

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1030/2016

Date of Institution ... 23.09.2016

Date of Decision ... 13.07.2018

Javed Khan, Constable no. 2554, Landi Akhun Ahmad, District Peshawar.
 ... (Appellant)

VERSUS

1. The PPO, Khyber Pakhtunkhwa, Peshawar and 3 others.
 ... (Respondents)

 Mr. Muhammad Asif Yousafzai,
 Advocate --- For appellant.

Mr. Sardar Shoukat Hayat,
 Additional Advocate General --- For respondents.

MR. AHMAD HASSAN, --- MEMBER(Executive)
 MR. MUHAMMAD HAMID MUGHAL --- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the
 parties heard and record perused.

FACTS

2. The brief facts are that the appellant was serving as Head Constable in Police Department. Disciplinary proceedings were initiated and upon conclusion major penalty of reversion from the rank of H.C to the rank of Constable was imposed on him vide impugned order dated 16.05.2016. He preferred departmental appeal on 30.06.2016, which was rejected on 31.08.2016, hence the instant service appeal on 23.09.2016.

ARGUMENTS

3. Learned counsel for the appellant argued that on the basis of FIR dated 07.10.2015 disciplinary proceedings were initiated against him and upon finalization major penalty of reversion from the rank of Head Constable to Constable was imposed vide impugned order dated 16.05.2016. He further argued that though name of S.I Iftikhar was mentioned in the charge sheet but after winding up the enquiry he was exonerated of the charges leveled against him. On the other hand the appellant was held responsible and awarded major penalty referred to above. FIR no. 1505 dated 27.10.2015 was not signed by the appellant, so he cannot be held responsible for the fault of others. Various formalities prescribed in the rules were not observed during the enquiry proceedings. He further contended that Mr. Siraj Khan, he was also departmentally proceeded and punishment of reduction from the rank of Head Constable to constable was also imposed on him vide impugned order dated 16.05.2016, but on acceptance of his departmental appeal the punishment was modified/converted into stoppage of two annual increments with cumulative effect vide impugned order dated 19.08.2016. As such action of the respondents is discriminatory and goes against the spirit of Article-25 of the Constitution.

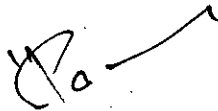
4. On the other hand learned Additional Advocate General argued all codal formalities were observed before passing the impugned order. He was treated according to law and rules, hence, there is no illegality in the said order. The appeal is not maintainable and be dismissed

CONCLUSION

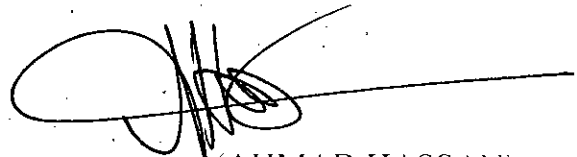
5. Vide impugned order dated 16.05.2016 major punishment of reduction from the rank of Head Constable to Constable was awarded to Mr. Siraj Khan and the

appellant. That upon acceptance departmental appeal of Mr. Siraj Khan the penalty was modified/converted into stoppage of two annual increments with cumulative effect vide order dated 19.08.2016. Due to these developments, it is a very genuine case of discrimination, as enshrined in Article-25 of the constitution. On this score alone the appeal in hand requires indulgence of this Tribunal. He deserves similar treatment. There is hardly any need to touch other aspects of the appeal.

6. As a sequel to the above discussion, the appeal is accepted and the impugned order dated 16.05.2016 is modified/converted into two annual increments for two years with cumulative effect. In the circumstances, parties are left to bear their own costs. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
MEMBER




(AHMAD HASSAN)
MEMBER

ANNOUNCED
13.07.2018

04.04.2018

Counsel for the appellant and Addl; AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 15.05.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

15.05.2018

Appellant in person and Mr. Muhammad Jan, Learned Deputy District Attorney alongwith Muhammad Raziq H.C for the respondents present. Learned counsel for the appellant is not available. Representative is directed to furnish complete record on the next date i.e 13.07.2018. Adjourned. To come up for record and arguments before D.B on the date fixed.


