

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 55/2016

Date of institution ... 15.01.2016

Date of judgment ... 03.09.2018

Diyar Bacha, Ex-Constable No. 3105
Police Lines Mardan.

... (Appellant)

VERSUS

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

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE IMPUGNED ORDER DATED 17.11.2015 WHEREBY THE
APPELLANT WAS DISMISSED FROM SERVICE WITHOUT
CONDUCTING REGULAR INQUIRY IN THE MATTER AND
AGAINST THE APPELLATE ORDER DATED 01.01.2016
WHEREBY THE APPEAL OF THE APPELLANT HAS BEEN
REJECTED ON NO GOOD GROUNDS.

Mr. Noor Muhammad Khattak, Advocate
Mr. Ziaullah, Deputy District Attorney

.. For appellant.
.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. MUHAMMAD HAMID MUGHAL

.. MEMBER (JUDICIAL)
.. MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Learned counsel for the appellants present. Mr. Ziaullah, Deputy District Attorney for the respondents also present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department as Constable. He was dismissed from service vide impugned order dated 17.11.2015 by the competent authority on the allegation that he while posted at Police Line Mardan bought a Motorcycle

M. Amin
3.9.2018

Hero 70CC engine No FML-172164, chassis No. FML-172164 which was stolen property vide case FIR No. 276 dated 19.07.2015 under sections 381-A/34/411 PS Sheikh Maltoon from Cook-Constable Hazrat Sher No. 255 for Rs. 12000/- only. The appellant filed departmental appeal on 26.11.2015 which was rejected on 01.01.2016 hence, the present service appeal on 15.01.2016.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department as Constable. He was dismissed from service on the aforesaid allegation. It was further contended that the appellant filed departmental appeal within time but the same was also rejected. It was further contended that the appellant had no knowledge that motorcycle in question was stolen property and he had purchased the motorcycle bonafidely therefore, it was contended that the major penalty imposed upon the appellant is very harsh and the same does not commensurate with the guilt of the appellant and prayed for lenient view.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was involved for purchasing of stolen Motorcycle. It was further contended that proper/regular inquiry was conducted wherein the appellant was found guilty and on the basis of inquiry report the appellant was rightly dismissed from service.

6. Perusal of the record reveals that the appellant was charge sheeted for purchasing of stolen Motorcycle involved in case FIR No. 276 dated 19.07.2015 under sections 381-A/34/411 PS Sheikh Maltoon from Cook-Constable Hazrat Sher. The record further reveals that there is nothing on the record to show that the appellant had knowledge that the motorcycle in question was a stolen

M. Anwar
3.9.2018

property. The record further reveals that there was no complaint against the appellant before purchasing the motorcycle in question therefore, the major penalty of dismissal from service of the appellant appeared to be harsh. As such, we partially accept the appeal, reinstate the appellant into service and convert the major penalty of dismissal from service of the appellant into withholding of two annual increments for a period of two years. The intervening period will be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

03.09.2018



(MUHAMMAD HAMID MUGHAL)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

27.04.2018 Junior counsel for the appellant and Mr. Kabir Ullah Khattak, Additional AG for the respondents present. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on **12.07.2018** before D.B.



Reader

12.07.2018 Clerk to counsel for the appellant present. Mr. Atta ur Rehman, SI alongwith Mr. Ziaullah, DDA for respondents present. Arguments could not be heard due to general strike of the Bar. Adjourned. To come up for Arguments on 03.09.2018 before D.B.



(Ahamed Hassan)
Member




(Muhammad Hamid Mughal)
Member

03.09.2018 Learned counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Atta-ur-Rehman, S.I (legal) for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, we partially accept the appeal, reinstate the appellant into service and convert the major penalty of dismissal from service of the appellant into withholding of two annual increments for a period of two years. The intervening period will be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
03.09.2018



(MUHAMMAD HAMID MUGHAL)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

06.11.2017


Appellant in person present. Mr. Ziaullah, Deputy District Attorney for the respondents also present. Appellant requested for adjournment on the ground that his counsel is not in attendance today. Adjourned. To come up for arguments on 15.01.2018 before D.B.



(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

15.01.2018


Clerk of the counsel for appellant present. Mr. Kabir Ullah Khattak, Addl: AG for the respondents present. Lawyer community on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourned. To come up for arguments on 13.03.2018 before D.B.


(Gul Zeb Khan)
Member


(M. Hamid Mughal)
Member

13.03.2018

Learned counsel for appellant and Mr. Muhammad Jan, learned DDA alongwith Muhammad Shafeeq Inspector for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 27.04.2018 before D.B.


(M.Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

55/16

21.12.2016

Counsel for the appellant and Mr. Khalid Mehmood, H.C alongwith Additional AG for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 08.05.2017 before D.B.

(MUHAMMAD AAMIR NAZIR)
MEMBER

08.05.2017

Clerk of the counsel for appellant present. Mr. Khalid Mehmood, Head Constable alongwith Mr. Ziaullah, Government Pleader for the respondents also present. Due to strike of the bar learned counsel for the appellant is not available today. Adjourned for arguments to 21.08.2017 before D.B.

(AHMAD HASSAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

21/8/2017

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. Due to non-availability of DB, case to come up for argument on 6/11/2017 before DB.

Reader

09.02.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to inquiry on the allegations of professional mis-conduct and dismissed from service vide impugned order dated 17.11.2015 where-against departmental appeal preferred on 26.11.2015 was rejected on 1.1.2016 followed by service appeal instituted on 15.1.2016.

That the inquiry procedure was not adopted and appellant condemned unheard.

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 14.4.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

14.4.2016

Counsel for the appellant and Mr. Muhammad Ghani, SI alongwith Addl: A.G for respondents present. Written reply by respondents submitted. The appeal is assigned to D.B for rejoinder and final hearing for 10.08.2016.


