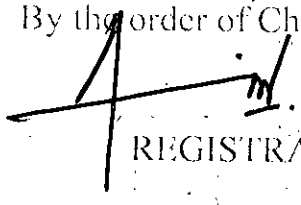


FORM OF ORDER SHEET

Court of _____

Appeal No. _____

105/2024

S.No.	Date of order proceedings.	Order or other proceedings with signature of judge
1	2	3
1	10/01/2024	<p>The appeal of Mr. Safi Ur Rehman presented today by Mr. Rizwanullah Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshi is given to counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 105 /2024

1. Safi-ur-Rehman (Ex-Constable No. 2262 Police Lines, Peshawar) Mohalla Saidaan, Garhi Sherdad, P.O, Sherdad, Tehsil & District Peshawar

(APPELLANT)

VERSUS

1. The Superintendent of Police HQs, Peshawar.

RESPONDENTS

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Through

Dated: 10-01-2024

Saf
Appellant

Rizwanullah
Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar
Email ID: advocaterizwanullah@gmail.com
Mobile No. 0300-596-5843

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 105 /2024

1. Safi-ur-Rehman (Ex-Constable No. 2262 Police Lines, Peshawar) Mohalla Saidaan, Garhi Sherdad, P.O, Sherdad, Tehsil & District Peshawar

(APPELLANT)

VERSUS

1. The Superintendent of Police HQs, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar

(RESPONDENTS)

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974 AGAINST THE ORDER DATED 20-09-2023
PASSED BY THE SUPERINTENDENT OF
POLICE HEADQUARTERS, PESHAWAR
(RESPONDENT NO.1) WHEREBY THE
APPELLANT WAS AWARDED HARSH AND
EXTREME PENALTY OF DISMISSAL FROM
SERVICE AGAINST WHICH A
DEPARTMENTAL APPEAL WAS FILED WITH
THE CAPITAL CITY POLICE OFFICER,
PESHAWAR (RESPONDENT NO. 2) ON
09-10-2023 BUT THE SAME WAS REJECTED
ON 06-12-2023. THEREAFTER, A REVISION
PETITION UNDER RULE 11-A (4) OF THE
KHYBER PAKHTUNKHWA, POLICE RULES,
1975 WAS FILED WITH THE PROVINCIAL
POLICE OFFICER, KHYBER PAKHTUNKHWA
(RESPONDENT NO. 3) ON 11-12-2023.**

HOWEVER, THE SAME WAS NOT RESPONDED.

Prayer in Appeal

By accepting this appeal, the impugned orders dated 20-09-2023 and 06-12-2023 may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Any other relief deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.

RESPECTFULLY SHEWETH,

Short facts giving rise to the present appeal are as under:-

FACTS

1. That the appellant joined the services of Police Department incapacity as Constable on 23-01-2019 he had 04 years unblemished service record to his credit.
2. That the appellant was performing his duty with great zeal, zest and devotion, when he alongwith Imran Khan IHC No. 866, Ali Rehman No. 793, and Tahir No. 6631 constables were deputed to take the following 03 under trial accused from Central Jail Peshawar to Police and Services Hospital, Peshawar for medical treatment:-
 - i. Gul Raiz s/o Zar Khan
 - ii. Yasin s/o Ali Akbar
 - iii. Qamar Aziz s/o Abdul Aziz
3. That in compliance with the order of his superior, the appellant alongwith other police officials reached Central Jail where, they were handed over the said three accused without "Prison van" on the ground that the said van had already taken other accused

to Hayatabad Medical Complex and Federal Judicial Complex. Therefore, they were constrained to hire private *Rikshas* so as to ensure medical treatment to the accused well in time.

4. That accused Gul Raiz and Yasin were treated earlier and they were duly shifted to Central Jail safely while the remaining one accused namely (Qamar Aziz) was prescribed a necessary drip. In the meanwhile, Tahir left the hospital due to the illness of his family.
5. That when the drip was ended, they waited for "Prison van" but otiose. Therefore, once again, they were constrained to resort to private conveyance and as such, they hired a private taxi so as to take the accused to jail. It is extremely worthwhile to mention here that all the nearby roads were closed down/blocked by the Government and there remained only two **U-turns** i.e. one located under the first over-bridge at *Suripool* opposite to *Balahisar Fort* while the other at *Hastnagri*.
6. That unfortunately, when they reached the former U-turn, it was closed down/blocked by the FC for the reasons best known to them therefore, they had to take the later U-turn situated at *Hashtnagri*. However, during the course of travel, the accused started vomiting and his condition got worsened, therefore, he was shifted near the window to enable him to get fresh air. This act was absolutely done in sheer good faith and on solitary humanitarian ground. Because, had the accused expired during the custody of Police, it would not only have resulted in severe condemnation of the Police Department in general but the appellant and his colleagues would have definitely been charged/held accountable for the death of the accused in particular.

7. That unfortunately, when the taxi was taking the U-turn at *Hashtnagri*, the accused abruptly opened the door, jumped out of the taxi and ironically made his escape good due to jamboree of different transport and people notwithstanding wholehearted hot pursuit of the appellant and other constables. Moreover, the effort to search the accused continued for considerable time but it yield no results. It is also noteworthy to add that Imran Khan IHC also used his personal pistol for aerial firing at the very moment to deter the accused for surrender whereas, I and other colleagues had only one rifle which was not used in order to avoid manifest collateral human loss on one hand while on the other to save the Police department from explicit counter denunciation.

8. That promptly, Imran Khan IHC duly informed the Muharrir Police Line for making report in daily diary about the unfortunate and disturbing incident. However, to their sheer irony, FIR No. 879 dated 02-08-2023 was registered against the appellant and other police officials. Thereafter, they were arrested howbeit released on bail

(Copy of FIR is appended as Annex-A)

9. That thereafter, Competent Authority initiated disciplinary proceedings against the appellant and as such, he was served with charge sheet and statement of allegations.

(Copy of charge sheet and statement of allegations are appended as Annex-B & C)

10. That the appellant submitted elaborate and exhaustive reply denied the allegations and also termed it as fallacious, malicious

and misconceived and prayed that he may be exonerated of the allegations levelled against him in the charge sheet.

(Copy of reply is appended as Annex-D)

11. That the above reply was not deemed satisfactory and Tauheed Khan Deputy Superintendent of Police was appointed as enquiry officer to conduct departmental enquiry in the matter. He finalized the enquiry and found the appellant guilty of the allegations and recommended him for appropriate punishment.
12. That thereafter, the appellant was served with a final show cause notice on 06-09-2023. He duly submitted reply and denied the allegations but it met the same fate. Ultimately, he was awarded harsh and extreme penalty of dismissal from service on 20-09-2023.

(Copy of show cause notice, its reply & impugned order are appended as Annex-E, F & G)

13. That the appellant felt aggrieved by the said order, filed a departmental appeal with the worthy Capital City Police Officer, Peshawar on 09-10-2023 and prayed that the impugned order may graciously be set aside and he may kindly be reinstated in service with all back wages and benefits. But the same was dismissed on 06-12-2023 in utter violation of law. Thereafter, the appellant filed a revision petition before the Provincial Police Officer, Khyber Pakhtunkhwa on 11-12-2023 which was not responded.

