

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT SWAT

SERVICE APPEAL NO. 475/2019

Date of institution ... 09.04.2019

Date of judgment ... 08.10.2019

Muhammad Ali (Ex. Head Constable B. No. 2122)

S/o Rozi, R/o Malam Jabba, Tor Toot, Tehsil Charbagh, District Swat.

... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa at Peshawar.
2. Regional Police Officer Malakand Range-III at Saidu Sharif Swat.
3. District Police Officer Swat.
4. Incharge Establishment at DPO Office Swat.

... (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER OF RESPONDENT NO. 3 DATED 03.12.2018 VIDE ORDER BOOK NO. 95 WHEREBY APPELLANT WAS DISMISSED FROM SERVICE WITH IMMEDIATE EFFECT AGAINST WHICH APPELLANT FILED DEPARTMENTAL APPEAL ON 12.12.2018 BUT DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN DECIDED BY RESPONDENT NO. 2 YET.

Mr. Shabir Ahmad Khan, Advocate.

.. For appellant.

Mr. Anwar-ul-Haq, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel and Mr. Anwar-ul-Haq, Deputy District Attorney
alongwith Mr. Khawas Khan, S.I (Legal) for the respondents present.

Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department as Head Constable. He was imposed major penalty of removal from service vide order dated 03.12.2018 on the allegation

of having illicit relation with wife of one Umer Bacha who was mother of three children. The appellant filed departmental appeal on 12.12.2018 which was not responded hence, the present service appeal.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department as Head Constable. It was further contended that the appellant was imposed major penalty of dismissal from service vide order dated 03.12.2018 on the aforesaid allegation. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor the appellant was associated during the inquiry proceeding therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department as Head Constable. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 03.12.2018 on the aforesaid allegation. It was further contended that a proper inquiry was conducted and the inquiry officer has stated in the inquiry report dated 25.01.2019 that after preliminary inquiry it was found that the appellant was having illicit relation with the wife of Umer Bacha and the wife of complainant Umer Bacha also lodged report against her husband and ^M was sent to Dar-ul-Aman. It was further contended that the inquiry officer has also stated in the inquiry report that the minor daughter of the Umer Bacha also stated that the appellant was having illicit relation with her mother and used to contact her mother with mobile phone and on the basis of

M. Amin
8.10.2019

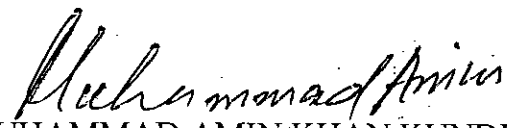
inquiry report the appellant was rightly removed from service after fulfilling all the codal formalities and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department as Head Constable. The record further reveals that the appellant was imposed major penalty of removal from service vide order dated 02.12.2018 on the allegation of having illicit relation with the wife of Umer Bacha who was mother of three children. The record further reveals that charge sheet, statement of allegation was framed and served upon the appellant and proper inquiry was also conducted. The record further reveals that it was stated by the inquiry officer in the inquiry report that the appellant was having illicit relation with the wife of Umer Bacha who was mother of three children. The record further reveals that the wife of Umer Bacha also lodged a report against her husband due to her illicit relation with the appellant. The record further reveals that the wife of Umer Bacha also filed dissolution against her husband due to illicit relation of appellant. The inquiry officer has also stated that the appellant was proved guilty of misconduct and had ruined the house of complainant Umer Bacha and recommended him for major punishment. Meaning thereby that the appellant was found guilty by the inquiry officer in the inquiry proceeding therefore, he was rightly imposed major penalty of removal from service after fulfilling all the codal formalities. As such, the appeal has no force which is hereby dismissed with no order as to costs. File be consigned to the record room.

ANNOUNCED
08.10.2019



(HUSSAIN SHAH)
MEMBER
CAMP COURT SWAT



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT SWAT

03.09.2019

Learned counsel for the appellant present. Mr. Mian Amir Qadir learned Deputy District Attorney alongwith Khawas Khan Inspector present and submitted written reply/comments. Adjourn. To come up for rejoinder if any and arguments on 07.10.2019 before D.B at Camp Court, Swat.




Member
Camp Court, Swat.

07.10.2019

Appellant alongwith his counsel and Mr. Anwar-ul-Haq, Deputy District Attorney alongwith Mr. Khawas Khan, S.I (Legal) for the respondents present. Arguments heard. To come up for order on 08.10.2019 before D.B at Camp Court Swat.

(Hussain Shah)
Member
Camp Court Swat



(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

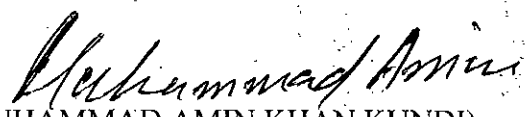
08.10.2019

Appellant alongwith his counsel and Mr. Anwar-ul-Haq, Deputy District Attorney alongwith Mr. Khawas Khan, S.I (Legal) for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, the appeal has no force which is hereby dismissed with no order as to costs. File be consigned to the record room.

ANNOUNCED
08.10.2019


(HUSSAIN SHAH)
MEMBER
CAMP COURT SWAT



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT SWAT

08.05.2019

Appellant with counsel present. Preliminary arguments heard.

The appellant (Ex-Head Constable) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 03.12.2018 whereby he was awarded major punishment of removal from service.


Points urged need consideration. The appeal is admitted for regular hearing subject to all the 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 01.07.2019 before S.B at Camp Court, Swat.


Appellant Deposited
Security & Process Fee


Member
Camp Court, Swat

01.07.2019

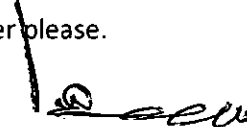

Clerk to counsel for the appellant present. Written reply not submitted. Nowsherawan S.I representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 03.07.2019 S.B at Camp Court, Swat.


Member
Camp Court, Swat.

