

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1256/2015

Date of Institution ... 26.10.2015

Date of Decision ... 13.07.2020

Muhammad Shafi son of Muhammad Yousuf R/O Village Dalazak,
Peshawar. ... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and five
others. ... (Respondents)

Mr. Allaud Din Khan,
Advocate. ... For appellant

Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General ... For respondents.

MR. HAMID FAROOQ DURRANI, ... Chairman.
Mr. MUHAMMAD JAMAL KHAN, ... Member (Judicial)

JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant is aggrieved of order dated 29.05.2016 issued by respondent No. 3, whereby, he was dismissed from service. The departmental appeal of appellant remained un-responded.

2. The appellant was appointed as Junior Clerk (BPS-05) in the year 1988 and started performing his duty. On 07.06.2008, an FIR was lodged against the appellant under sections 420/468/471/477-A/PPC and thereafter he was put to trial. Upon conclusion, the appellant was convicted for the charges and was awarded sentence of imprisonment with fine on five counts. He preferred an appeal before the Honourable



Peshawar High Court which was decided on 14.12.2012. While maintaining the conviction of appellant under different sections of law, including 5(2) of Prevention of Corruption Act, the sentence of five years imprisonment was reduced to two years R.I.

Departmental proceedings were initiated against the appellant on the count of absence from duty w.e.f 05.11.2012. He was served with charge sheet and statement of allegations. Subsequently, departmental enquiry was conducted against him on the ground of conviction in criminal cases wherein recommendation of action against the accused was made. On 22.04.2015, a final show cause notice was issued to the appellant which contained allegations of absence from duty and also conviction of appellant under multiple sections of law. The proceedings culminated into passing of impugned order dated 29.04.2015.

3. We have heard learned counsel for the appellant, learned Assistant Advocate General on behalf of the respondents and have also gone through the record.

4. Learned counsel for the appellant mainly contended that the appellant was released on probation by the Honourable High Court, therefore, the conviction was not to be considered as disqualification under the rules. He also argued that to begin with the departmental proceedings, the appellant was served with charge sheet and statement of allegations on the charge of absence from duty while, on the other hand, the enquiry was conducted in view of the conviction of appellant in



criminal cases. In his view the proceedings against the appellant were, therefore, in violation of the rules.

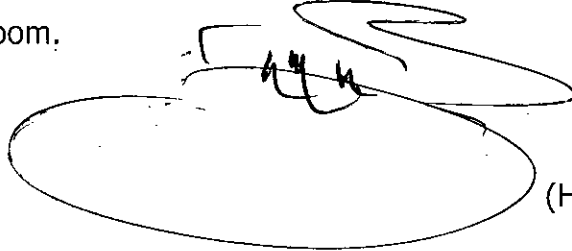
Learned Assistant Advocate General, while addressing arguments on behalf of the respondents contended that under Rule 8 and 11 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 the appellant was liable for dismissal straight away. The enquiry/departmental proceedings were not mandatory in the case of appellant.

5. It is a matter of record that the appellant had admitted his conviction on many counts in criminal case of moral turpitude. It is also gatherable from record that in his reply to the show cause notice the appellant did not question the addition of charges on account of absence alongwith his conviction in criminal cases. Similarly, in his departmental appeal no such objection was taken by the appellant.

6. In the instant case there is clear admission by the appellant not only about his absence from duty at the relevant time but also his conviction. In the circumstances Rule 8(a) of the rules ibid fully comes into play as it is a case of dismissal of government servant where he has been convicted on charges of corruption or moral turpitude. Under rule 8(b), however, the proceedings against the government servant are required to be taken under rule 5 where he has been convicted of charges other than corruption or moral turpitude. The arguments of learned counsel qua non-inclusion of charges regarding conviction of appellant in the charge sheet as well as statement of allegations, therefore, would not have much force.

7. For what has been stated above, we find the appeal in hand without merits, therefore, dismiss the same.

Parties are left to bear their own costs. File be consigned to the record room.

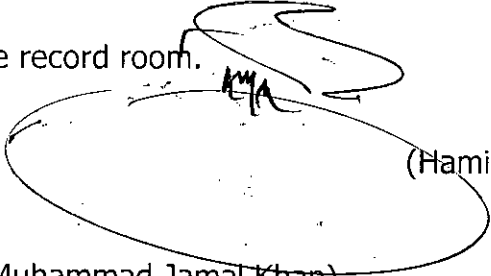



(MUHAMMAD JAMAL KHAN)
Member (Judicial)



(HAMID FAROOQ DURRANI)
Chairman

ANNOUNCED
13.07.2020

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
	13.07.2020	<p><u>Present.</u></p> <p>Mr. Allaud Din Khan, ... For appellant Advocate</p> <p>Mr. M. Riaz Khan Paindakhel , ... For respondents Assistant Advocate General,</p> <p>Vide our detailed judgment, we find the appeal in hand without merits, therefore, dismiss the same.</p> <p>Parties are left to bear their own costs. File be consigned to the record room.</p> <p> (Muhammad Jamal Khan) Member (Judicial)</p> <p> (Hamid Farooq Durrani) Chairman</p> <p><u>ANNOUNCED</u> 13.07.2020</p>

29-4 .2020

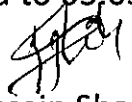
Due to COVID19, the case is adjourned to

13/7/2020 for the same as before.


Reader

21.01.2020

Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Adjourned to 03.03.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

03.03.2020

Appellant in person present. Addl: AG for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourned. To come up for arguments on 29.04.2020 before D.B.



Member


Member

05.09.2019

Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 01.11.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

01.11.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Raziq, Head Constable for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 11.12.2019 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

11.12.2019

Clerk to counsel for the appellant present. Addl: AG alongwith Mr. M. Raziq, H.C for respondents present. Clerk to counsel seeks adjournment due to general strike of the Bar. Adjourned. To come up for arguments on 21.01.2020 before D.B.



Member



Member

26.04.2019

Clerk to counsel for the petitioner and Adll: AG for the respondents present.

Due to general strike on the call of Bar Association instant matter is adjourned to 11.06.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

11.06.2019

Appellant in person and Mr. Muhammad Riaz Paindakhel, Asst. AG for the respondents present.

Appellant requests for adjournment due to non-availability of his learned counsel who is engaged in cases at Charsadda. Adjourned to 09.07.2019 for arguments before the D.B.


Member


Chairman

09.07.2019

Appellant in person and Mr. Riaz Paindakheil learned Assistant Advocate General present. Appellant submitted application for adjournment. Application Allowed. Adjourn. To come up for arguments on 05.09.2019 before D.B.


Member


Member

12.10.2018 Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Appellant seeks adjournment that his counsel is not available in today. Adjourned. To come up for arguments on ~~21.01.2019~~ before D.B


Member


Member

04.01.2019 Appellant in person and Mr. Zia Ullah learned Deputy District Attorney present. Appellant seeks adjournment on the ground that his counsel is not available. Adjourn. To come up for arguments on 19.02.2019 before D.B


Member


Member

19.02.2019 Appellant in person and learned Additional Advocate General for the respondents present. Appellant requests for adjournment as his learned counsel is indisposed hence not available. Adjourned to 03.04.2019 ^{before} D.B.


Member



Chairman

22.03.2019 Junior to counsel for the appellant and Mr. Ziaullah, DDA for the respondents present.

Request for adjournment is made on account of engagement of learned senior counsel for the appellant before the Honourable High Court today in many cases.

Adjourned to 26.04.2019 before the D.B.

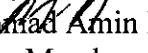

Member


Chairman

Service Appeal No. 1256/2015

09.03.2018


Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Aziz Shah, Reader for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 03.05.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member


03.05.2018

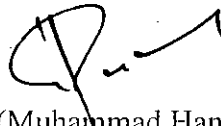
Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 16.07.2018 before D.B


Reader

16.07.2018


Appellant in person present. Mr. Muhammad Jan, DDA for respondents present. Arguments could not be heard due to general strike of the Bar. Adjourned. To come up for arguments on 31.08.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

31.08.2018

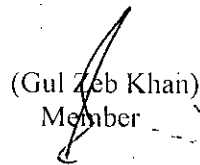
Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 12.10.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

02.06.2017

Appellant with counsel present and Mr. Muhammad Adéel Butt, Additional AG for the respondent present. Counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 27.09.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

27.09.2017

Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant submitted Wakalat Nama on behalf of the appellant and requested for adjournment. Adjourned. To come up for arguments on 01.12.2017 before D.B.


Member


Chairman


01.12.2017

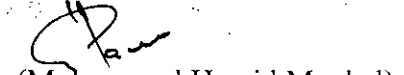
Since 1st December, 2017 has been declared as Public Holiday on account of Rabbi-ul-Awal. To come up for arguments on 31.01.2018 before the D.B.


Reader

31.01.2018

Appellant in person present. Mr. Riaz Pinda Kheil, learned Assistant Advocate General for respondents present. Appellant seeks adjournment as his counsel is not available Adjourned. To come up for arguments on 09.03.2018 before D.B.

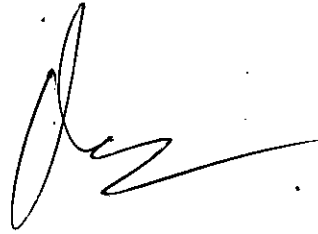

(Muhammad Amin Kundi)
MEMBER


(Muhammad Hamid Mughal)
MEMBER

24.08.2016

Appellant in person and Mr. Ziaullah, GP for respondents present. Rejoinder not submitted. Request for time to file rejoinder. To come up for rejoinder and final hearing on 14.12.2016 before D.B.

Member



Chairman



14.12.2016

Appellant in person and Mr. Muhammad Ibrar, Asst: Secretary alongwith Asst: AG for respondents present. Appellant requested for time to file rejoinder. Request accept. To come up for rejoinder on 08.03.2017.



(ASHFAQU TAZ)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

08.03.2017

Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant requested for time to file rejoinder. To come up for rejoinder and final hearing on 02.06.2017.