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member


Order

13.07.2018

Counsel for the appellant present. Mr. Aziz Shah, H.C alongwith Mr. Sardar Shoukat Hayat, Addl; AG for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is accepted and the impugned order dated 16.05.2016 is modified/converted into two annual increments for two years with cumulative effect. In the circumstances, parties are left to bear their own costs. File be consigned to the record room.


Announced:
13.07.2018



(MUHAMAMD HAMID MUGHAL)
Member


(AHMAD HASSAN)
Member

17.10.2017


Clerk of the counsel for appellant present. Mr. Kabir Ullah Khattak, Additional Advocate General for the respondents present. Clerk of the counsel for appellant seeks adjournment due to non availability of his senior counsel. Adjourn. To come up for arguments on 28.12.2017 before D.B.


(Ahmad Hassan)
Member (E)


(Muhammad Hamid Mughal)
Member (J)

28.12.2017

Clerk to counsel for the appellant and Addl: AG for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 20.02.2018 before D.B.


Member


20.02.2018

Due to non availability of D.B. Adjourned. To come up on 30.03.2018 before D.B.


(Gul Zohor Khan)
Member

30.03.2018


Learned counsel for the appellant and learned Addl; AG for respondents present. Learned AAG seeks adjournment. Adjourned. To come up for arguments on 04.04.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

27.03.2017


Counsel for the appellant and Mr. Aziz Ullah HC alongwith Addl. AG for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 16.05.2017 before D.B.


(AHMAD HASSAN)
MEMBER

16.05.2017


Junior to counsel for the appellant and Mr. Kabir Ullah Khattak, Assistant AG for the respondent present. Junior to counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 05.09.2017 before D.B.



(Muhammad Amin Khan Kundi)
Member


(Gul Zeb Khan)
Member

05.09.2017

Counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Counsel for the ^{appellant} seeks adjournment. Adjourned. To come up for arguments on 17.10.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member

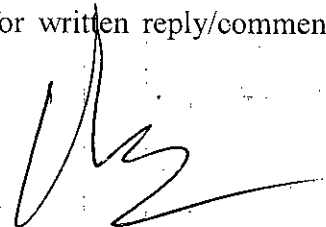

(Muhammad Hamid Mughal)
Member

06.12.2016

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal, the appellant has impugned order dated 16.05.2016 vide which the appellant was awarded penalty of reversion to lower rank. Against the impugned order appellant filed departmental appeal which was turned down by the appellate authority vide order dated 02.09.2016, hence the instant service appeal.

Appellant Deposited
Security & Process Fee

Since the matter required further consideration of this Tribunal therefore, the same is admitted for regular hearing, subject to deposit of security and process fee within 10 days. Notices be issued to the respondents for written reply/comments for 16.01.2017 before S.B.



Member

16.01.2017

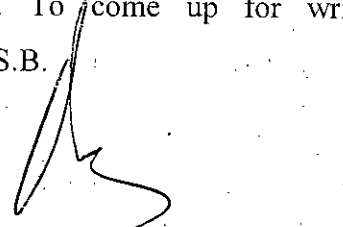
Counsel for appellant and Mr. Aziz Shah, Reader alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Written reply by respondents not submitted. Learned Additional AG requested for adjournment on behalf of respondents. Adjourned. To come up for written reply/comments on 20.02.2017 before S.B.



(ASHFAQUE TAJ)
MEMBER

20.02.2017


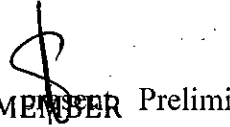

Counsel for the appellant and Mr. Aziz Shah HC alongwith Addl: AG for respondents present. Written reply not submitted. Requested for further adjournment. To come up for written reply/comments on ~~27.3.17~~ before S.B.



