

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1158/2019

Date of Institution ... 18.09.2019

Date of Decision ... 01.02.2022

Jamil Ahmad Ex LHC No. 2739 District Police Mardan.

... (Appellant)

VERSUS

Regional Police Officer, Mardan and others.

... (Respondents)

Fazal Shah Mohmand,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQ-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant while serving as constable in police department was charged in case FIR U/S 9-CNSA Dated 23-03-2019 and was arrested, who later on was released on bail vide judgment dated 18-04-2019. The appellant was suspended from service and was proceeded departmentally on the same charges and was ultimately dismissed from service vide order dated 11-07-2019. Feeling aggrieved, the appellant filed departmental appeal dated 08-08-2019, which was filed vide order dated 30-08-2019, hence the instant service appeal with prayers that the impugned order dated 11-07-2019 and 08-08-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has been acquitted of the criminal charges vide judgment dated 01-08-2019, hence there remains no ground to maintain the penalty and he is now entitled to be reinstated in service; that the appellant has not been treated in accordance with law, as no regular inquiry was conducted nor the appellant was afforded opportunity to defend his cause; that the appellant was suspended from service, hence as per police rules, the respondents were required to wait for conclusion of the criminal case, but the respondents hastily proceeded the appellant, which was illegal and unlawful; that the appellant was not afforded appropriate opportunity of personal hearing, hence he was condemned unheard.

03. Learned Additional Advocate General for the respondents has contended that the appellant during the course of his service was charged in FIR U/S 9-CNSA Dated 23-03-2019 and was suspended from service; that the appellant was proceeded against departmentally on the same charges by issuing him proper charge sheet/statement of allegation; that regular inquiry was conducted and the appellant was afforded appropriate opportunity of defense, but the appellant failed to prove his innocence; that upon recommendation of inquiry officer, the appellant was awarded with major punishment of dismissal from service; that departmental appeal of the appellant was properly examined and after due consideration, his appeal was rejected; that the instant appeal of the appellant being devoid of merit may be dismissed.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant while serving as constable in police department was charged in FIR U/S 9-CNSA Dated 23-03-2019 and was suspended from service. Being involved in the criminal case, the respondents were required to wait for the conclusion of the criminal case under section 16:19 of Police Rules, 1934, but the respondents hastily initiated departmental

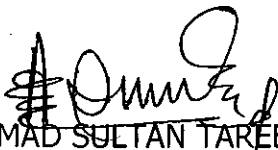
proceedings against the appellant and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.


06. The criminal case was decided vide judgment dated 01-08-2019 and the appellant was exonerated of the charges. In a situation, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460. It is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. Moreover, the appellant was acquitted of the same charges by the criminal court; hence, there remains no ground to further retain the penalty so imposed.

07. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs.

ANNOUNCED

01.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ORDER

01.02.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondent present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs.

ANNOUNCED

01.02.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

28.01.2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Mukarram Khan, SO for the respondents present.

Due to paucity of time, arguments could not be heard. To come up for arguments on 01.02.2022 before the D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)



Chairman

11.10.2021

Appellant in person present. Mr. Riaz Khan Paindakheil, Assistant Advocate General for the respondents present.

Learned Members of the DBA are observing Sogh over the demise of Dr. Abdul Qadeer Khan (Scientist) and in this regard request for adjournment was made; allowed. To come up for arguments on 22.12.2021 before D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

22.12.2021

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Khyal Roz Inspector for respondents present.

Former made a request for adjournment on the ground that he has not prepared the brief. Adjourned. To come up for arguments before D.B on 13.01.2022.


(Atiq-Ur-Rehman Wazir)
Member (E)


Chairman

13.01.2022

Clerk of learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Zaheer Ahmad, ASI for respondents for respondents present.

Due to non-availability of Mian Muhammad, Hon'able Member (Executive), the case could not be heard. Adjourned. To come up for arguments on 29.04.2022 before D.B.

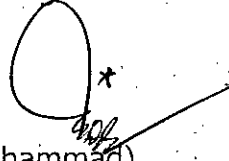

(ROZINA REHMAN)
MEMBER (J)

27.01.2021


Appellant with counsel present.

Muhammad Rasheed learned Deputy District Attorney alongwith Khyal Roz S.I (Legal) for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 08.03.2021 before D.B.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

08.03.2021

Appellant in person present.

Noor Zaman Khan Khattak learned District Attorney alongwith Khyal Roz Inspector for respondents present.

Due to non-availability of D.B, case is adjourned to 07.06.2021 for the same as before.



Reader

07.06.2021

Nemo for the appellant.

Javed Ullah, learned Assistant Advocate General for the respondents present.

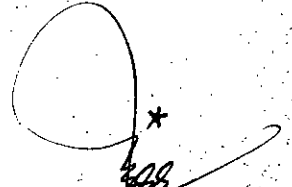
Due to general strike on the call of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today, therefore, the case is adjourned to 11.10.2021 for arguments before D.B. Appellant be put on notice for the date fixed.



(ROZINA REHMAN)
MEMBER (J)

24.06.2020

Appellant in person present. Addl:AG alongwith Mr. Atta ur Rehman, SI for respondents present. Written reply submitted which is placed on file. To come up for rejoinder and arguments on 22.09.2020 before D.B.

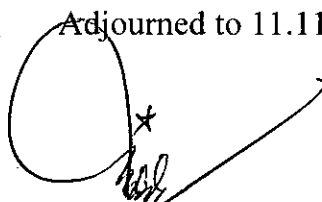

MEMBER

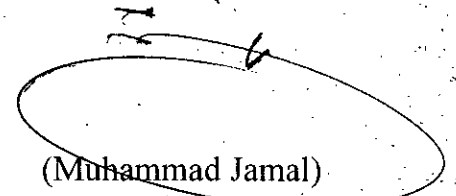
22.09.2020

Appellant in person alongwith junior counsel Miss. Rabia, Advocate is present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Atta Ur Rehman, Inspector for respondents present.

Junior to counsel submitted rejoinder which is placed on file. Time sought for arguments.

Adjourned to 11.11.2020 for arguments before D.B.



(Mian Muhammad)
Member (E)


(Muhammad Jamal)
Member(J)

11.11.2020

Junior to counsel for appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 27.01.2021 for hearing before the D.B.


(Atiq-ur-Rehman Wazir)
Member (E)


Chairman

26.12.2019

Appellant in person present. Addl: AG alongwith Mr. Atta ur Rehman, Inspector for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up written reply/comments on 06.02.2020 before S.B.


Member

06.02.2020

Appellant in person and Addl. AG alongwith Attaur Rahman, Inspector (Legal) for the respondents present.

Representatives of the respondents seeks further time to furnish reply. Adjourned to 01.04.2020 on which date the requisite reply/comments shall positively be furnished.


(Ahmad Hassan)
Member

01.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 24.06.2020 for the same. To come up for the same as before S.B.


Reader


24.10.2019

Counsel for appellant present.

On 11.07.2019, the appellant was awarded major penalty of dismissal from service with immediate effect on account of having been charged in an offence under the provisions of CNSA. He submitted the departmental appeal on 08.08.2019 wherein it was duly provided that the appellant stood acquitted from the criminal charge by a court of competent jurisdiction on 01.08.2019. The departmental appellate authority, however, while deciding the appeal conveniently avoided to discuss the aspect of case regarding acquittal of appellant. Learned counsel argued that when the basis of imposition of penalty upon the appellant did not exist any longer, the upholding of impugned was order uncalled for under the law. The same is not sustainable on that score alone.

In view of argument of learned counsel and available record, the instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/ comments on 26.12.2019 before S.B.

Appellant Deposited
Security & Process Fee
24/10/19





Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1158/2019 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/09/2019 19/09/19	<p>The appeal of Mr. Jameel Ahmad presented today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 18/9/19</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24/10/19.</u></p> <p> CHAIRMAN</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 1158 /2019

Jamil AhmadAppellant

V E R S U S

RPO & others.....Respondents

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with Affidavit		1-4
2.	Copy of FIR	A	5
3.	Copy of Bail Order dated 18-04-2019	B	6-8
4.	Copy of Charge Sheet & Reply	C & D	9-11
5.	Copy of Inquiry Report, Final Show cause Notice & Reply	E, F & G	12-16
6.	Copy of Dismissal Order dated 11-07-2019	H	17
7.	Copy of departmental Appeal and Order dated 30-08-2019	I & J	18-21
8.	Copy of Judgment dated 01-08-2019	K	22-33
9.	Wakalat Nama		34

Dated:- 12-09-2019

[Signature]
Appellant

Through

[Signature]
**Fazal Shah Mohmand
Advocate, Peshawar**

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

①

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 1158 /2019

Jamil Ahmad Ex LHC No 2739 District Police Mardan.

.....Appellant

V E R S U S

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1269

Dated 18/9/2019

- 1. Regional Police Officer, Mardan.
- ✓ 2. District Police Officer, Mardan.
- 3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 30-08-2019 OF RESPONDENT NO 1 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE ORDER DATED 11-07-2019 OF RESPONDENT NO 2 HAS BEEN FILED/REJECTED.

PRAYER:-

On acceptance of this appeal the impugned Orders dated 30-08-2019 of respondent No 1 and Order dated 11-07-2019, of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Filed to-day
[Signature]
Registrar
18/9/19

Respectfully Submitted:-

- 1. That the appellant was enlisted in the respondent department as Constable in the year 2009 and since then he performed his duties with honesty and full devotion and to the entire satisfaction of his high ups.
- 2. That the appellant while lastly posted as DFC Sessions Court Police Par Hoti Mardan in a false Narcotics case vide FIR No 51 dated 23-03-2019 U/S 9C-CNSA of Police Station Jewar District Buner. **(Copy of FIR is enclosed as Annexure A).**
- 3. That the appellant was suspended and was released on bail by the Peshawar High Court (Mingora Bench) Darul-Qaza Swat vide Order dated 18-04-2019. **(Copy of Order dated 18-04-2019 is enclosed as Annexure B).**

4. That Charge Sheet was issued to the appellant on the allegations of involvement in criminal case which the appellant replied in detail refuting the allegations. **(Copy of Charge Sheet and Reply is enclosed as Annexure C & D).**
5. That an illegal inquiry was conducted whereafter Final Show Cause Notice was issued to the appellant which was also replied by the appellant refuting the allegations. **(Copy of Inquiry Report, Final Show Cause Notice and Reply is enclosed as Annexure E, F & G).**
6. That finally the appellant was awarded the punishment of dismissal from service by respondent No 2 vide Order dated 11-07-2019. **(Copy of Order dated 11-07-2019 is enclosed as Annexure H).**
7. That the appellant filed departmental appeal on 08-08-2019 before respondent No 1 which was filed by respondent No 1 vide Order dated 30-08-2019. **(Copy of Departmental appeal and Order dated 30-08-2019 is enclosed as Annexure I & J).**
8. That the impugned Orders dated 30-08-2019 of respondent No 1 and Order dated 11-07-2019 of respondent No 2 are against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-



- A. That the impugned Orders are illegal, unlawful and void ab-initio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules.
- C. That the appellant was proceeded on the allegations of being involved in criminal case from which he has been acquitted by the Court of competent jurisdiction vide Order and Judgment dated 01-08-2019, as such he has been acquitted of the charges so he is entitled to be reinstated in service. **(Copy of Judgment dated 01-08-2019 is enclosed as Annexure K).**
- D. That the appellant no proper inquiry has been conducted and the appellant was never provided opportunity of cross examination.

- E. That the appellant was suspended so the respondents were required to have waited till the decision of the Court.
- F. That no proper inquiry was conducted in the matter to have found out the true facts and circumstances. No one was examined in presence of the appellant nor was he ever afforded opportunity of cross examination and no one was examined in presence of the appellant.
- G. That the version of the appellant regarding altercation with the Police was never considered and as such too the inquiry is not a proper legal inquiry.
- H. That the appellant was not provided reasonable opportunity of personal hearing and as such too he has been denied fundamental right of treatment according to law.
- I. That the appellant has about 10 years of service with unblemished service record.
- J. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief deemed appropriate and not specifically asked for, may also be granted in favor of the appellant.

