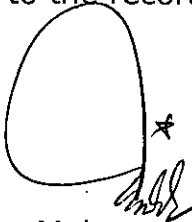



S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	22.07.2020	<p><u>Present.</u></p> <p>Arbab Saiful Kamal, ... For appellant Advocate</p> <p>Mr. Muhammad Riaz Khan Paindakhel, Asstt. Advocate General ... For respondents</p> <p>Vide our detailed judgment in Service Appeal No. 930/2019 (Hameed Ullah Vs. District Police Officer Swat and two others), this appeal is also allowed and the appellant is reinstated into service. The period during which he has not performed duty shall be counted towards leave of the kind due.</p> <p>Parties are left to bear their respective costs. File be consigned to the record room.</p> <p style="text-align: center;">  (Mian Muhammad) Member (Executive) </p> <p style="text-align: center;">  (Hamid Farooq Durrani) Chairman </p> <p style="text-align: center;"><u>ANNOUNCED</u> 22.07.2020</p>

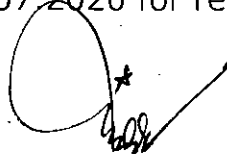
Service appeal No.932/19

30.06.2020

Appellant with counsel and Mr. Riaz Painsdakhel learned Asst. AG alongwith Mr. Khawas Khan Inspector for the respondents present.

During the course of arguments it transpired that the impugned order of respondent No.1 dated 01.01.2019 was not available with the memorandum of appeal. Learned counsel for the appellant states that due to inadvertence the copy of order passed against the appellant in connected appeal No.930/2019 was provided in the instant appeal. He, therefore, requests for time to bring on record the requisite order.

The appellant shall do the needful, within ten (10) days and the appeal shall come up on 14.07.2020 for remaining arguments.



Member

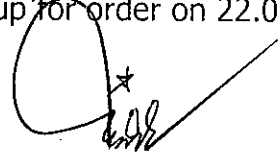


Chairman


14.07.2020

Appellant with counsel and Mr. Muhammad Riaz Khan Painsdakhel, Asstt. AG alongwith Khawas Khan, S.I (Legal) for the respondents present.

The appellant provided copy of order dated 01.01.2019, which is placed on record. Learned counsel for the appellant and learned Asstt. A.G have concluded their respective arguments. To come up for order on 22.07.2020 before this D.B.



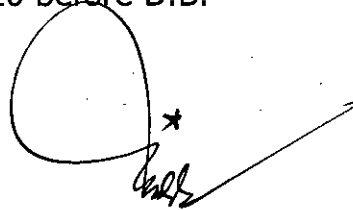
(Mian Muhammad)
Member



Chairman

12.03.2020

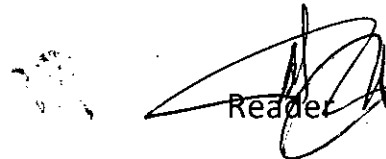
Appellant with counsel present. Mr. Ziaullah, DDA
alongwith Mr. Mir Faraz, DSP (Legal) for respondents
present. Arguments heard. To come up for order on
25.03.2020 before D.B.


Member


Member

25.03.2020

Due to public holiday on account of COVID19, the case is
adjourned to 30.06.2020 for the same as before.


Reader

13.02.2020

Appellant alongwith his counsel and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Rashid Ali, Constable for the respondents present. Partial arguments heard. Perusal of the inquiry report reveals that the inquiry officer has recorded the statements of 10 witnesses but the said statements are not available on the record. Representative of the department namely Rashid Ali present in the court is directed to furnish the complete record of inquiry including statements of witnesses recorded during inquiry on the next date positively. To come up for record and arguments on 02.03.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

02.03.2020

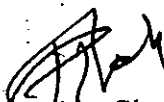
Counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Mir Faraz Khan, DSP (Legal) for respondents present. Representative of respondents submitted copy of statements of witnesses recorded during enquiry proceedings, which is placed on connected service appeal no. 930/2019. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 12.03.2020 before D.B.



Member


Member

30.12.2019

Appellant with counsel present. Mr. Riaz Painsdakhel learned Assistant Advocate General alongwith Mr. Khawas Khan Inspector for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 17.01.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

17.01.2020

Appellant in person present. Jehanzeb Constable representative of the respondent department present. Lawyers community is on strike on the call of Khyber Pakhtunkhwa Bar Council. Learned Member (Executive) is not available. Adjourned for 04.02.2020 before D.B.


Member

04.02.2020

Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 13.02.2020 for arguments before D.B.

(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

930/19

08.10.2019

Appellant in person and Addl. AG alongwith Muhammad Shafique, Reader for the respondents present.

Representative of respondents seeks further time. Adjourned to 12.11.2019 on which date the requisite reply/comments shall positively be submitted.



Chairman

12.11.2019

Counsel for the appellant and Addl. AG alongwith *Mr. Mir Faraz D.S.P (Legal)* for the respondents present.

Representative of respondents has furnished parawise comments on behalf of the respondents. Placed on record. To come up for arguments before D.B on 18.12.2019. The appellant may submit rejoinder, within a fortnight, if so advised.



Chairman

18.12.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourn. To come up for arguments on 30.12.2019 before D.B.



Member



Member

30.08.2019

Counsel for the appellant present.

On the strength of order dated 08.08.2019 passed in service appeal No. 930/2019, instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 16.09.2019 before S.B.

Appellant Deposited
Security & Process Fee

30/8/19


Chairman

16.09.2019

Appellant in person and Addl. AG alongwith Mir Faraz Khan, DSP (Legal) for the respondents present.

Representative of the respondents requests for time to submit reply. Adjourned to 08.10.2019 on which date the requisite reply/comments shall positively be submitted.


Chairman

08.10.2019

Appellant in person and Addl. AG alongwith Muhammad Shafique, Reader for the respondents present.


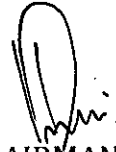
Representative of respondents seeks further time. Adjourned to 12.11.2019 on which date the requisite reply/comments shall positively be submitted.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 932 /2019


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17-07-2019	<p>The appeal of Mr. Arif resubmitted today by Mr. Saad ullah Khan Marwat Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p> REGISTRAR</p>
2	22/07/19	<p>This case is entrusted to S.B for preliminary hearing to be put up there on <u>30/08/19</u>.</p> <p> CHAIRMAN</p>

The appeal of Mr. Arif son of Muhammad Jan r/o Harkal Dargai District Malakand ex-Constable No. 2683 Police Station Shamozaï Swat received today i.e. on 10.07.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Annexures of the appeal may be flagged.
- 3- Memorandum of appeal may be got signed by the appellant.
- 4- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 5- Copy of Service appeal no. 499/2016 mentioned in the memo of appeal (Annexure-A) is not attached with the appeal which may be placed on it.
- 6- Copies of charge sheet, statement allegations, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 7- Copy of rejection order of departmental appeal mentioned in the appeal is not attached with the appeal which may be placed on it.
- 8- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1191 /S.T,

Dt. 11-7- /2019.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

^{JIV}
Re-submitted after completion.
An objection no. 6 is
concerned. Extent to reply to charge
sheet is not available at present.
put before the court.
11-07-19.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWARS.A No. 932/2019

Arif

versus

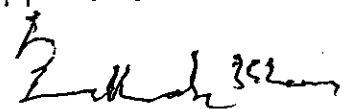
D.P.O & Others

I N D E X

S. No	Documents	Annex	P. No.
1.	Memo of Appeal		1-3
2.	Copy of Appeal, 17-03-2016	"A"	4-8
3.	Judgment dated 04-09-2018	"B"	09-12
4.	Reinstatement order dated 25-10-18	"C"	13
5.	Charge Sheet dated 29-10-2018	"D"	14-15
6.	Reply to Charge Sheet, 07-11-2018	"E"	16-18
8.	Findings of enquiry	"F"	19-21
9.	Letter for compliance, 10-12-2018	"G"	22
10.	Dismissal order dated 01-01-2019	"H"	23-24
11.	Representation dated 04-01-2019	"I"	25-26
12.	Rejection order dated 14-06-2019	"J"	27-28

Appellant

Through


Saadullah Khan Marwat
Advocate.21-A Nasir Mansion,
Shoba Bazaar, Peshawar.

Ph: 0300-5872676

0311-9266609

Dated.09-07-2019

1

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 932 /2019

Arif S/O Muhammad Jan,
R/o Harkai, Dargai,
District Malakand,
Ex-Constable. No. 2683,
Police Station Shamozaï,
Swat Appellant

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 943

Dated 10/7/2019

Versus

1. District Police Officer,
Swat.
2. Deputy Inspector General
Of Police, Malakand Region,
Saidu Sharif Swat.
3. Provincial Police Officer,
KP, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OB. NO. 01 DATED 01-01-2019 OF R. NO.
01 WHEREBY APPELLANT WAS DISMISSED FROM
SERVICE OR OFFICE ORDER NO. 6572-75 / E DATED
14-06-2019 OF R. NO. 02 WHEREBY HIS
DEPARTMENTAL APPEAL WAS REJECTED FOR NO
LEGAL REASON:

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

1. That facts and grounds of the subject matter has been fully narrated in the S.A. No. 499/16 and in the judgment dated 04-09-2018 of the Hon'ble Tribunal and need not to again repeat the same. (Copy as annex "A")

Filed to-day
Registrar
10/7/19

2. That on 04-09-2018, the hon'ble Tribunal was pleased to set aside the then impugned orders dated 23-12-2015 and 03-03-2016 by dismissing appellant from service and rejection of departmental appeal with direction to respondents to conduct de-novo enquiry strictly in accordance with law and rules. (Copy as annex "B")
3. That in pursuance of the said judgment, appellant was reinstated in service on 25-10-2018 by R. No. 01. (Copy as annex "C")
4. That on 29-10-2018, appellant was served with Charge Sheet and Statement of Allegation on account of misconduct. (Copy as annex "D")
5. That on 07-11-2018, the said Charge Sheet was replied and denied the allegations that no one deposed against appellant in the matter. (Copy as annex "E")
6. That enquiry into the matter was initiated and the Inquiry Officer in the Finding of report categorically stated that allegations leveled against appellant were baseless and were not proved. He is innocent and recommended for reinstatement in service with all back benefits. (Copy as annex "F")
7. That on 10-12-2018, the AIG Complaint & Inquiry, KP, Peshawar directed R. No. 03 to follow recommendation of the Investigation Officer under intimation to his office. (Copy as annex "G")
8. That instead of reinstating appellant in service, R. No. 01 again dismissed him from service vide order dated 01-01-2019. (Copy as annex "H")
9. That on 04-01-2019, appellant submitted departmental appeal before R. No. 02 which was rejected on 14-06-2019. (Copies as annex "I" & "J")

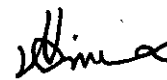
Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That during service tenure, appellant served the department with the best of his ability and to the entire satisfaction of the superiors without any complaint

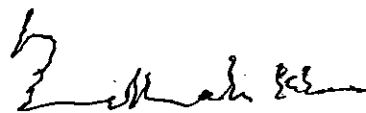
- b. That during militancy in the area, appellant performed his duty and never decamped from the spot.
- c. That after acceptance of former appeal by the hon'ble Tribunal, De-Novo enquiry was conducted wherein recommendations not only for his reinstatement was made but also with all back benefits.
- d. That if the authority was not in agreement with the recommendations of Inquiry Officer, he was legally bound to serve appellant with Show Cause Notice stating therein the reasons of none agreement with the findings of the Inquiry Officer but not doing so, the authority deviated from the law and appellant was liable to reinstatement with all back benefits.
- e. That when the authority did not honor the recommendation of IO, then what was the need of holding of enquiry which means that the authority was bent upon to dismiss appellant from service. In the circumstances, such act of the authority is based on malafide.
- f. That after recording evidence in the criminal case against appellant etc the allegations were not proved in competent court of law and were acquitted from the baseless charges. On this score alone, appellant was legally entitled to reinstatement with all back benefits.

It is, therefore, most humbly prayed that on acceptance of appeal, impugned orders dated 01-01-2019 and 14-06-2019 of the respondents be set aside and appellant be reinstated from the date 23-02-2015 in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.

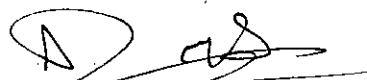


Appellant

Through



Saadullah Khan Marwat



Amjad Nawaz
Advocates.

Dated 09-07-2019

A 4

U

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2016

Arif Ex-Constable No. 2683, Police Station, Kanju,
District Swat.

...Appellant

VERSUS

1. The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar.
2. The Regional Police Officer Malakand Region,
Saidu Sharif, District Swat.
3. The District Police Officer Swat, Gulkada.

...Respondents

APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER O.B. NO. 216 DATED 23-12-2015
WHEREBY MAJOR PENALTY OF
DISMISSAL FROM SERVICE WAS
IMPOSED UPON THE APPELLANT
AGAINST THE LAW, RULES, FACTS AND
SHARIAH AND WAS NOT SUSTAINABLE
UNDER THE LAW, AGAINST WHICH THE
APPELLANT PREFERRED
DEPARTMENTAL APPEAL TO THE
RESPONDENT NO. 2, WHICH WAS ALSO
REJECTED IN VERY SUMMARY AGAINST
THE LAW, RULES, FACTS AND SHARIAH
VIDE ORDER NO. 4056/E DATED 02-05-
2016, RECEIVED ON 09-05-2016, HENCE
BOTH THE ORDERS ARE LIABLE TO BE
SET ASIDE BEING NOT SUSTAINABLE
AND VOID.

Arif

5

Prayer:

That on acceptance of this appeal both the orders impugned may very kindly be set aside and the appellant reinstated back into service with all back/ consequential benefits.

Respectfully Sheweth:

- i. That the appellant joined the Police Department in the year 2008 as constable and since then performed his duties with zeal, honesty and punctuality. To this effect no complaint has ever been made either by the authorities or the public.*
- ii. That the appellant was falsely charged in case FIR No. 383 dated 20-08-2015 under sections 5 Exp Act, 9 BCNSA, 15AA and 34 PPC Police Station Kanju and as a result of the same the appellant was dismissed from service.*
- iii. That appellant neither was nor is involved in any sort of criminal activity. That the appellant is a law abiding citizen and can never think of such an act for which he has allegedly been charged.*
- iv. That appellant is never associated with the enquiry in accordance with the law neither his defence version has been considered.*
- v. That on the basis of a farce enquiry the appellant was allegedly found guilty of the criminal act and thus dismissed from service vide impugned*

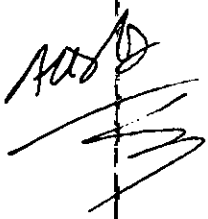
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law, rules, facts and Shariah. Copy of the order dated 23-12-2016 is enclosed as Annexure "A".

- vi. That feeling aggrieved of the said order the appellant preferred departmental appeal to the respondent No. 2, but the same was also rejected vide order No. 4056/E dated 02-05-2016, received on 09-05-2016 in a very summary manner against the law, rules, facts and Shariah and without giving his own reasons, being the appellate authority. Copy of the appeal is enclosed as Annexure "B" and that of the order as Annexure "C", respectively.
- vii. That feeling aggrieved of the both the impugned orders and having no other remedy this Honourable Tribunal is approached on the following grounds.

Grounds:

- a. That under the law the respondents were required to have conducted full dressed enquiry before the imposition of the major penalty, but the same is not the case as far as the appellant is considered and a farce enquiry has been conducted, thus the appellant has not been treated in accordance with the law.
- b. That the appellant has never been associated with the shame enquiry, neither has he been given the opportunity to defend himself nor his defence version has been considered for no reasons, whatsoever, thus has been condemned as unheard.



- c. That the appellant is bereaved of his Constitutional rights in a very blatant and colourful manner.
- d. That the respondents have used their official authority in a very fanciful and colourful manner, which is against the principles of natural justice and the law emanating from the commands of the Constitution.
- e. That the appellant has never committed any act of commission or omission which may constitute any offence under any law.
- f. That the appellant is not employed anywhere in these times of economic crunch.