(MUHAMMAD AAMIR NAZIR)
MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 1030/2016


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	06/10/2016	<p>The appeal of Mr. Javed Khan resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	26.10.2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26-10-16</u></p> <p>Clerk to counsel for the appellant MEMBER Preliminary arguments could not be heard due to general strike of the bar. To come up for preliminary hearing on 9.11.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>
	09.11.2016	<p>Counsel for the appellant present. Counsel for the appellant requested for adjournment. To come up for preliminary hearing on 06.12.2016 before S.B.</p> <p style="text-align: right;"> MEMBER</p>

The appeal of MR. Javed Khan Constable No. 2554 Landi Akhoon Ahmad Distt. Peshawar received today i.e. on 23.09.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Copies of charge sheet and statement of allegations mentioned in the memo of appeal in respect of appellant are not attached with the appeal which may be placed on it.
- 3- Copy of order dated 31/8/2016 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.

No. 1565 /S.T.

Dt. 23/9 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

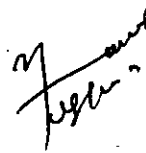
Mr. Muhammad Asif Yousafzai Adv. Pesh.

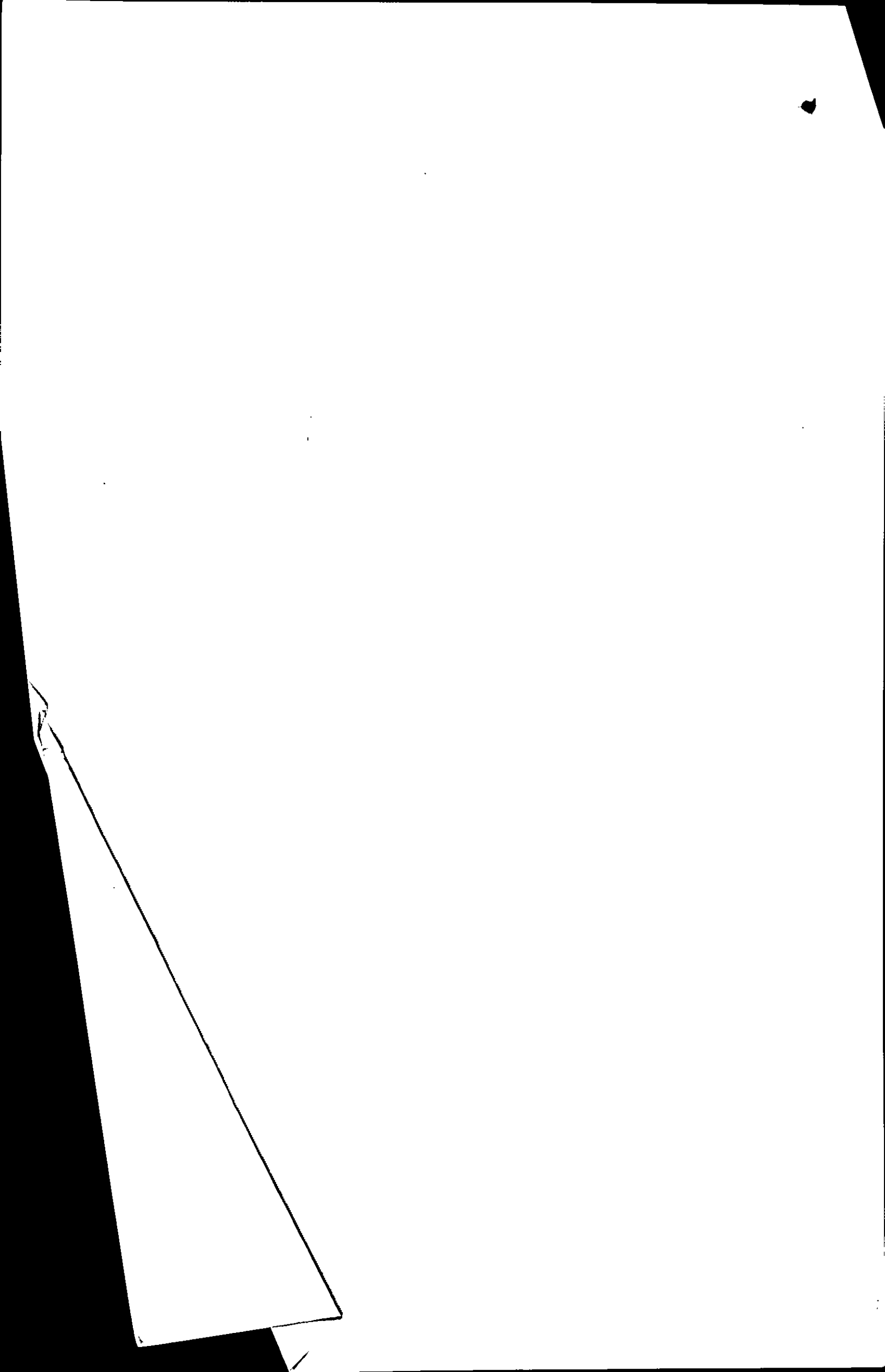
Sir,

The statement of allegation and charge sheet were already attached. The plea of appellant is that ~~that~~ his name was not mentioned in statement of allegation and charge sheet and punishment was awarded.

The copy of order dated 31-8-2016 was already attached.

The file was re-submitted





BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1030 /2016

Javed Khan

V/S

Police Deptt:

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	1-4
2.	Copy of FIR	A	5
3.	Copy of statement of allegation	-B-	6
4.	copy of charge sheet	-C-	7
5.	Copy of impugned order dated: 16.5.2016	-D-	8-9
6.	Copy of departmental appeal	-E-	10-11
7.	Copy of rejection order	-F-	12
8.	Copy of siraj khan order	-G-	13
9.	Vakalat Nama	-----	14

APPELLANT

THROUGH:



(M.ASIF YOUSAFZAI)


Syed Noman Ali Bukhari
(ADVOCATES, PESHAWAR)

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1030 /2016

Khyber Pakhtukhwa
Service Tribunal

Diary No. 1014

Dated 23-9-2016

Javed Khan, Constable No.2554
Landi Akhoun Ahmad
