

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 503/2016

Date of institution ... 12.05.2016

Date of judgment ... 05.12.2017

Muhammad Jameel S/O Quli Khan,
R/o Moh: Barat Khel, Landiwah, Lakki Marwat,
Ex-Constable No. 622, FC, Lakki Marwat.

... (Appellant)

VERSUS

1. Regional Police Officer, Bannu Region Bannu.
2. Provincial Police Officer, KP, Peshawar.
3. District Police Officer, Lakki Marwat.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
OFFICE ORDER NO. 358/EC DATED 03.02.2016, OF
RESPONDENT NO. 1 WHEREBY APPELLANT WAS DISMISSED
FROM SERVICE FOR NO LEGAL REASON.

Mr. Arbab Saif-ul-Kamal, Advocate.
Mr. Muhammad Jan, Deputy Distric

.. For appellant.
.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. AHMAD HASSAN

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

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for

the appellant present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Asghar Ali, Head Constable for the respondents also present. Arguments heard and record perused.

2. Brief facts of the present appeal are that the appellant was serving in Police Department and during service he was charge sheeted by the Regional Police Officer Bannu on the allegations that (a) he has close relation with

M. Amin
5.12.2017

proclaimed offender Naseeb of Lakki District, (b) that he was arrested in District Mianwali, Punjab in theft of a Motorcycle and thereafter released (c) that he was carrying narcotics for narcotics paddlers. Accordingly charge sheet and statement of allegation was served upon the appellant and DSP Headquarter Bannu was appointed as inquiry officer. After conducting inquiry the Regional Police Officer Bannu dismissed the appellant from service on the basis of inquiry report vide order dated 03.02.2016. The appellant also filed departmental appeal on 11.02.2016 but the same was not responded hence, the present service appeal on 12.05.2016.

3. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that during service the appellant was charge sheeted on the aforesaid allegations. It was further contended that the said allegations were baseless and there was/is no direct evidence against the appellant regarding involvement in aforesaid allegations. It was further contended that the inquiry officer has stated in the inquiry report that he has recorded the statement of S.I Muhammad Saleem Khan and ASI Ghulam Saboor Khan but the appellant was not provided any opportunity of cross examination. It was further contended that the inquiry officer has also stated in the inquiry report that the appellant has denied the allegations during inquiry proceeding therefore, non-providing of opportunity of cross examination on the witnesses have rendered the inquiry illegal and liable to be set-aside. It was further contended that the said inquiry officer has also stated that S.I Muhammad Saleem Khan and ASI Ghulam Saboor Khan have also favoured the appellant in their statement. It was argued that the appellant was serving as constable in police department and the competent authority was DPO of the concerned district but the impugned order of dismissal of the appellant was passed by the Regional Police officer therefore, he was not competent authority and the impugned order is also liable to be set-aside on this score alone and prayed for acceptance of appeal.

M. Amin
5-12-2017

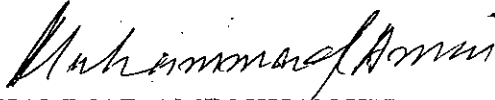
4. On the other hand, learned Deputy District Attorney for the official respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department and during service he was involved in the aforesaid criminal case. It was further contended that a proper inquiry was conducted and after conducting proper inquiry the appellant was found guilty therefore, he was rightly dismissed from service.

5. We have heard arguments on both side and gone through the record.

6. Perusal of the record reveals that the appellant was serving in police department. The record further reveals that during service he was involved in the aforesaid criminal case. The record further reveals that statement of Muhammad Saleem Khan S.I and Ghulam Saboor Khan ASI were recorded by inquiry officer during inquiry proceeding but the appellant was not provided any opportunity of cross examination. Moreover the inquiry officer has also stated that both the witnesses have favoured the appellant in their statement. Moreover the appellant was constable in police department therefore, DPO was competent authority but the appellant was removed by Regional Police Officer, therefore the impugned order was also passed by incompetent authority. As such we accept the appeal, set-aside the impugned order and reinstate the appellant in service. However the department at liberty to conduct de-novo inquiry within a period of three months according to mode and manner prescribed by law. IN case de-novo inquiry is conducted the issue of back benefits will be decided subject to de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
05.12.2017



(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

06. 05.07.2017

Counsel for the appellant and Mr. Zia Ullah, Deputy District Attorney for the respondent present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 30.10.17 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Hamid Mughal)
Member

30.10.2017

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. AG alongwith Javed Iqbal, Inspector for the respondents present. Learned Additional AG seeks adjournment. Granted. To come up for arguments before the D.B on 05.12.2017.




Member


Chairman

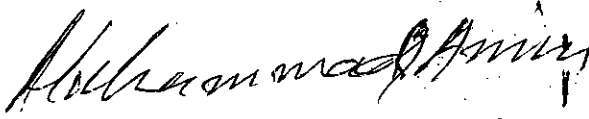
05.12.2017

Appellant with counsel present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Asghar Ali, Head Constable for the respondents also present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, we accept the appeal, set-aside the impugned order and reinstate the appellant in service. However the department at liberty to conduct de-novo inquiry within a period of three months according to mode and manner prescribed by law. IN case de-novo inquiry is conducted the issue of back benefits will be decided subject to de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
05.12.2017


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

31.08.2016

Counsel for the appellant, M/S Farman, Inspector and Muhammad Asghar, H.C alongwith Mr. Ziaullah, GP for respondents present. Written reply on behalf of respondents No. 1 to 3 submitted. The appeal may be placed before D.B for rejoinder and final hearing for 04.11.2016. The Chairman may assign the appeal to appropriate D.B.