(Copy of departmental appeal, rejection order and revision petition are appended as Annex-H, I & J)

14. That the appellant is jobless since his dismissal from service.

GROUNDS

- A. That the respondents have not treated the appellant in accordance with the mandate of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973** which has unequivocally laid down that it is the inalienable right of every citizen to be treated under the law, rules and policy. Therefore, the impugned orders are not sustainable in the eye of law.
- B. That regular Inquiry was not conducted in a manner prescribed by law as neither any witness was examined in the presence of appellant nor he was provided any opportunity of cross-examination in order to impeach the credibility of the witnesses if any appeared against him. Similarly, he was also not provided any chance to produce his defence in support of his version. The above defect in inquiry proceeding is sufficient to declare entire process as unlawful and distrustful. Right of fair trial is a fundamental right by dint of which a person is entitled to a fair trial and due process of law. The appellant has been deprived of his indispensable fundamental right of fair trial as enshrined in Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Besides, there is also no iota of evidence to connect the appellant with the commission of misconduct. Therefore, the report of the Inquiry Officer is based on conjectures, surmises and suppositions. Hence, the findings recorded by Inquiry Officer against the appellant is perverse and is not supported by any legal evidence at all and as such, the same are not tenable under the law.
- C. That the Competent Authority was under statutory obligation to have considered the case of appellant in its true perspective and also in accordance with law besides to see whether the regular inquiry was conducted in consonance with law and that the

allegations thereof were proved against him without any shadow of doubt or otherwise. However, he has completely overlooked this important aspect of the case without any cogent and valid reasons and awarded him major penalty of dismissal from service. Thus, the impugned orders are liable to be set aside on this count alone

- D.** That the Competent Authority was also required to look for the mens-rea on the part of appellant that too in juxtaposition to the manifest implications mentioned in his written replies but he did not give any weight whatsoever to the same and totally ignored it without any legal justification. Hence, the impugned order is against the spirit of administration of justice because no one can be penalized in absence of mens-rea as per various judgments of superior courts.
- E.** That the Appellate Authority was under statutory obligation to have applied his independent mind to the merit of the case by taking notice about the illegality and lapses committed by the inquiry officer as well as by the Competent Authority as enumerated in earlier paras. Nevertheless, he failed to do so and rejected the departmental appeal unlawfully. Therefore, the impugned orders are not tenable under the law
- F.** That the respondent No.3 was legally bound to have decided the revision petition filed by the appellant after application of mind with cogent reasons within reasonable time as per law laid down by august Supreme Court of Pakistan reported in **2011-SCMR-1 (citation-b)**. It would be advantageous to reproduce herein the relevant citation for facility of reference:

2011 S C M R 1

Supreme Court of Pakistan (citation-b)

**---S---24-A---Speaking---order-Public
functionaries are bound to decide cases of their
subordinates after application of mind with
cogent reasons within reasonable time.**

But the above Authority failed to do so. Hence, the impugned orders are not warranted by the law.

- G. That after completion of investigation, the matter was submitted to the District Public Prosecutor for the trial of accused. The District Public Prosecutor after proper scrutiny, held that it was not a fit case for the trial of the accused and as such moved an application u/s 494/249-A CrPC 1898 read-with Section 5(b) 4 sub(c) clause (ii) of the Prosecution Act, 2005 before the Hon'ble Court for the discharge/withdrawal of the accused from the charges leveled against them in the FIR, on the grounds mentioned therein. Therefore, the impugned orders are liable to be set aside on this count alone.

**(Copy of application of
DPP is appended as
Annex-K)**

- H. That the Hon'ble Court after hearing arguments and going through the record as well as the application of DPP, arrived at the conclusion that **“there is no direct evidence on case file showing negligence on the part of accused”**. Besides, the illegality/lapses committed by the investigating officer was also pointed out and as such ordered for the discharge of accused namely Imran IHC No. 866, Safi Rehman No 2266 (appellant), Ali Rehman No. 793 and Tahir No. 6631 from the charges leveled against them in the case vide order dated 05-12-2023. It is worthwhile to mention here that once the appellant was discharged from the criminal case by the competent court of jurisdiction, no ground whatsoever existed to remain the edifice of punishment awarded to him by the Competent Authority. Therefore, the impugned orders are not sustainable in the eye of law.

**(Copy of order of Hon'ble
Court is appended as
Annex-L)**

- I. That none of the inquiry report was provided to the appellant to offer explanation with regard to adverse findings if any

recorded against him being the requirement of law. Reliance can be placed on **PLD-1981-SC-page-176-citation (f) and 1987-SCMR-1776-(b)**. Hence, the impugned orders are not tenable under the law.

- J.** That the impugned orders are against law, facts of the case and norms of natural justice. Therefore, the same are not tenable under the law
- K.** That the impugned orders were passed in mechanical manner and the same are perfunctory as well as non-speaking and also against the basic principle of administration of justice. Thus, the impugned orders are bad in law.

PRAYER

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned orders dated 20-09-2023 and 06-12-2023 may very graciously be set aside and the appellant may kindly be reinstated in service with all back wages and benefits.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.


Appellant

Through


Rizwanullah

Dated: 10/01/2024

Advocate High Court, Peshawar
Email ID: advocaterizwanullah@gmail.com
Mobile No. 0300-596-5843

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2024

1. Safi-ur-Rehman (Ex-Constable No. 2262 Police Lines, Peshawar) Mohalla Saidaan, Garhi Sherdad, P.O, Sherdad, Tehsil & District Peshawar

(APPELLANT)

VERSUS

1. The Superintendent of Police HQs, Peshawar.

RESPONDENTS

AFFIDAVIT

I, Safi-ur-Rehman (Ex-Constable No. 2262 Police Lines, Peshawar) Mohalla Saidaan, Garhi Sherdad, P.O, Sherdad, Tehsil & District Peshawar do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Saf
DEPONENT



Annex - A (11)

پولیس فارم نمبر: 24-15(1)

سرینل نمبر: 002991

ابتدائی اطلاعی رپورٹ نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 ضابطہ فوجداری

نمبر: 879/23 تھانہ: PS HASHTNAGRI ضلع: Peshawar ای ٹیک نمبر: SGH-8/3/2023-880

تاریخ و وقت وقوع: 02-08-2023 10:45AM

1: تاریخ و وقت رپورٹ بحوالہ رپورٹ نمبر (20) 6 تھانہ سے روانگی کی تاریخ و وقت یہ سبیل عام

02-08-2023 06:20 Pm

2: نام و سکونت اطلاع دہندہ مستثنیت AKBER HUSSAIN ASI / LO² موجودہ پتہ: پولیس لائن

پیش: پولیس آفسر

3: مختصر کیفیت: جرم (معدہ، دفعہ) و مال اگر کچھ ہو گیا ہے

جرم:

223 ت پ

224 ت پ

KPK POLICE ACT 2017-118-

جی ٹی روڈ یونٹن بلعائل سکول نمبر 1

4: جائے وقوعہ و فاصلہ تھانہ سے اور سمت

آمدہ تحریر مراسلہ پر مقدمہ درج رجسٹر کیا جاتا ہے

5: کارروائی متعلقہ تفتیش اگر اطلاع درج کرنے میں کچھ توقف ہو تو اس کی وجہ

بیان کی جاوے۔

ٹیلی فون نمبر: 03239149680

عہدہ: ASI

بیلٹ نمبر: 02

Saeed ur rehman دستخط

(ابتدائی اطلاع نیچے درج کریں)

ایک تحریری مراسلہ من جانب مستثنیت مندرجہ خانہ نمبر 2 سے بدست کنسٹیبل بلیٹیاں LHC/5443 موصول ہو کر ذیل ہے۔ خدمت جناب آفیسر انچارج تھانہ شہید گلگت حسین اطلاع ملی کہ عمران خان IHC سے ملزم قمر عزیز ولد عبدالعزیز سکند دالہ زاک روڈ پختہ غلام مطلوبہ بمقامات علت 793 مورخہ 17/02/69 جرم 17(4) خرابہ تھانہ چینی گیٹ (2) علت 410 مورخہ 13/4/021 جرم 302 تھانہ خزانہ حراست پولیس سے باگ چکائے حسب اطلاع موقع آکر معلوم ہوا کہ عمران IHC/866 بمعہ کنسٹیبلان صفی الرحمن H/2262، علی الرحمن R/793، طاہر R/6631 نے ملزم قمر عزیز ولد عبدالعزیز جوڈیشل لاک سٹریجیل سے بغرض علاج معالجہ پولیس سروس ہسپتال لایا تھا جو بعد علاج معالجہ سروس ہسپتال سے سنٹرل جیل بذریعہ پرائیویٹ گاڑی لے جا رہے تھے۔ جو کہ بقام جائے وقوعہ بالا پر ملزم قمر عزیز ولد عبدالعزیز بمعہ ہتھکڑی گاڑی سے بھاگ گیا ہے جو کہ عمران خان IHC صفی الرحمن H/2262، علی الرحمن R/793، طاہر R/6631 کی غفلت بمعہ احتیاتی کا نتیجہ ہے مضمون رپورٹ سے صورت جرم بالا کاپی جا کر ملزم عمران خان IHC صفی الرحمن H/2262، علی الرحمن R/793، طاہر R/6631 کو حسب ضابطہ گرفتاری کے جبکہ ملزم قمر عزیز ولد عبدالعزیز کی گرفتاری و پیش رکھ کر قرار شدہ ملزمان بندش حوالات تھانہ زیر حراست انچارج مسکن دن طارق خان SI جبکہ مراسلہ بغرض قائمی مقدمہ بدست بلیٹیاں LHC/5443 بجوائی جاتی ہے۔ پرچہ دیا جا کر کسی تفتیشی آفسر کو معمور تفتیش کیا جاوے۔ دستخط انگریزی اکبر حسین ASI LO2 مورخہ 2/8/2023 کارروائی تھانہ آمدہ تحریر مراسلہ حرف بہ حرف درج بالا ہو کر پرچہ جرم، بالا چاک کیا جا کر نقول پرچہ جات بغرض تفتیش حوالہ طارق خان SI/OH کیے جاتے ہیں پرچہ گزارش ہے۔

