

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 666/2016

Date of Institution ... 27.05.2016

Date of Decision ... 27.06.2019

Sabir Hussain, Ex-IH constable no. 5568,
Capital City Police Peshawar. ... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others.
... (Respondents)

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate --- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney --- For respondents.

MR. AHMAD HASSAN, --- MEMBER(Executive)
MR. HUSSAIN SHAH --- MEMBER(Executive)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for
the parties heard and record perused.

ARGUMENTS

2. Learned counsel for the appellant argued that he joined the Police Department as Constable in 1986 and later on elevated to the rank of IHC. He was falsely implicated in a criminal case lodged through FIR no. 752 under section-17(3) Haraba PS City Mardan dated 19.07.2014. On the basis of above FIR, firstly, a show cause notice was issued to the appellant, to which he replied. Thereafter, formal disciplinary proceedings were initiated against the appellant. As he was in police custody so charge sheet and statement of allegations were not served on him. Enquiry proceedings were conducted at the back of the appellant.

Upon release from jail, he submitted reply to the charge sheet and statement of allegations. In this case three enquiries were conducted but all of them remained inconclusive. The moot point in all the above enquiries was to keep the departmental proceedings pending till the decision of the criminal case. However, these instructions were not followed by the competent authority and major penalty of dismissal from service was awarded to him vide impugned order dated 14.03.2016. He filed departmental appeal on 28.03.2016, which was turned down through order dated 02.05.2016, hence, the present service appeal.

3. Neither statements of witnesses were recorded by the enquiry officer nor opportunity of cross examination was afforded to the appellant. Charges leveled against him were not established during the enquiry proceedings. He was acquitted by Addl: Sessions Judge-III Mardan vide judgment dated 18.01.2018. Reliance was placed on case law reported as 2018 PLC (C.S)454, 2007 SCMR 192, 2002 SCMR 57, 2008 609 and judgment of this Tribunal in a case of identical nature rendered in service appeal no. 1025/17 decided on 03.07.2018.

4. On the other hand learned Deputy District Attorney argued that charge sheet and statement of allegations were served on him on 11.11.2014 but he submitted reply on 03.11.2015 without giving any justification for the inordinate delay caused in submission of reply. Objection raised by the learned counsel for the appellant in the present service appeal were not raised by the appellant during departmental proceedings. On the strength of case law reported as 2001 SCMR 2018, departmental and criminal proceedings can run parallel. He was awarded major penalty on the basis of departmental enquiry as his action constituted serious mis-conduct.

CONCLUSION

5. The record placed before us revealed that Professor (R) Fateh Muhammad Khan lodged FIR no.752 under Section-17(3) Haraba P.S Mardan dated 19.7.2014 against unknown accused. During investigation the complainant in his 2nd statement under Section-164 Cr.P.C nominated the appellant is co-accused. The respondents under Rule-5(3) of Police Rules 1975 served a show cause notice dated 14.10.2014 on the appellant to which he replied. The appellant was confined to Quarter guard vide D.D no. 11 dated 06.09.2014 and remained there for fifty eight days. That departmental proceedings were initiated against the appellant by serving charge sheet and statement of allegations. It would not be out of place to mention here that he was arrested by the police in November, 2014. As he was in jail therefore, charge sheet and statement of allegations were not served on the appellant. This fact has never been denied by the respondents. It also goes against the procedure laid down in Police Rules, 1975. He was released on bail on the orders of Peshawar High Court, Peshawar on 06.01.2015. Though, learned Deputy District Attorney held that appellant guilty of submitting reply to the charge sheet/statement of allegations after considerable delay but was unable to defend the respondents for dragging the enquiry proceedings for two years without any cogent reason.

6. In the present case the task of conducting departmental enquiry was assigned to SDPO Town. The matter was probed by the enquiry officer thrice as is evident from the report dated 03.08.2015, 25.08.2015 and 13.11.2015. One thing is common in all the reports that the enquiry officer recommended to keep the case pending till decision of the criminal case pending against the appellant in the

competent court of law. Opinion of DSP(Legal) was also obtained which is reproduced below:-

I have gone through the enquiry in hand, which reveals that the Enquiry Officer has not submitted clear findings/conclusion vide which they could be punished or exonerated. The E.O may collect evidence in light of which may forward a decisive conclusion for its disposal.

7. In the presence of above opinion, there is hardly any ambiguity that enquiry was not conducted in the mode and manner prescribed in the rules. We are afraid that in the absence of statement of the complainant the inquiry report in hand is worthless. During the course of enquiry the enquiry officer failed to establish the charge leveled against the appellant. It is pertinent to point out that on the basis of statement of Inspector/I.O Bashir Muhammad of CTD, Mardan, the appellant was held guilty of the charges leveled against him. However, this statement was not available on the case file nor produced by the respondents during the hearing of the appeal. The enquiry report replete with that deficiencies and shortcomings. Neither, statements of witnesses were recorded nor opportunity of cross examination was afforded to the appellant. It was a valid ground for rendering the entire proceedings as nullity in the eyes of law.

8. Perusal of para-7 & 8 of the enquiry report would reveal that the competent authority travelled beyond his jurisdiction/mandate and procedure laid down in Police Rules 1975. He was under obligation to decide this case according to Rule-5 of Police Rules-1975. This action on his part was patently illegal and unlawful. It further validated that stance of the appellant being innocent and also exposed arbitrary, whimsical, highhanded of the respondents in handling the departmental proceedings.

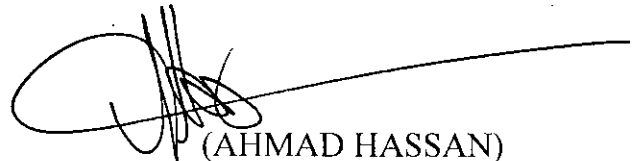
9. To set the record straight that the appellant after registration of FIR surrendered to law and was placed under suspension as per para-2 of the impugned order. He was entitled for subsistence allowance for the period, he remained under suspension. This action of the respondents was in line with CSR-194. Moreover, it further confirmed that the appellant never remained absconder after registration of FIR and this fact is not disputed.

10. The appellant was acquitted by the Addl: Sessions Judge-III Mardan vide order dated 18.01.2018. No doubt criminal and departmental proceedings can run parallel but in the present service appeal one thing is common that in both the cases no incriminating evidence was collected against the appellant. The only charge on the basis of which major penalty was awarded to the appellant is no more in the field. On the strength of case law relied upon by the learned counsel for the appellant there is ample room for setting aside the impugned order referred to above.

11. As a sequel to above, the appeal is accepted, impugned order dated 14.03.2016 and 02.05.2016 are set aside and the appellant is reinstated in service. He is entitled for subsistence allowance for the period under suspension. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.



(HUSSAIN SHAH)
MEMBER



(AHMAD HASSAN)
MEMBER

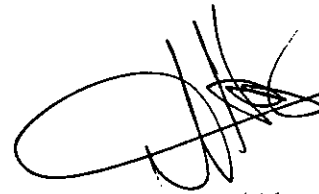
ANNOUNCED
27.06.2019

Order

27.06.2019 Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. M. Raziq, H.C for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is accepted, impugned order dated 14.03.2016 and 02.05.2016 are set aside and the appellant is reinstated in service. He is entitled for subsistence allowance for the period under suspension. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
27.06.2019



(Ahmad Hassan)
Member



(Hussain Shah)
Member

20.03.2019

Appellant in person and Addl: AG alongwith Mr. Bakht Wali Shah, Assistant (Judicial) for respondents present.

Due to general strike on the call of Bar Council, learned counsel for the appellant is not in attendance.

Adjourned to 08.05.2019 before D.B.


Member


Chairman


08.05.2019

Junior to counsel for the appellant and Asst: AG for respondents present.

Due to paucity of time, the instant matter is adjourned to 27.06.2019 for arguments before D.B.

Order

27.06.2019


Member
Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. M. Raziq, H.C for respondents present. Arguments heard and record perused.


Chairman

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is accepted, impugned order dated 14.03.2016 and 02.05.2016 are set aside and the appellant is reinstated in service.