(ASHFAQUE TAJ)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

23.11.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Junior Clerk in Police Department and after putting in 28 years unblemished service dismissed from service vide impugned order dated 29.5.2015 on the allegations of absence for 20 days where against he preferred departmental appeal on 25.6.2015 which was not responded and hence the instant service appeal on 10.11.2015.

That no opportunity of hearing was extended to the appellant and that the inquiry was not conducted in the prescribed manners and, above all, the penalty is excessive.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 1.3.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

01.03.2016

Appellant in person and Mr. Aziz Shah, Reader alongwith Addl. A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 9.5.2016 before S.B.


Chairman

09.05.2016

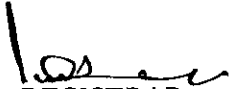

Appellant in person and Mr. Hayat Muhammad, H.C alongwith Asstt. A.G for the respondents present. Written reply by the respondents submitted. The appeal is assigned to D.B for rejoinder and final hearing for 24.08.2016.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1256/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10.11.2015	<p>The appeal of Mr. Muhammad Shafi resubmitted today by Mr. Malik Akhtar Hussain Awan Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>23-11-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Muhammad Shafi son of Muhammad Yousaf R/O Dala Zaak Peshawar received today i.e. on 26.10.2015 is incomplete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days.

- 1- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- The law under which appeal is filed is not mentioned.
- 3- Copies of charge sheet, statement of allegations and enquiry report are not attached with the appeal which may be placed on it.
- 4- Annexures of the appeal may be attested.
- 5- Appeal may be page marked.
- 6- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

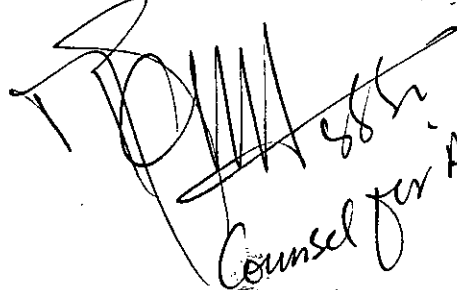
No. 1163 /S.T,

Dt. 27/10 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Malik Akhtar Hussain Awan Adv. Pesh.

objections removed, need full
done. Resubmitted please.


Counsel for Appellant

BEFORE THE KPK SERVICES TRIBUNAL PESHAWAR

Service appeal No. **1256**...../2015.

Muhammad ShafiPETITIONER.

VERSUS

The Government of KPK Etc.....RESPONDENTS.

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S. No.	Description of Documents	Annexures	Pages
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2.	Memo of Addresses of parties		7
3.	Copies of Charge sheet and show cause notice and reply to Show cause notice	A, B, B/1, B/2	8 - 15
4.	Copy of Dismissal Order	C	16 - 18
5.	Copy of Departmental representation	D	19
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Muhammad Shafi
Appellant
Through
(Malik Akhtar Hussain Awan)
Advocate, Peshawar

BEFORE THE KPK SERVICES TRIBUNAL PESHAWAR

Service appeal No. 1256...../2015.

Muhammad Shafi S/o Muhammad Yousuf
R/O village Dala Zaak Peshawar.

PETITIONER.

VERSUS

n.w.f. Province
Service Tribunal
Diary No. 1294
dated 26-10-2015

1. The Government of KPK through Its Inspector General of Police Peshawar.
2. The Inspector General of Police KPK, Peshawar.
3. The Assistant Inspector General of Police ^{Estt.} KPK, Peshawar.
4. The Capital City Police Officer Peshawar.
5. The Senior Superintendent of Police (Traffic) Peshawar.
6. The Deputy Superintendent of Police (H.Qrs) Peshawar.

RESPONDENTS.

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT 1973 AGAINST THE IMPUGNED ORDER DATED 29-5-2015 ISSUED BY RESPONDENT NO. 3 WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND THEREAFTER THE DEPARTMENTAL REPRESENTATION OF THE APPELLANT WAS NOT REPLIED AND ORDER PASSED BY THE RESPONDENT NO. 3 REMAINED UPHELD.

PRAYER IN APPEAL.

ON ACCEPTANCE OF THIS APPEAL THE ORDER OF THE RESPONDENT NO.3 DATED 29-5-2015 MAY KINDLY BE SET ASIDE BEING ILLEGAL, WITHOUT LAWFUL AUTHORITY, VOID AB-ANITIO AND THE PETITIONER HONORABLY ABSOLVED OF THE CHARGES OR IN THE ALTERNATIVE THE PETITIONER MAY BE RETIRED FROM SERVICE WITH ALL BACK BENEFITS.

~~10/11/15~~
26/10/15

re-submitted to-day
and filed.

~~10/11/15~~
10/11/15

HONOURABLE SIR,

The appellant submits his case as through this appeal is as under:-

ON FACTS.

1. That the appellant is permanent and law abiding citizen of Pakistan and hails from a respectable and noble family of Peshawar.
2. That the appellant was appointed as junior clerk BPS-5 and joined his services/duty in 1988 in the respondent department and since his appointment remained posted in various sections of the respondents and worked with zealously and honesty, hence, till date he has an extraordinary unblemished record of service in his credit.
3. That the appellant being junior clerk was working to ASP Police Station Gul Bahar Peshawar and was assigned the duties of Stenographer which he also performed to the satisfaction of his superiors.
4. That an FIR No. 04 dated 07-06-2008 under section 420/468/471/477-A/PPC was lodged against the appellant at the behest of the then DSP on personal grudge have/had with appellant and thus the appellant was compelled to face the criminal trial.
5. That since the appellant had been intrusted such a large number of allegations which were dubious in toto, thus, he left with no option but to attend court of law and obey orders respectively.
6. That when the appellant was busy in attending courts proceedings the respondents instead of taking notice on part of the concerned departmental hierarchy, took a surprising step and initiated departmental enquiry against the appellant only and left the other responsible officials performing duties in the relevant branch, hence, departmental enquiry committee consisted of respondent No. 6 was constituted under the Efficiency & Discipline Rules 2011.

7. That the enquiry committee did not enquire the matter officially but took reliance on the inquiry initiated by Anti Corruption department at the behest of rival DSP and thus the appellant was held guilty.
8. That appellant was not afforded opportunity to submit his respective reply both to the charge sheet and the statement of allegations to the respondent No. 6 wherein he could categorically state each and every fact of the occurrence and failure of responsibility on part of the concerned authorities and documentary proof already available at their official record.
9. That the respondent enquiry committee did not appreciate the documentary official record and facts of the case and without affording him an opportunity of being heard in person thus held him responsible. It is pertinent to mention here that neither of the enquiry member visited or gone through the record but recommended punishment while sitting as judge of their own cause.
10. That the respondent No.3 upon receiving the recommendations served him with a show cause notice wherein the appellant was called upon to reply to the same allegations. (Copy of the show cause notice is annexure-A)
11. That the appellant submitted a proper reply to the respondent No.3 and all the material documents were again made attached to clarify the entire factual position and responsibility. (Copy of the reply to show cause is annexure-B)
12. That the respondent No.3 instead of taking deeper appreciation of facts and circumstances of the case, and also to afford him a personal hearing of being heard in person, turn down the reply of the appellant and imposed major penalty and **DISMISSED** him from service. (Copy of the order is annexure-C)
13. That the appellant presented a departmental representation / appeal to the respondent No.2 but the same was also kept filed and not responded uptill now and the decision of the respondent No.3 remained maintained/upheld. (copy of the appeal and order is annexure-**D** and **D/I**)
14. That feeling aggrieved by the order of the respondents, the appellant finds no other adequate remedy but seek indulgence of this Hon'ble Tribunal,

GROUND.

- A. Because the appellant had/has the right to be heard in person by the Respondents who acted as judge of their own cause and the appellant was held responsible for the corruption in the traffic license branch.
- B. That the appellant was intentionally made escape goat under a sacrifice to save the will wishers, even leaving behind all the legal as well as mandatory provisions of law and also beyond the powers vested in them.
- C. Because the entire action taken by the respondents is the worst example of high-handedness, misuse of Official position against the innocent employees.
- D. Because the respondents did not applied proper procedure into the case of the appellant as required under the services laws for conducting a departmental enquiry against a Government Servant.
- E. Because the appellant has not been held guilty in any independent official inquiry which in fact was not conducted any where, hence, the entire action of the respondent is self explanatory and proves malafide also on part of the respondents, thus the petitioner cannot be deprived of his legal as well as constitutional right to be heard in person which record shall prove that he has performed an unblemished service through out his service career.
- F. Because it would be sufficient to prove from the record that the appellant was never assigned the duty of license clerk at any time, however, during the days of occurrence appellant was on duty at complaint cell of Central Police Office, hence, the appellant was charged with malafide.
- G. Because it is also evident from the record and remarks put forward by the respondent No.3 in his inquiry which based on criminal case pending against the appellant.
- H. Because the enquiry committee till its final culmination could not observe the fact that the appellant had not received any of the license or bribe money and if so then those officials who came across with such allegations have not been touched - what to speak of the so called enquiry which infact was conducted to save the actual culprits.

- I. Because the appellant being a Public servant expected to be treated under the norms of justice. However, the respondent under a hurry manner issued a show cause to the appellant, without conducting an independent Enquiry as required under the law and also natural justice.
- J. Because the respondent 6 also conducted a so-called enquiry, when the appellant was in police lines, What to speak of the enquiry which was held at the respective offices of the respondents instead of the place of occurrence where the enquiry had to be conducted under the law because there was an FIR but they wanted to save themselves by using the appellant's unblemished career as their safety shield.
- K. Because the respondents while sitting as judge of their own cause did not bother to accept that it was their duty to check and observe the official record but they decided to exercise their official powers against appellant and thus over ride the law and the principles of natural justice.
- L. Because the entire proceedings have created a mysterious situation to the recommendations of the respondents when they intentionally and malafidely recommended the appellant for major punishment.
- M. Because the proceedings of the so called enquiry committee and the record of the respondents would reveal that the appellant was never remained as record keeper of the license branch and this fact was already in the knowledge of respondents but instead of accepting the responsibility and failure on their part, the respondent held the appellant as guilty.
- N. Because the respondent did not bother to pay a single visit to the site of occurrence, however, appellant approached Respondent No.5 for a visit at his office to disclose the real facts and circumstances of the case but the ice could not be melted because the respondents have already decided to put the justice aside, thus refused to allow the appellant.
- O. Because the appellant was condemned un-heard through out the proceedings, what to speak of the allegations which were biased, malafide and fabricated, however, the so called inquiry committee could not place any material to prove misconduct.

