


04.11.2019


Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Mir Faraz, DSP (Legal) for the respondents present. Representative of respondents submitted para-wise reply on behalf of respondents No. 1 to 3 which is placed on record. Case to come up for rejoinder and arguments on 04.12.2019 before D.B at Camp Court Swat.


(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

04.12.2019

Lawyers are on strike on the call of Bar Association. Adjourn. To come up for further proceedings/arguments on 08.01.2020 before D.B at Camp Court, Swat.


Member



Member
Camp Court, Swat


08.01.2020


Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Ishaq, Head Constable for the respondents present. Appellant submitted application of withdrawal of the present service appeal on the ground that his grievance has been redressed. Application is placed on record. In this regard signature of the appellant was also obtained at the margin of order sheet as a token of proof. Accordingly, the present service appeal is dismissed as withdrawn. File be consigned to the record room.

ANNOUNCED

08.01.2020


(Hussain Shah)
Member
Camp Court Swat


(M. Amin Khan Kundi)
Member
Camp Court Swat


08.1.20

08.08.2019

Mr. Kamran Khan, Advocate on behalf of counsel for the appellant present.

An application for transfer of the appeal to Camp Court Swat has been submitted. It is noted in the application that the appellant belongs to Swat while some of the respondents are also performing their official duty at Swat.

The application is allowed and the office is directed to post instant appeal before Touring Bench at Swat on 04.09.2019.



Chairman

04.09.2019

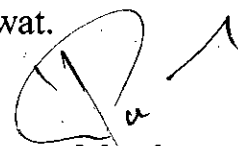
Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ex-Constable) has filed the present service appeal against the order dated 01.01.2019 whereby he was awarded major punishment of dismissal from service.

Points urged need consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 04.11.2019 before S.B at Camp Court, Swat.

Appellant Deposited
Security & Process Fee

6/9/19






Member
Camp Court, Swat

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 599/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/05/2019	<p>The appeal of Mr. Barkat Ali presented today by Mr. Muhammad Javed Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR = 9/5/19</p>
2-	10/05/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21/06/19</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>None present on behalf of the appellant. Notice be issued to appellant and his counsel for attendance and preliminary hearing for 08.08.2019 before S.B.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member</p>
	21.06.2019	

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 599 /2019

Barkat AliAppellant

VERSUS

Provincial Police Officer and othersRespondents

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5	Application for condonation of delay		10-11
6	Copy of the Mad Report No. 21 dated 29/09/2018	"A"	12-15-
7	Copy of the order dated 01/01/2019	"B"	(16), 13
8	Copy of the departmental appeal	"C"	(17) (18) 14
9	Copy of the FIR	"D"	(19) 15
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Appellant
Through Counsel

B. Ali

Muhammad Javaid Khan
Advocate, Supreme Court of
Pakistan

Office: Allah-o-Akbar Masjid,
College Colony, Saidu Sharif, swat
Cell: 0343-9607492

①

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 599 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 733

Dated 09/5/2019

Barkat Ali S/o Said Umar R/o Sheen Dand, Guli Bagh,
Tehsil Charbagh, District Swat

.....Appellant

VERSUS

- 1) Provincial Police Officer Government of Khyber
Pakhtunkhwa at Central Police Office (CPO) Peshawar.
- 2) Deputy Inspector General of Police / Regional Police Officer
(RPO) Malakand Region at Saidu Sharif, Swat
- 3) District Police Officer Swat at Gulkada, Saidu Sharif, District
Swat

.....Respondents

Filed to-day

Registrar

9/5/19

Service Appeal Under Section 4 of Service
Tribunal Act read with other relevant provisions
against the impugned order dated 01/01/2019 issued
by respondent No.3, whereby the appellant has

been dismissed from service illegally, and unlawfully and unconstitutional.

PRAYER:

On acceptance of this service appeal the impugned order dated 01/01/2019 of respondent No. 3 may be declared illegal, unlawful and the appellant may be reinstated in service with all back benefits including the salaries etc. of the intervening period.

Any other relief, deemed fit and necessary in the given circumstances of the case may also be awarded in favor of appellant against respondents.

Respectfully Sheweth:

The appellant submits as under:

1. That the appellant was appointed as constable on 24/11/2009.
2. That from the date of appointment till the date of the impugned order dated 01/01/2019, the appellant performed his

duties honestly, bravely to the utmost satisfaction of superior officers.

- 3. That the bad days of the appellant started when on 29/09/2018, the SMG rifle allotted to Constable Anwar Zeb No. 2854/R, disappeared. (Copy of the Mad Report No. 21 dated 29/09/2018 is attached herewith as annexure "A")
- 4. That thereafter, an enquiry on the back of the appellant was conducted illegally, unlawfully and unconstitutionally, without following the codal formalities.
- 5. That the appellant was then dismissed from service vide order dated 01/01/2019 illegally, unlawfully and unconstitutionally. (Copy of the order dated 01/01/2019 is annexure "B")
- 6. That the appellant then filed a departmental appeal within ten days to the respondent No.2, which has not been

decided up till now. (Copy of the departmental appeal is annexed herewith as annexure "C").

7. That the impugned order dated: 01/01/2019 is illegal, unlawful, against facts available, unwarranted inter alia on the following grounds amongst others.