The intervening period shall be treated as leave of the kind due. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
27.06.2019

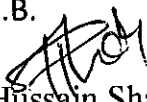
(Ahmad Hassan)
Member

(Hussain Shah)
Member

Service Appeal No. 666/2016

18.12.2018


Appellant alongwith his counsel Mr. Tamiur Ali, Advocate present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Muhammad Raziq, Head Constable for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 13.02.2019 before D.B.


(Hussain Shah)
Member


(Muhammad Amin Khan Kundi)
Member

13.02.2019

Learned counsel for the appellant and Mr. Riaz Painsdakhel learned Assistant Advocate General alongwith Mr. Raziq H.C for the respondents present. Learned Assistant AG informed the tribunal that similar nature appeal title Sajjad Khan is fixed in reply on 18.02.2019 therefore requested that in both the appeal one of the same inquiry was conducted. Therefore requested for adjournment. Adjourned. To come up on 23.03.2019 before D.B.


(Hussain Shah)
Member


(Muhammad Amin Khan Kundi)
Member

07.06.2018

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 27.07.2018 before D.B

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

27.07.2018

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Abrar Reader for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 18.09.2018 before D.B

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

18.09.2018

Mr. Taimur Ali Khan, junior counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is stated busy before the Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 30.10.2018 before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

30.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 18.12.2018.

Reader

11.12.2017

Learned counsel for the appellant present. Mr. Muhammad Jan, learned Deputy District Attorney, for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file and requested for adjournment. Adjourned. To come up for arguments on 12.02.2018 before D.B.



(Muhammad Hamid Mughal)
MEMBER



(Gul Zeb Khan)
MEMBER

12.02.2018

Agent to counsel for the appellant and Mr. Usman Ghani, Learned District Attorney for respondents present. Due to general strike of the bar, the case is adjourned. To come up for arguments on 05.04.2018 before D.B.



(Ahmad Hassan)
MEMBER



(Muhammad Hamid Mughal)
MEMBER

05.04.2018

Junior to counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available. Adjourn. To come up for arguments on 07.06.2018 before D.B.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member


21.03.2017

Counsel for appellant and Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 19.04.2017 before S.B.


Chairman

19.04.2017


Counsel for the appellant and Mr. Muhammad Raziq, HC alongwith Addl. AG for the respondents present. Written reply submitted. To come up for rejoinder and final hearing on 29.05.2017.


(Muhammad Amin Khan Kundi)

Member

29.05.2017


Agent to counsel for the appellant and ~~Raziq, HC~~ alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Agent to counsel for the appellant requested for time to file rejoinder. Adjourned. To come up for rejoinder and arguments on 20.09.2017 before D.B



(Muhammad Amin Khan Kundi)
Member


(Gul Zeb Khan)
Member

20.09.2017

Counsel for the appellant present. Learned Assistant Advocate General for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 11.12.2017 before D.B.


Member
(Executive)


Member
(Judicial)

28.09.2016

Counsel for the appellant and Additional AG respondents present. Written reply not submitted. Requested for adjournment. Adjournment granted. To come up for written reply/comments on 29.11.2016.

Member

29.11.2016

Clerk to counsel for the appellant and a single Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 11.1.2017 before S.B.

MEMBER

11.01.2017

Appellant with counsel present. Security and process fee not deposited. The same be deposited within in a week where-after notices be issued to the respondents for written reply/comments for 14.02.2017 before S.B.

Chairman

14.02.2017

Appellant with counsel present and Addl: AG for the respondents present. Notice be issued to the respondents for written reply/comment for 21.03.2017 before S.B.

(AHMAD HASSAN)
MEMBER

20.07.2016

Counsel for the appellant present and requested for adjournment. Request accepted. To come up for preliminary hearing on 26.07.2016 before S.B.


MEMBER

26.7.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Head Constable when subjected to enquiry on the allegations of mis-conduct and dismissed from service vide impugned order dated 14.3.2016 where-against he preferred departmental appeal on 28.3.2016 which was also rejected vide impugned order dated 2.5.2016 and hence the instant service appeal on 27.5.2016.

That neither any enquiry was conducted in the prescribed manners nor opportunity of hearing and defence afforded to the appellant.

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 28.09.2016 before S.B.


Chairman

MARSHAL COMMISSION
MEMBERS

Form-A
FORM OF ORDER SHEET

Court of _____

Case No. 666/2016

No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3

1

20/06/2016

The appeal of Mr. Sabir Hussain resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the learned Member for proper order please.


REGISTRAR 20/6/16

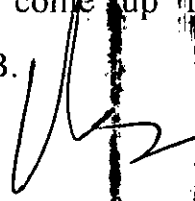
21-6-15

This case is entrusted to S. Bench for preliminary hearing to be put up there on. 22-6-16


MEMBER

22.06.2016

Counsel for the appellant present. Request for adjournment. Request accepted. To come up for preliminary hearing on 20.7.2016 before S.B.


Member

The appeal of Mr. Sabir Hussain Ex-IH Constable no. 5568 CCPO Peshawar received to-day i.e. on 27.05.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

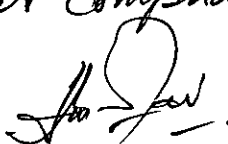
- 1- Page Nos. 11, 12 & 15 of the appeal are illegible which may be replaced by legible/better one.
- 2- Annexure-M of the appeal is incomplete which may be completed.

No. 901 /S.T,

Dt. 27/5 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. M.Asif Yousafzai Adv. Pesh.

Sir, Submitted after compliance


BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 666 /2016

Sabir Hussain

V/S

Police Deptt:

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4.	copy of reply to show cause	-C-	7
5.	Copy of statement of allegation	-D-	8
6.	copy of charge sheet	-E-	9
7.	copy of reply to charge sheet	-F-	10
8.	Copy of inquiry reports DATED 3.4.2015, 25.8.2015 & 13.9.2015	-G,G1&G2-	11-16
9.	Copy of show cause notice	- H-	17
10.	copy of reply to final show cause	-I-	18
11.	Copy of order dated: 14.3.2016	-J-	19-20
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APPELLANT

THROUGH:


(M.ASIF YOUSAFZAI),


(TAIMUR ALI KHAN),

&
(Syed Noman Ali Bukhari)
(ADVOCATES, PESHAWAR)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 666 /2016

Sabir Hussain Ex-IH constable No.5568
Capital City Police Peshawar.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Capital City Police, Officer, Peshawar.
3. The Superintendent of Police, Head Quarters, Peshawar.

S.W.P. Provincial
Service Tribunal
Diary No. 540
dated 27-5-2016

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 02.05.2016, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 14.03.2016, WHEREIN PENALTY OF DISMISSAL FROM SERVICE WAS IMPOSED UPON APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 02.05.2016 AND 14.03.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the police force in the year 1996 and completed all his due training etc and also have good service record throughout and promoted to IH Constable with the passage of time.
2. That the appellant was falsely involved in a criminal case and lodged F.I.R No. 752 dated 19.07.2014 U/S 17(3) Haraba PS city Mardan against the appellant. **(Copy of FIR is attached as annexure-A).**

27/5/16
Re-submitted to -day
and filed.