It is, therefore, very respectfully prayed that on acceptance of this appeal both the orders impugned may very kindly be set aside and the appellant reinstated into service with all back / consequential benefits.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

Appellant

Arif

Through Counsels,

Aziz-ur-Rahman

Imdad Ullah
Advocates Swat

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توانہ کا

میٹرن منجولہ ۶ عدد کارٹوس 30 بوز، 4 بیڈٹ جرس
 مجتہ وزنی ۹۵۵ گرام پر آمد ہو کر جملہ اشیاء بالا بروتے فرد
 قبضہ پولیس میں سر کے جرس کے ہر بیڈٹ سے 5/5 گرام
 جرس علیحدہ علیحدہ بغرض تجزیہ FSL بلاہ پارسل ہوائے
 کیٹی - جو جراثیم بالا کا ارتکاب یا کیم ڈرائیو اور مشینہ والا
 معہ دیگر ملزمان اسم و سکن نامعلوم کے خلاف مر اسلم بغرض
 قاضی مقدمہ بدست کورٹیل اسماعیل بز 2518 ارسال ہوا ہے
 مشتاق احمد حسب سابقہ گرفتاریاں ہے۔ سلا محمد
 سراج خان SAO تھانہ کابو حدرہ 015-8-20 کاروائی
 تھانہ بس آمدہ مر اسلم جو فہ حرف درج صدر ہو کر
 پورچہ اہم بالا چاکٹ کیرا جا کھر نقل ہو کر معہ مر اسلم
 بغرض تفتیش حوالہ تشعبہ تفتیش کیرا جاتا ہے۔ افسران
 بالا کو اطلاع دی جا رہی ہے۔ پورچہ سرکارش ہے۔

عراق
چالان
کی تا

MASI - PS - Kanju

20-08-2015 Exp-Sub Act

(اجلہ منظور)

26-27	اندان نمبر 26	20-08-2015	383
28-29	اندان نمبر 28	20-08-2015	383
30-31	اندان نمبر 30	20-08-2015	383
32-33	اندان نمبر 32	20-08-2015	383
34-35	اندان نمبر 34	20-08-2015	383
36-37	اندان نمبر 36	20-08-2015	383
38-39	اندان نمبر 38	20-08-2015	383
40-41	اندان نمبر 40	20-08-2015	383
42-43	اندان نمبر 42	20-08-2015	383
44-45	اندان نمبر 44	20-08-2015	383
46-47	اندان نمبر 46	20-08-2015	383
48-49	اندان نمبر 48	20-08-2015	383
50-51	اندان نمبر 50	20-08-2015	383
52-53	اندان نمبر 52	20-08-2015	383
54-55	اندان نمبر 54	20-08-2015	383
56-57	اندان نمبر 56	20-08-2015	383
58-59	اندان نمبر 58	20-08-2015	383
60-61	اندان نمبر 60	20-08-2015	383
62-63	اندان نمبر 62	20-08-2015	383
64-65	اندان نمبر 64	20-08-2015	383
66-67	اندان نمبر 66	20-08-2015	383
68-69	اندان نمبر 68	20-08-2015	383
70-71	اندان نمبر 70	20-08-2015	383
72-73	اندان نمبر 72	20-08-2015	383
74-75	اندان نمبر 74	20-08-2015	383
76-77	اندان نمبر 76	20-08-2015	383
78-79	اندان نمبر 78	20-08-2015	383
80-81	اندان نمبر 80	20-08-2015	383
82-83	اندان نمبر 82	20-08-2015	383
84-85	اندان نمبر 84	20-08-2015	383
86-87	اندان نمبر 86	20-08-2015	383
88-89	اندان نمبر 88	20-08-2015	383
90-91	اندان نمبر 90	20-08-2015	383
92-93	اندان نمبر 92	20-08-2015	383
94-95	اندان نمبر 94	20-08-2015	383
96-97	اندان نمبر 96	20-08-2015	383
98-99	اندان نمبر 98	20-08-2015	383
100-101	اندان نمبر 100	20-08-2015	383

حوالہ داری
بالیڈ
27
-15

رابطہ
رابطہ

سب ڈویژن پولیس آفیسر
 اطلاع کے لیے اطلاع دہندہ کا دستخط ہو گا یا اس کی مہر یا نشان لگا یا جائیگا۔ اور اس فرم کو کسٹوڈیاں برائے اطلاع کا دستخط بطور تصدیق ہوگا۔ حرف الف یاب سرخ روشانی سے
 ایک ملزم یا مشہور علی الترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیا یا افغانستان جہاں موزوں ہوں لکھنا چاہیے۔

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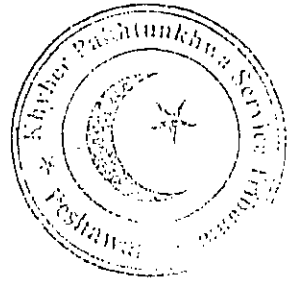
B 1 9

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

Service Appeal No. 257/2016

Date of Institution ... 17.03.2016

Date of Decision ... 04.09.2018



Hamidullah H/C No. 1564
R/O Mohalla Bakhto Sahra Tehsil Matta District Swat.

(Appellant)

VERSUS

1. District Police Officer, Swat and 2 others.

(Respondents)

MR. SHAMS UL HADI,
MR. IMDAD ULLAH,
Advocates

For appellant.

MR. USMAN GHANI,
District Attorney

For respondents

MR. AHMAD HASSAN,
MR. SUBHAN SHER

MEMBER (Executive)
CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 499/2016 titled Arif as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The brief facts are that the appellant was serving as Head Constable in Police Department. He was charged in a criminal case registered under Section-9 CNSA read with section 15AA/34PPC registered vide FIR no. 383 at PS Kanju dated 20.08.2015 and on the strength of the same disciplinary proceedings were initiated and the appellant removed from service vide impugned order dated 23.12.2015. He

ATTESTED

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


preferred departmental appeal, which was rejected on 03.03.2016, hence, the instant service appeal on 17.03.2016.

ARGUMENTS

4. Learned counsel for the appellant argued that upon registration of FIR, he was proceeded departmentally and after finalization of proceedings major penalty of dismissal from service was imposed on him vide impugned order dated 23.12.2015. Enquiry proceedings were carried out in a slipshod manner. Neither statements of witnesses were recorded in his presence nor opportunity of cross examination was afforded to him. Opportunity of personal hearing was also denied to him. Show cause notice before imposition of penalty was not served on the appellant, as such he was condemned unheard.

5. Learned District Attorney argued that all the codal formalities were completed before imposition of penalty on the appellant. He requested that the instant appeal be dismissed.

ATTESTED


 EXAMINED
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

CONCLUSION.

6. Scrutiny of record revealed that after registration of FIR against the appellant enquiry proceedings were initiated against him by serving charge sheet and statement of allegations. However, enquiry was not conducted in the mode and manner prescribed in Police Rules 1975. The enquiry officer was bound to record statement of witnesses and extend opportunity of cross examination to the appellant. However, no such opportunity was afforded to him. Show cause notice was not served on him before awarding major penalty. Opportunity of personal hearing was also denied to the appellant. There are numerous judgments of the Supreme Courts that in case major penalty is to be awarded then proper enquiry as prescribed in the rules should invariably be conducted. The serious lacunae pointed out above were



not procedural lapses but glaring illegalities each one was sufficient to vitiate the entire enquiry proceedings. It can be safely inferred that opportunity of fair trial and due process were denied to the appellant as such he was condemned unheard.

7. As a sequel to above, we deem it proper to set aside the impugned orders dated 23.12.2015 and 03.03.2016 and direct the respondent-department to conduct de-novo enquiry strictly in accordance with law and for the purpose of enquiry the appellant is treated as reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.

Sd/- Ahmad Hassan,

(SI)

*Member
Camp court Swat*

*Sd/- Subhan Shis,
Chairman*

ANNOUNCED
04.09.2018

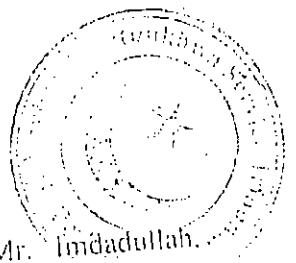
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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	<u>11-09-2018</u>
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Date of Delivery of Copy	<u>11-09-18</u>

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Appeal No. 499/2016
Arif vs Govt



ORDER

04.09.2018

Appellant Arif in person alongwith his counsel Mr. Imdadullah, Advocate present. Mr. Khawas Khan, SI alongwith Mr. Usman Ghani, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today placed on file in connected service appeal no. 257/2016 entitled "Hameedullah -vs- District Police Officer, Swat and 2 others" this appeal is also disposed off. In the circumstances, parties are left to bear their own costs. File be consigned to the record room.

Announced
04.09.2018

Ed. Member
Camp court Swat

Ed. Chairman

Certified to be true copy

Kh. Imdadullah
Service Tribunal,
Peshawar

Date of Presentation	11-09-2018
Number of Pages	800
Copying Charges	6.00
Urgent	2.00
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Date of Receipt	11-09-2018
Date of Delivery of Copy	11-09-2018

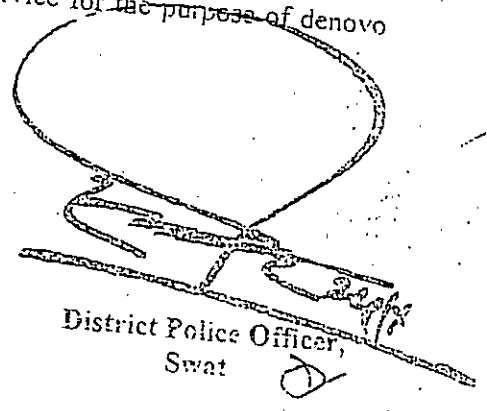
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ORDER

In compliance with the judgment of Service Tribunal, Khyber Pakhtunkhwa in Service Appeal No.499/2016, dated 04-09-2018 and directions received from CPO/Khyber Pakhtunkhwa, Peshawar vide Memo: No.3043/Legal, dated 05-10-2018, Ex-Constable Arif No.2683 is temporarily re-instated in service for the purpose of denovo departmental proceedings.


District Police Officer,
Swat

OB No. 171
Dated 25/10/2018.



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CHARGESHEET.

Syed Ashfaq Anwar, PSP District Police Officer, Swat being competent authority, hereby charge you, Constable Arif No. 2683 (Re-instated in service for the purpose of Denove Departmental Enquiry) as follows:-

You committed the following act/acts, which is/are gross misconduct on your part as defined in Rules 2, (ii) 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.

You while posted to CP Township Police Station Kanju remained involved in registration of a conducted FIR against one namely Mushtaq s/o Kaki Khan r/o Mashikumai vide FIR No 383 dated 20-08-2015 u/s 5 EXP 9B-CNSA/15 AA/34 PPC Police Station Kanju in connivance with Head Constable Hamid Ullah No. 156-I and Gul Sher No. 201/Ex-serviceman. You have been reinstated in service for the purpose of Denove Departmental proceedings in compliance with the judgment of the Honorable Service Tribunal Khyber Pakhtunkhwa in service appeal No. 499/2016, dated 04-9-2018, conveyed to this office vide CPO Peshawar Memo: No. 3043/Legal, dated 05-10-2018. You are therefore, issued this charge sheet and statement of allegations.

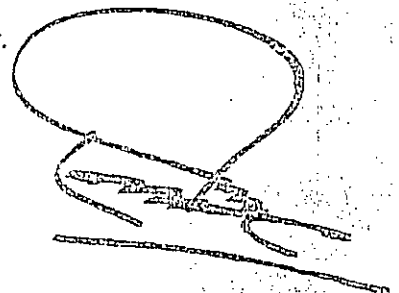
2. By reasons of the above, you appear to be guilty of misconduct and rendered yourself liable to any of penalties specified in Rule-4 of the Disciplinary Rules 1975.

3. You are therefore, required to submit your written reply within two (02) 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, having which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.

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

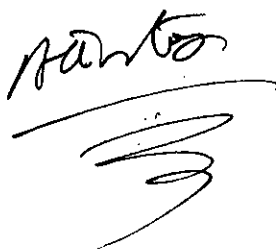
6. A statement of allegations is enclosed.



District Police Officer
Swat

9/1 /PA.

Dated: 29-10-2018.



DISCIPLINARY ACTION.

I, Syed Ashfaq Anwar, PSP District Police Officer, Swat being competent authority, is of the opinion that he Constable Arif No. 2683 (Re-instated in service for the purpose of Denove Departmental Enquiry) has rendered himself liable to be proceeded against departmentally as he has committed the following acts/omissions as defined in Rule 2 (iii) of Police Rules 1975 with amendments 2014 vide Notification No 3859/Legal, dated 27-08-2014 of the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar as per Provincial Assembly of Khyber Pakhtunkhwa Notification No. PA/Khyber Pakhtunkhwa/Bills 2011/4405 dated 16/09/2011 and C.P.O. K.P.K Peshawar Memo: No. 3037-62/Legal, dated 19/11/2011.

STATEMENT OF ALLEGATIONS

It has been reported that he while posted to CP Township, Kanju committed the following act/acts which is/are gross misconduct on his part as defined in Rules 2 (iii) of Police Rules 1975.

He while posted to CP Township Police Station Kanju remained involved in registration of a concocted FIR against one namely Mushtaq-s/o Kaki Khan r/o Mashkumai vide FIR No. 383 dated 20-08-2015 u/s 5 EXP 9B-CNSA/15 AA/34 PPC Police Station Kanju in connivance with Head Constable Hamid Ullah No. 1564 and Gul Sher No. 201/Ex-serviceman. He has been re-instated in service for the purpose of Denove Departmental proceedings in compliance with the judgment of the Honorable Service Tribunal Khyber Pakhtunkhwa in service appeal No. 499/2016, dated 04-09-2018, conveyed to this office vide CPO Peshawar Memo: No. 3043/Legal, dated 05-10-2018.

2 For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, SP Investigation, Swat is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused officer, record its findings and make within two (02) days of the receipt of this order, recommendation as to punishment or either appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the enquiry officer.

District Police Officer
Swat
27/10

No : 91 /PA. Dated Gulkada the 23-10-2018.

Copies of above to:-

- 1. SP Investigation, Swat for initiating proceeding against the accused Officer/Official namely Constable Arif No. 2683 under Police Rules, 1975.
 - 2. Constable Arif No. 2683
- With the direction to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer for the purpose of enquiry proceeding.

فائنڈنگ رپورٹ۔

بحوالہ چارج شیٹ نمبر PA/90 مورخہ 29-10-2018 چارج جناب DPO صاحب طلح سوات۔

برخلاف: محمد اللہ نمبر RHC/2626 سابق نمبر 1564 متعینہ صاحبہ کو رٹ JM دہ حال JIS پولیس لائن کبل۔

جناب عالی

چارج شیٹ بالا بحوالہ چارج جناب DPO صاحب طلح سوات برخلاف الزام الیہ حمید اللہ نمبر 2626 جس کی رو سے زیر تفتیشی کو انگریزی نمبر

مقرر فرمایا ہے۔

تفصیل الزام:-

الزام الیہ حمید اللہ نمبر RHC/2626 سابق نمبر 1564 پر دو سے چارج شیٹ بالا الزام ہے کہ انہوں نے دیگر شریک جیم لڑمان کٹھنیلان عارف نمبر 2683 اور گل شاہ نمبر EXA/201، جہاٹیکر کے ساتھ مل کر کسی مشتاق احمد ولدہ کا کی خان ساکن مشکوئی خوازہ خیلہ کے خلاف من گھڑت مقدمہ عدلت 383 مورخہ 20-08-2015 جرم Exp/15-AA/9C-CNSA-5 تھانہ کاجوردی رجسٹر کر دیا ہے۔ الزام الیہ حمید اللہ RHC کو معزز سرورس ٹریبونل کے ہلروں ایپل نمبر 257/2016 حکم نمبر 04-09-2018 کی تعمیل میں اور CPO پٹا درہ چھٹی نمبر 3041/Legal مورخہ 05-10-2018 کے تابع جناب DPO صاحب سوات نے Denovo حکمانہ انگریزی کے لئے بحوالہ OB نمبر 171 مورخہ 25-10-2018 عارضی طور پر ملازمت پر بحال کر کے چارج شیٹ بالا جاری کیا ہے۔

تفصیل تحقیق:-

1۔ الزام الیہ حمید اللہ RHC کو طلب کیا گیا۔ مذکورہ کو تفصیلی طور پر سنا گیا۔ اور چارج شیٹ حسب ضابطہ حوالہ کیا گیا۔ اور اگلے تاریخ پر بیان قلمبند کیا گیا۔ جنہوں نے اپنے اوپر لگائے گئے الزامات کی تردید کی۔ اور اپنی دفاع میں مقدمہ عدلت 383/2015 بالا کے نسبت معزز عدلت JAS کبل حکم نمبر 27-04-2018 نوٹوائٹیشن پیش کر کے عدالت سے بری ہونا بیان کیا۔

2۔ ذیل گواہان کو طلب کر کے مفردانے گئے۔ مذکورین ذیل کے بیانات قلمبند کر کے الزام الیہ کو ان پر بصرہ کرنے کا پورا پورا موقع دیا گیا۔

i۔ حبیب الرحمان ولد امیر زادہ ساکن چنال درخیلہ بالا تحصیل مو۔

ii۔ مدد محمد جمال نمبر HC/3193 متعینہ تھانہ کاجوردی بحوالہ چارج دوری گودام JIS پولیس لائن کبل۔

iii۔ محمد سیراج خان سابقہ SHO تھانہ کاجوردی بحوالہ SHO تھانہ لیوڑی ضلع شاہک۔

iv۔ شاد خان ولد انوار الحق ساکن اولڈر شاہک حال حلقہ عظیم آباد کاجوردی۔

v۔ کٹھنیل گل خان نمبر 1525 متعینہ چوکی ٹنگوئی حال JIS پولیس لائن کبل۔

vi۔ مشتاق احمد ولدہ کی خان ساکن مشکوئی خوازہ خیلہ۔

vii۔ کٹھنیل نسیم والی نمبر Ex-A/516 متعینہ چوکی ٹنگوئی حال JIS پولیس لائن کبل۔

viii۔ ASI احمد ظفر محمد تھانہ کاجوردی بحوالہ تھانہ رحیم آباد۔

ix۔ کٹھنیل رحم داد نمبر Ex-A/634/HC متعینہ گارڈ ہیری کاجوردی۔

x۔ سپرنٹنڈنٹ وہاب OII تھانہ کاجوردی بحوالہ ایڈیشن سٹاف JIS پولیس لائن کبل۔

الزام الیہ حمید اللہ RHC کو سن کر ان کے بیان اور جملہ گواہان بالا کے بیانات، اور ملاحظہ رکھا تو سے پایا گیا کہ مورخہ 20-08-2015 کو برت 15:10 بجے SHO تھانہ کاجوردی SI محمد سیراج خان نے بمقام کاجوردی چوکی ایک موٹر کارڈاؤن نمبر PS-K.K.S/3394 روڈ پر ٹریفک کی روانی میں حلقہ ڈالے ہوئے پاکر یہ بھاری پر موٹر کارڈاؤن نمبر نے اپنا نام مشتاق احمد ولدہ کی خان ساکن مشکوئی خوازہ خیلہ بتلایا۔ اور بیان کیا کہ اس کو بطور کسی خوازہ خیلہ آڈہ سے دو کسان ایک جوان العمر سبز رنگت آنکھوں والا اور دوسرا سفید داڑھی والے نے ہسپتال سید شریف تک بک کے جس میں داڑھی والے شخص کو چار ٹاپا ہر کر رہا تھا۔ اس کے ساتھ خوازہ خیلہ میٹروں پمپ میں سیب کا ایک کاشن اکریٹ موٹر کارڈاؤن کی ڈکی میں رکھ کر ہر دون کسان نے کاجوردی چوکی پہنچ کر پانی پینے کے لئے موٹر کار سے اخیہ کر کے اتر کر رو پھرے ہوئے۔ گاڑی میں موجود کاشن سیب کا سرسری معائنہ کر کے جس میں ہینڈ گریڈ موجود پا کر BDS کو طلب کر کے جنہوں نے گریٹ مذکورہ سے موقع پر سڑھے ہوئے سیب، ایک ہینڈ گریڈ، لفافہ میں 1180 گرام ہارڈی سواد، 16 نف سٹیلٹی لیڈ تار، ایک عدد پھول 30 پور