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 475/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/04/2019	<p>The appeal of Mr. Muhammad Ali presented today by Mr. Shabir Ahmad 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</p>
2-	12-4-19	<p>This case is entrusted to touring S. Bench at Swat for preliminary hearing to be put up there on <u>8-5-19</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR**

Appeal No. 475/2019

Muhammad Ali (Ex. Head Constable B.No. 2122)S/o
Rozi R/o Malam Jabba, Tor Toot, Tehsil Charbagh,
District Swat

.....Appellant

VERSUS

Inspector General of Police KPK and others

.....Respondents

SERVICE APPEAL

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Appellant

Through Counsel

Shabir Ahmad Khan (Dawlat Khel)

Advocate, High Court

Office Address: Hamza Law Chamber,

Dubai Plaza, near Azad Medicine Old

Post office Road Mingora, Swat

Cell: 0341-5666363 , 0333-9499466

Dated: 08/04/2019

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**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR**

Appeal No. 475/2019

Muhammad Ali (Ex. Head Constable B.No. 2122)S/o
Rozi R/o Malam Jabba, Tor Toot, Tehsil Charbagh,
District Swat

.....Appellant **Khyber Pakhtunkhwa
Service Tribunal** Diary No: 596

VERSUS

Dated: 09-4-2019

1. Inspector General of Police Khyber Pakhtunkhwa at Peshawar
2. Regional Police Officer Malakand Range - III at Saidu Sharif Swat.
3. District Police Officer Swat.
4. Incharge Establishment at DPO Office Swat

.....Respondents

Filed to-day
[Signature]
Registrar
9/4/19

SERVICE APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER OF RESPONDENT NO. 3 DATED 03/12/2018 vide order Book No. 95 WHEREBY APPELLANT WAS DISMISSED FROM SERVICE WITH IMMEDIATE EFFECT AGAINST WHICH APPELLANT FILED DEPARTMENTAL APPEAL ON 12/12/2018 BUT DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN DECIDED BY RESPONDENT NO.2 *ET.*

Respectfully Sheweth:

Facts arising to the present appeal are as under;

- 1) That appellant was initially recruited in police department as Constable in 2009 and after

qualifying various courses, the appellant was promoted to the rank of Head Constable.

- 2) That the appellant has performed his duty with honesty, great zeal and enthusiasm.
- 3) That on 20/08/2018 the respondent No.2 issued a charge sheet to the appellant vide No. 86/PA, in which the allegations leveled against the appellant as "whereas, one namely Umar Bacha S/o Zarkash Mian R/o Salanda Manglawar, had lodged an application alleging you of having illicit relation with her wife, who is mother of three children and employing ways to lower her for maintaining the relations." The applicant had further complained that you had ruined his house and trying to turn his wife against (applicant). The complainant was enquired through Additional SP Swat. the preliminary enquiry revealed that the applicant's complain is based on truth and you are ruing his house despite being the father of three children. You are having an illicit relations with a married girl which is against discipline and warrants strict departmental

action. You are therefore, issued this charge sheet and statement allegations. (Copy of charge sheet along with better copy of charge sheets are annexed herewith as annexure "A")

- 4) That the appellant submitted written reply of the charge sheet, issued by respondent No.3 but without conducting proper enquiry and without reaching to the real facts and without giving opportunity of hearing to the appellant. The respondent No.3 straight away dismissed the appellant from service vide OB No. 195 dated 03/12/2018. (Copy of dismissal order is attached herewith as annexure "B")
- 5) That the appellant submitted a written application to the respondent No.4 for obtaining photocopies of the enquiry mentioned above for the purpose to file departmental appeal before respondent No.2, but in vain. The respondent No.4 straight away denied. Then the appellant moved an application before respondent No. 3 on 10/12/2018 to the extent that respondent No.3 may kindly be directed to issue complete

documents of the mentioned enquiry but in vein. This fact has already been brought in the notice of respondent No.2 in Para No.3 of the departmental appeal. (Copy of application to respondent No.2 is annexed herewith as annexure "C")

6) That the appellant preferred departmental appeal before respondent No.2, which is still pending before him and the stipulated period prescribed for the disposal of departmental appeal has been lapsed, hence, the instant service appeal. (Copy of departmental appeal is annexed herewith as annexure "D")

7) That no proper opportunity of being fairly heard, was given to appellant by respondent No. 3 and illegally dismissed the appellant from service which is against law and service rules and norms of natural justice.

Hence the present appeal is submitted on the following amongst other grounds.

GROUND:-

- i. That the appellant was not treated in accordance with law and rules on the

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subject and the impugned order has been passed in flagrant violation of law and rules tainted with mala-fide intention and is therefore not sustainable and is liable to be set aside.

ii. That the allegations leveled against the appellant are baseless, frivolous and not sustainable and untenable under the law and rules on the subject.

iii. That neither proper inquiry of the appellant was conducted nor proper opportunity of hearing was given to the appellant.

iv. That the universal cannon of natural justice have been set aside and no ample opportunity of presenting the delinquent stance / version has been given.

v. That no opportunity of cross examination have been given to the appellant so that the appellant may cross examined the so called applicant namely Umar Bacha.

vi. The impugned order is unreasonable, arbitrary and is liable to be set aside.

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vii. That other important points will be raised during the course of arguments with prior permission of this Honorable Tribunal.

It is therefore, humbly prayed that on acceptance of this service appeal, the impugned order of respondent No. 2 may graciously be set aside and appellant may be reinstated in service with all back benefits.