[Signature]
20.6.16
Registrar

3. That direct show cause notice was issued to the appellant on the basis of FIR No.752 dated 19.7.2014 on dated 14.10.2014 which was properly replied by the appellant. **(Copies of show cause notice and reply to show cause notice are attached as Annexure-B&C)**
4. That on the basis of the above mentioned FIR, charge sheet was served upon the appellant in which the appellant was charged as "you IH constable Sabir Hussain & Hc Sajjad No. 5568 while posted at ATS Distt: Peshawar were involved in a criminal case vide FIR No .752 dated 19.07.2014 U/S 17 (3) Haraba PS city Mardan. This amount to gross misconduct on your part and against the discipline of the force . The appellant submitted his reply to charge sheet in which he clear the entire situation and denied all the allegations therein. **(Copies of charge sheet and statement of allegation and reply are attached as Annexure-, D,E&F).**
5. That the two inquiries were conducted against the appellant. In the first inquiry dated 3.4.2015, the inquiry officer gave his recommendation that "the case may be please be kept pending till the decision of the court". **(copy of the inquiry report dated 3.4.2015 is attached as Annexure-G)**
6. That second inquiry was conducted against the appellant on 25.8.2015 in which the inquiry officer stated that *"the case is under process in the court. However, in the matter legal opinion may please be required from PDSP for decision"* on which the DSP legal opined that *"I have gone through the inquiry ion hands which reveals that the E.O has not submitted clear finding/conclusion vide which they could be punished or exonerated. The E.O may collect evidence in the light of which may forward a decisive conclusion for its disposal"* and on the basis of that third inquiry was conducted against the appellant on dated 13.11.2015 in which the inquiry officer again submitted that *"the inquiry may please kept pending till the decision of the court as the matter is under trial in court"*, but in all these inquires neither the statement was recorded nor opportunity was provided to the appellant to cross examined the witness. **(Copies of the inquiry report dated 25.8.2015 and 13.11.2015 are attached as Annexure-G1&G2)).**

4. That the final show cause notice was issued to the appellant which was duly replied by the appellant in which he once again denied all the allegations therein. **(Copies of final show cause and reply to show cause notice are attached as Annexure-H&I)**
5. That the appellant was dismissed from service under police rule 1975 vide order dated 14.03.2016. **(Copy of order dated 14.03.2016 is attached as Annexure-J)**
6. That against the dismissal order dated, 14.03.2016 the appellant filed departmental appeal on dated 28.3.2016, but the same was also rejected for no good ground on 02.05.2016. **(Copies of departmental appeal and rejection order are attached as Annexure-K&L).**
7. That now the appellant come to this august tribunal on the following grounds amongst others.

GROUND:

- A) That the impugned order dated 02.05.2016 and 14.03.2015 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That in inquiry report dated 3.4.2015 and dated 13.11.2015, the inquiry officer recommended "the case may be please be kept pending till the decision of the court", but despite that department did not consider the recommendation of inquiry officer and dismissed the appellant from service.
- C) That the inquiry was not conducted according to prescribed procedure as no chance of defence was provided before passing the impugned order which is the violation of law and rules.
- D) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- E) That trail of the appellant is still pending however the department did not observe the rule CSR-194, and dismissed the appellant from service before the finalization of proceeding against the appellant in the Court.

- F) Those two show cause notices were issued to the appellant for same cause of action which is against the law and rules.
- G) That the appellant was released on bail by the Honorable High Court Peshawar on dated 6.1.2015 in the FIR No. 752 dated 19.7.2014.
(Copy of high court order is attached as Annexure-M)
- H) That the penalty of dismissal from service is very harsh which is passed in violation of law and rules, therefore, the same is not sustainable in the eyes of law.
- I) That the appellant was not treated according to law and rules.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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


APPELLANT

Sabir Hussain

THROUGH:


(M.ASIF YOUSAFZAI)


(TAIMUR ALI KHAN)

&

(SYED NOMAN ALI BUKHARI)
(ADVOCATES, PESHAWAR)

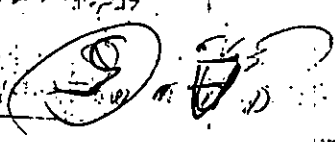
ATTESTED

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553-9867408
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8' (6)

OFFICE OF THE SUPERINTENDENT OF POLICE HQRS, CCP PESHAWAR

No. 426/PA

Dt: 14/10/2014 (12)

SHOW CAUSE NOTICE

(Under Rule 5(3) KPK, Police rules 1975)

1. That you IHC Sabir Hussain Khan & HC Sajjad No.5568 while Posted at ATS Team have rendered yourself liable to be proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for the following misconduct:

"You were involved in criminal case vide FIR No.752 dated 19.07.2014 u/s 17 (3) Haraba PS City (Mardan).

2. That by reason of above, as sufficient material is placed before the undersigned, therefore is decided to proceed against you in general police proceeding without aid of enquiry officer:
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force.
4. That your retention in the police force will amount to encourage in efficient and unbecoming of good police officer;
5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action you by awarding one or more of the kind punishments as provided in the rules.
6. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
7. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex-parte action shall be taken against you.
8. You are further directed to inform the undersigned that you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.

IHC Sabir Hussain Khan

No. 1850

ATTESTED


**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**



24/10/14

Answer ce 21

7

7

In response to the Show Cause Notice, I respectfully submit my explanation as under:-

1. That on 19-07-2014 I was on duty at my place of posting i.e ATS Squad Police Lines, Peshawar on the other hand, I have been falsely implicated in case FIR No.752, dated 19.07.2014 U/S 17(3) Haraba PS City Mardan.
2. That on receipt of an information the DSP/Operation, ATS, Peshawar unauthorized by confined me in the Quarter Guard vide DD No.11 dated 06.09.14 of Police Lines Peshawar and up-till now I am confined to Quarter Gaud for 58 days and still facing this punishment.
3. That the departmental proceedings are usually initiated against an accused police man after the decision of the court. Being my involvement in the above criminal case, I was required to be handed over the local police for investigation after fulfilling the codal formalities.
4. That so far my confinement to Quarter Guard for prolonged period concerned, it is contrary to the departmental proceedings under police rules. Moreover, under the rules, the DSP has no competency to keep me in the Quarter Guard for such a prolonged period as I have already qualified my intermediate course and I am a "D" list Head Constable.
5. Keeping in view of the above facts, I request your good honor to please consider my departmental proceedings and my confinement to Quarter Guard under the prevailing Police Rules and keep the same pending till the decision of the const.

For this act of kindness I shall be ever pray for your long life and other prosperities

To He Syad No. 5568 farbed
= Reply formel un-satisfactory while
invaliate departmentally

Yours obediently

Syad

(SABIR HUSSAIN)

IHC No.1850

ATS Team Peshawar

31-10-14

ATTESTED

*

Syad

Annexure - 2

OFFICE OF DSP
78-E
29/11/14

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that IHC Sabir Hussain & HC Sajjad NO.5568 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975.

STATEMENT OF ALLEGATION

"That IHC Sabir Hussain & HC Sajjad NO.5568 while posted at ATS Team, Peshawar was involved in a criminal case vide FIR No.752 dated 19.07.2014 U/S 17 (3) Haraba PS City (Mardan). This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPo Town is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

[Signature]
SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 201 /E/PA, dated Peshawar the 11/11 /2014

1. SDPo Town is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned etorio

*Call The officials concerned,
get statement*

BY: SUPDT. OF POLICE
Town Circle, Peshawar

ATTESTED
[Signature]

Handwritten notes: *Handwritten - E*, *(9)*, *(10)*, *7*

Handwritten mark: *(10)*

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that IHC Sabir Hussain & HC Sajjad NO.5568 of Capital City Police Peshawar with the following irregularities.

"That you IHC Sabir Hussain & HC Sajjad NO.5568 while posted at ATS Team, Peshawar were involved in a criminal case vide FIR No.752 dated 19.07.2014 U/S 17 (3) Haraba PS City (Mardan). This amounts to gross misconduct on your part and against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

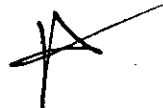
Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

ATTESTED



Ammaes "F"
"D" &

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جہاں بحالی!

