

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	<p><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p><u>CAMP COURT SWAT</u></p> <p><u>APPEAL NO. 180/2015</u></p> <p><u>Khaista Muhammad Versus The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others.</u></p> <p><u>JUDGMENT</u></p> <p><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader alongwith Mr. Khawas Khan, Sub Inspector (Legal) for respondents present.</p> <p>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.</p> <p>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</p>

A
04.10.16

instant service appeal on 03.03.2015.

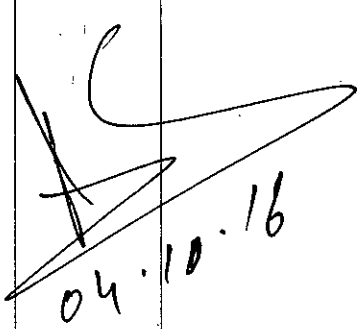
4. Learned counsel for the appellant has argued that neither any enquiry in the mode and manners prescribed by rules was conducted nor any evidence was recorded nor opportunity of cross-examination or participation in the enquiry was afforded to the appellant. That the enquiry officer in the enquiry 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.

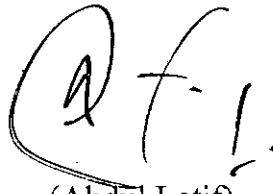
6. We have heard arguments of learned counsel for the parties and perused the record.

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.

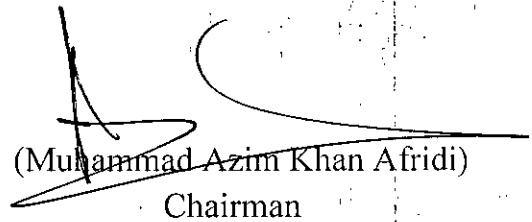
8. Since no evidence whatsoever was collected in support of the alleged charge which remained unsubstantiated during the enquiry and no punishment whatsoever was warranted in the absence of any such evidence as such we hold that the impugned order of reversion of the

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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.



(Abdul Latif)
Member



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

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.

5 6.7.2015 Appellant with counsel and Mr. Khawas Khan, S.I (legal) alongwith Mr. Muhammad Zubair, Sr. GP 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	<p>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.</p> <p style="text-align: right;">  REGISTRAR </p>
2	9-3-15	<p>This case is entrusted to Touring Bench Swat for preliminary hearing to be put up thereon <u>07-4-2015</u></p> <p style="text-align: right;">  CHAIRMAN </p>
3	7.4.2015	<p>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.</p> <p>That the inquiry proceedings were conducted at the back of the appellant and no opportunity of hearing was even extended to him.</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 180 of 2015

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

...Appellant

VERSUS

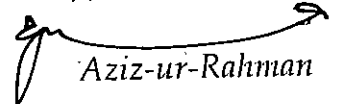
The Provincial Police Officer, Khyber Pakhtunkhwa and Others.

...Respondents

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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

VERSUS

K.W.F. Province
Service Tribunal

Diary No. 176

Dated 03-3-2015

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

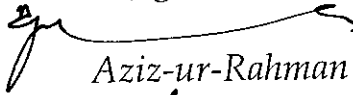
orders may very kindly be set aside and the appellant restored back to the position of HC along with all consequential benefits.

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.

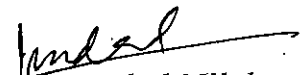
...Respondents

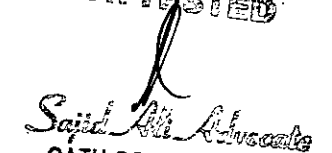
AFFIDAVIT

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. _____ Date: 22/3/15

(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
Imdad Ullah*

Advocate Swat

CHARGE SHEET

(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 25/05/2014.

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: 25/05/2014.

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

درخواست در بارہ عطا شدگی نقدیات

(10)

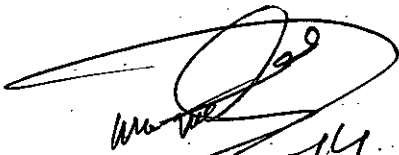
Annexure "C"

ضامی

تاریخ درخواست گزارش صبح 19 نومبر 2017ء
حرم 11/19/2017ء کارپوریشن سوات نے
رستگاری صبح 19 نومبر 2017ء کے لئے
کاغذات کے نقولات دینے کا حکم صادر فرمایا جا

الطاف


انکس ٹائپ محمد 6206 حال قلعہ قندھاڑ


26.11.17

EL

DPo/swat

26/11/17

ATTESTED

Advocate

یہ کہ حکم معترضہ خلاف قانون و انصاف اور روئیداد مسل و حقائق ہے بدیں وجہ قابل منسوخی ہے۔

