

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 647/2016

Date of Institution... 15.06.2016

Date of decision... 17.04.2018

Shahzad Rafique son of Muhammad Rafique resident of Mohallah Saba Coloy H #
908/28, P.O Nawanshehr Districte Abbottabad Ex. Constable ... (Appellant)

Versus

1. Deputy Inspector General of Police Hazara Division Abbottabad and 1 other.
....(Respondents)

MR. Zulfiqar Ahmad Advocate

For appellant.

MR. Usman Ghani,
District Attorney

...

For respondents.

MR. NIAZ MUHAMMAD KHAN, ...
MR. MUHAMMAD HAMID MUGHAL, ...

CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on 17.07.2013 due to his
absence and according to appellant he received the same on 04.02.2016 against
which he filed departmental appeal on 04.02.2016. The departmental appeal was
not responded to and thereafter he filed the present service appeal on 15.06.2016.

ARGUMENTS

3. The Learned counsel for the appellant argued that the appellant was not associated in the inquiry proceedings nor any inquiry was conducted against the appellant. That the whole proceedings were initiated at the back of the appellant without serving any notice on him. That the dismissal order was given retrospective effect which was a void order. That the appellant had genuine reason for his absence due to illness of his mother. That the mother of the appellant died on 25.07.2013 which was a proof of the fact that the appellant was really attending to his ailing mother. That had there been an inquiry then certainly this factum of ailment of the mother of the appellant would have been taken into consideration by the authority and no penalty would have been imposed.

4. On the other hand the learned District Attorney argued that the departmental appeal of the appellant was time barred, therefore, the present service appeal was also time barred. He further argued that the charge sheet was issued to the appellant. That the appellant did not attend the office and it was impossible to associate him in the inquiry proceedings. That the previous conduct of the appellant had also warranted his dismissal. That on previous occasion he was also awarded the penalty. That even today the appellant admits his absence. That the department had rightly imposed penalty as the appellant had no valid defense to defend his absence. That the final show cause notice was served through special messenger but the appellant was found absent even from his home.

CONCLUSION

5. This Tribunal is first to decide the objection of limitation. The order of dismissal shows that it was passed with retrospective effect. This Tribunal in a judgment dated 02.03.2018 decided by the larger bench in a case entitled "*Raheemud Din Vs. I.G.P and two others*" has already held that retrospective order is a void order and no limitation would run against such order. The record reveals that there is no inquiry report, charge sheet was framed. Though there is no proof of the service e of charge sheet on the appellant yet non-service of charge sheet for any reason in absence of the appellant or his deliberate avoidance to service would not empower the inquiry officer not to hold inquiry. It is a settled position of administrative law that when the absence of a civil servant is proved then the inquiry officer is to proceed ex-parte and then he is bound to conclude the inquiry proceedings ex-parte. But no ex-parte proceedings were initiated by the inquiry officer. So much so that this Tribunal has failed to locate any inquiry report on record. The authority only has mentioned in the order and in the final show cause notice that according to findings of the inquiry officer the appellant was called but he did not appear before the inquiry officer. In such eventuality the inquiry officer should have proceeded as observed above. The other option should have been service of charge sheet etc through advertisement in the newspapers which is a settled procedure in such situation. Non-holding of inquiry is a major flaw which cannot be called as an irregularity. The previous conduct of the appellant would not justify non-holding of inquiry or the imposition of major penalty. The previous conduct can at the most be taken into consideration for


Raheemud Din

deciding the quantum of punishment, if otherwise, the proceedings were under taken in accordance with law. But previous conduct itself provides no ground for imposition of major penalty. The admission of the appellant as to his absence in his appeal and today before the Tribunal is not unqualified. While admitting his absence he has given explanations for his absence. The inquiry is always ordered to probe into such defenses taken by a civil servant and then to decide the charge sheet.

6. As a sequence of the above discussion this Tribunal is of the view that the whole proceedings were illegal and this Tribunal by accepting this appeal reinstates the appellant in service. The intervening and absence period shall be treated as leave without pay. The department is however at liberty to hold denovo proceedings in accordance with law within a period of 90 days from the date of receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Hamid Mughal)
Member



(Niaz Muhammad Khan)
Chairman
Camp Court, A/Abad

ANNOUNCED

17.4.2018

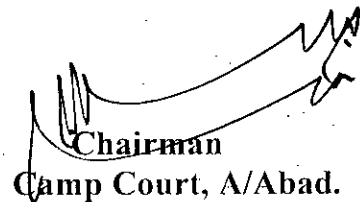
647/2016

17.04.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman
Camp Court, A/Abad.

ANNOUNCED
17.04.2018

21.12.2017

Appellant in person present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Mr. Wajid Ali, SI for the respondents present. Arguments could not be heard due to incomplete bench. To come up arguments on 21.03.2018 before D.B at Camp Court, Abbottabad.




(Gul Zeb Khan)
Member (Executive)
Camp Court, Abbottabad.

21.03.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Wajid Ali, ASI for the respondents present. After hearing the arguments at some length and especially on the point of limitation, the learned District Attorney argued that the appellant had filed an earlier departmental appeal in the year, 2014 which was rejected by the DIG (reference was made in the comments). Bt that appeal or its decision is not on the file. The learned District Attorney seeks time for production of the said documents. Granted. To come up for such record and arguments on 17.4.2018 before the D.B at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad

647/16

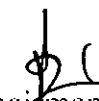
23.12.2016

Appellant with counsel and Mr. Qaim Ali Shah, ASI alongwith Mr. Muhammad Siddique Sr.GP for the respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 16.3.2017 before SiB at camp court, Abbottabad.


Chairman
Camp court, A/Abad

16.03.2017


Appellant in person and Mr. Abdul Waheed, ASI (Legal) alongwith Mr. Muhammad Siddique Sr.GP for the present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 19.09.2017 at camp court. Abbottabad.


Chairman
Camp court. A/Abad

19.09.2017

Appellant in person and Mr. Muhammad Bilal, Deputy District Attorney for the respondents present. Rejoinder submitted. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 21.12.2017 before D.B at camp court, Abbottabad.


Member


Chairman
Camp court, A/Abad.


20.07.2016

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was serving as Constable when dismissed from service vide impugned order dated 17.7.2013 on the allegations of willful absence which order was communicated to the appellant after his utmost efforts on 23.1.2016 where-against he preferred departmental appeal on 04.02.2016 and hence the instant service appeal on 15.6.2016.

That absence of the appellant was not willful as he was unable to perform duty due to ailment of his mother. That no enquiry afforded to the appellant in the manners prescribed by the rules

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 21.10.2016 before S.B at camp court, Abbottabad.

Appellant Deposited
Security & Process Fee


Chairman
Camp court, A/Abad,

21.10.2016




Appellant in person and Mr. Mir Afzal Inspector (Legal) with Sr.GP for the respondents present. Adjournment requested. To come up for written reply on 23.12.2016 before S.B at camp court, Abbottabad.


Chairman
Camp Court, A/Abad.

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 647/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15/06/2016	<p>The appeal of Mr. Shahzad Rafique received today by post through Mr. Zulfiqar Ahmad Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	16-6-16	<p>This case is entrusted to Touring S. Bench at A.Abad for preliminary hearing to be put up there on. <u>22-6-2016</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
22.06.2016		<p>Counsel for the appellant present. Seeks adjournment. Adjourned for preliminary hearing to 20.07.2016 before S.B at camp court, Abbottabad.</p> <p style="text-align: right;"> Chairman Camp court, A/Abad,</p>

BEFORE THE SERVICES TRIBUNAL KHYBER PUKHTUN KHWA

PESHAWAR

Appeal no. 647/2016

Shahzad Rafique S/O Mohammad Rafique R/O Mohallah Saba Colony H # 902/28,

P.O Nawanshehr District Abbottabad Ex. Constable # 357.

... APPELLANT

VERSUS

1 *Deputy Inspector General of Police Hazara Division Abbottabad.*

2 *District Police Officer Abbottabad.*

...RESPONDENTS

APPEAL AGAINST DISMISSAL

SERVICE APPEAL

INDEX

S. No.	Description	Annexure	Pages
1	Service Appeal with affidavit		1 To 5
2	Copy of application	"A"	6
3	Copy of order of DPO Torghar	"B"	7
4	Copy of order of DIG regarding transferring the appellant	"C"	8
5	Copy of appeal	"D"	9 To 10
6	Copies of applications regarding issuance for copies	"E"	11 To 20
9	Wakalatnama	"F"	21

[Signature]
... APPELLANT

Through

Dated 13/06/2016

[Signature]
(ZULFIQAR AHMED)
Advocate High Court
Abbottabad

10



BEFORE THE SERVICES TRIBUNAL KHYBER PUKHTUN KHWA
PESHAWAR

Appeal no. 647/2016

Shahzad Rafique S/O Mohammad Rafique R/O Mohallah Saba Colony H # 902/28,

P.O Nawanshehr District Abbottabad Ex: Constable # 357.

... APPELLANT

VERSUS

Khyber Pakhtukhwa
Service Tribunal

1 Deputy Inspector General of Police Hazara Division Abbottabad.

Diary No. 638

2 District Police Officer Torghar.

Dated 15-6-2016

...RESPONDENTS

=====

**APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT
1974 AGAINST THE ORDER OF RESPONDENT # 2 DATED 17/ 07/
2013 WHEREBY THE PETITIONER WAS DISMISSED FROM
SERVICE AS WELL AS THE ORDER OF RESPONDENT # 1
WHEREBY DEPARTMENTAL APPEAL WAS REFUSED IS
WITHOUT ANY PLAUSABLE EXPLANATION ILLEGAL, VOID
WITHOUT LAWFUL AUTHORITY, WITHOUT JURISDICTION
AND SAME IS NOT TENABLE IN THE EYES OF LAW AND ARE
LIABLE TO BE SET ASIDE.**

**PRAYER:- ON ACCEPTANCE OF INSTANT APPEAL, THE
ORDERS OF RESPONDENT NO 1 & 2 MAY KINDLY BE SET
ASIDE AND THE APPELLANT RESTORED IN SERVICE FROM
THE DATE OF DISMISSAL AND ALSO PENALTY IMPOSED UPON
THE APPELLANT MAY ALSO BE SET ASIDE AND ANY FURTHER
PROCEEDINGS IN CONSEQUENCE OF IMPUGNED ORDER MAY
ALSO BE SET ASIDE BEING UNLAWFUL AND AGAINST THE
SETTLED NORMS OF JUSTICE.**

Filed to-day
15/6/16
Registrar

Respectfully Sheweth; -

The facts giving rise to the instant appeal are arrayed as under.