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


Appellant

Through Counsel


Shabir Ahmad Khan (Dawlat Khel)

Advocate, High Court

Dated: 08/04/2019

**BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR**

Muhammad Ali (Ex. Head Constable B.No. 2122)S/o Rozi R/o Malam Jabba, Tor Toot, Tehsil Charbagh, District Swat

.....Appellant

VERSUS

IGP and others

.....Respondents

Affidavit

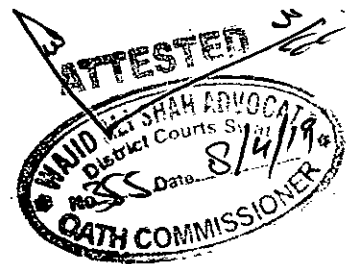
I, Muhammad Ali S/o Rozi R/o Malam Jabba, Tor Toot, Tehsil Charbagh, District Swat, do hereby solemnly affirm on oath that the contents of the service appeal are true and correct to the best of my knowledge and belief and nothing had been kept concealed from this august court.

Arshad Ali Khatak

Identified by:
Arshad Ali Khatak
Advocate, High Court.

Muhammad Ali

Deponent:
Muhammad Ali



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**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR**

Muhammad Ali (Ex. Head Constable B.No. 2122)S/o
Rozi R/o Malam Jabba, Tor Toot, Tehsil Charbagh,
District Swat

.....Appellant

VERSUS

Inspector General of Police KPK and others

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SERVICE APPEAL

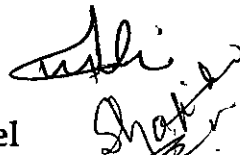
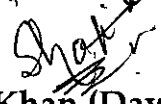
MEMO ADDRESSES

ADDRESS OF THE APPELLANT:

Muhammad Ali (Ex. Head Constable B.No.
2122)S/o Rozi R/o Malam Jabba, Tor Toot, Tehsil
Charbagh, District Swat
Cell No. 0347-9544351
CNIC No. 15602-0767553-9

ADDRESSES OF THE RESPONDENTS:

1. Inspector General of Police Khyber
Pakhtunkhwa at Peshawar
2. Regional Police Officer Malakand Range – III at
Saidu Sharif Swat.
3. District Police Officer Swat.
4. Incharge Establishment at DPO Office Swat

Appellant 
Through Counsel 
Shabir Ahmad Khan (Dawlat Khel)
Advocate, High Court

CHARGE SHEET

9 S

I Syed Ashfaq Anwar, PSP, District Police Officer, Swat being competent authority, hereby charge you, Head Constable Muhammad Ali No. 2122 while posted to Police Lines Kabal as follows:-

You committed the following acts, which is/are gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules, 1975 with amendments 2014 vide Notification No.3859/Legal, dated 27-08-2014 of the General of Police, Khyber Pakhtunkhwa, Peshawar.

Whereas, one namely Umar Backa s/o Zarkash Mian r/o Salanda Manglore had lodged a complaint alleging you of having illicit relations with her wife, who is mother of three children, and employing ways to lure her for maintaining such relations. The applicant had further complained that you had ruined his house and trying to turn her wife against him (applicant). The complaint was forwarded through Addl: SP Swat. The preliminary inquiry revealed that the applicant's complaint is based on truth and you are ruining his house being the father of three children. You are having illicit relations with a married girl which is against discipline and warrants strict departmental action. You are therefore issued this charge sheet and statement of allegations.

2. By reasons of the above you appear to be guilty of misconduct and rendered yourself liable to all or any of penalties specified in Rule-4 of the Disciplinary Rules 1975.

3. You are, therefore, required to submit your written reply within seven (07) days of the receipt of this Charge Sheet to the Enquiry Officer.

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

5. Informate as to whether you desire to be heard in person or not.

6. Statement of allegations to be closed.

District Police Officer
Swat

_____/PA,

Dated: 27/08/2018.

Attested to be True Copy

Shahid Khan
Shahid Ahmad Khan (Dawat Khan)
Advocate High Court
& Federal Shariat Court

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Better Copy Page
Charge Sheet

1. I Syed Ashfaq Anwar PSP District Police Officer Swat being competent authority hereby charge you Head Constable Muhammad Ali No. 2122 by posted to police line Kabal as follows.

You committed the following act/ acts, which is / are gross misconduct on your part as defined in Rule 2(iii) of Police Deciplinary Rules 1975 with amendment 2014 vide notification No. 3859 / Legal dated 27/08/2014 of the general of Police Khyber Pakhtunkhwa.

"whereas, one namely Umar Bacha S/o Zarkash Mian R/o Salanda Manglawar, had lodged an application alleging you of having illicit relation with her wife, who is mother of three children and employing ways to lower her for maintaining the relations." The applicant had further complained that you had ruined his house and trying to turn his wife against (applicant). The complainant was enquired through Additional SP Swat. the preliminary enquiry revealed that the applicant's complain is based on truth and you are ruing his house despite being the father of three children. You are having an illicit relations with a married girl which is against discipline and warrants strict departmental action. You are therefore, issued this charge sheet and statement allegations.

Attested to be True Copy

Shahir Ahmad
Advocate High Court
& Federal Shariat Court
(Dawlat Khan)

2. By reasons of the above you appeared to be guilty of misconduct and rendered yourself liable to all or any penalties specified in rule 4 of disciplinary Rule 1975.
3. You are therefore required your written reply within the seven days of the receipt of the charge sheet from the enquiry officer.
4. Your written reply if any should reach the enquiry officer within the specified period otherwise it shall be presumed that you have no defence to put in and in that case ex-party action shall be taken against you.
5. Intimate is to whether you desire to be heard in person or not.
6. A statement of allegation is to be enclosed.

No. 86/PA
Dated 20/08/2018

sd
District Police Officer Swat
SDP

© 1994 by [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

(14)

ORDER

This order will dispose of Departmental Enquiry against Head Constable Muhammad Ali No. 2122 of this District Police. He while posted to Police Lines Kabal was alleged of gross misconduct as one namely Umar Bacha s/o Zarkash Mian r/o Salanda Manglore had lodged an application, alleging him of having illicit relations with his wife, who is mother of three children; and employing ways to lure her for maintaining the relations. The applicant had further complained that he had ruined his house and trying to turn his wife against him (applicant). Addl: SP Swat initially probed the complaint and reported that the applicant's complaint was based on truth and the delinquent Head Constable was having illicit relations with his wife. The Enquiry Officer recommended departmental enquiry against the respondent Head Constable.