Dated-: 12-09-2019


Appellant
 Through

Fazal Shah Mohmand
Advocate, Peshawar

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2019

Jamil Ahmad **Appellant**

V E R S U S

RPO & others..... **Respondents**

AFFIDAVIT

I, Jamil Ahmad Ex LHC No 2739 District Police Mardan, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

[Signature]
Fazal Shah Mohmand
Advocate Peshawar

[Signature]
DEPONENT

[Signature]
ATTESTED
WALI KHAN MOHMAM
Oath Commissioner
Advocate High Court
Peshawar

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیرو رنفو 152 مجموعہ ضابطہ فوجداری

5

بل درج کرو۔

جوڑ

خلع

تاریخ 23/05/23 وقت 11:30 بجے

1 (51)

تاریخ وقت رپورٹ	23/05/23
نام و سکونت اطلاع دہندہ مستفیث	ووہیر جان بیگم ساجد بیگم کازلا
مختصر کیفیت جرم (معرّفہ) حال اگر کچھ لیا گیا ہو۔	9C CIVISA جسوس 2455 گھنٹہ پورس
جائے وقوعہ فاسلہ قاعدت اور سمت	جوڑکے پورس کازلا لینا اسٹریٹ 415 جانیہ شریف انزہا
نام و سکونت ملزم	جمیل احمد وار سمیع گل سکن قلم طاقتوس خیل سنگاؤ بیہاچ حوران 9-5050E42-05016101 CIVISA 661-03429788396
کاروائی جو تفتیش کے متعلق آئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو	تمام سیریز میں سہلہ ہو رہی ہے
قاعدت سے رواغ کی تاریخ وقت	سہیل خان

ابتدائی اطلاع نیچے درج کرو۔ اس وقت ایک تحریری مکتوب منجانب وار سید جان بیگم جوڑکے پورس کازلا سکن ملنگم ایف: طفیل ہادی وار فہمیل رپورٹ نمبر 9C CIVISA جسوس 2455 گھنٹہ پورس سے ملے گا۔ وار سید جان بیگم نے اپنے مکتوب میں بتایا ہے کہ ان کے شوہر جمیل احمد وار سمیع گل سکن قلم طاقتوس خیل سنگاؤ بیہاچ حوران سے علیحدگی ہو چکے ہیں اور ان کے بچے سمیع گل اور طاقتوس بھی ان سے علیحدگی ہو چکے ہیں۔ ان کے شوہر جمیل احمد وار سمیع گل نے ان سے علیحدگی ہو جانے پر ان کے بچے سمیع گل اور طاقتوس کو اپنے پاس رکھ لیا ہے۔ ان کے شوہر جمیل احمد وار سمیع گل نے ان سے علیحدگی ہو جانے پر ان کے بچے سمیع گل اور طاقتوس کو اپنے پاس رکھ لیا ہے۔ ان کے شوہر جمیل احمد وار سمیع گل نے ان سے علیحدگی ہو جانے پر ان کے بچے سمیع گل اور طاقتوس کو اپنے پاس رکھ لیا ہے۔

جوز خان مشین (۱۰۰۲) پر سیل ل سبزی شیٹ

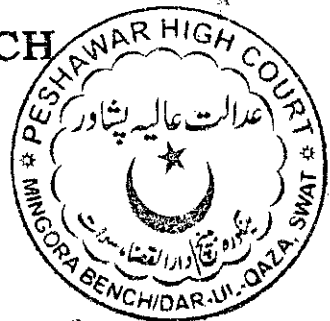
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(1)

6 "B"

**BEFORE PESHAWAR HIGH COURT/ BENCH
MINGORA/ DARUL QAZA SWAT**

Cr. Misc.(B.A) No. 178/2019



Muhammad Jamil Ahmad son of Saman Gul resident of
Mohallah Tawas Khel Sangawo District Mardan.

.....Accused / Petitioner

VERSUS

- 1) The State through Additional Advocate General.
- 2) Waheed Khan SI Choki Katkala police station Jowar
District Buner
.....(Respondents)

Case FIR No. 51 Dated 23/03/2019

Charge under sections 9C CNSA

Police Station Jowar , District Buner

BAIL PETITION U/S 497 CR.P.C FOR THE RELEASE OF
THE ACCUSED / PETITIONER ON BAIL TILL THE
DISPOSAL OF THE CASE.

Respectfully Sheweth:

1. That the accused / petitioner is falsely charged in
instant case and arrested by local police and has
been behind the bar. (Copy of FIR is Annexure
"A").
2. That accused / petitioner filed bail application
before the Session Judge / Zilla Qazi Buner
Dagar who entrusted the same to the learned

FILED TODAY

06 APR 2019

Additional Registrar

ATTESTED
To Be True Copy

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

7

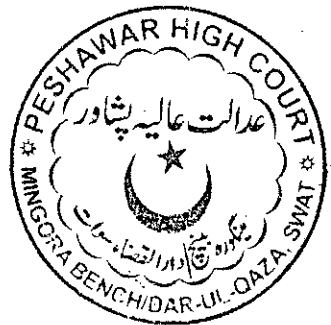
Cr.M (B.A) No. 172-M/2019

JUDGMENT

Date of hearing: 18.04.2019

Nemo for petitioner.

Muhammad Rahim Shah, Assistant A.G. for State.



ROOH-UL-AMIN KHAN, J.- Having been charged u/s 9 (c) of the Control of Narcotic Substances Act, 1997 vide case F.I.R No. 51 dated 23.03.2019 registered at Police Station Jowar, District Buner, the accused/petitioner has filed the instant petition for his post-arrest bail.

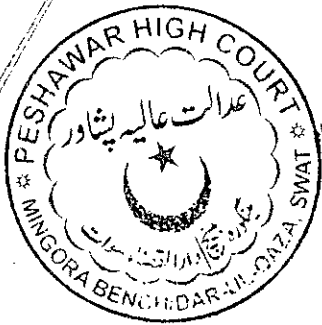
2. As per prosecution, the accused was arrested while riding a motorcycle coming from Jowar side. On search, chars weighing 2455 grams in two packets were recovered wherefrom samples were separated for chemical analysis, however, the report of F.S.L is not available, hence, at this stage it cannot be determined as to whether the recovered stuff was chars or otherwise. Moreso, the accused petitioner was later on produced before the Judicial Magistrate for custody but the allegedly recovered

ATTESTED
To Be true Copy

Tajamul/PS*

S.B Hon'ble Mr. Justice Rooh-ul-Amin Khan
(B.A No. 172-M of 2019 Muhammad Jamil Vs. The State and one other)

8



chars was not produced with him which is violation of mandatory provision of Section 27 of the Control of Narcotic Substances Act, 1997. The petitioner is a civil servant and there is no apprehension of his abscondence whereas investigation against him is complete and he is no more required to police for the purpose of investigation.

3. For what has been discussed above, this petition is allowed. The accused/petitioner be released on bail subject to his furnishing bail bond in the sum of Rs.2,00,000/- (rupees two hundred thousand) with two sureties each in the like amount to the satisfaction of concerned Judicial Magistrate who shall ensure that the sureties are local, reliable and men of means.

Announced.
Dt: 18.04.2019

Roohul Amin
JUDGE

Certified to be true copy

[Signature]

EXAMINER 18-4-19
Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 87 of Constitution of Pakistan

ATTESTED
To Be True Copy

Office 18/4 WK

S.No. 33
Name of Applicant [Signature]
Date of Presentation of Applicant 18/4/19
Date of Completion of Copies 18/4/19
No of Copies 03
Urgent Fee [Signature]
Fee Charged 06/-
Date of Delivery of Copies 18/4/19



OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

9
2019

No. 128 /PA

Dated 2-14 /2019

DISCIPLINARY ACTION

I, SAJJAD KHAN (PSP), District Police Officer Mardan, as competent authority am of the opinion that LHC Jamil Khan No.2739, himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Rules 1975.

STATEMENT OF ALLEGATIONS

Whereas, LHC Jamil Khan No.2739, while posted as DFC Sessions Court PS Par Hoti (now under suspension Police Lines), has been charged in a case vide FIR No.51 dated 23-03-2019 U/S 9© CNSA Police Station Jowar (District Buner).

For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, Mr. Mushtaq Ahmad SP Operations Mardan is nominated as Enquiry Officer.

The Enquiry Officer shall, in accordance with the provision of Police Rules 1975, provides reasonable opportunity of hearing to the accused Police Officer, record/submit his findings and make within (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused Official.

LHC Jamil Khan is directed to appear before the Enquiry Officer on the date + time and place fixed by the Enquiry Officer.

Steps pl: proceed.

(SAJJAD KHAN) PSP
District Police Officer
Mardan

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(2)

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

10

2019

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

CHARGE SHEET


I, SAJJAD KHAN (PSP), District Police Officer Mardan, as competent authority, hereby charge LHC Jamil Khan No.2739, while posted as DFC Session Court PS Par Hoti (now under suspension Police Lines), as per attached Statement of Allegations.

1. By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.

2. You are, therefore, required to submit your written defense within 07 days of the receipt of this Charge Sheet to the Enquiry Officer, as the case may be.

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

4. Intimate whether you desired to be heard in person.


(SAJJAD KHAN) PSP
District Police Officer
Mardan

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11**BEFORE THE DISTRICT POLICE OFFICER, MARDAN**

**Subject: REPLY TO THE CHARGE SHEET+ STATEMENT OF ALLEGATIONS
NO.128/PA DATED 02-04-2019**

Respected Sir,

The petitioner submits as follows:

Your honour had issued the subject charge sheet cum statement of allegations against the petitioner with the following allegations which was handed over to the petitioner on 24-04-2019:-

**“ Whereas,LHC Jamil Khan No.2739, while posted as DFC Sessions Court PS Par Hoti(now under suspension),has been charged in a case vide FIR No.51 dated 23-03-2019 u/s 9-C CNSA Police Station Jowar (District Buner)”
(Copy of charge Sheet +
Statement of allegations is enclosed)**

1. The facts behind the issuance of subject charge sheet are that on 23-03-2019 petitioner hails from village Sangawo which is situated at the boundary of Buner District .That on 23-03-2019 petitioner left his village for Bhai Killay District Buner on his Motor Cycle to visit his relative Gohar Khan r/o of the same village.On reaching near Katkala Check Post, the petitioner was stopped by Police Officials and was asked regarding the documents of the motor cycle .Meanwhile the exchange of hot words took place between the petitioner and Police Officials.The Police arrested the petitioner and brought him to the Police Station.
2. The police Officials informed the SHO of Police Station and after a lengthy meeting decided that petitioner should be arrested in some narcotics case. Unfortunately, the Police showed a fake and concocted recovery of the alleged Charas weighing 2455 grams and registered a baseless case against the petitioner vide FIR No.51 dated 23-3-19 u/s 9-C CNSA PS Jewar.(Copy enclosed)
3. The petitioner was sent to judicial lock up where after he was released on bail by the Honourable High Court Peshawar vide Court order dated 18-4-2019.(Copy of order is enclosed)
4. That in fact no recovery of Charas has been effected from the possession of the petitioner .The Police falsely implicated the petitioner in the said case due to the personal enmity and malafidty.
5. That the petitioner was enlisted as constable in police department on 6-9- 2009 and had performed his duty with zeal and efficiency . The petitioner was never dealt departmentally prior to this nor any punishment awarded to him in the entire period of service .All such facts are evident from the shining service record of the petitioner.
6. The petitioner is married with 03 kids and entire livelihood of the family depends upon the service of the petitioner.
7. The alleged criminal case is pending trial and there is no possibility of his conviction in the instant case.

Keeping in view the above facts and circumstances, it is humbly requested that the charge sheet + summary of allegation may kindly be filed, please.

Yours Obediently,

ATTESTED
To E True Copy

Jamil

LHC (JAMIL KHAN NO.2739)

Police Lines Mardan

Dated: 25 April, 2019.

NEW
12

**OFFICE OF THE
SUPERINTENDENT OF POLICE
OPERATIONS & HEADQUARTERS
MARDAN**

Tell: 0937-9230117

Fax: 0937-9230111

E.Mail: Spops1506@gmail.com

PA.(Ops)

Dated 16/05/2019.

The District Police Officer,
Mardan.

DEPARTMENTAL ENQUIRY AGAINST LHC JAMIL NO. 2739.

Kindly refer to your office Memo: No. 128/PA dated 02.04.2019

subject noted above.

ALLEGATIONS:

The subject enquiry proceeding against LHC Jamil Khan No.2739 dated under the allegations that he while posted as DFC Sessions Court PS (now under suspension Police lines) has been charged in a case Vide FIR dated 23.03.2019 u/s 9CCNSA Police station Jowar (district Buner).

PROCEEDING:

Enquiry proceedings were initiated. Vide this office letter-memo: 158/PA(Ops) dated 18.04.2019, a copy of charge sheet along-with statement of allegation was addressed to the Superintendent district Jail Buner, for service on the accused official. On 20.04.2019 the accused official was released on bail from the High court Peshawar. He was summoned a copy of charge sheet alongwith statement of allegation was duly served upon him. He was heard and recorded at length. He was provided sufficient opportunity of his defense. The accused official produced his written statement wherein he stated that he hails from village Sangawo, situated at the boundary of district Buner. On 23.03.2019 he left his village Bhai killay for district Buner on his motorcycle to visit his relative Gohar Khan r/o same village. When he reached near Katkala check post the police officials stopped him and asked regarding the documents of the motorcycle. Meanwhile an altercation took place between them. The police officials arrested him and taken to the police station. The police officials informed the SIO and after a lengthy meeting decided that petitioner should be arrested in some narcotics cases. Unfortunately the police showed a fake and concocted recovery of the alleged Chars weighing 2455 grams and registered a baseless case vide FIR No. 51 dated 23.03.2019 u/s 9CCNSA PS Jewar. (Copy enclosed) That he was sent to judicial lock-up where after he was released on bail by the honorable High Court Peshawar vide court order dated 18.04.2019. The defaulter officer further stated in fact no recovery has been effected from his possession. The police officials falsely implicated him in the said case due to personal enmity and mala-fide.

