency, corrupt practices, and involvement with smugglers of NCP vehicles. His attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part as defined in rule 2(ii) of Police Rules 1975.

In this connection ASI Ayub Khan, was charge sheeted vide this office No. 862/R, dated 01.04.2015 and also proceeded against departmentally through Mr. Mian Ghulam Gul DSP/Legal Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 537/LB dated 29.04.2015, as the allegation have been established against him and recommended him for Punishment.

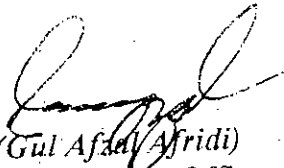
The undersigned agreed with the findings of enquiry officer and the alleged ASI Ayub Khan, is hereby **dismissed from service** with immediate effect, in exercise of the power vested in me under the above quoted rules

Order announced

O.B No.

Dated

317  
4/5/2015

  
(Gul Afzal Afridi)  
District Police Officer,  
Mardan.

No. 4430-35/R, dated Mardan the 5/5/2015

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan.

**Attested to be True Copy**





7

BEFORE THE SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2015

Muhammad Ayub ..... Appellant

Versus

Provincial Police Officer and others..... Respondents

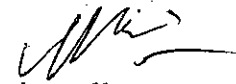
ADDRESSES OF THE PARTIES

APPELLANT

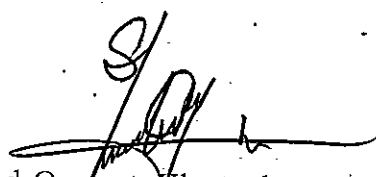
Muhammad Ayub S/o Haleem Gul R/o Dhagi Near Government  
College No. 2, Mardan

RESPONDENTS

1. Provincial Police Officer/ Inspector General of Police  
Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police Mardan Division-I, Mardan.
3. District Police Officer, Mardan.
4. Government of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar

  
Appellant

Through

  
Shahid Qayum Khattak  
Advocate, High Court  
Peshawar

Dated: 04/09/2015

BEFORE THE DIG MARDAN REGION-I MARDAN

Subject: APPEAL AGAINST THE O.B NO. 817 DATED 04-05-015 OF DISTRICT POLICE OFFICER MARDAN, WHERE BY THE APPELLANT WAS AWARDED THE PUNISHMENT "DISMISSEL FROM SERVICE".

R/Sir,

It is submitted that :

1. That the DPO Mardan had issued the charge sheet/ statement of allegation No.862/R dated 01-04-2015 against the Appellant with the following allegations:

"That ASI Ayub while posted as SHO Police Station Sher Garh, is recommended for departmental proceeding for his inefficiency, corrupt practices and involvement with smugglers of NCP vehicles" ( Copy of charge sheet is annexed as Annexure "A" ).

2. That in the light of the charge sheet, a departmental inquiry was initiated against the appellant. The appellant submitted a comprehensive reply to the charge sheet before the inquiry officer which is reproduced below:

Brief facts of the issuance of the subject charge sheet are that on 21-03-2015, some unknown person send SMS to worthy IGP KPK Peshawar, regarding the alleged involvement of the petitioner with smugglers of NCP vehicles. Beside the said allegation, the petitioner was also blamed for inefficiency and corrupt practices. The petitioner do hereby submits Para wise reply to the allegations leveled in the charge sheet

a) INEFFICIENCY:

This allegation is incorrect. The petitioner had joined Police Department on 15-09-1991 as Constable and after passing Departmental examination, he was promoted to the rank of ASI . Due to his professional skills, he remained posted at different responsible jobs and completed his tenure up to the entire satisfaction of his superiors, which is on Record. If the petitioner was inefficient , then the competent authorities would never post him in the police stations, which is a job of higher responsibilities. The competent authorities had remarked the Petitioner as "EFFICIENT POLICE OFFICER" in his ACRs, Which is evident from his Service Record. It would not be out of place to mention here that the Petitioner had not been awarded any major/minor punishment regarding inefficiency during his 23 years of service. It is also added that the Petitioner had gained numbers of commendation certificates issued by DPO, DIG and IGP for his efficient performance in different cases which is evident from the petitioner service record. In the light of the best performance and efficiency, the worthy DPO Mardan promoted the petitioner as Sub inspector and on 03-08-2014 posted him as SHO PS Sher Ghar. During this period, the petitioner had recovered contraband, illicit Arms and ammunitions and arrested Pos wanted in heinous offences with the following details:

Attached to be True Copy

Arrest of Pos	Explosives	Narcotics	Arms & Ammunitions		
		Chars	KK	Pistois	Rounds
46	200KG	14 KG	7	29	500

b) CORRUPTION:

This allegation are also false and baseless. During the Appellant's lengthy period of service, no complaint of corruption was received from any person, source or institution. The Petitioner has not been remarked as "CORRUPT" by the Reporting Officer in his ACRs throughout his service. during his prolong service. Having no complaint of corruption, the allegation of corruption leveled against the Petitioner in the charge sheet is beyond understanding / justice.

c) Involvement with smugglers of NCP vehicles:

The petitioner had never been involved in such like practices throughout his entire service. No verbal / documentary complaint was made against the petitioner by any one and this fact is also evident from the petitioner service record. Similarly no reporting officer had remarked the petitioner to be of such category. During the short period of 08 months as SHO Sher Ghar, the petitioner succeeded to recover 26 vehicles of different kinds ( NCP ) from the possession of smugglers which is annexed as annexure "B".

CONCLUSION:

A) The sender of the SMS is unknown and hence the complaint is anonymous. According to the Government of NWFP ( now KPK ), services and general administration department ( Regulation wing ) No. SOR-II ( S&GAD ) 5 (29) 97 vol: II dated 15-11-1999. That anonymous complaint should not be entertained in any Govt Department / Office in future. The same directives of the govt has already been conveyed by the office of worthy IGP KPK vide letter No. 2059-94/ c.cell dated 17-11-1999. ( Copy of Govt order is annexed as annexure "C" ).

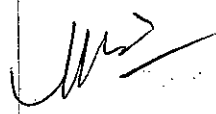
B) The allegations leveled against the petitioner are false, baseless, suspicious, supposition and here say. According to the supreme court of Pakistan PLD 1989 SC 335 , it has been established that suspicious supposition and here say are not the proof of any act.

3. That appellant reply to the charge sheet was not considered by the E.O. During the course of inquiry, beside the allegations mentioned in the charge sheet, the inquiry officer blamed the appellant for the following allegations:

i) That the appellant had not registered the cases of theft committed in the houses of Sartaj, Sher zada, Afzal Khan , Rehmat Gul, Akhtar, Rafique and Muhammad Siddique all residents of PS Sher Ghar and established the appellant to be inefficient.

ii) That the appellant facilitated the smugglers of NCP Vehicles in getting released on Bail / superdari those vehicles from court and that appellant failed to prefer application / revision for cancellation of Bail / Superdari Order of lower court before the competent forum. The E.O by blaming the appellant like so established that the appellant had links with smugglers of NCP Vehicles.

Attested to be True Copy



4. The inquiry officer submitted his finding before the DPO Mardan and recommended the appellant for punishment. The DPO Mardan awarded major punishment to the appellant and dismissed him from service vide O.B No.817 dated 04-05-2015. ( Copy is annexed as annexure "D" )

5. Your Honour! The appellant has already submitted a detailed reply to the allegations mentioned in the charge sheet while, for the added allegations during the course of inquiry, the appellant submits as under:

- a) The first allegation, so far it relates to the burking of theft cases, no one from such persons informed the appellant regarding the occurrence. They had not visited the police station for lodging any kind of report. According to the alleged statement of one head constable Niaz Ali No. 1400 I/c PP Akbar Banda, he had admitted in his statement that he was in the knowledge of the commission of theft cases but no one of them was ready to go to police station for lodging a report. This clearly shows that if such people were victimized then why they did not bothered to visit the police station or the office of the senior police officers for their grievances. The said head constable had not brought any information regarding theft cases in the notice of appellant.
- b) The second allegation of not preferring applications / revision for cancellation of Bail / Superdari of NCP Vehicles is baseless. Though it is basic responsibility of the prosecution but even then being SHO, the appellant personally had filed revision in the following cases:
  - i) Case No.198 dated 15-03-2014 u/s 420,468,471 PPC PS Sher Ghar
  - ii) Case No.283 dated 08-05-2014 u/s 420,468,471 PPC PS Sher Ghar
  - iii) Case No.221 dated 20-04-2014 u/s 420,468,471 PPC PS Sher Ghar
  - iv) Case No.483 dated 23-12-2014 u/s 420,468,471 PPC PS Sher Ghar
  - v) Case No.27 dated 03-02-2015 u/s 420,468,471 PPC PS Sher Ghar

Moreover, on the verbal request of the appellant in DD No.32 dated 02-01-2015 u/s 523/550 Crpc PS sher Ghar and in DD No. 30 dated 26-08-2014 u/s 523/550 Crpc PS Sher Ghar, a revision applications were filed by the APP Takht Bhai which are on record. It would not be out of place to mentioned here that the appellant was directed by the prosecution time and again to comply immediately the superdari Order regarding NCP Vehicles. The appellant was proceeded against by contempt of court in this regard by various courts.

**Attested to be True Copy**

( Copies of applications / revisions are annexed as annexure "E" )

6. That it is known fact that the base of the departmental inquiry in which the appellant was dismissed from service is the sending of SMS to the worthy IGP KPK peshawar by unknown person, Leveling certain allegations against the appellant. These allegations mentioned in the SMS were inquired into DSP Takht Bhai, who submitted detailed inquiry finding No. 1849/S dated 07-04-2014 before the DPO Mardan. During the course of inquiry, all the



(16-A)

allegations mentioned in the SMS were proved to be false and baseless, rather the appellant was declared efficient, hardworking, diligent and loyal to his profession. DSP Takht Bhai also requested for including his above inquiry finding with the going on departmental inquiry at Mardan against the appellant to be the part of inquiry but his request was not considered and the appellant was dismissed from the service. ( Copy of DSP Takht Bhai inquiry finding No. 1849 /S dated 07-04-2015 is annexed as annexure "F" )

**PRAYER:**

It is requested that the Appeal of the Appellant may kindly be accepted and Order of the punishment be set aside on the following grounds:-

1. The allegations leveled against the appellant in the charge sheet and further allegations raised in the inquiry finding of the E.O are false and baseless.
2. The inquiry Officer, neither collected any kind of proof regarding the allegations against the Appellant, nor recorded a statement of a single person in support of the allegations mentioned in the charge sheet.
3. There is no iota of evidence to connect the Appellant with the allegations. Hence, the allegations are of superficial nature.
4. The Appellant has not been given any opportunity of "PERSONAL HEARING" by the competent authority at the time of passing of impugned punishment Order, which is contrary to the Police rules 1975, hence great injustice was extended.
5. The Appellant was not given final show cause Notice by competent authority, which was the necessary requirement as per relevant rules and thus the illegal Order was passed.
6. In addition to the above facts, the E.O has also made certain irregularities and has dashed the rules and regulations to the ground by not attending the virgin of the appellant and record produced by the appellant. The present inquiry, so far conducted is just an eye wash and fill in the blanks.
7. The Appellant has served the Department for more than 24 years and was at the verge of promotion.
8. The Appellant is having shining Official record and prior to this the Appellant was not treated departmentally during his whole service.
9. The Appellant performed his duties efficiently, honestly, with great zeal and never showed any in efficiency and negligence during his lengthy period of service.
10. The appellant is married with 05 kids. His old mother is also living on his shoulder. The appellant is having no source of income except police service who spent his golden period of his age in the service of police department.

**Attested to be True Copy**

*[Handwritten Signature]*

(17)

Keeping in view of the facts and circumstances mentioned above, it is humbly requested that the Appeal of the Appellant may kindly be accepted. The impugned Order passed by DPO Mardan may kindly be set aside and the appellant may be re-instated in service from the date of dismissal please.