FACTS:-

1. That the appellant was appointed in the police department as constable on 02/04/2002 in District Abbottabad, and during the duty the appellant was transferred from District Abbottabad to District Torgar vide order # 8058-59/PA dated 25/10/2012 issued from the office of DIG Hazara Region, Abbottabad.
2. That after the transfer, appellant reported in District Torgar on 12/02/2013, meanwhile Mother of appellant become serious ill, so the appellant got 12 days leave because there was no other male member in the appellant's house who could take care of mother's health.
3. That due to the weakness, illness and serious condition of mother's health appellant could not report back for duty on 24/02/2013 and due to the said illness appellant's mother was expired on 25/07/2013.
4. That after the death of mother, appellant was busy in funeral and other customs, due to this effect appellant moved an application to DIG, HAZARA REGION, ABBOTTABAD for cancellation of transfer order from District Abbottabad to District Torgar, but no reply was given on this application. (Copy of application is attached as annexure "A").
5. That during this tenure appellant was dismissed on 17/7/2013 vide order OB # 178, where the DPO Torgar mentioned in dismissal order that the appellant was transferred from Abbottabad District on complaint basis to Torgar District, but there is no such like allegation was mentioned in such order. The contents given in the impugned order regarding misbehave by father of appellant is also based on personal grudge and without any justification as the father of appellant is a law abiding

person and had serve the police department for long period and was retired from service as Sub Inspector. The feelings of some FC Said Mohammad # 27 seems to be his personal feelings which cannot be made basis for taking action against the appellant. (Copy of order of DPO Torghar is attached as annexure "B" and order of DIG regarding transferring the appellant is attached as annexure "C").

- 6. That feeling aggrieved the appellant submitted departmental appeal before the D.I.G on 4/02/2016, but still no reply was given. (Copy of appeal is attached "D").
- 7. That the appellant during the period under reference also moved application to the DIG/ respondent # 1 to provide the copies of orders if passed on the appeal lodged by the appellant but still no reply is received from that end nor any copy of order on appeal is conveyed yet hence the present appeal is presented against the order of respondent # 2 and non provision of any order on appeal.
- 8. That the appellant tried to get attested copies of the inquiry report and impugned orders but was not allowed access to the said documents which are in the possession of police department. (Copies of applications regarding issuance for copies are attached as annexure 'E').

That the impugned order of respondent No 1 & 2 are liable to be set aside inter – alia on the following grounds:-

GROUND S:-

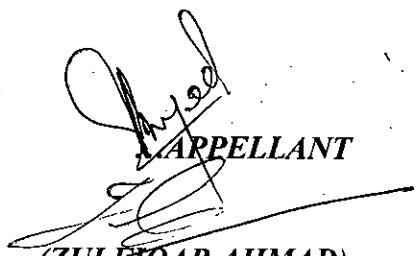
- a. That the orders of respondent # 1 & 2 are illegal arbitrary, void, without lawful authority and also without jurisdiction and hence liable to be set aside.

- b. That patently orders of dismissal from service are illegal without lawful authority and result of misreading and non reading.
- c. That the illegal and without jurisdiction orders of respondent # 1 & 2 have resulted in mis-carriage of justice and amounted to abuse of process of law which has adversely effected the appellant by the un fair partial, un reasonable and discriminatory orders of respondent # 1 & 2 as the bias departmental inquiry findings have been submitted against the appellant and based for dismissal of the appellant.
- d. That there was no show cause notice issued to appellant by respondent # 1 even no right of cross examination was provided to the appellant and the impugned order passed in violation of the settled norms of justice.
- e. That the appeal is within time and this Honorable tribunal has got jurisdiction in the matter.
- f. That further points will be submitted at the time of arguments.

PRAYER: It is therefore most humbly prayed that on acceptance of instant appeal against impugned order of respondent # 2 may kindly be set aside and in the meantime if respondent # 1 has passed any order against the appellant may also be set aside and the appellant reinstated in service with all back benefits under the law.

Through

Dated: 13/06/2016


APPELLANT
(ZULFIQAR AHMAD)
Advocate High Court
Abbottabad

BEFORE THE SERVICES TRIBUNAL KHYBER PUKHTUN KHWA
PESHAWAR

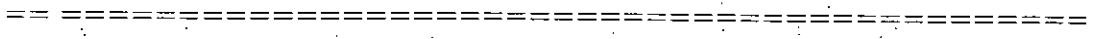
Shahzad Rafique S/O Mohammad Rafique R/O Mohallah Saba Colony H # 902/28,
P.O Nawanshehr District Abbottabad Ex. Constable # 357.

... APPELLANT

VERSUS

- 1 Deputy Inspector General of Police Hazara Division Abbottabad.
- 2 District Police Officer Abbottabad.

...RESPONDENTS



APPEAL AGAINST DISMISSAL

AFFIDAVIT

I Shahzad Rafique S/O Mohammad Rafique R/O Mohallah Saba Colony H # 902/28,
P.O Nawanshehr District Abbottabad Ex. Constable # 357, Do hereby solemnly
affirm and declare on oath that the contents of foregoing appeal are true and
correct to the best of my knowledge and belief and nothing has been concealed
therein. No such appeal is pending an any other court.

...DEPONENT
13/6/2016

Dated 13/06/2016
Identified by

(ZULFIQAR AHMAD)
Advocate High Court
Abbottabad



13/6/2016

کمشنر خیاب DIG صاحب سزاہ ریٹج

اسلام علیکم
خداوند تعالیٰ کی آخیاہ پر رحمت ہو

Aswabel

Zulfiqar Ahmed
Advocate Abbottabad
Office # 11 Ayn
Lawyers Block
Distt Courts - Abbottabad

درخواست مراد منوچی تبادلم

خیاب عالی - درخواست ذیل عرض ہے۔

عالیہ - حال ہی میں سائل کے بیٹے شہزاد رفیق کیلئے 1158 کا

تیار ہوا آڈر نمبر PA : 59-58-8058 مورخہ 12-10-25

فیکلٹی ٹورنٹو ہے۔
عالیہ - مورخہ یوں کہ زور ہم عرصہ 2 سال سے شوگر
کی طرف چلی آ رہی ہے۔ جو اس روز کی مرض کیوجہ سے اب
رکن آنکھوں کی بنیادی ہے جا چکی ہے۔ جیسا کہ علاج عالیہ
اور دم آباد - راولپنڈی کی مری - مری پھیلاؤوں سے کرا رہا ہے۔
مگر کوئی آفاقہ نہ پڑا۔ کاندھات میں لیکل شامل علاج ہے۔
اس قدر ہی بیماری کیوجہ سے کافی کمزور ہو چکی ہے۔ اور خیاب ہے۔
سہ ہذا خود ہی ٹورنٹو کا مریض ہوں۔ اور اکثر اوقات بیمار
رہتا ہوں۔ شہزاد رفیق فرا اکلوتا بیٹا ہے۔ جو اپنے دائرہ کا
خود علاج کرا رہا ہے۔ اور اپنے بڑھتے دائرہ کی قدرت میں مریض
کو نشان رہتا ہے۔ دیگر گورنر میں دیا کوئی فرد نہیں جو کام
سرا انجام دے سکے۔ یہ سب بٹھا رہے بیمار۔ اور بڑھی وایدہ کی
زندگی کا آخری سہارا ہے۔ بتا رہے ہیں اندھا کی جائے۔ سب سے ماہر
وجوہات کے پیش نظر اس کا تیار ہوا فیکلٹی ٹورنٹو سے
نورج فرمایا جا رہا ہے۔ سائل یعنی آپ - اور آپ کے بچوں کے
دعا تو رہے گا۔ والسلام۔

المردوم 5/11/2012

العارفہ در رفیقہ دیشا شہزادہ الکرہ یوں ساتھ نواں شہزادہ

DISMISSAL ORDER

Attested
Zulfiqar Anwar
Advocate Association
Office # 11 Ayub Khan Rd,
Lawyers Plaza,
Distt. Courts, Abbottabad

This order will be disposed of the departmental enquiry conducted against constable Shehzad Rafique No. 357 was transferred from Abbottabad district on complaint bases to this District vide DIG Hazara Order No. 8058-59/PA dated 25.10.2012 the constable departure from Abbottabad dist: on 05.11.2012 and reported in this District on 12.02.2013 after a lapse of 03-month and 07 day absented him self from duty and again absented himself from duty with effect from 24.02.2013 to till dated.

Departmental enquiry was initiated and entrusted to DSP H:qrs: vide this Office Memo: No. 135/PA dated 06.03.2013 and No.155/PA dated 25.03.2013 accordingly. According to the finding of Enquiry officer, the constable shehzad Rafique No. 357 was called but did not appear before the Enquiry Officer, and according to EO the constable is habitual absentee and recommended him for major punishment as Dismissed from service.

A final Show cause Notice was issued vide this office Memo:199/PA dated 17.06.2013 and Constable Said Muhammad No.27 of this District was sent a special Messenger to serve upon you. According to the report of FC Said Muhammad No.27 vide DD No.12 dated 03.07.2013 PS Nawasher District Abbottabad that you was not present in home and your father refused from receiving of Final Show cause and abused/insulted them.

Perusal of service record reveals that constable during his service had several time dismissal from service he is not likely become a good Police officer, or ameliorate his habits and out looks towards service, and he is a stigma on the face of force.

Now therefore I Shanazar Khan DPO Torghar the competent authority in exercise of power confirmed upon me under the NWFP Police Rules 1975 is hereby awarded major punishment of dismissal from service from the date of his absence.

Order announced.

Shanazar Khan
District Police officer,
Torghar

OB No. 178 /Dated 17 - 7 /2013.

Attested
Shanazar Khan
2 DND TG
18/1/16

(8)

= Annex

ORDER

This is an order on the representation of Ex-Constable *Shahzad Rafique No.1158* of Abbottabad District against the order of major punishment i.e. dismissal from service awarded to him by the District Police Officer Abbottabad vide his OB No.326 dated 03-10-2011.