He was issued a charge sheet and statement of allegations vide this office No. 86/PA, dated 20-08-2018 and SP Investigation, Swat was appointed as Enquiry Officer to conduct proper departmental enquiry against the delinquent Head Constable. The Enquiry Officer carried out regular enquiry against the Police Officer and submitted his findings. The Enquiry Report revealed that the Head Constable under enquiry enjoyed illicit relations with the applicant's wife which resulted into separation between the applicant and his wife. The Enquiry Officer held the Head Constable guilty of misconduct and recommended major punishment for him.

From the perusal of the Enquiry Report, it is evident that the Head Constable under enquiry had illicit relations with a married girl which ruined the applicant's house and resulted into dissolution of his marriage. By doing so the Head Constable has stigmatised Police Department and harmed sanctity of the Force. His conduct is detrimental to discipline and his further retention in Police is bound to affect the 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 removal from service with immediate effect.

Order announced.

District Police Officer
Swat

O.B. No. 195

Dated: 03-12-2018

Copies to:-

1. Addl: SP Swat
 2. Establishment Clerk
 3. OSI
- For necessary action, please.

Attested to be True Copy
Shahid
Shahid Ahmad Khan (Dawlat Khel)
Advocate High Court
& Federal Shariat Court

والوں نے صریحاً انکار کیا کہ ہم آپ کو مذکورہ کاغذات نہیں دے سکتے جس پر میں نے
بجواباً کہا کہ مجھے یہ تحریریں دے دیں۔ مگر تحریر دینے سے بھی انکاری ہے حتیٰ کہ من سائل کو
مذکورہ درخواست بھی واپس نہیں کرتا۔

۴۔ یہ کہ سائل سے اپیل ٹائم بارڈ ہو رہا ہے لہذا جناب DPO صاحب سوات کو ہدایت کی جائے
کہ وہ حسب ضابطہ سائل کو مذکورہ کاغذات حوالہ کریں تاکہ من سائل بروقت محکمانہ اپیل
کر سکے۔ جو کہ من سائل کا قانونی حق ہے۔

لہذا استدعا ہے کہ بمنظوری درخواست ہذا حسب استدعا
درخواست سائل منظور فرمایا جائے۔

عریضہ: _____

محمد علی ولد روزی

سکنہ تور توت، ملم جبہ، تحصیل چارباغ، ضلع سوات

سابقہ پیلٹ نمبر: 2122

موبائل رابطہ نمبر: 0347-9544351

المرقوم: 10/12/2018

Attested to be True Copy
Shabir
Shabir Ahmad Khan (Dawlat Khel)
Advocate High Court
& Federal Shariat Court

بکھنور جناب ڈپٹی انسپکٹر جنرل آف پولیس بمقام ملاکنڈ ریجن III

روز
محمد علی ولد نسیم سکھ محلہ تور توت، مہلم جبہ، تحصیل چارباغ، ضلع سوات (سابقہ ہیڈ کانسٹیبل نمبر 2122)

اپیلانٹ

بنام

ڈسٹرکٹ پولیس آفیسر بمقام گلگندہ ضلع سوات

محکمہ اپیل بر خلاف حکم فیصلہ محررہ 03/12/2018 جناب ڈسٹرکٹ پولیس آفیسر صاحب سوات

جناب عالی!

اپیلانٹ حسب ذیل عرض رساں ہے۔

۱۔ یہ کہ من اپیلانٹ محکمہ پولیس میں سال 2009ء میں بحیثیت کانسٹیبل بھرتی ہو کر مختلف

کورسز پاس کر کے آخر کار بہ عہدہ ہیڈ کانسٹیبل ترقی پائی تھی۔

۲۔ یہ کہ من اپیلانٹ کے خلاف ایک شخص مسمی عمر بادشاہ نے ایک مہنی بر جھوٹ اور من

گھڑت درخواست گزار کر جس پر من اپیلانٹ کے خلاف انکوائری شروع ہو کر

SP انوسٹی گیشن صاحب سوات کو انکوائری آفیسر مقرر کیا گیا۔

جاری صفحہ (۲)

Attested to be True Copy
Shahir Ahmad Khan
Shahir Ahmad Khan (Dawlat Khan)
Advocate High Court
& Federal Shariat Court

۳۔ یہ کہ انکوائری ختم ہونے پر فائنڈنگ رپورٹ جناب DPO صاحب سوات کو مرسل کی جس پر جناب DPO صاحب سوات نے من اپیلانٹ کو موقع فراہم کئے بغیر غیر قانونی طور پر بحوالہ آرڈر بک نمبر 95 محررہ 03/12/2018 کو سنگین سزا دیکر محکمہ سے برخاست کیا۔

۴۔ یہ کہ من اپیلانٹ نے مورخہ 07/12/2018 کو جناب ڈی۔ پی۔ اوصاحب سوات کو ایک درخواست گزاری کہ من اپیلانٹ کو انکوائری کاغذات مہیا کریں تاکہ سائل بروقت جناب DIG صاحب کو محکمانہ اپیل دائر کریں مگر انچارج Establishment نے نقوات دینے سے صریحاً انکار کیا جب من اپیلانٹ نے نقل درخواست جو کہ من اپیلانٹ نے دائر کیا تھا اُس کی کاپی طلب کی تو من اپیلانٹ کی درخواست تو دو ربات، اُسکی فوٹو کاپی بھی مہیا نہیں کی۔ بدیں وجہ درخواست کا نقل لف اپیل ہذا نہیں ہے۔