Yours Obediently,

*W* 07-05-2011  
EX-ASI (Muhammad Ayub)

District Police Mardan

Attested to be True Copy

*W*

(18)

Annexure (F)

ORDER.

This order will dispose-off the appeal preferred by Ex- ASI Avab Khan of Mardan District Police against the order of District Police Officer, Mardan, wherein he was dismissed from service vide District Police Officer, Mardan OB No. 817 dated 04.05.2015.

Brief facts of the case are that he while posted as SHO Police Station Shergarh was recommended for departmental proceeding for his inefficiency, corrupt practices, and involvement with smugglers of NCP vehicles. His attitude adversely reflected on his performance which is indiscipline act and gross misconduct, in this connection he was charge sheeted and also proceeded against departmentally through Deputy Superintendent of Police, Legal, Mardan, who after fulfilling necessary process, submitted his findings to District Police Officer, Mardan as the allegation were established against him and recommended for punishment. District Police Officer, Mardan agreed with the findings of enquiry Officer and the alleged ASI was dismissed from service

I have perused the record and also heard the appellant in Orderly Room held in this office on 05.08.2015. Keeping in view his long service and poor family circumstances. The penalty "dismissal from service" is converted into "stoppage of three increments with cumulative effect". The period he remain out of service is treated as leave without pay.

ORDER ANNOUNCED.

(MUHAMMAD SAIED) PSP  
Deputy Inspector General of Police,  
Mardan Region-1, Mardan

No. 4587/ES, Dated Mardan the 11/08/2015.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 695/LB dated 05.2015. His service record is returned herewith for record in your office.

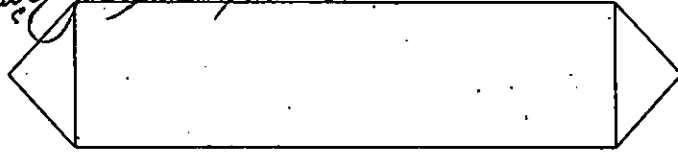
Assesed  
DSP Legal  
Mardan

(\*\*\*\*\*) OB/EE  
For N/A action

DPO/Mardan  
cel 12/8/15

OB 1374  
13-8-15

# بعدالت حساب کسروں میں ٹریبونل ایساہ



2 منجانب ایساہ

محمد الوب بنام 19/11

مورخہ

مقدمہ

دعویٰ

جرم

## باعث تحریر آنکے

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

Alleser  
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ماہ ستمبر

المرقوم 09

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کے لئے منظور ہے۔

مقام لکھنؤ

محمد الوب ولد حلیم گل سیدہ دلہنی سیدان



C

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

**Service Appeal No. 1005/2015**

Muhammad Ayub.....Appellant.

**VERSUS.**

District Police Officer, Mardan & others.....Respondents.

**Respectfully Sheweth:**

**PRELIMINARY OBJECTIONS:-**

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.
7. That the instant appeal is barred by law.

**REPLY ON FACTS:-**

1. Pertains to record, hence, no comments.
2. Correct; hence, no comments.
3. Incorrect. Mere denial to the allegations does not establish innocence, therefore, proper departmental enquiry was conducted & the allegations were established against the appellant.
4. Correct to the extent that the appellant was held responsible, but on solid grounds, & was therefore, recommended for major penalty.
5. Pertains to record, hence, no comments.
6. Correct to the extent of converting the dismissal from service into stoppage of 03 increments with cumulative effects & treating his period as leave without pay. Rest of the Para should not be considered.
7. The appellant is not aggrieved, rather, punished as he deserved.