Member


04.11.2016

Counsel for the appellant, Mr. Muhammad Jan, GP alongwith Mr. Farman, Inspector and Muhammad Frooq Khan, Inspector for respondents present. Rejoinder submitted. To come up for arguments on 02.03.2017.


(PIR BAKHSH SHAH)
MEMBER
(ABDUL LATIF)
MEMBER

02.03.2017

Counsel for the appellant and Mr. Yaseen, SI (Legal) alongwith Assistant AG for the respondents present. Counsel for the appellant requested for adjournment. To come up for final hearing on 05.07.2017 before the D.B.


Member
Chairman

Date of order/proceedings

02.05.2017

2

Magistrate

Order or other proceedings with signature of Judge or

BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 644/2016

Imtiaz Khan Versus Inspector General of Police, Khyber Pakhtunkhwa Peshawar and 2 others.

JUDGMENT

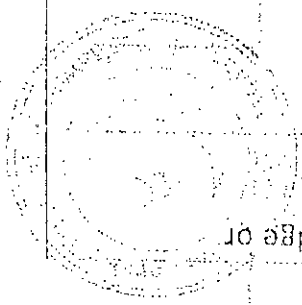
MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN.

Counsel for the appellant and Mr. Ziaullah, Government Pleader alongwith Bakht Zamin, Inspector (Legal) for respondents present.

2. Imtiaz Khan heretofore referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against impugned order dated 09.02.2016 vide which he was dismissed from service and where-against his departmental appeal dated 04.03.2016 was not responded containing the appellant to prefer the instant service appeal on 10.06.2016.

3. We have heard arguments of learned counsel for the appellant and learned Government Pleader for respondents and perused the record.

4. Charge against the appellant is that he entertained contact with a proclaimed offender namely Naseeb Khan. Perusal of record would suggest that witnesses produced during the enquiry



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08-05-17

New York

Ed. Howard Hanson

Chairman

Ed. M. Howard Hanson

have not supported the allegations. The sole evidence may
 for dismissal of the appellant is G.D.R. which was not ev-
 supported during the enquiry by any witnesses. Refusal of the
 some would however suggest that the appellant has allegedly
 made contact with one Nannos who is not a proclaimed offender.
 Even it is not established that the said cell number was in the use
 of a proclaimed offender.

5. In view of the above we are left with no option but to accept
 the present appeal, set aside the impugned order referred to above
 and reinstate the appellant in service with all consequential back
 benefits. Parties are left to bear their own costs. It to be consigned
 to the record room.

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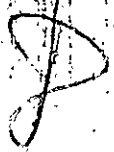


23.05.2016

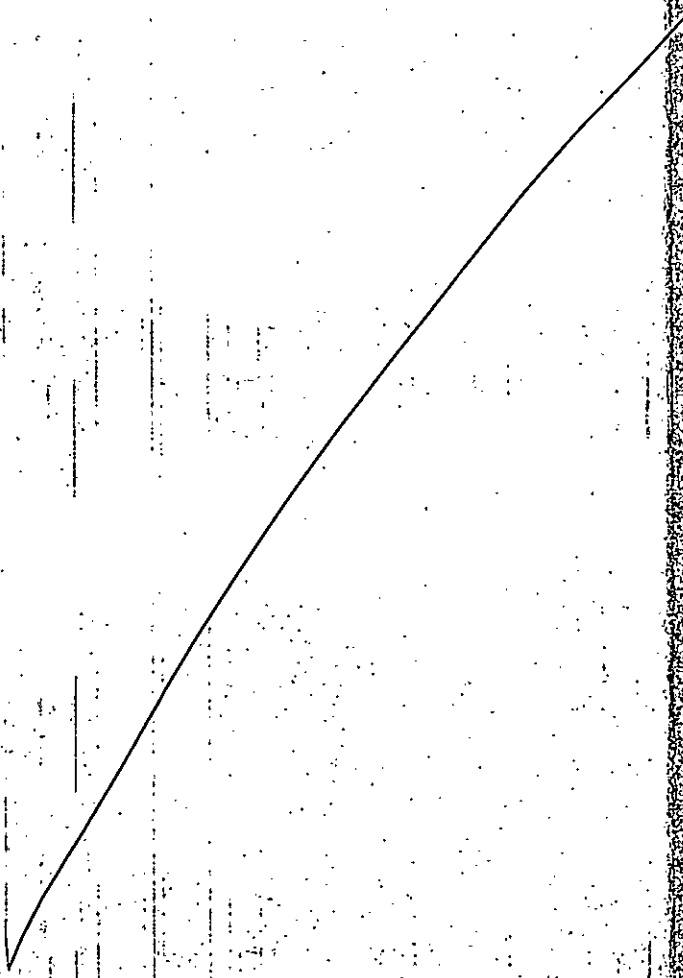
Appellant with counsel present Preliminary arguments heard and case file perused. Through the instant appeal, the appellant has impugned order dated 3.2.2016 vide which the appellant was dismissed from service. Against the impugned order appellant filed departmental appeal on 11.2.2016 which was not responded within the statutory period, hence the instant service appeal.

Points argued at the Bar required further consideration of this Tribunal therefore, the appeal is admitted for regular hearing, subject to deposit of security and process fee within 10 days. Notices be issued to the respondents for written reply/comments for 31.8.2016 before S.B.