Disrict peshawar .

.....(Appellant)

VERSUS

1. The Provincial Police Officer, KPK Peshawar.
2. Capital City Police officer Peshawar.
3. Senior Superintendent of Police (operation) Peshawar.
4. District Police Officer Peshawar.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 16.5.2016 WHEREBY THE PENALTY OF REVERSION FROM THE RANK OF HC TO THE RANK OF CONSTABLE WAS IMPOSED UPON THE APPELLANT AND AGAINST THE ORDER DATED 31.8.2106 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

Filed to-day

Registrar

23/9/16

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 16.05.2016 AND 31.8.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE RESTORED TO HIS ORIGNAL RANK OF HC WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPOPRIATE THAT MAY ALSO BE AWARADED IN FAVOUR OF APPELLANT.

Re-submitted to -day
and filed.

Registrar

6/10/16.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was appointed as Constable in the police Department and the appellant performed his duties with great Zeal and Zest and due to best performance appellant was promoted to the rank of Head Constable and also has good service record throughout.
2. That on the basis of FIR the charge sheet and statement of allegation was served upon the SI Iftikhar and ASI Siraj Muhammad on the basis of which inquiry was conducted against these officials. **(Copy of FIR, statement of allegation, and charge sheet are attached as Annexure- A, b, & C).**
3. That during the inquiry proceeding, inquiry officer also recommended major punishment for the appellant, without associating appellant with the inquiry.
4. That on the basis that one sided inquiry, even without final show cause notice, the major penalty of "*reversion from the rank of HC to the rank of Constable*" was imposed upon the appellant vide impugned order dated 16.5.2016 under Police Rule-1975. **Copy of the impugned order is attached as Annexure-D).**
5. That the appellant preferred departmental appeal the order dated 16.5.2016 which was rejected vide order dated 31-8-2016 for no good grounds. **(Copy of Departmental appeal and rejection order are attached as annexure-E & F).**
6. That now the appellant come to this august Tribunal on the following grounds amongst others.

GROUND:

- A) That the impugned order dated 16.5.2016 and 31.8.2016 is against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.