- P. Because the appellant was declared and held responsible under allegations of misconduct while the entire record of the appellant would be found clear as crystal and speaks about the unblemished and efficient official duty record..
- Q. Because the show cause served upon the appellant asserting that why he should not be removed from service was a clear proof of malafide on part of the respondents, since, it is evident from the record that all those duties which should be performed by the appellant had been done efficiently but even then the respondent put blame on the appellant, hence, held him guilty under a style of court of marshal.
- R. Because the appellant in his reply to the show cause notice precisely disclosed the material facts and certain irregularities committed by the concerned department as well as their responsibility towards the said Corruption, but all in vain.
- S. Because the respondents malafidely punished the appellant just to save their own skin while intentionally and without lawful authority left behind all the rules and regulation and rights of a service man, hence, also filed the departmental representation with a slip shod.

It is, therefore, humbly prayed that on acceptance of this appeal the order dated 25-5-2015 issued by the respondents may kindly be set aside and the appellant be reinstated in his previous position with all back benefits etc OR in the alternative may very kindly be compulsorily retired from service.

Any other relief to which the appellant is also deemed entitled may also be granted.

Muhammad Shafi
Muhammad Shafi
APPELLANT

Through

Malik Akhtar Hussain Awan
(Malik Akhtar Hussain Awan)
Advocate Peshawar

ATTESTED
AFFIDAVIT

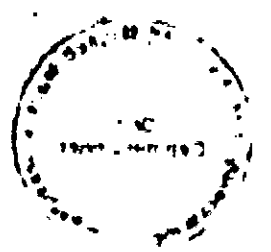


I, Muhammad Shafi S/o Muhammad Yousuf R/O village Dala Zaak Peshawar do hereby solemnly affirm and declare on oath that the contents of this appeal are true and correct to best of my knowledge and belief.

Muhammad Shafi
DEPONENT

~~Handwritten signature and scribbles~~

SECRET



BEFORE THE KPK SERVICES TRIBUNAL PESHAWAR

Service appeal No./2015.

Muhammad Shafi APPELLANT

VERSUS

Government of KPK Etc.....RESPONDENTS.

NAME AND ADDRESSES OF THE PARTIES.

APPELLANT

Muhammad Shafi S/o Muhammad Yousuf
R/O village Dala Zaak Peshawar.

RESPONDENTS

The Government of KPK through Its Inspector General of Police
Peshawar.


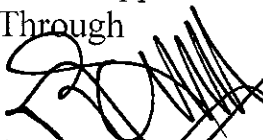
The Inspector General of Police KPK, Peshawar.

The Assistant Inspector General of Police KPK, Peshawar.

The Capital City Police Officer Peshawar.

The Senior Superintendent of Police (Traffic) Peshawar.

The Deputy Superintendent of Police (H.Qrs) Peshawar.


Appellant
Through

(Malik Akhtar Hussain Awan)
Advocate Peshawar

CHARGE SHEET

I, Khalid Masood Addl: IGP/Headquarters Khyber Pakhtunkhwa Peshawar, as competent authority, hereby charge you Mr. Muhammad Shafi Junior Clerk of CCP Peshawar as follows:-

You while posted as steno to ASP/Gul Bahar absented yourself from your lawful duty w.e.f 5.11.2012 til date without leave/permission as intimated by CCPO Peshawar vide his letter No. 19541/EC-II dated: 22.11.2012.

2. By reasons of the above, you appear to be guilty of misconduct under KPK Civil servants (efficiency and Discipline rules 2011, and have rendered yourself liable to all or any of the penalties specified in the rules ibid.

3. You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Committee/Enquiry Officer as the case may be.

4. Your written defence, if any, should reach the Enquiry Officer/Enquiry committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case exparte action shall follow against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.

Attested
[Signature]

[Signature]
(KHALID MASOOD)

Addl: IGP/HQrs
(For Provincial Police Officer
Khyber Pakhtunkhwa
Peshawar.

6/12

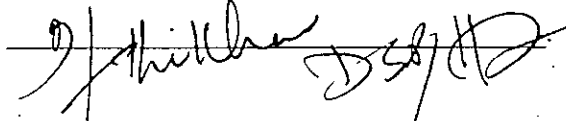
DISCIPLINARY ACTION

I, Khalid Masood Addl: IGP/Headquarters Khyber Pakhtunkhwa, Peshawar as competent authority, is of the opinion that you, Mr. Muhammad Shafi Junior Clerk of CCP Peshawar have rendered yourself liable to be proceeded against as you have committed the following acts/omission within the meaning of Khyber Pakhtunkhwa Civil Servant Efficiency and Discipline Rules 2011.

STATEMENT OF ALLEGATION

He while posted as steno to ASP/Gul Bahar absented himself from his lawful duty w.e.f 5.11.2012 til date without leave/permission as intimated by CCPO Peshawar vide his letter No. 19541/EC-II, dated 22.11.2012.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an enquiry committee consisting of the following is constituted under Civil Servant Efficiency and Discipline Rules 2011.

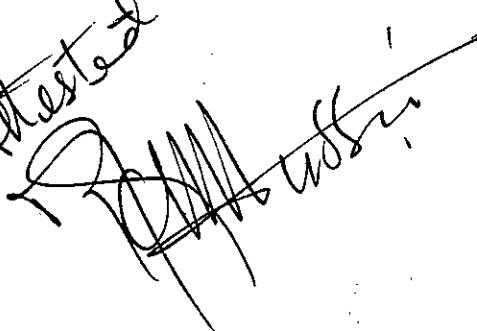
- i. 
- ii. _____

3. The enquiry committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make within 25 days of the receipt of this order, recommendations as to punishment or the appropriate action against the accused.

4. The accused and a well conversant representative of departmental shall join the proceedings on the date, time and place fixed by the enquiry committee.


(KHALID MASOOD)

Addl: IGP/HQrs
For Provincial Police Officer
Khyber Pakhtunkhwa
Peshawar

Attested


FINDING REPORT IN DEPARTMENTAL ENQUIRY AGAINST
JUNIOR CLERK MUHAMMAD SHAFI.

Please refer to your office endst: No.10608/EC-II, dated 03-10-2013 on the subject cited above (enclosed in original for ready reference).

As per the directive of High ups, the matter has been enquired by the undersigned: -

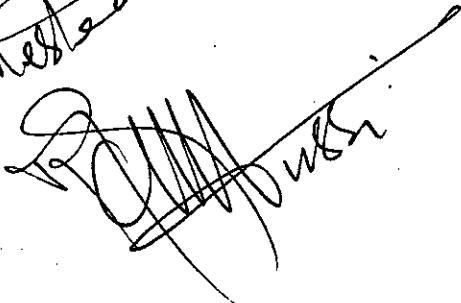
The accused Junior Clerk who is also facing trial in case FIR No.4, dated 07.06.2008 u/s 420/468/471/477 PPC, read with section 5(2)/PC act, Police Station ACE Peshawar. He was convicted on 05.11.2012 and sent to Central Jail Peshawar on the same day. His convictions are as under: -

1. U/S 420 PPC 5 years RI with a fine of Rs.30,000/- and default to undergo SI for 6 months.
2. U/S 468 PPC 5 years RI with a fine of Rs.30,000/- and default to undergo SI for 6 months.
3. US/ 471PPC 5 years RI with a fine of Rs.30,000/- and default to undergo SI for 6 months.
4. US/ 477/A. PPC 5 years RI with a fine of Rs.30,000/- and default to undergo SI for 6 month.
5. US/ 5(2)PC. Act. 5 years RI with a fine of Rs.30,000/- and default to undergo SI for 6 months.

All the sentences shall run concurrently and benefit of S.382-B CrPC, if applicable, is extended to the accused.

Thereafter, he filed an appeal before Peshawar High Court Peshawar against the impugned judgment. The High Court partially accepted his appeal and ordered as under: -

"For the reasons to be recorded later on, both the appeals are partially allowed and while maintaining the conviction of the appellants under section 420/468/471/477-A PPC and under section 5(2) of Prevention of Corruption Act, their sentences of five years are reduced to two years RI under each section of law and the fine imposed upon them shall remain intact. Since the appellants are government servants and being the first offenders and sole bread earner for their families, I deem it appropriate to place on probation instead

Attested


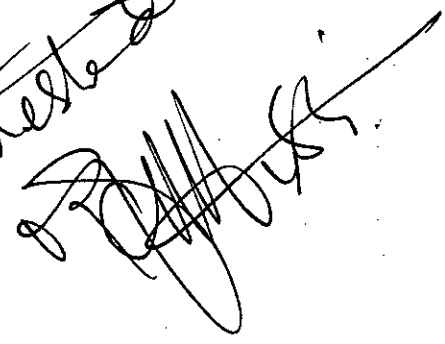
keeping them in Jail physically. They are, therefore, ordered to be released on probation under the provision of section 5 of the probation of offenders ordinance, 1960 provided each of them to furnish bail bond in the sum of Rs.1,00,000/- (rupees one lac) with two sureties each in the like amount to the satisfaction of the concerned probation officer, with terms and conditions mentioned in the said section of law". Their release on probation is also subject to deposit the fine imposed upon them by the learned trial Court.

Soon after his release from jail on 21-12-2012, he reported for duty at CCP Peshawar on 24-12-2012. His arrival report at CCP Peshawar is also enclosed as:-

According to the above mentioned judgment passed on by Honorable Justice Shah Jehan Khan his conviction u/s 420/468/471/477-A PPC and 5(2) of prevention of corruption act, their sentences of five year are reduced to two year R.I. under each section of law and find imposed upon them shall remain intact, and as the appellant is government servant, therefore, he is placed on probation instead of keeping him Jail physically.