Appellant Deposited
Security & Process Fee





Member



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 503/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12/05/2016	<p>The appeal of Mr. Muhammad Jameel presented today by Mr. Saadullah Khan Marwat Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR. -</p>
2	21-06-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23-6-2016</u>.</p> <p> CHAIRMAN</p>

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No. 503 /2016

Muhammad Jameel

Versus

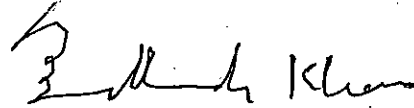
R.P.O & others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Appeal		1-3
2.	Charge Sheet, 07.12.2015	"A"	4-5
3.	Reply to Charge Sheet, 12.12.2015	"B"	6-8
4.	Dismissal Order, 03.02.2016	"C"	9
5.	Representation, 11.02.2016	"D"	10-11

Appellant

Through



Dated: 05.05.2016

(Saadullah Khan Marwat)
Advocate
21-A Nasir Mansion,
Shoba Bazaar, Peshawar.
Ph: 0300-5872676
0311-9266609

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWARS.A No. 503 /2016

Muhammad Jameel S/o Quli Khan,
 R/o Moh: Barat Khel, Landiwah, Lakki Marwat,
 Ex-Constable No. 622, FC, Lakki Marwat. Appellant

Versus

A.W.P. Province
Service Tribunal
 Diary No. 471
 Dated 12-5-2016

1. Regional Police Officer, Bannu Region
Bannu.
2. Provincial Police Officer, KP, Peshawar.
3. District Police Officer, Lakki Marwat. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,
 1974 AGAINST OFFICE ORDER NO. 358/EC
 DATED 03.02.2016, OF R. NO. 1 WHEREBY
 APPELLANT WAS DISMISSED FROM SERVICE
 FOR NO LEGAL REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

1. That appellant was initially appointed as Constable on 26.06.2007 and since then performed his duty up to the standard without any complaint.
2. That on 07.12.2015, charge sheet and statement of allegation was served upon appellant to the effect that he has close relation/contacts with main Narcotics paddlers and proclaimed offenders but such allegation, being general in nature, was totally false and absolutely incorrect. (Copy as annex "A")

Filed to file
12/15/16

3. That the said charge sheet was replied by denying the allegations on 12.12.2015. (Copy as annex "B")
4. That enquiry in to the matter was perhaps initiated but the same was not conducted as per the mandate of law as no statement of any witness(s) was recorded in presence of appellant nor he was afforded opportunity of cross examination, what to speak of service of final show cause notice and personal hearing, being mandatory.
5. That on 03.02.2016, appellant was dismissed from service on the aforesaid alleged allegations. (Copy as annex "C")
6. That on 11.02.2016, appellant submitted representation before R. No. 2 which met dead response till date. (Copy as annex "D")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. Appellant has no concern, whatsoever, with the allegations leveled against him, being general in nature.
- b. That appellant remained under supervision of 6/7 SHOs in various Police Stations who supported appellant for not indulging in any adverse activity.
- c. That as per the charge sheet formal enquiry was conducted against the appellant and formal enquiry has no base in law.
- d. That neither any statement in presence of appellant was recorded by any witness(s) nor he was afforded opportunity of cross examination, being mandatory.
- e. That unfortunately PO Naseeb Khan happens co-villager for the locality of appellant yet he has no relation with him.

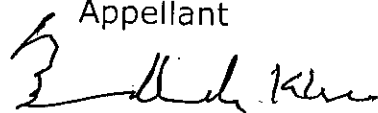
- f. That the punishment, by keeping in view in the aforesaid position, is very harsh and appellant was debarred from further service, if any, for no legal reason but with malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 03.02.2016 of R. No. 1 be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

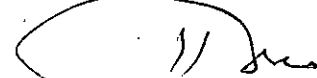


Appellant

Through




Saadullah Khan Marwat



Arbab Saif-ul-Kamal

&



Miss Robina Naz,
Advocates,

Dated: 10.05.2016

3

A

CHARGE SHEET

4

WHEREAS, I am satisfied that a formal inquiry as contemplated in the N.W.F.P. Police Rules, 1975 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation, if established would call for a Major penalty as confined in Rules 4-1 (b) of the aforesaid Rules.

NOW THEREFORE, as required by Rule 6-1 (a) of the aforesaid Rules, **I, Muhammad Tahir PSP, Regional Police Officer, Bannu Region, Bannu** charge you **Constable Jamil No. 622 of Lakki District Police** for misconduct on the basis of summary of allegations appended herewith.

AND WHEREAS, I direct you further under the Rule (6-1) b of the aforesaid rules to put in a written defense within 07-days of the receipt of this charge sheet as to why a Major punishment as defined in Rule 4-1 (b) should not be awarded to you. Also state at the same time whether you desire to be heard in person or not.

In case your reply is not received within the prescribed period without sufficient reasons it would be presumed that you have no defense to offer and an ex-party action will be taken against you.

Attested
J. 23

[Signature]
Regional Police Officer,
Bannu Region, Bannu.
47/12/75

(4)

5

STATEMENT OF ALLEGATIONS.

I, **Muhammad Tahir PSP, Regional Police Officer, Bannu Region, Bannu** as competent authority, am of the opinion that **Constable Jamil No. 622 of Lakki District Police** has rendered himself liable to be proceeded against as he committed the following misconduct within the meaning of disciplinary rules-1975 (amendment vide NWFP Gazette 27th: January-1976)

• SUMMARY OF ALLEGATION.

- That you Constable, Jamil No. 622 of Lakki District Police have close relations with PO Naseeb of Lakki District.
- That you had also been arrested in District Mianwali, Punjab in theft of a Motor-cycle and thereafter released.
- That you are carrying narcotics for narcotics paddlers.

For the purpose of scrutinizing the conduct of the said accused w/r to the above allegations **DSP-HQr-Bannu** is appointed as Enquiry Officer.