Facts leading to punishment are that while posted at Police Line Abbottabad intruded into a Guest House namely "TRAVELERS-IN" at Jinnahabad on 15-11-2007 at 2000 hrs. There he harassed & humiliated one Nisar Ahmed s/o Mirdad Khan employee of the said Guest House victimized him & by beating him through kicks & fists taken him to PS Mirpur. He put him behind the bars being innocent. Through this Tyranny & brutality he was demanded to pay Rs 20,000/- for his release. This amount with one mobile set was extracted from him & then was left free. Subsequently another Employee of said Guest House namely Salim was also intimidated for dire consequences & compelled to pay Rs. 10,000/-. By doing so he misused his uniform. His this act was defamatory for the image of Police Force.

The said FC was proceeded against departmentally. EO in his findings proved the allegation followed by his dismissal from service vide OB No.230 dated 2-7-08. He preferred appeal before Service Tribunal. As per verdict of Service Tribunal, the appellant was reinstated in service with the simultaneous order to keep him under suspension. Denovo enquiry was ordered to be conducted & the lawful lacunas & descriptions, as highlighted in the judgment of Service Tribunal were asked to be re-probed. Denovo enquiry was ordered & E.O comprising upon Mr. Abdul Aziz Afridi, DSP Cantt & Inspector Abdul Hamid, Reserve Inspector, Police Lines was constituted with the direction to conduct denovo enquiry fairly, properly, impartially, judiciously & strictly in accordance with the direction of Service Tribunal.

In the denovo enquiry, the allegations as elaborated above have been proved. Therefore awarded major punishment of dismissal from service w.e.f 22-05-2007 as had been incorporated in the previous dismissal order.

After receiving the mercy petition and the comments of DPO Abbottabad, he was heard in person in the OR held on 09-08-2012 in which his enquiry file was marked to ADIG for comments. ADIG after thorough probe has reported that from the perusal of record of the defaulter Constable it reveals that he was recruited on 02-04-2002 and during his service he has been thrice dismissed from service, but it can not be ignored that he is a trained soldier as well as a son of a retired Police Officer. Hence he has requested for a lenient view. He was again heard in person in the OR held on 24-10-2012.

In view of above I convert the order passed by the DPO Abbottabad vide his OB No.326 dated 03-10-2011 i.e. ~~from major punishment of "Dismissal from Service"~~ into minor punishment of "forfeiture of two years approved service" and reinstate him in service from the date of dismissal. The period he remained out of service is treated as leave without pay and he is posted to Torghar District.

No.

8058 - 59
/PA Dated Abbottabad the 25/11/2012

[Signature]
Deputy Inspector General of Police
Hazara Region Abbottabad
/2012.

1. Copy of above is forwarded to the DPO Abbottabad for information and necessary action with reference to his Memo: No.19279 dated 08-12-2011. The Service Roll and Fauji Missal File of the appellant are returned herewith.
2. The District Police Officer Torghar for information and necessary action please.

Encl: (as above)

[Signature]
Deputy Inspector General of Police
Hazara Region Abbottabad
(C.O Khurram Hussain)

بکھنور جناب ڈپٹی انسپکٹر جنرل پولیس، ہزارہ ریجن ایبٹ آباد

Annex



Assessed

[Handwritten signature]

Zulfiqar Ahmed
Advocate Abbottabad
Office # 11 Ayub Khan Tarni
Lawyers Plaza
Distt. Courts, Abbottabad

اپیل بنا راضی حکم مصدرہ بحوالہ چھٹی آرڈر انگریزی OB. No 178 مورخہ 17/7/2013 جاریہ
از دفتر جناب DPO صاحب تورغر۔ جس کے ذریعے جناب DPO موصوف نے سائل اپیلانٹ
شہزاد رفیق سابق کنشٹیبل پولیس نمبر 357 کو ملازمت پولیس سے ڈسمس فرما دیا۔

استدعا ہے کہ قانون اور انصاف کے تقاضوں کو مدنظر رکھتے ہوئے۔ اور سائل کو انصاف دلاتے ہوئے۔
سائل کے خلاف جاری کیا گیا حکم مصدرہ بحوالہ چھٹی آرڈر انگریزی OB. No 178 مورخہ
17/7/2013 کا عدم۔ منسوخ فرمایا جا کر سائل کو بتاریخ ڈسمس سے ملازمت پر بحال فرمایا جا کر
انصاف فرمایا جاوے۔

جناب عالی! موجبات اپیل ذیل ہیں۔

- (۱) یہ کہ سائل مورخہ 02/04/2002 کو ضلع ایبٹ آباد میں بطور کنشٹیبل پولیس بھرتی ہوا۔ اور سائل اس دوران اپنی ڈیوٹی بڑے
احسن انداز سے سرانجام دیتا رہا۔ اور بحوالہ آرڈر نمبر 8058-59/PA مورخہ 25/10/2012 جاریہ از دفتر DIG صاحب
ہزارہ ریجن ایبٹ آباد ضلع تورغر تبدیل ہوا۔
- (۲) یہ کہ بعد میں سائل نے مورخہ 12/02/2013 کو ضلع تورغر حاضری کی۔ اور اسی دوران والدہ صاحبہ کی طبیعت شوگر سے اچانک
خراب ہونے کی وجہ سے مورخہ 2013: 12/0 کو 12 یوم کی رخصت لی۔ کیونکہ سائل ہی والدہ اور والد کا سہارا تھا۔ اور گھر
میں اور کوئی مرد ایسا نہ تھا جو والدہ کی بیماری میں دیکھ بھال کر سکتا۔ میری بارہ یوم کی رخصت منظور ہو کر مورخہ 24/02/2013 کو
حاضری تھی۔ مگر والدہ صاحبہ کی طبیعت روز بروز خراب ہونے کی وجہ سے اور موت کی کشمکش میں ہونے کی وجہ سے سائل مورخہ
24/02/2013 کو حاضر نہ ہو سکا۔ اور اسی بیماری کی وجہ سے والدہ صاحبہ 25/07/2013 کو وفات پا گئیں۔
- (۳) یہ کہ والدہ کی وفات کے بعد سائل والدہ کی تدفین و دعائیں مصروف رہا۔ اور گھر میں بوڑھے والد جو کہ شوگر اور دل کے مریض ہیں۔ کا بھی
اللہ اور میرے بعد کوئی سہارا نہ تھا۔ اور میری تبدیلی ایک دور دراز ضلع میں تھی۔ جو اس سلسلے میں والد صاحب جو خود پولیس کے ریٹائرڈ سب
انسپکٹر ہیں۔ نے ایک درخواست بمراد منسوخی تبادلہ بنام DIG صاحب ہزارہ ریجن کو بھیجی۔ تاکہ میرا تبادلہ ضلع تورغر سے ضلع ایبٹ آباد ہو
جائے۔ مگر اس درخواست پر بھی کوئی عمل نہ کیا گیا۔ (درخواست لف قابل ملاحظہ ہے)۔
- (۴) یہ کہ اسی دوران مورخہ 17/7/2013 کو سائل کو بحوالہ آرڈر انگریزی OB.No 178 ملازمت سے ڈسمس کر دیا گیا۔ جس میں
DPO صاحب نے یہ ذکر کیا۔ کہ سائل کو ضلع ایبٹ آباد سے DIG صاحب ہزارہ ریجن نے شکایتی تبدیل ضلع تورغر کیا ہے۔ جو کہ غلط
ہے۔ کیونکہ DIG صاحب ہزارہ ریجن نے ایسا کوئی ذکر اپنے آرڈر میں نہ کیا ہے۔
- (۵) یہ کہ آرڈر متذکرہ میں شوکاژ نوٹس اور فائل شوکاژ نوٹس کا ذکر کیا گیا۔ جو کہ سراسر غلط ہے۔ سائل کو نہ تو شوکاژ نوٹس ملانے ہی کوئی فائل شوکاژ

نوٹس ملا۔ اگر ملتا تو سائل اپنے دفاع میں ان نوٹس کا جواب دیتا اور نہ ہی سائل کو مقامی پولیس تھانہ نواں شہر سے کوئی اطلاع دی گئی۔ اور نہ ہی سائل کو کوئی موقع جرح گواہان دیا گیا۔

(۸) یہ کہ آرڈر متذکرہ میں مد نمبر 27 مورخہ 03/07/2013 ضلع تورغر کے فائل شوکا ز نوٹس کا بھی ذکر ہے۔ جو کہ غلط ہے۔ اس بارے میں سائل کو کوئی اطلاع نہ دی گئی۔ حقیقت یہ ہے۔ کہ 03/07/2013 کو سائل بمعہ والدین کے اسلام آباد گیا ہوا تھا۔ جو کہ والدہ صاحبہ کے علاج کے سلسلے میں تھا۔ اور گھر میں کوئی بھی نہ تھا۔ گھر مقفل تھا۔ کانسٹیبل مذکور نے کسی محلہ دار کا بھی بیان نہ لیا۔ کہ گھر کیوں مقفل ہے۔ اور گھر والے کدھر کس کام سے گئے ہیں اس سلسلے میں کوئی نقل فائل شوکا ز نوٹس حوالہ مقامی پولیس نہ کی۔ جو مقامی پولیس اس کی تعمیل کرواتی۔ مقامی پولیس دو تین روز بعد سائل کو گھر آ کر نوٹس کی تعمیل کروا دیتی۔

(۹) یہ کہ اب علم ہوا آرڈر متذکرہ میں محکمانہ انکوآری آفس نمبر 135/PA Dated 06/03/2013 اور محکمانہ انکوآری نمبر 155/PA مورخہ 25/03/2013 DSP صاحب ہیڈ کوارٹر کومارک ہوئی۔ جس کی بھی کوئی اطلاع سائل کو نہ دی گئی۔