یہ کہ ایپیلانٹ مورخہ 24/07/1999 کو محکمہ پولیس میں بھرتی ہو کر بعد ضروری ٹریننگ باقاعدہ ملازمت شروع کی۔

یہ کہ ایپیلانٹ فرسٹ ایڈ کورس لاہور سے اور لوئر کلاس ہنگو سے امتیازی طور پر پاس کی۔

یہ کہ ایپیلانٹ کو حسب معمول و قوانین 2008 میں بحیثیت ایچ سی ترقی دی گئی۔
یہ کہ دہشت گردی و انتہائی پسندی کے آیام میں ایپیلانٹ نے اپنی جان کے پروا کئے بغیر تھانہ مٹہ کالا کوٹ، 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 نکلنے ہوئے پولیس اہلکاران و آفسران کو دن سٹپ ترقی دی گئی جبکہ ایپیلانٹ اس سے محروم رہا۔

یہ کہ ایپیلانٹ نے بدوران تعیناتی بحیثیت آئی ایچ سی چوکی فتح پور تھانہ خوازہ خیلہ عمارتی لکڑی یعنی سیلپران کے سمگلران کے خلاف موثر کارروائی کر کے جس کی ایپیلانٹ سزا بھگت رہا ہے۔ جبکہ اصل حقائق یعنی ٹمبر مافیا کے خلاف ایپیلانٹ نے جہاد کیا ہے جس کی تائید و تصدیق محکمہ جنگلات اہلکاران و آفسران کر سکتے ہیں لیکن انوائری آفسرنے ان کی کسی قسم کا بیان قلمبند نہ کر کے صرف پولیس اہلکاران پر انحصار کیا ہے۔ ٹمبر مافیا فرد کی نشاندہی نہیں کی گئی ہے۔

یہ کہ ایپیلانٹس کے خلاف عوام الناس میں سے کسی بھی فرد بشر کا کسی بھی لحاظ سے شکایت نہیں کی گئی چہ جائیکہ ٹمبر مافیا کیسا تھ ملی بھگت ہے۔

یہ کہ ایپیلانٹ کا جملہ سروس ریکارڈ داغ و دھبہ سے پاک و صاف ہے۔ اور ایپیلانٹس نے اپنے فرائض منصبی ہمیشہ عبادت سمجھ کر سرانجام دی ہے۔

یہ کہ ایپیلانٹ محکمہ پولیس کے لئے ایک سرمایہ ہے نہ کہ ایک بوجھ چارج شیٹ کا جو اب منجانب ایپیلانٹ اپیل ہذا کا جز لائن یک تصور کیا جاوے۔ اور یوں ایپیلانٹ کی گناہی اور اصل مرکبان جرم کے نشاندہی واضح و ثابت ہو جائے گی۔

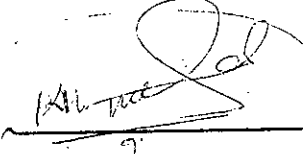
ATTESTED

Wadeed
Advocate

13

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

لہذا استدعا کی جاتی ہے۔ کہ بمنظوری اپیل ہذا حکم
معارضہ OBN0201 مصدرہ 19/11/14 کو
کالعدم و منسوخ فرمایا جا کر اپیلانٹ کو جملہ
استفادات کے ساتھ اپنے سابقہ عہدہ پر بھال کرنے
کا حکم صادر فرمایا جائے۔


عریض
سابقہ ہیڈ کانسٹیبل نمبر 620 حال سی ٹی ڈی مدین

المرفوم 27/11/2014

ATTESTED

Advocate

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,

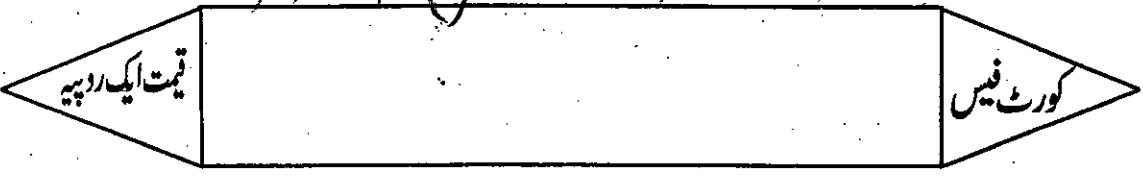
Dated 16-02-2015.