Chairman

10.08.2016

Agent to counsel for the appellant and Mr. Muhammad Ghani, SI alongwith Addl. AG respondents present. To come up for rejoinder and arguments on 21-12-16.




Member


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 55/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.01.2016	<p>The appeal of Mr. Diyar Bacha presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Banch for preliminary hearing to be put up thereon <u>9-2-16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: center;"><i>Handwritten diagonal line</i></p> <p style="text-align: center;"><i>Handwritten: 21-15-16</i></p>

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO 55 /2016

DIYAR BACHA

VS

POLICE DEPTT:

INDEX

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5.	Appellate order	D	13.
6.	Vakalat nama	14.

APPELLANT

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 55 /2016

K.W.F. Province
Service Tribunal
Diary No. 41
Dated 15-1-2016

Mr. Diyar Bacha, Ex. Constable No. 3105,
Police lines Mardan **Appellant**

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Deputy Inspector General of Police, Mardan Region-I Mardan.
- 3- The District Police Officer, District Mardan.

..... **Respondents**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 17-11-2015 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST THE APPELLATE ORDER DATED 01-01-2016 WHEREBY THE APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 17-11-2015 and 01-01-2016 may very kindly be set aside and the respondents may please be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant was appointed as Constable in the respondent Department. That after appointment the appellant started performing his duty quite efficiently and up to the entire satisfaction of his superiors.
- 2- That appellant while serving as constable at police lines Mardan, District Mardan, the appellant served with impugned order dated 17.11.2015 whereby the appellant was dismissed from service on the allegation that appellant has bought a Motor cycle "Hero 70cc" which is stolen property vide case FIR NO.276 dated 19-07-2015 U/S 381-

15/1/16

15/1/16

A/34/411 police station Sheikh Maltoon Mardan from Ex-Cook Constable Hazrat Sher No.255 for Rs only. 12000/-. Copy of the impugned order dated 17.11.2015 is attached as annexure **A.**

- 3- That feeling aggrieved from the impugned order dated 17-11-2015 the appellant filed Departmental appeal along with certain documentary evidence on 26-11-2015 but the same was rejected by the appellate authority on no good grounds vide order dated 1.1.2016. Copies of the Departmental appeal, record and appellate order are attached as annexure **B, C and D.**
- 4- That appellant having no other remedy prefer the instant appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned orders dated 17-11-2015 and 01-01-2016 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That no show cause notice has been served on the appellant by the respondents before issuing the impugned order dated 17.11.2015 against the appellant.
- D- That no fact finding inquiry has been conducted in the matter of the appellant which is mandatory in such like cases, therefore the impugned orders are not tenable and liable to be set aside.
- E- That no charge sheet and statement of allegation has been served by the respondents on the appellant before issuing the impugned order dated 17.11.2015 against the appellant.
- F- That no chance of personal hearing/ defense has been given to the appellant which is mandatory under amended E & D rules 2011.

- G- That no regular Departmental inquiry has been conducted in the matter of appellant which is as per Supreme Court judgments is necessary in cases of punitive actions against the civil servant.
- H- That the respondent acted in arbitrary and malafide manner while issuing the impugned orders dated 17-11-2015 and 01-01-2016.
- I- That the action has been taken against the appellant by the respondent No.3 under the misconception of law and as such the impugned order is void ab initio in the eye of law.
- J- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 11-01-2016

APPELLANT



DIYAR BACHA

THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE**

A - 4

ORDER

My this order will dispose of the departmental inquiry, which is conducted against **Constable Diyar Bacha No. 3105**, on the allegations that he, while posted at Police Lines Mardan, bought a motorcycle Hero 70 CC Engine No. FML-172164, Chassis No. FML-172164 which is stolen property vide case FIR No. 276, dated 19.07.2015 u/s 381-A/34/411 PS Sheikh Maltoon, from cook constable Hazrat Sher No. 255 for Rs. 12000/- only. However the original market price of the said motorcycle is Rs. 40000/-. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.


In this connection, **Constable Diyar Bacha No. 3105**, was issued charge sheet vide this office No. 1054/R, dated 04.09.2015, and also proceeded against departmentally through the **Shamreez Khan DSP/City Mardan**, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 1828/S dated 10.11.2015 as the allegations have been established against him and recommended him for major punishment.

The undersigned agreed with the findings of enquiry officer and the alleged **Constable Diyar Bacha No. 3105**, 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. 2106

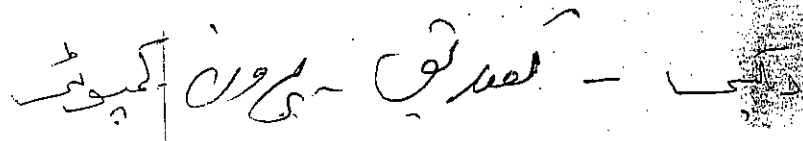
Dated 12/11/2015


(Faisal Shahzad)PSP
District Police Officer,
Mardan.

No. 10185-9/GB dated Mardan the 17-11/2015

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 OHC (DPO) Mardan.



ATTESTED



BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE MARDAN REGION-I

MARDAN

B- (5)

Subject: APPEAL AGAINST THE O.B NO. 2106 DATED 12-11-015 OF DISTRICT POLICE OFFICER MARDAN, WHERE BY THE APPELLANT WAS AWARDED THE PUNISHMENT " DISMISSAL FROM SERVICE ".

R/Sir,

It is submitted that :

1. That the DPO Mardan had issued the charge sheet/ statement of allegation No.1054/R dated 04-09-2015 against the Appellant with the following allegations:

"That Constable Diyar Bacha No.3105, while posted at police lines Mardan, bought a motorcycle Hero 70 CC engine No.FML-172164, Chasis No. FML-172164 which is stolen property vide case FIR No.276, dated 19-07-2015 u/s 381-A/34/411 PS Sheikh Maltoon, from cook Constable Hazrat Sher No.255 for Rs.12000/- only. However the original market price of the said motorcycle is Rs. 40,000/-. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(ii) of police rules 1975".