(۱۰) یہ کہ سائل نے محکمانہ اپیل بھنور DIG صاحب ہزارہ ریجن ایبٹ آباد کرنے کیلئے متعدد درخواستیں برائے حصول مصدقہ نقول آرڈر ڈسمبل۔ فائل شوکا ز نوٹس۔ فائنڈنگ رپورٹ و جملہ انکوآری کی مکمل نقول مختلف تاریخوں میں DPO صاحب تورغر کو بھیجی گئی۔ (نقولات درخواستیں لف قابل ملاحظہ ہیں)۔ مگر ان درخواستوں کا کوئی جواب سائل کو نہ دیا گیا۔ اور نہ ہی نقول فراہم کی گئی۔ جو آخر کار سائل نے مورخہ 17/11/2015 کو ight to Information Act کے تحت درخواست بذریعہ جسٹری DPO صاحب تورغر کو بھیجوائی۔ جو مورخہ 19/01/2016 کو DPO صاحب تورغر نے آرڈر نمبر 178 OB.No مورخہ 17/07/2013 جس کو DPO صاحب تورغر نے مورخہ 18/01/2016 کو Attest کیا۔ اور سائل کے گھر کے پتہ پر بحوالہ رجسٹری نمبر 741 بھیجوا یا۔ جو بذریعہ ڈاک خانہ نواں شہر دو ماہ بعد مورخہ 23/01/2016 سائل کو موصول ہوا۔ (نقل لفاظی لف قابل ملاحظہ ہے)۔

(۱۲) یہ کہ سائل ایک ریٹائرڈ پولیس افسر کا بیٹا ہے۔ سائل کے والد نے عرصہ 42 سال محکمہ پولیس میں ایمانداری اور دیانتداری سے نوکری کر کے 60 سال کی عمر میں ریٹائرمنٹ لی۔ سائل کے والد کی عمر اب 77 سال سے اوپر ہے۔ جو کہ شوگر اور دل کے مریض ہیں۔ اور سائل اپنے بوڑھے اور کمزور والد کا واحد سہارا ہے۔ اور ایک بڑی فیملی کا واحد کفیل ہے۔

استدعا ہے کہ سائل کی اپیل پر غور فرمایا جا کر جانبداری پر مبنی اور غیر منصفانہ حکم سزائے ڈسمبل منسوخ و کالعدم فرمایا جا کر سائل شہر ادریتق سابق کانسٹیبل نمبر 357 کو تاریخ ڈسمبل سے ملازمت پر بحال فرمایا جا کر انصاف دلایا جاوے۔

المقوم:- 04/02/2016

شہزاد رفیق سابق کانسٹیبل نمبر 357 ضلع تورغر ولد محمد رفیق ریٹائرڈ سب انسپکٹر پولیس ساکنہ محلہ صبا کالونی مکان نمبر 902/28، ڈاک خانہ نواں شہر تحصیل ضلع ایبٹ آباد۔

رابطہ موبائل نمبر:- 0315-1514861

0335-5034549



Attended

Zulfiqar Ahmed
Advocate Abbottabad
Office # 11 Ayub Khan Tower
Lawyers Plaza
Distt. Courts, Abbottabad

کوتھام سے حاصل کی گئی ہے
درخواست گزار کے لئے
محل قابل واددہ تسلیم

حکم نامہ

سائل کو محمد سید کے لئے
محل قابل واددہ تسلیم
کیا جائے گا

اسد علی کے لئے
محل قابل واددہ تسلیم
کیا جائے گا

الغرض

درخواست گزار کے لئے

تسلیم نمبر 357

محل قابل واددہ تسلیم

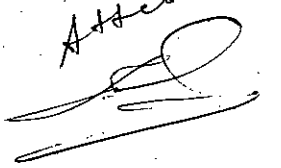
28/7

محل قابل واددہ تسلیم

محل قابل واددہ تسلیم

کے ساتھ ساتھ اس کا صلہ و بدلہ

درج ذیل اسٹیمپ حاصل بقول ماعدات دیا گیا جس کو
کی عمل مائل

Attested


Zulfiqar Ahmed
Advocate Abbottabad
Office # 11 Ayub Khan Tanol
Lawyers Plaza
Distt. Courts, Abbottabad

حصہ بیان
سائل کو محمد سے لے کر طرفہ دیا گیا ہے جو سائل کو
پر اسکا لہرے اپیل و ملراں کا ذیل ماعدات کی ضرور
ہے

اس لیے ماعدات کی کارٹی بقول عطا
فرمان حافی

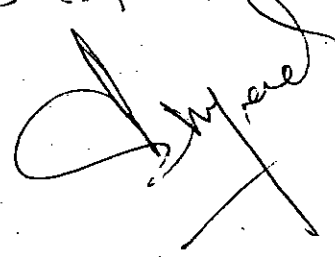
المقوم 8 10
2013

الاعداد

تفصیل ماعدات

EX کاسٹل 3535 ادرتس و لہ ماعداتس
سلسلہ صفائی نمبر 902 صا کارٹی
287
توان کہ صلہ و حاصل اسٹ آمار
موندیل 9 5034549 - 0335

(1) آرڈر د
(2) شو پاس و سٹیٹس بقول
(3) Finding بقول
(4) order finding بقول
محمد انولری بقول



حرفہ حساب DPO صاحب صلح ٹوڈیٹر

درخواست گزار حصول لٹول فائینڈنگ ڈیپارٹمنٹس انٹوٹری

Attended

[Signature]

حساب عالی

درخواست گزار صلح ٹوڈیٹر سے

سائل کو محمد سے بطور فائینڈنگ ہے جو سائل نے حصول لٹول ڈیپارٹمنٹس انٹوٹری سے درخواست کی ہے۔ درخواست کی تاریخ 2014ء ہے۔

اصول لٹول ہے۔ حساب عالی جو ان آج کل کی طرف سے لٹول ملا

اسد علی حاجی ہے نہ سائل کو ڈیپارٹمنٹس انٹوٹری کی لٹول فراہم کی ہے نہ لٹول عطا کی ہے

لٹول فراہم

راہ آدہ و عینس ہدیر
کا عدالت ڈیپارٹمنٹ
انٹوٹری

EX لٹول 357
وہ عدالت میں عدالت 902
2870
صاحب لٹول کو ان صلح ٹوڈیٹر

[Signature]

(9)

(2)

(14)

خدمت صاحبہ صاحبہ صاحبہ کو در

درخواست غلطی سے حاصل ہونے والی رقمیں واپس لوٹانے

صاف

سائل نے آٹھ ماہ کی خدمت میں پہلے سے درخواست
غلطی سے حاصل ہونے والی رقمیں واپس لوٹانے
خلاف اپیل کرنی ہے۔ چھوٹی رقمیں جو کوئی رقم
آدرخواست آئی ہے اس سے پہلے سے واپس لوٹانے
تعمیر فرمائی جاوے

الم رقم 20 3/4
العارض

مخبرہ صاحبہ صاحبہ صاحبہ
مخبرہ صاحبہ صاحبہ صاحبہ
نمبر 281C
مبلغ حاصل ہونے والا رقم

محمد علی

Attested

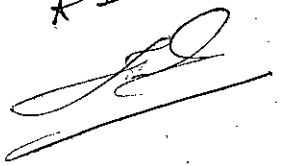
[Signature]

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حزبہ عامہ DPO صاحبہ مبلغ و دیگر

درخواست نمبر ادھصول قاعدت ڈیپارٹمنٹس انلورڈ

لوگوں کے لئے



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Dist. Courts, Abbottabad

حاصل اعلیٰ کرادش ہے کہ میں سرحدوں کے سلسلہ میں

کراچی آبادیوں میں ہے آجنا کو پہل ادنیٰ درخواست نمبر ادھصول قاعدت ادھصول

ڈیپارٹمنٹس انلورڈ جو آئیے آئیے ڈیپارٹمنٹس
حلاف ایبل کرنی ہے درکار ہے

اسد علی کے لئے لڑنے میں مانا ہوا ہے دلیل کھری
بندہ ادھصول کھوئی جانے میں وہ ایس کا
ایبل دار درسیوں میں باقی ہوں

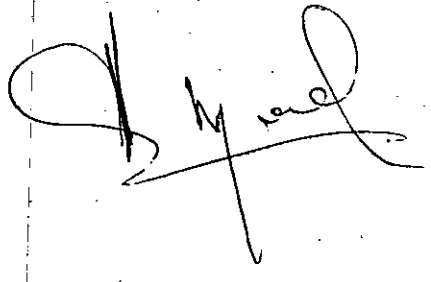
الموعوم 2/3
2015

EX کاسٹل سٹریٹ اردو پٹی 77

صلا محمد رضی سندھ صاحبان لوڈ

صفا نمبر 902 مبلغ تحصیل
287c

اسٹیمار



موبائل نمبر 50345494 0335

گفتاور خیاب DPo ماہیہ صلح توریہ

درخواست مراد قبول لکھل کائنات ڈیپارٹمنٹ انکوری

RIGHT TO INFORMATION (رہت) ACT-2015

خیابان درخواست ذیل عرض ہے

سائل کو حکم سے سرفراز کیا گیا روا جو سائل کو ایک ایسے
مذہب ان پٹیشن ذیل کائنات کی ضرورت ہے۔ اسے جاننا چاہیے
ذیل کائنات کا صدر لکھل بھارتیہ وزارت۔

Attended

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Distt. Courts Abbottabad

ضلع برکشاہ
انڈر ووم - 23 اکتوبر سال 2015

EX کیشن سٹیز اور رفیقہ

(23-10-15)

نمبر 354 صلح توریہ وید فورٹ
کے مکاتبات 28-2-2015ء ماہ کالونی
نورنگ سٹیز بھول و صلح ایسے آباد
ڈاکھانہ بھول سٹیز

والیہ نوٹس نمبر 0335-5034549

لکھل کائنات =

- ① آڈیٹ ڈسٹریکشن درجہ لکھل
- ② فائنڈنگ کائنات لکھل
- ③ FINDING - رپورٹ کائنات
- ④ جملہ انکوری کے مکاتبات لکھل

CONSTABLE
EX - NO

354

کھوئے ہوئے DPo ماف سے تعلق

درخواست گزار قبول اور ڈسمن ڈیٹا کی سب سے پہلی کاپی ماف کے لئے قبول

ماف ماف سائل کو حکم سے ڈسمن کیا جائے۔

جو سائل کام کالج نہ ہو، کچھ سے مراد ڈھونڈنے کی کوشش کرنا ہے۔
 کراچی میں پانچ گنا ہو گیا ہے جو اس وقت کے حالات کو دیکھ کر
 وہاں کے لوگوں کی کوششوں سے فائدہ مند رہے گا۔
 دریا بہا ہے۔ جو اب اس وقت کے حالات کو دیکھ کر
 فائدہ مند ہے۔ اس سے مراد یہ ہے کہ جو اس وقت کے حالات کو دیکھ کر
 ماف ماف سائل سے ڈسمن اور ماف ماف سائل سے ڈسمن کر رہے ہیں۔
 کیا جانے۔ قبول شدہ ہے کہ یہ سب سے پہلی کاپی ہے۔
 اس سے قبل آجیٹ ہو گیا درخواست گزار کی سب سے پہلی کاپی ہے۔

المرفوعہ - 26

2015

Ex. کاپی سب سے پہلی کاپی ماف کے لئے قبول
 دیہی کالج کے لئے ماف کے لئے قبول ہے۔ 28-2-90
 ڈیٹا کی سب سے پہلی کاپی ماف کے لئے قبول ہے۔
 راجہ کو سائل ماف کے لئے قبول ہے۔ 50-345-49-50-335

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgment is due.