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900 گرام چس برآمد کی۔ جس پر SHO صاحب نے ملزم مشتاق احمد بشمول دو نفر ملزمان اسم مسکن مجرم Exp/15-AA/9B-CNSA-5 ضبط تحریر میں لا کر مرسل تھانہ کیا۔ جس کی بنیاد پر مقدمہ عدلت 383/2015 بالا درج رجسٹر نمبر تفتیش حوالہ شعبہ تفتیش ہوا۔ ابتدائی طور پر SI مشرف خان اور مالکانہ سپیکر فضل وہاب خان OII تھانہ کا نمبرامور تفتیش ہوئے۔ سلسلہ تفتیش کو جاری رکھتے ہوئے تھانہ کالج میں نصب CCTV کیمروں سے دو نامعلوم ملزمان پولیس اہلکاران کلسٹیل عارف نمبر 2683 اور کلسٹیل گل شاہ نمبر Ex-A/201 تصدیق ہو کر شامل تفتیش کئے گئے۔ کلسٹیل عارف نے انکشاف کیا کہ انہوں نے وقوعہ کے روز چوکی ٹاؤن شپ کا نمبر سے الزام الیہ حمید اللہ RHC کے کہنے پر کہ خوازہ جیلہ میں SHO صاحب کی امانت ہے لانے کے لئے کلسٹیل گل شاہ Ex-A کی معیت میں بذریعہ موٹر کار جس کو حبیب الرحمان جو حمید اللہ کا پھوپھی زاد اور الزام الیہ حمید اللہ RHC مذکورہ کا بھیجا ہوا تھا چلا رہا تھا۔ نے خوازہ جیلہ جا کر وہاں ٹیکسی سٹینڈ میں موٹر کار غواہی جس کو ڈرائیور مشتاق چلا رہا تھا۔ مبلغ 1000/- روپے پر بک کیا۔ بمقام خوازہ جیلہ کاشف پٹرول پمپ سیب کاشن مذکورہ حبیب الرحمان مذکورہ نے گاڑی میں رکھ دیا۔ اور حمید اللہ RHC سے بذریعہ فون رابطہ میں رہ کر کالج چوک پہنچنے پر گاڑی روک کر دونوں کلسٹیلان موٹر کار سے اترے۔ تو SHO صاحب نے ڈرائیور مشتاق احمد سمیت موٹر کار کو تھانہ کالج لے جایا جہاں سے موٹر کار سے برآمدگی ہوئی۔

O۔ اے سہی حبیب الرحمان کو شامل تفتیش کیا تو مذکورہ نے جملہ بیان کردہ صورتحال کی تصدیق کی۔ اس نسبت مذکورہ کا بیان زیر دفعہ 164 ض ف نام بند کر کے مذکورہ کے بیان کی روشنی میں الزام الیہ حمید اللہ RHC، کلسٹیل عارف اور کلسٹیل گل شاہ نمبر Ex-A/201 کو مورخہ 24-08-2015 ملزمان نامزد کئے گئے۔ تینوں ملزمان کی گرفتاری عمل میں لائی گئی۔ الزام الیہ کلسٹیل عارف اور گل شاہ بدوران تفتیش جرم خود سے اقراری ہوئے تاہم بدوران عدالت جرم خود سے معترف ہوئے اور جوڈیشل حوالات بھیجوائے گئے۔ جبکہ ملزم حمید اللہ نمبر RHC/2626 صحت جرم سے انکاری رہے۔ اور مزید حراست پولیس کے حصول پر جوڈیشل حوالات بھیجوائے گئے۔

تفتیش کے دوران الزام الیہ حمید اللہ RHC اور سہی جہاگیر ولد شاہ مدارسا کن ناگاردین کے مابین روابط و تعلقات منظر عام پر آئے اور جو مقدمہ میں چارج شدہ ملزم مشتاق احمد کا بہنوئی تصدیق ہوا۔ سہی جہاگیر اور مشتاق احمد کے مابین خاندانی ناچاقی سامنے آئی۔ ناچاقی برطانیہ مشتاق احمد تا حال موجود ہے۔ اور اسکی (مشتاق احمد کی) بہن کا والد کے گھر آنا چاہتا بلکل بند ہے۔ سہی مشتاق احمد کو جھوٹی مقدمہ میں پھنسانے کے لئے سہی جہاگیر کا کردار عیاں ہوا۔ جس پر ملزم جہاگیر کو بھی ملزم مقدمہ نامزد کیا گیا۔ مذکورہ اپنی چائز گرفتاری سے دیدہ واندہ طور پر گرفتاریاں ہو کر مذکورہ کے خلاف کارروائی روپوشی عمل میں لائی گئی۔ دوران تفتیش حقائق کے بنیاد پر ملزم مشتاق احمد کو بوجہ بے گناہی دائرہ ملازمت سے نکال کر چالان فارم کے خانہ نمبر 02 میں ڈالا گیا۔ روپوش ملزم جہاگیر نے عدالت سے عبوری ضمانت قبل از گرفتاری حاصل کر کے مورخہ 31-10-2015 کو خارج ہو کر حسب ضابطہ گرفتار ہوا۔ تاہم دوران تفتیش صحت جرم سے انکاری رہے۔ اور مزید حراست پولیس کے حصول پر مورخہ 03-11-2015 کو جوڈیشل حوالات بھیجوائے گیا۔ انکوڑی سے ذیل قابل ذکر باتیں سامنے آئی ہیں۔

- 1۔ دوران تفتیش کلسٹیل عارف کے انکشاف پر پرائیویٹ گواہ ثار خان ولد انوار الحق نے اپنے ابتدائی بیان میں واضح کیا کہ وقوعہ سے قبل ڈرامہ بالا رچانے کے لئے حمید اللہ RHC اور کلسٹیل عارف نے اس کے دکان آکر اسے دو ہزار روپے دیئے تھے۔ لیکن اس نے (ثار نے) انکار کیا تھا۔ اور رقم مذکورہ اس نے کلسٹیل عارف کو بدست کلسٹیل اصغر واپس کیا ہے۔ جو O.I.I.O نے بروئے فرد قبضہ پولیس کئے ہیں۔
- 2۔ برطانیہ O.I.I.O سپیکر فضل وہاب خان الزام الیہ حمید اللہ RHC نے وقوعہ ہذا کے نسبت کلسٹیل عارف نمبر 2683 کو بذریعہ ایزی پیس مبلغ 15000/- روپے ادا کئے ہیں۔ اگرچہ اس ٹرانزیکشن میں CNIC گناہم جبکہ موبائل نمبر حمید اللہ RHC کا استعمال ہوا ہے۔ رقم مذکورہ بطور رشوت الزام الیہ کلسٹیل عارف نمبر 2683 سے برآمد ہو کر قبضہ پولیس کیا گیا ہے۔
- 3۔ الزام الیہ حمید اللہ RHC کلسٹیل عارف اور گل شاہ Ex-A کے خلاف گواہان حبیب الرحمان، ثار خان، شاہ فیصل، کاکی خان، کلسٹیل عارف، سہی رحمانی نمبر 516، کلسٹیل عجب خان نمبر 1525 بشمول دیگر گواہان کے بیان ذیل درجہ 161/164 ض ف بطور ٹھوس شواہد منظر میں پر لائے گئے ہیں۔ الزام الیہ حمید اللہ، کلسٹیل عارف کے درخواست ضمانت بدیں وہ لوڈیئر کورٹس سے خارج ہو کر باحد عدالت عالیہ ہائی کورٹ فیج دار تقاضا نمٹا گٹ سزات سے ضمانت پر رہا ہوئے۔

انکوڑی ہذا سے یہ حقائق سامنے آئے کہ الزام الیہ حمید اللہ اور کلسٹیل عارف نے وقوعہ سے ایک یوم قبل یعنی مورخہ 19-08-2015 کو

(Handwritten signature)



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Phone: 091-9211947

Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

No. 1657 /E&I, dated Peshawar the 10 /12/2018

To: The District Police Officer,
Swat.

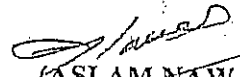
Subject: **DENOVE DEPARTMENTAL ENQUIRY AGAINST
EX-FC JAMIDULLAH NO. 1564/2626**

Memo:

Please refer to your office letter No 22029/E dated 06.12.2018, on the subject cited above.

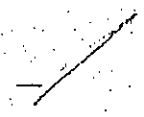
2. Your good self being competent authority in the matter may proceed further in the light of recommendations of the enquiry officer, under intimation to this office.

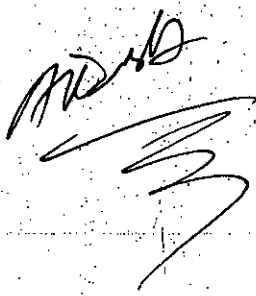
3. Being a court matter the proceedings shall be completed within the limitation period to avoid further legal complications.


(ASLAM NAWAZ)
Assistant Inspector General of Police
Complaint & Enquiry
Khyber Pakhtunkhwa,
Peshawar

No. /E&I,
Copy of above is forwarded for information to:-

1. The Regional Police Officer, Malakand.
2. The PSO to IGP.


(ASLAM NAWAZ)
Assistant Inspector General of Police
Complaint & Enquiry
Khyber Pakhtunkhwa,
Peshawar



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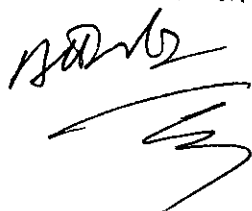
ORDER

This order will dispose of Denove Departmental enquiry against Head Constable Hameed Ullah No. 1564 (re-instated in service for the purpose of Denove Departmental enquiry and allotted constabulary No. 2626). He while posted as Naib Court Judicial Magistrate Maita was alleged of gross misconduct as he implicated an innocent citizen in a case of heinous nature. He in connivance of Constable Arif No. 2683 and Constable Gul Sher No. 201/Ex-serviceman placed 01 hand grenade, 1.2 kg explosives, 16 fuses, 01 pistol 30 bore and 900 gm charas in the car of one namely Mushtaq s/o Kaki Khan r/o Mashkumai and got him arrested through local Police of Police Station Kanju. A case FIR No. 287 dated 20-08-2015 u/s 5 exp 9B-CNSA/15AA/34 PPC Police Station Kanju was thus registered against him. Smelling foul, a regular enquiry was conducted against the delinquent Head Constable and subsequently he was dismissed from service vide this office OB No. 216 dated 23-12-2015 after it was proved that he alongwith Constable Arif and Constable Gul Sher implicated an innocent citizen in a fake case.

In compliance of Judgment of the Honorable Service Tribunal Khyber Pakhtunkhwa in Service Appeal No. 257/2016, dated 04-09-2018, received in this office vide CPO Peshawar Memo: No. 3041/Legal, dated 05-10-2018, the dismissed Head Constable was re-instated in service for the purpose of Denove Departmental Enquiry. As such he was issued a charge sheet and statements of allegations vide this office No. 90/PA, dated 29-10-2018 and SP (Investigation) Swat was appointed as Enquiry Officer to conduct a regular enquiry against the re-instated Head Constable. The Enquiry Officer submitted his findings and recommended that the Head Constable be re-instated in service with all backs benefits because the case could not be proved in the court against the delinquent Head Constable who was subsequently decreed as accused in the same case.

^u The Head Constable was called in Orderly Room and heard in person. The case file was minutely perused and the delinquent officer was thoroughly interviewed which unfolded the whole incident. Therefore, the undersigned did not agree with the recommendation of the Enquiry Officer as he had not applied his judicial mind. Consequently, all concerned in the case were called. They were heard in person, thoroughly interrogated, cross examined and their statements were recorded. ✓

The undersigned came to the conclusion that a plot was hatched by Head Constable Hameed Ullah No. 1564 with one Mr. Jehangir, the brother in law of the original accused Mushtaq due to strained family relationship between the latter two. The Head Constable further hired Constable Arif No. 2683 and Constable Gul Shah No. 201/Ex-serviceman on payment and provided them a wooden crate containing 900 gm charas, 01 hand grenade, 1.2kg explosives, 16 fuses and 01 pistol 30 bore. Later on he informed the SHO of Police Station Kanju to arrest the accused. Interestingly, Mr. Habib Ur Rahman and Fiazar Khan who were shown as witnesses against original accused Mushtaq in the case were pre-planned as the enquiry revealed that the former was first cousin of Head Constable Hameed Ullah No. 1564 while the latter was a close friend of FC Arif. Moreover, they both admitted in front of the undersigned



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that they had no knowledge of the incident but were told by TIC Hameed Ullah No. 1564 and PC Arif to depose against Mushtaq. Moreover, when Hameed Ullah, Arif and Gul Sher were challanged in this case after being declared as accuseds, the IO malifidey did not change the earlier witnesses (Habib-ur-Rahman and Nisar) and as such both of them resided in the court from their testimony against Hameed Ullah etc.

This whole case is a classic example of abuse of Police uniform and extreme violation of code of conduct for a Police Officer. Implicating an innocent individual in a heinous case by Police Officers in connivance of his relatives to teach him a lesson due to his family issues is not only ignoble but also inhuman. His conduct is abhorable and detrimental to discipline. He could not be re-instated in service. Hence, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules – 1975, I-Syed Ashfaq Anwar, PS District Police Officer, Swat being competent authority, am constrained to again award him major punishment of dismissal from service.

Order announced.

(Signature)
District Police Officer
Swat

O.B. No. 01

Dated: 01.01.2019

Copy to:-

1. Deputy Inspector General of Police (Internal Accountability) with reference to CPO Peshawar letter No. 1357/E&I, dated 17-10-2018 please.
2. Establishment Clerk
3. OSI

For necessary action, please.

(Signature)

District Police Officer
Swat

imp order 11/1/2018

Survey process
order comm.

Competent authority
became

enjoying office

in violation of order
of Tribunal in prev. appeal
(Enquiry)

بھجور جناب ڈپٹی اسپیکٹر جنرل آف پولیس ملاکنڈ ڈویژن بمقام سید و شریف

اپیل برخلاف حکم نمبر 01 مورخہ 01/01/2019 جناب ڈسٹرکٹ پولیس آفیسر صاحب ضلع سوات

جناب عالی:

اپیل ذیل عرض ہے:

1- یہ کہ سائیل محکمہ پولیس میں بحیثیت کسٹبل مورخہ 20/01/2010 کو بھرتی ہوا تھا۔ اور باقاعدہ طور پر پولیس ٹریگ سکول ہنگو سے تربیت حاصل اور ٹریگ مکمل کرنے کے بعد ضلع سوات میں مختلف پولیس سٹیشن اور چوکیات میں نیک نیٹی اور خوش اسلوبی کیساتھ خدمات سرانجام دی اور کبھی بھی افسران بالا کو کوئی شکایت کا موقع نہیں دیا۔

اپیل ہذا ہے

2- یہ کہ من سائیل کو مورخہ 20/08/2015 کو ایک بے بنیاد مقدمہ میں نامزد کیا گیا بعد اور تین پولیس اہلکاران کے بوجہ بالامن سائیل کو سرکاری نوکری سے بھی برخاست کیا گیا۔ مقدمہ ہذا میں کارروائی شروع ہوئی۔ بدوران تفتیش تفتیشی آفیسر نے مختلف لوگوں کے بیانات بھی قلمبند کئے۔ لیکن کسی بھی شخص نے من سائیل کیخلاف بیان نہیں دیا۔ اور نہ ہی کوئی ثبوت پیش کئے (نقول بیانات لف اپیل ہذا ہے) اور مقدمہ عدالت نمبر 383 مورخہ 20/08/2015 میں جن پولیس افسران یا اہلکاران نے کارروائی کی تھی یا حصہ لیا تھا۔ تمام کے تمام پولیس اہلکاران اور افسران کے بیانات معزز عدالت ایڈیشنل سیشن جج صاحب کبل سوات میں قلمبند ہوئے۔ مذکورہ بیانات میں من سائیل کے خلاف کوئی بھی ایسی بات نہیں آئی جن کی وجہ سے من سائل کو گناہ ثابت کر سکے۔ اور اس بنا پر معزز عدالت نے من سائیل بمعہ اولترمان کو باعزت طور پر بری کر دیا۔ (نقل فیصلہ معزز عدالت لف ہے)

3- یہ کہ مذکورہ جامعہ فیصلہ کیخلاف محکمہ پولیس نے عدالت عالیہ پشاور ہائی کورٹ دارالقضاء سوات جج میں اپیل دائر کی لیکن بوجہ کم وزنی محکمہ پولیس اپیل کو معزز عدالت عالیہ پشاور ہائی کورٹ دارالقضاء سوات جج نے خارج کی۔ اس کے بعد من سائیل نے جناب DPO صاحب سوات کو ایک درخواست بابت بحالی نوکری گزاری لیکن جناب DPO صاحب نے مسترد کر دیا۔ اس کے بعد من سائیل نے معزز عدالت سرورس ٹریبونل خیبر پختونخواہ میں اپیل نمبر 2016-499 دائر کی جس پر معزز عدالت نے مورخہ 04/09/2018 کو من سائیل کے حق میں فیصلہ سنایا اور من سائیل کو نوکری پر بحال کرنے کا حکم دیا اور محکمہ پولیس کو ہدایت دی کہ ایک De-novo انکوائری کرے کیونکہ بوقت برخاستگی من سائیل کو ذاتی کواشنوائی کا موقعہ نہیں دیا تھا۔ لیکن جناب DPO صاحب نے عدالت کے فیصلہ کو جزوی طور پر تسلیم کرتے ہوئے من سائیل کو عارضی طور پر نوکری پر بحال کر دیا حالانکہ معزز عدالت نے اپنے فیصلہ میں عارضی

Academy

بحالی کا کوئی ذکر نہیں کیا ہے۔ (فیصلہ معزز عدالت سروس ٹریبونل خیبر پختونخواہ لف ہذا ہے)

4- یہ کہ جناب DPO صاحب سوات نے De-novo انکوائری کے سلسلے میں سائیل کو غیر قانونی طور پر ایک بار پھر چارج شیٹ نمبر 91-PA مورخہ 29/10/2018 دیا۔ اور مذکورہ De-novo انکوائری جناب SP صاحب انوسٹی گیشن نے مکمل جان میں کی اور ایک بار پھر تمام گواہان کو طلب کیا۔ اور ان کے بیانات قلمبند کئے۔ اور پھر من سائیل کو بھی طلب کیا گیا۔ تفصیلی سوالات کئے جس پر من سائیل نے تفصیلی جوابات دیئے۔ اور اپنی اوپر لگے گئے تمام الزامات کو مسترد کر دیا۔ معزز عدالتوں کے فیصلے کی نقولات بھی دیئے جس میں من سائیل کو بے گناہ قرار دیا گیا ہے۔ جناب SP صاحب انوسٹی گیشن نے اپنے تفصیلی رپورٹ میں بھی من سائیل کو بے قصور قرار دیا اور All back benefits کی سفارش کی اور جناب انسپکٹر جنرل آف پولیس خیبر پختونخواہ نے بھی اپنے دفتر سے جاری کردہ حکم نامہ نمبر E-1657 مورخہ 10/12/2018 کے ذریعے بھی جناب DPO صاحب سوات کو ہدایت کی تھی کہ چونکہ یہ ایک عدالتی معاملہ ہے اور عدالت نے رسمی عارف کو تمام الزامات سے بری کیا ہے۔ تو آپ انکوائری آفیسر کی سفارشات کی روشنی میں اقدامات کریں۔ (نقول لف اپیل ہذا ہے)

5- یہ کہ جناب DPO صاحب سوات نے De-novo انکوائری آفیسر کے سفارش کے برعکس ایک دفعہ پھر من سائیل کو نوکری سے بر طرف کر کیا گیا۔ جو کہ انصاف اور قانون کے بالکل خلاف اور من سائیل کو ذہنی اذیت اور پریشانی میں مبتلا کر دیا ہے۔ جو کہ توہین عدالت کے زمرے میں بھی آتا ہے۔ نقل OB NO1 مورخہ 01/01/2019 (لف اپیل ہذا ہے)۔

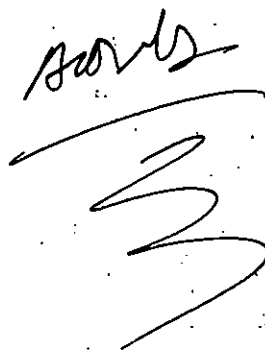
6- لہذا استدعا ہے کہ بے منظوری اپیل ہذا حکم، فیصلہ جناب DPO صاحب سوات کو کا اہتمام قرار دیا جائے اور من سائیل کو De-novo انکوائری آفیسر صاحب کے سفارشات کے روشنی میں All back benefits نوکری پر بحال کرنے کا حکم فرمایا جائے۔ تو من سائیل مزید عدالتوں کے چکر دوں سے بھی بچ جائیگا اور آپ صاحبان کو عمر درازی کیلئے ہمیشہ دعا گو رہے گا۔

عریفہ:

آپ کا تابع فرمان عارف سابقہ نمبر 2683

گاؤں خرقی تحصیل درگی

رابطہ نمبر 03400843457





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**OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND**

AT SAIDU SHARIF SWAT.

Pli: 0946-9240381-88 & Fax No. 0946-9240390

Email: dighalakand@yahoo.com

ORDER:

This order will dispose of appeals of Ex-Head Constable Hamidullah No. 1564/2626. Constable and Ex-Constable Arif No. 2683 for reinstatement in service.

Brief facts of the case are that Ex-Constable Arif No. 2683 in connivance with Ex-Head Constable Hameed Ullah No. 1564 and Constable Gul Sher No. 201/Ex-Serviceman placed 01 Hand Grenade, 1.2 kg explosives, 16 fuses, 01 pistol 30 bore and 900 gm charas in the Car of one namely Mushtaq s/o Kaki Khan r/o Mashkumal and got him arrested through local Police of PS Kanju. A case FIR No. 385 dated 20/08/2015 u/s 5-Exp/9-BCNSA/15-AA/34-PPC PS Kanju was thus registered against him. Smelling foul, a regular enquiry was conducted against the delinquent officers i.e. SI Muhammad Siraj the then SHO PS Kanju (now at District Shangin), Head Constables Hamidullah No. 1564, Constable Arif No. 2683 and it was proved that they implicated an innocent citizen in a fake case. Subsequently Head Constables Hamidullah No. 1564 and Constable Arif No. 2683 were dismissed from service vide DPO Swat. office OB No. 216 dated 23/12/2015 and SI Muhammad Siraj was awarded the punishment of reduction in pay by three stages vide DPO Swat office OB No. 216 dated 23/12/2015.

Later on Head Constables Hamidullah No. 1564 and Constable Arif No. 2683 filed appeals in the court of Honorable Service Tribunal, Khyber Pakhtunkhwa Peshawar. In compliance of Judgments of the Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar in Service Appeal No. 257/2016, dated 04/09/2018 of HC Hamidullah No. 1564 and Service Appeal No. 499/2016 dated 04/09/2018 of Constable Arif No. 2683 both the dismissed officers were reinstated in service for the purpose of Denovo Departmental Enquiry. SP Investigation Swat was appointed as enquiry officer. The enquiry officer submitted his findings and recommended that both the officers be reinstated in service with all back benefits because the case could not be proved in the Court against the delinquent officials who were subsequently declared as accused in the same case. Both the officers were called in Orderly Room by DPO Swat and heard in person. The case file was minutely perused and the delinquent officers were thoroughly interviewed which unfolded the whole incident. Therefore, the DPO Swat did not agree with the recommendation of the enquiry officer as he did not apply his judicial mind. Consequently all concerned in the case were called. They were heard in person, thoroughly interrogated, cross examined and their statements were recorded. The DPO, Swat came to the conclusion that a plot was hatched by Head Constable Hameed Ullah No. 1564 with one Mr. Jehangir brother in law of original accused Mushtaq due to strained family relationship between the latter two. The Head Constable Hamid Ullah further hired Constable Arif No. 2683 and Constable Gul Shah No. 201/Ex-Serviceman on payment and provided them a wooden crate containing 900 gm charas, 01 hand grenade, 1.2 kg explosives, 16 fuses and 01 pistol 30 bore. Later on, Head Constable Hameed Ullah informed the SHO Muhammad Siraj of Police Station Kanju to arrest the accused. Interestingly, Mr. Habib Ur Rahman and Nisar Khan who were shown as witness against original accused Mushtaq in the case were pre-planned as the enquiry revealed that the former was first cousin of Head Constable Hameed Ullah No. 1564 while the later was a close friend of FC Arif. Moreover, they both admitted in front of the DPO, Swat that they had no knowledge of the incident but were told by HC Hameed Ullah No. 1564 and FC Arif to depose against Mushtaq. Moreover, when HC Hameed Ullah, FC Arif and FC Gul Sher were challaned in this case after being declared as accused, the Investigation Officer malafidely did not charge the earlier witness (Habib Ur Rahman and Nisar) and as such both of them resoled in the Court from their testimony against Arif etc. The whole case is classic

Arif

Example of abuse of Police Uniform and extreme violation of code of conduct for a Police Officers. Implicating an innocent individual in a heinous case by Police Officers in connivance with his relatives to teach him a lesson due to his family issues is not only ignoble but also inhuman. Their conduct is abhorable and detrimental to discipline. They could not be re-instated in service. Hence, they both i.e Head Constable Hamidullah No. 1564 and Constable Arif No. 2682 were again dismissed from service vide DPO, Swat office OB No. 01 dated 01/01/2019. The allegations leveled in the Departmental appeals are baseless and vogue in nature. All the opportunities of self defense and hearing were provided to the delinquent officers but they failed to stratify the DPO, Swat regarding the serious allegations.

(Both, Ex-Head Constable Hamidullah No. 1564/2626 and Constable Arif No. 2683 were called in Orderly Room by the undersigned and their case was thoroughly perused. To further scrutinize the case, SP Investigation Swat and Addl: SP Swat were nominated to conduct denovo enquiry into the matter and submit findings report vide this office order No. 3982-84/E, dated 27/03/2019. The enquiry officer after conducting proper denovo enquiry into the matter submitted his finding report vide SP Investigation Swat Memo: No. 3440/C-Cell, dated 15/05/2019 wherein he recommended that though the charges against both the officers i.e Ex-Head Constables Hamidullah No. 1564/2626 and Ex-Constable Arif No. 2683 could not be proved in the court and they were acquitted but they i.e SI Muhammad Siraj, Head Constable Hamidullah No. 1564/2626 and Constable Arif No. 2683 are wholly solely responsible for registration of fake case vide FIR No. 383 dated 20/08/2015 u/s 5-Exp/9-BCNSA/15-AA/34-PPC PS Kanju, District Swat. Therefore, I the Undersigned uphold the order passed by DPO Swat wherein he has dismissed Head Constable Hamidullah No. 1564/2626 and Constable Arif No. 2683, from service. Their appeals are hereby rejected. Moreover, the punishment of reduction in pay by three (3) stages awarded by DPO Swat vide OB No. 216 dated 23/12/2015 to SI Muhammad Siraj is hereby converted into dismissal from service with immediate effect as the delinquent officers are equally responsible for such illegal act as proved in denovo enquiry conducted by SP Investigation Swat.

Order announced.

OB/EC
Var No. Action
[Signature]

[Signature]
 (MUHAMMAD SAIED), PSP
 Regional Police Officer,
 Malakand, at Saidu Sharif Swat
 k/m...Naq

No. 6572-75 /E,

Dated 14-06 /2019.

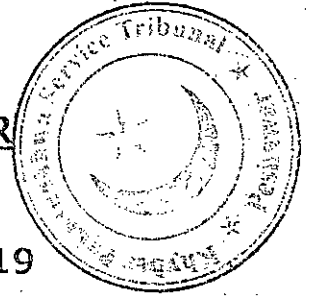
OB No. 98
17.6.19

Copy of above is forwarded to the:-

1. Worthy Inspector General of Police, Khyber Pakhtunkhwa Peshawar with reference to AIG/ Complaint & Enquiry CPO Peshawar Memo: No. 1657/E&I dated 10/12/2018, No 5750/C-Cell dated 27/12/2018 (addressed to DPO Swat) and No. 325/C-Cell dated 18/01/2019 (addressed to DPO Shangla)
2. District Police Officer, Swat for information and necessary action with reference to his office Memo: No. 1033/Legal, dated 21/01/2019 and No. 3411/E, dated 26/02/2019. Service Rolls and Fauji Missals of Ex-Head Constable Hamidullah No. 1564/2626 and Ex-Constable Arif No. 2683 containing complete enquiry files are returned herewith for record in your office.
3. SP Investigation Swat with reference to his office Memo: No. 3440/C-Cell, dated 15/05/2019.
4. District Police Officer Shangla for information and necessary action.

[Signature]

BEFORE KPK SERVICE TRIBUNAL PESHAWAR



S.A No. 930 / 2019

Hameed Ullah S/O Khan Zada,
R/o Sakhra Tehsil Matta, Swat,
Ex-Head Constable. No. 2626,
Police Line Kabal Swat Appellant

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 942

Dated: 10/7/2019

Versus

1. District Police Officer,
Swat.
2. Deputy Inspector General
of Police, Malakand Region,
at Saidu Sharif Swat.
3. Provincial Police Officer,
KP, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OB. NO. 01 DATED 01-01-2019 OF R. NO.
01 WHEREBY APPELLANT WAS DISMISSED FROM
SERVICE OR OFFICE ORDER NO. 6572-75 / E DATED
14-06-2019 OF R. NO. 02 WHEREBY HIS
DEPARTMENTAL APPEAL WAS REJECTED FOR NO
LEGAL REASON:

Filed to-day
Registrar
10/7/19

⇔<=>⇔<=>⇔<=>⇔<=>⇔

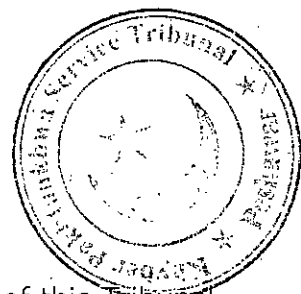
Respectfully Sheweth:

1. That facts and grounds of the subject matter has been fully narrated in the S.A. No. 257/16 dated, 17-03-2016 and in the judgment dated 04-09-2018 of the Hon'ble Tribunal and need not to again repeat the same. (Copy as annex "A")

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

A-No. 930/2019
Hameedullah vs Govt



08.08.2019

Counsel for the appellant present.

Contents that in pursuance to the judgment of this Tribunal passed in service appeal No. 257/2016 denovo enquiry was conducted by the department. In the enquiry report it was recommended that as allegations against the appellant were not proved, he was entitled to all back benefits. Despite, the competent authority without providing cogent reasons awarded major punishment of dismissal from service to the appellant. Similarly, his departmental appeal was also rejected.

In view of arguments of learned counsel and available record, instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 16.09.2019 before S.B.

8/8/19

Appellant Deposited
Security & Process Fee

Chairman

Certified to be true copy

Khairatullah
Service Tribunal,
Peshawar

Date of Presentation of Application 28-8-19
Number of Words 800
Copying Fee 12-00
Urgent _____
Total 12-00
Name of Copyist
Date of Completion of Copy 28-8-19
Date of Delivery of Copy 29-8-19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 932/2019

Arif S/O Muhammad Jan R/O Harkal Dargai District Malakand (Ex- Constable
No.2683) Police Station Shamoza, Swat

..... Appellant

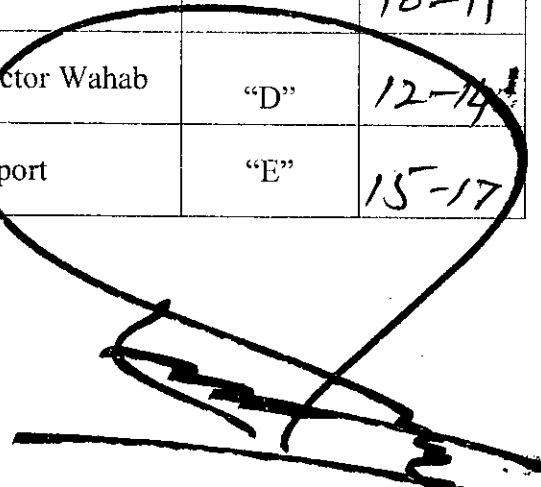
VERSUS

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

..... Respondents

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District Police Officer, Swat
(Respondent No. 01)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 932/2019

Arif S/O Muhammad Jan R/O Harkal Dargai District Malakand (Ex- Constable No.2683) Police Station Shamoza, Swat

..... Appellant

VERSUS

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

..... 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.
- 7. That the appellant has not filed departmental appeal before the respondent No.02 within time limit.

FACTS:

- 1. Pertains to record of service appeal No.499/16 wherein respondents department had submitted comprehensive reply to the service appeal of appellant. Copy of reply is enclosed as annexure "A".
- 2. Pertains to record of honorable Tribunal. The directions of honorable Tribunal have been complied with in accordance with law/rules.
- 3. Pertains to record. The appellant was re instated for denovo enquiry and all opportunities of fair defense etc were provided to the appellant in accordance with law/rules.
- 4. Pertains to record, hence needs no comments.
- 5. Incorrect. The reply of appellant was found unsatisfactory and enquiry officer was appointed to probe into the matter.

*Checked
 7 formal correct
 H. H. H.
 M. S. P. S. G. S.
 26/09/19*

- 6. Incorrect. Enquiry Officer has referred criminal case which has no effect on departmental probe as per ruling of apex Court. Furthermore, competent authorities are not bound to follow the remarks/findings of enquiry officer. Orders of respondents are well reasoned, speaking and based on facts. Copies enclosed as annexure "B" and "C".
- 7. Incorrect. District Police Officer is competent authority under the rules to award punishment after conducting of departmental enquiry against the appellatant through enquiry officer.
- 8. Incorrect. Orders of respondents are well reasoned, speaking and based on facts. Appellant with others officials have planted a fake criminal case against innocent person by abusing Police uniform and violating code of conduct and the same fact was dig out during course of investigation. He was challaned to criminal Court for facing trial but got acquitted on technical grounds, which does ^{not} affect the departmental proceedings in any way.
- 9. Pertains to record. Order of respondent No.02 is speaking, well reasoned and justified under the rules.

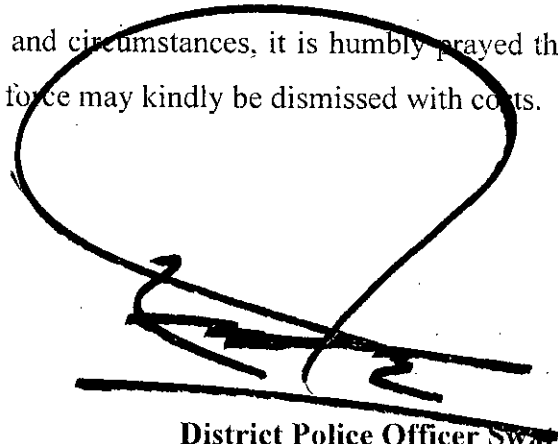
GROUNDS:

- a. Incorrect. The performance of appellatant during service was not fully satisfactory.
- b. Incorrect. Being a Police officer he is duty bound to perform his duty in all situation. Those Police official who had wilfully decamped from official duty had been dealt departmentally.
- c. Correct to the extent that in denovo enquiry, the enquiry officer (SP Investigation) has recorded statement of material witness namely Fazal Wahab Inspector (Investigating Officer of case FIR No.383 dated 20/08/2015 U/S 5 Exp, 9B-CNSA, 15AA/34 Police Station Kanju) in the presence of appellatant and the actual facts regarding abuse of Police uniform, extreme violation of code of conduct and implicating of innocent individuals in a heinous case by the appellatant and his colleagues have been fully established vide last third para of finding report. Copy of statement of Inspector Wahab and finding report of Enquiry Officer are enclosed as annexure "D" and "E".
- d. Incorrect. There is no need of issuing of Show Cause Notice to the appellatant under the rule. As explained in para "C", competent authority did not agree with last para of enquiry finding and has based his speaking order in the last third para of enquiry report and statement of investigating officer.

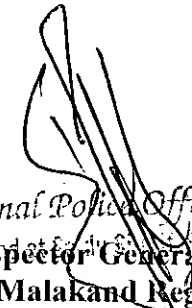
- e. Incorrect. The competent authority has awarded appropriate punishment to the appellant in the light of proved serious nature charges during enquiry and personal satisfaction. Furthermore, the respondents have no malafide intention or grudges towards the appellant and the whole departmental proceedings was carried out in accordance with facts and rules.
- f. Incorrect. The criminal and departmental proceedings are separate in nature. In criminal investigation the appellant and his colleagues found responsible for the charges and they were challaned to court in the light of evidence but during trial the witnesses retracted from their statements and the accused appellant was acquitted on technical grounds which does not affect the departmental proceedings wherein the charges of abuse of Police uniform, extreme violation of code of conduct and implicating of innocent persons in fake case were fully established.

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.



**District Police Officer Swat
(Respondent No. 01)**



Regional Police Officer,
**Deputy Inspector General of Police
Malakand Region
(Respondent No. 2)**



**Provincial Police officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 03)**

Service Appeal No. 932/2019

Arif S/O Muhammad Jan R/O Harkal Dargai District Malakand (Ex- Constable
No.2683) Police Station Shamoza, Swat

..... Appellant

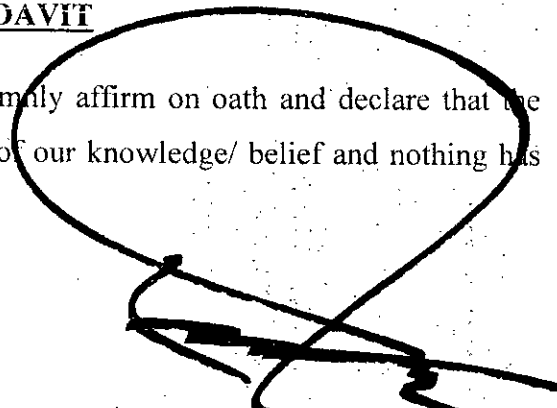
VERSUS


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

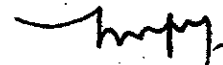
..... Respondents

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.


District Police Officer, Swat
(Respondents No.01)


Regional Police Officer,
Deputy Inspector General of Police
Malakand Region
(Respondents No.02)


Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
(Respondents No.03)

Service Appeal No. 932/2019

Arif S/O Muhammad Jan R/O Harkal Dargai District Malakand (Ex- Constable
No.2683) Police Station Shamoza, Swat

..... Appellant

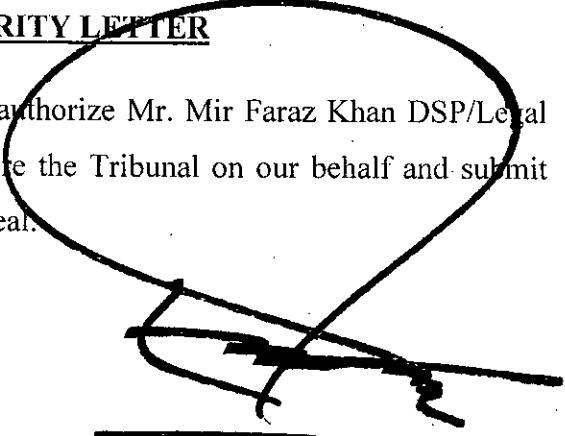
VERSUS

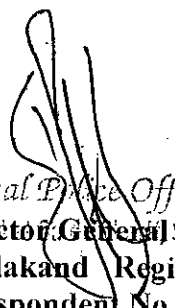
1. District Police Officer Swat.
2. Deputy Inspector General of Police, Malakand at Saidu Sharif Swat.
3. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.


..... 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.


District Police Officer Swat
(Respondent No. 01)


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


Provincial Police officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 03)

Am ead A

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 499/2016.

Arif Fa Constable No. 2683, Police Station Kanju, District Swat

..... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar

2. Regional Police Officer, Malakand Region at Saidu Sharif, Swat

3. District Police Officer, Swat

..... (Respondents)

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Shewith

Preliminary Objections:-

1. That the Service Appeal is time barred.
2. That the appeal is bad due to misjoinder and non-joinder of necessary parties.
3. That the appellant has got no cause of action.
4. That the appellant is estopped due to his own conduct.
5. That the appellant has concealed material facts from this August Tribunal.

ON FACTS

- i. Para No. 01 pertains to the Service record of the appellant, therefore needs no comments.
- ii. Incorrect. The appellant in collaboration with SHO and 2 other officials planned to implicate an innocent Taxi driver namely Mushtaq, but during investigation it transpired in the said FIR; that the Taxi driver was innocent and the appellant alongwith others were the real culprits, by planted a fake recovery due to personal enmity of one of accused. Therefore the appellant being guilty of misconduct was dismissed from service after proven guilty in Enquiry against him.
- iii. Incorrect. The appellant falsely implicated an innocent Taxi driver and committed gross misconduct as well as criminal act, and thereby bringing a bad name for the entire force.
- iv. Incorrect. Proper departmental was conducted against the appellant. vide copy of charge sheet, statement of allegation Finding Report and Enquiry papers as Annex- "A", "B", "C" and "D" respectively.
- v. Incorrect. The appellant fabricated, conspired and falsely implicated an innocent Taxi driver in a fake criminal case. Therefore he was nominated as principal accused and committed to jail. Departmental enquiry was conducted against him and he was proven guilty of allegations/charges leveled against him.

VI. Correct to the extent that his departmental appeal was turned down by respondent No. 2 being devoid of merits. The rest is denied.

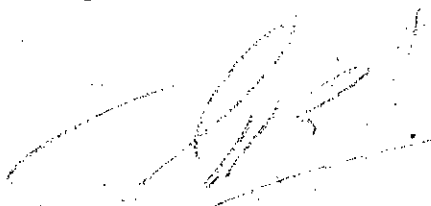
VII. The appellant has not no cause of action to file instant appeal.


ON GROUNDS

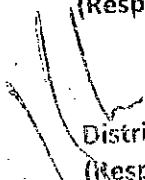
- a. Incorrect. Proper departmental enquiry was conducted against the appellant. He has been treated in accordance with law and rules applicable to him.
- b. Incorrect. The appellant was associated with departmental proceedings. He also submitted his statement to the enquiry officer. The appellant being guilty of misconduct and criminal act couldn't produce any substantive, cogent and material evidence to defend himself.
- c. Incorrect. No legal or constitutional right of the appellant has been infringed or bereaved.
- d. Incorrect. The appellant has been treated in accordance with law. No principle of natural justice and no provision of constitution have been violated. The appellant was an offender who committed an offence and misconduct.
- e. Incorrect. The appellant committed a criminal offence and gross misconduct who was proven guilty during enquiry.
- f. No comments.

PRAYER

In view of the above comments on facts and grounds it is very humbly prayed that Appeal of the appellant may be dismissed with costs.


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


Regional Police Officer,
Malakand Region at Saidu Sharif, Swat
(Respondent No. 02)


District Police Officer, Swat
(Respondent No: 03)

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Attention to DIG Enquiry

Annex B

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ORDER

This order will dispose of Denove Departmental enquiry against Head Constable Hameed Ullah No. 1564 (re-instated in service for the purpose of Denove Departmental enquiry and allotted constabulary No. 2626). He while posted as Naib Court Judicial Magistrate Matta was alleged of gross misconduct as he implicated an innocent citizen in a case of heinous nature. He in connivance of Constable Arif No. 2683 and Constable Gul Sher No. 201/Ex-serviceman placed 01 hand grenade, 1.2 kg explosives, 16 fuses, 01 pistol 30 bore and 900 gm charas in the car of one namely Mushtaq s/o Kaki Khan r/o Mashkumai and got him arrested through local Police of Police Station Kanju. A case FIR No. 383 dated 20-08-2015 u/s 5Exp 9B-CNSA/15AA/34 PPC Police Station Kanju was thus registered against him. Smelling foul, a regular enquiry was conducted against the delinquent Head Constable and subsequently he was dismissed from service vide this office OB No. 216 dated 23-12-2015 after it was proved that he alongwith Constable Arif and Constable Gul Sher implicated an innocent citizen in a fake case.

In compliance of Judgment of the Honorable Service Tribunal Khyber Pakhtunkhwa in Service Appeal No. 257/2016, dated 04-09-2018, received in this office vide CPO Peshawar Memo: No. 3041/Legal, dated 05-10-2018, the dismissed Head Constable was re-instated in service for the purpose of Denove Departmental Enquiry. As such he was issued a charge sheet and statements of allegations vide this office No. 90/PA, dated 29-10-2018 and SP (Investigation) Swat was appointed as Enquiry Officer to conduct a regular enquiry against the re-instated Head Constable. The Enquiry Officer submitted his findings and recommended that the Head Constable be re-instated in service with all backs benefits because the case could not be proved in the court against the delinquent Head Constable who was subsequently declared as accused in the same case.

The Head Constable was called in Orderly Room and heard in person. The case file was minutely perused and the delinquent officer was thoroughly interviewed which unfolded the whole incident. Therefore, the undersigned did not agree with the recommendation of the Enquiry Officer as he had not applied his judicial mind. Consequently, all concerned in the case were called. They were heard in person, thoroughly interrogated, cross examined and their statements were recorded.

The undersigned came to the conclusion that a plot was hatched by Head Constable Hameed Ullah No. 1564 with one Mr. Jehangir, the brother in law of the original accused Mushtaq due to strained family relationship between the latter two. The Head Constable further hired Constable Arif No. 2683 and Constable Gul Shah No. 201/Ex-serviceman on payment and provided them a wooden crate containing 900 gm charas, 01 hand grenade, 1.2kg explosives, 16 fuses and 01 pistol 30 bore. Later on he informed the SHO of Police Station Kanju to arrest the accused. Interestingly, Mr. Habib Ur Rahman and Nisar Khan who were shown as witnesses against original accused Mushtaq in the case were pre-planned as the enquiry revealed that the former was first cousin of Head Constable Hameed Ullah No. 1564 while the latter was a close friend of FC Arif. Moreover, they both admitted in front of the undersigned

that they had no knowledge of the incident but were told by HC Hameed Ullah No. 1564 and FC Arif to depose against Mushtaq. Moreover, when Hameed Ullah, Arif and Gul Sher were challaned in this case after being declared as accuseds, the IO malifidely did not change the earlier witnesses (Habib-ur-Rahman and Nisar) and as such both of them resiled in the court from their testimony against Hameed Ullah etc.

This whole case is a classic example of abuse of Police uniform and extreme violation of code of conduct for a Police Officer. Implicating an innocent individual in a heinous case by Police Officers in connivance of his relatives to teach him a lesson due to his family issues is not only ignoble but also inhuman. His conduct is abhorable and detrimental to discipline. He could not be re-instated in service. 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 again award him major punishment of dismissal from service.

Order announced.

**District Police Officer
Swat**

O.B. No. CL

Dated: 01-01-2019

Copy to:-

1. Deputy Inspector General of Police (Internal Accountability) with reference to CPO Peshawar letter No. 1357/E&I, dated 17-10-2018 please.
2. Establishment Clerk
3. OSI

For necessary action, please.

**District Police Officer
Swat**



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OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND

AT SAIDU SHARIF SWAT.

Ph: 0946-9240381-88 & Fax No. 0946-9240390

Email: dignitakand@yahoo.com

ORDER:

This order will dispose of appeals of Ex-Head Constable Hamidullah No. 1564/2626, Constable and Ex-Constable Arif No. 2683 for reinstatement in service.

Brief facts of the case are that Ex-Constable Arif No. 2683 in connivance with Ex-Head Constable Hameed Ullah No. 1564 and Constable Gul Sher No. 201/Ex-Serviceman placed 01 Hand Grenade, 1.2 kg explosives, 16 fuses, 01 pistol 30 bore and 900 gm charas in the Car of one namely Mushtaq s/o Kaki Khan r/o Mashkumai and got him arrested through local Police of PS Kanju. A case FIR No. 385 dated 20/08/2015 u/s 5-Exp/9-BCNSA/15-AA/34-PPC PS Kanju was thus registered against him. Smelling foul, a regular enquiry was conducted against the delinquent officers i.e. SI Muhammad Siraj the then SHO PS Kanju (now at District Shangin), Head Constables Hamidullah No. 1564, Constable Arif No. 2683 and it was proved that they implicated an innocent citizen in a fake case. Subsequently Head Constables Hamidullah No. 1564 and Constable Arif No. 2683 were dismissed from service vide DPO Swat, office OB No. 216 dated 23/12/2015 and SI Muhammad Siraj was awarded the punishment of reduction in pay by three stages vide DPO Swat office OB No. 216 dated 23/12/2015.

Later on Head Constables Hamidullah No. 1564 and Constable Arif No. 2683 filed appeals in the court of Honorable Service Tribunal, Khyber Pakhtunkhwa Peshawar. In compliance of Judgments of the Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar in Service Appeal No. 257/2016, dated 04/09/2018 of HC Hamidullah No. 1564 and Service Appeal No. 499/2016 dated 04/09/2018 of Constable Arif No. 2683 both the dismissed officers were reinstated in service for the purpose of Denovo Departmental Enquiry. SP Investigation Swat was appointed as enquiry officer. The enquiry officer submitted his findings and recommended that both the officers be reinstated in service with all back benefits because the case could not be proved in the Court against the delinquent officials who were subsequently declared as accused in the same case. Both the officers were called in Orderly Room by DPO Swat and heard in person. The case file was minutely perused and the delinquent officers were thoroughly interviewed which unfolded the whole incident. Therefore, the DPO Swat did not agree with the recommendation of the enquiry officer as he did not apply his judicial mind. Consequently all concerned in the case were called. They were heard in person, thoroughly interrogated, cross examined and their statements were recorded. The DPO, Swat came to the conclusion that a plot was hatched by Head Constable Hameed Ullah No. 1564 with one Mr. Jehangir brother in law of original accused Mushtaq due to strained family relationship between the latter two. The Head Constable Hamid Ullah further hired Constable Arif No. 2683 and Constable Gul Shah No. 201/Ex-Serviceman on payment and provided them a wooden crate containing 900 gm charas, 01 hand grenade, 1.2 kg explosives, 16 fuses and 01 pistol 30 bore. Later on, Head Constable Hameed Ullah informed the SHO Muhammad Siraj of Police Station Kanju to arrest the accused. Interestingly, Mr. Habib Ur Rahman and Nisar Khan who were shown as witness against original accused Mushtaq in the case were pre-planned as the enquiry revealed that the former was first cousin of Head Constable Hameed Ullah No. 1564 while the later was a close friend of FC Arif. Moreover, they both admitted in front of the DPO, Swat that they had no knowledge of the incident but were told by HC Hameed Ullah No. 1564 and FC Arif to depose against Mushtaq. Moreover, when HC Hameed Ullah, FC Arif and FC Gul Sher were challaned in this case after being declared as accused, the Investigation Officer mala fide did not charge the earlier witness (Habib Ur Rahman and Nisar) and as such both of them resoled in the Court from their testimony against Arif etc. The whole case is classic

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Example of abuse of Police Uniform and extreme violation of code of conduct for a Police Officers. Implicating an innocent individual in a heinous case by Police Officers in connivance with his relatives to teach him a lesson due to his family issues is not only ignoble but also inhuman. Their conduct is abhorable and detrimental to discipline. They could not be re-instated in service. Hence, they both i.e Head Constable Hamidullah No. 1564 and Constable Arif No. 2682 were again dismissed from service vide DPO, Swat office OB No. 01 dated 01/01/2019. The allegations leveled in the Departmental appeals are baseless and vogue in nature. All the opportunities of self defense and hearing were provided to the delinquent officers but they failed to stratify the DPO, Swat regarding the serious allegations.

Both, Ex-Head Constable Hamidullah No. 1564/2626 and Constable Arif No. 2683 were called in Orderly Room by the undersigned and their case was thoroughly perused. To further scrutinize the case, SP Investigation Swat and Addl: SP Swat were nominated to conduct denovo enquiry into the matter and submit findings report vide this office order No. 3982-84/E, dated 27/03/2019. The enquiry officer after conducting proper denovo enquiry into the matter submitted his finding report vide SP Investigation Swat Memo: No. 3440/C-Cell, dated 15/05/2019 wherein he recommended that though the charges against both the officers i.e Ex-Head Constables Hamidullah No. 1564/2626 and Ex-Constable Arif No. 2683 could not be proved in the court and they were acquitted but they i.e SI Muhammad Siraj, Head Constable Hamidullah No. 1564/2626 and Constable Arif No. 2683 are wholly solely responsible for registration of fake case vide FIR No. 383 dated 20/08/2015 u/s 5-Exp/9-BCNSA/15-AA/34-PPC PS Kanju, District Swat. Therefore, I the Undersigned uphold the order passed by DPO Swat wherein he has dismissed Head Constable Hamidullah No. 1564/2626 and Constable Arif No. 2683 from service. Their appeals are hereby rejected. Moreover, the punishment of reduction in pay by three (3) stages awarded by DPO Swat vide OB No. 216 dated 23/12/2015 to SI Muhammad Siraj is hereby converted into dismissal from service with immediate effect as the delinquent officers are equally responsible for such illegal act as proved in denovo enquiry conducted by SP Investigation Swat.

Order announced.

OB/EC
W. M. A. Khan
District Police Officer
19/5/2019

Muhammad Saad
MUHAMMAD SAAD, PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat
haji Naqi

No. 6572-75/E,

Dated 14-06/2019.

OB No. 98
17.6.19

- Copy of above is forwarded to the:-
1. Worthy Inspector General of Police, Khyber Pakhtunkhwa Peshawar with reference to AIG/ Complaint & Enquiry CPO Peshawar Memo: No. 1657/E&I dated 10/12/2018. No 5750/C-Cell dated 27/12/2018 (addressed to DPO Swat) and No. 325/C-Cell dated 18/01/2019 (addressed to DPO Shangla)
 2. District Police Officer, Swat for information and necessary action with reference to his office Memo: No. 1033/Legal, dated 21/01/2019 and No. 3411/E, dated 26/02/2019. Service Rolls and Fauji Missals of Ex-Head Constable Hamidullah No. 1564/2626 and Ex-Constable Arif No. 2683 containing complete enquiry files are returned herewith for record in your office.
 3. SP Investigation Swat with reference to his office Memo: No. 3440/C-Cell, dated 15/05/2019.
 4. District Police Officer Shangla for information and necessary action.

بجوالہ خارج شیٹ نمبر 91/PA مورخہ 29-10-2018 بحاریہ جناب DPO صاحب ضلع سوات۔
برخلاف:- کنسٹیبل عارف نمبر 2683 متعینہ چونکی ٹاؤن شپ کا نجو حال CP گوڈا تھانہ شہزادی ضلع سوات۔

جناب عالی! چارج شیٹ بالا بحاریہ جناب DPO صاحب ضلع سوات برخلاف الزام الیہ کنسٹیبل عارف نمبر 2683 متعینہ چونکی ٹاؤن شپ کا نجو حال ہے۔

تفصیل الزام:-

الزام الیہ کنسٹیبل عارف نمبر 2683 پر برودے چارج شیٹ بالا الزام ہے کہ انہوں نے دیگر شریک جرم نذرمان الزام الیہ نمبر RHC/2626، گل شاہ نمبر EXA/201، جہانگیر کے ساتھ مل کر کسی مشتاق احمد ولدہ کی خان ساکن مشکوئی خوازہ خیالہ کے خلاف کینٹھرت مقدمہ نمبر 383 مورخہ 20-08-2015 جرم Exp/15-AA/9C-CNSA-5 تھانہ کا نجو درج رجسٹر کروایا ہے۔ الزام الیہ کنسٹیبل عارف نمبر 2683 کو سروس سروس ٹریبونل کے سروس اپیل نمبر 499/2016 حکم محررہ 04-09-2018 کی تعمیل میں اور CPO سپاؤنڈیشن نمبر 3043/Legal مورخہ 05-10-2018 کے تابع جناب DPO صاحب سوات نے Denovo حکمانہ انکوائری کے لئے وارنٹس ٹیڈی ملازمت پر بحال کر کے چارج شیٹ بالا جاری کیا ہے۔

تفصیل تحقیق:-

- 1- الزام الیہ کنسٹیبل عارف نمبر 2683 کو طلب کیا گیا۔ مذکورہ کو تفصیلی طور پر سنا گیا۔ اور چارج شیٹ حسب ضابطہ حوالہ کیا گیا۔ اور اگلے تاریخ پر بیان قلمبند کیا گیا۔ جنہوں نے اپنے اوپر لگائے گئے الزامات کی تردید کی۔ اور مقدمہ نمبر 383/2015 بالا میں بری ہونا بیان کیا۔
- 2- ذیل گواہان کو طلب کر کے منفرد اُسے گئے۔ مذکورین ذیل کے بیانات قلمبند کر کے الزام الیہ کو ان پر جرح کرنے کا پورا پورا موقع دیا گیا۔
 - i- حبیب الرحمن ولد امیر زادہ ساکن چنیالہ درختیالہ بالا تحصیل مٹہ
 - ii- مدد محرز حجب جمال نمبر HC/3193 متعینہ تھانہ کا نجو حال انچارج وردی گودام JIS پولیس لائن کابل۔
 - iii- SI محمد سیراج خان سابقہ SHO تھانہ کا نجو حال SHO تھانہ اپوری ضلع شانگلہ
 - iv- غار خان ولد انوار الحق ساکن اولند رشانگلہ حال محلہ عظیم آباد کا نجو۔
 - v- کنسٹیبل سب خان نمبر 1525 متعینہ چونکی ٹاؤن شپ حال JIS پولیس لائن کابل۔
 - vi- مشتاق احمد ولدہ کی خان ساکن مشکوئی خوازہ خیالہ۔
 - vii- کنسٹیبل نسیم والی نمبر Ex-A/516 متعینہ چونکی ٹاؤن شپ حال JIS پولیس لائن کابل۔
 - viii- AS-ASI مجر فور محرر تھانہ کا نجو حال تھانہ نسیم آباد۔
 - ix- کنسٹیبل رحم داد نمبر Ex-A/634/HC متعینہ گاروڈھیر کی کا نجو۔
 - x- انسپکٹر فضل وہاب OII تھانہ کا نجو حال اپریشن سٹاف JIS پولیس لائن کابل۔

الزام الیہ کنسٹیبل عارف نمبر 2683 کو سن کر ان کے بیان اور جملہ گواہان بالا کے بیانات، اور ملاحظہ ریکارڈ سے پایا گیا کہ مورخہ 20-08-2015 کو بوقت 15:10 بجے SHO تھانہ کا نجو SI محمد سیراج خان نے بمقام کا نجو چونک ایک موٹر کار از قسم نو آگنی نمبر 3394/PS-K.K.S روڈ پر ٹریفک کی روانی میں خلل ڈالے ہوئے پا کر پتہ برابری پر موٹر کار ڈرائیور نے اپنا نام مشتاق احمد ولدہ کی خان ساکن مشکوئی خوازہ خیالہ بتلایا۔ اور بیان کیا کہ اس کو بطور نیکی خوازہ خیالہ آڈہ سے دو کسان ایک جوان العمر سبز رنگت آنکھوں والا اور دو عمر سفید داڑھی والے نے ہسپتال سید شریف تک بک کر کے جس میں داڑھی والے شخص کو بیمار بنا ہر کر رہا تھا۔ اس کے ساتھ خوازہ خیالہ پٹیرویل پمپ میں سب کا ایک کاشن اگریٹ موٹر کار کی ڈگنی میں رکھ کر ہر دون کسان نے کا نجو چونک پمپ کر پانی پینے کے لئے موٹر کار سے بغیر کرایہ ادا کئے اتر کر رو پکڑے ہوئے۔ گاڑی میں

موجودہ کاٹن سبب کا سرسری معائنہ کر کے جس میں ہینڈ گرنیڈ موجود پا کر BDS کو طلب کر کے جنہوں نے ذکریت مذکورہ سے متعلق پتہ پڑھا، ایک ہینڈ گرنیڈ، لفافہ میں 1180 گرام بارودی مواد، 16 فٹ سینٹی فیوژنار، ایک عدد پستول 30 بور بمیڈ میگزین، معمولی سات عددہ رولنگ، 900 گرام چرس برآمد کی۔ جس پر SHO صاحب نے ملزم مشتاق احمد بشمول دو نفر ملزمان اسم مسکن، معلوم مجرم Exp/15-AA/9B-CNSA-5 ضبط تحریر میں لا کر مرسل تھا نہ کیا۔ جس کی بنیاد پر مقدمہ عدالت 383/2015 بلا درجہ ہو گیا۔

تفتیش حوالہ شدہ تفتیش ہوا۔ ابتدائی طور پر SI شرف خان اور مابعد انسپکٹر فضل وہاب خان OII تھا نہ کونجو ماسور تفتیش ہوئے۔ سلسلہ تفتیش کو جاری رکھتے ہوئے تھا نہ کونجو میں نصب CCTV کیمروں سے دو نامعلوم ملزمان پولیس اہلکاران کنسٹیبل عارف نمبر 2683 اور کنسٹیبل گل شاہ نمبر Ex-A/201 تھد ترقی ہو کر شامل تفتیش کئے گئے۔ کنسٹیبل عارف نے انکشاف کیا کہ انہوں نے وقوعہ کے روز چوکی ٹاؤن شپ کونجو سے الزام الیہ حمید اللہ RHC کے کہنے پر کہ خوازہ خیلہ میں SHO صاحب کی امانت ہے لانے کے لئے کنسٹیبل گل شاہ Ex-A کے معیت میں بذریعہ موٹر کار حبیب الرحمان جو حمید اللہ کا چھوٹے بھی زاد اور الزام الیہ حمید اللہ RHC مذکورہ کا بھیجا ہوا تھا چلا رہا تھا۔ نے خوازہ خیلہ جا کر وہاں ٹیکسی سٹینڈ میں موٹر کار غواگئی جس کو ڈرائیور مشتاق چلا رہا تھا۔ مبلغ 1000/- روپے پر بک کیا۔ بمقام خوازہ خیلہ کاشف پتیرول پمپ سبب کاٹن مذکورہ حبیب الرحمان مذکورہ نے گاڑی میں رکھ دیا۔ اور حمید اللہ RHC سے بذریعہ فون رابطے میں رہ کر کونجو چوک پہنچنے پر گاڑی روک کر دونوں کنسٹیبلان موٹر کار سے اترے۔ تو SHO صاحب نے ڈرائیور مشتاق احمد سمیت موٹر کار کو تھا نہ کونجو لے جایا جہاں سے موٹر کار سے برآمدگی ہوئی۔

I.O نے سہمی حبیب الرحمان کو شامل تفتیش کیا تو مذکورہ نے جملہ بیان کردہ صورتحال کی تصدیق کی۔ اس نسبت مذکورہ کا بیان زیر دفعہ 164 ضف قائم بند کر کے مذکورہ کے بیان کی روشنی میں الزام الیہ حمید اللہ RHC، کنسٹیبل عارف اور کنسٹیبل گل شاہ نمبر Ex-A/201 کو ہدوی 24-08-2015 ملزمان نامزد کئے گئے۔ تینوں ملزمان کی گرفتاری عمل میں لائی گئی۔ الزام الیہ کنسٹیبل عارف اور گل شاہ بدوران تفتیش جرم خود سے اتراری ہوئے تاہم روبرو عدالت جرم خود سے منحرف ہوئے اور جوڈیشل حوالات بھیجوائے گئے۔ جبکہ ملزم حمید اللہ نمبر RHC/2626 صحت جرم سے انکاری رہے۔ اور مزید حراست پولیس کے حصول پر جوڈیشل حوالات بھیجوا گیا۔

تفتیش کے دوران الزام الیہ حمید اللہ RHC اور سہمی جہانگیر ولد شاہ مدارس کوننگار مدین کے مابین روابط و تعلقات مظہر نام پر آئے اور جو مقدمہ میں چارج شدہ ملزم مشتاق احمد کا بہنوئی تصدیق ہوا۔ سہمی جہانگیر اور مشتاق احمد کے مابین خاندانی ناچاقی سامنے آئی۔ ناچاقی بر ملا بق مشتاق احمد نا حال موجود ہے۔ اور اسکی (مشتاق احمد کی) بہن کا والد کے گھر آنا جانا بالکل بند ہے۔ سہمی مشتاق احمد کو چھوٹی مقدمہ میں پھنسانے کے لئے سہمی جہانگیر کا کردار عیاں ہوا۔ جس پر ملزم جہانگیر کو بھی ملزم مقدمہ نامزد کیا گیا۔ مذکورہ اپنی جائز گرفتاری سے دیدہ دانستہ طور پر گریزاں ہو کر مذکورہ کے خلاف کاروائی روپوشی عمل میں لائی گئی۔ دوران تفتیش حقائق کے بنیاد پر ملزم مشتاق احمد کو بوجہ بے گناہی دائرہ ملزمیت سے نکال کر چالان فارم کے خانہ نمبر 02 میں ڈالا گیا۔ روپوش ملزم جہانگیر نے عدالت سے عبوری ضمانت قبل از گرفتاری حاصل کر کے جو مورخہ 31-10-2015 کو خارج ہو کر حسب ضابطہ گرفتار ہوا۔ تاہم دوران تفتیش صحت جرم سے انکاری رہے۔ اور مزید حراست پولیس کے حصول پر مورخہ 03-11-2015 کو جوڈیشل حوالات بھیجوا گیا۔ انکوڑی سے ذیل قابل ذکر باتیں سامنے آئی ہیں۔

1- دوران تفتیش کنسٹیبل عارف کے انکشاف پر پرائیویٹ گواہ ثار خان ولد انوار الحق نے اپنے ابتدائی بیان میں واضح کیا کہ وقوعہ سے قبل ڈرامہ بالا رچانے کے لئے حمید اللہ RHC اور کنسٹیبل عارف نے اس کے دکان آ کر اسے دو ہزار روپے دیے تھے۔ لیکن اس نے (ٹار نے) انکار کیا تھا۔ اور رقم مذکورہ اس نے کنسٹیبل عارف کو بدست کنسٹیبل اصغر واپس کیا ہے۔ جو OII/I.O نے بروئے فرد قبضہ پولیس کئے ہیں۔

2- بمطابق OII/I.O انسپکٹر فضل وہاب خان الزام الیہ حمید اللہ RHC نے وقوعہ ہذا کے نسبت کنسٹیبل عارف نمبر 2683 کو بذریعہ ایڈی پیسہ مبلغ 15000/- روپے ادا کئے ہیں۔ اگرچہ اس ٹرانزکشن میں CNIC گننام جبکہ سبائل نمبر حمید اللہ RHC کا استعمال ہوا ہے۔ رقم مذکورہ بطور ثبوت الزام الیہ کنسٹیبل عارف نمبر 2683 سے برآمد ہو کر قبضہ پولیس کیا گیا ہے۔

3- الزام الیہ حمید اللہ RHC کنسٹیبل عارف اور گل شاہ Ex-A کے خلاف گواہان حبیب الرحمان، ثار خان، شاہ فیصل، کا کی خان، کنسٹیبل نسیم دانی نمبر 516، کنسٹیبل عجب خان نمبر 1525 بشمول دیگر گواہان کے بیان زیر دفعہ 161/164 ضف بطور ٹھوس شواہد سفہ منسل پر لانے گئے ہیں۔ الزام الیہ حمید اللہ، کنسٹیبل عارف کے درخواست ضمانت بدیں وجہ لوئیکورٹس سے خارج ہو کر مابعد عدالت عالیہ ہائی کورٹ بیج دار لقننا، نضا گٹ سوات سے

خامت پر رہا ہوئے۔

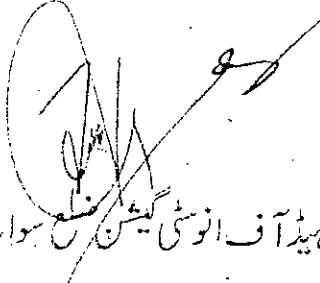
انکو انری ہذا سے یہ حقائق سامنے آئے کہ الزام الیہ حمید اللہ اور کنسٹیبل عارف نے وقوعہ سے ایک یوم قبل یعنی مورخہ 03-2015

سیب کریٹ زیر بحث بذریعہ موٹر کار ڈرائیور حبیب الرحمان اس کے موٹر کار میں چوکی ننگولی حدود قحانہ کاجو سے درختیہ ہزارہ پورہ کی طرف
موٹر کار ڈرائیور حبیب الرحمان نے امانت رکھ کر وقوعہ کے روز حمید اللہ RHC کی ہدایت پر ایک مرتبہ پھر کنسٹیبل عارف بشمول کنسٹیبل گل شہزاد کی ہون
شپ کاجو سے بذریعہ موٹر کار خود خوازہ خیالہ لاکر اور درختیہ میں رکھا ہوا سیب کریٹ خوازہ خیالہ پہنچا کر الزام الیہ کنسٹیبل عارف کو ہتہ مشقات بیرون
پس حوالہ کیا۔ جو اس نے مشتاق احمد کے موٹر کار کے ڈگی میں رکھ دیا۔ اور ایک مرتبہ پھر کریٹ مذکورہ کو حدود قحانہ کاجو مشتاق احمد کے موٹر کار میں کاجو
چوک تک لایا گیا۔ اور وقوعہ ہزارہ پورہ ہوا۔

دوران ٹرائل مشل مقدمہ کا بنیاد گواہ حبیب الرحمان اپنے بیان (زیر دفعہ 164 ضف) سے مخرف ہوا ہے۔ اور ما قبل اپنے تلامبہ مذکورہ بیان
مذکورہ سے بروئے بیان حلفی لاتعلقی کا اظہار کیا ہے۔ پرائیویٹ گواہ ثار خان بھی اپنے بیان 164 ضف سے مخرف ہوا ہے۔ اور اس نسبت اس نے اپنی
بیان حلفی دائر کی ہے۔ دیگر بقایا گواہان کی شہادت کی تکمیل پر معزز عدالت ایڈیشنل سیشن جج صاحب کے حوالہ سے مشتاق احمد کے ہتہ مشقات بیرون
27-04-2018 چاروں ملزمان کو شک کا فائدہ دے کر بری کئے ہیں۔

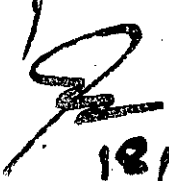
نتیجہ :-

مندرجہ بالا بحث سے حالات نمایاں ہے کہ الزام الیہ کنسٹیبل عارف نمبر 2683 پر لگائے گئے الزامات کورٹ میں ثابت نہ ہو سکے۔ مذکورہ کو
اسی بنیاد پر معزز کورٹ سروس ٹریبونل نے بحال کیا۔ لہذا زبردستی الزام الیہ کنسٹیبل کو بے قصور گردانتے ہوئے بعد All Back Benefit بحال کی
سفرارش کی جاتی ہے۔


ہیڈ آف انوسٹی گیشن سروسز

PA.

I don't agree with the
findings as the EO has
not applied his judicial
mind. plz call the concerned.


18/12

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S. A. No. 932 /2019

Arif

versus

D.P.O & Another

REPLICATION

Respectfully Sheweth,

Preliminary Objections:

All the 07 preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why the appeal is barred by law and limitation, appellant has no cause of action and locus standi, necessary parties are not impleaded, he has not come to the hon'ble Tribunal with clean hands, the appeal is not maintainable, concealment of material facts and not filing of departmental appeal within time.