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... further pleaded that in the year 2009 he was enlisted in police ... performed his duty with zeal and efficiency and that he never ... mentally prior to this nor any punishment awarded to him in the ... service. All such facts are evident from his shining service record. ... that the alleged criminal case is pending trial and there is no ... conviction.

... this office letter Memo: No. dated addressed to the SP ... district Buner, the IO of the case and In-charge PP Katkala were ... office. Their statements are placed on the file. SI Waheed Khan In-charge Post Katkala district Buner, in his written statement stated that on ... 23.03.2019 he along-with police contingents were present at check post ... about 11:30 hrs the accused Jamil Ahmad s/o Saman Gul r/o ... Tawas Kheil Sangao Mardan riding a motorcycle was signaled to stop ... party. Upon searching a box whereon Bata shoes was inscribe found ... left side of the safeguard of the motorcycle. During further searching ... box two packets containing Chars weighing 1230 gm and 1225 gm were ... Regarding the recovered chars he disclosed that carries the recovered ... deliver it to one Fazal Hadi s/o Fazal Wahab. The recovered chars was ... recovery memo: whereby 5/5 gm chars from each packet were separated ... chemical analysis while the remaining chars were sealed into other parcels as ... The motorcycle was taken on recovery memo: and he (I/C PP SI ... Khan) send Murasla to Police station by hand of FC Muhammad Ali No.

Besides the investigation officer in his written statement state that SI Waheed Khan In-charge along with police contingents were present at check post Katkala whereby a motorcycle rider was stopped who disclosed his name Jamil Ahmad s/o Saman Gul. On the left side of the safeguard a shopper whereon Bata shoes was inscribed was found upon suspicion the bag was searched. During searching two packets containing chars were recovered. Weighing of the chars was made as 1230 gm and 1225 gm were found in two packets. From the recovered chars 05/05 gm were separated for chemical analysis while the remaining were preserved as evidence. Regarding the recovery of chars the accused disclosed that the recovered chars will have to deliver to one Fazal Hadi s/o Fazal Wahab. The motorcycle was also into possession via recovery memo. The complainant SI Waheed Khan send Murasla against both the above named accused to the police station. Upon which SI Afsar khan registered a case vide FIR No. 51 dated 23.03.2019 u/s 9CCNSA PPC PS Jewar against the above named accused. The Investigation officer inspected the spot. On pointation of the complainant site plan was prepared, statement u/s 161 CrPc of all the witnesses were recorded. Accused was produced before the court whereby 01 day police custody was granted by the court. After completion of necessary investigation the accused were produced before the court for recording statements u/s 164 CrPc where they refused and were further remanded to judicial lock up. Accused Fazal Hadi succeeded in getting bail from the court while the bail petition of accused Jamil was dismissed by the honorable district court. Now accused Jamil Ahmad also got from the High Court Peshawar.

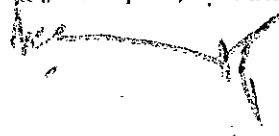
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findings:

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... statements recorded and circumstances it transpires
 ... local police at PP Karikala PS Jewar district Bunnir during
 ... packets containing chars weighing 1230 gm and 1225 gm
 ... accused constable Jamil Ahmad (i.e) from the left side
 ... motorcycle. During his initial interrogation he confessed
 ... and further disclosed that he carries the Chars to deliver it to
 ... of Fazal Wahab. A case vide FIR No. 51 dated 23.03.2019 vs
 ... (District Bunnir) was registered against both the accused.
 ... going in view of the above the allegations levelled against
 ... Jamil No. 2739 district Mardan are proved. He has earned a bad
 ... police department. He is found guilty of gross misconduct providing
 ... at this stage would be deemed to encourage him for doing such
 ... activities in future. Hence he is recommended for Major Punishment
 ... Rules 1975.

Superintendent of Police,
 Operations & Headquarters
 Mardan



Issue F.S.C.N

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**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

(14)
2019

No. 167 /PA

Dated 27 /05 /2019

FINAL SHOW CAUSE NOTICE

Whereas, you LHC Jamil No.2739, while posted as DFC Sessions Court PS Par Hoti (now under suspension Police Lines), has been charged in a case vide FIR No.51 dated 23-03-2019 U/S 9© CNSA Police Station Jowar (District Buner).

In this connection, during the course of Departmental Enquiry, conducted by Mr. Mushtaq Ahmed SP/Operations Mardan vide his Office letter No.236/PA, (Ops) dated 16-05-2019, in pursuance of this Office Statement of Disciplinary Action/Charge Sheet Nos.128/PA dated 02-04-2019, holding responsible you of gross misconduct and recommended for major punishment.

Therefore, it is proposed to impose Major/Minor penalty as envisaged under Rules 4 (b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence, I Sajjad Khan (PSP) District Police Officer Mardan, in exercise of the power vested in me under Rules 5 (3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you to Show Cause Finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach this office within 07 days of receipt of this Notice, failing which; it will be presumed that you have no explanation to offer.

You are liberty to appear for personal hearing before the undersigned.

Received by Jamil

Dated: 28/05/2019

(SAJJAD KHAN) PSP
District Police Officer
Mardan

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Copy to RI/Police Lines (Attention Reader) to deliver this Notice upon the alleged official & the receipt thereof, shall be returned to this office within (05) days positively for onward necessary action.

BEFORE THE DISTRICT POLICE OFFICER, MARDAN

15/01/19

Subject: REPLY TO THE FINAL SHOW CAUSE NOTICE NO.167/PA DATED: 27-05-2019

Respected Sir,

The petitioner submits as follows:

- A. Prior to the subject **Final Show Cause Notice**, Your honour had issued the charge sheet cum statement of allegations No.128/PA dated 02-04-2019 against the petitioner with the following allegations:-
- “ Whereas, LHC Jamil Khan No.2739, while posted as DFC Sessions Court PS Par Hoti(now under suspension),has been charged in a case vide FIR No.51 dated 23-03-2019 u/s 9-C CNSA Police Station Jowar (District Buner)” (Copy of charge Sheet + Statement of allegations + Show cause Notice are enclosed)**
- B. In response to the charge sheet, petitioner submitted a detailed and comprehensive reply on dated 25-04-2019 which is reproduced below:
1. The facts behind the issuance of subject charge sheet are that on 23-03-2019 petitioner hails from village “Sangawo” which is situated at the boundary of Buner District .That on 23-03-2019, Petitioner left his village for Bhai Killay District Buner on his Motor Cycle to visit his relative Gohar Khan R/O of the same village. On reaching near Katkala Check Post, the petitioner was stopped by Police Officials and was asked regarding the documents of motor cycle. Meanwhile the exchange of hot words took place between the Petitioner and Police Officials. The Police arrested the petitioner and brought him to the Police Station.
 2. The police Officials informed the SHO of Police Station and after a lengthy meeting decided that petitioner should be arrested in some narcotics case. Unfortunately, the Police showed a fake and concocted recovery of the alleged “Charas” weighing 2455 grams and registered a baseless case against the petitioner vide FIR No.51 dated 23-3-19 u/s 9-C CNSA PS Jowar. **(Copy of FIR is enclosed)**
 3. The petitioner was sent to judicial lock up where after he was released on bail by the Honourable High Court Peshawar vide Court order dated 18-4-2019. **(Copy of Peshawar High Court order is enclosed)**
 4. That in fact no recovery of Charas has been effected from the possession of petitioner. The Police falsely implicated the petitioner in the said case due to the personal enmity and malafidty.
 5. That the petitioner was enlisted as constable in police department on 06-09-2009 and had performed his duty with zeal and efficiency . The petitioner was never dealt departmentally prior to this nor any punishment awarded to him in the entire period of service .All such facts are evident from the shining service record of the petitioner.
 6. The petitioner is married with 03 kids and entire livelihood of the family depends upon the Police service of the petitioner.
 7. The alleged criminal case is pending trial and there is no possibility of his conviction in the instant case.
- C. Your honour has now issued the subject **Final Show Cause Notice No.167/PA** dated 27-05-2019.Beside the above detailed reply, petitioner has later on came to know regarding certain relevant facts mentioned as under.
- i. Petitioner has been falsely implicated in the instant case. Beside the exchange of hot words between the petitioner and police party ,one of the Police officials posted at PP Katkala namely “**Aziz ur Raheem**” played active role in the registration of false case against the petitioner. The said Police Official “**Aziz ur Raheem**” is the co-villager of the petitioner. In the year 2008, the real sister of the said “**Aziz ur Raheem**” was abducted by one “**Gul Roze**” (Maternal cousin of the petitioner).Later on, the said girl was married to “**Aziz ur Raheem**” but the enmity between the two families was left behind. The said “**Aziz ur Raheem**” got an opportunity to take revenge and thus succeeded to take into confidence the Police officials of PP Katkala and registered the present case against the petitioner.Constable “**Aziz ur Raheem**” is still posted at the same PP Katkala District Buner.
 - ii. The petitioner has also learnt regarding the enquiry findings prepared by the EO.The

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has relied upon the statements of Police Officials who have falsely implicated the petitioner in the instant case on personal grudges and conspiracy. It is wonderful and astonishing that the EO has not recorded the statement of a single person /witness in support of alleged allegations. The EO has fully supported the prosecution story framed by the police officials due to the connivance of constable "Aziz ur Raheem" (enemy of the petitioner). The EO has held responsible the petitioner for gross misconduct and recommended him for award of "Major Punishment" which is against the norms of fair justice.

iii. The EO has further mentioned in the enquiry findings that the statements of Police Officials were recorded and placed on enquiry file. All this drama has been staged in the absence of petitioner. The petitioner was not given an opportunity to cross examine on these officials during the enquiry proceedings. The present circumstances of the enquiry clearly indicate that one sided game has been played against the petitioner and illegal enquiry proceedings were conducted against him in his absentia. The EO badly failed to fulfill the legal requirements during the enquiry proceedings. Hence, the enquiry findings are against the norms of natural justice.
(Copy of the enquiry findings is attached)

iv. That the salary of the petitioner is stopped since suspension order for the last 02 months which is against the KPK Police Rules, 1975 and contrary to the judgments of Supreme Court of Pakistan on the subject because the guilt of the petitioner is yet to be proved in the competent court of law. The family of the petitioner is facing immense hardships to meet daily household expenses. Sir, Life is almost become miserable for the petitioner due to stoppage of salary. Your Honour, The salary of the petitioner may kindly be released from the date of suspension orders till the decision of the instant case.

Keeping in view the above facts and circumstances, it is humbly requested that the Final show cause notice may kindly be filed and necessary orders for the release of salary of the petitioner may very graciously be also passed, please.

Your's obediently,

LHC (JAMIL KHAN NO.2739)

POLICE LINES MARDAN

Dated: 31 May, 2019.

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**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

2019

No. 4256-58/PA

Dated 11/7/2019

ORDER ON ENQUIRY OF LHC JAMIL NO.2739

This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted as DFC Sessions Court PS Par Hoti, (now under suspension Police Lines) was placed under suspension and closed to Police Lines vide this office OB No.664 dated 26-03-2019, issued vide order/endorsement No.2071-75/OSI dated 27-03-2019, on account of charging in a case vide FIR No.51 dated 23-03-2019 U/S 9 @ CNSA, Police Station Jowar (District Buner) with proceedings against departmentally through Mr. Mushtaq Ahmed SP Operations Mardan vide this office Statement of Disciplinary Action/Charge Sheet No. 128/PA dated 02-04-2019, who (P.O) after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.236/PA (Ops) dated 16-05-2019, holding responsible the alleged Constable of gross misconduct and recommended for major punishment.

In this connection, the alleged official was served with a Final Show Cause Notice, under K.P.K Police Rules-1975, issued vide this office No.167/PA dated 27-05-2019, to which, his reply was received and found un-satisfactory.

Final Order

LHC Jamil was heard in O.R on 09-07-2019, but failed to submit any plausible reasons in his defense, therefore, awarded him major punishment of dismissal from service with immediate effect, in exercise of the power vested in me under Police Rules 1975

OB No. 1198

Dated 11/7/2019

(SAJJAD KHAN) PSP
District Police Officer
Mardan

Copy forwarded for information & n/action to:-

- 1) The Regional Police Officer Mardan with reference to his good office No.697/R dated 28-03-2019, please.
- 2) The SP/Investigation, Buner w/r to his office letter No.1561/Inv dated 25-03-2019.
- 3) The DSP/IO(Qrs) Mardan.
- 4) The PO & E.C (Police Office) Mardan.
- 5) The OSI (Police Office) Mardan with () Sheets.