The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc: and findings within 25-days after the receipt of this order.

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

**Regional Police Officer,
Bannu Region, Bannu.**

No. 3652-84 IEC dated 07/12/15
Copy to :-

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar for favour of information.
2. The District Police Officer, Lakaki for information.
3. The Enquiry Officer.

Attested
[Signature]

[Signature]
✓ **Regional Police Officer,
Bannu Region, Bannu.**
[Signature]

سازمان مدیریت و برنامه ریزی کشور
دفتر امور مناطق

تاریخ: 19-12-015

موضوع: ...

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PO Naseeb CDR

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Jamil

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P.O Imran CDR

A Number	B Number	Call Start Time	Call Duration	Call Type	Type	Location - A
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923318238940	923463256717	30/09/2015 20:29	18	INCOMING	VOICE	N/A - LANDIWA
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923318238940	923348308475	01/10/2015 10:59	83	OUTGOING	VOICE	N/A - LANDIWA
923318238940	923315791140	01/10/2015 11:17	464	OUTGOING	VOICE	N/A - NAAR MUHAMMAD GHAZNI KHEL

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ORDER.

My this order will dispose off the departmental proceedings initiated against Constable Jamil No. 622 of District Police Lakki on account of the following omission:-


- That he, Constable Jamil Khan No. 622 of District Police Lakki has closed relations with PO Nasib of Lakki Distict.
- That he had also been arrested in District Mianwali, Punjab in theft of a Motor-Cycle and thereafter released.
- That he is carrying narcotics for narcotics paddlers.

The said Police Officer was charge sheeted based upon statement of allegations and DSP/HQrs: Bannu was appointed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry under Police Rules 1975 and submitted his findings; wherein the aforementioned charges against the said delinquent Police Officer have been proved without any shadow of doubt.

The enquiry proceedings were thoroughly perused and the officer concerned heard in orderly room on 29.1.2016.

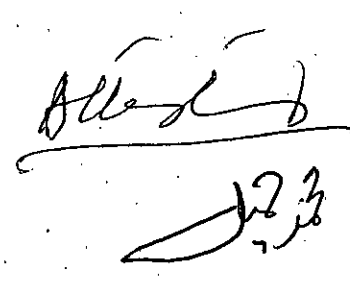
Therefore, I, Muhammad Tahir PSP, Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me, after thoroughly perusal the record/proceedings and hearing the Police Officer in orderly room on 29.1.2016 came to the conclusion that order of Major punishment is required to be imposed upon him, being held guilty of the allegations/charges by the Enquiry Officer as well as un-satisfactory hearing for showing himself innocent with the undersigned. Hence, the delinquent Police Officer is hereby dismissed from service.

Order announced.


(Muhammad Tahir)PSP,
Regional Police Officer,
Bannu Region, Bannu.

No. 358 /EC, dated. 03/2/2016. 03/2/16

Copy to the District Police Officer, Lakki.


(Muhammad Tahir)PSP
Regional Police Officer,
Bannu Region, Bannu.

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Before The Honorable Provincial Police officer
Khyber Pakhtunkhwa Peshawar.

Subject: APPEAL AGAINST THE ORDER OF WORTHY REGIONAL
POLICE OFFICER BANNU VIDE ORDER NO. 358 DATED
03/02/16 BY VIRTUE OF WHICH THE APPLICANT WAS
DISMISSED FROM SERVICE.

Respected Sir,

The appellant submit as below:-

1. That the allegations leveled against appellant are totally baseless and misconceive.
2. That the order of Honorable Regional police officer is not based on facts rather coercive and arbitrary as no evidence what so ever has been collected during inquiry to establish or even to connect me with the allegations leveled against me.
3. That as already submitted before the EO as well as explain to the Honorable R.P.O Bannu that I got no relation or any concern with PO Naseeb Khan. Neither he is my relative nor I have any relation with him except that he is my co-villager which is a natural decision and I can't oust him from the locality, therefore, the charge that I had any relation with PO Naseeb Khan is totally false and baseless. perhaps some evil minded person has conveyed this information to my seniors with some ulterior motive as I am serving in police and may that I while performing duties have detected crime and criminals to the senior and for this reason the law broker has adopted this way to convey false information to my seniors and cool his thrust.
4. That so far as the arrest of the appellant by Mianwali police is concerned, this fact has never been enquired nor any evidence exists on enquiry file to testified that I was arrested by Mianwali police at any occasion as such this allegation is also false and baseless.
5. That on the same allegations the appellant was subjected to two enquires one initiated by DPO and entrusted to SP Investigation Toheed Khan however before completion of the inquiry another charge sheet of the same allegation was issued by the honorable RPO Bannu and DSP/HQ Bannu was appointed as EO living the fate of first enquiry incomplete and thus put the appellant under surprise as to why the second inquiry was initiated.
6. That the issuing of charge sheet directly by the R.P.O to the appellant being constable, is also surprising as normally and as a rule too, the DPO is the authority but perhaps my dismissal was decided before initiating inquiry which is against the natural justice and equity.

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7. That the appellant got sufficient service in police department and since his recruitment as a constable he is always performed and displayed devoted duties for which he has also awarded by the R.P.O as well as DPOs .
8. That the appellant has never been indulged in such like activities as alleged in the charge sheet nor I got any relation with any PO what to say about Naseeb who is admitted my co-villagers but neither my relative nor I got any relation with him. Being a low scale employee and innocent too I may not be teased for no fault.

It is therefore, requested that the order of the Honorable R.P.O may kindly be set-aside and I may personally be heard to explain my position while the order of the RPO Bannu concerning my dismissal may please be set-aside being coercive and arbitrary having no supporting evidence on record.