ON FACTS

- 1-4. These paras of the appeal are not replied by the respondents and the same were termed to record of service.
5. Not correct. The para of the appeal is correct regarding submission of reply to the Charge Sheet, denying the allegations and no one deposed against appellant as for as standard of satisfaction is concerned, law has not made any standard for satisfaction, despite the fact that Inquiry Officer reported the matter in categorical manner that none of the charge was proved against appellant. He was found innocent and recommended for reinstatement in service with all back benefits.
6. As above. And when the Inquiry Officer exonerated appellant from the baseless charges, then the authority was legally bound to reinstate him in service with all back benefits.

7. Not correct. The para of the appeal is correct. This para was not replied by the respondents in accordance with the para of appeal, wherein AIG Complaint & Enquiry Peshawar directed R. No. 03 to follow the recommendation of Investigation Officer in letter and spirit under intimation to his office.
8. Totally false and absolutely incorrect as and when authority deviates from the recommendation of Inquiry Officer then in such situation the authority was legally bound to serve appellant with Show Cause Notice by giving reasons of deviation but in the case in hand, the law was not followed in letter and spirit.

When appellant was acquitted from the baseless charges on any ground on the same allegation leveled against him in the Charge Sheet etc, then there was no need, under the law, to again dismiss him from service.

9. Needs no comments. Order of R. No. 02 is in total disregard of law and rules.

GROUND:

- a. Not correct. The para of the reply is without proof.
- b. Not correct. Appellant not decamped from official duty during militancy.
- c. Admitted correct by the respondents regarding exoneration of appellant from the baseless charges and recommendations for reinstatement in service with all back benefits by the Inquiry Officer. Rest of the para is incorrect. Such version should have been brought before the IO which was not relied upon by him.
- d. Not correct. The position has been explained the preceding para regarding deviation from law and rules.
- e. Not correct. The competent authority failed to ad-hear to law as stated in the preceding paras. The charges were dis-proved in the enquiry proceeding. The malafide of the authority is quite apparent from his action as the Inquiry Officer exonerated him

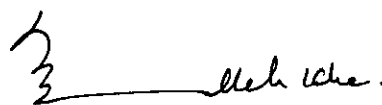
from the charges, then what was the ground with the authority to punish him for nothing.

- f. Not correct. Appellant was exonerated from the baseless charges in criminal as well as in departmental proceedings as is evident from the same. No mis-act was ever done by the appellant in the matter. (Copy as annex "R/1")

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


Appellant

Through


Saadullah Khan Marwat
Advocate,

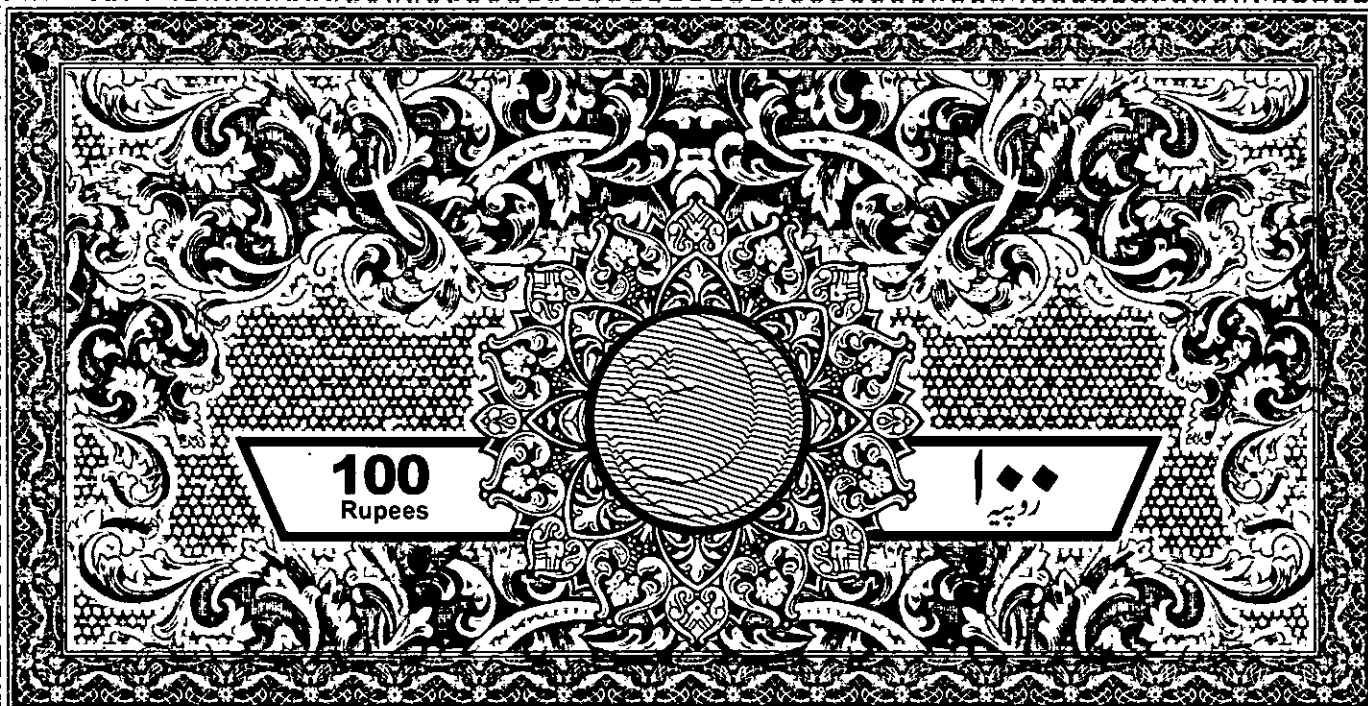
Dated: 18-12-2019

AFFIDAVIT

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

I reaffirm the same on oath once again to be true and correct as per the available record.


DEPONENT



AFFIDAVIT

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

I reaffirm the same on oath once again to be true and correct as per the available record.

DEPONENT

DJ
18/12
19



8 DEC 2019

187/12

PESHAWAR TREASURY
MANSOOR AHMAD
LICENSE NO: 39 DATE 04-03-2004
STAMP VENDOR

Distt/CC
17 DEC 2019
(Treasury Wing) Peshawar.

Mansoor Ahmad

18/12/19

R/3 4

IN THE COURT OF MAMREZ KHAN KHALIL,
Additional Sessions Judge/ Izafi Zilla Qazi Kabal, Swat

CNSA Case No: 03/CNSA of 2016
Date of institution: 02-02-2016
Date of Decision: 27-04-2018



The State
Through Mohammad Siraj Khan SHO PS Kanju, Swat.....
.....(Complainant)

VERSUS

- (1) Jehangir aged about 34/35 years S/o Shah Madar R/o Bar Kalay Madyan, Tehsil Bahrain, District Swat.
- (2) Hamidullah aged about 33/34 years S/o Khan Zada R/o Sakhra Matta, Tehsil Matta, District Swat.
- (3) Arif aged about 28/29 years S/o Mohammad Khan R/o Koz Chum Kharkai, Dargai.
- (4) Gul Shah aged about 49/50 years S/o Iman Din R/o Totai, Dargai.....(Accused on bail)

Charged in Case FIR No.383 Dated: 20-08-2015 Under Section 9(C) CNSA of PS Kanju, District Swat.

Present:-

Mr. Ahmad Zeb Shah, APP for the State
Mr. Sajjad Anwar Advocate for accused Hamidullah
Mr. Sardar Zulfiqar Advocate for accused Jehangir
Mr. Ziarat Gul Advocate for accused Arif & Gul Shah

JUDGMENT:

1. Accused named above challand to this court in order to face trial on the charges/allegations of planting recovery of carton containing one hand grenade, explosive material 1180 grams

5

and one safety fuse wire 16 feet, one Pistol 30 bore No.84722 alongwith Magazine containing 07 live rounds of 30 bore, 04 packets of Charas weighing 900 gm from the boots/luggage compartment of Motorcar bearing Registration No.3394/PSKKS-N against accused Mushtaq Ahmad (Taxi driver), which was hired from Khawaza Khela to Saidu Sharif Hospital by accused Arif and Gul Shah and the recovered material was arranged/managed by accused Hamidullah at the active scheme and connivance of accused Jehangir (brother-in-law of Mushtaq Ahmad Taxi driver). During course of investigation, further 1000 gm Chars was alleged to be recovered from the briefcase of accused Hameed ullah.



2. As per contents of FIR ExPA, Arif and Gul Shah have been charged for hiring the Motorcar of Mushtaq Ahmad bearing Registration No. 3394 PSKKS-N from Khwaza Khela to Saidu Sharif Hospital on 20/08/2015 at 13:35 hours. On the way, accused Arif took apple carton from a filling station and put in the boots of the said Motorcar. When they reached near Kanju Chowk, both the accused namely Arif and Gul Shah get off from the Motorcar on the pretext for drinking water, but they did not turn back, thus, said apple carton, being suspected was checked through BDS by Siraj SHO and found therein some rotten apples, one hand grenade, one shopping bag containing explosive material, one safety fuse wire 16 feet, one 30 bore pistol along with magazine containing 7 live rounds and four packets charas weighing total 900 grams. Initially murasalla

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ExPw1/1 was drafted and sent to Police Station for registration of case against driver Mushtaq Ahmad and aforesaid articles/narcotics was secured vide recovery memo ExPw1/2. Mushtaq Ahmad though arrayed as accused in the FIR, but on the same day, he was released on bail after furnishing bail bonds to the satisfaction of SHO PS Kanju Siraj Khan, who was later on, suspended in the instant case. On 24-08-2015, after recording statement of one Habib-ur-Rehman U/S 164 Cr.PC, accused facing trial namely Hamidullah, Arif and Gul Shah were nominated accused and arrested vide arrest card ExPw17/4. Accused Jehangir was nominated in the statement of Mushtaq Ahmad Taxi Driver recorded U/S 164 Cr.PC on 31-08-2015 and assigned the role of abatement and facilitation of co-accused with the intention to involve him in fabricated case and planted incriminating articles against him on account of his family dispute, being his brother-in-law. The SHO concerned without seeking permission from the competent court regarding discharge of accused Mushtaq Ahmad from whom active possession chrs, pistol, Hand Grenade and explosive materials were recovered, placed his name in column No.2 of challan, being innocent.

3. After registration of case and completion of requisite and necessary investigation, complete challan against accused facing trial was submitted on 25-01-2016.
4. On 02-02-2016, after receipt of challan, all accused including Mushtaq Ahmad taxi driver, were summoned, however; on

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15-02-2016, accused Mushtaq Ahmad was discharged from the charges levelled against him, whereas after compliance of provision of section 265-C Cr.PC, rest of accused were charge sheeted by my learned predecessor on 15-02-2016 U/S 9 (C) CNSA, to which they pleaded not guilty and claimed trial, which commenced. It is pertinent to point out separate challan in respect of Explosive material, pistol also submitted in connected trial, which is also adjudicated through separate case file.



5. Prosecution in order to prove charge against the accused, produced and examined 12 witnesses, out of total 39 witnesses as per calander/challan form.
6. A brief gist of the prosecution's evidence led in trial is as under;

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 13-03-2017
 27/11/17
 [Signature]

Pw-1: Mohammad Siraj Khan SHO, is complainant and star witness of the instant case, who on 28-03-2016 and 03-01-2017 reiterated the story as narrated by him in FIR. He drafted murasalla ExPw1/1. He took into possession the planting-recovery of carton containing one hand grenade, explosive material 1180 grams and one safety fuse wire 16 feet, one Pistol 30 bore No.84722 alongwith Magazine containing 07 live rounds of 30 bore, 04 packets of Charas weighing 900 gm vide recovery memo ExPw1/2 and during the proceedings pictures ExPw1/3 to ExPw1/8 were drawn and the Motorcar from which the said recovery was effected, was taken into possession vide recovery memo ExPw1/2. He pointed out the place of recovery to I.O. He released Mushtaq

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8

Ahmad on furnishing bail bonds ExPw1/9. He vide application ExPw1/10, obtained opinion regarding Motorcar No.3393/PSKKS-N, Explosive material and Hand grenade. This Pw after about nine months of his examination-in-chief put his appearance for cross-examination.

Pw-2: Constable Intiaz Ali No.724, is marginal witness to the recovery memo, vide which Seizing officer took into possession one hand Grenade, explosive material in plastic bag weighing 1180 gm, safety fuse wire 16 feet, Pistol alongwith 07 cartridges and 04 packets chars weighing 900 gm, however during cross-examination admitted that all these material were secured from the Motorcar inside Police Station.

Pw-3: Musharaf Khan SHO/CIO, conducted partial investigation in the instant case. He on the pointation of complainant/SHO Siraj Khan prepared site plan ExPw3/1. He vide application ExPw3/2 obtained opinion regarding Pistol and cartridges 30 bore. He vide application ExPw3/3 requested for CDR in respect of mobile numbers. He vide application took into possession USB containing recording CCTV camera. On the pointation of Mushtaq prepared site plan ExPw3/5. He during the proceedings drawn pictures ExPw3/6 to ExPw3/10 and placed on file.

Pw-4: Rahim Khan SHO, submitted challan Expw4/1 against accused facing trial.

Pw-5: Nisar S/o Anwar-ul-Haq, stated that he took Rs.2000 loan from accused Arif and returned the same to Asghar, who on the request of APP for the State, was declared hostile witness.



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27/09/18

Pw-6: Asghar Ali Constable No.2376, stated that on 23-08-2015 one Nisar S/o Anwar-ul-Haq R/o Township handed over him Rs.2000/- to give it to Constable Arif, which he took from him as loan, and he produced to I.O.

Pw-7: Mohammad Naseer-ud-Din Constable No.2832, is marginal witness to the recovery memo, vide which I.O took into possession Briefcase on the pointation of accused Hameed ullah in Police Post Ningolai, containing one packet Chars weighing 1000 gm, one cartridge 30 bore, one liquor bottle 1/2 liter, Iron National, Citizen Watch, one hair brush, on bottle spray, two Police Caps, one white Shalwar and Banyani, one bottle Augmentin tablets, X-Ray, X-3 Mobile, License of Pistol 30 bore etc.

Pw-8: Amjad Ghfoor MASI, on receipt of murasalla from Mohammad Siraj SHO through constable Ismail, he chalked out FIR ExPA. He is also marginal witness to the recovery memo ExPw8/1, vide which I.O took into possession recording of CCTV Camera in USB. He dispatched samples vide receipt rahdari No.385/21 dated 20-08-2015 through constable Jawad alongwith other documents to FSL for analysis and similarly, sent explosive material, chars and liquor vide receipt rahdari No.395/21, 396/21 dated 28-08-2015 to FSL through Head Constable Shah Raza, wherein explosive material 1180 grams and safety fuse were not received in FSL laboratory and returned the same to him.

Pw-9: Mohammad Khaliq ASI, is marginal witness to pointation memo, vide which accused Hameed ullah pointed out his briefcase to I.O



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containing one packet Chars weighing 1000 gm, one liquor bottle 1/2 liter, Iron National, Citizen Watch, License of Pistol 30 bore and other things.

Pw-10: Fazal Wahab CIO conducted investigation in the instant case. He on 23-08-2015 collected information regarding driver Habib-ur-Rehman of Motorcar No.239LEA XLI and vide application ExPw10/1 recorded his statement U/S 164 Cr.PC. He took into possession copy of CNIC of accused Arif vide recovery memo ExPw10/2, produced to him by Yasir and was stamped with Shahdaab Customer Service/Easy Paisa on it. He arrested accused Arif and Gul Shah and issued their arrest card ExPw10/4. He vide recovery memo Expw10/5 took into possession one Q-mobile and Bestow watch of golden color from accused Hamidullah and Rivo 40 mobile set from accused Arif and mobile Q. He vide surety bond ExPw10/6, bounded Mukhtiar Ahmad to produce Motorcar No.2391/LEA vide surety bond ExPw10/7 handed over the same to one Habib-ur-Rehman. He vide application ExPw10/8 obtained two days police custody in favour of accused Hamidullah, Arif and Gul Shah. He on the pointation of witness Habib-ur-Rehman, prepared site plan ExPw10/9, wherein carton of apple given by accused Hamidullah containing the alleged recovered explosive material and chars etc was put and on his directions, handed over the same at Kashif Filling Station to accused Arif. He vide recovery memo ExPw10/10 took into possession Rs.2000, produced to him by Asghar Ali, which was given to him by one Nisar to give the same to accused Arif. He also took into possession Rs.15470/-, sent by accused Hamidullah through

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C.I.O.

Easy paisa. He vide application ExPw10/12 received report regarding recovered Hand Grenade and later on, obtained opinion from Abdul Jabbar Armourer. He vide application ExPw10/13 recorded statements of witnesses U/S 164 Cr.PC. He on the pointation of Mohammad Khaliq Incharge Police Post Ningolai, prepared sketch ExPw10/14. Vide pointation memo ExPw10/16, accused pointed out the place where they made consultation for the commission of offence, where they got case property carton from Police Post Ningolai and where accused Hamidullah brought carton of apple from Police Post Ningolai and put in boots of the Motorcar. He vide application ExPw10/17 took into possession 1000 gni chhrs and 1/2 liter liquor recovered from briefcase of accused Hamidullah. He produced accused Arif and Gul Shah vide application ExPw10/18 before competent court for recording their statements U/S 164/364 Cr.PC. He vide application ExPw10/19 obtained one day police custody. He vide application ExPw10/20 got permission from court to dispose off the apple. He vide recovery memo ExPw10/21 took into possession garments of accused Arif, produced by his brother. He vide application ExPw10/22 produced accused Hamidallah before competent court for obtaining his police custody, but he was remanded to judicial lock-up. He vide application ExPw10/23 & ExPw10/24 sent sample from the recovered chhrs, liquor and explosive to FSL through constable Shah Raza. Vide application ExPw10/25 recorded statement of Mushtaq Ahmad U/S 164 Cr.PC. He vide parwana ExPw10/26 nominated accused Jehangir in the present case and vide



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application ExPw10/27 requested for warrant U/S 204 Cr.PC against him ExPw10/28. He vide application ExPw10/30 requested for proclamation notice U/S 87 Cr.PC in respect of accused Jehangir, which is ExPw17/31. He vide application ExPw10/32 recorded statement of PW Shah Faisal U/S 164 Cr.PC. He vide parwana ExPw10/33 made addition of section 9-C instead of 9-B. He during investigation drawn pictures ExPw10/34 to ExPw10/39 and on completion of investigation, handed over the case file to Rehmat Ali Khan SHO.



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Pw-11: Ajab Khan Constable No.1525, stated that he spent one month in tent with accused Hamidullah. On 17-08-2015, he came back from election duty to Police Post Ningolai. On 18-08-2015, when he was going to home on vacation, accused Hamidullah was present on duty, however when he came back, accused Hamidullah was transferred. He further stated that he had not recorded any statement in court, but when confronted with his statement recorded U/S 164 Cr.PC on 26-08-2015, he denied his signature on it, so on the request of APP for the State, this Pw was declared hostile witness.

Pw-11-A: Shah Raza Constable No.1188, took sample of three parcels alongwith receipt rahdari to FSL and he is marginal witness to the recovery memo vide which copy of CNIC of accused Arif, produced by Yasir of Shahdaab Customer Service.

Pw-12: Mushtaq Ahmad, who in the beginning was arrayed as accused stated that Mst.Mehnaz is his sister and accused Jehangir is his brother-in-law and after their marriage, about 3/4 months

before the instant case, their relations were strained, who in order to involve him in a criminal case, planted the fake recovery against him as alleged in FIR.

7. Eventually, after hold up the case for more than two and half year with considerable length and lingering on unnecessarily, on 26-02-2018, at the closure of prosecution's evidence, statements of accused recorded U/S 342 Cr.PC, whereby, accused facing trial professed innocence and denied the prosecution's allegations. Accused did not opt to lead any evidence in their defence nor appeared as their own witnesses in terms of section 340(2) Cr.PC.

8. Arguments heard. Record perused.

9. The prosecution story is that on the relevant day Mohammad Siraj Khan SHO along with other Police personnel were present at Kanju Chowk at a distance of one furlong from police station Kanju and at about 15:10 hours intercepted Motor Car (Ghwagai) bearing Registration No: 3994/PSKKSJN parked on main road which caused hindrance in traffic, driver Mushtaq Ahmad S/o Kaki Khan R/o Mashkomai Khwaza Khela on cursory interrogation disclosed that he is taxi driver and at about 1500 hours two unknown persons, however furnished their salient facial description, booked his taxi Car for Saidu Sharif Hospital and at Kanju Chowk both of them get down and did not turn back. During course of Motor Car search one Hand Grenade, explosive substance and charrs weighing 900 gm was



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recovered from the luggage compartment of Taxi Car. After separation of samples and sealing process, recovery memo Ex.PW-1/2 was prepared *qua* recovered contraband and other materials in question. The above-named, accused Driver was arrested being involved in the crime, who stated that the contraband etc was the ownership of said two persons who made their escape good from the crime scene. Later on accused facing trial were arrayed in the instant case.



10. In this particular and unique case, the local Police/I.O of case from the very beginning introduced three set of accused, attributed specific role to each set. Interestingly, out of 04 accused, three of them namely Arif No.2683, Gul Shah No.201-X-Army and Hameed Ullah No.1564-RCH are Police officials, whereas accused Jehangir is the brother-in-law of Mushtaq Ahmad. Primarily, accused Arif and Gul Shah have been attributed role of planting contraband, explosive substance, Pistol etc in the Motorcar of Mushtaq Ahmad, whereas accused Hameed ullah has been booked for facilitating co-accused named above to enrope Mushtaq Ahmad at the behest and instance of accused Jehangir with whom driver Mushtaq Ahmad have family dispute. Besides above stated allegations, PW-10 Fazal Wahab SI recovered one Briefcase containing 1000 gm chars, 1/2 liter liquor, one live cartridge and other ostensible articles etc therefore accused Hameed Ullah in the present case has been further booked for recovery of 1000 gm Chars.

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11. Before discussing the prosecution evidence produced during the trial proceedings, it is important to point out that on the same very day of incident Pw1 Mohammad Siraj Khan the then SHO of Police Station Kanju on his own accord without seeking permission from the competent court, superior officers or prosecution Branch, released Mushtaq Ahmad on bail after furnishing bail bonds to his satisfaction and thereafter placed his name in column No:02 of Challan and recommended his case for discharge by exculpating from the heinous crime. After submission of challan for trial proceedings, my learned predecessor-in-office while believing the recommendation of SHO concerned regarding discharge of Taxi Driver Mushtaq Ahmad also exonerated him of the charges on 15.02.2016 by not advertng crucial aspect of the case as earlier on 02.02.2016, provision of section 265-C Cr.P.C was rightly complied form him which is sufficient reason about declining the opinion of concerned SHO. The story of prosecution to the extent of recovery of contraband Chras weighing 900 gm from the Taxi Car driven by exonerated accused Mushtaq Ahmad has not been denied by Driver Mushtaq Ahmad and recovery of 100 gm chras from the briefcase of accused Hameed ullah lying in Police Post Ningolai, therefore, I shall refrain to make observations on this part of evidence and shall only discuss the prosecution evidence to the extent of allegations levelled against present accused facing trial.



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12. At this trial the prosecution is supposed to have proved that the recovered contraband and explosive articles etc were managed/planted by accused facing trial in mode and manner as alleged by the prosecution by producing their witnesses. In this regard, the foremost discussion would be about their nomination in the case. As observed above, the exonerated accused Mushtaq Ahmad at the time of his arrest disclosed that his Taxi Car was booked by two persons, the salient features whereof already given in the FIR/Murasila Ex.PW.1/1. It is also worth mentioning that the investigating officer, who carried out supplementary investigation, was required to have arranged identification parade of the accused facing trial through exonerated accused Mushtaq Ahmad to have brought on record some tangible evidence against accused Arif and Gul Shah, but no such effort on the part of investigating officer is available on file. As such it can safely be held that except nomination of the accused facing trial without assigning specific role in the Murasila Ex.P W1 /1, no evidence whatsoever is on record to substantiate allegations against them. PW:1 Mohammad Siraj Khan SHO during cross examination admitted said fact by not carried out identification parade of accused Arif and Gul Shah. Similarly PW-10 Investigating officer was also of the same stance not conducted identification parade of aforesaid accused. So, in this way the prosecution withheld best piece of evidence by willfully ignoring most important incriminating aspect of the case.

(10/11)

13. As per prosecution during the course of investigation, the IO of the case recorded statement of one Habib-ur Rehman resident of Matta Swat U/S 164 Cr.P.C, wherein he explained the entire scheme of crime as to how the story was staged as well as its mode and manner, but during trial proceeding the prosecution abandon this PW by closing the chapter of important circumstantial evidence against the accused facing trial. IO of the case after completion of investigation, handed over the case file to SHO for submission of challan without bringing any evidence on record to prove nomination of the accused facing trial as true and correct. It was the duty of the investigating officer to have collected concrete evidence against the accused facing trial during investigation, but by not doing so he damaged the prosecution case to the extent of allegations of planting contraband in the vehicle. After arrest of the present accused facing trial, supplementary investigation was carried out by PW-10 Fazal Wahab SI and in his court statement during cross examination this PW admitted that there is no previous history of the accused facing trial. PW-10 also admitted that neither the accused had confessed their guilt nor any recovery was effected from the direct possession of accused facing trial, therefore implication of accused Arif and Gul Shah in the crime is not proved by the prosecution.



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The prosecution also made a futile attempt by bring on record CCTV recording captured/stored in USB by Pw- Constable Irfan, secured by PW-3 Musharaf Khan CIO/SHO, who

admitted in his court statement that neither Motorcar in question is visible nor accused Arif and Gul Shah have been shown step down from Motorcar, so this piece of evidence also not proved. Reliance is placed on reported judgment titled Fahém Vs The State, 2014 PCr.LJ Peshawar High Court 732.



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(a) Explosive Substances Act (XI of 1908)---

---Ss. 4 & 5---Anti-Terrorism Act (XXVI of 1997), Evidence of C.C. TV recording, was neither clear nor compelling, rather was shrouded in mystery as to how the law-enforcing agencies had reached to accused through the same--Not a single circumstance had been proved by the prosecution wherefrom inference regarding guilt of accused could be drawn, as the evidence fell far short of the prescribed standards--- Prosecution version, was not in consonance with the statements of prosecution witnesses--- Trial Court was not justified to ignore the material discrepancies and infirmities in the prosecution evidence--- Conviction and sentence of accused persons, were set aside and they were acquitted of the charges levelled against them and were set at liberty, in circumstances.

(b) Criminal trial---

---Evidence---Circumstantial evidence-Conviction could be based on circumstantial evidence, provided the circumstances from which the conclusion was drawn, were cogent, reliable, fully established, and were pointing towards the guilt of accused.

14. So for involvement of accused Hameed Ullah and Jehangir is concerned, admittedly both the accused named above were also not named in the FIR and on the other hand, the defence plea is that accused facing trial is innocent and never indulged in the business of narcotic. The accused facing trial so named later on during course of investigation by Mushtaq Ahmad and other PWs is not proved through cogent evidence. On this aspect when the prosecution evidence is scrutinized, it transpires that Taxi Driver Mushtaq Ahmad, on whom behest the accused facing trial were arrayed as accused in the case, was not knowing them earlier as evidence from the Murasila Ex.PW 1/1.



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15. Perusal of FIR would reveal that instant case has been registered after preliminary investigation, which is evident from the contents of murasilla ExPw1/1, because after impounding the vehicle at Kanju Chowk, it was taken to Police Station for proper search and inspection. It is also apparent in report that the complainant/Pw-1 while taking precautionary measures summoned BDS Squad, who secured explosive substance, which suggest that the complainant beside preliminary investigation, also engineered case in a very clever manner by assigning specific role to each accused, Pw- Ibrahim Shah HC (BDS) in connected trial of explosive case, examined Hand Grenade and explosive substance, in his cross-examination admitted that on being summoned, he came to Police Station Kanju, where he recovered said articles in the rare portion of

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Motorcar placed in apple carton, therefore, it can safely be held that before registration of case said Pw- examined material placed in Motor Car at the instance of Pw-1.

16. The most interesting and acentric feature of the case is that admittedly after impoundment of vehicle, it was parked in Police Station Compound despite having placed dangerous explosive material and Hand Grenade and Pw-1/complainant most irresponsible Police officer in a very informal manner drafted muraslla ExPw1/1 inside Police Station and sent to the room of PW. 08 Amjad Ghafoor MASI Moharar of Police Station through Pw- Constable Ismaeel, rather he was supposed to register FIR directly in the relevant register. Pw-1 in his examination-in-chief did not disclose single circumstance of the incident and simply stated that he drafted muraslla ExPw1/1 and sent to Police Station through Constable PW Ismaeel. Constable PW-2 Intiaz Ali while questioned in cross-examination admitted that BDS Squad recovered crime articles from the Motorcar, while parked in Police Station. He further stated that Motorcar was parked in Police Station before his arrival to Police Station, therefore, it suggest that this Pw was not present alongwith Pw-1 on the spot. It is also evident on record that said incriminating articles were neither recovered from the direct or indirect possession of accused facing trial nor on their pointation, but the local Police specifically Pw-1 Mohammad Siraj SHO introduced circumstantial evidence against accused which is also too weak and tainted in nature. In



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this context prosecution during course of trial proceedings with utmost efforts made an attempt to compel their official witnesses as well as private witnesses to make deposition against accused at any cost, but at the same time most of the prosecution witnesses on the request of Prosecutor declared as hostile witnesses. The prosecution with able assistance of incompetent and completely botcher witness made unsuccessful fatigue to prove case against accused, but none of PWs supported false story alleged by Pw-1: All the PWs though to some extent recorded their statement, but during cross-examination, deviated from their examination-in-chief. Pw-12 Mushtaq Ahmad Taxi Driver of vehicle when put his appearance before this court, introduced his vexedness with his brother-in-law Ichangir accused and also explained the complete episode of incident, but at Page No.2 of his examination-in-chief, either intentionally or obliging accused omitted to mention recovery of contraband (chars) from the apple carton placed in the luggage compartment of his Motor Car. Pw-12 during cross-examination further introduced new version by stating that apple carton was not removed from Motorcar till the arrest of accused and this Pw also stated that accused Arif and Gul Shah were arrested at 02:00 hours at night time, so the story of prosecution regarding recovery of objectionable and incriminating articles from the Motor Car is highly improbable.

17. So for role of accused Hameed ullah in the background of initial story is concerned, the prosecution produced Pw-5 Nisar, who invariably denied his liaison/nexus with accused Hmaeed ullah. Similar, Pw-12 Mushtaq Ahmad (driver) in his examination-in-chief charged accused Hameed ullah only being close friend of his brother-in-law Jehangir and during cross examination, unequivocally and in clear words admitted that he is not in a position to produce single iota of evidence regarding any conspiratorial scheme for his implication. The most strong and convincing evidence on the strength whereof, prosecution laid foundation of the case, is the statement of Pw Habib-ur-Rehman, who during course of investigation, got recorded his statement U/S 161 Cr.PC as well as U/S 164 Cr.PC, wherein he explained the gang of conspirators and their secret plan, but surprisingly, the prosecution abandoned Pw Habib-ur-Rehman on the plea of being won over and thereafter, did not make any request for his deposition, which is big blow to the prosecution. So for recovery of 100 grm Chars from the briefcase of accused Hameed Ullah vide recovery memo Ex. PW10/17 is concerned, PW-9 Abdul Khaliq ASI in his cross examination admitted that in his presence parcels was not prepared by the IO of the case. Further admitted that so-called chars was recovered from the place where 3/4 constables were residing so it is proved on record that alleged place of recovery was not under the active and exclusive control of accused Hameed Ulah. PW-7 Nasceud Din Constable is the second marginal witness of recovery memo through which recovery of 1000 gm chars was recovered



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for the briefcase of accused Hameed Ullah. During relevant days Said PW was also posted as incharge of Police Post Ningolai and during cross examination admitted that on the directions of DSP, concerned his signature was put on the recovery memo in the police station and in his presence no parcel with respect of chars was prepared. so both the aforesaid PWs denied recovery of chars on the pointation of accused Hameed Ullah. PW-10 Fazal Wahab CIO during cross examination admitted that during relevant days accused Hameed Ullah was posted as Naib Court in the Court of Judicial Magistrate (Tehsil) Matta and further admitted over writing on so-called recovery memo Ex. PW10/17 which is sufficient proof of manipulation against accused.



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18. There is no denial of the fact that accused Hameed ullah was serving in Police Department and during relevant days, as per Pw-1/SHO/complainant, accused Hameed ullah was performing his service as Naib Court with Judicial Magistrate Matta jurisdiction. Pw-4 Rahim Khan SHO in his court statement admitted that on account of best performance, accused Hameed ullah was awarded commendation certificate. Further stated his house was set ablaze by Taliban during insurgency. Accused in his statement recorded U/S 342 Cr.PC also exhibited copy of FIR ExDw1/1, certificate ExDw1/2, application ExDw1/3 etc, which highlighted his efficient services in Police Department.

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19. As per prosecution story, the instant case was staged by accused Jehangir in order to involve Mushtaq Ahmad on account of his family dispute, but Pw-12 Mushtaq Ahmad during cross-examination, in clear words admitted that the relations of his sister with accused Jehangir are cordial. Similarly, Pw- Kaki Khan (father of Mushtaq Ahmad) and father-in-law of accused Jehangir in connected trial, in his court statement could not advance any strained relations of his daughter with accused Jehangir, rather admitted that from the wedlock of spouses there are issues. Further admitted that since there is no strained relations reported between the parties, therefore, not registered any case against accused Jehangir. It is also pertinent to point out that most important and bone of contention of the case was Mst.Mehnaz wife of accused Jehangir, but she could not produced by the prosecution, hence, this another crucial evidence not brought on record.

20. So, far FSL report in respect of chars is concerned, admittedly, chars 900 gm was not recovered from the direct possession of accused facing trial and Pw-2 Constable Imtiaz marginal witness of recovery memo ExPw1/2 in his court statement did not utter a single word about sampling process, rather stated that 900 gm chars was sealed in parcel and other articles were also sealed in separate parcel. Similarly recovery of 1000 gm chars is also not proved against accused Hameed Ullah Since, the prosecution badly failed to establish its case against accused, therefore, aforesaid opinion, which is also

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questionable and FSL etc, having no evidential value nor sufficient to base conviction of accused.

21. In view of above discussion, the prosecution failed to bring on record tangible evidence to believe that the recovered contraband had been planted by accused facing trial against Mushtaq Ahmad, therefore, I do not hesitate to conclude that the prosecution has not been able to prove allegations against the accused facing trial. Thus, by extending benefit of doubt to accused facing trial Jehangir, Hameed ullah, Arif and Gul Shah, they are acquitted of the charges leveled against them. The accused are on bail, hence, their sureties are absolved of the liabilities of their bail bonds.



- 22. Case property be kept dealt with as per law after the expiry period of appeal/revision.
- 23. File be consigned to the Record Room after its necessary completion and compilation.

Announced:
27-04-2018

(Signature)
(MAMREZ KHAN KHALIL)
Additional Sessions Judge /Zafi
Zilla Qazi Kabal, Swat.

CERTIFICATE:

Certified that this judgment consist of twenty two (22) pages. Each page has been read, checked, corrected and wherever necessary signed by me.

(Signature)
(MAMREZ KHAN KHALIL)
Additional Sessions Judge /Zafi
Zilla Qazi Kabal, Swat.

ATTESTED TO BE TRUE COPY

(Signature)
EXAMINER
Civil Judge-I, Kabal Swat.

24-5-18

(Signature)
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ذیلی قاضی کابل سوات