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To,

The Deputy Inspector General
of Police, Mandla Region - I
Mandla.

Subject: Appeal against the order of DPO/Mandla issued vide
O.P. NO 1198 dated 11.7.2019 whereby the
appellant was awarded Major Punishment of Dismissal
from service.

Respected Sir,

- 1) It is submitted that the appellant was falsely implicated in case FIR NO 51 dated 23.3.2019 u/s 9 CNBA PS Jowar Distt-bunder. The appellant was arrested in the case and later on released on bail.
- 2) That appellant was issued charge sheet NO 128-PA dated 2.4.2019 by DPO/Mandla and a departmental enquiry was initiated against him. Sp/operation mandan was appointed as EO. During the course of enquiry the appellant produced a detailed and comprehensive reply before the EO but was not considered. The EO recommended the appellant for the award of Major Punishment. (Detailed Reply of the appellant to the charge sheet is placed on enquiry file)
- 3) That the DPO/Mandla issued FSC NO 167-PA to the appellant to which again the appellant submitted reply but was not considered. Resultantly, the DPO/Mandla awarded Major Punishment to the appellant and dismissed him from service vide O.P. NO 1198 dated 11.7.2019, and hence the present appeal. (copy of O.P. NO 1198 dated 11.7.2019 is enclosed).

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4) That the appellant resorted to his high ups time and again that he has been falsely implicated in the instant case and is innocent. Unfortunately his version was not attended. During this period the appellant was facing trial of this case in the court of (Kashif Dilwar) Asst. II Dist Buner at Dappar. several date of appearance were attend and the appellant was waiting for justice from the competent court of law.

5) That before the judgment of the court unfortunately, the appellant was dismissed from service without the fate of the case pending in court. on 1.8.2019, the court of Asst. II Buner decided the instant case and appellant along with co-accused Fazli-Hadi were acquitted vide court judgment dated 1.08.2019. (Copy of court judgment dated 1.08.2019 is enclosed).

6) That as per court judgment, the appellant has been declared innocent.

7) That the appellant was enlisted as constable in police department on 6.9.2009 and holds shining service record. The appellant never dealt departmentally in the entire period of service.

8) That the appellant is married and with 03 kids along with old parents and the whole family is depend upon the police service of the appellant.

Keeping in view the above facts and circumstances (espacial court judgment dated 1.8.2019) it is humbly prayed that the appeal of the appellant may kindly accepted and the order of DPO Manda may be set-aside by re-instating the appellant in service from the date of dismissal of.

Yours obediently,

Javed

EX-LHE Jamil Ahmad No 2739.
Distt. Manda.

Date: 8.8.2019

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4) That the appellant resorted to his high ups time and again that he has been falsely implicated in the instant case and is innocent. Unfortunately his version was not attended. During this period the appellant was facing trial of this case in the court of (Kashif Dilwar) Asst. II Dist Buner at Dappar. Several date of appearance were attend and the appellant was waiting for justice from the competent court of law.

5) That before the judgment of this court unfortunately, the appellant was dismissed from service without the fate of the case pending in court. On 1.8.2019, the court of Asst. II Buner decided the instant case and appellant along with co-accused Fazli Makh were acquitted vide court judgment dated 1.08.2019. (Copy of court judgment dated 1.08.2019 is enclosed).

6) That as per court judgment, the appellant has been declared innocent.

7) That the appellant was enlisted as constable in police department on 6.9.2009 and holds shining service record. The appellant never dealt departmentally in the entire period of service.

8) That the appellant is married and with 03 kids along with old parents and the whole family is depend upon the police service of the appellant.

Keeping in view the above facts and circumstances (special court judgment dated 1.8.2019) it is humbly prayed that the appeal of the appellant may kindly accepted and the order of DPO Mardan may be set aside by re-instating the appellant in service from the date of dismissal of.

Yours obediently,

Javed

EX-LHC Jamil Ahmad No 2739.
Distt. Mardan.

Dated: 8.8.2019

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ORDER.

This order will dispose-off the appeal preferred by **Ex-LHC Jamil No. 2739** of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded Major punishment of Dismissal from Service vide OB: No. 1198 dated 11.07.2019

Brief facts of the case are that, the appellant while posted as DFC Sessions Court Police Station Par Hoti was placed under suspension and closed to Police Lines vide District Mardan OB No.664 dated 26-03-2019, on account of charging in a case vide FIR No.51 dated 23-03-2019 U/S 9 © CNSA Police Station Jowar (District Buner) with proceedings against departmentally through Mr. Mushtaq Ahmed SP Operations Mardan. The Enquiry Officer after fulfilling necessary process, submitted his Finding Report to District Police Officer, Mardan, holding responsible the alleged Constable of gross misconduct and recommended him for major punishment.

In this connection, the alleged official was served with a Final Show Cause Notice to which, his reply was received and found un-satisfactory.

He was heard in Orderly Room on 09-07-2019 by the District Police Officer, Mardan, but failed to submit any plausible reasons in his defense, therefore, awarded him major punishment of dismissal from service with immediate effect. He preferred an appeal to the Undersigned for re-instatement into service. His appeal was sent to District Police Officer, Mardan for comments. After receiving of comments, he was called in orderly room held in this office on **27.08.2019** and heard him in person The appellant did not produce any cogent reason to prove himself innocent. Therefore, I find no grounds to intervene into the order passed by the District Police Officer, Mardan. **His appeal for re-instatement into service is filed.**

ORDER ANNOUNCED.

Muhammad Ali Khan
(Signature)

(MUHAMMAD ALI KHAN)PSP
Regional Police Officer,
Mardan.

No. 10856/ES,

Dated Mardan the 30/08 /2019.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 360/LB dated 21.08.2019. His Service Record is returned herewith.

(*****)

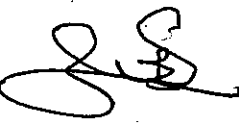
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IN THE COURT OF KASHIF DILAWAR
ADDITIONAL SESSION JUDGE-II/JUDGE MODEL CRIMINAL TRIAL
COURT/JUDGE SPECIAL COURT, BUNER.

Case No. 65/2CNSA of 2019.

Date of Commencement of Trial..... 28.05.2019
Date of Entrusted to this court..... 13.06.2019
Date of Decision..... 01.08.2019

مستورات جطاق
اصل دوست


State through Waheed Khan SI PP Katkala District
Buner.....(Complainant)

Versus

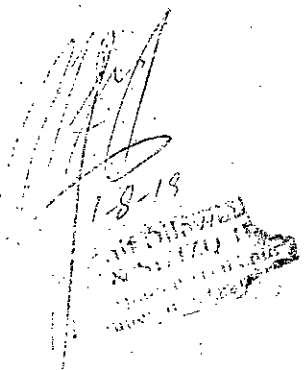
- (1) Jamil Ahmad s/o Siman Gul r/o Sangao District Mardan .
- (2) Fazal Hadi s/o Fazal Wahab r/o Batai Pirbaba District
Buner.....(accused facing trial)

Charged in case F.I.R No.51, dated 23.03.2019
U/s 9 (c) -CNSA of P.S Jowar, District Buner.

JUDGMENT

1. Vide this judgment, case against accused facing trial will be disposed of.

2. Prosecution story as unfolded in the FIR is that on 23.03.2019, complainant along with other police officials was present on check post Katkala on routine checking. In the meanwhile, at 11:30 hours, a person on motorcycle came from Jowar side who was signalled to stop and was intercepted. On query, said produced his CNIC and disclosed his name as Jamil Ahmad s/o Saman Gul r/o Mohalla Tawas Khel Sangao Mardan. During search of motorcycle, from the left safe guard, one plastic shopper was hanging on which BATA was written. On further search of said plastic shopper, another red colour

1-8-19


TRUE COPY
EXAMINER
District & Session Judge
Buner
1-8-19

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plastic shopper in which a sweet box was found. From said box, two slabs of contraband chars weighing 1230 grams and 1225 grams respectively were recovered. The said accused disclosed the same as his ownership and was carrying for co-accused Fazal Hadi. The complainant separated five/five grams from both the slabs as sample for FSL from the recovered stuff and sealed in parcel No.1 and 2 while the remaining stuff was sealed in parcels No. A1 and A2. The complainant also sealed the two bags and sweet box in parcel No. 5. The motorcycle was also taken into possession by the complainant. Accused were arrested and the instant case was registered against the accused facing trial.

3. After the completion of the investigation, the case was sent-up for trial. Accused were produced and after observing codal formalities within the meanings of section 265-C Cr.P.C, they were charge sheeted on 22.06.2019 to which they did not plead guilty and claimed trial. Therefore, in order to substantiate the charge against the accused, the prosecution recorded the statements of PWs with the following resume.

PW-1 Wahid Khan SI (complainant) stated that on 23.03.2019, he along with other police officials were present for checking at check post Katkala. Meanwhile, a person came on motorcycle from Jowar side, was stopped. On demand, he produced his CNIC wherein his name was found as Jamil Ahmad s/o Saman Gul r/o Tawas Khel Sangao. There was a bag lying to left side safeguard of the

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Chief Magistrate
District Court
Tawas Khel Sangao

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motorcycle. On the inquiry, accused stated that it was a sweet box. On suspicion, he searched it and found another bag of red colour wherein the sweet bag was lying on which Mardan Sweets and Bakers were written. On further search of the sweet bag, the two packets of charas in slab shape, wrapped in brown colour tape were recovered. He weighed both the packets separately out of which one was found 1230 grams and the other was 1225 grams. The accused admitted the same as his ownership and stated that he was taking the same for one Fazal Hadi s/o Fazal Wahab r/o Batai Pirbaba. He separated 5/5 grams charas from each packet for FSL purpose and sealed in parcels No.1 and 2 while the remaining stuff was sealed in parcels No. A1 and A2. He also sealed the two bags and sweet box in parcel No. 5. He took into possession the same along with motorcycle. In this respect, he prepared recovery memo Ex-Pw-1/1 and Ex-Pw-1/2 in the presence of marginal witnesses and the witnesses put their signatures. He issued his card of arrest Ex-Pw-1/3. He scribed the murasila Ex-PA and sent to police station through Muhammad Ali FC. He also took 16 photographs of the recovery proceedings which were exhibited as Ex-Pw-1/4. The I.O also prepared site plan, at his instance.

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PW-2 Razmin Khan HC stated that he was the marginal witness to recovery memo already Ex-Pw-1/1 vide which the complainant recovered the contraband Ex-P1, Ex-P2 of two packets total 2455 grams from the safeguard of motorcycle belonging to accused Jamil Ahmad. The complainant separated 5/5 grams as sample for FSL purpose and sealed in parcels No. 1 and 2 while the remaining stuff was sealed in parcels No. A1 and A2. Similarly, the plastic bags

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and sweet box were sealed in parcel No. 5. The complainant took into possession the motorcycle Ex-P4 produced vide recovery memo Ex-Pw-1/2. He put his signature on the said recovery memos. In this respect, his statement was recorded by the I.O.

PW-3 Bakht Afsar Khan SI stated that on 23.03.2019, by receiving the murasila from Wahid Khan SI through Muhammad Ali FC, he converted its contents into FIR, which was Ex-PA, which correctly bore his signature.

PW-4 Fawadullah HC stated that on 25.03.2019, he handed over two parcels containing samples of charas along with its relevant documents to Fazal Akbar HC for taking it to FSL vide rahdari No. 78/21 and he took the same to FSL and on his return, he handed over receipt to him which was Ex-Pw-4/1.

PW-5 Ikramullah HC stated that he was the marginal witness to recovery memo Ex-Pw-5/1 vide which the complainant Wahid Khan SI handed over five parcels containing charas which were taken into possession by the I.O in his presence along with the motor cycle. Similarly, he was also the marginal witness to pointation memo Ex-Pw-5/2 vide which the accused Jamil Ahmad pointed out his place of presence at the time of occurrence. In this respect, his statement was recorded by the I.O.

PW-6 Noor Khitab SI who investigated the present case, visited the spot, prepared the site plan Ex.PB at the instance of complainant/eye-witnesses. He recorded the statements of PWs u/s 161 Cr.P.C. He interrogated the accused and he admitted his guilt before him and was ready to point out the spot. Therefore, he led him to the spot where he prepared the pointation memo Ex-Pw-5/2 at his instance in the

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presence of Fazal Akbar and Ibrahim. On the same date, he arrested accused Fazal Hadi and issued card of arrest Ex-Pw-61. Vide application Ex-Pw-62, he produced the accused before the judicial magistrate for custody and one day custody was granted. Vide application Ex-Pw-63, he sent the parcel to the FSL for analysis through constable Fazal Akbar and later on FSL report Ex-Pw-64 received in positive. Vide application Ex-Pw-65, he produced the accused for recording their confessional statements, but they were sent to judicial lock up. Vide recovery memo Ex-Pw-51, he took the already recovered parcel of the contendant along with motorcycle of red colour unique in the presence of witnesses. He also placed at the master of DPO Mardum.