۵۔ یہ کہ من اپیلانٹ نے پھر آپ صاحبان کے خدمت اقدس میں ایک درخواست گزاری کہ جناب ڈی۔ پی۔ اوصاحب سوات کو حکم کریں کہ وہ من اپیلانٹ کو انکوائری کاغذات بغرض محکمانہ اپیل حوالہ کریں مگر من اپیلانٹ کو درخواست متعلقہ براہِ منج والوں نے واپس کر کے من اپیلانٹ کی درخواست پر کسی قسم کی کارروائی نہیں کی۔ (نقل درخواست لف اپیل ہذا ہے)۔

Attested to be True Copy

Shabir Ahmad Khan
Shabir Ahmad Khan (Dawat Kbel)
Advocate High Court
& Federal Shariat Court

- ۶- یہ کہ اپیلانٹ بے گناہ ہے اور اپیلانٹ کو سننے کا موقع نہیں دیا گیا ہے بلکہ جناب ڈی۔ پی۔ اوصاحب سوات اور انکو ایئر آفیسر نے یکطرفہ کارروائی کی ہے۔ جو کہ من اپیلانٹ کے ساتھ سراسر ظلم اور زیادتی ہے۔
- ۷- یہ کہ من اپیلانٹ نے محکمانہ اپیل ہذا کے ساتھ اپنا بیان لکھا ہے جس میں مکمل تفصیل درج ہے۔

لہذا استدعا ہے کہ بمظوری اپیل ہذا حسب استدعا فیصلہ محررہ
 03/12/2018 جناب ڈی۔ پی۔ اوصاحب سوات کو
 Set aside کر کے من اپیلانٹ کو Re-instate
 کرنے اور Back benefits دینے کا حکم صادر فرمایا جائے۔

عریضہ: _____

محمد علی ولد حسین اوزی

سکنہ محلہ تور توت، مہم جبہ، تحصیل چارباغ، ضلع سوات

(سابقہ ہیڈ کانسٹیبل نمبر 2122)

المرقوم: 12/12/2018

Attested to be True Copy
 Shabir Ahmad Khan (Dawat Khan)
 Advocate High Court
 & Federal Shariat Court

SERVILE TRIBONAL KPK at Peshawar
BEFORE THE PESHAWAR HIGH COURT, MINGORA
BENCH DAR-UL-QAZA

WAKALAT NAMA

(17)

814 of 2019.


Titled:

Muhammad Ali **VERSUS** I.G.P KPK & others.

I/We do hereby appoint SHABIR AHMAD KHAN ADVOCATE, in the above mentioned case, to do all or any of the following acts, deeds and things:

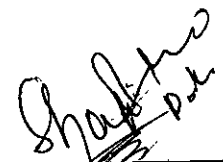
- 1) To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard, and any other proceedings arising out of or connected therewith.
- 2) To sign and verify and file, petitions, appeals, affidavits and applications as may be deemed necessary or advisable by them for the conduct, prosecution or defense of the said case at all its stages.
- 3) To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of the proceedings.
- 4) To do any act necessary or ancillary to the above acts, deed and things.
- 5) To appoint any other counsel to do any/all of the acts, deeds and things.
- 6) I/we, shall appear in the court/tribunal on every date of hearing for assistance and if due to my/our non appearance, any adverse judgment/order/decree is passed, they will not be held responsible.

IN WITNESS whereof I/we have signed this *Wakalatnama* hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this



Signature of Executant
M. Ali

ATTESTED & ACCEPTED BY:



SHABIR AHMAD KHAN
Advocate, High Court
0341-566 6363

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 475/2019

Muhammad Ali (Ex-Head Constable B No.2122) S/O Rozi R/O Malam Jabba,
Tehsil, Tor Toot, Tehsil Charbagh District Swat.

..... Appellant

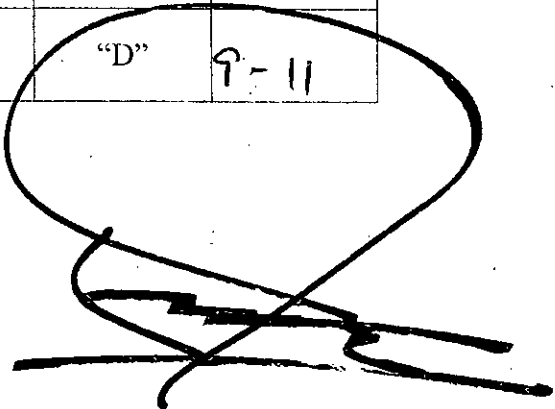
VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others

..... Respondents

INDEX

S.No:	Description of Documents	Annexure	Page
1	Para-wise Comments	-	1-3
2	Affidavit	-	4
3	Authority Letter	-	5
4	Copy of pay slip	"A"	6
5	List of punishment	"B"	7
6	Finding report Addl: SP Swat	"C"	8
	Finding report SP Investigation	"D"	9-11


**District Police Officer, Swat
(Respondent No. 3)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 475/2019

Muhammad Ali (Ex-Head Constable B No.2122) S/O Rozi R/O Malam Jabba,
Tehsil, Tor Toot, Tehsil Charbagh District Swat.

..... Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others

..... 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. Correct that the appellant was enlisted as constable in the year 2009 and has not regularly promoted to the rank of Head Constable and was drawing pay in the rank of Constable before removal from service. Copy of pay slip enclosed as annexure "A".
2. Incorrect. During service his performance was not satisfactory, besides the charges of illicit relation with a married woman he was awarded 07 minor punishments for wilfull absence from official duty. List enclosed as annexure "B".
3. Pertain to record, hence needs no comments.

4. Correct to the extent the reply of the appellant to the charge sheet was found unsatisfactory. Proper enquiry through Addl: SP, Swat and SP Investigation Swat was conducted, wherein all the opportunities of self defense were provided to the appellant. Copy of finding reports enclosed as annexure "C" & "D".
5. Incorrect. Respondent No.04 has provided all the relevant public documents record to the appellant and on the basis of the same documents appellant has filed the departmental appeal to the respondent No.02
6. Incorrect. The departmental appeal of the appellant is not based on cogent reasons and liable to be filed after hearing of appellant and going through complete record.
7. Incorrect. All the opportunities of self defense were provided to the appellant during the course of enquiry and after conducting proper enquiry through competent Enquiry Officer, wherein the charges were proved and the appellant was awarded punishment in accordance with facts and rules.