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 ضابطہ سر سوانر ٹریڈنگ کمپنی / ملکیت کے لئے



کلینہ منجانب ایس اے

مورخہ

کلینہ کم بنام حکومتی دہلی

مقدمہ

دعویٰ

جرم

باعت تحریر آنک

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام ملکیت کے لئے سر سوانر ٹریڈنگ کمپنی کے لئے ہمدردانہ طور پر 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 و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد 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 اس کا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوا ایے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر 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 خرم

واہ شہادہ العبد

Attested and Accepted by

سر سوانر ٹریڈنگ کمپنی کے لئے منظور ہے

Handwritten signature

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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:

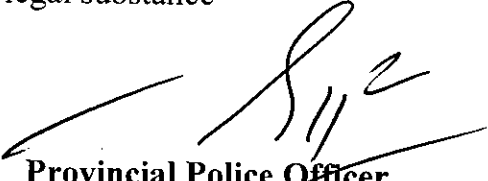
- i. Para No.1 of appeal pertains to service record and subject to proof.
- ii. Para No.2 of appeal pertains to service record, hence no comments.
- iii. Para No. 3 of appeal is not based on real facts, appellant while posted in PP Fatehpur have made links with timber smugglers.
- iv. Para No. 4 of appeal 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 right 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 do 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.**

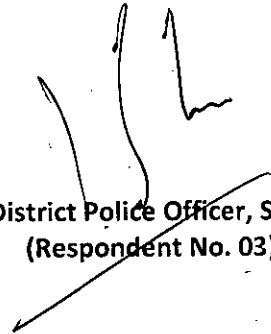
Respondents

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 secret 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)**

فائینڈنگ رپورٹ

انکوائری برخلاف اذان ہید کنشیل خائنہ محمد 620/Hc متعینہ چوکی فتح پور حال DCT برانچ پشاور

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

تفصیل تحقیق: ہید کنشیل خائنہ محمد 620/Hc متعینہ چوکی فتح پور حال DCT برانچ پشاور کو بسلسلہ انکوائری دفتر لڈا طلب کر کے بیانی ہے کہ اس نے دوران تعیناتی چوکی فتح میں بحیثیت IHC اپنی ذیوقی نہایت خوش اسلوبی اور ایمانداری کے ساتھ سرانجام دی ہے۔ جہاں تک نمبر مافیا کیساتھ روابط کا الزام ہے سرانسر 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 لڈا 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 سنگنگ ہدایات دی گئی۔ اس دوران انچارج کمپلیٹ سیل تحصیل خوازہ خیلہ سید اکبر سے بھی میج آنا شروع ہو گئے۔ اور وہی میج 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 چھٹی 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 ہید کنشیل خائنہ محمد چوکی فتح پور نمبر سنگنگ میں ملوث ہے۔

SHO تھانہ خورشید خان شہید SI حضرت سید خان بیانی ہے کہ عام انواہیں ہو رہی تھی کہ خائنہ محمد IHC نمبر مافیا سنگران کے ساتھ ملا ہوا ہے۔ ثبوت پانے کی کافی حد تک کوشش کی گئی لیکن کامیاب نہ ہو سکا۔ البتہ بحیثیت SHO اسے مذکورہ IHC کے خلاف نمبر سنگران 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 آفران بالا کو نمبر سنگنگ کے متعلق SMS ہوتے رہے تھے۔ چونکہ عام انواہیں چل رہی تھی کہ خائنہ محمد IHC چوکی فتح پور نمبر سنگنگ 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 سنگنگ ہدایات دے تھے۔ مذکورہ خائنہ محمد IHC کے نمبر سنگنگ میں ملوث ہونے کے خلاف ثبوت ہاتھ آنے کی کافی کوشش کی گئی تھی۔ لیکن کامیاب نہ ہو سکا تھا۔

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

نتیجہ تحقیق: بعد از انکوائری و قلمبندی 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، خائنہ محمد IHC چوکی فتح پور حال DCT برانچ پشاور اور سید اکبر خان انچارج کمپلیٹ سیل تحصیل خوازہ خیلہ و خفیہ معلومات سے میں اس نتیجہ پر پہنچ چکا ہوں کہ ہید کنشیل خائنہ محمد 620/Hc کے خلاف ظاہر انوکوئی تحریری رزبانی ثبوت نہیں ملا۔ البتہ خفیہ معلومات سے ہید کنشیل کا نمبر سنگنگ میں ملوث ہونا بیان ہوا ہے۔ لہذا آفران بالا کے تسلی ہونے تک ہید کنشیل خائنہ محمد 620/Hc کو وارننگ دینے اور پولیس لائن میں انڈرواچ رکھنے کی سفارش کی جاتی ہے۔ فائینڈنگ رپورٹ نمبر ادنا سب تمام پیش خدمت ہے۔

لاظفر خان

25/11/19

ایس ڈی پی او سرکل ملتان

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

Inded
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 Fatchpur 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 Fatchpur are reportedly linked with timber smugglers as per report of SDPO/Khwaza Khela Circle, dated 15-6-2014.

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.

15-6-2014

15-6-2014

ATTESTED

Inded
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 herewith 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.