PW-7 Fazal Akbar HC stated that on 22.03.2019, two parcels of samples of chairs along with its relevant documents were handed over to him by Ibrahim. AMI, which he took to FSL. In this respect, his statement was recorded by the I.O.

On the closure of prosecution evidence and brief account of the case given above, the statements of accused were recorded as 342 Cr.P.C. but they again reiterated their innocence and false implication in the case, however, they did not opt to make their statements on oath. The 340 (2) Cr.P.C. or to produce evidence in defense.

Learned A.P.P. for the state argued that accused were directly charged in the instant case. That huge quantity of contendant chairs was recovered from the possession of accused Jamil-Ahmed and he established the fact that he was taking the same for co-accused Fazal Hadi. That there were no major contradictions in the statements of

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PWs despite lengthy cross-examinations. That FSL report was received back as positive. That case against the accused was proved by the prosecution. The learned stated counsel requested for conviction of the accused.

6. Learned defence counsels for accused argued that nothing was recovered from personal possession of accused. That no independent witnesses cited in the FIR. That no description of contraband was given. That no recovery of money, CNIC etc was made and shown. That accused Fazal Hadi was neither present on spot nor recovery was effected from his personal possession. That no detail of motorcycle was produced. That no independent witness was associated in recovery proceedings. That there were many contradictions in the statements of witnesses and legally benefit of doubt be extended to the accused. The learned defence counsel requested for the acquittal of both the accused, in the circumstances.

7. I have heard the arguments of learned defence counsels rebutted by APP and gone through the record.

8. The prosecution case in brief is that on 23.03.2019, complainant along with other police officials was present on check post Katkala on routine checking. In the meanwhile, at 11:30 hours, a person on motorcycle came from Jowar side who was signalled to stop and was intercepted. On query, said person produced his CNIC and disclosed his name as Jamil Ahmad s/o Saman Gul r/o Mohalla Tawas Khel Sangao Mardan. During search of motorcycle, from the left safe guard, one plastic shopper having written BATA over it was found. On

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further search of said plastic shopper, another red colour plastic shopper in which a sweet box was found. From said box, two slabs of contraband chars weighing 1230 grams and 1225 grams duly wrapped in brown colour tape were recovered. The said accused disclosed the same as his ownership and stated it to be carried for co-accused Fazal Hadi. Consequent upon, both the accused were arrayed as accused in the instant case.

9. Now coming to the evidence, the complainant appeared before the court and his statement was recorded as PW-1. During his evidence, he stated that on the day of occurrence till 1800 hours, he had not proceeded on gusht/patrolling but according to PW-2, as it was a special day, therefore, he was accompanied by the complainant for gusht/patrolling. The complainant further stated that there were shops and godowns situated on the ground floor of police post and the nakabandi/checking point was situated in front of police post. He further stated that the said road was busy road. However, no independent witness was associated in recovery proceedings. The

complainant further stated that he wrote the word "brown colour tape" murasila. Similarly, during his cross-examination, picture No. 7 and 8 were shown to him, besides that he stated the colour as brown. However, according to PW-2, there were packets wrapped in yellow tape lying inside the sweet box. Similarly, from perusal of pictures No.7 and 8, it is appeared that the colour of tape on packets is yellow. Further, the complainant stated in his cross-examination that he completed the whole proceedings from 1130 to 1210 or 1215 hours,

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however, according to PW-2, they took 40 minutes on the said proceedings. Therefore, the stance of prosecution in the light of statements of witnesses has created doubts regarding the mode and manner of recovery of charas.

10. Furthermore, the complainant stated in his statement that he captured sixteen photographs Ex-Pw-1/4 regarding the recovery proceedings. From perusal of all the pictures, it is reflected that the first picture was taken by the complainant when he intercepted the motorcycle then thereafter he took pictures turn by turn regarding all the proceedings. Here, it is notable that as per prosecution version they were on routine patrolling and checking and that on coming of motorcycle, they searched the same but strangely without any spy information how come at the first instance the complainant became aware of the fact that inside the hanging shopper and then he took the snaps in advance. This act of complainant shows malafide on his part. Similarly, PW-3 also stated that the I.O took the snaps in his presence so it is also not clear that who captured the photographs. Admittedly,

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neither any incriminating has been recovered from the personal search of the accused nor any record produced or annexed, showing his previous involvement in similar nature of cases.

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11. Moreover, record transpires that the complainant has not mentioned the detailed of motorcycle. Further no documentary proof regarding the ownership of said motorcycle is available on file. Regarding the samples, the same have been sent to FSL on the third day of the occurrence, i.e. 25.03.2019. Thus the question of safe

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custody of the sample and its being not tampered with, are also begging questions, which cast adverse inference against the prosecution and shake the veracity of evidence. Reliance is placed on case titled "The State vs Imam Bakhsh and others" reported in 2018 SCMR 2039 of which relevant extract is reproduced as follow;

---Rr. 5 & 6---Control of Narcotic Substances Act (XXV of 1997), S. 9--- Possession of narcotics---Report of Government Analyst---Safe custody and transmission of samples of the alleged drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory---Chain of custody began with the recovery of the seized drug by the police and included the separation of the representative sample (s) of the seized drug and their dispatch to the Narcotics Testing Laboratory---Said chain of custody, was pivotal, as the entire construct of the Control of Narcotic Substances Act, 1997 and the Control of Narcotic Substances (Government analyst, which in turn rested on the process of sampling and its safe and secure custody and transmission to the laboratory--- Representative samples of the alleged drug must be in safe custody and undergo safe transmission from the stage of recovery till it is received at the Narcotics Testing Laboratory---Prosecution must establish that the chain of custody was unbroken, unsuspecting, indubitable, safe and secure---Any break in the chain of custody or lapse in the control of possession of the samples, would cast doubts on the safe custody and safe transmission of the sample (s) and would impair and vitiate the conclusiveness and reliability of the report of the Government Analyst, thus, rendering it incapable of sustaining conviction.---

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In addition thereto, the investigation officer PW-6, appeared in witness box and he claimed him as IO of the case but it is strange that he received the contraband in sealed position. Though, the complainant alone is sufficient to prove the facts but it is the requirement of prudence that some second opinion in the case would be there. The investigation officer was not in a position to disclose the fact that any contraband was recovered by the complainant or not. He has not taken the same into possession and not de-sealed the same, so the said

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investigation cannot be relied as a supportive circumstance to the case of prosecution.

13. Record further depicts that the name of complainant of the case is Wahid Khan SI. Under the Police Rules, the Police Officials are given specific name seals which are corresponding initials of their names, so record reflects that seal affixed with the abbreviation of 'MZ' which is not corresponding to the name of complainant. Under such like situation, when his name seal is not corresponding with his name, he was bound to show that it was his name seal. The entries of recovery memo admittedly recorded in one go. Reliance is placed on case law titled, "Akhtar Iqbal vs The State." reported in 2015 SCMR 291, of which relevant extract is reproduced as follow;

---S. 9(c)--- Possession of narcotic---Reappraisal of evidence---Benefit of doubt-- Material witnesses not produced before Trial Court---Doubt as to whether samples were taken from each and every packet of narcotic--- Probability of false implication---Effect---Recovery officer and one of the recovery witnesses expired before making their statements before the Trial Court---Only material witness produced by the prosecution before the Trial Court---Only material witness produced by the prosecution before the Trial Court was a witness who had attested memorandum of recovery---Head of raiding party was not produced before the Trial Court and no explanation for such failure was offered---Parcels of recovered narcotic were sealed with the monogram (name initials) of an official who was not even posted at the relevant police station at the time of alleged recovery from accused---No explanation was offered as to why the said parcels did not contain the monogram of the recovery officer--- Prosecution claimed that a sample had been taken from each and every slab of recovered substance but note recorded by Trial Court in such regard tended to create an impression that such claim might not be correct--- Accused in his statement under S. 342, Cr.P.C. claimed that he had been falsely implicated in the present case because he was

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instrumental in the arrest of a drug baron, who was later on convicted and sentenced to death---Probability existed that accused was falsely implicated in the present case---Appeal was allowed and accused was acquitted of the charged by extending him benefit of doubt.

13. So far as the case to the extent of accused Fazal Hadi is concerned, record transpires that accused Fazal Hadi was not present on spot. Similarly, no direct recovery has been effected from him. Moreso, no CDR report is available which could show the any conversation was made by co-accused Jameel Ahmad with accused Fazal Hadi, prior to the occurrence. Further, record is silent about the involvement of Fazal Hadi accused in such like cases. Under the circumstances, the case of prosecution has been found full of contradictions and doubts which makes the recovery proceedings dubious. For safe administration of criminal justice, prosecution is duty bound to prove its case beyond any shadow of doubt and as held by the Superior Courts of the Country in numerous cases that only a single doubt in the prosecution case can be considered enough for giving benefit to the accused. Reliance is placed on case law titled,

"Riaz Ahmad vs The State" reported in 2016 P Cr. L J 114 (Peshawar), of which concluding para is reproduced as under:

(a) Criminal trial-----Benefit of doubt---Prosecution was duty bound to prove its case beyond any reasonable doubt and if any single and slightest doubt was created, benefit of the same must go to accused and it would be sufficient to disbelieve the prosecution story and held the accused for acquittal---Many doubts were not needed in the prosecution case' rather any reasonable doubt arising out of the prosecution evidence, pricking the judicial mind, was

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sufficient for acquittal of accused---Accused, was always considered as the most favourite child of law and every benefit of doubt would go to him, regardless of fact whether he had taken any such plea or not.

14. For the foregoing reasons, this court has reached to the safe conclusion that the prosecution in the instant case has not been able to prove the charge against both the accused namely Jameel Ahmad and accused Fazal Hadi through convincing and reliable evidence, therefore, while giving them benefit of doubt, accused facing trial are acquitted of the charge levelled against them, in the present case. Accused are on bail, therefore, their sureties stand relieved. Case property be disposed of according to law, after the lapse of period of appeal/revision. File be consigned to record room after its completion and compilation.

ANNOUNCED.
Dated: 01.08.2019

(Signature)
(Kashif Dilawar)
ASJ-II/JMCTC/JSC, IZQ,
Buner at Daggar

CERTIFICATE

Certified that this judgment consists of Twelve **(12)** pages, each has been read, checked, signed and corrected by me wherever it was necessary.

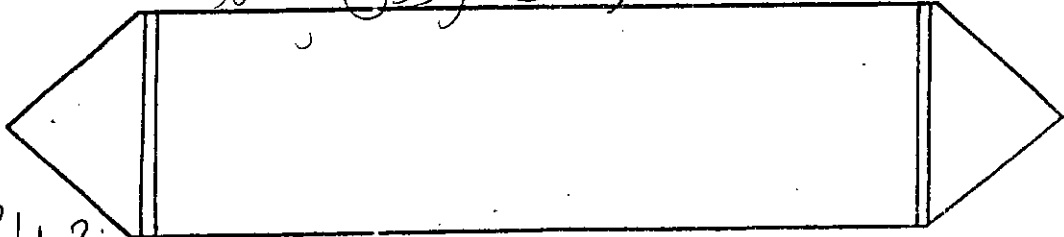
CD No:	5067
Date of Application	28/7/19
Date of Receipt of File	28/7/19
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(Kashif Dilawar)
ASJ-II/JMCTC/JSC, IZQ,
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Kashif Dilawar
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Model Criminal Trial Court
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بعدالت سروس لٹریچر لکھنے



2۔ منجانب۔ فضل احمد

حکیم احمد بنام R.P.O. و عمرہ

موزعہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کے لئے فضل شاہ صمد A.S.C 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 تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بہ صورت ڈگری کرنے اجراء اور وصولی چیک دروپہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بہ صورت مقدمہ مذکور 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 بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند ہے۔

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BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1158/2019.

Jamil Ahmad Ex-LHC No.2739 District Police
Mardan.....Appellant.

VERSUS

1. The Regional Police Officer, Mardan Region, Mardan
 2. District Police Officer, Mardan.
 3. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
-Respondents.

Respectfully Sheweth,

Parawise comments by respondents No. 01, 02 & 03 are submitted as under:-

PRELIMINARY OBJECTIONS:-

1. That the appellant has not approached this Hon'ble Tribunal with clean hands.
2. That the appellant has concealed actual facts from this Hon'ble Tribunal.
3. That the appellant has got no cause of action or locus standi to file the instant appeal.
4. That the appellant is estopped by his own conduct to file the instant Service Appeal.
5. That the appeal is unjustifiable, baseless, false, flawless and vexatious and the same is liable to be dismissed with special compensatory cost in favour of respondents.
6. That the Hon'ble Tribunal has no jurisdiction to adjudicate the matter.