GROUNDS:

- i. Incorrect. The appellant has been treated in accordance with law/rules and the respondents have passed the removal order of appellant in accordance with facts and rules.
- ii. Incorrect. The allegations leveled against the appellant were proved during departmental probe and on the basis of finding of Enquiry Officer, appellant was awarded appropriate punishment in accordance with facts and rules.
- iii. Incorrect. Proper enquiry was conducted through Addl: SP, Swat and SP Investigation and all the opportunities of personnel hearing and self defense were provided to the appellant during the course of enquiry.
- iv. Incorrect. The charges have been proved through independent evidence and all the codal formalities and principle of natural justice have been fulfilled during departmental probe
- v. Incorrect. All the opportunities of personal hearing and self defense were provided to the appellant during the course of enquiry by the Enquiry Officer.

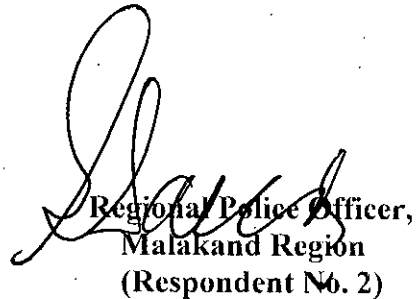
- vi. Incorrect. Orders of the respondents are reasonable, legal and in accordance with law/rules.
- vii. That the respondents may be allowed to add any other grounds at the time of arguments.

PRAYER:

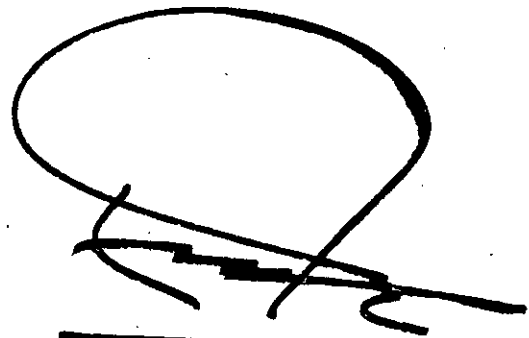
Keeping in views the above facts and circumstances, it is humbly prayed that the appeal of appellant being devoid of legal force may kindly be dismissed with costs.



**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)**



**Regional Police Officer,
Malakand Region
(Respondent No. 2)**



**District Police Officer Swat
(Respondent No. 3)**



**Incharge Establishment at
DPO Office, Swat
(Respondent No. 4)**

Service Appeal No. 475/2019

Muhammad Ali (Ex-Head Constable B No.2122) S/O Rozi R/O Malam Jabba, Tehsil,
Tor Toot, Tehsil Charbagh District Swat.

..... Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others

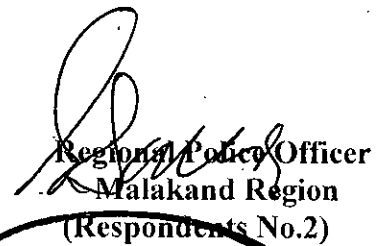
..... Respondents

AFFIDAVIT

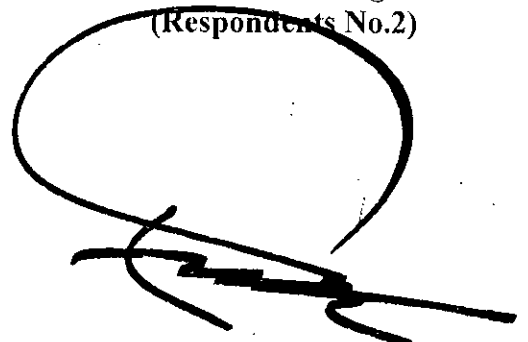
We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from the honorable Tribunal.



**Inspector General of Police
Khyber Pakhtunkhwa Peshawar
(Respondents No.1)**



**Regional Police Officer
Malakand Region
(Respondents No.2)**



**District Police Officer, Swat
(Respondents No.3)**



**Incharge Establishment at
DPO Office, Swat
(Respondent No. 4)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

5

Service Appeal No. 475/2019

Muhammad Ali (Ex-Head Constable B No.2122) S/O Rozi R/O Malam Jabba, Tehsil,
Tor Toot, Tehsil Charbagh District Swat.

..... Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others


..... Respondents

AUTHORITY LETTER

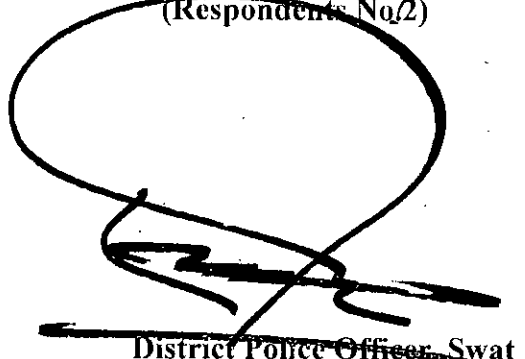
We, the above respondents do hereby authorize Mr. Mir Faraz Khan DSP/Legal & Mr. Khawas Khan SI Legal to appear before the Tribunal on our behalf and submit reply etc in connection with titled Service Appeal.



**Inspector General of Police
Khyber Pakhtunkhwa Peshawar
(Respondents No.1)**



**Regional Police Officer
Malakand Region
(Respondents No.2)**



**District Police Officer, Swat
(Respondents No.3)**



**Incharge Establishment at
DPO Office, Swat
(Respondent No. 4)**

9

MUHAMMAD ALI

Ameera

00496664 MUHAMMAD ALI CNIC: 1560207675539 Desig: CONSTABLE (80239918) Grade: 07 NTN: Buckle No.: 2122 Gazetted/Non-Gazetted: N

PAYMENTS	AMOUNT	DEDUCTIONS	AMOUNT	LOAN/FUND	PRINCIPAL	REPAID	BALANCE
0001 Basic Pay	14,650.00	3007 GPF Subscription - Rs	1,010.00-		GPF#: POLSW004009		30,304.00
1000 House Rent Allowance	1,589.00	6505 GPF Loan Principal In	2,000.00-		INCOME TAX 999.96	419.00	581.00
1210 Convey Allowance 20	1,932.00	3530 Police wel:Fud BS-1 t	293.00-		GPF Temp. Advance 0368	60,000.00	4,000.00 + 56,000.00
1300 Medical Allowance	1,500.00	4004 R. Benefits & Death C	690.00-				
1547 Ration Allowance	681.00	3609 Income Tax	83.00-				
1567 Washing Allowance	150.00						
1646 Constabulary R Allow	300.00						
1901 Risk Allowance (Poli	3,530.00						
1902 Special Incentive Al	775.00						
1911 Compen Allow 20% (1-	1,000.00						
1933 Special Risk Allowan	3,000.00						
2148 15% Adhoc Relief All	335.00						
2168 Fixed Daily Allowanc	2,730.00						
2199 Adhoc Relief Allow @	225.00						
2211 Adhoc Relief All 201	1,153.00						
2224 Adhoc Relief All 201	1,465.00						
2247 Adhoc Relief All 201	1,465.00						

PAYMENTS 36,480.00 DEDUCTIONS 4,076.00 NET PAY 32,404.00 01.11.2018 30.11.2018
 Branch Code:220221 HBL BANK SQUARE MINGORA SWAT HABIB BANK LIMITED HBL BANK SQUARE MINGORA SWAT SWAT Accnt.No: 7901245003

A next B

(7)

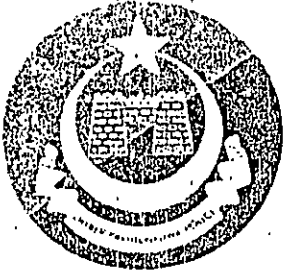
Bad Entries/Minor Punishment detail of Constable Muhammad Ali
Swat Police

Sr.No	Misconduct	Nature of punishment
01	Absented from duty w.e.f 07/05/2010 to 11/05/2010	Without pay
02	16/11/2010 to 22/11/2010	Without pay
03	25/09/2010 to 27/09/2010	Without pay
04	14/11/2012 to 12/11/2012	Without pay
05	07/01/2013 to 13/01/2013	Without pay
06	03/07/2018 to 07/07/2018	Without pay
07	28/07/2018	Fine Rs.500/-

13.
Establishment Clerk

Amir C

8



از دفتر ایڈیشنل سپرنٹنڈنٹ آف پولیس
ضلع سوات

فون نمبر 0946-9240253

Email: additionalspswat@gmail.com

جناب عالی!

بجوالہ مشمولہ انکوائری محمد علی نمبر LHC/2122 سابقہ پولیس اہلکار معروض خدمت ہوں کہ سبھی عمر باچا ذلہ زرخش میاں ساکن سالنڈہ منگلور نے محمد علی مذکورہ کے خلاف جناب DPO صاحب سوات کو ایک درخواست دائر کر کے جو کہ سن ایڈیشنل SP کو بغرض انکوائری حوالہ کیا گیا۔ درخواست پر ابتدائی تحقیقات ہو کر معلوم ہوا کہ مذکورہ محمد علی کا سبھی عمر باچا (درخواست کنندہ) کی منکوحہ بیوی کے ساتھ ناجائز تعلقات استوار تھے۔ درخواست کنندہ کی بیوی نے برخلاف عمر باچا تھانہ منگلور میں رپورٹ کر کے مقامی پولیس نے مذکورہ دارالامان بھجوائی۔

درخواست کنندہ کے ایک بیٹی طفلکہ تمیرہ بی بی درخواست کنندہ نے دفتر لا کر جس کی بیان قلم بند ہو کر طفلکہ نے بھی واضح کی کہ پولیس اہلکار محمد علی اس کی ماں سے میل میلاپ رکھتا تھا اور بذریعہ موبائل فون رابطہ کیا کرتا تھا۔

درخواست کنندہ کی بیوی سے خاندانہ آس نے موبائل فون برآمد کر کے نمبر 0342-9835672 جو بھی محمد علی کے نام پر درج تھا۔ محمد علی مذکورہ نے اس بارہ میں ایک رپورٹ پیش کر کے جس میں متذکرہ نمبر 5/6 ماہ قبل گمشدگی کا رپورٹ درج تھا۔ جس سے صاف ظاہر تھا کہ محمد علی اور درخواست کنندہ کی منکوحہ بیوی کا آپس میں ناجائز تعلقات استوار تھے۔ محمد علی درخواست کنندہ کی منکوحہ بیوی کو شادی کا جھانڈہ دیکر جس نے خاندانہ آس کے خلاف رپورٹ کر کے دارالامان چلی گئی تھی۔

ابتدائی تحقیقات سے معلوم ہوا کہ محمد علی پولیس اہلکار قطعی گنہگار ہے۔ جس کے خلاف رپورٹ جناب DPO صاحب سوات کو پیش کر کے DPO صاحب نے باقاعدہ حکمانہ کارروائی کا حکم صادر کر کے SP صاحب انوسٹی گیشن کو انکوائری کی ہدایت کی SP صاحب انوسٹی گیشن نے باقاعدہ انکوائری کر کے محمد علی کو مورد الزام ٹھہرایا جا کر جناب DPO صاحب سوات نے محکمہ پولیس سے برطرف کیا۔

محمد علی سابقہ پولیس اہلکار قطعی گنہگار ہے مذکورہ نے ایک غیر اخلاقی فعل کر کے سبھی عمر باچا کے گھر کو برباد کیا ہے سزا کا مستحق تھا۔

ابتدائی تحقیقات سن ایڈیشنل SP اور حکمانہ انکوائری جناب SP صاحب انوسٹی گیشن سے مکمل اتفاق ہے سزا میرٹ پر دی گئی ہے۔ مذکورہ کی اپیل خارج کرنے کی سفارش کی جاتی ہے۔

خان خیل
ایڈیشنل ایس پی سوات
25 جنوری 2019

Handing over of the Denote
Enquiry received and
Submitted to the kind personal and
enquiry please

Amended
9

FINDINGS

This report relates to the Departmental Enquiry against LHC Muhammad Ali No.2122 JIS Police Line Kabal who has been charge sheeted vide District Police Officer, Swat in the light of allegations leveled in the application moved by one Umar Bacha s/o Zarqaish Mian r/o Salanda Manglor to the effect that the said LHC has illicit relations with his wife Mst: Sajida who is mother of three minor Kids and due to this act of LHC Muhammad Ali the applicant's house has been destroyed.

In order to probe into the matter, preliminary enquiry was entrusted to Addl: SP Swat, who thereof has declared LHC Muhammad Ali as defaulter of the allegations leveled against him. Accordingly he was issued Charge Sheet and the undersigned has been appointed as Enquiry Officer for conducting Departmental Enquiry.

Synopsis of the departmental enquiry reveals that:-

1. *Mst: Sajida who is residing at Darul Aman Saidu Sharif has denied the allegations leveled against LHC Muhammad Ali by her husband Umar Bacha, however disclosed that she has instituted a civil suit for Nikah Dissolution "KHULA".*
2. *LHC Muhammad Ali was heard in person who described the allegations leveled against him as baseless and concocted but disclosed Mst: Sajida as one of his far relatives nothing else.*
3. *The applicant Umar Bacha in his statement has supported the contents of his application with little bit addition that his wife has now been carried away from Darul Aman Saidu Sharif by the respondent (LHC Muhammad Ali).*
4. *Statements of Fazal Wahid and Abdul Wahid (brothers of Mst: Sajida) were also recorded which revealed that their sister now a days has left Darul Aman and is living with one of her relatives elsewhere.*

BRIEF CIRCUMSTANCES:-

From the statements of all concerned as well as respondent LHC Muhammad Ali it has been surfaced that Mst: Sajida D/O Abdul Haleem r/o Salanda Manglor presently residing at Darul Aman Saidu Sharif was married to one Umar Bacha (applicant) and she gave birth three children (one boy & two girls) are alive. The applicant Umar Bacha being a poor person is laboring to drive a Suzuki van owned by his maternal uncle. Due to strained relations between the couple they usually used quarrelling with harsh words to each other. Ultimately on 22/02/2018 Mst: Sajida instituted civil suit in the Court of Senior Civil Judge / Alla Illaq Qazi Swat for dissolution of "Nikah" and requested for residing in Darul Aman Saidu Sharif which was accepted by the Court and she started living there. During trial of the civil suit, despite of repeated notices from the concerned court.

Respondent party (Umar Bacha) did not bother to appear before the Court for the lawful proceedings, which resulted into ex-parte decision of Degree of "Nikah" dissolution in favour of Mst. Sajida by the Court.

During the course of enquiry two different versions have come to

notice:-

- 1. *The applicant Umar Bacha has blamed LHC Muhammad Ali for abetment of his wife Mst. Sajida which resulted into disturbance of his house atmosphere.*
- 2. *Mst. Sajida has urged that she has sought dissolution of married life from her husband Umar Bacha because of his ill reputation and repeated misbehavior.*

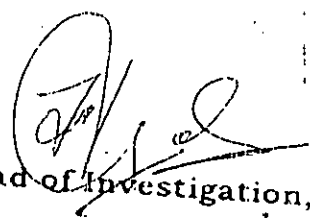
As per statement of child Hamida Bibi 11/12 years old, she has 4 times witnessed LHC Muhammad Ali while coming to their house and having conversation with her mother Mst. Sajida. Similarly, a report of LHC Muhammad Ali has also been entered into Daily Diary No.88 dated 04/05/2018 for misplacement of his SIM No.0342-9835672, which indicates concealment of his relations and contacts with the said lady. Furthermore, Mst. Sajida instituted an application in the Court of AAC Swat requested therein that she has completed her normal duration of "Divorce" and wants to be remarried with LHC Muhammad Ali who has also shown his willingness in this regard through an affidavit rendered by him. However, the AAC Swat being not the authorized forum for Court marriage declined the request. For the purpose, on 03/08/2018 she resorted to the Court of ASJ-VI in this regard but when she came to know about the departmental proceedings against LHC Muhammad Ali ultimately withdrawn her application and again requested to leave to elsewhere from Darul Aman. Her request was accepted by the Court and she accordingly left Darul Aman. The whole episode ultimately indicates close relations between LHC Muhammad Ali and Mst. Sajida.

CONCLUSION:-

From the facts so far verified, I have reached to the conclusion that actually there were close relations between LHC Muhammad Ali and Mst. Sajida, which resulted into dissolution of Nikah with her husband applicant Umar Bacha. Due to which the bright future happy family husband, wife and their three children has gone towards darkness. Respondent LHC Muhammad Ali being member of a discipline force of Police Department who is considering well responsible to ensure peace, tranquility and harmony amongst the general masses as well as to protect and secure life, prosperity and property of citizen has misused his lawful responsibility by indulging himself in doubtful interaction.

RECOMMENDATION:-

In view of the above circumstances, the undersigned is agree with the verdict of the preliminary Enquiry Officer Addl: SP Swat and recommend LHC Muhammad Ali to be awarded major punishment, please.



Head of Investigation, Swat.