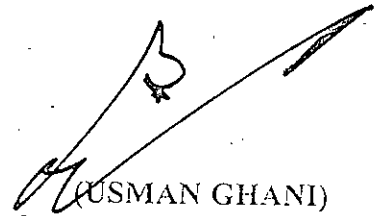
He further stated that he will file an appeal against the judgment of Peshawar High Court at Supreme Court of Pakistan and waiting for the detail judgment of Court. On 8.04.2013, he produced a copy of his appeal, which is enclosed for ready reference.

The accused J/C Muhammad Shafi was again directed to resubmit his statement and also mentioned the date of his trial in the Supreme Court of Pakistan. On 30.01.2015, he produced a certificate from Muhammad Ajmal Khan Advocate on record / ASC Supreme Court of Pakistan, wherein it has been stated that he has filed a review petition at Supreme Court of Pakistan at Branch Registry Peshawar against the Judgment dated 18.06.2013 of the Hon'ble court, and the same will be fixed on its own turn at Peshawar, so to this effect certificate is issued. Furthermore, he also produced a Final Release Certificate issued by Probation Officer-II District Courts Peshawar, wherein it has been stated that the probationer period of Muhammad Shafi has been completed on 13.12.2014 (both are enclosed for ready references). No directives have been received from the Court to stop the enquiry against the accused J/C.

Attested


In such like situation and foregoing circumstances as no directive have been received from the court for stopping the E.O. for taking action against the J/C, it is found that he has been considered as convicted, at this stage, it is, therefore, recommended that suitable legal action may please be taken against the accused J/C after obtaining the opinion of Legal Brach.


(All the relevant papers are enclosed).



(USMAN GHANI)
Dy: Superintendent of Police
HQrs: CCP/Peshawar.

NO. 455 /S.

Dated 05.02.2015.
Encl;()Papers.

Attested

455



Annex (B/A)

13

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE
PESHAWAR

Ph: 091-9210545 Fax: 091-9210927

No 2594 /E-V,

Dated

Peshawar the

22-4

/2015

FINAL SHOW CAUSE NOTICE.

1. WHEREAS, you Junior Clerk Mohammad Shafi, while posted as Steno to ASP, Gul Bahar Peshawar absented yourself from your lawful duties with effect from 05.11.2012 to 23.12.2012 without any kind of leave or permission as intimated by Capital City Police Officer, Peshawar vide his office Letter No 19541/EC-II Dated 22.11.2012. Furthermore, ASP, Gul Bahar quoted from News Paper the Daily "AAJ" Dated 11.11.2012 that you had been punished for 05 years in each section which become 25 years with one lac and fifty thousand rupees as penalty by the Court of Anti Corruption Judge and also confined to Jail as you had been charged in a Case vide FIR No 04 Dated 07.06.2008 under section 420/468/471/477 PPC read with section (5 (2) PC Act, PS ACE, Peshawar. Later on, you filed an appeal in the Honorable Peshawar High Court Peshawar against the impugned judgment of Anti Corruption Judge Peshawar. Your appeal was accepted partially while maintaining the conviction the under section of 420/468/471/477 PPC read with section (5 (2) PC Act, your sentence of imprisonment of five years was reduced to two years R.I under each section of law and fine imposed upon you was remained intact. However, being a Govt: Servant and first offenders and sole bread earner for the family, you were placed on probation instead keeping in Jail physically under the provision of Section 05 of the Probation of Offenders Ordinance, 1960 with the provision of bail bond in the sum of Rs: - 1, 00, 00/- with two sureties to the satisfaction of the concerned Probation Officer with proper terms and conditions. Similarly, you were released from Jail on 14.12.2012. You had committed gross misconduct as defined in Govt. servants (Efficiency and Discipline Rules 2011), resultantly you were issued Charge Sheet with Statement of Allegations.

2. WHEREAS, the Enquiry Officer has finalized the Enquiry proceedings, giving you full opportunities of defence i.e. Personal Hearing as well as cross examination of the witnesses and the statement of all PWs were recorded in your presence, besides audience to relevant record. Consequent upon the completion of Enquiry Proceedings, the Enquiry Officer held you guilty of the Charge leveled against you as per Charge Sheet. Furthermore, as per the concluding para of Enquiry Officer with the contents that no directive was received from the Court for stopping the Enquiry Officer for taking action against you Junior Clerk as it was found that you were considered as convicted at this stage, hence you were recommended for taking suitable legal action by the Enquiry Officer after obtaining the opinion of Legal Branch.

Attested



14

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE
PESHAWAR

Ph: 091-9210545 Fax: 091-9210927

3. **AND WHEREAS**, on going through the Findings and recommendation of Enquiry Officer, the material placed on record and other connected papers including your defence before the said Enquiry Officer; I am satisfied that you have committed the misconduct and are guilty of the charges leveled against you as per statement of allegations conveyed the detail of allegations conveyed to you which stand proved and render you liable to be awarded punishment under the said rules.
4. **NOW THEREFORE**, I, SYED FIDA HASSAN SHAH, PSP, Asstt: Inspector General of Police, Estt: Khyber Pakhtunkhwa, Peshawar as Competent Authority have tentatively decided to impose upon you, any one or more penalties including the penalty of "dismissal from Service" under Section 4 of Govt. servants (Efficiency and Discipline Rules 1974/(amended in 2011).
5. You are therefore, required to Show Cause within seven days of the receipt of this Notice, as to why the aforesaid penalty should not be imposed upon you, failing which it shall be presumed that you have no defence to offer and an exparte action shall be taken against you. Meanwhile also intimate whether you desire to be heard in person or otherwise.

(SYED FIDA HASSAN SHAH)PSP
Assistant Inspector General of Police, Estt:
Khyber Pakhtunkhwa,
Peshawar.

Attested
[Handwritten signature]

Annex (B/2)

15

R/Sir,

Kindly refer to the final show cause notice issued from the office of AIG/Establishment to me vide No. 2594/E-V dated 22.04.2015.

In this regard my detail reply is as under:-

I was facing trial in a case FIR No. 4 dated 07.06.2008 u/s 420/468/471/477 A PPC read with section 5(2) PC ACT, Police Station ACE Peshawar. As the case was fixed for hearing on 05.11.2012 before the learned special Judge, Anti Corruption Peshawar, on 05.11.2012 after obtaining proper permission from Competent Authority, I duly attended the Court. Unluckily, after arguments by the Counsel, I was convicted and sent to Central Jail Peshawar.

Later on, I filed an Appeal in Peshawar High Court Peshawar against the impugned Judgment of the Court of Anti Corruption. The Honorable Peshawar High Court Peshawar, partially accepted my appeal and ordered of my releasing from the Prison on probation for a period of two years vide judgment dated 14.12.2012, now my probation period has completed and a certificate received from Probation Officer, Peshawar is enclosed herewith.


Therefore, soon after my releasing from the Jail on 21.12.2012, I have reported of my arrival for duty on 24.12.2012 accordingly. Now my case is also subjudice in the August Supreme Court of Pakistan. A Certificate to this effect of Ajmal Khan Advocate of Supreme Court is submitted herewith for your kind perusal.

The absence from my duty with effect from 05.11.2012 to 23.12.2012 was not intentional rather because of Court Order which I have obeyed.

It is therefore requested that I may kindly be exonerated from the charges and my Enquiry may also kindly be filed, please.

Dated 29.04.2015.

Yours Obediently

Attested

MALIK AKHTAR BUSSAINAWAN
Advocate Supreme Court

Muhammad Shafi J/Clerk



Annex C

16

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE
PESHAWAR

Ph: 091-9210545 Fax: 091-9210927

No 3360 /E-V, Dated Peshawar the 29-5 /2015

ORDER

My this order will dispose of a Departmental Enquiry initiated against Junior Clerk Mohammad Shafi who committed the following, acts of omission/commission that:-

2. While he was posted as Steno to ASP, Gul Bahar absented himself from his lawful duty with effect from 05.11.2012 to 23.12.2012 without leave/permission as intimated by Capital City Police Officer, Peshawar vide his office Letter No 19541/EC-II Dated 22.11.2012. As ASP, Gul Bahar quoted from the News Papers Daily AAJ Dated 11.11.2012 that the above named Junior Clerk was punished for 25 years imprisonment with a fine of Rs:- 1,50,000/- by the Court of Honorable Judge of Anti Corruption, Peshawar.
3. After passing the said judgment by the relevant Court he was issued Charge Sheet with Statement of Allegations and Mr. Iftikhar Ud Din, DSP, HQrs: of Capital City Police Officer was nominated as Enquiry Officer to probe into the matter.

4. The enquiry officer completed the Subject Enquiry and submitted his finding with the following contents that:-

On 03.01.2013, the accused official appeared before him and produced a written report, wherein he has stated that he was facing a Trial in as case Vide FIR NO 04 Dated 07.06.2008 under section 420/468/471/477 PPC read with Section 5 (2) PC Act, Police Station, Anti Corruption Estt., Peshawar. He case was fixed for hearing on 05.11.2012 before the learned Special Judge, ACE, Peshawar. Unlucky, due to weak arguments by his Council, he was convicted and sent to Central Prison, Peshawar due to his involvement in the following Criminal cases.

- i. Under Section, 420 PPC, 05 years RI with a fine of Rs:-30,000/- and default to undergo SI for 06 months.
- ii. Under Section, 468 PPC 05 years RI with a fine of Rs: - 30,000/- and default to undergo SI for 06 month.
- iii. Under Section 471 PPC, 05 years RI with a fine of Rs: - 30,000/- and default to undergo SI for 06 months.
- iv. Under Section 477/A, PPC 05 years RI with a fine of Rs: - 30,000/- and default to undergo SI for 06 months.
- v. Under Section 5(2) PC, Act, 05 years with a fine of Rs: - 30,000/- and default to undergo SI for 06 months.

5. All the sentences shall run concurrently and benefit of S.382-B CrPC if applicable, is extended to the accused. Thereafter, he filed an appeal before the Peshawar High Court against the impugned Judgment. The Honorable High Court partially accepted his appeal and ordered as under:-

Attested
MALIK AKHTAR HUSSAIN AWAN
Advocate Supreme Court



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE
PESHAWAR

Phone No. 091-9210545 Fax 091-9210927

No 3361-67 /E-V Dated Peshawar the 29-5 /2015

Copy of above is forwarded for information and necessary action to the:-

- 1). Capital City Police Officer, Peshawar with reference to his office Letter No 19541/E-V Dated 22.11,2012.
- 2). Senior Superintendent of Police, Traffic, Peshawar.
- 3). Deputy Supdt: of Police, HQrs: Capital City Police Office, Peshawar.
- 4). Registrar, CPO, Peshawar.
- 5). Office Supdt: Secret CPO, Peshawar.
- 6). In-Charge Central Registry Cell CPO Peshawar.
- 7). Office Supdt: Carrier Planning Branch CPO Peshawar

Attested

MALIK AKHTAR HUSSAIN AWAN
 Advocate Supreme Court



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE
PESHAWAR

Ph: 091-9210545 Fax: 091-9210927

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"For the reasons to be recorded later on, his appeal was allowed and while maintaining the conviction of the appellant's under section 420/468/471/477-A PPC and ~~under section 5 (2) of Prevention of Corruption Act, his Sentences of five years are reduced to two years RI under each Section of Law and the Fine imposed upon him shall remain intact.~~ Since the appellant is a Government Servant and being the first offender and sole bread earner for his family, I deem it appropriate to place on probation instead keeping him in Jail physically. He is therefore, ordered to be released on probation under the provision of Section 5 of the probation of offender Ordinance, 1960 provided to furnish a bail bond in the sum of Rs: - 1, 00,000/- (One lac only) with two sureties in the like amount to the satisfaction of the concerned Probation Officer, with term and conditions mentioned in the said Section of Law. His release on probation is also subject to deposit the fine imposed upon him by the Learned trial Court. Therefore, he was released from Prison on 21.12.2012, and duly reported for duty at Capital City Police Office, Peshawar. He also further stated that he has filed an appeal against the impugned judgment of Peshawar High Peshawar and on 08.04.2013 also produced a copy of his appeal for ready reference before the Enquiry Officer.

6. In view of above mentioned circumstances, the Enquiry Officer Mr. Iftikhar Ud Din, DSP, HQrs: Peshawar has submitted in his findings that the Enquiry in hand may please be kept pending till the decision of appeal lying in the august Supreme Court of Pakistan after seeking the Opinion of Legal Branch.

7. On perusal of Findings of the Enquiry, the Competent Authority recorded his kind remarks with the contents that "No, initiate Departmental Proceedings since, the Relevant Court has not stopped the Department Proceedings against him".

8. Therefore, in the light of remarks of the Competent Authority the Departmental Proceedings was still kept to continue against him to finalize the matter once for all. The Enquiry Officer completed the Enquiry Proceedings against the said official and reached to the conclusion that Junior Clerk has been found convicted in the above mentioned Criminal Cases and he was recommended for suitable legal action/punishment against him.

09. To fulfill the all codal formalities, he was issued Final Show Cause Notice with an opportunity for appearance for personal hearing and to produce his defence in his case before the undersigned. In response to the same, he submitted his reply but even then, he could not produce anything in his defense nor satisfy the undersigned which shows that he was intentionally involved in the Criminal case due to which he was convicted by the relevant Court on his omission.

10. Thus, on going through the findings/recommendation of the Enquiry Officer and the material on record and in the above mentioned Criminal Case and after conviction by the relevant Court, I, SYED FIDA HASSAN SHAH, PSP Assistant Inspector of Police, Establishment, Khyber Pakhtunkhwa, Peshawar as competent authority hereby pass the order of his dismissal with immediate effect under the Khyber Pakhtunkhwa, Efficiency and Disciplinary Rules, 2011.

ORDER ANNOUNCED


(SYED FIDA HASSAN SHAH)

AIG/Estt:

For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.


MALIK AKHTAR HUSSAIN AWAN
Advocate Supreme Court

CR//30533/E-B

Dy No. 975/E-V

DT: 25-6-2015

(19)

Annex (D)

To,

The Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.

Subject:- Appeal for reinstatement in service.

Sir,

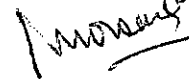
Respectfully I beg to say that I have been dismissed from service vide AIG/ Establishment Order No.3360/E-V, dated 29-05-2015, as I was facing a departmental enquiry regarding my absence from duty. The absence was not intentional but rather court decision because I was convicted by trial court in a criminal case.

On appeal to Peshawar High Court Peshawar, I was released from Jail and placed on probation for a period of Two Years under the provision of section 5 of the probation of offenders Ordinance 1960, on completion of the said period a certificate to this effect has been given by the probation officer Peshawar, however a Review petition is also under process in Supreme Court of Pakistan All the relevant papers are attached for your kind perusal please.

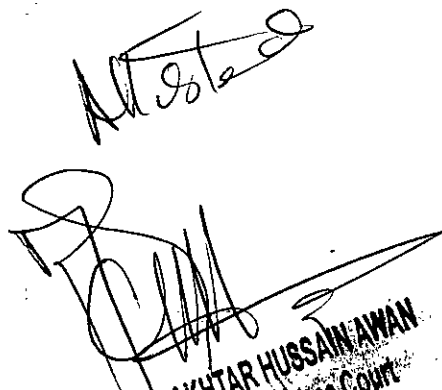
It is therefore requested that I may kindly be re instated in service and obliged.

Dated 24-06-2015

Yours Obediently



Muhammad Shafi
Ex-Junior Clerk
S/O Muhammad Yousaf
Village & P.O Dalazak
Tehsil & District Peshawar.



MALIK AKHTAR HUSSAIN AWAN
Advocate Supreme Court

10 گنتی

ایڈووکیٹ/ڈپٹی ایڈووکیٹ

پشاور بار ایسوسی ایشن

21107

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بار کونسل ابار ایسوسی ایشن خیبر پختونخواہ

رابطہ نمبر: 0300-900-7473

BC-10-57427

بعدالت جناب: جسٹس عزیز حسین سرور سینیئر ایڈووکیٹ جنرل فیئر آکشن خاواہ لغمانا اور

منجانب: مدعی	دعوی:
محمد شفیع	علت:
بنام	موردہ:
	جرم:
	تھانہ:

بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب وہی کاروائی متعلقہ آن مقام لگنجا اور لکھنؤ میں محمد شفیع اور ان کے وکیل کو ذیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر نمائندگی و فیصلہ برطاعت دینے جواب دعوی اقبال دعوی اور درخواست از ہر قسم کی تصدیق زریں بد محتفل کرنے کا اختیار ہوگا، نیز ضرورت ہوتی ہو تو پیروی یا اہیل کرنے یا آزمائی اور منسوخی، نیز دائر کرنے اہیل نگرانی و نظربانی و پیروی کرنے کا اختیار ہوگا اور ضرورت ہوتی ہو تو مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور ذیل یا اختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی حملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ماحضہ بد داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جان التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف وصول کرنے کا اختیار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ لکھنؤ کی پیروی بند کر دیں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المقوم:

محمد شفیع

وہ شد

مقام لگنجا اور

کے لئے منظور ہے۔

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No1256/2015.

Muhammad Shafi Ex- Junior Clerk Police Line Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Assistant Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Capital City Police Officer, Peshawar.
4. Senior Superintendent of Police, Traffic, Peshawar.
5. Deputy Superintendent of Police, HQrs, Peshawar.....Respondents.

Reply on behalf of Respondents No. 1, 2, 3, 4 & 5.

Respectfully shewth:.

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
3. That the appellant has not come to this Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That this Hon'able Tribunal has no jurisdiction to entertain the appeal.

Facts:-

- (1) Para No. 1 is not related. Hence needs no comments.
- (2) Para No.2 pertains to record. Hence needs no comments.
- (3) Para No.3 pertains to record. Hence needs no comments.
- (4) Para No.4 is incorrect. In fact the appellant got involved wilfully in a criminal case vide FIR No.04 dated 07.06.2008 u/s 420/468/471/477/PPC read with section 5(2) PC Act, police station, Anti-corruption Estt: Peshawar.
- (5) Para No.5 is incorrect. Para already explained above.
- (6) Para No.6 is incorrect. The appellant absented himself from his lawful duty w.e.f 05.11.2012 to 23.12.2012 without taking leave/permission. He was punished for 25 years imprisonment and with fine of RS/1,50,000 by the court of Honorable Judge of Anti-Corruption , Peshawar in the case vide FIR No.04 dated 07.06.2008 u/s 420/468/471/477 PPC read with section 5(2) PC Act, police station, Anti-corruption Estt: Peshawar. In this regard he was proceeded departmentally.
- (7) Para No.7 is totally incorrect and denied. Proper enquiry was conducted by DSP HQrs Peshawar.

- (8) Para No.8 is incorrect. He was awarded full opportunity of defense. All codal formalities were fulfilled.
- (9) Para No.9 is incorrect. As above.
- (10) Para No.10 is correct to the extent that upon the findings of the E.O, he was issued final show cause notice.
- (11) Para No.11 is correct to the extent that he submitted his reply but the same was found unsatisfactory.
- (12) Para No.12 is incorrect. In fact after fulfilling all codal formalities , as the charges leveled against him were stand proved , hence he was awarded major punishment of dismissal from service vide No.3360/E-V dated 29.05.2015.
- (13) Para No.13 is correct to the extent that he submitted an appeal but was rejected/filed after due consideration was rejected/filed.
- (14) That appeal of the appellant being devoid of merits may kindly be dismissed.

GROUNDS:-

- (A) Incorrect. The allegations leveled against him were stand proved.
- (B) Incorrect. No malafide intention is involved on the part of replying respondents.
- (C) Incorrect. The appellant was treated as per law and rules.
- (D) Incorrect. In fact proper enquiry was conducted against him.
- (E) Incorrect. The appellant was proved guilty of allegations leveled against him , after fulfilling all codal formalities.
- (F) Incorrect. No malafide intention is involved. The charges leveled against him were stand proved.
- (G) Para is correct to the extent that inquiry was kept pending till final disposal of the criminal case.
- (H) Incorrect. The charges leveled against him were stand proved.
- (I) Incorrect. Proper enquiry was conducted against him.
- (J) Incorrect. The appellant proceeded departmentally on allegation of wilfull absence and his involvement in a criminal case vide FIR No.04 dated 07.06.2008 u/s 420/468/471/477 PPC read with Section 5(2) PC Act , police station , ACE Peshawar , which were stand proved against him.
- (K) Incorrect. Para already explained above in detail.
- (L) Incorrect. No malafide intention is involved on the part of replying respondents.
- (M) Incorrect. Para already explained in detail in proceeding Para's.
- (N) Incorrect. All codal formalities were fulfilled.
- (O) Incorrect. The appellant was called and heard in person in OR but he failed to defend himself.
- (P) Incorrect. The appellant was found guilty of allegations leveled against him.

- (Q) Incorrect. As above.
- (R) Incorrect. Para already explained in detail.
- (S) Incorrect. As above.

PRAYERS:-

It is therefore most humbly prayed that in light of above facts, submissions the appeal of the appellant being devoid of merits, legal footing may be dismissed.



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



**Assistant: Inspector General of Police,
Estt, Khyber Pakhtunkhwa, Peshawar.**



**Capital City Police Officer,
Peshawar.**



**Senior Superintendent of Police,
Traffic, Peshawar.**



**Deputy Superintendent of Police,
HQrs, Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

SERVICE APPEAL No. 1256/2015

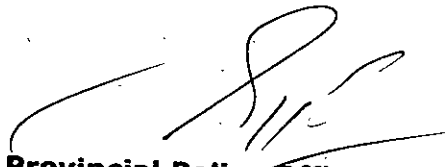
Muhammad Shafi Ex- Junior Clerk Police Line Peshawar.....Appellant.

VERSUS.

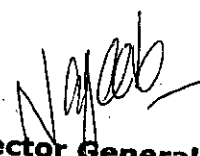
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Assistant Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Capital City Police Officer, Peshawar.
4. Senior Superintendent of Police, Traffic, Peshawar.
5. Deputy Superintendent of Police, HQrs, Peshawar.....Respondents.

AFFIDAVIT

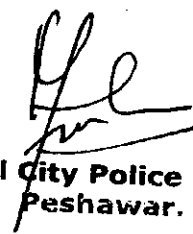
We respondents No. 1 ,2 ,3 , 4 & 5 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.



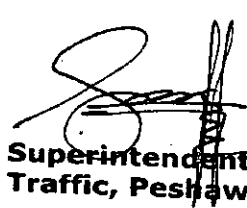
**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**



**Assistant: Inspector General of Police,
Estt, Khyber Pakhtunkhwa, Peshawar.**



**Capital City Police Officer,
Peshawar.**



**Senior Superintendent of Police,
Traffic, Peshawar.**



**Deputy Superintendent of Police,
HQrs, Peshawar.**

9/15
From: The Senior Superintendent of Police,
Traffic, Peshawar.

To: The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Judicial complex (old) Khyber Road,
Peshawar.

K.W.F. Province
Service Tribunal
Diary No. 129
Dated 22-2-16

No. 715 /GC, Dated Peshawar the 19/02/2016.

Subject: - **APPEAL NO. 1256 OF 2015 MR. MUHAMMAD SHAFI
APPELLANT/PETITIONER VERSES GOVERNMENT OF KPK
ETC RESPONDENT NO. 05.**

Memo:

The subject appeal received from your office is returned herewith
in original with the remarks that the appellant/petitioner is not serving in
this office, please.


Encls: 21


SENIOR SUPERINTENDENT OF POLICE,
TRAFFIC, PESHAWAR

Ms
19/02.

Put up to the court with appeal.

Read


23/2/16

BEFORE THE KPK SERVICES TRIBUNAL PESHAWAR

Service appeal No./2015.

Muhammad Shafi.....PETITIONER.

VERSUS

Government of KPK EtcRESPONDENTS.

REJOINDER ON BEHALF OF APPELLANT

HONOURABLE SIR,

The appellant submits his rejoinder through this appeal is as under:-

ON FACTS.

Para 1 of the appeal has already explained lawfully and honestly by the appellant.

Para No. 2 of the appeal has not been denied by the respondents and thus stood proved that the appellant was appointed as junior clerk BPS-5 and joined his services/duty in 1988 in the respondent department and since his appointment remained posted in various sections of the respondents and worked with zealousness and honesty, hence, till date he has an extraordinary unblemished record of service in his credit.

Para 3 of the appeal is also admitted by the respondents that the appellant being junior clerk was working to ASP Police Station Gul Bahar Peshawar and was assigned the duties of Stenographer which he also performed to the satisfaction of his superiors.

BEFORE THE KPK SERVICES TRIBUNAL PESHAWAR

Service appeal No./2015.

Muhammad Shafi.....PETITIONER

VERSUS

Government of KPK EtcRESPONDENTS.

REJOINDER ON BEHALF OF APPELLANT

HONOURABLE SIR,

The appellatant submits his rejoinder through this appeal is as under:-

ON FACTS.

Para 1 of the appeal has already explained lawfully and honestly by the appellatant.

Para No. 2 of the appeal has not been denied by the respondents and thus stood proved that the appellatant was appointed as junior clerk BPS-5 and joined his services/duty in 1988 in the respondent department and since his appointment remained posted in various sections of the respondents and worked with zealousness and honesty, hence, till date he has an extraordinary unblemished record of service in his credit.

Para 3 of the appeal is also admitted by the respondents that the appellatant being junior clerk was working to ASP Police Station Gul Bahar Peshawar and was assigned the duties of Stenographer which he also performed to the satisfaction of his superiors.

Para 4 of the appeal has also been admitted by the respondents that an FIR No. 04 dated 07-06-2008 under section 420/468/471/477-A/PPC was lodged against the appellant at the behest of the then DSP on personal grudge have/had with appellant and thus the appellant was compelled to face the criminal trial.

Para 5 of the comments is based on evasive denial and thus that of the para of appeal is true and correct.

Para No. 6 of the comments is devoid of fact whereas the real factual position has been explained that when the appellant was busy in attending courts proceedings the respondents instead of taking notice on part of the concerned departmental hierarchy, took a surprising step and initiated departmental enquiry against the appellant only and left the other responsible officials performing duties in the relevant branch, hence, departmental enquiry committee consisted of respondent No. 6 was constituted under the Efficiency & Discipline Rules 2011.

Para No.7 of the comments is again incorrect and with out substance while that of the para of main appeal is based on true facts that the enquiry committee did not enquire the matter officially but took reliance on the inquiry initiated by Anti Corruption department at the behest of rival DSP and thus the appellant was held guilty.

Para No.8 to 14 of the comments would reveal that the respondents have acted beyond of their vested powers and on the basis of personal grudge the appellant was awarded such a harsh punishment and it was for the reason that the appellant was made a escape goat to save the skin of actual culprits by turn down his reply and imposed major penalty and **DISMISSED** him from service.

GROUND.

The reply of the respondents is totally based on malafide and personal like and dislike therefore the ground the appeal stood proved against the respondents because the appellant had/has the right to be heard in person by the Respondents who acted as judge of their own cause and the appellant was held responsible for the corruption in the traffic license branch and was intentionally made escape goat under a sacrifice to save the will wishers, even leaving behind all the legal as well as mandatory provisions of law and also beyond the powers vested in them.

Moreover the action taken by the respondents is the worst example of high-handedness, misuse of Official position against the innocent employees by avoiding proper procedure as required under the services laws for conducting a departmental enquiry against a Government Servant.

It is, therefore, humbly prayed that on acceptance of this appeal the order dated 25-5-2015 issued by the respondents may kindly be set aside and the appellant be reinstated in his previous position with all back benefits etc OR in the alternative may very kindly be compulsorily retired from service.

Any other relief to which the appellant is also deemed entitled may also be granted.

Muhammad Shafi

Muhammad Shafi
APPELLANT

Through

for:

Shm

(ALLAUDDIN KHAN KHALIL)

Advocate Peshawar

AFFIDAVIT

I, Muhammad Shafi S/o Muhammad Yousuf R/O village Dala Zaak Peshawar do hereby solemnly affirm and declare on oath that the contents of this appeal are true and correct to best of my knowledge and belief.

Muhammad Shafi

DEPONENT



for: *Shm*

02-6-17

Rs. 50



7567

ایڈووکیٹ: محمد شفیع
 بار کونسل ایسوسی ایشن نمبر: _____
 رابطہ نمبر: _____

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: حیدر حسین سردار ٹریبونل پشاور

مخاتب: <u>محمد شفیع</u>	دعویٰ:
<u>محمد شفیع</u> <u>بنام</u> <u>حکومت</u> <u>پاکستان</u>	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

بابت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام پشاور کے لیے جس شمارے کے تحت کاروائی کے لیے درخواست کی گئی ہے اس کے
 اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زیریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف سے یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جائے التوائے مقدمہ کے سب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

Accepted

PESHAWAR BAR ASSOCIATION
NO. 7-43, WAH
PESHAWAR

المقام: _____ واہ شد _____

مقام پشاور کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کاپی نامتائیل قبول ہوگی۔

A. I. Khan
Adv

لعدالت جناب حامد مغل ممبر سہیل ٹرسٹ اور مغل سہیل ٹرسٹ

محمد شفیع بنام حکومت

درخواست برآمد شد
بفنی بوجہ غیر حاضر وکیل

جناب عالی

مفتی مہ بالا عدالت حضور میں زبردستی جو ممبر سہیل ٹرسٹ

آج مورخ 9/7/019 بتلے مفتی رہے۔

یہ کہ وکیل سائل نہیں سے بالیر ہے جس کی

وہ سے عدالت حضور سے رو برو ہر وقت دیکھنا مشکل

ہے جناب وہ سے تاریخ بندیل کرن کے استعا

ہے

لیکن استدعا ہے کہ منظور ہے درخواست ہذا

مقدمہ بالا کر سہیل ٹرسٹ کی تاریخ بندیل

تیار ہے۔

سائل محمد شفیع لوکلک خود

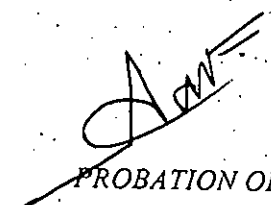
محمد شفیع



DIRECTORATE OF RECLAMATION & PROBATION,
HOME AND TRIBAL AFFAIRS DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

FINAL RELEASE CERTIFICATE

It is to certify that Mr. Muhammad Shafi S/O Muhammad Yousaf R/O Village & Post Office Dalazak District Peshawar was placed on probation by the court of Additional District & Session Judge-III Peshawar on 14-12-2012 for the period of Two years. He remained under the supervision of Probation officer-II District Courts Peshawar. He successfully completed his probation period on 13-12-2014. During his period of probation, he remained peaceful and regularly attended my office. Now he is a law abiding citizen and as per section- 11 of the Pakistan Probation of Offender Ordinance 1960, he is fit for any Government job.


PROBATION OFFICER-II
DISTRICT COURTS
PESHAWAR

THE PROBATION OF OFFENDERS ORDINANCE, 1960
(XLV of 1960)

CONTENTS

1. Short title, extent and commencement
2. Definitions
3. Courts empowered under the Ordinance
4. Conditional discharges, etc
5. Power of court to make a probation order in certain cases
6. Order for payment of costs and compensation
7. Failure to observe conditions of the bond
8. Powers of court in appeal and revision
9. Provisions of the code to apply to sureties and bond
10. Variation of conditions of probation
11. Effects of discharge and probation
12. Appointment of probation officers
13. Duties of a probation officer
14. Power to make rules
15. Omitted
16. Repeal of sections 380 and 562-564 of the code
17. Provisions of this Ordinance to be in addition to and not in derogation of certain laws

TEXT

THE PROBATION OF OFFENDERS ORDINANCE, 1960
(XLV of 1960)¹

[1st November, 1960]

An
Ordinance

to provide for the release on probation of offenders in certain cases.

Whereas it is expedient to provide for the release on probation of offenders in certain cases and for matters incidental thereto;

Now, therefore, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:—

1. Short title, extent and commencement.— (1) This Ordinance may be called the Probation of Offenders Ordinance, 1960.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date or dates as the Central Government may, by notification in the official Gazette, appoint, and different dates may be appointed for different areas.

2. Definitions.— In this Ordinance, unless there is anything repugnant in the subject or context:—

(a) "Code" means the Code of Criminal Procedure, 1898²;

(b) "Court" means a court empowered to exercise powers under this Ordinance;

(c) "Officer-in-charge" means the head of the Probation Department;

(d) "probation officer" means a person appointed as such under section 12;

(e) "probation order" means an order made under section 5;

(f) "Probation Department" means the department responsible for the administration of this Ordinance;

(g) all other words and expressions used but not defined in this Ordinance and defined in the Code shall have the same meaning as assigned to them in the Code.

3. Courts empowered under the Ordinance.— (1) The following courts shall be the courts empowered to exercise powers under this Ordinance, namely:—

(a) a High Court;

(b) a Court of Sessions;

³[(c) & (d) xxxxxxxx];

(d) a Sub-Divisional Magistrate;

(e) a Magistrate of the 1st Class; and

(f) any other magistrate especially empowered in this behalf.

(2) A Court may exercise powers under this Ordinance, whether the case comes before it for original hearing or on appeal or in revision.

(3) Where any offender is convicted by a Magistrate not empowered to exercise powers under this Ordinance, and such Magistrate is of opinion that the powers conferred by section 4 or section 5 should be exercised, he shall record his opinion to that effect and submit the proceedings to a Magistrate of the 1st Class or a Sub-Divisional Magistrate forwarding the offender to him, or taking bail for appearance before him, and such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had

¹ The ordinance has been amended in its application to the province of East Pakistan by East Pakistan Act No. 10 of 1964, S.2 with effect from 1st April, 1964. See Dacca 1964, PT: I.P. 435.

² Act v of 1898.

³ Clause (C) & (D) omitted by the probation of offenders (Amdt.) Ordinance 2002.

originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

4. Conditional discharges, etc.— 1) Where a court by which a person, not proved to have been previously convicted, is convicted of an offence punishable with imprisonment for not more than two years is of opinion, having regard to:—

- (a) the age, character, antecedents or physical or mental condition of the offender, and
- (b) the nature of the offence or any extenuating circumstances attending the commission of the offence,

that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may, after recording its reasons in writing, make an order discharging him after admonition, or, if the court thinks fit, it may likewise make an order discharging him subject to the condition that he enters into a bond, with or without sureties, for committing no offence and being of good behaviour during such period not exceeding one year from the date of the order as may be specified therein.

(2) An order discharging a person subject to such condition as aforesaid is hereafter in this Ordinance referred to as "an order for conditional discharge", and the period specified in any such order as "the period of conditional discharge".

(3) Before making an order for conditional discharge, the court shall explain to the offender in ordinary language that if he commits any offence or does not remain of good behaviour during the period of conditional discharge he will be liable to be sentenced for the original offence.

(4) Where a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

5. Power of court to make a probation order in certain cases.— (1) Where a court by which—

- (a) any male person is convicted of an offence not being an offence under Chapter VI or Chapter VII of the Pakistan Penal Code, or under sections 216A, 328, 382, 386, 387, 388, 389, 392, 393, 397, 398, 399, 401, 402, 455, or 458 of that Code, or an offence punishable with death or transportation for life, or
- (b) any female person is convicted of any offence other than an offence punishable with death, is of opinion that, having regard to the circumstances including the nature of the offence and the character of the offender, it is expedient to do so, the court may, for reasons to be recorded in writing, instead of sentencing the person at once, make a probation order, that is to say, an order requiring him or her to be under the supervision of a probation officer for such period, not being less than one year or more than three years, as may be specified in the order;

Provided that the court shall not pass a probation order unless the offender enters into a bond, with or without sureties, to commit no offence and to keep the peace and be of good behaviour during the period of the bond and to appear and receive sentence if called upon to do so during that period:

Provided further that the court shall not pass a probation order under this section unless it is satisfied that the offender or one of his sureties, if any, has a fixed place of abode or a regular occupation within the local limits of its jurisdiction and is likely to continue in such place of abode or such occupation, during the period of the bond.

(2) While making a probation order, the court may also direct that the bond shall contain such conditions as in the opinion of the court may be necessary for securing supervision of the offender by the probation officer and also such additional conditions with respect to residence, environment, abstention from intoxicants and any other matter which the court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or a commission of other offences by the offender and for rehabilitating him as an honest, industrious and law-abiding citizen.

(3) When an offender is sentenced for the offence in respect of which a probation order was made, that probation order shall cease to have effect.

6. Order for payment of costs and compensation.— (1) A court directing the discharge of an offender under section 4 or making a probation order under section 5 may order the offender to pay such compensation or damages for loss or injury caused to any person by the offence and such costs of the proceedings as the court thinks reasonable :

Provided that the amount of compensation, damages and costs so awarded shall in no case exceed the amount of fine which the court might have imposed in respect of the offence.

(2) At the time of awarding compensation or damages in any subsequent civil suit or proceeding relating to the same offence, the court hearing such suit or proceeding shall take into account any sum paid or recovered as compensation, damages or costs under sub-section (1).

(3) The amount ordered to be paid under sub-section (1) may be recovered as fine in accordance with the provisions of section 386 and 387 of the Code.

7. Failure to observe conditions of the bond.— (1) If the court by which an offender is bound by a bond under section 5 has reason to believe that the offender has failed to observe any of the conditions of his bond, it may issue a warrant for his arrest or may, if it thinks fit, issue summons to the offender and his sureties, if any, requiring them to appear before it at such time as may be specified in the summons.

(2) The court before which an offender is brought or appears under sub-section (1) may either remand him to judicial custody until the case is heard or admit him to bail, with or without sureties, to appear on the date of hearing.

(3) If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of his bond, including any conditions which may have been imposed under sub-section (2) of section 5, it may forthwith—

(a) sentence him for the original offence, or

(b) without prejudice to the continuance in force of the bond, impose upon him a fine not exceeding one thousand rupees:

Provided that the court imposing the fine shall take into account the amount of compensation, damages or costs ordered to be paid under section 6.

(4) If a fine imposed under clause (b) of sub-section (3) is not paid within such period as the court may fix, the court may sentence the offender for the original offence.

8. Powers of court in appeal and revision.— Where an appeal or application for revision is made against conviction of an offence for which an order is made under section 4 or section 5 discharging the offender absolutely or conditionally or placing him on probation the appellate court or the court sitting in revision may pass such order as it could have passed under the Code, or may set aside or amend the order made under section 4 or section 5 and in lieu thereof pass sentence authorized by law:

Provided that the appellate court or the court sitting in revision shall not impose a greater punishment than the punishment which might have been imposed by the court by which the offender was convicted.

9. Provisions of the code to apply to sureties and bond.— The provisions of sections 122, 406A, 514, 514A, 514B and 515 of the Code shall, so far as may be, apply in the case of sureties and bonds taken under this Ordinance.

10. Variation of conditions of probation.— (1) The court by which a probation order is made under section 5 may at any time, on the application of the person under probation or of the probation officer or of its own motion, if it thinks it expedient to vary the bond taken under that section, summon the person under probation to appear before it, and, after giving him a reasonable opportunity of showing cause why the bond should not be varied, vary the bond by extending or reducing the duration thereof or by altering any other of its terms and conditions or by inserting additional conditions therein:

Provided that in no case shall the duration of the bond be less than one year or more than three years from the date of the original order:

Provided further that where the bond is with surety or sureties, no variation shall be made in the bond without the consent of the surety or sureties; and if the surety or sureties do not consent to the variation, the court shall require the person under probation to execute a fresh bond, with or without sureties.

(2) Any such court as aforesaid may, on the application of any person under probation or of the probation officer or of its own motion, if satisfied that the conduct of the person under probation has been satisfactory as to render it unnecessary to keep him under supervision, discharge the probation order and the bond.

11. Effects of discharge and probation.— 1) A conviction of an offence, for which an order is made under section 4 or section 5 for discharging the offender after the due admonition or conditionally or placing him on probation, shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the provisions of this Ordinance :

Provided that where an offender, being not less than eighteen years of age at the time of his conviction of an offence for which an order discharging him conditionally or placing him on probation is made, is subsequently sentenced under this Ordinance for that offence, the provisions of this sub-section shall cease to apply to the conviction.

(2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is discharged after due admonition or conditionally, or who is placed on probation, shall in any event be disregarded for the purposes of any law which imposes any disqualification or disability upon convicted persons, or authorizes or requires the imposition of any such disqualification or disability.

(3) The foregoing provisions of this section shall not affect—

(a) any right of any such offender to appeal against his conviction, or to rely thereon in bar of any subsequent proceedings for the same offence (6) the revisiting or restoration of any property in consequence of the conviction of any such offender.

12. Appointment of probation officers.— (1) A probation officer referred to in a probation order may be any person appointed to be probation officer by the Officer-in-charge.

(2) A probation officer referred to in sub-section (1) shall be a person who shall possess such qualifications as may be prescribed by rules made in this behalf under this Ordinance.

(3) A probation officer, in the exercise of his duties under any probation order, shall be subject to the control of the Officer-in-charge.

13. Duties of a probation officer.— A probation officer shall, subject to the rules made under this Ordinance,—

(a) visit or receive visits from the offender at such reasonable intervals as may be specified in the probation order or, subject thereto, as the Officer-in-charge may think fit;

(b) see that the offender observes the conditions of the bond executed under section 5 ;

(c) report to the Officer-in-charge as to the behaviour of the offender ;

(d) Advise, assist and befriend the offender, and when necessary endeavour to find him suitable employment ; and

(e) perform any other duty which may be prescribed by the rules made under this Ordinance.

14. Power to make rules.— (1) The [Provincial Government] may, by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing provision, the Provincial Government, may make rules—

(a) regulating the appointment, resignation and removal of probation officers and prescribing the qualification of such officers ;

(b) prescribing and regulating the duties of probation officers; and

(c) regulating the remuneration payable to probation officers.

15. Delegation of powers to Provincial Government. Omitted by A. O. 1964, Art. 2 and Sch.

16. Repeal of sections 380 and 562-564 of the code.— Sections 380, 562, 563 and 564 of the Code are hereby repealed.

⁴ Subs. by A.O. 1964 Art, 2 and sch. For "Central Government"

17. Provisions of this Ordinance to be in addition to and not in derogation of certain laws.— The provisions of this Ordinance shall be in addition to and not in derogation of the Reformatory Schools Act, 1897, the Bengal Children Act, 1922, the Punjab Borstal Act, 1926, the Bengal Borstal Schools Act, 1928, the ⁵[Punjab Children Act, 1983 (pb. Ord. XXII of 1983)], and the ⁶[Punjab Youthful Offenders Act, pb. Ord. XXII of 1983]; and the Sindh Children Act, 1955.

⁵ Words "Punjab Children Act 1952" substituted by probation of offenders (amdt), Ordinance 2002.

⁶ Words comma and figures "Punjab Youthful Offenders Act, 1952" substituted by probation of offender (amdt) ordinance. 2002.

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Cr.A.No.521-P/2012.

JUDGMENT

Date of hearing: 14.12.2012.

Appellants Muhammad Shahi by Mr. Gul Rahman M. Ahmad Advocate
Respondent State by Mr. Imran Khan Advocate

SHAH JEHAN AKHUNDZADA, J.- Through this single judgment I propose to dispose of the instant Cr.A.521-P/2012 as well as the connected Cr.A. No.522-P/2012 as both these are directed against one and the same judgment passed by the learned Special Judge, Anti-corruption, KPK, Peshawar dated 5.11.2012 whereby both the appellants were convicted and sentenced as under:-

1-U/S 420 PPC 5 years RI with a fine of Rs.30,000/- and default to undergo S.I. for 6 months;

J. Khan
2-U/S 468 PPC 5 years RI with a fine of Rs.30,000/- and default to undergo S.I. for 6 months;

3-U/S 471 PPC 5 years RI with a fine of Rs.30,000/- and default to undergo S.I. for 6 months;

4-U/S 477/A PPC for 5 years RI with a fine of Rs.30,000/- and default to undergo S.I. for 6 months;

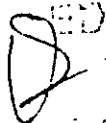
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EXAMINER
Peshawar High Court

5-U/S 5(2) PC Act 5 years, R.I. with a fine of Rs.30,000/- and default to undergo S.I. for 6 months. All these sentences shall run concurrently and benefit of Section 382-B Cr.P.C., if applicable, is extended to the accused.

2- The essential facts of the prosecution case are that on the written application of Abdul Rauf DSP Traffic MLA, Peshawar an inquiry under section 156(3) Cr.P.C. was conducted by Muhammad Wali, Addl. SHO (PW-17) and after completion of the same a case under section 420/468/471/477-A Cr.P.C. read with section 5(2) Prevention of Corruption Act, was registered against Muhammad Shafi and Muhammad Humayun, appellants vide FIR No.04 dated 7.6.2008.

3- After completion of investigation, complete challan was submitted before the Senior Special Judge, Anti-corruption, Peshawar. The learned trial Court had formally charged both the appellants on 19.9.2009 to which they pleaded not guilty and claim trial. In order to prove its case, the prosecution has examined as many as (17) witnesses and after the conclusion of the prosecution evidence, statements of the appellants under section 342 Cr.P.C. were recorded wherein they



denied the allegations levelled against them by prosecution and professed innocence. They neither produced defence, nor opted to be examined on oath in disproof of the charges levelled against them. Thereafter the learned trial Court, after hearing the arguments of counsel for both the sides, convicted and sentenced the appellants vide judgment dated 5.11.2012, as stated above. Hence, the instant appeal. Learned counsel for the appellants contended that the impugned judgment and order of conviction is against law, facts and circumstances of the case; that the learned trial Judge has not properly appreciated the evidence and has not thoroughly gone to the material placed on record; that the evidence of the witnesses regarding recoveries and other matters is contradicting each other; that the prosecution has miserably failed to prove its case against the appellants through cogent and conclusive evidence but the learned trial Court has erred in law while recording the impugned conviction which is not sustainable in the eye of law; that the conclusion drawn by the learned trial Court are based on surmises and conjectures, hence

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he prayed for setting aside the impugned conviction and acquittal of the appellants.

4- On the other hand, learned counsel appearing for the State defended the impugned judgment and order of the trial Court and argued that the case against the appellants has been proved beyond any shadow of doubt therefore, the learned trial Court was quite justified to record their conviction; that despite lengthy cross examination, nothing favourable to the appellants could be extracted from the witnesses and their statements for consistent and un-shattered. Hence, the trial Court has rightly convicted and sentenced the appellants and their appeals are liable to be dismissed.

5- I have heard the arguments of the learned counsel for both the sides and have scanned the record and evidence on file with their valuable assistance.

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6- Abdul Rauf DPO, then DSP Traffic/MLA, Peshawar (PW-3) during routine checking, took into possession the driving license of one Hussain Khan being doubtful and after getting report from record keeper regarding "change of paper" which resulted in the disclosure of the crime through change of sheets in the relevant

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registers of MLA and upon his arrest Muhammad Wali Khan, Addl. SHO (PW-17) conducted inquiry under section 156(3) of Cr.P.C. during which he received list of licenses of paper change and driving licenses of different persons and taken into possession the relevant registers vide recovery memo. Ex.PW-1/7. He also taken into possession the driving licenses issued on bogus paper change. The prosecution had also examined Obaid Ullah (PW-4) and Noor-ul-Qamar (PW-5) who stated that they have obtained licenses through one Manzoor Khan, (PW-6) an employee of the Police Department after providing him photographs and driving license fee. Manzoor Khan, (PW-6) stated in his statement that he provided the photographs and requisite fee to Muhammad Shafi, appellant for preparation of driving licenses of his relatives namely, Fazle Maula, Noor-ul-Qamar, obaidullah and Naushad. Muhammad Shafi after some days handed over four driving licenses which were found fake. Lal Said (PW-12) stated that he had paid Rs.1500/- alongwith photographs and copy of NIC and he delivered him a driving license and he later on came to know that the said license was fake and forged. Ghulam Said (PW-9) had deposed that

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Lal Said (PW-12), Usman Shah and Muhammad Naeem approached him for getting driving license and he took them to Humayun, appellant then record keeper and paid Rs.1500/- each to him for preparation of driving license.

7- There is no denying of the fact that both the appellants were serving as Traffic Clerks in MLA, Peshawar i.e. Muhammad Shafi was posted as Copying Clerk and Humayun was posted as Record Keeper during the relevant period and the record pertaining to the driving licenses was kept by them.

8- Therefore, taking into consideration accumulative effects of all the factors I am persuaded to hold that the conclusion drawn by the learned trial Judge for involvement of the appellants in the commission of the above offence is based on sound and cogent reasoning and thus, both the appellants were rightly convicted and sentenced but keeping in view the role attributed to them, the sentences awarded to them seems to be harsh.

9- In the light of the above, both the appeals are partially allowed and while maintaining the conviction of the appellants under sections 420/468/471/477-A PPC and under section 5(2) of Prevention of Corruption Act,

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their sentences of five years are reduced to two years R.I. under each section of law and the fine imposed upon them shall remain intact.

10- Since the appellants are government servants and being the first offenders and sole bread earner for their families, I deem it appropriate to place them on probation instead keeping them in Jail physically. Hence, the impugned order is suspended and they are, therefore, ordered to be released on probation under the provision of section 5 of the Probation of Offenders Ordinance, 1960 provided each of them to furnish bail bond in the sum of Rs.1,00,000/- (rupees one lac) with two sureties each in the like amount to the satisfaction of the concerned Probation Officer, with terms and conditions mentioned in the said section of law.

11- Their release on probation is also subject to deposit the fine imposed upon them by the learned trial Court.

12- The above are the reasons of my short order announced on 14.12.2012.

sd/shah Jehan Akhbar

AM/S
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CERTIFIED TO BE TRUE COPY

18-02-13
Examiner
Peshawar High Court Peshawar
Authorised(U) for Article 87 of
the Supreme Order 1984