Dy No - 562/16
dt 11.2.16

Yours obedient
sd/
EX Constable Jamil
No. 422

Jamil
Jamil

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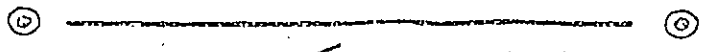
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.503 /2016

Muhammad Jameel Ex-Constable No. 622 S/O Quli Khan,

R/o Moh: Barat Khel, Landiwah, Lakki Marwat. Appellant


Versus

Provincial Police Officer, KP, Peshawar & others Respondents

INDEX

S/No	Description of Documents	Annexure	Page
1	Comments/Reply		1 To 2
2	Affidavit		3
3	Authority Letter		4
4	Annexure "A"		5

R
31/8/2016.


DEPONENT
11101-1483421-1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**Appeal No.503 /2016**

Muhammad Jameel Ex-Constable No. 622 S/O Quli Khan,

R/o Moh: Barat Khel, Landiwah, Lakki Marwat. Appellant

Versus

Provincial Police Officer, KP, Peshawar & others Respondents

Preliminary Objections

1. That the appeal of appellant is badly time-barred.
2. That the appeal is not maintainable in its present form.
3. That the appellant has concealed the actual facts from the honorable tribunal.
4. That the appeal is bad in law due to non-joinder and mis-joinder of unnecessary parties.
5. That the appellant has approached the Honorable Tribunal with unclean hands.
6. That the appellant has got no cause of action and locus-standi to file the instant appeal.
7. That the appellant has been stopped by his own conduct.

PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS

Respectfully Sheweth:-

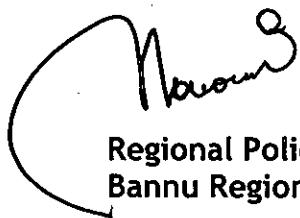
1. Pertains to record. Hence no comments.
2. Correct to the extent that the appellant was charge sheeted, on the allegations that the appellant has a close contact with famous PO/narcotics peddler/gambler Nasibo of District Lakki Marwat & he has arrested in motorcycle theft in District Mianwali Punjab. Rest of the para is incorrect the allegations leveled against the Appellant are based on facts and established during enquiry proceedings.
3. Pertains to record. Hence no comments.
4. Incorrect. All codal formalities were adopted as the appellant was properly charge sheeted, and DSP/HQr Bannu conducted enquiry into the allegations. All opportunities of cross examination and personal hearing were provided. The allegations was established, final show cause notice was issued and punishment awarded.
5. Incorrect. The appellant was awarded punishment after having been proved allegations through CDR during departmental proceedings.
6. Incorrect. The appellant did not rebut the allegations in the Appellate Forum.

Grounds of Appeal

- a. Incorrect. The appellant was charge sheeted and the allegations were proved during departmental proceedings through CDR etc.
 - b. Pertains to record. Hence no comments.
 - c. Incorrect. Proper departmental enquiry was conducted by DSP/HQ, Bannu according to Police Rules 1975.
 - d. Incorrect. All opportunities were provided to the appellant according to law/rules.
 - e. Incorrect. All kinds of information were conveyed by the appellant to the PO Nasibo & his family members being bonafide of the same race & locality and his contacts was proved from CDR beyond any shadow of doubts.
- [Copy of Call Data Record (CDR)]**
- f. Incorrect. The punishment awarded to the appellant, after having been proved in departmental proceedings which is quite legal according to Police Rules 1975.

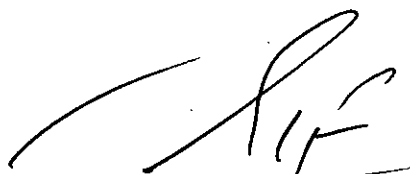
Prayer:-

It is, therefore, humbly prayed that in view of his involvement and close contacts with PO Nasibo & his brothers and presence of solid documentary evidence. His anti-social activities brought bad name to the entire Police Force therefore; his appeal may kindly be dismissed with cost.



**Regional Police Officer,
Bannu Region, Bannu**

(Respondent No.1)



**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar**

(Respondent No.2)



**District Police Officer,
Lakki Marwat**

(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.503 /2016

Muhammad Jameel Ex-Constable No. 622 S/O Quli Khan,

R/o Moh: Barat Khel, Landiwah, Lakki Marwat. Appellant

Versus

Provincial Police Officer, KP, Peshawar & others Respondents

AFFIDAVIT.

I, Mohammad Fawoq Khan Inspector, representative for respondents PPO & Others, do hereby solemnly affirm and declare that the contents of the accompanying comments submitted by me are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.



DEPONENT
11101-1483421-1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.503 /2016

Muhammad Jameel Ex-Constable No. 622 S/O Quli Khan,

R/o Moh: Barat Khel, Landiwah, Lakki Marwat. Appellant

Versus

Provincial Police Officer, KP, Peshawar & others Respondents

AUTHORITY LETTER.

Mr. Mohammad Fawaz Khan Inspector, is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar on behalf of the Provincial Police Officer, KPK & Others in the above cited Appeal.

He is authorized to submit and sign all documents pertaining to the present Petition.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
Respondent No.2


Regional Police Officer
Bannu Region, Bannu
Respondent No.1


District Police Officer
Lakki Marwat
Respondent No.3

ORDER

My this order will dispose off the departmental proceedings initiated against Constable Jamil No. 622 of District Police Lakki on account of the following omission:-

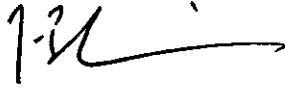
- That he, Constable Jamil Khan No. 622 of District Police Lakki has closed relations with PO Nasib of Lakki Distict.
- That he had also been arrested in District Mianwali, Punjab in theft of a Motor-Cycle and thereafter released.
- That he is carrying narcotics for narcotics paddlers.

The said Police Officer was charge sheeted based upon statement of allegations and DSP/HQrs: Bannu was appointed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry under Police Rules 1975 and submitted his findings, wherein the aforementioned charges against the said delinquent Police Officer have been proved without any shadow of doubt.

The enquiry proceedings were thoroughly perused and the officer concerned heard in orderly room on 29.1.2016.

Therefore, I, Muhammad Tahir PSP, Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me, after thoroughly perusal the record/proceedings and hearing the Police Officer in orderly room on 29.1.2016 came to the conclusion that order of Major punishment is required to be imposed upon him, being held guilty of the allegations/charges by the Enquiry Officer as well as un-satisfactory hearing for showing himself innocent with the undersigned. Hence, the delinquent Police Officer is hereby dismissed from service.

Order announced.


(Muhammad Tahir)PSP,
Regional Police Officer,
Bannu Region, Bannu.

No. 358 /EC, dated. 03/2/2016. #03/2/16.

Copy to the District Police Officer, Lakki.


(Muhammad Tahir)PSP
Regional Police Officer,
Bannu Region, Bannu.

5
From: - The Deputy Superintendent of Police,
HQ, Bannu.

To: - The Regional Police Officer, Bannu,
Bannu Region, Bannu.

No. 65/HQ / Dated Bannu, 13 / 1 / 1 / 2016.

Subject: - FINDING OF DEPARTMENTAL ENQUIRY AGAINST CONSTABLE JAMEEL KHAN NO.422.

Memo:

Kindly refer to your Endst No.3652-54/EC dated 07.12.2015 on the above subject.

Constable Jameel khan No.422 was charge sheeted on the following grounds.

- "That he has close relation with PO Naseeb of Lakki District.
- That he had also been arrested in District Mianwali, Punjab in theft of a Motorcycle and there after released.
- That he is carrying Narcotics for Narcotics paddlers".

The undersigned was appointed to probe into the allegations. The charge sheet/summary of allegations was served upon him and he replied to it which was placed on the enquiry file. He in his statement did not confess/establish the charges, during the enquiry I have recorded the statement of the following officers:-

- Statement of SI Mohammad Saleem Khan the then SHO PS Lakki Marwat Police Line Lakki
- Statement of ASI Ghulam Saboor Khan Incharge PP City Lakki.

Moreover, the Proclaimed Offender Naseeb and his brothers Naimat, Qismat, Imran and his father Nekam Khan S/O Jan Ahmad wanted to the local Police of District Lakki Marwat in the following criminal cases:-

- FIR No.96 dated 27.06.2010 u/s 302/324/353/148/149 PPC/7ATA PS Dadiwala.
- FIR No.112 dated 19.05.2011 u/s 324/353/148/149 PPC PS Dadiwala.
- FIR No.38 dated 05.03.2010 u/s 324/353/148/149 PPC PS Dadiwala.
- FIR No.134 dated 10.07.2014 u/s 324/353/148/149 PPC PS Dadiwala.
- FIR No.183 dated 10.09.2014 u/s 324/353/427 PPC/7ATA PS Dadiwala.
- FIR No.221 dated 25.10.2014 u/s 15AA PS Dadiwala.
- FIR No.246 dated 22.11.2014 u/s 5/6 Gambling Act/15AA PS Dadiwala.
- FIR No.252 dated 13.12.2014 u/s 15AA PS Dadiwala.
- FIR No.208 dated 11.10.2015 u/s 324/353/148/149 PPC PS Dadiwala.
- FIR No.103 dated 18.04.2015 u/s 15AA PS Dadiwala.
- FIR No.127 dated 27.06.2013 u/s 324/435/148/149 PPC PS Dadiwala.
- FIR No.48 dated 17.03.2011 u/s 13AO PS Dadiwala.
- FIR No.212 dated 30.09.2011 u/s 9CNSA PS Dadiwala.
- FIR No.49 dated 25.02.2015 u/s 5/6 Gambling Act PS Dadiwala.

Statement of accused official Jameel No.422.

He stated that he has performed his duty at about 09 years in Police Department and no complaint has yet been received by the High ups. He has no link/relation with PO Naseeb etc neither arrested in criminal case at District Mianwali. He performed his duty with Pak

Army at Lakki Town, not in home Police Station Dadiwala. He performed his duty with zeal & zest and the allegations against him are baseless.

According to perusal of the record, accused official did not admit/confess the charges in his written reply, shown his present posting at Internment Center Lakki & not in home Police Station Dadiwala. He did not produce any defense. He further admitted in his statement that Namoos is brother of PO Naseeb. According to the CDR the said Constable Jamil No.622 has contacted several times with Mobile No. 0336-9623480 of PO Naseeb and No. 0331-8238940 of PO Imran (brother of the Naseeb). (Copy of the CDR is enclosed with the enquiry file).

CONCLUSION:-

SI Saleem Khan and ASI Ghulam Saboor have given their statement deliberately in favour of the defaulter official due to belonging in same race and locality to avoid any local enmity. Therefore, their statements are discrete/excluded from evidence and is based on the following supporting evidence:-

1. Documentary (CDR).
2. Constable Jamil No.422, PO Naseeb & others are the resident of one and same locality and further individual also keep relation/contact of one PO Naseeb with Mobile No.0336-9623480 & PO Imran with Mobile No.0331-8238940 several times as evident from the CDR and therefore, it is certain that the defaulter Police Official keeps the POs informed about the movement of Police.

No other supporting evidence from the staff of Police Officers came forward. The intelligence agencies were contacted and their officers concerned were also contacted and confirmed the charges leveled against the individuals. Furthermore, secret enquiry from other reliable sources were also made and they also supported the charges. The record of the SRC was consulted, one major punishment of dismissal from service due to tainted reputation of his involvement in anti social activities, and 02 minor punishments were found in his service record.

The intelligence agencies have confirmed the charges against the defaulter constable therefore; I am of the view that the defaulter constable has close relation with PO Naseeb and PO Imran his brothers. He also keeps the PO and his brothers informed about the movement of local Police pertaining to the raids/search operations for their arrests therefore, the charges were found established.



(SYED INAYAT ALI SHAH)
DSP/ HQ, BANNU.

(8)

P.O Naseeb CDR 5

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A Number	B Number	Call Start Time	Call Duration	Call Type	Type	Location - A
923369623480	923459015057	03/09/2015 15:01	15	INCOMING	VOICE	N/A - HAMIDAN BANDA
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923369623480	923459858716	15/10/2015 18:31	252	INCOMING	VOICE	N/A - WANDA SHAHAB KHEIL
923369623480	923018077457	15/10/2015 18:37	31	OUTGOING	VOICE	N/A - WANDA SHAHAB KHEIL
923369623480	923329853856	21/10/2015 17:24	21	INCOMING	VOICE	N/A - LANDIWA
923369623480	923459858716	21/10/2015 17:25	14	INCOMING	VOICE	N/A - LANDIWA
923369623480	923329853856	21/10/2015 17:28	42	INCOMING	VOICE	N/A - LANDIWA

(9)

P.O Imran CDR

Jamil

Jamil

A Number	B Number	Call Start Time	Call Duration	Call Type	Type	Location - A
923318238940	923348308475	02/09/2015 10:24	235	OUTGOING	VOICE	N/A - LANDIWA
923318238940	923369749986	02/09/2015 10:31	700	OUTGOING	VOICE	N/A - LANDIWA
923318238940	923315791140	02/09/2015 20:06	370	OUTGOING	VOICE	N/A - LANDIWA
923318238940	923348308475	02/09/2015 20:15	8	OUTGOING	VOICE	N/A - LANDIWA
923318238940	923348308475	02/09/2015 20:15	19	OUTGOING	VOICE	N/A - LANDIWA
923318238940	923348308475	02/09/2015 20:16	35	OUTGOING	VOICE	N/A - LANDIWA
923318238940	923429375893	02/09/2015 20:16	6	INCOMING	VOICE	N/A - LANDIWA
923318238940	923369749986	12/09/2015 18:58	412	OUTGOING	VOICE	N/A - LANDIWA
923318238940	9233459858716	12/09/2015 19:38	83	INCOMING	VOICE	N/A - LANDIWA
923318238940	923315784860	12/09/2015 20:00	68	OUTGOING	VOICE	N/A - LANDIWA
923318238940	923463256717	30/09/2015 20:29	18	INCOMING	VOICE	N/A - LANDIWA
923318238940	923348308475	30/09/2015 20:36	76	OUTGOING	VOICE	N/A - LANDIWA
923318238940	923348340181	30/09/2015 20:43	334	INCOMING	VOICE	N/A - LANDIWA
923318238940	923369749986	01/10/2015 10:53	308	OUTGOING	VOICE	N/A - LANDIWA
923318238940	923348308475	01/10/2015 10:59	83	OUTGOING	VOICE	N/A - LANDIWA
923318238940	923315791140	01/10/2015 11:17	464	OUTGOING	VOICE	N/A - NAAR MUHAMMAD GHAZNI KHEL

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CHARGE SHEET

WHEREAS, I am satisfied that a formal inquiry as contemplated in the N.W.F.P. Police Rules, 1975 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation, if established would call for a Major penalty as confined in Rules 4-1 (b) of the aforesaid Rules.

NOW THEREFORE, as required by Rule 6-1 (a) of the aforesaid Rules, **I, Muhammad Tahir PSP, Regional Police Officer, Bannu Region, Bannu** charge you **Constable Jamil No. 622 of Lakki District Police** for misconduct on the basis of summary of allegations appended herewith.

AND WHEREAS, I direct you further under the Rule (6-1) b of the aforesaid rules to put in a written defense within 07-days of the receipt of this charge sheet as to why a Major punishment as defined in Rule 4-1 (b) should not be awarded to you. Also state at the same time whether you desire to be heard in person or not.

In case your reply is not received within the prescribed period without sufficient reasons it would be presumed that you have no defense to offer and an ex-parte action will be taken against you.


Regional Police Officer,
Bannu Region, Bannu.

47/12/15

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STATEMENT OF ALLEGATIONS.

I, **Muhammad Tahir PSP, Regional Police Officer, Bannu Region, Bannu** as competent authority, am of the opinion that **Constable Jamil No. 622 of Lakki District Police** has rendered himself liable to be proceeded against as he committed the following misconduct within the meaning of disciplinary rules-1975 (amendment vide NWFP Gazette 27th: January-1976)

SUMMARY OF ALLEGATION.

- That you Constable, Jamil No. 622 of Lakki District Police have close relations with PO Naseeb of Lakki District.
- That you had also been arrested in District Mianwali, Punjab in theft of a Motor-cycle and thereafter released.
- That you are carrying narcotics for narcotics paddlers.

For the purpose of scrutinizing the conduct of the said accused w/r to the above allegations **DSP-HQr-Bannu** is appointed as Enquiry Officer.