REPLY ON FACT:

1. Plea taken by the appellant is not plausible because every Police officer/official is under obligation to discharge his official duties with zeal/devotion, honesty and upto the entire satisfaction of his high ups, because in this department no room lies for lethargy.
2. Correct to the extent that the appellant while posted as DFC, Sessions Court Mardan, Police Station Par Hoti involved in a criminal case vide FIR No.51 dated 23.03.2019 u/s 9C,CNSA, Police Station Jowar District Buner. Rest of the Para regarding false involvement is totally ill based because as per contents of the above mentioned FIR, recovery was affected from the active/personal possession of appellant. (Copy of FIR is annexed as "A").
3. Para to the extent of suspension is correct because the appellant being member of disciplined Force was under obligation to fight against crime rather to involve himself in offence of moral turpitude. Whereas rest of the Para is not plausible because release on bail does not mean acquittal from the charges, because the same is release from the custody.
4. Correct to the extent that on the basis of afore-mentioned involvement in criminal case, the appellant was issued Charge Sheet alongwith Statement of Allegations and enquiry was entrusted to SP Operations Mardan. However, rest of the Para is not plausible because mere denial by the appellant does not mean his innocence because recovery of Narcotics (Charas) was affected from personal and active possession of the appellant.(Copies of Charge Sheet & Statement of allegations are annexed as "B" & "C").

5. Incorrect. Stance taken by the appellant is totally devoid of merit because the appellant failed to point out any illegality in the enquiry proceedings. Besides, during the course of enquiry proceedings the appellant was provided ample opportunities to produce evidence in his defense but in fiasco. Hence, plea of the appellant regarding illegal enquiry is totally against the material available on record.
6. Correct to the extent that the appellant was awarded Major punishment of dismissal from service by the competent authority. But it is pertinent to mention here that the enquiry officer after fulfillment of all legal & codal formalities submitted his report/findings wherein the appellant was held responsible. In light of findings, the appellant was issued Final Show Cause Notice to which his reply was received and the same was paid due consideration but found unsatisfactory. Besides, the appellant was also provided right of personal hearing through Orderly Room held by the competent authority but this time too he failed to produce even a single iota of evidence in his defense. Therefore, the appellant was awarded appropriate punishment of dismissal from service which does commensurate with the gravity of misconduct of appellant.
7. Correct to the extent that the appellant preferred departmental appeal which was also decided on merit because the appellant was provided full-fledged opportunity of defending himself through Orderly Room by the appellate authority but he bitterly failed to produce any cogent reason in his defense. Therefore, the same was rejected/filed being devoid of any merit.
8. Incorrect. Stance taken by the appellant is completely devoid of merit because the appellant has badly failed to point out any illegality in the proceedings therefore, his plea is not plausible rather is based on flimsy & whimsical grounds.

REPLY ON GROUNDS:

- A. Incorrect. Orders passed by the competent as well as appellate authority are legal, lawful hence, liable to be maintained.
- B. Incorrect. As discussed in the preceding Paras all legal and codal formalities have been fulfilled whereafter speaking orders were passed.
- C. Correct to the extent of initiation of departmental proceedings for his involvement in offence of moral turpitude whereas rest of the Para is not plausible because departmental and criminal proceedings are two different entities which can run parallel and the fate of one will have no effect on the other. Moreover, the retention of appellant in Police department will certainly stigmatize the prestige of this department.
- D. Para already explained needs no comment.
- E. Plea taken by the appellant is not plausible because suspension is not a penalty rather Police officers/officials in case of misconduct are suspended just that they may not feel any hardship to join enquiry proceedings.
- F. Para explained earlier needs no comments.
- G. Incorrect. Story propounded by the appellant regarding exchange of harsh words is totally tailored one because the appellant kept changing his version during enquiry proceedings as in his reply to the Charge Sheet and reply to the Final Show Cause Notice are worth perusal having glaring contradictions.

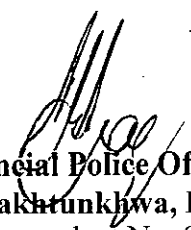
H. Para explained earlier needs no comments.

I. Length of service and unblemished service record does not exonerate any Police officer/official from his future wrong deeds.


F. The respondents also seek permission of this Honourable Tribunal to raise additional grounds at the time of arguments.

PRAYER:


It is therefore most humbly prayed that on acceptance of above submissions, appeal of the appellant may very kindly be dismissed with costs.



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



**Regional Police Officer,
Mardan.
(Respondent No. 01)**



**District Police Officer,
Mardan
(Respondent No. 02)**

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 1158/2019.

Jamil Ahmad Ex-LHC No.2739 District Police

Mardan.....Petitioner.


VERSUS


1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region-I, Mardan


.....Respondents.

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.


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


**Regional Police Officer,
Mardan.
(Respondent No. 01)**


**District Police Officer,
Mardan
(Respondent No. 02)**

OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com



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Dated 2-14/2019

DISCIPLINARY ACTION

I, SAJJAD KHAN (PSP), District Police Officer Mardan, as competent authority am of the opinion that LHC Jamil Khan No.2739, himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Rules 1975.

STATEMENT OF ALLEGATIONS

Whereas, LHC Jamil Khan No.2739, while posted as DFC Sessions Court PS Par Hoti (now under suspension Police Lines), has been charged in a case vide FIR No.51 dated 23-03-2019 U/S 9© CNSA Police Station Jowar (District Buner).

For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, Mr. Mushtaq Ahmad SP Operations Mardan is nominated as Enquiry Officer.

The Enquiry Officer shall, in accordance with the provision of Police Rules 1975, provides reasonable opportunity of hearing to the accused Police Officer, record/submit his findings and make within (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused Official.

LHC Jamil Khan is directed to appear before the Enquiry Officer on the date + time and place fixed by the Enquiry Officer.

Steno pl: proceed.

J

(SAJJAD KHAN) PSP
District Police Officer
Mardan

98 (2)

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN


Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com



CHARGE SHEET

I, SAJJAD KHAN (PSP), District Police Officer Mardan, as competent authority, hereby charge LHC Jamil Khan No.2739, while posted as DFC Session Court PS Par Hoti (now under suspension Police Lines), as per attached Statement of Allegations.

1. By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.
2. You are, therefore, required to submit your written defense within 07 days of the receipt of this Charge Sheet to the Enquiry Officer, as the case may be.
3. Your written defense, if any, should reach the Enquiry Officers within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.


(SAJJAD KHAN) PSP
District Police Officer
Mardan

BEFORE THE DISTRICT POLICE OFFICER, MARDAN

Subject: **REPLY TO THE CHARGE SHEET+ STATEMENT OF ALLEGATIONS**
NO.128/PA DATED 02-04-2019

Respected Sir,

The petitioner submits as follows:

Your honour had issued the subject charge sheet cum statement of allegations against the petitioner with the following allegations which was handed over to the petitioner on 24-04-2019:-

" Whereas, LHC Jamil Khan No.2739, while posted as DFC Sessions Court PS Par Hoti(now under suspension),has been charged in a case vide FIR No.51 dated 23-03-2019 u/s 9-C CNSA Police Station Jowar (District Buner)"
 (Copy of charge Sheet + Statement of allegations is enclosed)

1. The facts behind the issuance of subject charge sheet are that on 23-03-2019 petitioner hails from village Sangawo which is situated at the boundary of Buner District .That on 23-03-2019 petitioner left his village for Bhai Killay District Buner on his Motor Cycle to visit his relative Gohar Khan r/o of the same village.On reaching near Katkala Check Post, the petitioner was stopped by Police Officials and was asked regarding the documents of the motor cycle .Meanwhile the exchange of hot words took place between the petitioner and Police Officials.The Police arrested the petitioner and brought him to the Police Station.
2. The police Officials informed the SHO of Police Station and after a lengthy meeting decided that petitioner should be arrested in some narcotics case. Unfortunately, the Police showed a fake and concocted recovery of the alleged Charas weighing 2455 grams and registered a baseless case against the petitioner vide FIR No.51 dated 23-3-19 u/s 9-C CNSA PS Jewar.(Copy enclosed)
3. The petitioner was sent to judicial lock up where after he was released on bail by the Honourable High Court Peshawar vide Court order dated 18-4-2019.(Copy of order is enclosed)
4. That in fact no recovery of Charas has been effected from the possession of the petitioner .The Police falsely implicated the petitioner in the said case due to the personal enmity and malafidty.
5. That the petitioner was enlisted as constable in police department on 6-9- 2009 and had performed his duty with zeal and efficiency . The petitioner was never dealt departmentally prior to this nor any punishment awarded to him in the entire period of service .All such facts are evident from the shining service record of the petitioner.
6. The petitioner is married with 03 kids and entire livelihood of the family depends upon the service of the petitioner.
7. The alleged criminal case is pending trial and there is no possibility of his conviction in the instant case.

Keeping in view the above facts and circumstances, it is humbly requested that the charge sheet + summary of allegation may kindly be filed, please.

Yours Obediently,

Jamil

LHC (JAMIL KHAN NO.2739)

Police Lines Mardan

Dated: 25 April, 2019.

OFFICE OF THE
SUPERINTENDENT OF POLICE
OPERATIONS & HEADQUARTERS
MARDAN

Tell: 0937-9230117

Fax: 0937-9230111

E.Mail: Spops1506@gmail.com

No. 236 /PA,(Ops)

Dated 16/05/2019.

To The District Police Officer,
Mardan.

Subject: DEPARTMENTAL ENQUIRY AGAINST LHC JAMIL NO. 2739.

Memo:

Kindly refer to your office Memo: No. 128/PA dated 02.04.2019 on the subject noted above.

ALLEGATIONS:

The subject enquiry proceeding against LHC Jamil Khan No.2739 was initiated under the allegations that he while posted as DFC Sessions Court PS Parhoti (now under suspension Police lines) has been charged in a case Vide FIR No. 51 dated 23.03.2019 u/s 9CCNSA Police station Jowar (district Buner).

PROCEEDING:

Enquiry proceedings were initiated. Vide this office letter memo: No. 158/PA(Ops) dated 18.04.2019, a copy of charge sheet along-with statement of allegation was addressed to the Superintendent district Jail Buner, for service upon the accused official. On 20.04.2019 the accused official was released on bail from the High court Peshawar. He was summoned a copy of charge sheet alongwith statement of allegation was duly served upon him. He was heard and enquired at length. He was provided sufficient opportunity of his defense. The accused official produced his written statement wherein he stated that he hails from village Sangawo, situated at the boundary of district Buner. On 23.03.2019 he left his village Bhai killay for district Buner on his motorcycle to visit his relative Gohar Khan r/o same village. When he reached near Katkala check post the police officials stopped him and asked regarding the documents of the motorcycle. Meanwhile an altercation took place between them. The police officials arrested him and taken to the police station. The police officials informed the SHO and after a lengthy meeting decided that petitioner should be arrested in some narcotics cases. Unfortunately the police showed a fake and concocted recovery of the alleged Chars weighing 2455 grams and registered a baseless case vide FIR No. 51 dated 23.03.2019 u/s 9CCNSA PS Jewar. (Copy enclosed) That he was sent to judicial lock-up where after he was released on bail by the honorable High Court Peshawar vide court order dated 18.04.2019. The defaulter officer further stated in fact no recovery has been effected from his possession. The police officials falsely implicated him in the said case due to personal enmity and mala-fide.

Handwritten initials: JS, P, ✓

...ed official further pleaded that in the year 2009 he was enlisted in police
...ent and had performed his duty with zeal and efficiency and that he never
...with departmentally prior to this nor any punishment awarded to him in the
...period of service. All such facts are evident from his shining service record.
...further pleaded that the alleged criminal case is pending trial and there is no
...possibility of his conviction.

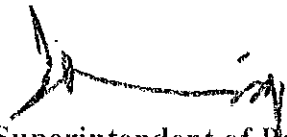
Vide this office letter Memo: No. dated addressed to the SP Investigation district Buner, the IO of the case and In-charge PP Katkala were called in the office. Their statements are placed on the file. SI Waheed Khan In-charge Police Post Katkala district Buner, in his written statement stated that on dated 23.03.2019 he along-with police contingents were present at check post Katkala. At about 11:30 hrs the accused Jamil Ahmad s/o Saman Gul r/o Mohallah Tawas Kheil Sangao Mardan riding a motorcycle was signaled to stop by the police party. Upon searching a box whereon Bata shoes was inscribe found with the left side of the safeguard of the motorcycle. During further searching from the box two packets containing Chars weighing 1230 gm and 1225 gm were recovered. Regarding the recovered chars he disclosed that carries the recovered chars to deliver it to one Fazal Hadi s/o Fazal Wahab. The recovered chars was taken on recovery memo: whereby 5/5 gm chars from each packet were separated for chemical analysis while the remaining chars were sealed into other parcels as evidence. The motorcycle was taken on recovery memo: and he (I/C PP SI Waheed Khan) send Murasla to Police station by hand of FC Muhammad Ali No. 815.