ASI Saeed ur rehman

02-08-2023

Attested

Saeed
Appellant

CHARGE SHEET

I superintendent of police Headquarters Capital city police Peshawar as a competent authority do hereby, charge you FC Safi ur Rehman No 2262 of capital city police Peshawar with the following allegation .

1. That you FC Safi ur Rehman Belt No 2262 while posted in police lines were Deputed Alongwith IHC Imran No866 ,FC Ali Rehman No 793 and FC Tahir No ,6631 For production of three under trial accused namely (1) Gulraiz s/o Zar Khan r/o Main Essa Nowshera in case FIR No ,122, dated 01.04.2022 u/s 302 PS Misri Banda Nowshera,(2) Yasin s/o Ali Akbar r/o Tehkal payyan in case FIR No 538 , dated 11.07.2023 u/s 11ACNSA PS Sarband ,(3) Qammar Aziz s/o Abdul Aziz r/o Ammar colony Pakha Ghulam Peshawar in case FIR No.793.dated 06 .09.2021 u/s 17(4) Haraba /412/414/404/419/420/15AA PS Michni Gate and FIR No . 410 , Dated 14.04.2021 u/s 302/109/200/201/202/243/365 PS Khazana arrested and confined in central Prison Peshawar for treatment in police ,and services Hospital .You were required to take these accused in prison Van But he get them from the prison and transmitted in a private rickshaw.
2. You after treatment again shifted two accused by foot and did not bother to call for prison van .
3. That you again arrange for transportation of the third accused namely Qammar Aziz involved in cass FIR No.793.dated 06.09.2021 u/s 17(4) Haraba /412/414/404/419/420/15-AA PS Michini Gate and FIR.No . 410 , Dated 14.04.2021 u/s 302/109/200/201/202/243/365 PPC of PS Khazana in a Taxi Car and did not bother to call for prison van .
4. That you ,When sat in the taxi car alongwith above accused did not turn the car in the nearest U-turn located under the first overhead bridge at suri pul opposite to Bala Hisar Fort rather you travelled advance and resultantly he jumped out of the car at next U-turn located in front of chamber of commerce office and escaped . How one accused escaped from you four officials.
5. That you did not inform anny senior officer immediately after escape of the accused.
6. That proper criminal case vide FIR No.879, dated 02.08.2023 u/s 223/224 PPC Ps SGH 118 police Act has also been registered against you been involved in above omission and commission.

You are therefore, required to submit to this office or the Enquiry Officer your written reply within 07-days of the receipt of this charge sheet.


Your written defence, if any, should reach this office or the Enquiry Officer within the specified period, failing which it shall be presumed that you have nothing to put in your defence and in that case an ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

Attested

Saf
Appellant


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

DISCIPLINARY ACTION

I Superintendent of police, Headquarters, Capital city police Peshawar as a Competent authority, am of the opinion that FC Safi ur Rehman No 2262 has rendered him Self liable to be proceeded against under the provision of police Disciplinary Rules 1975

STATEMENT OF ALLEGATION

1. That FC Safi ur Rehman Belt No 2262 while posted in police lines was Deputed Alongwith IHC Imran No866, FC Ali Rehman No 793 and FC Tahir No,6631 For production of three under trial accused namely (1) Gulraiz s/o Zar Khan r/o Main Essa Nowshera in case FIR No,122, dated 01.04.2022 u/s 302 PS Misri Banda Nowshera,(2) Yasin s/o Ali Akbar r/o Tehkal payyan in case FIR No 538, dated 11.07.2023 u/s 11ACNSA PS Sarband ,(3) Qammar Aziz s/o Abdul Aziz r/o Ammar colony Pakha Ghulam Peshawar in case FIR No.793.dated 06 .09.2021 u/s 17(4) Haraba /412/414/404/419/420/15AA PS Michni Gate and FIR No . 410 , Dated 14.04.2021 u/s 302/109/200/201/202/243/365 PS Khazana arrested and confined in central Prison Peshawar for treatment in police and services Hospital .He was required to take these accused in prison Van But he get them from the prison and transmitted in a private rickshaw.
2. He after treatment again shifted two accused by foot and did not bother to call for prison van .
3. That he again arranged for transportation of the third accused namely Qammar Aziz involved in cass FIR No.793.dated 06.09.2021 u/s 17(4) Haraba /412/414/404/419/420/15AA PS Michini Gate and FIR No . 410 , Dated 14:04.2021 u/s 302/109/200/201/202/243/365 PPC of PS Khazana in a Taxi Car and did not bother to call for prison van .
4. That he ,When sat in the taxi car alongwith above accused did not turn the car in the nearest U-turn located under the first overhead bridge at suri pul opposite to Bala Hisar Fort rather he travelled advance and resultantly he jumped out of the car at next U-turn located in front of chamber of commerce office and escaped . How one accused escaped from him alongwith other three officials.
5. That he did not inform any senior officer immediately after escape of the accused .

For the purpose of serutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and Tuheed khan DSP Inv is appointed as Enquiry officer.

6. The Enquiry officer shall in accordandce with the provisions of the police Disciplinary Rules 1975 , 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.

Attested

Sd/-
Appellant

Annex-D

بخدمت جناب سپرنٹنڈنٹ صاحب پشاور

عنوان:-
تحریری جواب مخائب کنسٹبل صفی الرحمن بیلٹ نمبر 2262

جناب عالی: سائل حسب ذیل عرض رساں ہے۔

گزارش ہے کہ بحوالہ انگریزی چٹھی جواب حسب ذیل ہے۔

1- فقرہ نمبر 11 اس حد تک درست ہے کہ تین عدد ملزمان جن کے نام و جرم انگریزی چٹھی میں درج ہیں کو موجودگی انچارج عمران خان IHC علی رحمان کنسٹبل بیلٹ نمبر 793، من سائل و کنسٹبل طاہر بیلٹ نمبر 6631 کو ملزمان مذکورہ کو سنٹرل جیل پشاور سے بحفاظت پولیس ہسپتال پہنچایا تھا۔ دو مذکورہ کنسٹبلان مسلح بہ سرکاری رائفلوں تھے جبکہ میرے پاس ہتھکریاں تھی اور انچارج کے پاس بھی ایک عدد پستول برائے حفاظت موجود تھا ملزمان متذکرہ کو بحفاظت سنٹرل جیل پشاور سے نکال کر سرکاری گاڑی کا کافی انتظار کیا لیکن مذکورہ گاڑی حیات آباد میڈیکل کیمپس اور فیڈرل جوڈیشل کیمپس برائے پہنچانے ملزمان گئی تھی اور من سائلان کے پاس ملزم قمر عزیز کی حالت بہت خراب تھی اس لیے ملزمان بالا کو انسانی ہمدردی کے تحت رکشہ میں بٹھا کر مذکورہ پولیس ہسپتال پہنچا دیے۔ دو ملزمان کو ڈاکٹر صاحبان نے معائنہ کر کے جلدی فارغ کیا جبکہ ملزم قمر عزیز کو ڈریپ وغیرہ لگانے کے لیے عارضی طور پر ٹھہرایا، دو ملزمان فارغ ہو کر میں معہ کنسٹبل طاہر متذکرہ دو فارغ شدہ ملزمان کو بحفاظت سنٹرل جیل پشاور میں داخل کروا کر کنسٹبل طاہر گھر میں بیماری کا کہے کر گھر خود چلا گیا جبکہ من کنسٹبل واپس ہسپتال پہنچ گیا جبکہ کنسٹبل طاہر با اجازت واپس نہیں آیا مذکورہ ملزم کی ڈریپ وغیرہ بعد پھر سرکاری گاڑی کا انتظار کیا لیکن بعد از ماویسی مذکورہ ملزم قمر عزیز کو زیر حراست من کنسٹبل نے ہتھکریاں لگا کر انچارج و کنسٹبل علی الرحمن مسلح سرکاری رائفل سنٹرل جیل پشاور روانہ ہوئے جب ٹیکسی قلعہ بالا حصار کے یوٹرن کے قریب پہنچی تو روڈ بلاک ہونے کی وجہ سے اگلی یوٹرن کے لیے روانہ ہوئے اور جیسے ہی سرحد چیمبر آف کامرس کے یوٹرن پر مڑنے لگے تو مذکورہ ملزم قمر عزیز یکدم روانہ گاڑی میں من کنسٹبل پر ایلٹاں کر کے من کنسٹبل کو دھکے دیتے ہوئے بمعہ ہتھکری چھلانگ لگائی اور گاڑیوں کی بے حد رش کا فائدہ اٹھا کر رو پوچھ کر ہوا۔ من سائل نے بمعہ کنسٹبل و انچارج گاڑی سے اتر کر چار سمتوں میں تلاش شروع کی لیکن مذکورہ ملزم کو نہ پاسکے ہم نے ملزم کو تلاش کیا لیکن گاڑیوں کے رش کا فائدہ اٹھا کر ملزم غائب ہو گیا۔ (نقل میڈیکل دستاویزات لفٹ ہیں)۔

2- فقرہ نمبر 2 کے بابت عرض ہے کہ چونکہ ملزم قمر عزیز کو پولیس ہسپتال میں علاج دی جا رہی تھی اور دوسرے دو ملزمان فارغ ہوئے تو انچارج کے کہنے پر دو فارغ شدہ ملزمان کو من کنسٹبل و کنسٹبل طاہر نے دونوں ملزمان کو سنٹرل

Attest

Sub
Appellant

2

جیل پشاور میں داخل کیا جبکہ کنسٹیبل طاہر نے مذکورہ انچارج سے بوجہ بیماری رخصت لی اور کنسٹیبل سیف الرحمن اپنی ڈیوٹی کے لیے ہسپتال واپس پہنچ گیا اور اس طرح ملزم قمر عزیز متعلقہ ہسپتال سے فارغ ہو کر اور سرکاری گاڑی/وین کی کافی انتظار کرنے کے باوجود نہ آئی اس وجہ سے ملزم قمر عزیز کو متعلقہ انچارج اور ہم دونوں کنسٹیبلان نے انسانی ہمدردی اور نیک نیتی کے خاطر ٹیکسی میں بیٹھایا۔

3- فقرہ نمبر 3 کے بابت عرض ہے کہ چونکہ سرکاری پولیس وین دوسرے ملزمان کو لیکر لیڈی ریڈنگ ہسپتال اور حیات آباد گئی تھی اور کافی انتظار کرنے کے بعد ہم نے انسانی ہمدردی اور نیک نیتی کے خاطر ملزم کو ٹیکسی گاڑی میں زیر حراست پولیس برائے سنٹرل جیل پشاور روانہ ہوئے

4- فقرہ نمبر 4 کے نسبت عرض ہے کہ من کنسٹیبل پرائیوٹ ٹیکسی کے پچھلی سیٹ پر ملزم کے بائیں جبکہ کنسٹیبل علی رحمن ملزم کے دائیں طرف اور انچارج اگلی سیٹ پر جبکہ ملزم قمر عزیز کو ہتھکڑی لگی ہوئی درمیان میں بٹھایا گیا اور سنٹرل جیل روانہ ہوئے۔ چونکہ سورے پل کے یوٹرن پر کافی زیادہ گاڑیوں کی رش تھی اس لیے اگلے یوٹرن کو استعمال کرنے بہتر سمجھ کر ٹیکسی میں روانہ ہوئے اور جب ٹیکسی سرحد چیمبر آف کامرس کے یوٹرن پر موڑ گئی تو مذکورہ ملزم نے من کنسٹیبل کے اوپر اٹلیاں شروع کی جس سے میری یونیفارم بہت خراب ہو گئی اور اسی اثناء میں ٹیکسی کا دروازہ کھول کر جمعہ ہتھکڑی بھاگ نکلا۔ ہم نے ٹیکسی گاڑی فوراً روک کر ملزم کی تلاشی شروع کی لیکن ہماری ٹریفک کو موجودگی میں ملزم کا پتہ نہ چل سکا کہ کہاں اور کیسے غائب ہوا نیز ملزم کو ڈرانے کی خاطر انچارج نے ہوائی فائر بھی کیے لیکن بے سود۔ ہم نے ہر طرح سے ملزم کا خیال رکھا تھا لیکن یہ سب کچھ یکدم اور جلدی سے ہوا جس میں ہم پولیس والوں کا نہ تو کوئی ارادہ تھا اور نہ کوئی ذاتی مقصد بس یہ سب کچھ اچانک سے ہوا۔

انچارج

5- فقرہ نمبر 5 کے بابت عرض ہے کہ نے وقوع کے متعلق فوراً افسران بالا کو مطلع کیا لیکن پہلے ملزم کی تلاش بيسار کر کے پھر فوراً افسران بالا کو اطلاع دی گئی۔

Attest

6- فقرہ نمبر 6 کے نسبت جواب عرض ہے کہ ملزم کی حراست پولیس سے بھاگنے میں ہم پولیس والوں کا نہ کوئی ارادہ تھا اور نہ مقصد، نہ کوئی سازش اور نہ ہی کوئی امداد اور اعانت تھی اور نہ کوئی ایسی بات تھی بلکہ ہماری نیت صاف تھی اور یہ سب کچھ غیر ارادی طور پر اور فوراً ہوا اور ملزم نے منہ بھر اٹلیاں کرنے کا فائدہ اٹھایا اور خاص طور پر گاڑیوں کی رش کا فائدہ اٹھایا اور پولیس حراست سے بھاگ نکلا۔ سائل نے حکمہ پولیس میں 06 سال کی ملازمت کی ہے اور سائل کے خلاف کبھی بھی ماضی میں اس طرح کا کوئی الزام عائد نہیں کیا گیا ہے۔

Sd/-
Inspector

3

مزید عرض ہے کہ ہم نے مذکورہ ملزم کی فرار میں نہ تو کوئی مدد کی ہے اور نہ ہی کوئی امداد کی ہے بلکہ ملزم کے بھاگنے کے بعد ہم نے اس کی تلاش بیسار کرنے اور گرفتار کرنے کی کافی کوشش کی لیکن گاڑیوں کی کافی رش کی وجہ سے ملزم بھاگ نکلا۔ ہم نے ملزم کو ڈرانے کی خاطر ہوائی فائر بھی کیے لیکن سب کچھ بے سود ہے۔ ہم بے گناہ ہیں اور مذکورہ ملزم کی بھاگ جانے میں نہ تو ہمارا کوئی ارادہ، مدد سازش وغیرہ یا کوئی اور امر تھا بلکہ یہ سب کچھ اچانک ہوا۔

لہذا عرض ہے کہ مذکورہ اکتوائری کو ختم کر کے ہم سلطان کو معاف کرنے کا حکم صادر فرمائیں کیونکہ ہم سلطان بے گناہ، بے قصور اور معصوم ہیں اس امر کے لیے سائل تاحیات دعا گو ہے گا۔

ارض

Attest

Sd/-

Aspellant

سائل:-

صفی الرحمن کنسٹیبل پلٹ نمبر 2262
پولیس لائنز پشاور

Annex-E

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, Constable Safi ur Rehman No.2262 the final show cause notice.

The Enquiry Officer, DSP/HQrs after completion of departmental proceedings, has recommended you for appropriate punishment as you found guilty of the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Safi ur Rehman No.2262 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of punishment under Police Disciplinary Rules 1975.

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.

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 3/09 /PA. SP/HQrs: dated Peshawar the 6-9 /2023.

Copy to official concerned

Attested

Sd/-

Appellant

Annex-F

بخدمت جناب سپرنٹنڈنٹ آف پولیس ہڈ کوارٹر پشاور

جناب عالی!

بحوالہ انگریزی چھٹی نمبری PA.SP HQRS/3104 مورخہ 06-09-2023-

سائل حسب ذیل عرض رساں ہے۔

1. یہ کہ سائل نے اپنی 7 سال نوکری میں اپنی ڈیوٹی استداد اور حالت کے مطابق اور ایمانداری اور نیک نیتی کے ساتھ ادا کیے ہے۔ اور دانستہ طور پر یا ارادی طور پر کوئی بھی فعل مذکورہ واقعہ کے بارے میں نہ کیا ہے۔

2. یہ کہ من سائل نے اپنی پوری سروس میں ایسا کوئی بھی فعل نہ کیا ہے۔ جس سے محکمہ کو یا سائل کی کوئی بدنامی ہو۔

3. یہ کہ سائل کے خلاف انکوائری آفیسر نے جو بھی سزا تجویز کی ہے اس میں حد درجے نرمی لائی جائے کیونکہ سائل سے دانستہ طور پر واقعہ ہذا میں کوئی عمل سرزد نہ ہوا ہے۔

4. یہ کہ سائل ایک ایماندار اور سچا پولیس اہلکار ہے اور جو واقعہ ہوا ہے۔ وہ بالکل اچانک ہوا ہے۔ جس میں سائل کا کوئی بھی ارادہ یہ سازش نہ تھی۔ مزید برآں سائل بذات خود جناب صاحب بہادر کے سامنے پیش ہونا چاہتا ہے۔ تاکہ شخص طور پر اپنی بے گناہی ثابت کر سکے۔

یہ کہ سائل کے چھوٹے چھوٹے بچے ہیں اور آج کل کی مہنگائی کے دور میں بڑی مشکل سے اپنا اور اپنے بچوں کا پیٹ پال رہا ہے۔ برائے مہربانی سائل کے کیس پر ہمدردانہ نظر رکھی جائے تاکہ

Attest

انصاف اور انصاف ہو سکے۔

Appellant

سائل تاحیات دو عاگوں رہے گا۔

الغرض

صفی الرحمان 2262

This is a formal departmental proceeding against FC Safi ur Rehman Belt No. 2262 initiated vide this office Endst No. 162/E/PA, dated, 09 08 2023 on the charges that

- i. On 02.08.2023 he alongwith FC Safi ur Rehman No.2262 FC Ali Rehman No. 793 and FC Tahir Shah No 6631, while posted in Police Lines, were deputed for production of three under trial accused namely (1) Gulraiz s/o Zar Khan r/o Main Essa Nowshera in case FIR No. 122, dated 01.04.2022 u/s 302 PS. Misri Banda Nowshera (2) Yasin s/o Ali Akbar r/o Tehkal Payyan in case FIR No 538, dated 11.07.2013 u/s 11ACNSA PS Sarband, (3) Qammar Aziz s/o Abdul Aziz r/o Ammar Colony Pakha Ghulam Peshawar in case FIR No. 793, dated 06.09.2021 u/s 17(4) Haraba/412/414/404/419/420/15AA PS Michni Gate and FIR No. 410, dated 14.04.2021 u/s 302/109/200/201/202/243/365 PS Khazana from Central Prison Peshawar for treatment in Police and Services Hospital.
 - ii. He was required to take these accused in Prison Van but he got them from the Prison and transmitted in a private rickshaw
 - iii. He after treatment again shifted two accused by foot and did not bother to call for prison van.
 - iv. He again arranged for transportation of the third accused namely Qammar Ariz involved in above mentioned cases, in a Taxi Car and did not bother to call for Prison Van. That he when sat in the taxi car alongwith above accused, did not turn the car in the nearest U-turn located under the first overhead bridge at Suri Pul opposite to Bala Hisar Fort rather travelled advance and resultantly the accused Qamar Aziz jumped out of the car at next U-turn located in front of Chamber of Commerce office and escaped. How one accused escaped from them.
 - v. That he did not inform any Senior Officer immediately after escape of the accused.
2. A proper criminal case vide, FIR No. 879, dated 02.08.2023 u/s 223/224 PPC 118 Police Act has also been registered at PS SGH against him, being involved in above omissions and commissions.
3. The DSP Rural Investigation was nominated enquiry Officer. The enquiry Officer concluded that there is a clear difference in the stance of under enquiry officer and facts. He neither informed for provision of Jail van, escorted the accused in private taxi adopt insecure and risky way despite of availability of safe route and failed to follow SOPs and instructions. The E-O found him guilty of charges and suggested for appropriate punishment.
4. Subsequently, he was issued Final Show Cause Notice on 06.09.2023
5. On 18.09.2023, FC Safi Ur Rehman Belt No. 2262 was heard in person and his record was perused. He did not justify his acts and omission. His verbal and written stance found contrary to the facts. He also admits his inefficiency.

Hence, Keeping in view the finding reports of the Enquiry Officer, facts and Circumstances, in which one hand-cuffed under trial accused, facing trial, in heinous criminal case, escaped alongwith official handcuff from custody of three police officials and that too when the accused was sitting in a car in between the Police escort and keeping in view the provision of Police Rules 16-37, he was proved inefficient, indiscipline and ergo dismissed from Service.

[Signature]
SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

GD No. 9835
Dated 21/09/2023
No. 3569-57 (FA/SP) dated Peshawar the 20/09/2023

Copies to:

1. The W/Capital City Police Officer, Peshawar.
2. The W/SSP Operation & Coordination, Peshawar
3. The SSP Investigation, Peshawar.
4. DSP, Investigation, Rural, CCP, Peshawar.
5. The DSP HQs for information and necessary action w.r to process committee report regarding official hand cuff.
6. The I.O of case FIR No. 879/2023 of PS SGH.
7. Pay Officer, OASI, FMC & CRC.
8. The SHO PS SGH
9. Safi ur Rehman s/o Tariq Shah resident of Mohallia Saidaan Garhi Sherdad, Mathra, Peshawar.

[Signature]
SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

AH
Attested
Saudi
Appellant

Annex - H

20

Page 1 of 6

To

The Worthy Capital City Police Officer,
Peshawar.

Subject:

DEPARTMENTAL APPEAL UNDER RULE 11 OF THE
KHYBER PAKHTUNKHWA POLICE RULES, 1975 (AS
AMENDED 2014) AGAINST THE ORDER DATED 20-09-2023
PASSED BY THE SUPERINTENDENT OF POLICE
HEADQUARTERS PESHAWAR WHEREBY THE
APPELLANT WAS AWARDED HARSH AND EXTREME
PENALTY OF DISMISSAL FROM SERVICE IN UTTER
VIOLATION OF LAW.

Prayer in appeal

On acceptance of this appeal, the impugned order dated 20-09-2023 may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

RESPECTED SIR,

The appellant respectfully submits the instant Departmental Appeal inter-alia on the following factual and legal grounds:

FACTS

1. That the appellant joined the services of Police Department incapacity as Constable on 23-01-2019 he had 04 years unblemished service record to his credit.
2. That the appellant was performing his duty with great zeal, zest and devotion, when he alongwith Imran Khan IHC No. 866, Ali Rehman No. 793, and Tahir No. 6631 constables were deputed to take the following 03 under trial accused from Central Jail Peshawar to Police and Services Hospital, Peshawar for medical treatment:-
 - i. Gul Raiz s/o Zar Khan
 - ii. Yasin s/o Ali Akbar
 - iii. Qamar Aziz s/o Abdul Aziz
3. That in compliance with the order of his superior, the appellant alongwith other police officials reached Central Jail where, they were handed over the said three accused without "Prison van" on the ground that the said van had already taken other accused

09-10-23

Attest
Sub
Appellant

to Hayatabad Medical Complex and Federal Judicial Complex. Therefore, they were constrained to hire private *Rikshas* so as to ensure medical treatment to the accused well in time.

4. That accused Gul Raiz and Yasin were treated earlier and they were duly shifted to Central Jail safely while the remaining one accused namely (Qamar Aziz) was prescribed a necessary drip. In the meanwhile, Tahir left the hospital due to the illness of his family.

5. That when the drip was ended, they waited for "Prison van" but otiose. Therefore, once again, they were constrained to resort to private conveyance and as such, they hired a private taxi so as to take the accused to jail. It is extremely worthwhile to mention here that all the nearby roads were closed down/blocked by the Government and there remained only two U-turns i.e. one located under the first over-bridge at *Suripool* opposite to *Balahisar Fort* while the other at *Hastnagri*.

6. That unfortunately, when they reached the former U-turn, it was closed down/blocked by the FC for the reasons best known to them therefore, they had to take the later U-turn situated at *Hashtnagri*. However, during the course of travel, the accused started vomiting and his condition got worsened, therefore, he was shifted near the window to enable him to get fresh air. This act was absolutely done in sheer good faith and on solitary humanitarian ground. Because, had the accused expired during the custody of Police, it would not only have resulted in severe condemnation of the Police Department in general but the appellant and his colleagues would have definitely been charged/held accountable for the death of the accused in particular.

Attested
Sd/-
Appellant

7. That unfortunately, when the taxi was taking the U-turn at *Hashtnagri*, the accused abruptly opened the door, jumped out of the taxi and ironically made his escape good due to jamboree of different transport and people notwithstanding wholehearted hot pursuit of the appellatant and other constables. Moreover, the effort to search the accused continued for considerable time but it yield no results. It is also noteworthy to add that Imran Khan IHC also used his personal pistol for aerial firing at the very moment to deter the accused for surrender whereas, I and other colleagues had only one rifle which was not used in order to avoid manifest collateral human loss on one hand while on the other to save the Police department from explicit counter denunciation.

8. That promptly, Imran Khan IHC duly informed the Muharrir Police Line for making report in daily diary about the unfortunate and disturbing incident. However, to their sheer irony, FIR No. 879 dated 02-08-2023 was registered against the appellatant and other two police officials. Thereafter, they were arrested howbeit released on bail

(Copy of FIR is appended as Annex-A)

9. That thereafter, Competent Authority initiated disciplinary proceedings against the appellatant and as such, he was served with charge sheet and statement of allegations.

(Copy of charge sheet and statement of allegations are appended as Annex-B & C)

10. That the appellatant submitted elaborate and exhaustive reply denied the allegations and also termed it as fallacious, malicious and misconceived and prayed that he may be exonerated of the allegations levelled against him in the charge sheet.

(Copy of reply is appended as Annex-D)

Attested
 Seal
 Appellatant

- 11. That the above reply was not deemed satisfactory and Tauheed Khan Deputy Superintendent of Police was appointed as enquiry officer to conduct departmental enquiry in the matter. He finalized the enquiry and found the appellant guilty of the allegations and recommended him for appropriate punishment.
- 12. That thereafter, the appellant was served with a final show cause notice on 06-09-2023. He duly submitted reply and denied the allegations but it met the same fate. Ultimately, he was awarded harsh and extreme penalty of dismissal from service on 20-09-2023.

(Copy of show cause notice, its reply & impugned order are appended as Annex-E, F & G)

GROUNDS

- A. That the Competent Authority has not treated the appellant in accordance with the mandate of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973** which has unequivocally laid down that it is the inalienable right of every citizen to be treated under the law, rules and policy. Therefore, the impugned order is not sustainable in the eye of law.
- B. That regular Inquiry was not conducted in a manner prescribed by law as neither any witness was examined in the presence of appellant nor he was provided any opportunity of cross-examination in order to impeach the credibility of the witnesses if any appeared against him. Similarly, he was also not provided any chance to produce his defence in support of his version. The above defect in inquiry proceeding is sufficient to declare entire process as unlawful and distrustful. Right of fair trial is a fundamental right by dint of which a person is entitled to a fair trial and due process of law. The appellant has been deprived of his indispensable fundamental right of fair trial as enshrined in Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Besides, there is also no iota of evidence to connect the

Attested
Sd/-
Appellant

appellant with the commission of misconduct. Therefore, the report of the Inquiry Officer is based on conjectures, surmises and suppositions. Hence, the findings recorded by Inquiry Officer against the appellant is perverse and is not supported by any legal evidence at all and as such, the same is not tenable under the law.

C. That the Competent Authority was under statutory obligation to have considered the case of appellant in its true perspective and also in accordance with law besides to see whether the regular inquiry was conducted in consonance with law and that the allegations thereof were proved against him without any shadow of doubt or otherwise. However, he has completely overlooked this important aspect of the case without any cogent and valid reasons and awarded him major penalty of dismissal from service. Thus, the impugned order is liable to be set aside on this count alone

D. That the Competent Authority was also required to look for the mens-rea on the part of appellant that too in juxtaposition to the manifest implications mentioned in his written replies but he did not give any weight whatsoever to the same and totally ignored it without any legal justification. Hence, the impugned order is against the spirit of administration of justice because no one can be penalized in absence of mens-rea as per various judgments of superior courts.

E. That none of the inquiry report was provided to the appellant to offer explanation with regard to adverse findings if any recorded against him being the requirement of law. Reliance can be placed on **PLD-1981-SC-page-176-citation (f) and 1987-SCMR-1776-(b)**. Hence, the impugned order is not tenable under the law.

F. That the impugned order is against law, facts of the case and norms of natural justice. Therefore, the same is not tenable under the law.

Attested
Sal
Appellant

G. That the Competent Authority has passed the impugned order in mechanical manner and the same are perfunctory as well as non-speaking and also against the basic principle of administration of justice. Thus, the impugned order is bad in law.

PRAYER

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order dated 20-09-2023 may very graciously be set aside and the appellant may kindly be reinstated in service with all back wages and benefits.

Appellant



Safi-ur-Rehman

(Ex-Constable No. 2262)

Mohalla Saidaan, Garhi Sherdad, P.O, Sherdad,

Tehsil & District Peshawar

0313-979-9593

Dated 09th October, 2023

Attested

By

Appellant



Annex-I
OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No. 091 9210989 Fax No. 091 921259

26

ORDER

This order will dispose of the departmental appeal preferred by Ex-Constable Saif-ur-Rehman No. 2262, who was awarded the major punishment of "dismissal from service" under KP PR-1975 (amended 2014) by SP/1Qrs., Peshawar vide order No. 3549/57/PA, dated 20/09/2023.

2. Brief facts leading to the instant appeal are that the defaulter Constable was proceeded against departmentally on the following charges

- i. That on 02.08.2023, the defaulter Constable alongwith other personnel were deputed for production of 03 under trail accused namely i) Gulraiz in case FIR No. 122, dated 01.04.2022, u/s 302-PP, PS Mistri Banda Nowshera, ii) Yaseen in case FIR No. 538, dated 11.07.2023, u/s 11-A CNSA, PS Sarband, iii) Qamar Aziz in case FIR No. 793, dated 06.09.2021, u/s 17(4) Haraba:412/414-404-419-420/15AA, PS Michnigate, and case FIR No. 410, dated 14.04.2021 u/s 302/319/200/201/202/243/365-PPC, PS Khazana from Central Prison Peshawar for treatment in Police Services Hospital.
- ii. That he was required to take these accused in Prison Van but he got them out from the prison and transmitted in a private rickshaw.
- iii. That he after treatment of the 02 accused again shifted by foot and did not bother to call for Prison Van.
- iv. That he again arranged a taxi car for transportation of the third accused namely Qamar Aziz and did not bother to call for Prison Van. He sat in the taxi car alongwith above accused, did not turn the car in the nearest u-turn located under the first over head bridge at Suri Pul rather travelled advance and resultantly the said accused Qamar Aziz jumped out of the car at next U-turn located in front of Chamber of Commerce office and escaped.
- v. That he did not inform his seniors immediately after escape of the accused.
- vi. A proper criminal case vide FIR No. 879, dated 02.08.2023 u/s 223/224 PPC/118 Police Act has also been registered at PS SGH against him.

3. He was issued Charge Sheet and Summary of Allegations by SP/1Qrs. Peshawar. DSP-Investigation Rural, Peshawar was appointed as Enquiry Officer to scrutinize the conduct of the accused official. The Enquiry Officer after conducting proper departmental enquiry submitted his findings in which he was found guilty. The competent authority in light of the findings of the Enquiry Officer issued him Final Show Cause Notice. However, his reply to the said notice was found unsatisfactory and hence, awarded the major punishment of dismissal from service.

4. He was heard in person in Orderly Room. During personal hearing, he was given an opportunity to prove his innocence. However, he failed to submit any plausible explanation in his defense. Therefore, his appeal for setting aside the punishment awarded to him by SP/1Qrs. Peshawar vide order No. 3549-57/PA, dated 20/09/2023 is hereby rejected/fled.

"Order is announced"

CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 4506-12 /PA, dated Peshawar the 06 / 12 /2023

Copies for information and necessary action to the:-

- 1 SP/1Qrs. Peshawar.
- 2 AD-TI CCP Peshawar.
- 3 PO, CRC, OASI & FMC alongwith complete Fuji Misal.
- 4 Official concerned.

Attested

By
Appellacmit

11954

Page 1 of 8

Annex-J

(27)

To

The Worthy Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Subject:

**REVISION PETITION UNDER RULE 11-A(4) OF THE
KHYBER PAKHTUNKHWA POLICE RULES, 1975 (AS
AMENDED 2014) AGAINST THE ORDER DATED 06-12-2023
PASSED BY THE CAPITAL CITY POLICE OFFICER,
PESHAWAR WHEREBY THE DEPARTMENTAL APPEAL
FILED BY THE PETITIONER WAS REJECTED IN UTTER
VIOLATION OF LAW.**

RESPECTED SIR,

The petitioner respectfully submits the instant Revision Petition inter-alia on the following factual and legal grounds:

FACTS

1. That the petitioner joined the services of Police Department incapacity as Constable on 23-01-2019 he had 04 years unblemished service record to his credit.
2. That the petitioner was performing his duty with great zeal, zest and devotion, when he alongwith Imran Khan IHC No. 866, Ali Rehman No. 793, and Tahir No. 6631 constables were deputed to take the following 03 under trial accused from Central Jail Peshawar to Police and Services Hospital, Peshawar for medical treatment:-

- i. Gul Raiz s/o Zar Khan
- ii. Yasin s/o Ali Akbar
- iii. Qamar Aziz s/o Abdul Aziz

That in compliance with the order of his superior, the petitioner alongwith other police officials reached Central Jail where, they were handed over the said three accused without "Prison van" on the ground that the said van had already taken other accused to Hayatabad Medical Complex and Federal Judicial Complex. Therefore, they were constrained to hire private *Rikshas* so as to ensure medical treatment to the accused well in time.

Attested

Sd/-
Appellant

4. That accused Gul Raiz and Yasin were treated earlier and they were duly shifted to Central Jail safely while the remaining one accused namely (Qamar Aziz) was prescribed a necessary drip. In the meanwhile, Tahir left the hospital due to the illness of his family.
5. That when the drip was ended, they waited for "Prison van" but otiose. Therefore, once again, they were constrained to resort to private conveyance and as such, they hired a private taxi so as to take the accused to jail. It is extremely worthwhile to mention here that all the nearby roads were closed down/blocked by the Government and there remained only two U-turns i.e. one located under the first over-bridge at *Suripool* opposite to *Balahisar Fort* while the other at *Hastnagri*.
6. That unfortunately, when they reached the former U-turn, it was closed down/blocked by the FC for the reasons best known to them therefore, they had to take the later U-turn situated at *Hashtnagri*. However, during the course of travel, the accused started vomiting and his condition got worsened, therefore, he was shifted near the window to enable him to get fresh air. This act was absolutely done in sheer good faith and on solitary humanitarian ground. Because, had the accused expired during the custody of Police, it would not only have resulted in severe condemnation of the Police Department in general but the petitioner and his colleagues would have definitely been charged/held accountable for the death of the accused in particular.

Attested

Sd/-
Appellant

7. That unfortunately, when the taxi was taking the U-turn at *Hashtnagri*, the accused abruptly opened the door, jumped out of the taxi and ironically made his escape good due to jamboree of different transport and people notwithstanding wholehearted hot pursuit of the petitioner and other constables. Moreover, the effort to search the accused continued for considerable time but it yield no results. It is also noteworthy to add that Imran Khan IHC also used his personal pistol for aerial firing at the very moment to deter the accused for surrender whereas, I and other colleagues had only one rifle which was not used in order to avoid manifest collateral human loss on one hand while on the other to save the Police department from explicit counter denunciation.

8. That promptly, Imran Khan IHC duly informed the Muharrir Police Line for making report in daily diary about the unfortunate and disturbing incident. However, to their sheer irony, FIR No. 879 dated 02-08-2023 was registered against the petitioner and other two police officials. Thereafter, they were arrested howbeit released on bail

(Copy of FIR is appended as Annex-A)

9. That thereafter, Competent Authority initiated disciplinary proceedings against the petitioner and as such, he was served with charge sheet and statement of allegations.

(Copy of charge sheet and statement of allegations are appended as Annex-B & C)

10. That the petitioner submitted elaborate and exhaustive reply denied the allegations and also termed it as fallacious, malicious

Attested

Sd/-
Aspallani

and misconceived and prayed that he may be exonerated of the allegations levelled against him in the charge sheet.

(Copy of reply is appended as Annex-D)

11. That the above reply was not deemed satisfactory and Tauheed Khan Deputy Superintendent of Police was appointed as enquiry officer to conduct departmental enquiry in the matter. He finalized the enquiry and found the petitioner guilty of the allegations and recommended him for appropriate punishment.
12. That thereafter, the petitioner was served with a final show cause notice on 06-09-2023. He duly submitted reply and denied the allegations but it met the same fate. Ultimately, he was awarded harsh and extreme penalty of dismissal from service on 20-09-2023.

(Copy of show cause notice, its reply & impugned order are appended as Annex-E, F & G)

13. That the petitioner felt aggrieved by the said order, filed a departmental appeal with the worthy Capital City Police Officer, Peshawar on 09-10-2023 and prayed that the impugned order may graciously be set aside and he may kindly be reinstated in service with all back wages and benefits. But the same was dismissed on 06-12-2023 in utter violation of law. Hence, the petitioner was constrained to file the instant revision petition.

(Copy of departmental appeal and rejection order are appended as Annex-H & I)

Attested
Sub
Appellant

GROUND S

- A. That the Competent Authority has not treated the petitioner in accordance with the mandate of **Article 4 of the Constitution of**

Islamic Republic of Pakistan, 1973 which has unequivocally laid down that it is the inalienable right of every citizen to be treated under the law, rules and policy. Therefore, the impugned orders are not sustainable in the eye of law.

B. That regular Inquiry was not conducted in a manner prescribed by law as neither any witness was examined in the presence of petitioner nor he was provided any opportunity of cross-examination in order to impeach the credibility of the witnesses if any appeared against him. Similarly, he was also not provided any chance to produce his defence in support of his version. The above defect in inquiry proceeding is sufficient to declare entire process as unlawful and distrustful. Right of fair trial is a fundamental right by dint of which a person is entitled to a fair trial and due process of law. The petitioner has been deprived of his indispensable fundamental right of fair trial as enshrined in Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Besides, there is also no iota of evidence to connect the petitioner with the commission of misconduct. Therefore, the report of the Inquiry Officer is based on conjectures, surmises and suppositions. Hence, the findings recorded by Inquiry Officer against the petitioner is perverse and is not supported by any legal evidence at all and as such, the same are not tenable under the law.

Attested

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Appellant c.

C. That the Competent Authority was under statutory obligation to have considered the case of petitioner in its true perspective and also in accordance with law besides to see whether the regular inquiry was conducted in consonance with law and that the allegations thereof were proved against him without any shadow of doubt or otherwise. However, he has completely overlooked this important aspect of the case without any cogent and valid reasons and awarded him major penalty of dismissal from

service. Thus, the impugned orders are liable to be set aside on this count alone

D. That the Competent Authority was also required to look for the mens-rea on the part of petitioner that too in juxtaposition to the manifest implications mentioned in his written replies but he did not give any weight whatsoever to the same and totally ignored it without any legal justification. Hence, the impugned order is against the spirit of administration of justice because no one can be penalized in absence of mens-rea as per various judgments of superior courts.

E. That the appellate Authority was under statutory obligation to have applied his independent mind to the merit of the case by taking notice about the illegality and lapses committed by the inquiry officer as well as by the Competent Authority as enumerated in earlier paras. Nevertheless, he failed to do so and rejected the departmental appeal unlawfully. Therefore, the impugned orders are not tenable under the law

F. That after completion of investigation, the matter was submitted to the District Public Prosecutor for the trial of accused. The District Public Prosecutor after proper scrutiny, held that it was not a fit case for the trial of the accused and as such moved an application u/s 494/249-A CrPC 1898 read-with Section 5(b) 4 sub(c) clause (ii) of the Prosecution Act, 2005 before the Hon'ble Court for the discharge/withdrawal of the accused from the charges leveled against them in the FIR, on the grounds mentioned therein. Therefore, the impugned orders are liable to be set aside on this count alone.

(Copy of application of
DPP is appended as
Annex-J)

G. That the Hon'ble Court after hearing arguments and going through the record as well as the application of DPP, arrived at

Attested

Sd/
Appellant

the conclusion that “**there is no direct evidence on case file showing negligence on the part of accused**”. Besides, the illegality/lapses committed by the investigating officer was also pointed out and as such ordered for the discharge of accused namely Imran IHC No. 866, Safi Rehman No.2266, Ali Rehman (petitioner) No. 793 and Tahir No. 6631 from the charges leveled against them in the case vide order dated 05-12-2023. It is worthwhile to mention here that once the petitioner was discharged from the criminal case by the competent court of jurisdiction, no ground whatsoever existed to remain the edifice of punishment awarded to him by the Competent Authority. Therefore, the impugned orders are not sustainable in the eye of law.

(Copy of order of Hon'ble Court is appended as Annex-K)

- H. That none of the inquiry report was provided to the petitioner to offer explanation with regard to adverse findings if any recorded against him being the requirement of law. Reliance can be placed on **PLD-1981-SC-page-176-citation (f) and 1987-SCMR-1776-(b)**. Hence, the impugned orders are not tenable under the law.
- I. That the impugned orders are against law, facts of the case and norms of natural justice. Therefore, the same are not tenable under the law
- J. That the impugned orders were passed in mechanical manner and the same are perfunctory as well as non-speaking and also against the basic principle of administration of justice. Thus, the impugned orders are bad in law.

Attested

Sd/
Appellant

PRAYER

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned orders dated 20-09-2023 and 06-12-2023 may very graciously be set aside and the petitioner may kindly be reinstated in service with all back wages and benefits.

Dated 11th December, 2023

Safir

Safi-ur-Rehman

(Ex-Constable No. 2262)

Mohalla Saidaan, Garhi Sherdad, P.O, Sherdad,

Tehsil & District Peshawar

0313-979-9593

Attested

Safir
Appellant

Amney-K

35

BEFORE THE COURT OF JUDICIAL MAGISTRATE, PESHAWAR.

THE STATEVS..... IMRAN ETC

Subject: APPLICATION FOR THE DISCHARGE/WITHDRAWAL R/W 494/249-
A Cr.PC OF THE ACCUSED FROM THE CHARGES LEVELED
AGAINST HIM, IN CASE FIR NO. 879 DATED: 02.08.2023,
U/S 223/224/118PA/15AA PPC, F.S SGH, PESHAWAR.

Respectfully Showeth:

That the instant case was registered on the report of complainant against the accused. During scrutiny the case was found not fit for trial on the following grounds.

Grounds:-

- That as per available record the occurrence has taken place within the criminal jurisdiction of PS SGH, Peshawar, however neither any police officer attended the occurred nor the same was reported by any officer of concerned PS Hence creates doubts in the reported of occurrence.
- That as per record the place of occurrence is a busy place, however even the statement of a single witness has not been recorded.
- That the spot and surrounding area has duly been covered with CCTV cameras but no such recording has been collected or send to FSL for connecting the accused with the offence.
- That no direct evidence is available on case file regarding the negligence of accused.
- That no evidence is available on case file regarding the presence, manner and mode of occurrence.
- In such like circumstances the trial of the accused would be a futile exercise, wastage of precious time of the court and the ultimate result would be the acquittal of the accused. So keeping in view the above facts, circumstances and available evidence on record, there are sufficient reasons for non-prosecution of the Case U/S 5(B), 4 sub (c) clause (ii) of the Prosecution Act 2005 r/w 494/249A Cr.PC.

It is, therefore, requested that the accused charged in the aforementioned case, may kindly be discharged of the charges leveled against him for deficient, weak evidence and for non-prosecution by the Prosecution Agency.

Attested
Sub
Appellant

Approved by

Dr.
(SHAHSAUD)
Deputy Public Prosecutor
Peshawar

DISTRICT P.P.
District Public Prosecutor
Peshawar

Annex - L

36

In The Court Of
MUHAMMAD SHOAIB JUDICIAL MAGISTRATE-III
Peshawar

3.1
17-11-23

Case No. 423/2

State VS Imran & Others.

FIR No. 879

Dated. 02.08.2023

U/S: 223/224 PPC

Police Station: SGH, Peshawar

11/1/24

Order... 05/12/2023.

SPP for State present. Accused Qamar Aziz absconding.
Accused Imran, Safi Rehman and Ali Rehman present on bail.
Accused Tahir on bail absent.




This Court, through this order, hereby addresses the application put forth by the learned prosecutor seeking withdrawal from the prosecution of the case under Section 494 Cr.P.C.

Having duly considered the arguments presented and having examined the relevant records, it is observed that the accused Imran IHC, Safi Rehman 2266, Ali Rehman 793 and Tahir 6131 are charged under FIR No. 879, dated 02/08/2023, u/s 223/224 PPC at Police Station SGH, Peshawar. The prosecution, represented by Shah Saud Dy.PP, Peshawar, has submitted the present application for withdrawal under Section 494 Cr.P.C., contending that the case against accused mentioned-above is weak from the prosecution's standpoint.



05/12/23
Muhammad Shoaib
Judicial Magistrate-III
Peshawar

Upon perusal of the records, it has come to light that although the FIR in question has been lodged against accused above, however, neither any Police officer of Police Station SGH, Peshawar attended the occurrence nor the same was reported by any officer of concerned Police Station. No CCTV footage has been secured by the investigating officer, notwithstanding the occurrence taking place under the surveillance of CCTV cameras. No statement of eye witness is available on case file regarding the negligence of the above-mentioned accused. No direct evidence is

24121	پشاور بار ایسوسی ایشن، خیبر پختونخوا
Rizwanullah	ایڈوکیٹ:
hc-09-0050	بار کونسل ایسوسی ایشن نمبر
03005965843	رابطہ نمبر:
	
	

Honble Chairman, KPK Service Tribunal, Peshawar

Appellant	مخائب	Service Appeal	دعویٰ:
Safi-ur-Rehman			علت نمبر:
			موزعہ:
SP, Headquarters Peshawar			جرم:
and others.			تھانہ:
باعت تحریر آگہ			

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام Peshawar کے لیے Rizwanullah کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقررات ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار 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 وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کے ساتھ ساتھ داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائزہ التوائے مقدمہ کے سبب سے ہوگا کو اپنی تاریخ پیشی تک تمام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ دستخط ہو سکے۔

Alt. 5/1/2024
T. A. A.

المرقوم: 8/1/2024

بد وادعہ بد وادعہ
Peshawar only