GROUNDS:

i) That the impugned order dated 01/01/2019 is illegal, unlawful, unconstitutional, and base on mala-fide which is very much clear from the record on file.

ii) That a criminal case FIR No. 456, dated 04/05/2018, U/S 409-PPC, P.S Khurshid Khan Shaheed Khwazakhela, District Swat is still

under investigation. (Copy of the FIR is attached herewith as annexure "D").

- iii) That no formal enquiry has been conducted before the imposition of major penalty of dismissal from service, which is illegal, unlawful and unconstitutional.
- iv) That the appellant has never been associated with any sort of enquiry nor given opportunity to cross examine the witnesses if any, hence the principals of natural justice as well as principals laid down in Article 10 (a) of the constitution has been blatantly violated.
- v) That from the face of the record, it is very much clear that the appellant has been made escape goat, just to save the actual accused if any.

vi) That other grounds not specifically raised will be argued with the permission of this Honorable Court at the time of arguments.

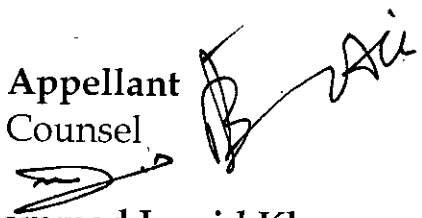
8. That this appeal is being filed against the order dated: 01/01/2019 of respondent No. 3, against which a departmental appeal has been filed within ten days before respondent No.2, which has not been decided as yet, hence this Honorable Tribunal has got jurisdiction and this appeal is well within time.

It is therefore humbly prayed:-
that On acceptance of this service appeal the impugned order dated 01/01/2019 of respondent No. 3 may be declared illegal, unlawful and the appellant may be reinstated in service

with all back benefits including the salaries etc. of the intervening period.

Any other remedy which is just, appropriate and efficacious may also be awarded in favor of the appellant please.

Appellant
Through Counsel



Muhammad Javaid Khan
Advocate, Supreme Court of
Pakistan

Dated:06/05/2019

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. _____/2019

Barkat AliAppellant


VERSUS

Provincial Police Officer and othersRespondents

Service Appeal
AFFIDAVIT

I, Barkat Ali S/o Said Umar R/o Sheen Dand, Guli Bagh, Tehsil Charbagh, District Swat, do hereby solemnly affirm and declare on oath that all the contents of this Service Appeal are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Honorable Court.

Identified by,


Muhammad Javaid Khan
Advocate, Supreme Court of Pakistan

DEPONENT


Barkat Ali



**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. _____/2019

Barkat AliAppellant

VERSUS

Provincial Police Officer and othersRespondents

Service Appeal

ADDRESSES OF THE PARTIES

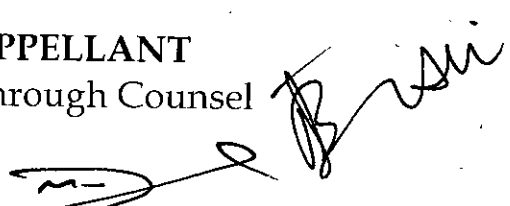
ADDRESSES OF THE APPELLANT

Barkat Ali S/o Said Umar R/o Sheen Dand, Guli Bagh,
Tehsil Charbagh, District Swat
CNIC: 15602-5673659-7
Cell:

ADDRESS OF THE RESPONDENTS:

1. Provincial Police Officer Government of Khyber Pakhtunkhwa at Central Police Office (CPO) Peshawar.
2. Deputy Inspector General of Police / Regional Police Officer (RPO) Malakand Region at Saidu Sharif, Swat
3. District Police Officer Swat at Gulkada, Saidu Sharif, District Swat

APPELLANT
Through Counsel


Muhammad Javaid Khan
Advocate, Supreme Court of
Pakistan

**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. _____/2019

Barkat Ali *Appellant*

VERSUS

Provincial Police Officer and others Respondents

**APPLICATION FOR CONDONATION OF DELAY OF FEW
DAYS IN FILING THE INSTANT SERVICE APPEAL.**

Respectfully Sheweth:

The applicant / appellant submits as under:-


1. That the above Service appeal has been filed before this Hon'ble Tribunal, in which no date of hearing has yet been fixed.
2. That the contents of the above mentioned Service Appeal along with the contents of the annexures may be considered as an integral part of this application.
3. That there may be a few days in filing the instant service appeal, which is not deliberate.
4. That valuable rights of the appellant are involved in the present service appeal.
5. That if the condonation prayed for is not granted, then there will be an irreparable loss to the applicant / Appellant.

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It is therefore respectfully prayed that on acceptance of this application an order prayed for may be passed.

Any other remedy which is just, appropriate and efficacious may also be awarded in favor of Appellant please.

APPELLANT
Through Counsel

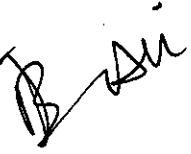

Muhammad Javaid Khan
Advocate, Supreme Court of
Pakistan

Affidavit:

It is stated on oath that contents of this application are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Court.

Deponent

Barkat Ali





نقلہ 21 روزنامہ 29.09.2018

مدد 21 آند / رپورٹ SHO وقت 16:00 بجے مورخہ 29.09.2018 اس وقت کنسٹیبل انور زیب R/2854
 متعینہ تھانہ خورشید خان شہید بہ حاضر دفتر آکر یوں رپورٹ کرتا ہے۔ کہ مجھ پر تھانہ کے کوت مال خانہ سے بمورخہ
 08.09.2018 رائیٹل از قسم SMG نمبری 19055990 ڈپٹی کیلئے تقسیم تھا۔ مورخہ 09.09.2018 کو بوجہ
 ایر جنسی گھر خود گیا تھا۔ رائیٹل متذکرہ کو میں نے اپنے رہائشی کمرہ نزد تھانہ پرائیویٹ بلڈنگ میں اپنے بکسہ میں رکھا
 تھا۔ جب گھر خود سے واپس آیا تو بکسہ کا ملاحظہ کر کے بکسہ کے اندر رائیٹل متذکرہ غائب پایا۔ کافی معلومات و پتہ براری
 کے بعد دستیاب نہ ہو سکا۔ میرے ساتھ کمرہ میں کنسٹیبلان (1) سیف اللہ R/2178، (2) برکت علی
 R/2103، (3) تاج محمد SPF/2910 رہائش پذیر ہیں۔ اسی طرح ہمارے اسی بلڈنگ میں دوسرے کمرہ میں
 کنسٹیبل سیف اللہ R/369 بھی رہائش پذیر ہے۔ میرا کسی کے ساتھ کوئی عداوت نہیں ہے، لیکن میرا شک یہ کہ
 رائیٹل متذکرہ بالا کنسٹیبلان بالایا کسی اور نے پس و پیش کیا ہے۔ برائے اطلاع رپورٹ لکھنے آیا ہوں۔ رپورٹ لکھی
 جا دیں غور ہوئیں۔ نشان انگوٹھا۔ کاروائی تھانہ پس حسب گفت سائیل رپورٹ درج صدر ہو کر پڑھکر سنایا سمجھایا گیا،
 جس نے در سگی کا انگوٹھا ثبت کی جسکی میں تصدیق کرتا ہوں۔ تھانہ کے ساتھ پوسٹ پرائیویٹ بلڈنگ کل 6 کروں پر
 مشتمل ہے۔ جس میں پولیس البکاران کرایہ پر رہائش پذیر ہے۔ رپورٹ کنندہ کارپورٹ درج روزنامہ ہو کر نقلہ
 علیحدہ مرتب کر کے بغرض مناسب حکم آفسران بالا کے خدمت میں ارسال ہوگی۔

جناب عالی!

نقل بمطابق اصل ہے۔

MHC-PS-KKS

C-25

(13) (17)

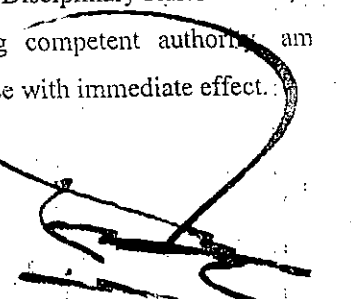
ORDER

This order pertains to show cause notice issued to Constable Barkat Ali No. 2103 of this district Police. He while posted to Police Station Khwaza Khela was alleged of gross misconduct as it was reported that official rifle bearing No. 19055990 (made in China) allotted to Constable Anwar Zeb No. 2854 had been stolen away from him (Anwar Zeb) on 26-09-2018. A preliminary enquiry was carried out into the matter by SDPO Khwaza Khela Circle who reported that Constable Anwar Zeb No. 2854, being custodian of the rifle was completely responsible for missing of the same but the role of the delinquent Constable in the incident could not be ruled out as he was roommate of Constable Anwar Zeb and was present at the time of occurrence.

He was issued show cause notice vide this office No. 464/PA, dated 19-10-2018 to explain his position. He was summoned in orderly room and heard in person but he failed to present any cogent reason to rebut the allegations leveled against him. He was given considerable time to trace the rifle but he failed to recover the same.

The Enquiry Report reveals that the delinquent Constable was roommate of Constable Anwar Zeb No. 2854 who was in possession of the Govt. rifle. It has also been reported that the Constable under enquiry was present at the time of occurrence therefore his involvement in missing of the rifle could not be ruled out. This is blatant violation of discipline and code of conduct for a Police Officer. His behavior is detrimental to discipline and his further retention in Police is bound to affect conduct of other personnel of the force. Hence, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules - 1975, I Syed Ashfaq Anwar, PSP, District Police Officer, Swat being competent authority am constrained to award him major punishment of dismissal from service with immediate effect.

Order announced.


District Police Officer
Swat

O.B. No. 01.01

Dated: 01.01.2019

Copy to:-

1. Establishment Clerk
2. OSI

For necessary action, please.

بمخبر جناب و عزت الماب ڈی، ٹی، جی صاحب بمقام سید و شریف سوات

عنوان: درخواست در بارہ بحالی محکمہ پولیس میں بحیثیت کانسٹیبل

جناب عالی!

سائل حسب ذیل عرض رسان ہے!

- (01) یہ کہ سائل تھانہ KKS میں بحیثیت گنر دیگر نفری پولیس (a) انور زیب (b) سیف اللہ (c) تاج محمد کے ساتھ ایک ہی کمرہ میں رہائش پذیر تھا۔
- (02) یہ کہ سائل مورخہ 23-09-018 حسب معمول ڈیوٹی پر موجود تھا۔
- (03) یہ کہ سائل کے ساتھ انور زیب کانسٹیبل نے رابطہ کر کے اسے بتلایا کہ مجھ پر تقسیم شدہ سرکاری رائلٹل SMG غائب ہو چکا ہے موبائل گاڑی میں چیک کریں۔
- (04) یہ کہ سائل نے بعد چھان بین کانسٹیبل انور زیب کو بتلایا کہ رائلٹل مذکورہ سے لاعلمی ظاہر کی۔
- (05) یہ کہ سائل کے عدم موجودگی میں انور زیب سے رائلٹل پس و پیش ہو چکا ہے۔
- (06) یہ کہ سائل اس معاملہ میں بالکل بے گناہ ہے
- (07) یہ کہ سائل کی بے گناہی کو نظر انداز کرتے ہوئے بحوالہ OB نمبر 01 محرمہ یکم جنوری 2019 محکمہ پولیس سے کنٹریکٹ ختم کر دیا گیا ہے۔

سائل نے سال 2009 سے محکمہ پولیس میں ایک نے داغ ماضی گزارا ہے اور محکمہ پولیس میں مزید نوکری کرنے کا اذ حد شوق رکھتا ہے۔ اس طرح سائل ایک غریب اور مفلس خاندان ایک واحد کفیل ہے اور گھر میں دوسرا کوئی کام کاج کا قابل نہیں ہے لہذا بذریعہ درخواست ہذا استدعا ہے کہ سائل کی بیوی بچوں پر مرحمت فرما کر سائل کو دوبارہ محکمہ پولیس میں اپنے ہی عہدہ پر دوبارہ بحال کرنے کا حکم صادر فرمائیں۔

العبد


برکت علی سابقہ کانسٹیبل نمبر 2103 تھانہ KKS ضلع سوات




رابطہ نمبر: 0345-6074068

(1) نام (زادہ نام) ولدیت SHO . سکونت MKS موبائل نمبر 0346 9170 849	(15)
(2) نام _____ ولدیت _____ سکونت _____ CNIC نمبر _____ موبائل نمبر _____	(2) نام _____ ولدیت _____ سکونت _____ CNIC نمبر _____ موبائل نمبر _____
(3) نام _____ ولدیت _____ سکونت _____ CNIC نمبر _____ موبائل نمبر _____	(3) نام _____ ولدیت _____ سکونت _____ CNIC نمبر _____ موبائل نمبر _____
ہمدانی کے اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو	ہمدانی کے اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو
تاریخ و وقت	تاریخ و وقت

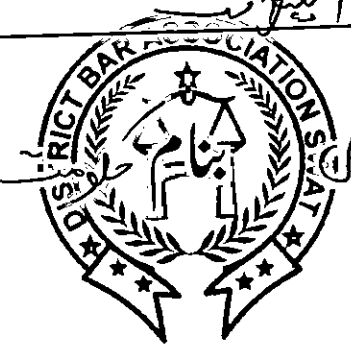
ابتدائی اطلاع نیچے درج کرو۔ کانسٹیبل انور زیب 2854 نے کوالم مداح
 29/9/18 کو اطلاع درج کی جو کہ ذیل پر مداح احمد انور SHO مورخ 29/9/18 وقت 16:00 بجے
 وقت کانسٹیبل انور زیب 2854 صنعتہ قلعہ MKS بجائے دفتر آکر یوں رپورٹ کرتا ہے کہ
 نامہ کونٹ مال خانہ سے مورخ 9/9/18 کو یو جی ایف کے نام پر خود لکھا تھا۔ راتینیل متذکرہ کو صینے اپنے رپارٹنگ
 نامہ پر ایسیویٹ ملڈ ٹف میں اسے لکھ کر لکھا تھا۔ جب تک خود سے واپس آیا۔ تو لکھ
 کر کے لکھ کر انڈر رائٹنگ متذکرہ کا تباہ کیا۔ کاشی معلومات، لکھ کر اس کے بعد دستیاب
 رہا۔ صینے سے لکھ کر میں کانسٹیبل انور زیب 2854 (2) پر کونٹ علی 203 (3) تاج ملڈ 29/9/18
 پر لکھ کر میں اس طرح بھارت اس بلڈنگ میں دوسرے کمرے میں کانسٹیبل سیف اللہ 368 بھی
 سے لکھ کر میں صینے کسی کے سائی کوئی عداوت نہیں ہے لیکن صینے کانسٹیبل متذکرہ بالاد
 ان بالان یا کسی اور سے کس دیش لکھا ہے عدانے اطلاع رپورٹ لکھ کر آیا ہے۔ رپورٹ لکھ کر
 میں انکسٹنٹ ماروائی قلعہ میں جب گھنٹہ ساٹھ بجی اور درج صوبہ ہو کر پڑھ کر سنایا
 آیا تھا جس سے درستی لکھا گیا تھا۔ کانسٹیبل کی جگہ میں لکھ کر آیا ہے۔ قلعہ کے سائی سے
 وقت ملڈ ٹف کل یہ کمرے پر مشتمل ہے جس میں پولیس آفیسر ان کریم پر رپارٹنگ لکھ کر
 لکھ کر کا رپورٹ درج اور ناچہ ہو کر لکھ کر لکھ کر لکھ کر لکھ کر لکھ کر لکھ کر لکھ کر
 مدت میں ارسال ہوئی۔ جب تک اطلاع ابھی ہے۔ رپورٹ بالان پر رپورٹنگ لکھ کر لکھ کر
 رپورٹ رپورٹ سے رپورٹ لکھ کر لکھ کر لکھ کر لکھ کر لکھ کر لکھ کر لکھ کر لکھ کر
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SHO . P.S. MKS
 04.05.18

Rs. 10/-

 <p>بار کونسل نمبر: 4078 بار ایسوسی ایشن نمبر: 1108 رابطہ نمبر: 03439607492</p>	  <p>49759</p>
<h2>ڈسٹرکٹ بار ایسوسی ایشن سوات</h2>	

بعدالت جناب: سید محمد سعید کمرہ پیروی خیرہ کھنڑا / سوات

 <p>مخانب: 1 لیسٹ منٹ بکریٹ علی</p>	<p>دعوی اور خواست (سید سعید علی)</p> <p>علت نمبر: _____ مورخہ: _____ جرم: _____ تھانہ: _____</p>
<h3>باعت تحریر آگہ</h3>	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے برائے پیروی مقدمہ

آن مقام سوات کیلئے محمد جاوید الہی و کمرہ کھنڑا کو مقرر کر کے اقرار کیا جاتا ہے، کہ صاحب موصوف کو مقدمہ کی کل کارروائی کو کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث کرنے، دعویٰ، جواب دعویٰ، اقبال دعویٰ، اور درخواست برائے ہر سبزی مقدمہ، منسوخی ڈگری یکطرفہ، اجراء و پیروی کرنے کا مختار ہوگا۔ نیز دائر کرنے اپیل نگرانی، نظر ثانی و پیروی کرنے کا مختار ہوگا۔ اور مقدمہ مذکورہ کیلئے کل وقتی یا جزوی کارروائی کیلئے کسی دیگر وکیل یا مختار قانون کو اپنے ہمرازہ یا اپنے بجائے تقریر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ اختیارات حاصل ہوں گے، اور اس کا ساختہ و پروا ختہ منظور قبول ہوگا، بدوران مقدمہ جو خرچہ و ہر جانہ کسی بھی سبب سے حاصل ہوگا، وہ وکیل موصوف وصول کرنے کا حقدار ہوگا، کوئی تاریخ پیشی مقام مذکورہ بالا سے باہر ہو، تو وکیل صاحب پیروی مقدمہ کرنے کے پابند نہ ہوں گے، مقدمہ کسی عدالت میں بعدم پیروی خارج ہونے یا ڈگری یکطرفہ ہونے کے صورت میں وکیل صاحب ذمہ دار نہیں ہوں گے،

لہذا کالت نامہ لکھ دیا کہ سندر ہے

مقام سوات کے لئے منظور ہے۔

بکریٹ علی و کمرہ کھنڑا

ایڈوکیٹ ادستخط:

الرقوم: 8/5/19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 599/2019

Barkat Ali S/O Said Umar R/O Sheen Dand, Guli Bagh Tehsil Charbagh District,
Swat

..... Appellant

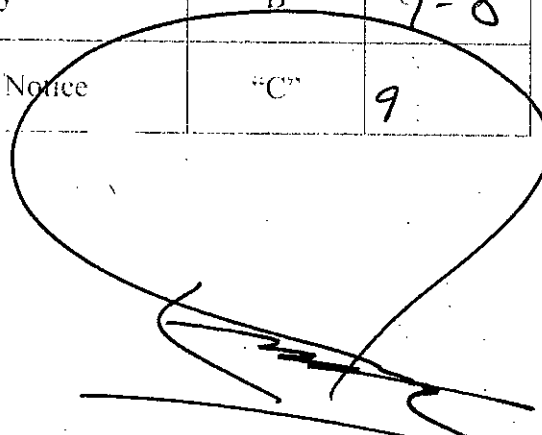
VERSUS

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

..... Respondents

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3	Authority Letter	-	5
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5	Copy of Enquiry	"B"	7-8
6	Copy of Show Cause Notice	"C"	9


District Police Officer, Swat
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 599/2019

Barkat Ali S/O Said Umar R/O Sheen Dand, Guli Bagh Tehsil Charbagh District,
Swat

..... Appellant

VERSUS

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

..... Respondents

PARAWISE REPLY BY RESPONDENTS

Respectfully Shewith,

PRELIMINARY OBJECTIONS

1. That the appeal is badly barred by Law & limitation.
2. That the appellant has got no Cause of action and locus standi to file the present appeal.
3. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
4. That the appellant has not come to the Tribunal with clean hands.
5. That the instant appeal is not maintainable in its present form.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.

FACTS:

1. Pertains to record, hence needs no comments.
2. Incorrect. The performance of appellant during service was not satisfactory and he has been awarded 03 minor punishments for wilfull absence from official duty. List enclosed as annexure "A".
3. Correct to the extent that SMG rifle allotted to Constable Anwar Zeb was found missing/stolen from the room where appellant and Anwar Zeb & other were residing together. Furthermore, the reputation of the appellant was not good and the role of appellant in missing of rifle could not be ruled out which is blatant violation of discipline and code of conduct for Police personnel.
4. Incorrect. Preliminary enquiry through Sub Divisional Police Officer, Circle Khwazakhela was conducted wherein the appellant and others were found responsible for missing of Government SMG rifle, subsequently Show Cause

2

Notice under rule 5 (3) of KPK Police Rule 1975 was issued to the appellant and reply of appellant to the Show Cause Notice was found unsatisfactory. Copies of preliminary enquiry and Show Cause Notice are enclosed as annexure "B" and "C".

5. Incorrect. Appellant and other officials were awarded appropriate punishment after observing all codal formalities required under the KPK Police Rules 1975.

6. Pertain to record, hence needs no comments.

7. Incorrect. The Orders of respondents are well reasoned, speaking and based on facts and the same has been wrongly challenged before this honorable.

Tribunal through unsound reasons, *therefore the same may hardly be dismissed on the following grounds: -*

GROUND:

i. Incorrect. Orders of the respondent are legal, lawful and based on facts and rules. There is no malafide on the part of respondents while dealing the serious misconduct of appellant.

ii. Correct to the extent that Government property was found missing/stolen by the appellant and others, therefore besides departmental action, criminal case FIR No. 465 dated 04/05/2019 U/S 409 PPC P.S Khurshid Khan Shaheed has also been registered and the appellant and others officials have been found responsible for the offence U/S 409 PPC.

iii. Incorrect. Enquiry through Sub Divisional Police Officer, Circle Khwazakhela was conducted against the appellant and others, wherein the charges of missing the rifle were established against the appellant and thereafter valid and legal order for imposition of punishment was passed.

iv. Incorrect. All the opportunities of personal hearing and defence were provided to the appellant during course of departmental probe.

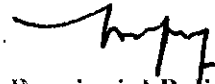
v. Incorrect. The appellant and other responsible officials being custodian of rifle were given considerable time to trace the rifle but they failed to recover the same.

vi. That the respondents may be allowed to add any other grounds at the time of hearing of the appeal.

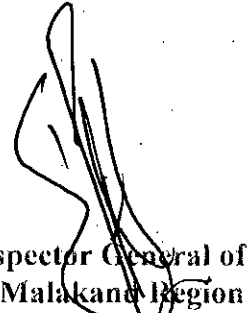
8. Pertains to record, hence needs no comments.

PRAYER:

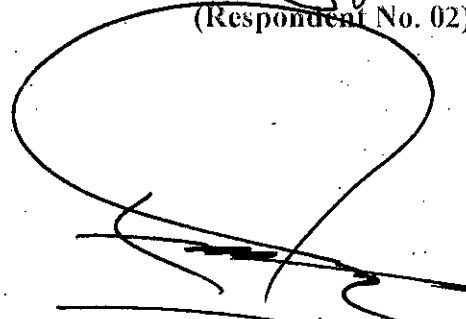
Keeping in view the above facts and circumstances, it is humbly prayed that the appeal of appellant being devoid of legal force may kindly be dismissed with costs.



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



Deputy Inspector General of Police
Malakand Region
(Respondent No. 02)



District Police Officer Swat
(Respondent No. 03)

Service Appeal No. 599/2019

Barkat Ali S/O Said Umar R/O Sheen Dand, Guli Bagh Tehsil Charbagh District,
Swat

..... Appellant

VERSUS

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

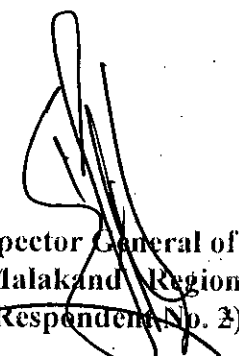
..... Respondents

AUTHORITY LETTER

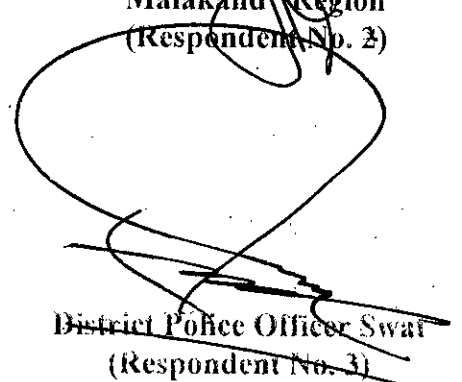
We, the above respondents do hereby authorize Mr. Mir Faraz Khan DSP/Legal Swat & Mr. Khawas Khan SI Legal to appear before the Tribunal on our behalf and submit reply etc in connection with titled Service Appeal.



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



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



District Police Officer Swat
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

5

Service Appeal No. 599/2019

Barkat Ali S/O Said Umar R/O Sheen Dand, Guli Bagh Tehsil Charbagh District,
Swat

..... Appellant

VERSUS

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

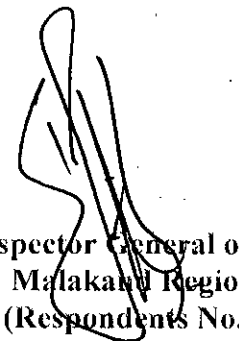
..... Respondents

AFFIDAVIT

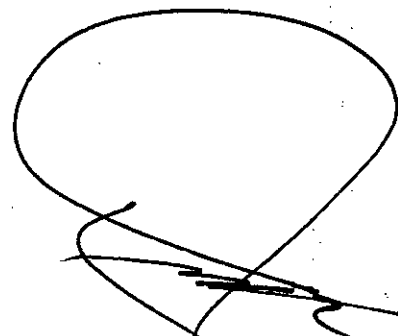
We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from the honorable Tribunal.



Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
(Respondents No.1)



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



District Police Officer, Swat
(Respondents No.3)

Serial No.

15. CENSURES AND PUNISHMENT

(1)

Charge: Absented from duty with effect from 7-3-10 to 21-3-10

Punishment: fourteen days (14) counted as leave with out pay - Awarded minor punishment of "Censure"

OB No 75
14-4-10

Df/smt

Charge: Absented from duty with effect from 24-11-09 to 25-11-09

Punishment: counted as leave without pay

OB 216 dt 6-12-09

Df/smt

Charge: Absented from duty with effect from 16-11-09 to 21-11-09

Punishment: counted as leave without pay

OB No 201
16-11-09

Df/smt

Charge: Absented from duty with effect from 10-11-09 to 11-11-09

Punishment: - Fined Rs: 50 only.

OB No. 154

23-7-10

Df/smt

Annex B ⑦



**OFFICE OF THE SUB DIVISIONAL POLICE
OFFICER CIRCLE KHWAZA KHELA SWAT**

Email: sdpokkc@gmail.com

Ph: 0946-745106

To: The District Police Officer,
District Swat.

No: 1656/R, Dated: 05/10/2018.

Subject: **MISSING OF OFFICIAL RIFLE SMG NO; 19055990 ALONG
WITH 30 ROUNDS.**

Memorandum:

Kindly refer to the worthy DPO Swat directions dated 02.10.2018, it is submitted that as per directions preliminary enquiry conducted into the matter. During enquiry statements of the following officers and officials recorded. Relevant record also checked and attached with enquiry.

S. No	Name and Designation	Remarks
01	HC Imran No; 1059	MHC police station Khursheed Khan Shaheed
02	HC Khan Baz No; 1339	KHC police station Khursheed Khan Shaheed
03	Constable Anwar Zeb No; 2854	Driver official vehicle police station KKS
04	Constable Saifullah No; 2178	Driver official vehicle police station KKS
05	Constable Rashid Khan No; 3124	Driver official vehicle police station KKS
06	Constable Fazal Haq No; 3137	AKHC police station Khursheed Khan Shaheed
07	Constable Saifullah No; 369	Police station Khursheed Khan Shaheed
08	Constable Barkat Ali No; 2103	Police station Khursheed Khan Shaheed
09	SPF Taj Muhammad No; 2910	Police station Khursheed Khan Shaheed

Statements and record are showing that on 08.09.2018 official SMG No; 19055990 along with 30 rounds were issued to constable driver Anwar Zeb No; 2854 for official duty from Kot of police station Khursheed Khan Shaheed as per issuing register maintained by KHC and since then the same official SMG remained in the custody of constable Anwar Zeb No; 2854. On 29.09.2018 vide daily diary No; 21, dated 29.09.2018 at 16:00 hours constable Anwar Zeb No; 2854 reported the missing of SMG along with 30 rounds to MHC police station Khursheed Khan Shaheed.

Driver constable Anwar Zeb No; 2854 mentioned in his statement that on 06.09.2018 he officially received SMG No; 19055990 from the Kot of police station Khursheed Khan Shaheed in connection with official duty. After duty as per routine he was to put the same SMG in his personal box laying inside in his rented room.

Stated that beside him other three constables namely Barkat Ali No; 2103, Saifullah No; 2178 and Taj Muhammad No; 2910/SPF are also residing with him in the same room situated adjacent to the building of police station.

On 24.09.2018 when he checked his box he found missing his official SMG from his box he enquired from his roommates but they show their ignorance. After searching he found no clue then he reported the matter to MHC who recorded report into the daily diary vide daily diary No; 21, dated 29.09.2018.

During cross examination stated that he has doubt over one constable Saifullah No; 369 because he is also residing in the same building in another rented room and his previous reputation is not good.

MHC Imran in his statement mentioned that constable Anwar Zeb No; 2854 when reported the matter he lodged report into the daily diary vide daily diary No; 21, dated 29.09.2018 and a copy sent to the high ups.

Constable Saifullah No; 2178, Barkat Ali No; 2103, Taj Muhammad No; 2910/SPF roommates of Anwar Zeb, Rashid Khan No; 3124 driver constable, Khan Baz No;139/KHC, Fazal Haq No; 3137/AKHC and constable Saifullah No; 369 also examined and their statements recorded in detail. All the above officers shown their ignorance in the subject matter.

"During enquiry statement recorded and record, obtained showing that"

- ✓ Official SMG No; 19055990 along with 30 rounds has been issued properly from police station Khursheed Khan Shaheed Kot to constable Anwar Zeb No; 2854 as per issuing register and since then remained in his personal custody.
- ✓ Constables Barkat Ali No; 2103, Saifullah No; 2178 and Taj Muhammad No; 2910/SPF verified roommates of constable Anwer Zeb No; 2854 and having their presence at the station in the cited period.
- ✓ Constable Saifullah No; 369 also residing in the same building as per statement of constable he is a suspect person in the subject matter, while general reputation of the said constable is also reportedly not good.
- ✓ KHC Khan Baz No; 1339 and AKHC Fazal Haq No; 3137 also responsible because they ignored to check record born on their charge as the missing SMG remained in the custody of constable Anwar Zeb No; 2854 for a long period and went out of the station in the subject matter.

Keeping in view the above facts, statements and record it is crystal clear that every police officer is personally responsible for the safe custody and care of every weapon, accessory there to issued to him until it is returned to the custody of the officer responsible for issuing that, hence Anwar Zeb No; 2854 is completely responsible for the missing of the cited official SMG and rounds, however the role of the rest above mentioned officials except Rashid Khan No; 3124 cannot be ignored.

It is therefore constables Anwar Zeb No; 2854, Saifullah No; 369, Barkat Ali No; 2103, Saifullah No; 2178, Taj Muhammad No; 2910/SPF, Khan Baz No; 1339/KHC, and Fazal Haq No; 3137/AKHC recommended for proper departmental proceeding to probe the matter please.

Submitted please.

Sub: *Divisional Police Officer,*
Circle Khwaza Khela Swat.

PA.
Scri. Imran

official police
of SMG.

12

Anwar (9)

OFFICE OF THE DISTRICT POLICE OFFICER, SWAT.

No. 464 PA, Dated Gulkada the 19-10-2018

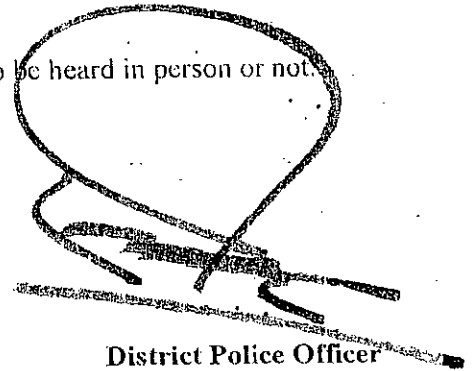
SHOW CAUSE NOTICE.

(Under Rule 5 (3) K.P.K Police Rules, 1975)

You Constable Barkat Ali No. 2103 while posted to Police Station Khwaza Khela have rendered yourself liable to be proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct/s:

Whereas, it was reported that official rifle, bearing No. 19055990, allotted to Constable Anwar Zeb No. 2854 had been stolen away from his possession on 26-09-2018. A preliminary enquiry was carried out into the incident by SDPO Khwaza Khela Circle. The Enquiry Report revealed that Constable Anwar Zeb, being the custodian of the rifle, was completely responsible for missing of the same but your role in the incident could not be ruled out as you are roommate of Constable Anwar Zeb and were present at the time of occurrence, hence your role is suspected in missing of the rifle which is against discipline and warrants strict departmental action. You are therefore issued this show cause notice.

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



District Police Officer
Swat

Received by _____

Dated _____ /2018.

صاحب عالی

پورچ سوزگار علی 464/PA مورخ 19/10/18 مقررین حدت ہوں آ گیا
 مع کسٹرون شیرین SPP، خاستہ دکان SPP، حاج محمد SPP، آبرام SPP اور
 سلیم گلورید SPP ویاہیل سرکار ہا عمامہ فور سید خان محمد عیث شہزاد ڈیوٹی
 انجام دے رہے ہیں۔ مورخ 26 کو وقت 18:00 بجے ڈیوٹی ختم کر کے شب باقی
 بلر چہ تھر فور جا کر مورخ 9 کو وقت 18:00 بجے ویاہیل ڈیوٹی شہزاد مع آئی ڈی
 اور ویاہیل سے تشریح واپس آ گیا کے بارے میں مجھے کوئی حکم نہیں ہے مورخ 29
 کو سزا دیا ویاہیل وین اظہار مع دے کر گیا ہے میرا اور ویاہیل SPP سے کیا ہے شمع
 کو نہیں لیا ہے۔ میں نے کیا ہے میرا نے قوت سے واپس لیا ہے تمھارے پاس کی کاغذ
 کو مجھے حکم نہیں ہے ہم تمہیں ہا کر کے میں حاج محمد، الوائز یا سید اختر نے شہزاد
 کی سزا دیا تقریباً 11/12 بجے ہوئے ہیں اس دوران ویاہیل کو نوٹس دیا ہے جس
 آیا ہے۔ اگر ہم بد وقت واپس آ گیا ہے تو بد وقت کو نوٹس دیا ہے اس دوران کیا
 سرکاری ویاہیل کے بارے میں واقعی SPP کو نوٹس دیا تھا وہ کہوں کہ جرات
 قدرت ہو اور ویاہیل سے تشریح واپس آ گیا ہے میرا مجھے کوئی حکم نہیں ہے

محمد علی

2103

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

C.M No. _____ of 2019

In

Service Appeal No. _____ of 2019

Barkat Ali.....Applicant/appellant

VERSUS

Provincial Police Officer & others.....Respondents

APPLICATION FOR TRANSFER OF THE
ABOVE MENTIONED SERVICE APPEAL
TO CAMP COURT SWAT OF THIS
HONORABLE TRIBUNAL.

Respectfully Sheweth:

The applicant / appellant submit as under:-

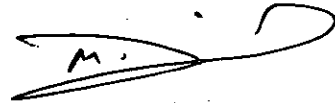
- 1) That the above mentioned service appeal is pending before this honorable tribunal and fixed for today.
- 2) That the applicant / appellant belongs to Swat, similarly some of the respondents are also performing their duties at Swat.

3) That the cause of action wholly arose at Swat.

It is, therefore, humbly prayed that on acceptance of this application the above titled service appeal may kindly be transfer to Camp Court Swat of this honorable tribunal .

Applicant

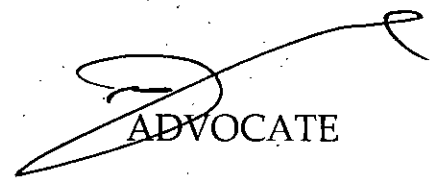
Through Counsel



MUHAMMAD JAVAID KHAN
Advocate, Supreme Court

CERTIFICATE:

(As per directions of my client) No such like Transfer Application earlier has been filed by the applicant on the subject matter before this Honorable Court.



ADVOCATE