Rs. Ps.

(18)

گڈٹ قیاب ڈسٹریکٹ

received a registered* addressed to _____ Date Stamp _____

*Write here "letter", "postcard", "packet" or "parcel" Initials of Receiving Officer with the word "insured" before it when necessary.

Insured for Rs. (in figures) 23 15 (in words) _____

Weight 15 Kilo Grams

Insurance fee Rs. _____ Ps. _____ (in words) _____

Name and address of sender _____

درخواست - ریما

مقدار 23 15

Attested
Jal

للم حصول
 گڈٹ قیاب کی تفصیل درخواست مورخہ 15 23
 میں درج ہے (آڈر نمبر 15) شوکاس نوٹس
 (3) ٹائٹل شوکاس نوٹس (4) FINDING ریوی
 آرڈر ہم ریویزی کی نقل درخواست
 درخواست آج سے کو مورخہ 15 23
 کی جانب سے موبائل K.P.K

RIGHT TO INFORMATION
 ORDINANCE 2013 NO VII OF 2013

دس یوم کے اندر جواب ضروری تھا، جو عرصہ
 (2) یوم گزر چکا ہے۔ کوئی جواب ضروری نہیں ہے۔
 درخواست کے بعد ریویزی کی جانب سے
 نہیں فرمائی جا رہی۔

ہذا پالیسٹن نے ایک درخواست مورخہ 15 23 کو
 حکام نوٹو کا پیسہ لیا ہے۔ ہمارے حصول
 گڈٹ قیاب کی تفصیل (آڈر نمبر 15) شوکاس نوٹس
 (3) ٹائٹل شوکاس نوٹس (4) FINDING ریوی
 آرڈر ہم ریویزی کی نقل درخواست
 درخواست آج سے کو مورخہ 15 23
 کی جانب سے موبائل K.P.K

K.P.K - RIGHT TO INFORMATION
 ORDINANCE 2013

جواب دینا تھا۔ میری فرمائشیں فرمائے جا رہی ہیں۔
 شکریہ ادا کرتا ہوں۔

الموتم 11 17

شہزاد رفیق

EX / کانسٹیبل نمبر 354
 صدر دفتر قیاب سیکشن مکان نمبر 28-902
 خیال آباد کالونی نواں شہر ڈیپو
 نواں شہر تحصیل و ضلع ایبٹ آباد
 ڈیپو

Attested



مجلس شورای اسلامی

354

کتابخانه شماره 28-902 موزه کابونی

وزارت فرهنگ و معارف

دفتر کتابخانه

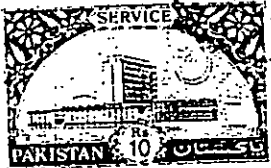
شماره 5034549-0335

Handwritten text and a rectangular stamp with the number 48, possibly indicating a library or collection number.

19

From DPO To Khan

[Handwritten signature]



[Handwritten signature]

1/20/18

23

[Handwritten signature]

Zulfikar Ahmed
100, Gate 10, Dabatabad
Karachi 7, Pakistan

کورٹ فیس

وکالت نامہ

بعدالت حساب سسر ویل سینٹر خواہ کھیت ایسٹ

عنوان: سیزا درمیں بنام دیگ سزاورہ راجن

منجانب: ایسٹ

نوعیت مقدمہ: سسر ویل ایبل
باعث تحریر آنکھمقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب وہی کل کاروائی متعلقہ آل مقام
ذوالفقار احمد اللہ وکیٹ ٹائیٹ کورٹ

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پرداختہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا احد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست براد استجارت ناشر بصیغہ مفلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سندر ہے۔

المرقوم: 13/6/2016

بمقام:

ذوالفقار احمد

العبید

Advocate

Addl. High Court

Zulfiqar Ahmad
Advocate Abbottabad
Office # 11 Ayub Khan Lane
Lawyers Plaza
Distt. Courts, Abbottabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUTUNAL PESHAWAR (CAMP COURT ABBOTTABAD)

Service Appeal No. 647/2016.

Shahzad Rafiq..... (Appellant)

Versus

**Deputy Inspector General of Police Hazara Region Abbottabad and
others..... (Respondents)**

Subject: - COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

- a) That the appeal has not been based on facts.
- b) That the appeal is not maintainable in its present form.
- c) That the appeal is bad for non-joinder of necessary and mis-joinder of unnecessary parties.
- d) That the appellant is estopped by his own conduct to file the appeal.
- e) That the appeal is barred by law and limitation.
- f) That the appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1. Para #1 pertains to service record of appellant.
2. Para#2 is incorrect as stated in fact the appellant was transferred from District Abbottabad to District Torghar vide office order # 16034-37/E dated 25.10.2012 by the office of Deputy Inspector General of Police, Hazara. The appellant departed from Abbottabad vide Diary #4 dated 15.11.2012 and gave his arrival report on 12.02.2013 after laps of 03 month and seven days. Therefore, he absented himself from 24.02.2013 up till now. After an enquiry the appellant was dismissed from service vide DPO Torghar office OB #178 dated 17.07.2013, further stated that the matter of illness of appellant's mother, he has not attached or produce any correct proof.
3. Detailed reply has been given in above Para#2.
4. Incorrect as stated, hence devoid. The appellant willfully and deliberately absented from duty without prior approval. It is pertinent to mention here that the previous conduct of appellant towards service was quite noticeable i.e as per record that during his posting in Abbottabad District on 18.04.2005, was suspended due to

misbehave with women and after enquiry dismissed from the service on 19.02.2005 vide DPO office Abbottabad O.B No. 524 dated 19.12.2005. The service Tribunal reinstated the appellant in the service on 20.07.2006. (Copies enclosed). During his posting at Abbottabad District due to his absence on 22.05.2007 the applicant was dismissed from service vide DPO Office Abbottabad O.B No. 271 dated 25.06.2007 the appellant was re-instated in the service by the Dy: Inspector General of Hazara Region Abbottabad vide his office order No. 1013-E dated 30.08.2007. (copies enclosed)

5. Incorrect, the appellant was transferred from Abbottabad to District Torghar on complaint basis as his previous record reveals that he is highly indisciplined and punished departmentally on several times.

6. Para#6 pertain to record.

7. Incorrect, that appellant has not applied for the attested copies of order passed on his departmental appeal.

8. Incorrect, the appellant has been given attested copies on his written application. After the Dismissal on 17.07.2013 the applicant file his appeal before the DIG Hazara region Abbottabad in the year 2014 after laps of 01 year. The DIG Hazara region rejected his appeal being time barred the applicant has bad reputation in Police department and also involve in corruption, illegal activities as well as indiscipline behavior during his service due to which he was dismissed from the service. Several criminal cases were also registered vide FIR No. 838 u/s 3/4 EHO FIR No. 839 u/s 3/4 EHO PS Mirpur Abbottabad FIR No. 868/2007 u/s 342/34 PPC PS Mirpur. The applicant is not suitable and his reinstatement is bad for Police department. Hence, appeal is liable to be dismissed. The orders passed by the authority are liable to maintained and instant appeal is liable to be dismissed.

The impugned order is liable to be maintained on the following grounds.

Grounds:-

a. Incorrect. The punishment awarded to the appellant is in accordance with law and Service rules. hence, appeal is not maintable in the eye of law and liable to be dismissed without any further proceedings.

b. Incorrect. The punishment awarded fully commensurate with gravity of allegation.

c. Incorrect. Hence, devoid. Action was taken in accordance of law after fulfillment all the codal formalities.

d. Incorrect. Final show cause notice was properly issued and served but he did not appear before the competent authority. Hence, the order issued by the authority against appellant is in accordance with the law.

e. Incorrect. The appeal is badly time barred.

- f. The respondents seeks further points to be agitated at the time of final hearings.
- g. That the appellant has suppressed the national facts from this. Honorable Tribunal hence not entitled for any relief and the instant appeal is liable to be dismissed.
- h. That the appellant is habitual offender hence appeal is liable to be dismissed on this score alone.
- i. That the appellant has treated in accordance with law after fulfilling all the codal formalities by the competent authority. Hence, appeal is liable to be dismissed.

Prayer:-

It is therefore, humbly prayed that the appeal in hand may graciously be dismissed with costs.


Deputy Inspector General of Police,
Hazara Region Abbottabad.

(Respondent No.1)


District Police Office, Torghar.

 (Respondent No.2).

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
PESHAWAR (CAMP COURT ABBOTTABAD)

Service Appeal No. 647/2016

Shahzad Rafiq.....PETITIONERS


VERSUS

- 1. Deputy Inspector General of Police, Hazara Region Abbottabad.**
- 2. District Police Officer Torghar.**

...RESPONDENTS

Affidavit.

We respondent do solemnly affirm and declare that the contents of the comments are true and correct to our knowledge and belief and that nothing has been concealed from this honorable tribunal.


Dy. Inspector General of Police,
Hazara Region, Abbottabad.
(Respondent No. 1)


District Police Officer Torghar.
(Respondent No. 2)

Before the Honourable Chairman, RPK Service
Tribunal Peshawar Camp Cant Abbottabad
Appeal No. 687/2016

Shoza Rafique vs DIG Hazara Range etc

Subject: - Attendance in Title Appeal.

Respectfully Sheweth:

1. That the titled case is pending adjudication before this Honourable Tribunal and fixed for hearing with production of Record.
2. That applicant (Representative of Deptt) was on way to this Tribunal today for attendance and production of Record. But due to rush and Road Jam by Traffic at "Bettle" could not reach when case was called, and decided. He was a bit late -
3. That this was not a deliberate act rather due to circumstances beyond applicant's control. His late arrival in Tribunal needs to be condoned.

It is, therefore, requested that this Honourable Tribunal may graciously be ^{pleased to} allow his attendance alongwith Record.

Dated 17-4-18

Order on Record
17-4-18

Applicant
(Wajid Ali)
ASI (Legal) Police
Torghar

The case has already been
decided & argued. The department
is a liberty to award all legal
remedies.

W. G. S.

17-9-18

21/10
BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA
PESHAWAR

Shahzad Rafiq S/O Mohammad Rafiq R/O Mohallah Saba Colony Nawanshehr,
Tehsil & District Abbottabad Ex-Constable # 357 Police Department Abbottabad.

... **APPELLANT**

VERSUS

1. Deputy Inspector General of Police, Hazara Region Abbottabad.
2. District Police Officer Torghar.

...**RESPONDENTS**

SERVICE APPEAL

REJOINDER ON BEHALF OF APPELLANT TO THE
COMMENTS FILED BY RESPONDENTS

Respectfully Sheweth;-

That the rejoinder on behalf of petitioner is as under;-

REPLY TO PRELIMINARY OBJECTIONS;-

- a. Para # a is incorrect. The appeal is based on facts and law.
- b. Para # b is incorrect. The appeal in its present form is maintainable under the law.
- c. Para # c is incorrect. All necessity parties have been made respondents in the service appeal.
- d. Para # d is incorrect. The appellant has got cause of action and is not estopped by any of the conduct to file the appeal.
- e. Para # e is incorrect. Service appeal submitted by appellant is not time barred by law and limitation.
- f. Para # f is incorrect. The appellant has come to this Honourable Tribunal with clean hands.

FACTUAL OBJECTIONS.

1. Para 1 needs no comments as the Para 1 of the service appeal has been accepted and admitted as correct.
2. Para 2 is incorrect and against facts. Although the transfer of the appellant was passed on 25/10/2012 but an application was moved to DIG respondent # 1 on the grounds that the mother of the appellant seriously ill due to sugar disease and the appellant being the only caring member of her oftenly take her mother to the hospitals including Islamabad and Rawalpindi for her proper checkup. That the mother of the appellant expired on 25/07/2013 due to the sugar disease. The respondent # 1 did not take in to notice the application moved in this behalf for cancellation of transfer order passed which was sufficient explanation the absent periods mentioned in this Para. However no inquiry in the notice of the appellant as mentioned in the comments filed by respondents and an exparte order was passed which is not justified under the law and needs to be reversed. (Copy of death certificate of the mother of appellant is attached).
3. Para 3, as sufficient explanation was given in the preceding Para but the respondents illegally and incorrectly have passed the impugned unjustified order.
4. Para 4 is incorrect, no willful or deliberate absence from duty was made. The previous conduct discussed in the Para is illegal as the appellant had been reinstated in service by the Honourable Service Tribunal as well as by the Worthy DIG , Hazara Region Abbottabad therefore declaring and mentioning such orders in the Para attracts Contempt of Court proceedings as well as the appellant has been already

- reinstated by the competent forums. By mentioning such irrelevant facts the respondents have attempted to gain the sympathies on this Honourable Tribunal and the save their skins from the illegal orders passed.
5. Para 5 is incorrect. In fact the appellant was reinstated in service by the then DIG on 25/10/2012 in an earlier matter and had transferred to District Torgar without mentioning about any complaint as has been alleged in this Para by respondents therefore the stance of the respondents about transfer on complaint amounts to misguiding this Honourable Forum.
 6. Para # 6, the appeal has been lodged on 4/2/2016 but the reply was not received, therefore the appeal is quite proper and on time.
 7. Para # 7 is denied in the light of all facts in the above Paras. The applications for attested copies of order on appeal (if any) are already attached with the main appeal.
 8. Para # 8 is also incorrect and against the record available on file. The impugned order of DPO, Torgar was received to registered letter on 23/01/2016. (Copy of registered post has already been attached with the main appeal, therefore the appeal of the appellant was unjustifiably entertained as has been mentioned in this Para. The departmental appeal as well as the appeal to the Tribunal are well in time after receipt of impugned order so far registering of criminal cases mentioned in this Para are concerned, these were registered against narcotics peddlers and the appellant was the member of raiding party. These should have been counted as encouraging factor but astonishing to mention here that why these references are made in this Para. So far a case u/s 342/34 PPC of P.S Mirpur is concerned the appellant has already been Honorably acquitted from the court of ASJ I, Abbottabad on 24/4/2010 being

divide of any evidence as has been mentioned in the judgment in the trial court where prosecution case was found full doubts. (Copies of both the FIRs as well as the judgment of the trial court are attached).

GROUND:-

- A. This Para is incorrect. the punishment awarded is against the facts and law and the appeal is liable to be accepted having been made on cogent reasons with sufficient explanation and proof.
- B. This Para is denied. The punishment awarded is illegal, unjustified and based on incorrect facts and law.
- C. This Para is incorrect. No coddle formalities were observed by passing impugned orders, seems to have been made on mala fide basis.
- D. This Para is incorrect. No show cause notice of any kind has been got received therefore the question of appearance before the competent authority was immaterial. The order passed was against law and facts.
- E. This Para is incorrect. The appeal lodged is in time.
- F. This Para needs no comments.
- G. This Para is incorrect. Nothing has been suppressed from this Honourable Tribunal. Therefore appeal of the appellant is liable to be accepted.

H. This Para is incorrect.

I. This Para is incorrect. The appeal is liable to be accepted.

PRAYER:-

It is, therefore, most respectfully prayed that this Honourable Tribunal may very graciously accept the appeal and the impugned orders set aside and the appellant may be ordered to be reinstated in service from the date of dismissal with all back benefits permissible to him under the law in order to meet the ends of justice.

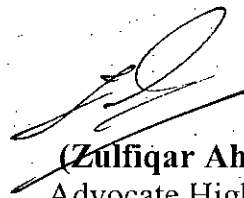


...APPELLANT

19-9-2017

Through;

Dated: 19-9- /2017



(Zulfiqar Ahmed)
Advocate High Court,
Abbottabad

BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Shahzad Rafiq

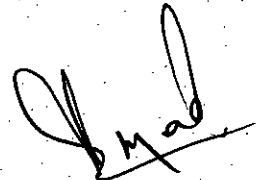
VERSUS

the Govt. of KPK & Others.

REJOINDER ON BEHALF OF APPELLANT

AFFIDAVIT

I, Shahzad Rafiq S/O Mohamamd Rafiq R/O Saba Colony Tehsil & District Abbottabad, do hereby affirm and declare on oath that the contents of foregoing rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.



DEPONENT

19-9-2017

Identified by:-



(Zulfikar Ahmed)
Advocate High Court,
Abbottabad

19-9-2017



P06235321

حکومت خیبر پختونخوا پاکستان

THE GOVT OF KHYBER PAKHTUNKHWA PAKISTAN

وفات سرٹیفکیٹ

DEATH CERTIFICATE

CRMS No: D131046-17-0039

FORM No: P06235321

NATURE OF DEATH : NORMAL

درخواست دہندہ کا نام: محمد رفیق

درخواست دہندہ کا شناختی کارڈ نمبر: 1310108284953

پتہ: مکان نمبر 902/28 TC، محلہ نیا نواں شہر، شہر ایبٹ آباد، تحصیل: ایبٹ آباد، ضلع: ایبٹ آباد

مت علالت	وجہ موت	تاریخ دفن	جائے وفات	تاریخ پیدائش	جنس	مذہب	شوہر کا نام	مستوفی کا نام
20 سال	طبعی	25-7-2013	گھر نواں شہر	1-1-1948	عورت	اسلام	محمد رفیق	اکھتر بی بی
							1310108284953	1310108065030

APPLICANT NAME: MOHAMMAD RAFIQUE

APPLICANT CNIC: 1310108284953 RELATION WITH DECEASED: Wife

ADDRESS: HOUSE #: TC 902/28, MOHALLAH NIA NAWAN SHEHR,

CITY: ABBOTTABAD, TEHSIL: ABBOTTABAD, DISTRICT: ABBOTTABAD

DECEASED NAME/ CNIC	HUSBAND NAME/ CNIC	DATE OF BIRTH	SEX	RELIGION	PLACE/DATE OF DEATH	DATE OF BURIAL	REASON OF DEATH	SICKNESS PERIOD
AKHTAR BIBI	MOHAMMAD RAFIQUE		FE- MALE	ISLAM	HOME NAWAN SHEHR		NATURAL	20 Y
1310108065030	1310108284953	1-1-1948			25-7-2013	25-7-2013		

 BLOOD RELATION PERSON CAUSING DISPOSAL OF BODY

NAME: MOHAMMAD RAFIQUE

CNIC: 131018284953

GRAVEYARD NAME: OPPOSITE POLICE STATION

تدفین کنندہ

محمد رفیق

نام: محمد رفیق

131018284953

شناختی کارڈ نمبر:

قبرستان کا نام: بلخاں پولیس اسٹیشن

تاریخ اجراء:

29-3-2017

ISSUE DATE: 30-3-2017

ADDITIONAL INFORMATION:

اضافی معلومات:

دستخط:

SECRETARY
Neighborhood Council
Nawansheer Urban Abbottabad

From DRO To Khan



Revised
23/1/2018

[Handwritten scribbles and signatures]

Zunaid Anwar
2018

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۲ مجموعہ ضابطہ نو جداری

ضلع	پیر پور
تاریخ	۱۵ ¹¹ / ₀₇ وقت ۱6:2۵ بجے
تاریخ و وقت رپورٹ	15 ¹¹ / ₀₇ وقت ۱6:4۵ بجے
نام و سکونت اطلاع دہندہ مستفیض	سیلم بیگ ASHU تھانہ پیر پور
مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔	41۵ برآمدگی (2 بوتل شراب)
جائے وقوعہ فاصلہ تھانہ سے اور سمت	جاویر مشہور دروڑ مناج
نام و سکونت ملزم	شکریت ولد محمد اسلم
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو	آمد حساب ضرب لٹا مع 3/4 کلو شہراز تھانہ ختم کر لائیں سہ ڈگری بائیں حال الامور پر پول ان حیات
تھانہ سے روانگی کی تاریخ و وقت	پیر ہمارا تھانہ قائم ہوا

ابتدائی اطلاع اپنے درج کرو۔ لائن سے تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور اور ملزم
ملزم بائیں 3/4 کلو شہراز تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم
لوری سے اطلاع ہوئی کہ شکریت ولد محمد اسلم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور
رہ جو ان گیسٹ ہاؤس میں جو شراب کا دھندہ کرنا ہے کہ اندھاریوں کے ساتھ ہوا
کو ہاتھ میں لے کر گیا آتے دیکھا جیکو نے اس کے تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم
دل شہراز تھانہ پیر پور پر 2 بوتل شراب (بٹراٹ اینڈ مائیکرو میٹر) از ہوا
VODKA بوتل فرقیہ پولیس جسب منباغ کیمیکال پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم
سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم
باقی دونوں بوتل شراب تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم
کو تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم
میں لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم
ملزم ملزم لیم 39۹ میں قد ۵'۵" سفید رنگ کے لباس میں تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم
سیلم بیگ ASHU تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم
ملزم کو تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم
جائے وقوعہ پیر پور تھانہ سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم

تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم تھانہ پیر پور سے لے کر تھانہ پیر پور کے لیے۔ افسر مقتوم

۱۵-۱۱-۰۷

میرا پروردگار ہے جس نے مجھے صاف سے صاف بتا دیا ہے۔
 اگرچہ میں نے اس سے پہلے کبھی نہیں سنا تھا۔ ہم صرف اس کا ذکر کرتے تھے۔
 اور اب اس کی حقیقت اس کے ذریعے ہمیں دکھائی دے رہی ہے۔ اس کے آگے
 کوئی دوسرا نہیں ہے۔ یہ اس کے لیے ہے۔ اس کے لیے ہے۔ اس کے لیے ہے۔
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حضرت علیؓ - نعتی و طہاری (اصول)

24.11
 24.11

دستخط

عہدہ

اطلاع سے یہ اطلاع دہندہ کا دستخط ہوگا یا اس کی مہر یا نشان لگایا جائے گا۔ اور اس پر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حرف الف بیاں سرخ و سیاہ
 ایک فرمایا۔ اس کے ترتیب دینے کے لیے ہر ایک کا نام لکھنا ہے۔



**IN THE COURT OF FARHATULLAH KHAN,
ADDITIONAL SESSIONS JUDGE-I,
ABBOTTABAD.**

Criminal Case No. 45/VII of 2008
Date of institution: 22/11/2008.
Date of decision: 24/04/2010.

STATE

VERSUS

- 1). Shahzad Rafique son of Muhammad Rafique, resident of Jirnah Colony, Abbottabad.
- 2). Baber son of Younas, Caste Awan, resident of Chona Kari, Tehsil & District Abbottabad.
(Accused)

**CASE FIR NO. 848 DATED 24-11-2007 U/S 161/342/389/506
PPC OF PS MIRPUR, ABBOTTABAD.**

JUDGMENT:

Allegations leveled as per above- mentioned FIR against the accused facing trial are that complainant has moved an application to ASP Cantt Abbottabad on 24/11/2007 EXPA wherein it is contended that complainant is a service boy in Travels inn guesthouse Abbottabad. On 15/11/2007 at about 8.00 PM, he the complainant was present in the said guesthouse. In the meanwhile, constable Shehzad of PS Mirpur came there and took the complainant to the other building of the guesthouse and informed that as per information of Shoukat, certain quantity of liquor is lying in room No. 313. That constable Shehzad took out liquor from the said room and also took the complainant to PS and asked the complainant to pay Rs.50,000/- for his release. That complainant paid Rs.20,000 and one mobile phone set to constable Shahzad through his brother in law namely Nabeel and got himself released. On the third day, the constable Shahzad took Saleem and also locked the guesthouse. That constable Shahzad also demanded Rs.10000/- from Saleem which he paid to Shahzad through another service

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RECEIVED IN THE COURT
Examined
District & Sessions Judge
Abbottabad

boy namely Zaheer outside the PS. That constable Shahzad used to bring girls to the said guesthouse for the last one year, but he kept mum due to police uniform. That constable Shahzad is threatening the complainant not to disclose to anyone otherwise he (complainant) will be arrayed as accused in narcotics case of 1 KG. Resultantly the above-mentioned FIR was registered against the accused initially under section 161/342/506 PPC but later on section 389 PPC was added.

After completion of investigation the case was submitted in the court of learned Sessions Judge, Abbottabad which was entrusted to this court for disposal.

Accused were summoned who appeared before this court. Copies under section 265-C Cr.P.C were given to the accused and thereafter charged was framed against them to which they pleaded not guilty and claimed trial.

The prosecution in order to prove its case produced following witnesses who have deposed as under:-

Naseer Khan ASI appeared and examined who stated that during the days of occurrence I was posted as Moharrir IHC PS Mirpur. On receipt of application addressed to ASP Circular Cantt by the complainant EXPA. The said application was marked to SHO for legal necessary action. The SHO PS Mirpur directed me to register case against the accused u/s 506/161/389 PPC. On receipt of application EXPA I chalked out FIR EXPA/1. The contents of EXPA/1 are correct according to EXPA. Today I have seen EXPA/1, which is in my handwriting and correctly bears my signature.

During course of cross examination the said PW stated that it is correct that in EXPA accused Baber was not charged by the complainant.

Witnessed to be true copy
Examined by
District & Session Judge
Abbottabad

P-191

Nisar Ahmed appeared and examined who stated that during the days of occurrence I was working in Travels in guesthouse as a waiter. That on 15/11/2007 at about 08.00 PM I was present in the guest house meanwhile constable Shahzad of PS Mirpur came there and took me to the upper story of the guest house where Shoukat lives in the room No. 313 and further told by Shoukat that some quantity of liquor was lying there. Constable Shahzad took out the said liquor from the said room and took me to the Ps. I was made to sit and the accused demanded Rs.50,000/- under the promise that he would be left free on the condition that he will not disclose this fact to any one. Nabeel who is my brother in law brought Rs.20,000/- and a mobile set, handed over to Shahzad and get me free. On the third day one Saleem was lifted took out to the guest house and the said quest house was closed and demanded Rs.10,000/- from him as well. Another waiter aheer who was standing out side the police staton handed over the said amount to accused Shahzad. Accused Shahzad used to visit our guesthouse for the last one year and laso used to bring girls with him. We were only afraid of the uniform of police officials and for that reason we kept mum. Now the accused is threatening us that if you told to any one about this fact, one KG chars will be planted against you. I submitted an application to the ASP Cantt for legal action against the accused. My application is already exhibited as EXPA. I also submitted an application to Incharge investigation PS for the addition of section 389 PPC which is EXPW2/1. I charge the accused for the offence.

During course of cross-examination the said PW stated that I am educated up to eight classes. It is correct that during the days of occurrence I was working as waiter in Semaz guesthouse. The owner of the guesthouse was Asif Javed. The application EXPA was drafted through the petition

EXAMINED
District & Session Judge
Abbottabad

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P-(20)

writer. The application was not read over to me by the petitioner writer but I have myself gone through the same. It is correct that at the bottom of application certain entries were subsequently added. It is correct that beside our self so many other workers are also attached with the said guesthouse. It is correct that the place of occurrence is situated in a very thickly populated area and there are so many shops and hotels also adjacent to the said guesthouse and also in front of the said guesthouse. It is correct that I could not identify the accused at the relevant time and their names were subsequently introduced to me by some body else whose name is not known to me. (On the same day cross was reserve but later on not appeared before the court for remaining cross).

درج تیار اید
جو اس سے کیا گیا ہے وہ
بوتے دہریہ ملزمان کا شناخت
نہ کر سکا۔ نہ مجھے نام یاد
سکا نہ اور نہ اس کا نام
شناخت ہو گیا ہے

Shoukat Zaman Khan SHO appeared and examined who stated that during the days of occurrence I was posted as SHO of PS Mirpur. On completion of investigation by the IO, he prepared complete Challan, which I forwarded the complete Challan against the accused, which is EXPW3/1

The said PW was not cross-examined.

* — Khurshid Khan SI who appeared and was examined who stated that during the days of occurrence I was posted as ASI in PS Mirpur, Abbottabad. After the receipt of FIR, I started investigation; I arrested both of the accused and issued arrest of card. I produced the accused before the Ilaqa Magistrate for police custody through my application EXPW4/1 as the offences were bailable at that time the accused were released on bail. I recorded the statement of the PWs. On 21/02/08 complainant submitted an application which is already EXPW2/1, to the Incharge of Investigation of PS Mirpur and same was entrusted to me. I got legal opinion from DPP Abbottabad, and section 389 PPC was added in the FIR. I submitted an application to Area

Examination
District & Session Judge
Abbottabad

P - (21)

Magistrate for recording statement of Muhammad Saleem on 26/11/2007, under section 164 Cr.P.C of PW Muhammad Saleem, which is EXPW4/2. I also got departmental inquiry regarding both the accused vide my application EXPW4/3 and placed with the file. After that I was transferred to PS Donga Galli.

During course of cross examination the said PW stated that I am fully conversant with Police Rules. It is correct that when a cognizable offence is committed, the police official being IO is duty bound under Police Rules to make/prepare the site plan. It is correct by preparation of site plan it means that infact accident had taken place and that very point. As there was no evidence in this case therefore, I did not deem it proper to prepare the site plan. It is correct that during the investigation no recovery whatsoever was effected from the accused facing trial. Volunteered that as police custody was not granted therefore, I failed to recover the amount mentioned in the FIR. It is correct that accused remained with me for 24 hours under legal arrest, but in that very period nothing was recovered from them. Non of the accused made any confession before the competent forum. It is not in my notice that Travel In Guest is a bad name in the society in Abbottabad and every kind of offence is committed in that house. It is incorrect to suggest that I am in league with the owner of the guesthouse therefore; I am not giving the correct reputation of that guesthouse. The witness is shown an FIR No. 838 dated 15/11/2007 under section 4 EHO of PS Mirpur. It is correct that recovery of two bottles of liquor was effected from one Shoukat who was an employee of Traveler guest house. It is correct that I had recorded the statement of Muhammad Saleem an employee of Travels in Guest House on 26/11/2007. It is correct that according to said witness (Muhammad Saleem) an amount of Rs.10000/- was

EXAMINER'S
District & Session Judge
Abbottabad

P-221

given to Shahzad (accused) through Zaheer waiter of said guesthouse. It is correct that I have not recorded the statement of the Zaheer Waiter under section 161 Cr.P.C. It is correct that when I reached in the guesthouse in room No. 313 I was told by said Zaheer Waiter that no amount was given in my presence to any one. It is correct that travelers guesthouse is within the criminal jurisdiction of PS Mirpur. It is incorrect to suggest that since we use that guest house on certain occasion free of cost therefore, I am deliberately suppressing the material facts from this Honourable Court and trying to save the skin of the owners of the guest house and the workers/management of the said guesthouse, (the entire suggestion is wrong). It is incorrect to suggest that I had dishonestly investigated the present case.

Muhammad Saleem appeared and was examined who stated that, during the days of occurrence I was employee of Travel in Guest House, Jinnah Abad. On 17/11/2007 one constable Shahzad came to me in the guesthouse and asked me that you are involved in a liquor case and took me to the PS. He made me sit there and demanded Rs.10000/- for my release. He has also taken my mobile set. After the payment of Rs.10000/- to Shahzad constable which was brought by Zaheer who is my who waiter in the travel in guesthouse. Constable Shahzad directed me not to disclose the same to any body otherwise you will be booked in a Narcotic case and also extended threat of dire consequences. We submitted an application before District & Sessions Judge, Abbottabad, which was marked to the ASP, Cantt, Abbottabad. On next day we as well as accused facing trial were summoned by ASP, Abbottabad. ASP Cantt after hearing us directed Constable Shahzad to return back the money to us. On the same day accused facing trial approached to one Nabeel brother in law of Nasar

EXAMINED
District & Sessions Judge
Abbottabad

and asked him to direct us for withdrawal of application submitted by us to ASP, Cantt. Nasar once again approach to ASP, Cantt, that his brother in law was detained by the accused facing trial. ASP Cantt sent two police officials for taking the accused to his office. I charged both the accused for the commission of the offence.

→ During course of cross-examination the said PW stated that I am illiterate, I cannot read nor I write. It is correct that I was asked by the police to sign a paper, which I did. I do not know the contents of the said application. In my presence nothing was given to any one. It is correct that I do not know one Zaheer and he has been introduced by the police and I know nothing regarding the instant case.

Raja Bukhtiar SHO appeared and was examined who stated that during the days of occurrence I was posted as ASI of PS Mirpur. After the investigation in this case I submitted complete Challan against the accused. Moreover I also drafted the last Zimni dated 11/05/2008. Complete Challan is already EXPW3/1.

During course of cross examination the PW stated that it is correct that I had gone through the order of the learned Judge of the High Court in respect of decision of bail petition of the petitioners (now accused facing trial). During the course of arguments it was held by Lordship Mr. Justice Said Maroof Khan that section 389 PPC is not applicable in this case according to its circumstances. Even then I imposed the same section of law. It is incorrect to suggest that I had not considered the views of the Honourable Judge of the Peshawar High court and has wrongly imposed section of law i.e 389 PPC.

Nabeel Akhter appeared and was examined who stated that, I am driver by profession and used to run a carry van from Mandian Chowk on

مذکورہ بالا حوالہ
 دیکھ کر بتایا گیا ہے کہ
 ان طرح کے حوالے سے
 کتنا پریشانی ہو سکتی ہے
 اور اس کے نتیجے میں
 عدالتوں کو کتنا پریشانی
 پہنچا سکتی ہے۔ اس لیے
 اس کے خلاف کارروائی
 کی جائے۔

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Examination
 District & Session Judge
 Abbanahar

D-123

P-(24)

15/11/2007 my brother in law who was waiter in Travel in guesthouse was confined in the PS by constable Shahzad. I went to Ps Mirpur for inquiry where Nasar told me that constable demanding the money Rs.50,000/- for his release, I also met constable Shahzad who repeated his demand. I give constable Shahzad Rs.20,000/- and a mobile phone then he released the Nasar on the condition you should not disclose this thing to any one. On 23/11/2007 when I was on a way to my village when I reach to CMH constable Shahzad and Baber call me and inquired that where I am. They followed me and they reached CMH and met me. They threatened me that you should ask Nasar to withdraw the application, which he has submitted against them and they are ready to return Rs.30,000/- and two mobiles to Nasar otherwise you will book him in a narcotic case. They took me to the office of ASP Cantt and I parked my carry near Police Station Cantt. I went to the office of ASP, Cantt, and made the complaint to the ASP, Cantt that they (accused) have dispossess me from carry van. ASP Cantt sent police officials to bring both the accused before him. I charged the accused for the commission of the offence.

During course of cross-examination the said PW stated I am aged of 22 years. I do not remember when my statement was recorded by the police u/s 161 Cr.P.C It is correct that after 10/15 days of the occurrence the local police recorded my statement. I have stated in my statement that the number of carry van was 4483 Karachi. (Confronted not so recorded). It is correct that in token of proof, as I was driver, I had handed over my driving license to the IO, who took the same into possession. Complainant is brother in law of mine. I was examined by the police in this case only one. I am matriculate. I see a copy of the statement today in the court shown by the defence counsel which was recorded

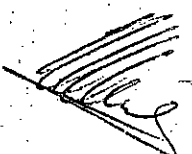
EXAMINER'S COPY

Examiner
District & Sessions Judge
Karachi

19

P-25

by the IO by me under section 161 Cr.P.C this statement carries my signature alongwith my ID Card #. It is correct that I see another statement dated 26/11/2007 today in the court which is my statement and was recorded by the IO u/s 161 Cr.P.C this statement also carries my signature alongwith my ID Card #. The witness clarifies that my statement recorded on 26/11/2007 is correct while another statement mentioned above is incorrect. It is correct that my statement was recorded by the IO and I was asked to sign the same and I did so. I had signed the said statement at the instance of IO and on his demand I showed my ID Card who wrote number of my ID card beneath of my signature. I had stated before the ASP that accused demanding money Rs.20,000/- and two mobiles sets. (Confronted not so recorded). I did not complaint anywhere regarding the amount and mobiles demanded by the accused before any authority except my statomenet recorded under section 161 Cr.P.C. I had given mobile number to the IO through which I was threatened by the accused not to disclose the matter to any one. I had also stated this fact in my statement u/s 161 Cr.P.C (confronted not so recorded). I did not give the detailed of currency notes which I handed over to the police. I have no relationship with the accused. It is incorrect to suggest that I am giving false evidence due to close relationship with the complainant.



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Examiner
District & Sessions Judge

SPP for the state contended that both the accused are charged in the FIR. That the accused have misused the police uniform and their official status. That PWs have corroborated each other on material points. That prosecution has proved the case against the accused beyond any doubt.

P-26)

Defence counsel contended that neither any recovery was effected from the accused nor the PWs have proved that any amount was paid to accused as a bribe for the release of complainant and one Saleem. That I.O has not prepared any site plan. Similarly I.O has admitted that there is no evidence against the accused. That accused are innocent and falsely implicated in the instant case. That prosecution case is full of doubts and benefit of doubt should be extended to the accused.

Perusal of file reveals that complainant has not charged the accused Baber in his application dated 24/11/2007 EXPA and this fact is also admitted by Naseer Khan ASI PW-1. Further more, complainant as PW-2 has contended in his examination in chief that he (PW-2) was working as waiter (service boy) in Travels inn guesthouse but has admitted in his cross-examination that he (PW-2) was working as waiter in Semaz guesthouse during the days of occurrence. This contradiction creates doubt in prosecution case as to whether complainant was working as waiter in Semaz guesthouse or Travels inn guesthouse. He has also admitted that he (PW-2) could not identified the accused at the relevant time and their names were subsequently introduced to him (PW-2) by some one else whose name is not known to him (PW-2). This creates further doubts in prosecution case as to who had disclosed the names of the accused to complainant when the accused were not known to complainant at the relevant time.

16

32

P-(27)

Perusal of file further reveals that Muhammad Saleem PW-5 has contended in his examination in chief that he (PW-5) was taken by accused Shehzad to PS where he paid Rs.10000/- and one mobile phone set to accused Shehzad but has admitted in his cross examination that he (PW-5) was asked by police to sign a paper which he did. He has also admitted that nothing was given to anyone in his presence and that he (PW-5) does not know one Zaheer and that he (PW-5) know nothing regarding the instant case. This creates further doubts in prosecution case as to whether Muhammad Saleem (PW-5) was taken to PS by accused Shehzad and as to whether accused Shehzad had demanded Rs.10000/- from him (PW-5) and as to whether PW-5 has paid any amount to accused Shehzad.

Perusal of file further reveals that Khurshid Khan investigating officer as PW-4 has admitted in his cross-examination that the accused remained with him (PW-4) for 24 hours under legal arrest but no recovery was effected from the accused. He has also admitted that there was no evidence in the case, therefore, site plan was not prepared. He has also admitted that when he (PW-4) reached the guest house, waiter Zaheer told him (PW-4) that no amount was given to any one in his (Zaheer) presence. This negates the contention of complainant and creates further doubts in prosecution case as to whether Zaheer waiter has paid any amount to any of the accused.

From what has been discussed above, it is concluded that complainant has admitted in his cross-examination that he could not



Witnessed to be true
 Examiner
 District & Sessions Judge
 Abbottabad

P-28

identified the accused at the relevant time and the names of accused were introduced to him subsequently by some one else. That Muhammad Saleem PW-5 has also admitted in his cross-examination that he (PW-5) was asked by police to sign a paper which he did and that he (PW-5) knows nothing regarding the instant case. That the prosecution case is full of doubt and the benefit of doubt is extended to the accused facing trial and resultantly accused facing trial are hereby acquitted of the charges leveled against them. They and their sureties are discharged from the liabilities of the bail bonds. Case property be disposed of as per law after the expiry of period of appeal/revision. File be consigned to the record room after necessary completion.

ANNOUNCED.
24-04-2010


(FARHATULLAH KHAN)

Additional Sessions Judge-I,
Abbottabad.

CERTIFICATE:

Attention to be true copy

Examiner
District & Sessions Judge
Abbottabad

It is certified that this judgment consists of 12 pages; I have checked, rectified and signed each page of judgment, wherever it was necessary.


(FARHATULLAH KHAN)

Additional Sessions Judge-I,
Abbottabad.

No. 7455 Date 27-4-10
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