The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc: and findings within 25-days after the receipt of this order.

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


✓ **Regional Police Officer,
Bannu Region, Bannu.**

No. 3652-54 / EC dated 07/12/15 # 7/12/15
Copy to :-

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar for favour of information.
2. The District Police Officer, Lakaki for information.
3. The Enquiry Officer.


**Regional Police Officer,
Bannu Region, Bannu.**

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 502/2015

Muhammad Jameel

versus

R.P.O & Others

REJOINDER

Respectfully Sheweth,

PRELIMINARY OBJECTION

All the 07 preliminary objections of the respondents are illegal and incorrect. No reason in support of the same is ever given as to why the appeal is time barred, not maintainable, concealment of facts, the same is bad for mis and non-joinder of necessary parties, unclean hands, without cause, locus standi and estoppel.

ON FACTS

1. Needs no comments.
2. Admitted correct to the extent of charge sheet, while rest of the Para is not correct regarding allegation close relation with Narcotics paddlers and proclaimed offenders.
3. Needs no comments regarding reply of charge sheet.
4. Not correct. The Para of the reply is without proof regarding cross examination over witness(s), service of final show cause notice and personal hearing.
5. Not correct. The punishment awarded to the appellant is illegal and not per the mandate of law. The para is without prove in respect of CDR.
6. Not correct. Proper representation was filed by rebutting therein the allegations.

G R O U N D S:

- A. Not correct. Reports of intelligence agencies have no legal value in the eyes of law until and unless examined and cross examined.

- B. Not correct. Non of the SHO reported appellant for involving in adverse activities.
- C. Not correct. Formal inquiry has no legal value, while proper departmental inquiry, if any, was not conducted as per the mandate of law.
- D. Not correct. Neither any statement of any witness(s) was recorded in presence of appellant nor was allowed to cross examined. The Para of the reply is without proof regarding cross examination.
- E. Not correct. The ground of the appeal is correct. No double punishments could be awarded to any one on one and the same act. In this Para of the reply such fact of quarter guard for 14 days is admitted correct by the respondents.
- F. Not correct. The ground of the appeal is correct. Appellant was illegally proceeded in the baseless allegation and the major punishment of dismissal from service is not in consoune with allegation.

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



Appellant

Through



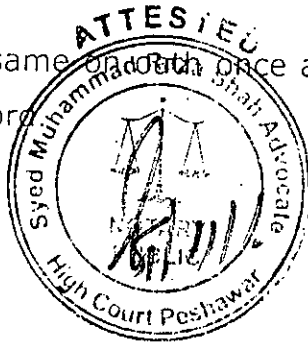
Saadullah Khan Marwat
Advocate,

Dated: 04.11.2016

AFFIDAVIT

I, Muhammad Jameel appellant do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same ~~on oath~~ ^{on oath} once again to be true and correct as per the available records.





DEPONENT

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بیان عدم اہمیت ASI ایچ ایم ڈی سی پورہ

فلاحی بیان کرتا ہے کہ کانٹینر جیل کے 422

دوران سال 2015ء میں ستر ہزار نو تریسٹیا 2/3

06 ہزار سیٹی ملٹریٹ میں کمبیاٹ وکریہ۔ ورنل

ڈیڑا ہر کمبیاٹ کرنا۔ مذکورہ کانٹینر کے خلاف

جے ایم ایم کے اصرار پر پیشہ افراد کمبیاٹو میں مدد

رکنے کا فریڈ شٹ کا ایک حوالہ ہے جو ہے

ASi/11c PP city Pslakki

22 12/15
0346-0968924

تعمیر شدہ

Ammy
E.O
DSP/40
22-12-015

م م مخالف ملزم و قیدی

م م نہیں کرتا

ASi/11c PP city Pslakki
22-12-015

Ammy
م م مخالف ملزم و قیدی
22-12-015

22-12-15

Dr. P. L. Malakar

[Handwritten signature]

22-12-15

[Handwritten signature]

[Handwritten text]

0301-8680911

22-12-15

Dr. P. L. Malakar

22-12-15

[Handwritten signature]

[Large handwritten text in Odia script, likely a letter or report]

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 2698 /ST

Dated 19 /12/2017


To

The Regional Police Officer, Bannu Region
Government of Khyber Pakhtunkhwa,
Bannu.

Subject: **JUDGEMENT/ ORDER IN APPEAL NO. 503/16, Mr. MUHAMMAD JAMEEL.**

I am directed to forward herewith a certified copy of Judgment/order dated 05/12/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

OK

5 we have heard argument on both sides and you through the record.

6) Perusal of the record reveals that the appellant was serving in Police Department. The record further reveals that during service he was involved in the above said Criminal case. The record further reveals that statement of Muhammad Saleem Khan Si and Ghulam Saboor Khan Si were recorded by inquiry officer during inquiry proceeding, but the appellant was not provided any opportunity of cross examination. Moreover the inquiry officer has also stated that both the witnesses have given the appellant in their statement. Moreover the appellant was established in Police Department, therefore DPO was competent authority to try but the appellant was examined by Regional Police officer. Therefore the impugned order was also passed by incompetent authority. As such we accepted the appeal set aside the impugned order. He is to be reinstated the appellant in service. However the department is at liberty to conduct de novo inquiry within period of three months.

According to me and numerous precedents by law. In case de novo inquiry is conducted. The issue of such inquiry will be decided subject to de novo inquiry. However the de novo inquiry is not granted in such cases. The appellant is not entitled to cross examination. The appellant is not entitled to cross examination. The appellant is not entitled to cross examination.