**REPLY ON GROUNDS:-**

- a. Totally incorrect & baseless. Both the impugned orders are legal just & there is no malafide intention on the part of respondents. Besides, there is no violation of the constitution any other law/rules. The order is thus maintainable.
- b. Totally incorrect & baseless. The order passed is as per rules, based on facts & principles of natural justice.
- c. Incorrect. The respondent No. 03 has initiated enquiry into the matter & after enquiry findings the punishment was awarded to his entire satisfaction. Further, the respondent No. 02 has converted the punishment of dismissal into stoppage of increments on the sympathetic grounds.
- d. Incorrect. Proper departmental enquiry was conducted & the findings are based on sound reasons.
- e. Incorrect. The allegations leveled against appellant are factual & sound, proved during enquiry. Further, opportunity of personal hearing was given, heard by respondent No. 02

ORDER.

This order will dispose-off the appeal preferred by Ex- ASI Ayub Khan of Mardan District Police against the order of District Police Officer, Mardan, wherein he was dismissed from service vide District Police Officer, Mardan OB No. 817 dated 04.05.2015.

Brief facts of the case are that he while posted as SHO Police Station Shergarh was recommended for departmental proceeding for his inefficiency, corrupt practices, and involvement with smugglers of NCP vehicles. His attitude adversely reflected on his performance which is indiscipline act and gross misconduct, in this connection he was charge sheeted and also proceeded against departmentally through Deputy Superintendent of Police, Legal, Mardan, who after fulfilling necessary process, submitted his findings to District Police Officer, Mardan as the allegation were established against him and recommended for punishment. District Police Officer, Mardan agreed with the findings of enquiry Officer and the alleged ASI was dismissed from service

I have perused the record and also heard the appellant in Orderly Room held in this office on 05.08.2015. Keeping in view his long service and poor family circumstances. The penalty "dismissal from service" is converted into "stoppage of three increments with cumulative effect". The period he remain out of service is treated as leave without pay.

ORDER ANNOUNCED

(MUHAMMAD SAIED) PSP  
Deputy Inspector General of Police,  
Mardan District, Mardan

No. 4597 /ES, Dated Mardan the 11/08 /2015.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo. No. 695/LB dated 05.08.2015. His service record is returned herewith for record in your office.

(\*\*\*\*\*)  
OB/EE  
For N/A action.

DP Mardan  
ct 12/8/15

OB 1374  
13-8-15

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

**Service Appeal No. 1005/2015**

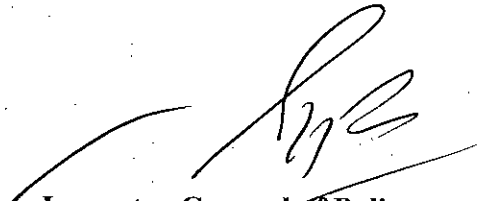
Muhammad Ayub.....Appellant.


**VERSUS.**

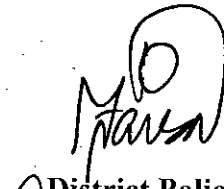
District Police Officer, Mardan & others.....Respondents.

**COUNTER AFFIDAVIT.**

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.

  
**Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.**  
(Respondent No. 1)

  
**Dy. Inspector General of Police,  
Mardan Region-I, Mardan.**  
(Respondent No. 2)

  
**District Police Officer,  
Mardan.**  
(Respondent No. 3)

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

Service Appeal No. 1005/2015

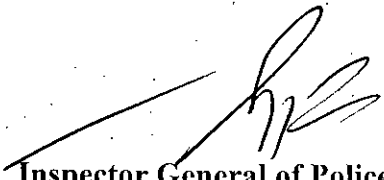
Muhammad Ayub.....Appellant.

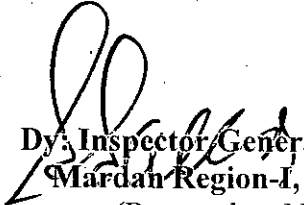
**VERSUS.**

District Police Officer, Mardan & others.....Respondents.

**AUTHORITY LETTER.**

Mr. Muhammad Shafiq Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

  
**Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No. 1)**

  
**Dy. Inspector General of Police,  
Mardan Region-I, Mardan.  
(Respondent No. 2)**

  
**District Police Officer,  
Mardan.  
(Respondent No. 3)**