Besides the investigation officer in his written statement state that SI Waheed Khan In-charge along with police contingents were present at check post Katkala whereby a motorcycle rider was stopped who disclosed his name Jamil Ahmad s/o Saman Gul. On the left side of the safeguard a shopper whereon Bata shoes was inscribed was found upon suspicion the bag was searched. During searching two packets containing chars were recovered. Weighing of the chars was made as 1230 gm and 1225 gm were found in two packets. From the recovered chars 05/05 gm were separated for chemical analysis while the remaining were preserved as evidence. Regarding the recovery of chars the accused disclosed that the recovered chars will have to deliver to one Fazal Hadi s/o Fazal Wahab. The motorcycle was also into possession via recovery memo. The complainant SI Waheed Khan send Murasla against both the above named accused to the police station. Upon which SI Afsar khan registered a case vide FIR No. 51 dated 23.03.2019 u/s 9CCNSA PPC PS Jewar against the above named accused. The Investigation officer inspected the spot. On pointation of the complainant site plan was prepared, statement u/s 161 CrPc of all the witnesses were recorded. Accused was produced before the court whereby 01 day police custody was granted by the court. After completion of necessary investigation the accused were produced before the court for recording statements u/s 164 CrPc where they refused and were further remanded to judicial lock up. Accused Fazal Hadi succeeded in getting bail from the court while the bail petition of accused Jamil was dismissed by the honorable district court. Now accused Jamil Ahmad also got from the High Court Peshawar.


recommendations:

From enquiry, statements recorded and circumstances it transpires on 23.03.2019 the local police at PP Katkala PS Jewar district Bunir during search recovered 02 packets containing chars weighing 1230 gm and 1225 gm in possession of accused constable Jamil Ahmad (i.e) from the left side pocket of his motorcycle. During his initial interrogation he confessed regarding the offense and further disclosed that he carries the Chars to deliver it to the Fazal Hadi s/o Fazal Wahab. A case vide FIR No. 51 dated 23.03.2019 u/s CCNSA PS Jewar (District Bunir) was registered against both the accused.

Forgoing in view of the above the allegations levelled against accused constable Jamil No. 2739 district Mardan are proved. He has earned a bad name for the police department. He is found guilty of gross misconduct providing any concession at this stage would be deemed to encourage him for doing such like illegal activities in future. Hence he is recommended for Major Punishment under police Rules 1975.


Superintendent of Police
Operations & Headquarters
Mardan

Issue F. SCN


DPS/MAN

**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpp_mardan@yahoo.com



167 /PA

Dated 27/05/2019

FINAL SHOW CAUSE NOTICE

Whereas, you LHC Jamil No.2739, while posted as DFC Sessions Court PS Par Hoti (now under suspension Police Lines), has been charged in a case vide FIR No.51 dated 23-03-2019 U/S 90 CNSA Police Station Jowar (District Buner).


In this connection, during the course of Departmental Enquiry, conducted by Mr. Mushtaq Ahmed SP/Operations Mardan. vide his Office letter No.236/PA, (Ops) dated 16-05-2019. in pursuance of this Office Statement of Disciplinary Action/Charge Sheet Nos.128/PA dated 02-04-2019, holding responsible you of gross misconduct and recommended for major punishment.

Therefore, it is proposed to impose Major/Minor penalty as envisaged under Rules 4 (b) of the Khyber Pakhtunkhwa Police Rules 1975.


Hence, I Sajjad Khan (PSP) District Police Officer Mardan, in exercise of the power vested in me under Rules 5 (3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you to Show Cause Finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach this office within 07. days of receipt of this Notice, failing which; it will be presumed that you have no explanation to offer.

You are liberty to appear for personal hearing before the undersigned.

Received by 

Dated: 28/05/2019


(SAJJAD KHAN) PSP
District Police Officer
Mardan

Copy to RI/Police Lines (Attention Reader) to deliver this Notice upon the alleged official & the receipt thereof, shall be returned to this office within (05) days positively for onward necessary action.

The police Sessions Officer implicated in the said case due to personal enmity and mala-fide.

BEFORE THE DISTRICT POLICE OFFICER, MARDAN

Subject:

REPLY TO THE FINAL SHOW CAUSE NOTICE NO.167/PA DATED: 27-05-2019

Respected Sir,

The petitioner submits as follows:

- A. Prior to the subject **Final Show Cause Notice**, Your honour had issued the charge sheet cum statement of allegations No.128/PA dated 02-04-2019 against the petitioner with the following allegations:-

"Whereas, LHC Jamil Khan No.2739, while posted as DFC Sessions Court PS Par Hoti(now under suspension),has been charged in a case vide FIR No.51 dated 23-03-2019 u/s 9-C CNSA Police Station Jowar (District Buner)" (Copy of charge Sheet + Statement of allegations + Show cause Notice are enclosed)

- B. In response to the charge sheet, petitioner submitted a detailed and comprehensive reply on dated 25-04-2019 which is reproduced below:

1. The facts behind the issuance of subject charge sheet are that on 23-03-2019 petitioner hails from village "Sangawo" which is situated at the boundary of Buner District .That on 23-03-2019, Petitioner left his village for Bhai Killay District Buner on his Motor Cycle to visit his relative Gohar Khan R/O of the same village. On reaching near Katkala Check Post, the petitioner was stopped by Police Officials and was asked regarding the documents of motor cycle. Meanwhile the exchange of hot words took place between the Petitioner and Police Officials. The Police arrested the petitioner and brought him to the Police Station.
2. The police Officials informed the SHO of Police Station and after a lengthy meeting decided that petitioner should be arrested in some narcotics case. Unfortunately, the Police showed a fake and concocted recovery of the alleged "Charas" weighing 2455 grams and registered a baseless case against the petitioner vide FIR No.51 dated 23-3-19 u/s 9-C CNSA PS Jowar. **(Copy of FIR is enclosed)**
3. The petitioner was sent to judicial lock up where after he was released on bail by the Honourable High Court Peshawar vide Court order dated 18-4-2019. **(Copy of Peshawar High Court order is enclosed)**
4. That in fact no recovery of Charas has been effected from the possession of petitioner. The Police falsely implicated the petitioner in the said case due to the personal enmity and malafidy.
5. That the petitioner was enlisted as constable in police department on 06-09-2009 and had performed his duty with zeal and efficiency . The petitioner was never dealt departmentally prior to this nor any punishment awarded to him in the entire period of service .All such facts are evident from the shining service record of the petitioner.

The petitioner is married with 03 kids and entire livelihood of the family depends upon the Police service of the petitioner.

7. The alleged criminal case is pending trial and there is no possibility of his conviction in the instant case.

- C. Your honour has now issued the subject **Final Show Cause Notice No.167/PA** dated 27-05-2019. Beside the above detailed reply, petitioner has later on came to know regarding certain relevant facts mentioned as under.

- i. Petitioner has been falsely implicated in the instant case. Beside the exchange of hot words between the petitioner and police party, one of the Police officials posted at PP Katkala namely "Aziz ur Raheem" played active role in the registration of false case against the petitioner. The said Police Official "Aziz ur Raheem" is the co-villager of the petitioner. In the year 2008, the real sister of the said "Aziz ur Raheem" was abducted by one "Gul Roze" (Maternal cousin of the petitioner). Later on, the said girl was married to "Aziz ur Raheem" but the enmity between the two families was left behind. The said "Aziz ur Raheem" got an opportunity to take revenge and thus succeeded to take into confidence the Police officials of PP Katkala and registered the present case against the petitioner. Constable "Aziz ur Raheem" is still posted at the same PP Katkala District Buner.

- ii. The petitioner has also learnt regarding the enquiry findings prepared by the FO The

Account of the petitioner
to the officer
deputy
subdivision
 OR
 03/06/19
 PPA

has relied upon the statements of Police Officials who have falsely implicated the petitioner in the instant case on personal grudges and conspiracy. It is wonderful and astonishing that the EO has not recorded the statement of a single person /witness in support of alleged allegations. The EO has fully supported the prosecution story framed by the police officials due to the connivance of constable "Aziz ur Raheem" (enemy of the petitioner). The EO has held responsible the petitioner for gross misconduct and recommended him for award of "Major Punishment" which is against the norms of fair justice.

- iii. The EO has further mentioned in the enquiry findings that the statements of Police Officials were recorded and placed on enquiry file. All this drama has been staged in the absence of petitioner. The petitioner was not given an opportunity to cross examine on these officials during the enquiry proceedings. The present circumstances of the enquiry clearly indicate that one sided game has been played against the petitioner and illegal enquiry proceedings were conducted against him in his absentia. The EO badly failed to fulfill the legal requirements during the enquiry proceedings. Hence, the enquiry findings are against the norms of natural justice. **(Copy of the enquiry findings is attached)**
- iv. That the salary of the petitioner is stopped since suspension order for the last 02 months which is against the KPK Police Rules, 1975 and contrary to the judgments of Supreme Court of Pakistan on the subject because the guilt of the petitioner is yet to be proved in the competent court of law. The family of the petitioner is facing immense hardships to meet daily household expenses. Sir, Life is almost become miserable for the petitioner due to stoppage of salary. **Your Honour**, The salary of the petitioner may kindly be released from the date of suspension orders till the decision of the instant case.

Keeping in view the above facts and circumstances, it is humbly requested that the Final show cause notice may kindly be filed and necessary orders for the release of salary of the petitioner may very graciously be also passed, please.

Your's obediently,

Jamil Khan

LHC (JAMIL KHAN NO.2739)

Dated: 31 May, 2019.

POLICE LINES MARDAN

پولیس لائن

نقل 40 روز نامی، 27³/₁₉

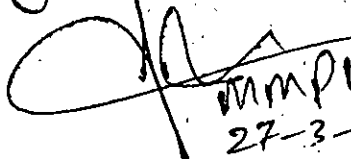
40 رپورٹ مگل بہادر خانہ، وقت 15:00 بجے مورف 27³/₁₉ درج

664. OB. جمیل. CMC 2739. سیشن پارہوتی سول لائن پورچیا میں
26-3-19
FIR نمبر SA جہاں CCNSA مورف 19-19

در معلوم ہوئے مذکورہ مورف FIR نمبر SA جہاں CCNSA مورف 19-19
جوڑ نہک ہو غیر پولیس کی تحویل میں ہے۔ رپورٹ درج روز نامی کے نام
تقریباً مناسب ما، رانی ارسال اشتران بالا کی جاتی ہے۔

صنا علی

نقل خط لائن اہل


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27-3-19
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**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN.**

Tel No. 0937-9230109 & Fax No. 0937-9230111

Email dpo_mardan@yahoo.com

Facebook: District Police Mardan

Twitter: @dpomardan

2019


2739

ORDER

Being charged in case vide FIR No. 51 dated 23.03.2019 w/s 9CCNSA PS Jowar District Buner, LHC Jamil Khan No. 2739 presently posted at DFC Session Court PS Par Hoti Mardan, is hereby placed under suspension with immediate effect.

OB No. 664

Dated 28-3- /2019.


District Police Officer
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER MARDAN.

No. 2071-75/OSI, dated Mardan the 27/03/2019

Copies are forwarded for information to the:-

1. Superintendent of Police Investigation, Buner w/r to his office letter No. 1561/Invest: dated 25.03.2019
2. DSP/HQrs: Mardan.
3. PA for departmental action.
4. Pay Officer to stop pay of the above mentioned official.
5. E.C

تھانہ ۲

پرائس لیٹ

بحوالہ مقدمہ عدالت 51 فروری 23 3/19 رقم 9CCNSA تھانہ ۲

نام ملنگا ملک، جیل خانہ دلہ سمن کل سٹنہ شفا و صلح دران
(۲) فصل ہاری و دلہ فصل و باب سٹنہ شفا و صلح دران

ضابطہ ۱

خود سرحدت میں ۱۹ فروری 23 کو وصول ہوا کہ ایسی کوئی مائیکرو فون
 لوکس تمام فنکشنل سٹاٹس مائیکرو فون تھا۔ یہ وقت تقریباً 11:30 بجے تھا۔ اس وقت
 سمن کل سٹنہ شفا و صلح دران معلوم ہوئی کہ سائل کے پاس سٹنہ شفا و صلح دران
 صبر (BATA) سٹور کی سٹی افیئر تھی۔ مقدمی مقدمہ نے نہ سٹنہ شفا و صلح دران سے ایک نقلی بلاسٹک
 سٹنہ شفا و صلح دران سے کھولی کرنا اس کی تھلائی اندر اندر سٹنہ شفا و صلح دران اور سٹنہ شفا و صلح دران
 ایک مائیکرو فون تھا جس سے سٹنہ شفا و صلح دران سے سٹنہ شفا و صلح دران سے سٹنہ شفا و صلح دران
 جس پر آدھ سٹنہ شفا و صلح دران کے سٹنہ شفا و صلح دران کے سٹنہ شفا و صلح دران کے سٹنہ شفا و صلح دران
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 عدالت 51 فروری 23 3/19 رقم 9CCNSA تھانہ ۲
 نوٹ: مقدمہ کی تفصیلات سے یہ ظاہر ہوتا ہے کہ سٹنہ شفا و صلح دران کے سٹنہ شفا و صلح دران کے سٹنہ شفا و صلح دران
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عبداللہ کے پردہ ہونے کے باعث خود سے فتویٰ ہو کر جو دراصل انتہائی مفید ہے۔ یہ درود
سے ملتا ہے۔ فضل ہادی دہلوی نے نقل ہادی ماکن سے فرمایا ہے کہ یہ ایسی ملی - صلہ طلبہ ہیں جو
محنت سے کام لیتے ہیں۔ انہوں نے جملہ امور میں ملوث رہ کر ان کے لوگوں کو تعلیم سے محروم نہ کرنے کے لیے
سرگرمی سے عمل کیا ہے۔ ان کے اس کوشش سے ان کے اس کو فتح و کسب و کمال حاصل ہوا ہے۔
بالا افسوس کہ ان کے کوشش سے ان کے کوشش سے ان کے کوشش سے ان کے کوشش سے ان کے کوشش سے
بہر حال یہ درود ہونا چاہیے کہ اللہ تعالیٰ ان کے کوشش سے ان کے کوشش سے ان کے کوشش سے
طلبہ کو ان کے کوشش سے ان کے کوشش سے ان کے کوشش سے ان کے کوشش سے ان کے کوشش سے
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St Iosif Ps Jawos.
01-03-19.