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 was not considered and the appellant was recommended for punishment. The DPO Mardan awarded the punishment to the appellant of dismissal from service vide O.B 2106 dated 12-11-2015. (Copy of O.B No.2106 is enclosed).
3. That the facts regarding the allegations mentioned in the charge sheet are as under:

- a) During the year 2014, the appellant remained posted at PS Choor. Cook Constable Hazrat Sher was also posted at that time at PS Choor. The said constable Hazrat Sher disclosed that he is in possession of an old motor cycle and wants to sell the same. I agreed for its purchase. The sale price was fixed rupees 20,000/- between us.
- b) The appellant paid rupees 9,000/- on the spot and for the payment of remaining amount, it was settled that it will be paid to Hazrat Sher after the handing over of the vehicle documents.
- c) That later on, the appellant was transferred to police lines Mardan. On 06-07-2015, I was directed by SHO Choor to come to PS Sheikh Maltoon along with the said motorcycle. I reached to the PS Sheikh Maltoon where the SHO PS Choor took the said motorcycle into his possession and I went back to police lines Mardan.
- d) That later on, I came to know that the said motor cycle was shown as stolen property in case FIR No.276 dated 19-07-2015 u/s 381-A /34/411 PS Sheikh Maltoon and the cook constable has been arrested in the said case.
- e) That the appellant had no concern with the said motorcycle except the purchase from cook Hazrat sher, who might be knowing regarding the said motorcycle well.

ATTESTED



Conclusion:

6

- A) That the impugned order of Dismissal is illegal and void ab-initio passed in utter violation of law , rules.
- B) That the petitioner was not knowing about the said motor cycle to be a stolen property. The appellant had purchased the same on normal routine market rate and there was no bad intention/ criminal intention in the said transaction from the appellant side.
- C) That the appellant was not given an opportunity of "personnel hearing" by DPO Mardan and thus ex-parte action has been taken against the petitioner.
- D) That the petitioner was given with no "Final show cause Notice" which is against the rules & regulations.
- E) That the petitioner service is the only source of income for his old parents and younger brothers / sisters.

Keeping in view of the facts and circumstances mentioned above, it is humbly requested that the Appeal of the Appellant may kindly be accepted and the impugned Order passed by DPO Mardan may kindly be set aside please.

Yours Obediently,

Diyar 26.11.2015

Constable Diyar Bacha No.3105

District Police Mardan

(Now Dismissed From Service)

ATTESTED

ای۔ ائی۔ ایل۔ اے۔ تیسٹ جرم قابل دست اندازی پوائس رپورٹ شدہ زبردفعہ ۱۵۲ مجموعہ ضابطہ فوجداری

بینچ ملتون

مردان

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تاریخ حوشت ۱۹ ۵۷ / ۲۵۱۵ وقت ۱۸:۲۵ بجے

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وقت رپورٹ ۱۹ ۵۷ / ۲۵۱۵ وقت ۱۸:۴۰ بجے	چالیدہ گرام پورڈیہ ۱۹ ۵۷ / ۲۵۱۵ وقت ۱۹:۰۵ بجے
دست اطلاع دہندہ شفیت	نور البصر ولد سید شہرناک خان آباد لوتھی رورڈ
فیت جرم (موردفعہ) حال اگر کچھ لیا گیا ہو۔	۳۱۰ ۳۸۱ A
ذوق فاصلہ تھانے سے اور دست	دبھ جان آباد نذر مسیحہ گیت جان آباد میں نور پور رورڈ
دست لزم	۱) خامہ ولد وارث خلات کنڈ سرنگ نہر بالا کنڈلسن ۲) حضرت شہر ولد محمد نواس کنڈہ باغیچہ ڈھیریا
یادداشت کے متعلق کوئی کارروائی کر کے مل تو فہم ہو تو تب بیان کر	بہر سید گرام سرائہ مقدمہ ۷۸ رجسٹرڈ کیا جائے گا
سے روانگی کی تاریخ اور دست	بہ سبیل ڈاک

ای۔ ائی۔ ایل۔ اے۔ تیسٹ گیشن کے متعلق کوئی کارروائی کر کے مل تو فہم ہو تو تب بیان کر

استراعی اطلاع بخیر رج کرو۔ لوقت صدر ایک شہر سرائہ سبیل ڈاک

۱) کہ بہت گھٹل امید ۲۱۹۳ موصول ہو کر درج ذیل ہے۔ بخیرت آخیرہ اخبار میں شیخ ملتون صاحب (سیدہ جان آباد) کے موقع پر مسیحا نور البصر ولد سید شہرناک خان لوتھی آباد لوتھی رورڈ

۲) لہذا دراصل سید الہ آباد لوتھی رورڈ کے واقعہ میں سید شہرناک خان لوتھی رورڈ کے واقعہ میں سید شہرناک خان لوتھی رورڈ کے واقعہ میں

F. 9019 ماڈل ۱۱۱ کے سرنگ سرخ از مسیحہ یونیک پر پھر ہا ادا نے نماز عصر اپنے مسجد جان آباد

ظور سے آکر موٹر سائیکل مسجد کے میں گیت کے سامنے کھڑا کر کے ہینڈل ٹالہ کیا اور نماز

کیا گئی مسجد جان آباد کے نماز گاہ پر آئے تو موٹر سائیکل اپنے حکم سے وہاں موجود نہ ہو سکا

۳) تلافی وینٹا ہزار لاکھ بھرتے ملوان ہوا کہ موٹر سائیکل متذکرہ بالا مسیحا خانم

رواوت خلا کٹنے سرنگ نہر بالا کنڈلسن اور حضرت شہر ولد محمد نواس کنڈہ باغیچہ

نہرناک خان لوتھی رورڈ کے واقعہ میں اپنے موٹر سائیکل متذکرہ بالا سرفہ کھڑے نہ

کیا جان بالا برخلاف دو ہیاداریوں اور دست کاروں کی مدد سے سید شہرناک خان لوتھی رورڈ کے واقعہ میں

ن آباد لوتھی رورڈ خان لوتھی رورڈ کے واقعہ میں سید شہرناک خان لوتھی رورڈ کے واقعہ میں

آباد لوتھی رورڈ کے واقعہ میں سید شہرناک خان لوتھی رورڈ کے واقعہ میں سید شہرناک خان لوتھی رورڈ کے واقعہ میں

یہ کہنے کے تا نیکہ نادر سبب ثبت کیا گیا۔ جس کا میں تصدیق کرتا ہوں۔ مضمون رپورٹ سے

رت خبر جان لوتھی رورڈ کے واقعہ میں قائم مقدمہ بہت گھٹل امید ۲۱۹۳ ارسال

انہی تفتیش کا کاروبار۔ دست کاروں کے پاس اسفند یا رخلان تھا SMT مورخہ ۱۹ ۵۷ / ۲۵۱۵ بقول

اصلاح تھا سید آخیرہ سرائہ خریف خریف درج بالا ہو کر پیرچہ بجز فوق مرتبہ ہوا بقول

Fi مضمون سرائہ خبر میں تفتیش خوانہ اخبار شعبہ تفتیش کے جاتے ہیں۔ یہ خبر اخبار

H. Rahme
SI PS SMT

APR 1958

ایجابی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردفعہ ۱۵۲ مجموعہ ضابطہ فوجداری

سٹیٹس ملٹون

ضلع سرحدان

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تاریخ وقت ۱۹/۰۷/۲۰۱۵ وقت ۱۸:۲۵ بجے

تاریخ وقت رپورٹ ۱۹/۰۷/۲۰۱۵ وقت ۱۸:۴۰ بجے	چالہ گرام پریس ۱۹/۰۷/۲۰۱۵ وقت ۱۹:۰۵ بجے
نام و کونٹ اطلاع دہندہ مستفیث	نورالبحر ولد سید قمر گل خان آباد لاہور
مختصر کیفیت جرم (موردفعہ) حال اگر کچھ لیا گیا ہو۔	PK 381 A-314
جائے وقوعہ فاصلہ تھانہ سے اور سمت	دیہہ جان آباد نزد مسپہ گیت خان آباد میں نوٹس فرورڈ
نام و کونٹ لزم	① خادمہ ولد وارث خٹک کنہ نرسنگ ہنر بالا کنڈل (۲) حضرت شیر ولد محمد نواس کنہ باغیچہ ڈیرہ
کارروائی پیش کی گئی اور اطلاع دہندہ سے توفیق ہوا ہو تو بتایا جائے	بہر سید گرام سرائہ مقدمہ درج شدہ کیا جاتا ہے
تھانہ سے روانگی کی تاریخ و وقت	بہ سبیل ڈاک

ایجابی اطلاع نے درج کرو۔ وقت صدر ایک سیر کی سرائہ مستفیث حضرت
خان آباد بہت کٹیل افسدہ ۲۱۹۳ اصول ہو کر درج کر لیا۔ خدمت آفیسر اعجاز علی شیم ملٹون صاحب
الملا) سید جان آباد آکر موقع پر مسکنی نورالبحر ولد سید قمر گل خان افغان پتھر ۱۳/۱۱/۱۳ سال کنہ جان آباد
مستفیث لہ پیر احمد عبداللہ یوں رپورٹ کرتا ہے کہ میں نے میرا درابا عبداللہ اپنے موٹر سائیکل
نمبر F. 9019 ماڈل ۱۱۱۱ برنگ سرخ از قسم یونیک میرا فرس ادا نے نماز عصر اپنے مسکن جان آباد
مستفیث غور سے آکر موٹر سائیکل مسجد کے میں گیت کے سامنے کھڑا کر کے ہینڈل ٹالہ کیا اور نماز
نماز کیلئے مسجد جا کر بعد ادا نے نماز جب پامیر آئے تو موٹر سائیکل اپنے حکم عدا موجود ہوا تاکہ
میں نے تلاش میں رہتا ہوا کہ کون سے پہلے ہوا کہ موٹر سائیکل متذکرہ بالا مسکن نامہ
ولد وارث خٹک کنہ نرسنگ ہنر بالا کنڈل اور حضرت شیر ولد محمد نواس کنہ باغیچہ ڈیرہ
ڈیرہ میں نے موٹر سائیکل سرفہ کر کے لے گیا ہے۔ میں اپنے موٹر سائیکل متذکرہ بالا سرفہ کر کے
دو سال بالا برخلاف دعویہ میں ۱۰ سال مستفیث لے گیا ہے کہ سید عبداللہ ولد سید قمر گل خان ۳۹/۳۹ سال کنہ
جان آباد نے رپورٹ بالا کا تائید کا اہل مستفیث اور صاحب کاررائی پولیس صاحب گستاخان رپورٹ
درج بالا ہو کر پتھر سبایا سمجھا گیا۔ درست تسلیم کر کے درنگر واد دستخط کیا۔ جبکہ
تائید کنندہ کے تائید کا دستخط ثبت کیا۔ جسکا میں تصدیق کرتا ہوں۔ مضمون رپورٹ سے
صورت جبر بالا ۱۵ سال حاکم سرائہ پھر من قائم مقدمہ بہت کٹیل افسدہ ۲۱۹۳ ارسال
تھانہ سے۔ تفتیش کا جاوہ۔ دستخط انگریزی اسفند یار خٹک سٹا SMT مورخہ ۱۹/۰۷/۲۰۱۵
کاررائی تھانہ پتھر آفیسر سرائہ خرف بخوف درج بالا ہو کر پتھر پتھر فوق مرتب ہو گیا بقول
FIR سے سرائہ پھر من تفتیش خواہہ اعجاز شعبہ تفتیش کیے جاتے ہیں۔ جرم جبر

HRobma

SI PS SMT

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قابل

ابتدائی اطلاع رپورٹ

اکبر علی

ابتدائی اطلاع نسبت قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ توجہ داری

تھانہ ۵۵
نمبر ۵۷۹
تاریخ 24/6/15
وقت 11:45

۱-	تاریخ و وقت رپورٹ	جائگہ کی وجہ سے 25/6/15	وقت 11:45
۲-	نام و سکونت اطلاع دہندہ مستغنیث	ریاض الحق ولد مولانا محمد صالح قوم اچان، لوجھ پورہ ۱۰ سالہ	
۳-	مختصر کیفیت جرم (موردہ) حال اگر کچھ لیا گیا ہو۔	411 381A	حقیقت کی صورت میں
۴-	جائے وقوعہ فاصلہ تھانہ سے اور سمت	سرد سیکر ڈال خانہ GPO وصال	
۵-	نام و سکونت ملزم		
۶-	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	مستغنیث کی رپورٹ پر قعدہ درج رکھ کر	
۷-	تھانہ سے روانگی کی تاریخ و وقت	۱۱ بجے	

ابتدائی اطلاع نیچے درج کرو۔ لوجھ پورہ مستغنیث سرد سیکر خانہ
 ۲ بجے بحالی حفاظت کے لئے لوجھ پورہ کو بلا حوالہ رکھ کر مورم 24/6/15
 لوجھ پورہ 11:45 بجے لوجھ پورہ لینی فورس سائیکل 9359 FA ارض نمبر 125
 حقیقتاً ایک سرح جس پر 4449096 ارض نمبر 766771 GPO 3
 سردال آکر فورس سائیکل خندڑہ کو جانے دیا گیا اور فورس پورہ اور میں
 نماز ظہر ادا کر کے مسجد گیا۔ کچھ نماز ظہر جب وہاں پہنچا تو فورس پورہ
 سائیکل خندڑہ موجود نہیں تھا۔ اور کوئی شہرہ نہ تھا۔ انہیں
 کافی حد تک اور پتہ نہ لگا گیا۔ اگر ذہنیات سے پتہ لگتا۔ سرپرست
 جے ر معلوم نہیں ہے۔ کم خندڑہ فورس سائیکل خندڑہ کو لے گیا
 ہے۔ خندڑہ میں اپنی فورس سائیکل خندڑہ لے گیا۔ کارروائی دیوہی سے
 علم/علماں اسماء نے معلوم دیکھا کہ وہاں کارروائی دیوہی سے
 گندہ اساتل رپورٹ درج ہو کر پتہ لگا کر سائیکل خندڑہ کو لے گیا
 دستاویز کیا۔ خندڑہ سے صورت میں خندڑہ کو لے گیا۔ خندڑہ کو لے گیا
 ماہ درج ہو کر فورس FIR اور تفتیش کے لئے خندڑہ کو لے گیا
 ہے جائے نہیں۔ درج کر کے 25/6/15

41

10

U/O M 381A

22 57P
15

Statement of Riazul Haq son of Wakeel Khan caste Afghani aged about 25 years r/o Jhanday Bessil Pakht Shah di Mardan on oath

Stated that on 25.6.2015 I had lodged report at Police Station, city vide FIR No.579 u/s 381-A PPC of unknown accused regarding stealing of my motorcycle Honda red colour. I was in search and now I am fully satisfied that my motorcycle was stolen by Hamid son of Waris Khan r/o Bala Garhi and Nazrat Shah son of Mohd Nawas r/o Bagheecha Dheri. I charge both the accused above for the offence.

Certified u/s 164 Cr.P.C

ROSLAC

27.7.2015

Riazul Haq complainant

GNMC No.15102-5344152-5

AFTAB IQBAL
Judicial Magistrate-IV
Mardan.

(SIGNAL)

(11)

FROM () HEAD OF INVESTIGATION ()

TO () ALL DPOS IN KHYBER PAKHTUNKHWA ()

NO. /GB () DATED 03/07 /2015 () SUBJECT () FIR NO. 579 DATED 25.06.2015 U/S 381A POLICE STATION CITY DISTRICT MARDAN () IN THIS CASE SOME UNKNOWN ACCUSED HAS BEEN STOLEN A MOTOR CYCLE HONDA 125CC, REGISTRATION NO. FA 9359, MODEL 2012, ENGINE NO. 3766771 & CHASSIS NO. U 449096 COLOUR RED () IT IS REQUESTED THAT IF THE SAID MOTOR CYCLE FOUND OR ALREADY TAKEN IN TO POSSESSION, THIS OFFICE MAY KINDLY BE INFORMED ACCORDINGLY ()

Handwritten notes:
- 9359 / FA
- U/S 381A
- 03/07/15

HEAD OF INVESTIGATION
MARDAN ()

No. 2724-⁵⁰/GB

Copy to OII Police Station City for information.

ATTACHED

Handwritten signature/initials

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فائل نمبر 16101-5069456-3

آرڈر نمبر 0345/9359787
فارم نمبر ۲۲-۱۱۵
دووں ملکان

ابتدائی اطلاع رپورٹ

ملزم صاحبہ 16101-1160909-9
0347-1099235

ابتدائی اطلاع نسبت قابل دست اندازی پولیس رپورٹ شدہ زبردفعہ ۱۵۲ مجموعہ ضابطہ فوجداری

03454140161
16101-2568523-1

ملزم خود

درج

ضلع

سٹی

12

تھانہ نمبر 13

تاریخ وقت رپورٹ	09/7/15 14:05	تاریخ وقت رپورٹ	09/7/15 20:20
نام و سکونت اطلاع دہندہ مستغیث	حیدر علی ولد عبدالرزاق سندھ	نام و سکونت ملزم	حاند ولید وارث خان
مختصر کیفیت جرم (موردفعہ) حال اگر کچھ لیا گیا ہو۔	381-A/4	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف و تاخیر ہو تو وجہ بیان کرو	مستغیث کے اہل گھر سے مل کر ملزم کو تلاش کیا گیا۔
خانے وقوعہ فاصلہ تھانہ سے اور سمت	حدیثہ	تھانہ سے روادگی کی تاریخ وقت	09/7/15

ابتدائی اطلاع نیچے درج کرو۔

ملزم صاحبہ صاحبہ کا نام اور پتہ 33 دربارہ چیچر 9 علاقہ سٹی میں
 چکر پور ایس ایس سیڈ گاؤں 2055، ایف ڈی پی 87020 RMIA جس نے
 SR-70 897556 7000 کے متعلق سے رپورٹ کی ہے۔ یہ سب سے پہلے اطلاع دہندہ کی طرف سے
 کی گئی ہے۔ اس وقت تک کسی اور اطلاع نہیں ہے۔ کہ بہتر طریقے سے اطلاع دہندہ نے
 ملزم صاحبہ کے بارے میں کوئی اور اطلاع نہیں دی ہے۔ حاند ولید وارث خان صاحبہ کے گھر سے
 اطلاع دہندہ نے اطلاع دی ہے۔ یہ سب سے پہلے اطلاع دہندہ کی طرف سے ہے۔
 کہ بہتر طریقے سے اطلاع دہندہ نے اطلاع دی ہے۔ کہ بہتر طریقے سے اطلاع دہندہ نے
 اطلاع دہندہ نے اطلاع دی ہے۔ یہ سب سے پہلے اطلاع دہندہ کی طرف سے ہے۔

ذمہ دار
 نام 05/01/15

ORDER.

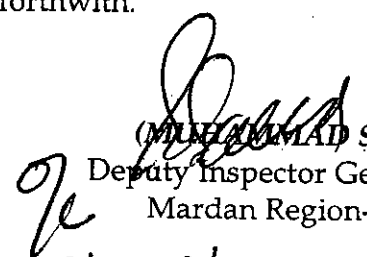
D - (13) (15)

This order will dispose-off the appeal preferred by Ex-Constable Syed Diyar Ahmad No. 3105 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was awarded Major Punishment of Dismissal from service vide OB No. 2106 dated 12.11.2015.

Brief facts of the case are that, he while posted at Police Lines, Mardan, bought a Motorcycle Hero 70CC engine No. FML-172164, Cassis No. FML-172164 which is stolen property vide case FIR No. 276 dated 19.07.2015 u/s 381-A/34/411 PS Sheikh Maltoon, from Ex-cook Constable Hazrat Sher No. 255 for Rs. 12000/- only. However the original market price of the said motorcycle is Rs. 40000/-. His this attitude adversely reflected on his performance. In this connection he was charge sheeted and also proceeded against departmentally through Deputy Superintendent of Police City, Mardan, who after fulfilling necessary process, submitted his findings to District Police Officer, Mardan as the allegation have been established against him and recommended him for Major punishment, District Police Officer, agreed with the findings of enquiry Officer and the alleged Constable was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 17.12.2015, but he failed to justify his innocence and could not produce any cogent reason about his innocence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.


ORDER ANNOUNCED.


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

No. 13 /ES, Dated Mardan the 01 - 01 - 2016.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 1169/LB dated 03.12.2015. His service roll is returned herewith for record in your office.

(*****)

ATTESTED


VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

OF 2016

Diyar Baeha

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Diyar Baeha

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** 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 cost. 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.

Dated. ____/____/2016

Diyar Baeha

CLIENT

Noor Mohammad Khattak

ACCEPTED

**NOOR MOHAMMAD KHATTAK
(ADVOCATE)**

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

C

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

Service Appeal No. 55/2016

Diyar Bacha Ex-Constable No. 3105.....Appellant.

VERSUS.

District Police Officer, Mardan

& others.....Respondents.

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

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 & limitation.

REPLY ON FACTS.

1. Pertains to record, hence, no comments.
2. Correct, hence, no comments.
3. Pertains to record.
4. The appellant has got no cause of action to file instant appeal.

REPLY ON GROUNDS:-

- A. Incorrect. The impugned orders are in accordance with law, facts, norms of justice & material on ground. Hence, tenable in the eyes of law.
- B. Incorrect. There is no violation of any article of Constitution of Islamic Republic of Pakistan. The appellant has been treated under relevant rules/law.
- C. Incorrect. Proper departmental enquiry was conducted by following all codal formalities.
- D. Incorrect. Replied above in the preceding Para-C.
- E. Incorrect. Proper departmental proceedings had been initiated by conducting proper enquiry, wherein, the appellant was found guilty, hence, punished as he deserved. **(copies of Charge Sheet/statement of allegations are attached as Annexure-A & B).**
- F. Incorrect. The appellant has been provided all opportunities of defence at all stages of departmental proceedings against him. Further, the appellant is member of Police Force and is dealt under Special Law i.e Police Rules.
- G. Incorrect & baseless. The appellant has been treated accordingly in the light of the directions of the Supreme Court of Pakistan.
- H. Incorrect & baseless, hence, denied. Detail reply has been given in above paras.
- I. Incorrect. The action taken by respondent No. 3 is in accordance with rules/law & the impugned order is legal & tenable in the eyes of law.

J. The respondents also seek permission of the Honourable Court to present grounds, if any, at the time of arguments.

PRAYER:-

It is therefore, prayed that the appellant's plea holds no legal grounds and he does not deserve to be retained more in service as prayed for. His appeal may please be dismissed with costs.



**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)**



**Dy: Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 02)**



**District Police Officer,
Mardan.
(Respondent No. 03)**

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

Service Appeal No. 55/2016

Diyar Bacha Ex-Constable No. 3105.....Appellant.


VERSUS.

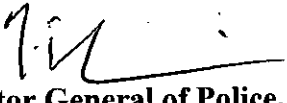
District Police Officer, Mardan

& 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.


**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**
(Respondent No. 01)


**Dy: Inspector General of Police,
Mardan Region-I, Mardan.**
(Respondent No. 02)


**District Police Officer,
Mardan.**
(Respondent No. 03)

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

Service Appeal No. 55/2016

Diyar Bacha Ex-Constable No. 3105.....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.


**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)**


**Dy: Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 02)**


**District Police Officer,
Mardan.
(Respondent No. 03).**

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 1054 /R/D.A-P.R-1975.

Dated 4-9- /2015.

DISCIPLINARY ACTION UNDER KPK POLICE RULES - 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority am of the opinion that Constable **Diyar Bacha No. 3105** rendered 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 you **Constable Diyar Bacha No. 3105**, while posted at Police Lines Mardan, bought a motorcycle Hero 70 CC Engine No. FML-172164, Chassis No. FML-172164 which is stolen property vide case FIR No. 276, dated 19.07.2015 u/s 381-A/34/411 PS Sheikh Maltoon, from cook constable Hazrat Sher No. 255 for Rs. 9000/- only. However the original market price of the said motorcycle is Rs.40000/-.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Shamraiz Khan DSP/City 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 defaulter official, record findings and complete within twenty five (25) days of the receipt of this order, recommendation for his punishment or other appropriate action against the accused officer.

4. The accused constable shall ensure and 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. 1054 /R, dated Mardan the 4-9- /2015.

Copy of above is forwarded to the:

1. DSP/City Mardan for initiating proceedings against the accused official / Officer namely Constable **Diyar Bacha No. 3105**, under Police Rules, 1975.
2. Constable **Diyar Bacha No. 3105**, 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.


CHARGE SHEET UNDER KPK POLICE RULES 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority hereby charge you **Constable Diyar Bacha No. 3105**, as follows.

That you Constable, while posted at Police Lines Mardan, bought a motorcycle Hero 70 CC Engine No. FML-172164, Chassis No. FML-172164 which is stolen property vide case FIR No. 276, dated 19.07.2015 u/s 381-A/34/411 PS Sheikh Maltoon, from cook constable Hazrat Sher No. 255 for Rs. 9000/- only. However the original market price of the said motorcycle is Rs.40000/-.

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

بیان اُردان کیل دیار نم 3105 منیجر پولیس لائن مردان

بیان کیا کہ جو الیگواٹریں مصر وہاں ہوں۔ اس سال 2009 کا صدر لائن سے کہا کہ پولیس لائن سے IB آفس کا کارڈ میں تھا۔ جو جوڑ سائیکل کی اسٹارٹ ضرورت تھی۔ جو ان دنوں میں تھا۔ جو وہ ہیں تعینات تھا۔ لٹو لٹو کیل سے جو کو کہا۔ اس میں نم کو اپنا جوڑ سائیکل مصر و ماڈل 2010 دیکھا ہوں۔ آمدولوں کے درمیان 15000 روپے کا ہوا ہے۔ 9000 روپے لے لے۔ جو دونوں لفظ SHH ہاں جو وہ نے جو کو کہا کیا۔ تمہارے ساتھ جو گاڑی ہے۔ وہ چوری کی ہے۔ وہ تھا SHH آفیس کے SHH کو چلا کرو۔ تمہیں نے ہر وقت گاڑی SHH ہاں SHH کو چلا کر دی ہے۔ اس میں ہر اکوٹن قصور نہیں تھا۔ جو یہ ہونا کہ ہوز سائیکل چوری کا ہے۔ لٹو لٹو نہیں ملتا تھا۔ اس بار سائیس باگ گناہ ہوں۔ صحاف کیا جاتا۔ یہی میرا بیان ہے۔

الغیر قوم = $\frac{11}{015} = 4$

محمد

المنیجر دیار نم 3105 منیجر پولیس لائن مردان
0313-0903330

JIRY REPORT OF CONSTABLE DIYAR BACHA NO.3105

Undersigned was deputed to conduct Enquiry of Constable Diyar Bacha NO.3105 by the Worthy District Police Officer Mardan through office Letter No.1054/R/D.A.P.R/1975, Dated 4/9/2015.

BRIEF FACTS.

That you constable Diyar Bacha No.3105, while posted at Police lines Mardan, bought a motorcycle hero 70 CC Engine NO. FML-172164, Chassis NO. FML-172164 which is stolen property vide case FIR NO.276, dated 19-7-2015 u/s 381-A/34/411 Police Station Sheikh Maltoon, from cook constable Hazrat Sher NO.255 for RS 9000/- only. However the original market price of the said motorcycle is Rs.40000/-.

ROCEEDINGS.

The proceedings of the enquiry have been conducted strictly in accordance with the NWFP Police Rules 1975.

FINDINGS.

Constable Diyar Bacha NO.3105 has about six years service in Police department. According to the Ex-record the above mentioned constable has no good and fifteen bad entries. A written description was taken from him. During the enquiry it was found that the above mentioned constable has deliberately bought a theft motorcycle from cook constable Hazrat Sher no.255 for 9000 rupees. Whereas the original market rate of the said motorcycle was 40000 rupees, on which a case FIR NO.276 dated 19-7-2015 u/s 381-A/411 has been register in Police Station SMT. This act of the above mentioned constable is out of behavior illegal and indiscipline, which causes bad effect on other constables and bad image of police department. The constable is hereby found to be guilty

CONCLUSION.

The undersigned has reached to the conclusion that the alleged Constable Diyar Bacha NO.3105 may be given major punishment please.

No: 1828 /S
Dt: 10-11-2015
Encl: (4)

*Dismissed from
service.*
M


Deputy Superintendent of Police,
City Circle, Mardan

ORDER

My this order will dispose of the departmental inquiry, which is conducted against **Constable Diyar Bacha No. 3105**; on the allegations that he, while posted at Police Lines Mardan, bought a motorcycle Hero 70 CC Engine No. FML-172164, Chassis No. FML-172164 which is stolen property vide case FIR No. 276, dated 19.07.2015 u/s 381-A/34/411 PS Sheikh Maltoon, from cook constable Hazrat Sher No. 255 for Rs. 12000/- only. However the original market price of the said motorcycle is Rs. 40000/-. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.


In this connection, **Constable Diyar Bacha No. 3105**, was issued charge sheet vide this office No. 1054/R, dated 04.09.2015, and also proceeded against departmentally through the **Shamreez Khan DSP/City Mardan**, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 1828/S dated 10.11.2015 as the allegations have been established against him and recommended him for major punishment.

The undersigned agreed with the findings of enquiry officer and the alleged **Constable Diyar Bacha No. 3105**, 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. 2106

Dated 17/11 /2015


(Faisal Shahzad)PSP
District Police Officer,
Mardan.

No. 10125-90/GB dated Mardan the 17-11 /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 OHC (DPO) Mardan.

①


ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Syed Diyar Ahmad No. 3105 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was awarded Major Punishment of Dismissal from service vide OB No. 2106 dated 12.11.2015.

Brief facts of the case are that, he while posted at Police Lines, Mardan, bought a Motorcycle Hero 70CC engine No. FML-172164, Cassis No. FML-172164 which is stolen property vide case FIR No. 276 dated 19.07.2015 u/s 381-A/34/411 PS Sheikh Maltoon, from Ex-cook Constable Hazrat Sher No. 255 for Rs. 12000/- only. However the original market price of the said motorcycle is Rs. 40000/-. His this attitude adversely reflected on his performance. In this connection he was charge sheeted and also proceeded against departmentally through Deputy Superintendent of Police City, Mardan, who after fulfilling necessary process, submitted his findings to District Police Officer, Mardan as the allegation have been established against him and recommended him for Major punishment, District Police Officer, agreed with the findings of enquiry Officer and the alleged Constable was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 17.12.2015, but he failed to justify his innocence and could not produce any cogent reason about his innocence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

ORDER ANNOUNCED.


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

No. 13 /ES, Dated Mardan the 01 - 01 - /2016.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 1169/LB dated 03.12.2015. His service roll is returned herewith for record in your office.

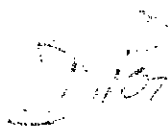
(*****)

OB/EC/0181/13

For file

M

DPo, Mardan


Mardan
11/12

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 55/2016

DIYAR BACHA

VS

POLICE DEPARTMENT

REJOINDER ON BEHALF OF PETITIONER IN RESPONSE TO
THE REPLY SUBMITTED BY THE RESPONDENTS

R/SHEWETH:

All the objections raised by the respondent are in correct, baseless and not in accordance with law and rules rather the respondent is estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

- 1- Admitted correct hence need no comments.
- 2- Admitted correct hence need no comments.
- 3- Admitted correct hence need no comments.
- 4- Incorrect and not replied accordingly hence denied.

GROUND:

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless hence denied. That the impugned orders dated 17-11-2015 and 01-01-2016 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside. That no show cause notice, no charge sheet and statement of allegation has been served by the respondents before issuing the impugned order dated 17-11-2015 against the appellant. That no chance of personnel hearing/defense has been given to the appellant which is mandatory under amended E & D Rules 2011. That no fact finding inquiry and Departmental inquiry has been conducted in the matter in the matter of the appellant which is mandatory in such like cases. That the respondent Department has acted in arbitrary and malafide manner while issuing the impugned orders dated 17-11-2015 and 01-01-2016. That the action has been taken against the appellant by the respondent No.3 under the misconception of law and as such the impugned order is void ab initio in the eye of law.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.

APPELLANT


DIYAR BACHA

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 55/2016

DIYAR BACHA

VS

POLICE DEPARTMENT

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It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.

APPELLANT

D
DIYAR BACHA

THROUGH:

NM
NOOR MOHAMMAD KHATTAK
ADVOCATE

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Appeal No. 55/2016

DIYAR BACHA

VS

POLICE DEPARTMENT

**REJOINDER ON BEHALF OF PETITIONER IN RESPONSE TO
THE REPLY SUBMITTED BY THE RESPONDENTS**

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All the objections raised by the respondent are in correct, baseless and not in accordance with law and rules rather the respondent is estopped due to their own conduct to raise any objection at this stage of the appeal.

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- 1- Admitted correct hence need no comments.
- 2- Admitted correct hence need no comments.
- 3- Admitted correct hence need no comments.
- 4- Incorrect and not replied accordingly hence denied.

GROUNDS:

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless hence denied. That the impugned orders dated 17-11-2015 and 01-01-2016 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside. That no show cause notice, no charge sheet and statement of allegation has been served by the respondents before issuing the impugned order dated 17-11-2015 against the appellant. That no chance of personnel hearing/defense has been given to the appellant which is mandatory under amended E & D Rules 2011. That no fact finding inquiry and Departmental inquiry has been conducted in the matter in the matter of the appellant which is mandatory in such like cases. That the respondent Department has acted in arbitrary and malafide manner while issuing the impugned orders dated 17-11-2015 and 01-01-2016. That the action has been taken against the appellant by the respondent No.3 under the misconception of law and as such the impugned order is void ab initio in the eye of law.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.

APPELLANT


DIYAR BACHA

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1909 /ST

Dated 22 /9 / 2018

To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Mardan.

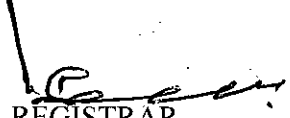
Subject: -

JUDGMENT IN APPEAL NO. 55/2016, DIYAR BACHA.

I am directed to forward herewith a certified copy of Judgement dated 03.09.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

o/c


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.