بحوالہ چارج شیٹ نمبر Peshawar 201/E/PA بحرہ 11/11/2014، مسائل ذیل

عرض گزار ہے

- 1- یہ کہ مسائل عمرہ۔ درازت تنگہ پولیس کے لئے انتہائی ایمانداری اور جان فتنائی سے اپنے فرائض منصبی سرانجام دتے رہاتے اور ابھی بھی ڈیوٹی پر مامور ہے۔
- 2- یہ کہ مسائل کو ایک مقدمہ نمٹتے نمبر 752، مورخہ 19/07/14، زبردفعہ (3) 17، حراہہ تھانہ سٹی مردان میں سازشی طور پر ملوث کر دیا گیا۔
- 3- یہ کہ مورخہ 06 جنوری 2015 کو عدالت عالیہ پشاور ہائی کورٹ پشاور کے حکم پر مسائل کو بہ عزت طور پر ضمانت مل چکی ہے۔ (عدالتی حکم پشاور ہائی کورٹ لف بیان ہے)
- 4- یہ کہ مسائل کا ماضی انتہائی شفاف رہا ہے۔ جو نہی حکمہ ہذا سے مطلع ہوا بروقت جواب حاضر خدمت ہے۔
- 5- یہ کہ پولیس وردی ہمیشہ برخلاف قہرنگان علاقہ و دیگر جرائم پیشہ اور افراد کے خلاف کاروائیوں کا حصہ رہتا ہے۔ جسکے رد عمل کے طور پر مسائل کو بغرض انتقام سازشی طور پر ملوث کیا گیا ہے۔ دراصل مسائل بالکل بے گناہ ہے۔
- 6- یہ کہ مسائل ٹرانسپل کورٹ میں بھی اپنی بے گناہی کو ثابت کر کے اللہ کے حضور پولیس وردی پر داغ نہ آنے دیگا۔

لہذا استدعا ہے کہ مسائل کے خلاف محکمانہ انکوائری کو بلا مزید کارروائی کے داخل دفتر فرمائی جائے۔ نیز دیگر داری جو عین ترین انصاف ہو مرحمت فرمائی جائے۔

المرقوم: 03-11-2015

ارض

صابر حسین (IHC 1850)
ملک سعاد شہید پولیس لین پشاور

ATTESTED

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RECEIVED

The stated in his detail statement that accused IHC Sabir Hussain was arrested in connection statement of the Inspector (I) of the case was recorded. IHC Sabir Hussain & HC Sajjad No. 5568 was summoned to the office but they did not attend the office for statement after issuance of repeatedly summons. In this were marked to the undersigned for inquiry and to find out real facts. Of allegations was issued to them by the W/SP-HQrs Peshawar. The inquiry paper u/s (F) Harapp PS City (Mardan). Subsequently proper charge sheet and summons Peshawar, were involved in a criminal case vide FIR No. 752 dated 19/07/2015. conducted with the allegation that while they were posted at ATS team. A departmental inquiry against IHC Sabir Hussain & HC Sajjad No. 5568 was here cited above.

Memorandum: Please refer to your office No. 201/E/PA-SP dated 11/11/2014 on the subject cited above.

Subject: Departmental Inquiry against IHC Sabir Hussain & HC Sajjad No. 5568

Dated: 3- April 2015

No. 78/E /PA

To: Superintendent of Police, HQrs Peshawar
From: Deputy Superintendent of Police, Town Peshawar

Town Sub-Division

Capital City Police

Handwritten notes and signatures at the bottom of the page, including a circled number '11'.

Town Sub Division.

To Superintendent of Police,
HQs Peshawar.

From: Deputy Superintendent of Police,
Town Peshawar.

No. 78/E /PA

Dated 25 August; 2015.

Subject: **Departmental Inquiry against IHC Sabir Hussain & HC Sajjad
No.5568**

Memo:

Please refer to your office nO.201/E/PA – SP/HQrs; dated 11.11.2014 on the subject
cited above.

A departmental inquiry against IHC Sabir Hussain & HC Sajjad No.5568 was before
conducted with the allegation that while they were posted at ATS Team Peshawar, were
involved in a criminal case Vide FIR No.752 dated 19.07.2014 u/s (3) Haraba PS City
(Mardan). Subsequently, proper charge sheet and summary of allegations were issued
to them by the W/SP – HQrs Peshawar. The inquiry papers were marked to the
undersigned for inquiry and to find out real facts.

IHC Sabir Hussain & HC Sajjad No.5568 was summoned to the office. But they did not
attend the office for statement after issuance of repeatedly summons. In this
connection statement of the Bashir Khan Inspector I.O of the case was recorded. He
stated in his detail statement that accused IHC Sabir Hussain was arrested in the

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SUPERVISOR
POLICE
HOURS: 08:00 AM - 04:00 PM

DSP/legat
4-5-015

attached to
opinion to
SR

for opinion - H
DSP/legat

encl (3)

201-4-104

Deputy Superintendent of Police
Town Sub-Division Peshawar

No 36-UB
08/04/2015

COURT

recommends that the case may please be kept pending till the decision of the

in the light of the above circumstances, the undersigned is of the opinion that

the said case. The case is under process in the Court.

Hussain has been shifted to Judicial Jail Mardan and HC Sajjad No. 5568 is

From the perusal of record and inquiry conducted it was revealed that HC Sajjad

receipt No. 279/21 dated 09/3/202015. (Statement of I.O is attached)

said case. In this complaint, challan was sent to the High Court Peshawar. The

not attend the hearing of the Court on different dates. He was declared as a

hook up Mardan. Accused HC Sajjad No. 5568 during court trial got BVA. But during

his previous statement as he given to police. After that he was shifted to judicial

case. But in the court during statement of 104/164 he showed ignorance in

admitted that he was the part of this case and was taken one inter interview as

said before on the order of senior officer. He was interrogated in the said case.

10 (1)

said case on the order of senior officers. He was interrogated in the said case. He admitted that he was the part of this case and was taken one lace rupees in this case. But in the court during statement u/s 164/364 he showed ignorance from his previous statement as he given to Police. After that he was shifted to judicial lock up Mardan. Accused HC Sajjad No.5568 during court trail got BBA. But he did not attend the hiring court on different dates. He was declared PO in the said case. In this complete challan was sent to the High Court, Peshawar vide receipt No.279/21; dated 09.03.2015. (Statement of I.O. is attached).

From the perusal of record and inquiry conducted it was revealed that IHC Sabir Husain has been shifted to Judicial Jail Mardan and HC Sajjad No.55568 is PO in the said case. The case is under process in the Court.

In the light of the above circumstance the undersigned is inquiry officer recommended that the case may please be kept till the decision of the Court.

Sd/-
Deputy Superintendent of Police,
Town Sub Division, Peshawar.

ATTESTED
/

Amroha's Case

(13)

Capital City Police

Town Sub-Division

To: - Superintendent of Police,
HQrs Peshawar

From: - Deputy: Superintendent of Police,
Town Peshawar

No. 78/E /PA

Dated. 25 August: 2015

Subject: - Departmental Inquiry against IHC Sabir Hussain & HC Sajjad
No.5568

No. 201/E/PA/114

28-8-2015

No 86 - CB Encl (4)
28/8/2015 Encl (4)

Memo:

Please refer to your office No.201/E/PA- SP/HQrs dated 11/11/2014. on the subject cited above,

A departmental inquiry against IHC Sabir Hussain & HC Sajjad No.5568 was here in conducted with the allegation that while they were posted at ATS Team Peshawar, were involved in a criminal case Vide FIR No.752 dated 19/07/2014 u/s (3) Haraba PS City (Mardan). Subsequently, proper charge sheet and summary of allegations was issued to them by the W/SP-HQrs Peshawar. The inquiry papers were marked to the undersigned for inquiry and to find out real facts. IHC Sabir Hussain & HC Sajjad No.5568 was summoned to the office. But they did not attend the office for statement after issuance of repeatedly summons. In this connection statement of the Bashir Khan Inspector I.O of the case was recorded. He stated in his detail statement that accused IHC Sabir Hussain was arrested in

LISTED

DSB/legal

For opinion

Mr Habibullah
SI for M/A P/L
31/8/15

said case on the order of senior officers. He was interrogated in the said case. He admitted that he was the part of this case and was taken one lac rupees in this case. But in the court during statement u/s 164/364 he showed ignorance from his previous statement as he given to Police. After that he was shifted to judicial lock up Mardan. Accused HC Sajjad No.5568 during court trail got BBA. But he did not attend the Court for hiring on different given dates. He was declared PO in the said case. In this regard complete challan was sent to the High Court Peshawar vide receipt No.279/21 dated 09/3/202015. (Statement of I.O is attached).

From the perusal of record and inquiry conducted it was revealed that IHC Sabir Hussain has been shifted to Judicial Jail Mardan and HC Sajjad No:55568 is PO in the said case. The case is under process in the Court. However, in the matter legal opinion may please be required from PDSP for decision.