(6) **OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpo_mardan@yahoo.com

2738
NO. 610

Dated 11/17/2019

1254-58 /PA

ORDER ON ENQUIRY OF LHC JAMIL NO.2739


This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted as DFC Sessions Court PS Par Hoti, (now under suspension Police Lines) was placed under suspension and closed to Police Lines vide this office OB No.664 dated 26-03-2019, issued vide order/endorsement No.2071-75/OSI dated 27-03-2019, on account of charging in a case vide FIR No.51 dated 23-03-2019 U/S 9 © CNSA Police Station Jowar (District Buner) with proceedings against departmentally through Mr. Mushtaq Ahmed SP Operations Mardan vide this office Statement of Disciplinary Action/Charge Sheet No.128/PA dated 02-04-2019, who (E.O) after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.236/PA (Ops) dated 16-05-2019, holding responsible the alleged Constable of gross misconduct and recommended for major punishment.

In this connection, the alleged official was served with a Final Show Cause Notice, under K.P.K Police Rules-1975, issued vide this office No.167/PA dated 27-05-2019, to which, his reply was received and found un-satisfactory.

Final Order

LHC Jamil was heard in O.R on 09-07-2019, but failed to submit any plausible reasons in his defense, therefore, awarded him major punishment of dismissal from service with immediate effect, in exercise of the power vested in me under Police Rules-1975.

OB No. 1198
Dated 11/17 2019.


(SAJJAD KHAN) PSP
District Police Officer
Mardan

Copy forwarded for information & n/action to:-

- 1) The Regional Police Officer Mardan with reference to his good office No.697-R dated 28-03-2019, please.
- 2) The SP/Investigation Buner w/r to his office letter No.1561/Inv dated 25-03-2019.
- 3) The DSP/HQrs Mardan.
- 4) The PO & E.C (Police Office) Mardan.
- 5) The OSI (Police Office) Mardan with 27 Sheets.

(2)

ORDER.

This order will dispose-off the appeal preferred by **Ex-LHC Jamil No. 2739** of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded Major punishment of Dismissal from Service vide OB: No. 1198 dated 11.07.2019

Brief facts of the case are that, the appellant while posted as DFC Sessions Court Police Station Par Hoti was placed under suspension and closed to Police Lines vide District Mardan OB No.664 dated 26-03-2019, on account of charging in a case vide FIR No.51 dated 23-03-2019 U/S 9 © CNSA Police Station Jowar (District Buner) with proceedings against departmentally through Mr. Mushtaq Ahmed SP Operations Mardan. The Enquiry Officer after fulfilling necessary process, submitted his Finding Report to District Police Officer, Mardan, holding responsible the alleged Constable of gross misconduct and recommended him for major punishment.

In this connection, the alleged official was served with a Final Show Cause Notice to which, his reply was received and found un-satisfactory.

He was heard in Orderly Room on 09-07-2019 by the District Police Officer, Mardan, but failed to submit any plausible reasons in his defense, therefore, awarded him major punishment of dismissal from service with immediate effect. He preferred an appeal to the Undersigned for re-instatement into service. His appeal was sent to District Police Officer, Mardan for comments. After receiving of comments, he was called in orderly room held in this office on **27.08.2019** and heard him in person The appellant did not produce any cogent reason to prove himself innocent. Therefore, I find no grounds to intervene into the order passed by the District Police Officer, Mardan. **His appeal for re-instatement into service is filed.**

ORDER ANNOUNCED.

Muhammad Ali Khan
(MUHAMMAD ALI KHAN)PSP
Regional Police Officer,
Mardan.

No. 10856 ES,

Dated Mardan the 30/08 /2019.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 360/LB dated 21.08.2019. His Service Record is returned herewith.

(*****)
7183
3-8-19

DSP, Ljnl, EC, OS
For information on record
District Police Officer
Mardan

Service Appeal No. 1158/2019.

Jamil Ahmad Ex-LHC No.2739 District Police

Mardan.....Petitioner.


VERSUS

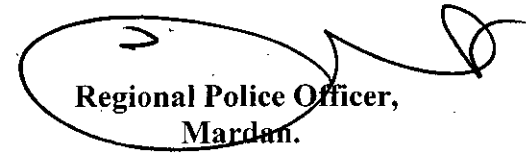
1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region-I, Mardan


.....Respondents.

AUTHORITY LETTER.

Mr. Atta-ur-Rahman Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


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


**Regional Police Officer,
Mardan.
(Respondent No. 01)**


**District Police Officer,
Mardan
(Respondent No. 02)**

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1158/2019

Jamil Ahmad.....**Appellant.**

V E R S U S

RPO & Others.....**Respondents**

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

All the objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal, the appellant has approached this honorable tribunal with clean hands and has concealed nothing from this honorable tribunal. The appellant has come to this honorable tribunal having case based on law and facts, the appellant is not estopped by his conduct to file instant appeal and this honorable tribunal has got the jurisdiction to entertain and adjudicate upon the matter.

REPLY TO FACTS/GROUNDS:

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of his rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. Respondents have admitted that the appellant was proceeded on the sole ground of involvement in criminal case from which he has been acquitted and thus is entitled to be reinstated in service. Respondents have also admitted that after being involved in criminal case he was suspended, so after suspension respondents were required to have waited till the decision of criminal case but instead the appellant was dismissed from service. Even the

appellant was not provided opportunity of cross examination in violation of principles of natural justice besides law on the subject.

Respondents have tried to twist the facts, and tried to cover their, omissions, commissions and lacunas. The valuable rights of the appellant are involved from which he cannot be deprived. The appellant could not be made to suffer for the fault of others as no one could be punished for the fault of others. In the circumstances the appellant has not been treated according to law and rules being his fundamental right.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.

Dated:- 22-9-2020

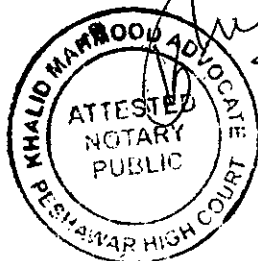
Appellant

Through


Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan.

AFFIDAVIT

I, Jamil Ahmad Ex LHC No 2739 District Police Mardan, (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.




DEPONENT

(2)

ORDER.

This order will dispose-off the appeal preferred by **Ex-LHC Jamil No. 2739** of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded Major punishment of Dismissal from Service vide OB: No. 1198 dated 11.07.2019

Brief facts of the case are that, the appellant while posted as DFC Sessions Court Police Station Par Hoti was placed under suspension and closed to Police Lines vide District Mardan OB No.664 dated 26-03-2019, on account of charging in a case vide FIR No.51 dated 23-03-2019 U/S 9 © CNSA Police Station Jowar (District Buner) with proceedings against departmentally through Mr. Mushtaq Ahmed SP Operations Mardan. The Enquiry Officer after fulfilling necessary process, submitted his Finding Report to District Police Officer, Mardan, holding responsible the alleged Constable of gross misconduct and recommended him for major punishment.

In this connection, the alleged official was served with a Final Show Cause Notice to which, his reply was received and found un-satisfactory.

He was heard in Orderly Room on 09-07-2019 by the District Police Officer, Mardan, but failed to submit any plausible reasons in his defense, therefore, awarded him major punishment of dismissal from service with immediate effect. He preferred an appeal to the Undersigned for re-instatement into service. His appeal was sent to District Police Officer, Mardan for comments. After receiving of comments, he was called in orderly room held in this office on **27.08.2019** and heard him in person The appellant did not produce any cogent reason to prove himself innocent. Therefore, I find no grounds to intervene into the order passed by the District Police Officer, Mardan. **His appeal for re-instatement into service is filed.**

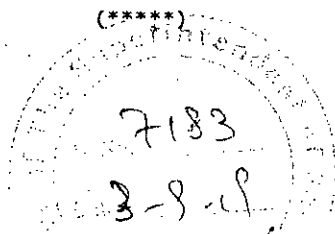
ORDER ANNOUNCED.

Muhammad Ali Khan
(MUHAMMAD ALI KHAN) PSP
Regional Police Officer,
Mardan.

No. 10857 /ES,

Dated Mardan the 30/08 /2019.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 360/LB dated 21.08.2019. His Service Record is returned herewith.



DSP, Bani, EC, OS
for information on record

[Signature]
District Police Officer
Mardan

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 1158/2019.

Jamil Ahmad Ex-LHC No.2739 District Police
Mardan.....

Petitioner.


VERSUS

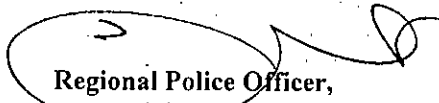
1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region-I, Mardan


.....Respondents.

AUTHORITY LETTER.

Mr. Atta-ur-Rahman Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


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


Regional Police Officer,
Mardan.
(Respondent No. 01)


District Police Officer,
Mardan
(Respondent No. 02)

KB Ser. Tribunal

Signat

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

S. A No 1158 /2019

Jamil Ahmed **Applicant/Appellant**



Put up to the worthy chairman with appeal.
VERSUS

Govt. and Others..... **Respondents**

APPLICATION FOR FIXATION EARLY DATE OF HEARING IN THE ABOVE TITLED CASE

*Fix in next week
28/1/22
21/1/2022*

Resub
Respectfully Submitted:-

- 1. That the above titled case is pending adjudication before this August Tribunal and fixed for 29-4-22
- 2. That the appellant belongs to a poor family is facing financial hardships besides the appeal is an old one and is also ripe for arguments.
- 3. That fixing an early date is in the interest of justice and there is no hurdle in fixing an early date in the above titled case, besides if an early date is not fixed in the titled case, the applicant would suffer irreparable loss.

It is therefore requested that on acceptance of this application, an early date of hearing may kindly be fixed in the above noted case.

Dated:-14.01.2022

Jamir
Applicant/Appellant

Through

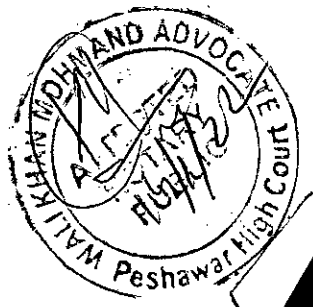
Fazal Shah

**Fazal Shah Mohmand
Advocate Supreme Court.**

AFFIDAVIT

I, Jamil Ahmed (Appellant/Applicant), do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable Court.

Jamir
DEPONENT



BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

S. A No 1158 /2019

Jamil Ahmed **Applicant/Appellant**

VERSUS

Govt. and Others..... **Respondents**

APPLICATION FOR FIXATION EARLY DATE OF HEARING IN THE ABOVE TITLED CASE

Respectfully Submitted:-

1. That the above titled case is pending adjudication before this August Tribunal and fixed for 29-4-22
2. That the appellant belongs to a poor family is facing financial hardships besides the appeal is an old one and is also ripe for arguments.
3. That fixing an early date is in the interest of justice and there is no hurdle in fixing an early date in the above titled case, besides if an early date is not fixed in the titled case, the applicant would suffer irreparable loss.

It is therefore requested that on acceptance of this application, an early date of hearing may kindly be fixed in the above noted case.

Dated:-14.01.2022

Jamil
Applicant/Appellant

Through

Fazal Shah Mohmand
**Fazal Shah Mohmand
Advocate Supreme Court.**

AFFIDAVIT

I, Jamil Ahmed (Appellant/Applicant) do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable Court.

Jamil
DEPONENT





**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 913 /ST

Dated: 13-4- /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Mardan.

Subject: JUDGMENT IN APPEAL NO. 1158/2019, MR. JAMIL AHMAD.

I am directed to forward herewith a certified copy of Judgement dated 01.02.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR