S.No. of proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	04.10.2016	BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT SWAT APPEAL NO. 180/2015 Khaista Muhammad Versus The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others. JUDGMENT MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:- Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader alongwith Mr. Khawas Khan, Sub Inspector (Legal) for respondents present. 2. Khaista Muhammad Ex-IHC hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against original order dated 19.11.2014 vide which he was awarded punishment in the shape of reversion from the rank of Head Constable to that of C-I Constable and where-against his departmental appeal dated 27.11.2014 was rejected vide final order dated 16.02.2015. 3. Brief facts of the case of the appellant are that he was subjected to departmental enquiry on the allegations of entertaining links with timber smugglers and after conducting the departmental enquiry the impugned orders were passed constraining the appellant to prefer the

04.10.16

instant service appeal on 03.03.2015.

4. Learned counsel for the appellant has argued that neither any enquiry in the mode and manners prescribed by rules was conducted nor any evidence was recorded nor opportunity of cross-examination or participation in the enquiry was afforded to the appellant. That the enquiry officer in the enquiry report suggested that no evidence whatsoever was collected in support of the allegations.

5. Learned Senior Government Pleader has argued that though no proof was found regarding involvement of the appellant in facilitating the timber smugglers however he was involved as a result of secret information.

6. We have heard arguments of learned counsel for the parties and perused the record.

04.10.16

7. Enquiry report dated 20.10.2014 would suggest that the appellant was attributed the charges on mere rumours. No complaint whatsoever was ever lodged against the appellant by the SHO concerned. According to findings of the enquiry officer no proof whatsoever was collected regarding involvement of the appellant in facilitation of smugglers. Even the enquiry officer has recommended warning to the appellant on the basis of the so-called secret information.

8. Since no evidence whatsoever was collected in support of the alleged charge which remained unsubstantiated during the enquiry and no punishment whatsoever was warranted in the absence of any such evidence as such we hold that the impugned order of reversion of the

appellant from the post of Head Constable to that of C-I constable is against facts and law. We are therefore left with no option but to accept the present appeal and set aside the impugned orders dated 19.11.2014 and 16.02.2015 and restore the appellant to his previous position. The appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

(Muhammad Azim Khan Afridi)
Chairman
Camp Court, Swat.
04.10.16

(Abdul Latif)
Member

ANNOUNCED
04.10.2016

09.12.2015 Counsel for the appellant and Mr. Amir Qadir, GP for respondents present. Due to non-availability of D.B arguments could not be heard. To come up for rejoinder and final hearing before D.B on 3.5.2016 at Camp Court Swat.

Chairman
Camp Court Swat

03.05.2016 Counsel for the appellant and Mr. Imranullah, Inspector (Legal) alongwith Mr. Muhammad Zubair, Sr.GP for the respondents present. Counsel for the appellant requested for adjournment to submit rejoinder. To come up for rejoinder and final hearing before D.B on 04.10.2016 at Camp Court, Swat.

Member

Chairman
Camp Court, Swat

Appellant Deposited
Security & Process Fee

The points urged need consideration. Admit. Subject to deposit of security &process fee within 10 days, notices be issued to the respondents for written reply for 6.5.2015 at camp court Swat, before S.B.

Chairman
Camp Court Swat

4 6.5.2015 Appellant in person and Mr. Khawas Khan, S.I (legal) alongwith Mr.Muhammad Zubair, Sr.G.P for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 6.7.2015 at Camp Court Swat.

Chairman
Camp Court Swat

5 6.7.2015 Appellant with counsel and Mr. Khawas Khan, S.I(legal) alongwith Mr. Muhammad Zubair, Sr. G.P for respondents present. Requested for adjournment. To come up for written reply on 7.9.2015 at camp court Swat.

Chairman
Camp Court Swat

7.9.2015 Counsel for the appellant and Mr.Khawas Khan, S.I(legal) alongwith Mr.Muhammad Zubair, Sr.G.P for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 9.12.2015 at Camp Court Swat.

Chairman
Camp Court Swat

Form- A

FORM OF ORDER SHEET

Court of

Case No. 180 /2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	03.03.2015	The appeal of Mr. Khaista Muhammad presented today by Mr. Aziz-ur-Rehman Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order. REGISTRAR
2	9-3-15	This case is entrusted to Touring Bench Swat for preliminary hearing to be put up thereon 07-4-2015. CHAIRMAN
3	7.4.2015	Appellant with counsel present. Learned counsel for the appellant argued that the appellant was serving as IHC at P.S Fatehpur when charged for facilitating timber smugglers and after a shame inquiry reverted to the post of Constable vide impugned order dated 19.11.2014 against which departmental appeal was preferred on 27.11.2014 which was rejected on 16.2.2015 and hence the instant service appeal on 3.3.2015. That the inquiry proceedings were conducted at the back of the appellant and no opportunity of hearing was even extended to him.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 180 of 2015

Khaista Muhammad Ex-IHC Police Post Fatehpur, District Swat.

...Appellant

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa and Others.

...Respondents

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1.	Memo of Appeal	....	1-5
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3.	Addresses of the parties	....	7
4.	Copies of the Charge Sheet	A	8
5.	Copy of the Order OB No. 102 dated 19-11-2014	B	9
6.	The Application	C	10
7.	Copy of the Departmental Appeal	D	11-13
8.	Copy of the Order No. 1452/E dated 16-02-2015	E	14
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Appellant Through

Aziz-ur-Rahman

Advocate Swat

Office: Khan Plaza, Gulshone Chowk,

Mingora Swat, Cell 0300 907 0671

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

(1)

Service Appeal No. 180 of 2015

Khaista Muhammad Ex-IHC Police Post Fatehpur, District Swat.

...Appellant

N.W.F.P. Province
Service Tribunal
Diary No 176
Dated 03-3-2015

VERSUS

1. *The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.*
2. *The Regional Police Officer, Malakand at Saidu Sharif.*
3. *The District Police Officer, District Swat at Gulkada.*

...Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF RESPONDENT NO. 3 BEARING O.B. NO. 201 DATED 19-11-2014, WHEREBY THE APPELLANT WAS REVERTED TO POST OF C-1 CONSTABLE AGAINST THE LAW, RULES AND FACTS. FEELING AGGRIEVED OF THE SAID ORDER THE APPELLANT PREFERRED A DEPARTMENTAL APPEAL TO THE RESPONDENT NO. 2, WHO ALSO REJECTED THE SAME IN A SUMMARY MANNER AGAINST THE LAW, RULES AND FACTS VIDE ORDER NO. 1452/E DATED 16-02-2015, HENCE BOTH THE ORDERS IMPUGNED ARE LIABLE TO SET ASIDE AND THE APPELLANT REMAINED AS HC WITHOUT ANY BREAK.

Filed to-day
Registrar
3/3/15

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL BOTH THE IMPUGNED ORDERS OF RESPONDENTS NO. 2 AND 3 BE SET ASIDE AND THE APPELLANT REMAINED AS HC WITHOUT ANY BREAK ALONG WITH ALL CONSEQUENTIAL BENEFITS.

Respectfully Sheweth:

Facts:

i) That the appellant joined the Police force in the year 1999 and since then performed his duties with honesty, bravery and punctuality.

ii) That the appellant also under various training and proved himself to be an efficient and able Police Officer/Official.

iii) That the while the appellant was post as IHC Police Post Fatehpur he performed his duties to the best of his abilities and helped the Forest Department in curbing the illegal timber smuggling, in which regard the Forest Department has given prize money to the appellant as well.

iv) That it was during this period that a false and baseless complaint was made against the appellant alleging that the appellant has got links with timber smugglers.

v) That a shame inquiry was constituted and the appellant was served with a charge sheet, wherein the same baseless charge of links with timber smugglers was leveled against the

appellant. Copy of the charge sheet is enclosed as Annexure "A".

vi) *That the appellant submitted a detailed reply to the same and clarified himself of the baseless allegations by providing the details of his successful effort of intercepting the timber smuggling attempts.*

vii) *That the reply of the appellant was never considered neither the appellant was given proper opportunity to defend himself, moreover his defence version was also never considered, rather it seemed a pre-decided case.*

viii) *That upon the recommendations of the inquiry officer the respondent No. 2 passed an order vide O.B. No. 201 dated 19-11-2014 against the law, rules and facts, whereby the appellant was reverted to the post of C-1 constable. Copy of the order is enclosed as Annexure "B".*

ix) *That appellant feeling aggrieved of the said order submitted an application for getting the copies of the whole inquiry proceedings, but the authorities were so biased that the same were never provided to the appellant. The application is enclosed as Annexure "C".*

x) *That feeling aggrieved and having no other option the appellant filed a departmental appeal to the respondent No. 2, who also rejected the same in a very mechanical manner vide order No. 1452/E dated 16-02-2015, without resorting either to the facts or the law and rules on the*

subject. Copy of the appeal is enclosed as Annexure "D" and that of the order as Annexure "E", respectively.

xi) *That feeling aggrieved of the orders impugned the appellant filed the instant appeal on the following grounds.*

Grounds:

a) *That the appellant has not been treated with in accordance with the law and rules and has been condemned as unheard.*

b) *That no proper inquiry has been conducted. Moreover the appellant has not been properly associated with the inquiry neither his defence version has been taken into any consideration. Furthermore that the appellant has never been given the opportunity to know any evidence, if any, that is used against him.*

c) *That the respondents have overstepped their authority in imposing the illegal order of reversion and that too in a very colorful and arbitrary manner.*

d) *That vested right of the appellant has been denied to him without any reasons, whatsoever.*

e) *That the appellant has never committed any act of commission or omission which may constitute any offence under any law.*

It is, therefore, very respectfully prayed that on acceptance of this appeal both the impugned

orders may very kindly be set aside and the appellant restored back to the position of HC along with all consequential benefits.

Any other relief deemed appropriate in circumstances may also very kindly be granted.

Appellant

Khaista Muhammad

Through Counsels,

Aziz-ur-Rahman

Imdad Ullah

Advocates Swat

(6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2015

Khaista Muhammad Ex-IHC Police Post Fatehpur, District Swat.

...Appellant

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa and Others.

...Respondents

AFFIDAVIT

I Khaista Muhammad solemnly state on Oath that all the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has either been misstated or concealed before this Honourable Tribunal.

Deponent
Khaista Muhammad

Identified by:
Imdad Ullah
Advocate Swat

ATTESTED
Sajid Ali Advocate
OATH COMMISSIONER
District Courts Swat
No 223 Date 2.3.15

(7)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2015

Khaista Muhammad Ex-IHC Police Post Fatehpur, District Swat.

...Appellant

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa and Others.

...Respondents

ADDRESSES OF THE PARTIES

Appellant:

Khaista Muhammad Ex-IHC Police Post Fatehpur, District Swat.

Respondents:

1. *The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.*
2. *The Regional Police Officer, Malakand at Saidu Sharif.*
3. *The District Police Officer, District Swat at Gulkada.*

Appellant
Through Counsel,
Imdad Ullah
Advocate Swat

Annexure "A"

8

CHARGE SHEET

I Mr. Sher Akbar S.St. P.S.P: District Police Officer, Swat as competent authority, hereby charge you, Head Constable Khaista Muhammad No.620 while posted as IHC Police Post Fatehpur as follows:-

It has been reported that you committed the following act / acts, which is / are gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules 1975.

You Head Constable Khaista Muhammad No.620 while posted as IHC Police Post Fatehpur are reportedly linked with timber smugglers as per report of SDPO/Khwaza Khela Circle, dated [illegible]-2014.

2. By reasons of the above, you appear to be guilty of misconduct and rendered yourself liable to all or any of penalties specified in Rule-4 of the Disciplinary Rules 1975.

3. You are, therefore, required to submit your written reply within seven (7) days of the receipt of this Charge Sheet to the Enquiry officer.

4. Your written reply, if any, should reach 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 ex-parte action shall follow against you.

5. Intimate as to whether you desire to be heard in person or not.

6. A statement of allegations is enclosed.

District Police Officer, Swat

No. 113 /E,

Dated 25/2/2014.

ATTESTED

Advocate

Annexure "B"

(9)

ORDER

This order will dispose off the departmental enquiry against Head Constable Khaista Muhammad No.620 he while posted as IHC Police Post Fatehpur was reportedly linked with timber smugglers.

He was issued Charge Sheet alongwith statement of Allegations and SDPO/Matta Circle was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent officer Head Constable Khaista Muhammad No.620 and recorded the statements of all concerned officers. He has provided ample opportunity to the delinquent officer Head Constable Khaista Muhammad No.620 to defense the charges leveled against him. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended the delinquent Officer for punishment. He was heard in Orderly Room. However, he could not present any plausible defense for the charges leveled against him.

Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, Sher Akbar, S.St, P.S.P, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of reversion to his substantive rank of C-I Constable.

Order announced.

District Police Officer, Swat

O.B. No. 201

Dated 19 / 11 /2014.

****

ATTESTED

Advocate

(10)

درخواست دربارہ عطائیگی نقولات

Annexure "C"

جناب عالی

بذریعہ درخواست گزارش ہے کہ بحوالہ [illegible] سال 2014
مورخہ 11/19/014 کو سائل کا ریورٹ ہوا ہے
لہذا عرض ہے کہ جملہ کاغذات رنگو رائٹری کے حصہ
کاغذات کے نقولات دینے کا حکم صادر فرمایا جائے

العارض

کانسٹیبل عائشہ محمد نمبر 695 حال تعینات CTD بریکوٹ

26.11.014

EC

DPO/Swat
26/11/17

ATTESTED
Advocate

Annexure "D"

(11)

بحضور جناب ڈی آئی جی صاحب ملاکنڈ رینج بمقام سیدو شریف ضلع سوات۔

سابقہ ہیڈ کانسٹیبل نمبر 620 حال سی ٹی ڈی مدین ---------- اپیلانٹ

بنام

ڈی پی او صاحب ضلع سوات ---------- ریسپانڈنٹ

اپیل بر خلاف حکم ازاں ریسپانڈنٹ OBNo 201 مصدرہ 19/11/2014 جس کی رو سے خلاف قانونی وانصاف اپیلانٹ کو حوالدار H.C کے عہدہ سے سی 1 کانسٹیبل ریورس ہونے کا حکم صادر فرمایا گیا ہے۔ نقل حکم ریسپانڈنٹ لف اپیل ہذا ہے۔

استدعائے اپیل

بمنظوری اپیل ہذا حکم معترضہ درج عنوان بالا کو کالعدم و منسوخ فرمایا جاکر اپیلانٹ کو جملہ استفاداجات کی ساتھ بحال کرنے کا حکم صادر فرمایا جائے۔

جناب عالی

اپیلانٹ حسب ذیل عرض رساں ہے۔

1) یہ کہ بدوران تعیناتی بحیثیت ایچ سی چوکی فتح پور تھانہ خوازہ خیلہ سوات اپیلانٹ کے خلاف ٹمبر مافیا / سمگلر کیساتھ ملی بھگت کا الزام لگایا گیا۔

2) یہ کہ اپیلانٹ نے چارج شیٹ کے جواب مین مفصل تحریری جواب دیا اور اس میں اصل مرتکبان جرم کے خصوصی طور پر نشاندہی کی لیکن ریسپانڈنٹ نے اس کو ملحوظ نظر رکھتے ہوئے انکوائری آفیسر کے رپورٹ پر جو کہ مبنی بر مفروضات و حقائق سے ہٹ کر ہے کی بنیاد پر حکم معترضہ صادر فرمایا ہے۔

3) یہ کہ حکم معترضہ بوجوہات زیل قابل منسوخی ہے۔

ATTESTED
Advocate

(12)

- یہ کہ حکم معترضہ خلاف قانون وانصاف اور روئیداد مسل وحقائق ہے بدیں وجہ قابل منسوخی ہے۔
- یہ کہ اپیلانٹ مورخہ 24/07/1999 کو محکمہ پولیس مین بھرتی ہوکر بعد ضروری ٹریننگ باقاعدہ ملازمت شروع کی۔
- یہ کہ اپیلانٹ فرسٹ ایڈ کورس لاہور سے اور لوئر کلاس ہنگو سے امتیازی طور پر پاس کی۔
- یہ کہ اپیلانٹ کو حسب المعمول وقوانین 2008 میں بحیثیت ایچ سی ترقی دی گئی۔
- یہ کہ دہشت گردی وانتہائی پسندی کے آیام میں اپیلانٹ نے اپنی جان کے پروا کئے بغیر تھانہ مٹہ کالاکوٹ، خوازہ خیلہ مینگورہ اور کالام کے تھانہ جات میں اپنے فرائض منصبی بہ طریق احسن سرانجام دیئے ہیں۔ لیکن ضلع سوات میں اس دہشت گردی کی آگ سے نکلتے ہوئے پولیس اہلکاران وآفسران کو ون سٹپ ترقی دی گئی جبکہ اپیلانٹ اس سے محروم رہا۔
- یہ کہ اپیلانٹ نے بدوران تعیناتی بحیثیت آئی ایچ سی چوکی فتح پور تھانہ خوازہ خیلہ عمارتی لکڑی یعنی سلیپران کے سمگلران کے خلاف موثر کاروائی کرکے جس کی اپیلانٹ سزا بھگت رہاہے۔ جبکہ اصل حقائ یعنی ٹمبر مافیا کے خلاف اپیلانٹ نے جہاد کیاہے جس کی تائید وتصدیق محکمہ جنگالات اہلکاران وآفسران کرسکتے ہیں لیکن انوائری آفسر نے ان کی کسی قسم کا بیان قلمبند نہ کرکے صرف پولیس اہلکاران پر انحصار کیاہے۔ ٹمبر مافیا فرد کی نشاندہی نہیں کی گئی ہے۔
- ی کہ اپیلانٹس کے خلاف عوام الناس میں سے کسی بھی فرد بشر کا کسی بھی لحاظ سے شکایت نہیں کی گئی چہ جائیکہ ٹمبر مافیا کیساتھ ملی بھگت ہے۔
- یہ کہ اپیلانٹ کا جملہ سروس ریکارڈ داغ و دھبہ سے پاک و صاف ہے۔ اور اپیلانٹس نے اپنے فرائض منصب ہمیشہ عبادت سمجھ کر سرانجام دی ہے۔
- یہ کہ اپیلانٹ محکمہ پولیس کے لئے ایک سرمایہ ہے نہ کہ ایک بوجھ چارج شیٹ کا جواب منجانب اپیلانٹ اپیل ہذا کا جزلائن یک تصور کیا جاوے۔ اوریوں اپیلانٹ کی گناہی اور اصل مرکبان جرم کے نشاندہی واضح وثابت ہو جائے گی۔

ATTESTED
Advocate

(13)

- یہ کہ حکم معترضہ جملہ مہذب قوانین کیساتھ ایک مذاق ہے۔ کیونکہ اصل مرکبان جرم کو چھوڑ کر ایک بے گناہ کو سزادیان کسی بھی قانون کے تحت جائز اور روا نہیں۔

لہذا استدعا کی جاتی ہے۔ کہ بمنظوری اپیل ہذا حکم معترضہ OBNo201 مصدرہ 19/11/14 کو کالعدم و منسوخ فرمایا جاکر اپیلانٹ کو جملہ استفاداجات کے ساتھ اپنے سابقہ عہدہ پر بحال کرنے کا حکم صادر فرمایا جائے۔

المرقوم 27/11/2014

عریضہ

سابقہ ہیڈ کانسٹیبل نمبر 620 حال سی ٹی ڈی مدین

ATTESTED
Advocate

Annexure "E" 14

OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND REGION, AT SAIDU SHARIF SWAT

ORDER:

This order will dispose off appeal of Constable Khaista Muhammad No. 620 of Swat District for restoration of rank as Head Constable.

Brief facts of the case are that the Head Constable Khaista Muhammad No. 620 while posted as IHC Police Post Fatehpur had reportedly linked with timber smugglers in smuggling. He was issued Charges Sheet alongwith statement of allegations and SDPO/Matta Circle was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent officer and recorded the statements of all concerned officials. He was provided ample opportunity to defend wherein he recommended delinquent Officer for punishment. He was heard in Orderly Room by District Police Officer, Swat. However, where he could not present any plausible defense for the Charges levelled against him. Being found guilty of the charges the District Police Officer, Swat awarded him the punishment of reversion to his substantive rank of C-I Constable No. 201 dated 19/11/2014.

He was called in Orderly Room on 10/02/2015 and heard in person. The appellant did not produce any substantive materials in his defense. Therefore I uphold the order of District Police Officer, Swat, whereby the appellant has been awarded punishment of reversion to his substantive rank of C-I Constable. His appeal is rejected.

Order announced

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

Naqi

No. 1452 /E,
Dated 16-02-/2015.

Copy District Police Officer, Swat for information and necessary action with reference to his office Memo: No. 19759/E, dated 30/12/2014.

****

ATTESTED
Advocate

بعدالت صاحب سب ڈویژنل مجسٹریٹ ... مسجد ...

قیمت ایک روپیہ		کورٹ فیس

مورخہ ... ۲۰ منجانب ...

مقدمہ ... بنام ...

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام ... مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ وتقرر ثالث وفیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زر اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برامد ہوگی اور منسوخ مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برواختہ منظور وقبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ وہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا وخرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم ... ماہ ... ۲۰

العبد گواہ شدہ العبد

Attested and Accepted by

بمقام ... کے لئے منظورہ ہے

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 180/2015.

Khaista Muhammad Ex-IHC PP Fatehpur Swat. **Appellant**

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Malakand Region, Swat.
3. The District Police Officer, Swat.....**Respondents.**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS .

Respectfully Shewith,

The comments on behalf of Respondents are submitted as below.

Preliminary Objections.

1. That the appellant has got no Cause of action and locus standi to file the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come to the Tribunal with clean hands.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant concealed the material facts from this Hon'ble Tribunal.
8. That the appellant has been estopped by his own conduct to file the appeal.

Facts:

i. Para No.1 of appeal pertains to service record and subject to proof.
ii. Para No.2 of appeal pertains to service record, hence no comments.
iii. Para No. 3 of appeal is not based on real facts, appellant while posted in PP Fatehpur have made links with timber smugglers.
iv. Para No. 4 of appeal is incorrect. Appellant while posted in above Police Post instead of assisting the Forest Department, appellant himself involved in timber smuggling.
v. Para No. 5 of appeal is incorrect. Proper departmental enquiry against the appellant was conducted during which it has been established that appellant has linked with timber smugglers.

vi. Para No. 6 of appeal is incorrect. The reply of appellant was not satisfactory, hence on receipt of recommendation of Enquiry Officer, appellant was reverted to substantive rank of Constable C-I list vide speaking order dated 19.11.2014 OB No. 201.

vii. Para No. 7 of appeal is incorrect. Proper departmental enquiry was conducted against appellant and proper opportunity of defence was provided but appellant did not prove himself innocent.

viii. Para No. 8 of appeal is correct to the extent of punishment vide OB No. 201 dated 19.11.2014 which is speaking in nature.

ix. Para No. 9 of appeal is incorrect and based on malafide intention

x. Para No. 10 of appeal is correct to the extent of filling of departmental appeal, but the same was rejected by the respondent No. 02 being meritless.

xi. The orders of respondents are quite legal and in accordance with law.

Grounds:

a. Incorrect: appellant has been treated in accordance with law.
b. Incorrect: proper departmental enquiry in accordance with law has been conducted.
c. Incorrect: the orders of respondents are quite legal and in accordance with law, while as per rules reversion from officiating rank is no punishment.
d. Incorrect: no vested righted of appellant has been violated.
e. Incorrect: appellant has proved himself an inefficient Police official and found guilty of the mis-conduct.

It is therefore requested that the appeal of appellant may kindly be dismissed with cost being devoid of merits and without any legal substance

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

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

District Police Officer, Swat.
(Respondent No. 3)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 180/2015

Khaista Muhammad Ex-IHC PP Fatehpur Swat. **Appellant**

VERSUS

1. **Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar**
2. **Deputy Inspector General of Police, Malakand Division Saidu Sharif Swat.**
3. **District Police Officer, Swat.**

Respondents

POWER OF ATTORNEY

We, the undersigned No. 01 to 04 doe hereby appoint Aziz Ur Rehman DSP Legal Swat as Special representative on our behalf in the above noted appeal. He is authorized to represent us before the Tribunal on each and every date fixed and to assist the Govt: Pleader attach to Tribunal.

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

Deputy Inspector General of Police,
Malakand Division, Saidu Sharif Swat.
(Respondent No. 02)

District Police Officer, Swat
(Respondent No. 03

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 180/2015

Khaista Muhammad Ex-IHC PP Fatehpur Swat. **Appellant**

VERSUS

1. **Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar**
2. **Deputy Inspector General of Police, Malakand Division Saidu Sharif Swat.**
3. **District Police Officer, Swat.**

Respondents

AFFIDAVIT

We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/behalf and nothing has been kept secrete from the honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar.

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

Deputy Inspector General of Police,
Malakand Division, Saidu Sharif Swat.
(Respondent No. 02)

District Police Officer, Swat
(Respondent No. 03)

ضلع سوات

از دفتر SDPO سرکل مٹہ

فائینڈنگ رپورٹ

انکوائری برخلاف اذان ہیڈ کنسٹیبل خائستہ محمد 620/Hc متعینہ چوکی فتح پور حال DCT برانچ پشاور

خلاصہ الزام: ہیڈ کنسٹیبل خائستہ محمد 620/Hc متعینہ چوکی فتح پور پر جس پر SDPO صاحب سرکل خوازہ خیلہ کے رپورٹ کے مطابق نمبر سمگلران سے ملنے کا الزام ہے۔اس حرکت کی بناء پر جناب DPO صاحب سوات نے چارج شیٹ نمبری 113/E مورخہ 25-06-014 جاری کر کے من SDPO مٹہ کو انکوائری آفیسر مقرر کیا۔

تفصیل تحقیق: ہیڈ کنسٹیبل خائستہ محمد 620/Hc متعینہ چوکی فتح پور حال DCT برانچ پشاور کو بسلسلہ انکوائری دفتر ہذا طلب کر کے بیانی ہے کہ اس نے دوران تعیناتی چوکی فتح پور میں بحیثیت IHC اپنی ڈیوٹی نہایت خوش اسلوبی اور ایمانداری کے ساتھ سرانجام دی ہے۔ جہاں تک نمبر مافیا کیساتھ روابط کا الزام ہے سراسر غلط جھوٹ، من گھڑت اور بے بنیاد ہے۔

دوران انکوائری SDPO صاحب سرکل خوازہ خیلہ یوسف علی خان، SHO تھانہ خورشید خان شہید SI حضرت سید خان اور انچارج چوکی فتح پور SI عمر رحیم خان حال SHO تھانہ بحرین کو دفتر ہذا طلب کر کے جن کے بیانات قلمبند کئے گئے۔ یوسف علی خان SDPO سرکل خوازہ خیلہ بیانی ہے کہ عوام الناس کے طرف سے SMS موصول ہوتے رہے کہ چوکی میاندم کی پولیس میں MHC رحیم خان کا ملوث ہونا بتلایا جاتا۔اس سلسلہ میں SHO صاحب تھانہ خوازہ خیلہ SI حضرت سید خان اور انچارج چوکی فتح پور عمر رحیم خان SI، انچارج چوکی میاندم عمر وہاب خان ASI اور سابقہ انچارج سلطان زیب SI کو اس نے اپنے دفتر خوازہ خیلہ طلب کر کے تدارک بابت نمبر سمگلنگ ہدایات دی گئی۔اس دوران انچارج کمپلینٹ سیل تحصیل خوازہ خیلہ سید اکبر سے بھی میسج آنا شروع ہوگئے۔اور وہی میسج DPO صاحب سوات کے طرف سے بھی ملا۔اس اقدام کے پیش نظر خفیہ طور پر جگہ بہ جگہ انچارج فتح پور اور انچارج چوکی میاندم عمر وہاب خان ASI نے لنک روڈ مختی پر 3/4 گاڑیاں سلیپران پکڑے۔اور محکمہ فارسٹ کے ذریعے جرمانہ ہوئے۔اس کے بعد SHO تھانہ خوازہ خیلہ حضرت سید خان SI اور انچارج چوکی میاندم، فتح پور سے زبانی ڈسکس کر کے قیاس کیا گیا کہ ہیڈ کنسٹیبل خائستہ محمد چوکی فتح پور نمبر سمگلنگ میں ملوث ہے۔

SHO تھانہ خورشید خان شہید SI حضرت سید خان بیانی ہے کہ عام افواہیں ہو رہی تھی کہ خائستہ محمد IHC نمبر مافیا سمگلران کے ساتھ ملا ہوا ہے۔ثبوت پانے کی کافی حد تک کوشش کی گئی لیکن کامیاب نہ ہوسکا۔البتہ بحیثیت SHO اسے مذکورہ IHC کے خلاف نمبر سمگلران کے ساتھ روابط کے متعلق کوئی شکایت موصول نہیں ہوئی ہے۔

اسی طرح انچارج چوکی فتح پور SI عمر رحیم خان حال SHO تھانہ بحرین بیانی ہے کہ میں بحیثیت انچارج چوکی فتح پور تعینات تھا آفسران بالا کو نمبر سمگلنگ کے متعلق SMS ہوتے رہے تھے۔ چونکہ عام افواہیں چل رہی تھی کہ خائستہ محمد IHC چوکی فتح پور نمبر سمگلنگ میں ملوث ہے۔اس نسبت DSP صاحب خوازہ خیلہ نے من SI انچارج چوکی میاندم اور SHO صاحب تھانہ KKS کو دفتر خود میں طلب کر کے بابت تدارک نمبر سمگلنگ ہدایات دئے تھے۔مذکورہ خائستہ محمد IHC کے نمبر سمگلنگ میں ملوث ہونے کے خلاف ثبوت ہاتھ آنے کی کافی کوشش کی گئی تھی۔لیکن کامیاب نہ ہوسکا تھا۔

جبکہ انچارج کمپلینٹ سیل تحصیل خوازہ خیلہ سید اکبر خان بیانی ہے کہ علاقہ میں نمبر سمگلنگ کے متعلق اطلاعات موصول ہو رہے تھے۔جس کے روک تھام کیلئے پولیس آفسران کو اطلاع دی ہے۔اور پولیس والوں نے کئی بار 3/4 گاڑیوں کو پکڑ کر جرمانہ کئے ہیں۔اور پولیس آفسران نے خود کاروائی کر کے تین حوالدار ان تبدیل کرائے ہیں۔باقی نیم مجھے کسی پولیس آفسر کی نمبر سمگلنگ میں ملوث ہونے کا علم نہیں ہے۔

نتیجہ تحقیق: بعد از انکوائری وقلمبندی بیانات یوسف علی خان سرکل آفسر خوازہ خیلہ، SHO تھانہ خورشید خان شہید حضرت سید خان SI، انچارج چوکی فتح پور حال SHO تھانہ بحرین عمر رحیم خان SI، خائستہ محمد IHC چوکی فتح پور حال DCT برانچ پشاور اور سید اکبر خان انچارج کمپلینٹ سیل تحصیل خوازہ خیلہ وخفیہ معلومات سے میں اس نتیجہ پر پہنچ چکا ہوں کہ ہیڈ کنسٹیبل خائستہ محمد 620/Hc کے خلاف ظاہراً تو کوئی تحریری رزبانی ثبوت نہیں ملا۔البتہ خفیہ معلومات سے ہیڈ کنسٹیبل کا نمبر سمگلنگ میں ملوث ہونا بیان ہوا ہے۔لہٰذا آفسران بالا کے تسلی ہونے تک ہیڈ کنسٹیبل خائستہ محمد 620/Hc کو وارننگ دینے اور پولیس لائن میں انڈر واچ رکھنے کی سفارش کی جاتی ہے۔ فائینڈنگ رپورٹ بمراد مناسب حکم پیش خدمت ہے۔

ظفر خان

ایس ڈی پی او سرکل مٹہ

Annexure "B"

(9)

ORDER

This order will dispose off the departmental enquiry against Head Constable Khaista Muhammad No.620 he while posted as IHC Police Post Fatehpur was reportedly linked with timber smugglers.

He was issued Charge Sheet alongwith statement of Allegations and SDPO/Matta Circle was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent officer Head Constable Khaista Muhammad No.620 and recorded the statements of all concerned officers. He has provided ample opportunity to the delinquent officer Head Constable Khaista Muhammad No.620 to defense the charges leveled against him. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended the delinquent Officer for punishment. He was heard in Orderly Room. However, he could not present any plausible defense for the charges leveled against him.

Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, Sher Akbar, S.St, P.S.P, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of reversion to his substantive rank of C-I Constable.

Order announced.

District Police Officer, Swat

O.B. No. 201

Dated 19 / 11 /2014.

****

ATTESTED

Advocate

Annexure "A" (8)

CHARGE SHEET

I Mr. Sher Akbar S.St. P.S.P. District Police Officer, Swat as competent authority, hereby charge you, Head Constable Khaista Muhammad No.620 while posted as IHC Police Post Fatehpur as follows:-

It has been reported that you committed the following act / acts, which is / are gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules 1975.

You Head Constable Khaista Muhammad No.620 while posted as IHC Police Post Fatehpur are reportedly linked with timber smugglers as per report of SDPO/Khwaza Khela Circle, dated [illegible].

2. By reasons of the above, you appear to be guilty of misconduct and rendered yourself liable to all or any of penalties specified in Rule-4 of the Disciplinary Rules 1975.

3. You are, therefore, required to submit your written reply within seven (7) days of the receipt of this Charge Sheet to the Enquiry officer.

4. Your written reply, if any, should reach 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 ex-parte action shall follow against you.

5. Intimate as to whether you desire to be heard in person or not.

6. A statement of allegations is enclosed.

District Police Officer, Swat

No. 113 /E,

[illegible] /2014.

25-6-014

ATTESTED
Advocate

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1701 /ST Dated 13 / 10 / 2016

To The D.P.O,
Swat at Gulkada.

Subject: - **JUDGMENT**

I am directed to forward herewit1h a certified copy of Judgement dated 4.10.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.