[Signature]
Deputy: Superintendent of Police,
Town Sub-Division Peshawar.

mark (A)

Sir,
I have gone through the enquiry in hands, which reveals that the E.O has not submitted clear finding / conclusion vide which ^{that} could be punished or exonerated. The E.O. may collect evidence in light of which, may forward a decisive conclusion for its disposal.

ATTESTED

[Signature]

[Signature]
SDPO Town
enquiry in
right of DSP/legal
Superintendent of Police
HQs: CCSP Peshawar.

ATTESTED

Enclose (50)

Mardan. Accused HC Sajjad No. 5568 during court trail got 88A but he did not attend the court his previous statement given to Police during investigation, he was shifted to judicial lock up in one lace ruppees in it. But in the court during statement u/s 164/35-1 he showed ignorance from interrogated in the said case. He admitted that he was the involved in this case and has taken accused IHC Sabir Hussain was arrested in said case on the order of senior officers. He was the Basir Khan Inspector I/O of the case was recorded. He stated in his detail statement that the office for statement after issuance of repeatedly summons. In this connected statement of IHC Sabir Hussain & HC Sajjad No. 5568 was summoned to the office. But they did not attend facts.

Peshawar. The inquiry papers were marked to the undersigned for inquiry and to find out the proper charge sheet and summary of allegations was issued to them by the W/SR/HQs criminal case vide FIR No. 752 dated 19/07/2014 u/s (3) Haraba PS City (Mardan). Subsequently with the allegation that while they were posted at ATS Team Peshawar, were involved in A departmental inquiry against IHC Sabir Hussain & HC Sajjad No. 5568 was here in conducted

Please refer to your office No. 201/E/PA-SF/HQs dated 11/11/2014 on the subject cited above.
 Memo: 81

Subject: - Departmental Inquiry against IHC Sabir Hussain & HC Sajjad No. 5568

Dated: 13 November 2015

No. 78/E /PA

From: Deputy Superintendent of Police, Town Peshawar

To: Superintendent of Police, HQs Peshawar

Town Sub-Division

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Amroze - 12

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Town Sub Division.

To Superintendent of Police,
HQs Peshawar.

From: Deputy Superintendent of Police,
Town Peshawar.

No. 78/E /PA

Dated 13 November, 2015.

Subject: **Departmental Inquiry against IHC Sabir Hussain
& HC Sajjad No.5568**

Memo:

Please refer to your office NO.201/E/PA – SP/HQrs; dated 11.11.2014 on the subject cited above.

A departmental inquiry against IHC Sabir Hussain & HC Sajjad No.5568 was before conducted with the allegation that while they were posted at ATS Team Peshawar, were involved in a criminal case Vide FIR No.752 dated 19.07.2014 u/s (3) Haraba PS City (Mardan). Subsequently, proper charge sheet and summary of allegations were issued to them by the W/SP – HQrs Peshawar. The inquiry papers were marked to the undersigned for inquiry and to find out real facts.

IHC Sabir Hussain & HC Sajjad No.5568 was summoned to the office. But they did not attend the office for statement after issuance of repeatedly summons. In this connection statement of the Bashir Khan Inspector I.O of the case was recorded. He stated in his detail statement that accused IHC Sabir Hussain was arrested in the said case on the order of senior officers. He was interrogated in the said case. He admitted that he was the part of this case and was taken one lace rupees in this case. But in the court during statement u/s 164/364 he showed ignorance from his previous statement as he given to Police during statement u/s 164/364 he showed ignorance before his previous statement given to police during investigation. He was shifted to judicial lock up to Mardan Accused HC Sajjad No.5568 during court trial got BBA. But he did not attend the court.

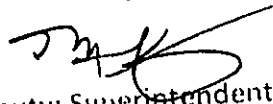
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for hiring on different given dates. He was declared PO in the said case. In this regard complete
challan was produced to the High Court Peshawar vide receipt No.279/21 dated 09/3/202015.
(Statement of I.O is attached).

During inquiry process on 03/11/2015 IHC Sabir Hussain attended the office and his statement
was recorded. He mentioned in his statement that he was falsely involved in the case vide FIR
No.752 dated 19/07/2014 u/s 17(3) haraba PS City district Mardan. He added that he got bail
from the court and his case is under process in the court (Statement is attached).

From the perusal of record and inquiry conducted it was revealed that during interrogation IHC
Sabir Hussain had admitted that he was involved in the said case, but during court process he
denied ignorance his involvement in case. While HC Sajjad No.55568 is PO in the said case til
now (Relevant record is attached).

It is therefore, submitted that the inquiry may please kept pending till the decision of the court
as the matter is under trail in Court.


Deputy: Superintendent of Police,
Town Sub-Division Peshawar.

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ATTESTED



Amree "H" 16/17

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, IHC Sabir Hussain No.1850 the final show cause notice.

The Enquiry Officer, SDPO Town, after completion of enquiry proceedings, against you IHC Sabir Hussain No.1850 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you IHC Sabir Hussain No.1850 deserve the punishment in the light of the above said enquiry reports.

I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975 for involvement in criminal case.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.
3. The copy of the finding of the enquiry officer is enclosed.

[Signature]
SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

No. 201 /PA, SP/HQrs; dated Peshawar the 08 /2016.

Copy to official concerned

ATTESTED

[Signature]

بخدمت جناب ایس پی ہیڈ کوارٹر صاحب پشاور۔

بجوالہ انگریزی چھٹی نمبر 201/PA,SP/HQs مورخہ 08/01/2016 موصولہ
مورخہ 02/02/2016۔

جناب عالی!

بجوالہ انگریزی چھٹی نمبر 201/PA,SP/HQs مورخہ 08/01/2016 موصولہ
مورخہ 02/02/2016، سائل ذیل عرض گزار ہے۔

- (۱) یہ کہ سائل عرصہ دراز سے محکمہ پولیس کیلئے انتہائی ایمانداری اور جانفشانی سے اپنے فرائض منصبی سرانجام دے رہا ہے اور ابھی بھی ڈیوٹی پر مامور ہے۔
- (۲) یہ کہ سائل کو ایک مقدمہ علت نمبر 752 مورخہ 19/07/2014 زبردفعہ (3) حرابہ تھانہ سٹی مردان میں سازشی طور پر ملوث کروایا گیا۔
- (۳) یہ کہ مورخہ 06/01/2015 کو عدالت عالیہ پشاور ہائی کورٹ پشاور کے حکم پر سائل کو باعزت طور پر ضمانت مل چکی ہے۔ (نقل حکم عدالت عالیہ لف ہذا ہے)۔
- (۴) یہ کہ سائل کا ماضی انتہائی شفاف رہا ہے جو نہی محکمہ ہذا سے مطلع ہوا بروقت جواب حاضر خدمت ہے۔
- (۵) یہ کہ پولیس وردی ہمیشہ برخلاف قمن گان علاقہ و دیگر جرائم پیشہ افراد کے خلاف کاروائیوں کا حصہ رہتا ہے جس کے رد عمل کے طور پر سائل کو بغرض انتقام سازشی طور پر ملوث کیا گیا ہے۔ دراصل سائل بالکل بے گناہ ہے۔
- (۶) یہ کہ سائل ٹرائل کورٹ میں بھی اپنی بے گناہی کو ثابت کر کے اللہ تعالیٰ کے حضور پولیس وردی پر داغ نہ آنے دیگا۔
- (۷) یہ کہ سائل نے اس سے قبل بھی مورخہ 03/11/2015 کو SDPO صاحب ٹاؤن کے روبرو زبانی تحریر جواب پیش کی ہے جو ریکارڈ پر موجود ہے۔ (نقل منسلکہ درخواست ہذا ہے)۔

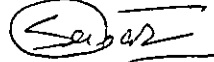
لہذا استدعا ہے کہ سائل کے خلاف محکمہ انکوائری کو بلا مزید کارروائی کے داخل دفتر فرمائی جاوے نیز دیگر دادری جو قرین انصاف ہو وہ بھی مرحمت فرمائی جاوے۔

المرقوم 10/02/2016

ATTESTED



عرض



صابر حسین (IHC 1850)

ملک سعد شہید پولیس لین پشاور۔

(10) J 19

ORDER

This office order relates to the disposal of formal departmental enquiry against IHC Sabir Hussain No.1850 & FC Sajjad No.5568 of Capital City Police Peshawar on the allegations that they while posted at ATS Team, involved in criminal case vide FIR No.752 dated 19.07.2014 u/s 17(3) Haraba PS City (Mardan).

2. In this regard, they were placed under suspension & issued charge sheet and summary of allegations. SDPO Town was appointed as Enquiry Officer. He conducted the enquiry proceedings and submitted his report that IHC Sabir Hussain has been shifted to Judicial Jail Mardan while FC Sajjad No.5568 is PO. The E.O further recommended that the enquiry may be kept pending till the final decision of the court vide Enquiry Report No.78/E/PA dated 03.04.2015

3. Upon the finding of Enquiry Officer, DSP Legal opinion was sought. He opined that the enquiry officer is supposed to summon the defaulter officials through their home addresses and in case they failed to associate with the enquiry proceedings, then vide his finding an ex-parte action may be recommended, as criminal case registered against the both accused officials has no binding over disposal of departmental enquiry.

4. In light of DSP Legal opinion, the enquiry paper was again referred to E.O for re-enquiry & report. He again conducted the enquiry & submitted his report that IHC Sabir Hussain has been shifted to judicial Jail Mardan and FC Sajjad No.5568 is still P.O. He further stated that in the matter legal opinion may be require to be obtained from DSP/legal for decision vide Enquiry Report No.78/E/PA dated 25.08.2015.

5. The enquiry paper was again sent to E.O for propr enquiry in the light of DSP Legal opinion. He again conducted the enquiry & submitted report that during interrogation IHC Sabir Hussain had admitted that he was involved in the said case, while HC Sajjad is P.O. He further stated that the Enquiry paper may be kept till the decision of the court vide Enquiry Report No.78/E/PA dated 13.11.2015.

6. On receiving finding of E.O, IHC Sabir Hussain was issued final show cause notice to which he received & replied. He was called & heard in person but his explanation found un-satisfactory.

7. Furthermore, O-II of the above mentioned case was called vide letter No.1022/PA dated 03.03.2016. Inspector/IO Bashir Muhammad CTD Mardan along with case file was appeared before the undersigned on 08.03.2016. He given written statement and stated that during Interrogation, IHC Sabir Hussain confessed his guilty & FC Sajjad No.5568 is still P.O in the case.

8. Moreover, DSP Legal opinion was again sought. He opined that the accused Police officers having been charged in an offence falling under moral turpitude. We may not left the instant enquiry at the mercy of court decision.

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9. From perusal of recommendations of E.O, DSP Legal opinion & report of Bashir Khan Inspector/I.O of the case CTD Mardan, the undersigned came to conclusion that both the alleged officials found guilty of the charges of involvement in criminal case us 17(3) Haraba.

Therefore, the charges of criminal case is hereby included in the dismissal order of FC Sajjad No.5568 who has been dismissed from service in the allegation of absence vide OB No.3213 dated 26.08.2015. Moreover, IHC Sabir Hussian No.1850 is hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect.

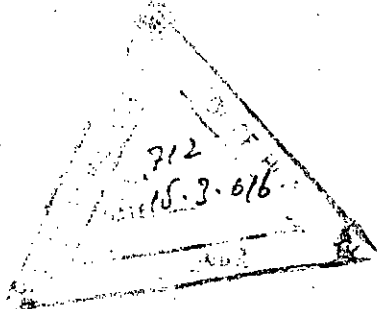
[Signature]
SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR *B14/3*

OB. NO. 974 / Dated 14/3 /2016

No. 1187-95 /PA/SP/dated Peshawar the 14/3 /2016

Copy of above is forwarded for information & n/action to:

- ✓ Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar, DSP Rural & ASP Gulbahar.
- ✓ Pay Office, OASI, CRC & FMC along-with complete departmental file. *Riv*
- ✓ Officials concerned.



LOI/MASO
in mission
R1/15/26

ATTESTED
[Signature]

Annexure ^{or} #11 (2)

To

Dy: No.	218	CCPO
Dt:	28.03.2016	
Encl:		

1. CAPITAL CITY POLICE OFFICER,
Peshawar.
2. PROVINCIAL POLICE OFFICER,
Khyber Pakhtunkhwa, Peshawar

No 178 - CB
29/3/2016
 encl
 (15)

SUBJECT: DEPARTMENTAL APPEAL AGAINST OFFICE ORDER NO. 974 DATED 14.03.2016 PASSED BY SUPERINTENDENT OF POLICE HEADQUARTERS, PESHAWAR WHEREBY THE UNDERSIGNED HAS BEEN DISMISSED FROM SERVICE, WITH IMMEDIATE EFFECT.

DSP Legal

For opinion, P/

[Signature]

Respected Sir,

F.M.C
 Put up Record
[Signature]

Y Dy. Supdt. Police
 Legal, CCP/Peshawar
 29/3/2016

For CCP
 28/3

Reference subject mentioned Office Order I, Sabir Hussain, Ex-IHC-1850, Malik Saad Shaheed Police Lines, Peshawar, submit my Departmental Appeal for your Honor's sympathetic & benevolent considerations as under:-

1. That, the allegations as leveled in the Charge Sheet coupled with Statement of Allegations & reiterated in Final Show Cause Notice, are illegal, unlawful, void and ineffective.
2. That, the same are against the principles of Natural Justice also.
3. That, the procedure as provided in law has not been followed in strict sense nor the rules of justice or good governance was respected by the Competent Authority, in any manner.
4. That, an FIR No. 752 dated 19.07.2014 under section 17 (3) Haraba / 411 PPC / 15 AA was registered in Police Station

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Mardan City by the Complainant Professor (R) Fateh Muhammad Khan against unknown accused.

- 5. That, during the course of investigation, the complainant in his 2nd statement under section 164 Cr.PC before the Competent Court of law nominated me as co-accused.
- 6. That, thereafter I was arrested by the Police in the month of November till 06.01.2015 when the Honourable Peshawar High Court, Peshawar released me on bail. It is important to mention here that for almost two months I was also kept in quarter guards in Police Lines, Peshawar.
- 7. That, on 15.10.2014, I was suspended by Superintendent of Police Headquarters, Peshawar vide Order dated 15.10.2014 and on 11.11.2014, I was served with the Charge Sheet coupled with Statement of Allegations which was duly replied by me.
- 8. That, subsequent to the reply of the Charge Sheet & Statement of Allegations, an illegal and unlawful inquiry was conducted against me wherein no meaningful chance of personal hearing was afforded.
- 9. That, besides not providing the chance of Personal Hearing, my statement was never recorded by the Departmental Inquiry Officer nor any statement of the witness from the prosecution / Department was ever recorded in my presence, which has, purportedly, used against me.
- 10. That, since no statement was recorded in my presence and no document was confronted to me, therefore, the question of affording the opportunity of cross-examination during the Departmental Enquiry, by the Enquiry Officer, does not arise.
- 11. That, the criminal proceedings initiated and lodged against me is under trial / process and the outcome of the same is still unknown.

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12. That, the Departmental Proceedings initiated and concluded against me are pre-mature because the same are based on FIR / Criminal Proceedings moreover the Trial Court has not yet concluded its proceedings.
13. That, with utmost respect, it is stated that the Departmental and Criminal proceedings are two distinct / parallel proceedings which can run side by side but both the proceedings cannot be merged / amalgamated.
14. That, in the instant case the proceedings of Criminal Interrogation Officer has been relied upon by the Departmental Inquiry Officer which is unprecedented, having no legal footings in the entire service law. It is noteworthy to mention here that the statement recorded before police or interrogation officer has no evidential value in the eyes of law unless and until the same is restated and recapped before the Magistrate or Competent Court of law.
15. That, as per law, unless and until the criminal charges have not been proved against an incumbent the same could not become hurdle in his service however till the pendency of the charges the accused may be kept in suspension but no major or minor punishment can be imposed.
16. That, the act of the Competent Authority is against the principles enshrined in the Constitution of Islamic Republic of Pakistan, 1973 especially Article 4, 25 and 27 has been violated by the Competent Authority.
17. That, it is well established principle of law that regular enquiry including the opportunity of personal hearing is must where the Competent Authority is willing to impose the major punishment.

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18. That, I was not provided with the documents fact finding enquiry report conducted against me.
19. That, the punishment as imposed is too harsh.

In view of the above, It is requested that the subject Dismissal Order may please be set-aside & I may please be reinstated in the service with all back wages and benefits moreover the allegations, as leveled against me, be dropped in the interest of justice and fairness with such other relief as may deem fit in the circumstances of the case may also be granted.

Thanking you.

Dated. 09.05.2016.

Yours faithfully,



(SABIR HUSSAIN)

Ex-IHC-1850, Malik Saad
Shaheed Police Lines, Peshawar
R/o Flat No. 09, Touheed
Centre, Near Yousafabad Canal,
Dalazak Road, Peshawar.

RECEIVED

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Amended L
OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No. 091-9210989
Fax No. 091-9212597

ORDER

This order will dispose off departmental appeal of Ex-IHC Sabir Hussain No. 185 who was awarded the punishment of Dismissal from service by SP-HQRs: vide OB No. 974, dated 14/3/2016.

2- Short facts behind the instant appeal are that the appellant was proceeded against departmentally on the charge of involvement in criminal case vide FIR No. 752 dated 19.7.2014 u/s 17 (3) Haraba PS City Mardan.

3- Proper departmental proceedings were initiated against him and DSP-Town was appointed as the E.O. who carried out a detailed enquiry and established the above allegations against him. On receipt of the findings of the E.O, the SP-HQRs Peshawar issued him a Final Show Cause Notice to which he replied. The same was perused and found unsatisfactory by the Competent Authority as such awarded him the above major punishment.

4- He was called in O.R. on 29.4.2016, and heard in person. Enquiry file was thoroughly examined. The appellant is involved in a heinous crime of 17 (3) Haraba. He was supposed to be punctual and loyal with his duty, protect the life/property of general public but instead he is depriving them from their property. All this amounts to gross misconduct on his part. He is just a stigma on the face of Police department. His retention in Police service is not justified. The order passed by SP-HQRs: is upheld. The appeal for re-instatement in service is rejected/filed.


(MUBARAK ZEB)
CAPITAL CITY POLICE OFFICER,
PESHAWAR.
2.5.16

No. 1041-48/PA dated Peshawar the 2 /05/2016.

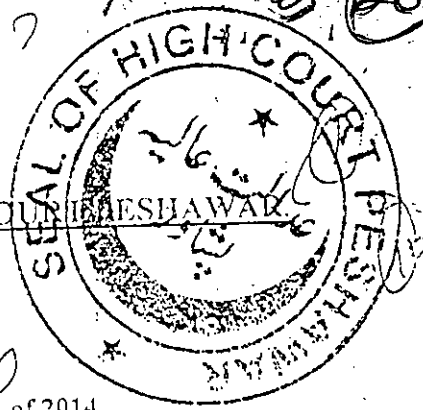
Copies for information and n/a to the:-

- 1/ SP-HQRs: Peshawar
- 2/ PO/EC-I/EC-II/AS/I-C Computer Cell
- 3/ FMC encl: _____
- 4/ Official Concerned

ATTESTED



Annexure - E.P.S. (1 Feb) 13 26



BEFORE THE HON'BLE PESHAWAR HIGH COURT PESHAWAR

Cr: Misc: Bail Petition No. 2091-P of 2014,

Sabir Khan S/O Nadar Khan R/O Dolat Nagar Gujrat Punjab Presently Saced Abad Dalazak Road Peshawar.

.....Accused / Petitioner.

VERSUS

The State

.....Respondent.

Case F.I.R No.752, Dated; 19-07-2014,U/S- 17 (3) Haraba/411 PPC/ 15 AA

P.S: City Mardan

BAIL PETITION 497 Cr.P.C FOR THE RELEASE OF ACCUSED / PETITIONER ON BAIL TILL THE FINAL DISPOSAL OF THE CASE.

Respectfully Sheweth:-

That the accused / petitioner respectfully submit as under: -

1. That the petitioner is an accused in the above-captioned case, registered at P.S City Mardan, vide Case F.I.R No.752, Dated; 19-07-2014, U/S 17 (3) Haraba /411PPC/15 AA, and the petitioner is behind the bar since his arrest. (Copy of F.I.R is annexed as 'A').
2. That the petitioner filed his bail petition in the Court of Addl: Session's Judge (iii), Mardan, for his release on bail, but the same was not considered and turned down vide order Dated; 04-12-2014. (Copy of the bail petition in order of Addl: Session's Judge (iii), Mardan, are annexed as 'B' and 'C'. respectively)

FILED TODAY
Deputy Registrar
16 DEC 2014

That the accused / petitioner now, approaches this Hon'able Court for release on bail, on the following inter-alias grounds.

ATTEST
EXAMINE
Peshawar High

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(11)

GRUNDS.

- A. That the accused / petitioner is quite innocent and there is absolutely no evidence against him which can connection him with the commission of offence.
- B. That it is well settled principle of law that while deciding a bail petition the court of law is not suppose to keep in mind the maximum sentence provided by the statute for the offence, but the one which is likely to be awarded to the accused in the facts and circumstances of the case, and as such the case of the petitioner is not fall with in the ambit of the prohibitory clause, and he is entitled for bail on this ground alone.
- C. That the accused / petitioner has falsely been implicated in the instant case on malafide intention and there is no ocular or circumstantial evidence against him on record.
- D. That there was no recovery what so ever has been affected from the personal possession of the accused / petitioner and he have no concern with the alleged recovery.
- E. That the allegations leveled against him requires further probe into the facts and circumstances of the case and the case of the accused / petitioner is one of further inquiry and as such he is entitled for the concession of release on bail.
- F. That co accused namely Muhammadf Ali, Nawazish Ali, Basher Khan, have already released on bail by competent Lower court, therefore, the accused/petitioner is also entitled to bail on rule of consistency.
- G. That on prior permission of this Hon'able Court, the accused / petitioner may urge other additional grounds, if any during the course of arguments.
- H. That the accused / petitioner is ready to furnish local/reliable sureties for the entire satisfaction of this Hon'able Court.

It is, therefore, most humbly prayed that on acceptance of this bail petition, the accused / petitioner may graciously be released on bail till the final decision of the case.

Dated; 15/12/2014.

Accused / Petitioner

[Signature]

Through: -
(Muhammad Nasir Ghilzai)
Advocate, High Court

NOTE:-

As Per instructions of my client, It is Certified that no such like bail petition as earlier been filed in this Hon' able Court, except the present one.

[Signature]

Advocate Peshawar.

FILED
DO NOT REPLY
16 DEC 2014

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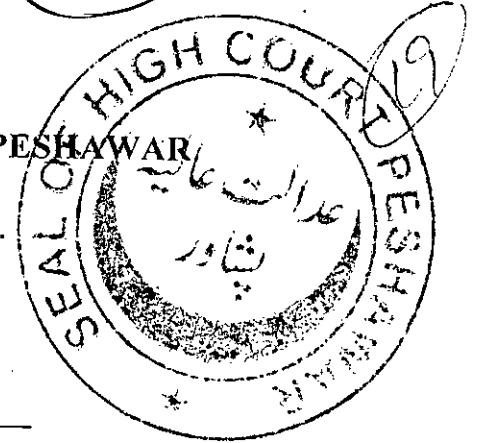
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ATTESTED
EXAMINER
Peshawar High Court
14 JAN 2015

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(28)

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)
Cr.Misc BA No. 2091-P/2014.
Sabir Khan... VS... The State



JUDGMENT

Date of hearing 06.1.2015

Petitioner (s) *by Mr. Muhammad Malik Ghailzai Advocate*

Respondent (s) *by Miss Aida Saffdar State Counsel
Mr. Iftikhar Uddin and Danishal Chankani Advocates*

HAIDER ALI KHAN, J:- Through this single order I intend to decide two connected bail applications, the one in hand and another bail application No. 2005-P/2014 titled Nadir Khan ...VS...The State, as both are arising out of the same FIR No. 752 dated 19.7.2014 registered under section 17(3) haraba/411 PPC/ 15 Arms Act at Police Station City Mardan.

2. The complainant, Professor (R) Fateh Muhammad Khan, while reporting the matter to the local police on 19.7.2014, alleged that on the eventful day at the time of "Aftari" he alongwith his wife were present in the house, when the door bell rang, he came out, noticed Four persons standing, posing themselves to be the police officials and on pretext of search of a person entered the house, locked the complainant and his wife in a room and started search of the rooms and fled away and when the complainant came out of the room, on search he found 25 tolas gold ornaments cash amount Rs. 5,00,000/- one pistol LLAMA bearing No. 285486 and

ATTESTED
EXAMINER
Peshawar High Court
14 JAN 2015

قیمت 10 روپے



51719

پشاور بار ایسوسی ایشن، خیبر پختونخوا

رابطہ نمبر:

بعدالت جناب: سرروس سٹریٹ ہونزل پشاور

منجانب: Sabir Hussain	دعویٰ: ایسٹ
Police Department	موضوع: عدالت نمبر: جرم: تھانہ:

بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کاروائی متعلقہ
 ان مقام ہنکار محمد آصف (مستحق) محمود علی صاحب (مستحق) ملک وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر حالت و فیصلہ برطاعت دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں بدستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا تاخیر یا تکلیف یا اہیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اہیل نگرانی و نظریاتی پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا مانعہ برداشت منظور و قبول ہوگا دوران مقدمہ
 میں جو خرچہ ہر جانہ التوائے مقدمہ کے نسبت سے ہوگا وہ وکیل موصوف وکیل کرنے کا مختار ہوگا کوئی تاریخ پیشی مقام
 دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم:

Accepted
Appointed

مقام کے لئے منظور ہے

تاریخ: _____

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.666/2016.

Sabir Hussain Ex- IHC No.5568 Police Line Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs, Peshawar.....Respondents.

Reply on behalf of Respondents No. 1, 2, &3.

Respectfully shewth:.

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
3. That the appellant has not come to this Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That this Hon'able Tribunal has no jurisdiction to entertain the appeal.

FACTS:-

- (1) Para No.1 pertains to record, hence needs no comments.
- (2) Para No.2 is correct to the extent that the appellant was proceeded departmentally on allegations that he involved himself in a criminal case vide FIR No.752 dated 19.07.2014 u/s 17(3) Haraba PS City Mardan. In this regard proper charge sheet and statement of allegation was issued to him, and SDPO Town was appointed as enquiry officer.
- (3) Para No.3 is correct to the extent that the appellant was issued show cause notice to which he replied. But his reply did not satisfy the competent authority. Hence he was proceeded.
- (4) Para No.4 is correct to the extent that the appellant was issued charge sheet which he replied. The charges leveled against him were stand proved during the proceeding.
- (5) Para No.5 is correct to the extent that enquiry was conducted by DSP Town. He conducted the enquiry and established the allegations leveled against him.
- (6) Para No.6 of the appeal is totally incorrect. Proper departmental enquiry was conducted against the appellant with completion of all codal formalities.
- (7) Para No.7 is correct to the extent that the appellant was issued final show cause notice to which he replied. The same was perused and found unsatisfactory by the competent authority. Hence he was awarded major punishment.

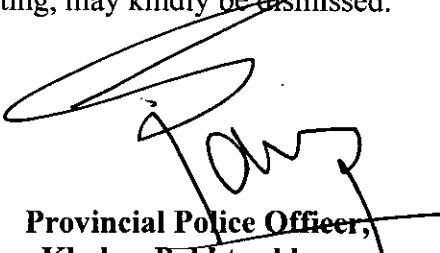
- (8) Para No.8 is correct to the extent that after fulfilling all codal formalities he was awarded major punishment of dismissal from service.
- (9) Para No.9 is correct to the extent that he filed a departmental appeal which was filed/rejected after due consideration.

GROUND:-

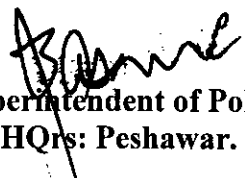
- (A) Incorrect. The punishments orders are just, legal and have been passed in accordance with law and rules.
- (B) Incorrect. The enquiry officer held him responsible, hence was awarded major punishment of dismissal from service.
- (C) Incorrect. Proper enquiry was conducted against him. He was given full opportunity of defence.
- (D) Incorrect. The appellant was treated as per law and rules.
- (E) Incorrect. In fact court proceedings and departmental proceedings are two different things and can run side by side.
- (F) Incorrect. The appellant was treated as per law/rules.
- (G) Incorrect. Para already explained in para no. E.
- (H) Incorrect. The punishment order is in accordance with law.
- (I) Incorrect. He was treated as per law/rules.
- (J) That the respondents also seek permission of this Honorable Service Tribunal to raise additional grounds at the time of arguments.

PRAYER.

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs: Peshawar.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.666/2016.

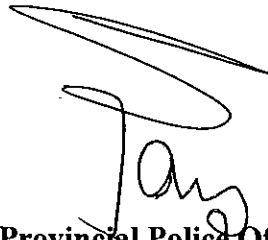
Sabir Hussain Ex- IHC No.5568 Police Line Peshawar.....Appellant.


VERSUS.

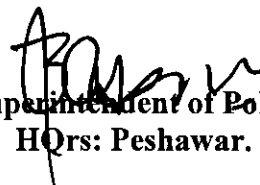
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs, Peshawar.....Respondents

AFFIDAVIT

We respondents No. 1 ,2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs: Peshawar.

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 666/2016

Sabir Hussain

VS

Police Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

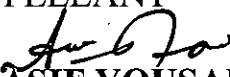
1. Admitted correct as the service record of the appellant is present with the department.
2. Not replied according to para 2 of the appeal moreover para 2 of the appeal is correct.
3. First portion of 3 of the appeal is admitted correct hence no comments while the rest of para is incorrect as the appellant as the appellant clearly mentioned in his reply to show that he was falsely implicated in criminal case and he was on duty on the day of occurrence.
4. Incorrect. the charges leveled against the appellant was not proved in the inquiry proceeding, but the inquiry officer clearly mentioned in his report that the inquiry may please kept pending till the decision of the court as the matter is under trail in court but despite that the appellant was dismissed from service without keeping the observation of the inquiry officer.
5. Incorrect. the inquiry officer did not established the allegation on the appellant but he clearly mentioned in his report that the inquiry may please kept pending till the decision of the court as the matter is under trail in court.
6. Not replied according to para 6 of the appeal moreover para 6 of the appeal is correct.
7. First portion of para 7 of the appeal is admitted correct hence no comments while the rest of para is incorrect as the appellant denied the allegation leveled against him in his reply to show cause and clear the entire situation about the issue.

8. Incorrect. The appellant was dismissed from service without fulfilling the codal formalities.
9. The departmental appeal of the appellant is rejected without good ground:

GROUND:

- A. Incorrect. While para A of the appeal is correct.
- B. Incorrect. the inquiry officer did not held him responsible, but he clearly mentioned in his report that the inquiry may please kept pending till the decision of the court as the matter is under trail in court.
- C. Incorrect. Inquiry was not conducted in the prescribed manner as the appellant has not given opportunity of defence.
- D. Incorrect. The appellant was not treated in accordance with law and rules.
- E. Incorrect. While para E of the appeal is correct.
- F. Not replied according to para F of the appeal. Moreover para F of the appeal is correct.
- G. Incorrect. While para E of the appeal is correct.
- H. Incorrect. The punishment is not in accordance with law which is liable to be set aside.
- I. Incorrect. The appellant was not treated as per law/rule.
- J. Legal.

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

Through: 
M. ASIF YOUSAFZAI
ADVOCATE SUPREME COURT

AFFIDAVIT

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

ATTESTED
Oath Commissioner
Zahoor Khan Advocate
Distt: Court Peshawar
11 DEC 2017


DEPONENT