- B) That the name of the appellant was not mentioned in the charge sheet but despite that the appellant was held responsible by the inquiry officer in his inquiry report and recommended major punishment to the appellant.
- C) That the name of actual responsible SI Iftikhar was mentioned in the charge sheet but he was exonerated by the inquiry officer and left unpunished while with malafide intention the appellant was held responsible, which means that the appellant was made scapegoat and has been punished for the fault of others.
- D) That no show cause was issued to the appellant before imposing major penalty of reversion to the lower rank and the whole action was taken on one sided inquiry which is the violation of law and rules.
- E) That the statement of witness not recorded in the presence of the appellant not opportunity provided to the appellant to cross examined the witness which is against the law and rules.
- F) That the allegation of tempering of date in FIR No.1505 dated 27.10.2015 was not true, it is also necessary to mention here that there is no difference of time in FIR No.1505 dated 27.10.2015 and in Chakedgi. Time was same in both.
- G) That the FIR no.1505 dated 27.10.2015 is not signed by the appellant, which means that the appellant was not responsible for fault if any.
- H) That it is also the responsibility of prosecution to scrutinize the case before the case to put in court. Therefore the appellant should not be penalized alone for fault if any.
- I) That the Siraj khan NO. 4149 is also actual person which name was mentioned in the charge sheet. But on the departmental appeal of the Siraj khan the major penalty was converted in to minor penalty of stoppage of 2 year increments, which is discriminatory nature of the department towards the appellant. **(Copy of order of siraj khan is attached as annexure-G).**


4

- J) That the penalty order of the appellant is the violation of FR-29 as in the penalty order it was not mention the period of reversion to the rank of constable to be effective.
- K) That the appellant was condemned unheard and has not been treated according to law and rules.
- L) That the penalty of reversion to the lower rank is very harsh and not commensurate with the guilt and the appellant is well qualified and trained and being the young police officer deserves lenient future.
- M) That the penalty of reversion to the lower rank is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law
- N) The appellant was not given final show cause notice which is necessary requirement as per relevant rules and thus the illegal order was passed.
- O) That the appellant has not been treated accordance with law, fair played justice, despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- P) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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


APPELLANT
Javed Khan

THROUGH:


(M.ASIF YOUSAFZAI)
&
Syed Noman Ali Bukhari
(ADVOCATES, PESHAWAR)

(6)

Signature of SI Iftikhar

Signature of SI Iftikhar

(24)

DISCIPLINARY ACTION

"B" Annex (4)

I, Abbas Majeed Khan Marwat, Senior Superintendent of Police Operations, Peshawar as competent authority, am of the opinion that SI Iftikhar and ASI Siraj Muhammad while posted at PS Hayatabad, Peshawar have rendered themselves liable to be proceeded against, as they committed the following acts/omission within the meaning of section 03 of the Police Rules 1975.

STATEMENT OF ALLEGATIONS

That time of occurrence and report in the FIR No. 1505 dated 27.10.2015 u/s 9CCNSA PS Hayatabad has been tempered whereas no time has been mentioned in the murasila. It is further alleged that no card of arrest of the accused has been prepared and report of FSL is still awaited due to which the accused has been released on bail, which clearly shows malafide on the part of Police.

By doing this, they have committed gross misconduct.

For the purpose of scrutinizing the conduct of afore said police official in the said episode with reference to the above allegations Mr. Mubin Khan SP/city is appointed as Enquiry Officer under Rule 5 (4) of Police Rules 1975.

The Enquiry Officer shall in-accordance with the provision of the Police Rules (1975), provide reasonable opportunity of hearing to the accused Official and make recommendations as to punish or other action to be taken against the accused official.

~~Signature~~
SENIOR SUPERINTENDENT OF POLICE,
(OPERATIONS), PESHAWAR

No. 421 E/PA, dated Peshawar the 08/02/2016.

Copy to the above is forwarded to the Enquiry Officer for initiating proceeding against the accused under the provision of Police Rules 1975

red
116

ATTESTED

~~Signature~~

7

DISCIPLINARY ACTION
 Department of Police
 SI Si
 Fake Signature
 of Si Iftikhar
 of Si Iftikhar

21
 20

Amma

CHARGE SHEET

Whereas I am satisfied that a Formal Enquiry as contemplated by Police Rules 1975 is necessary & expedient in the subject case against you **SI Iftikhar & ASI Siraj Muhammad** while posted at **PS Hayatabad, Peshawar**.

And whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule 3 of the aforesaid Rules.

Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules, **I, Abbas Majeed Khan Marwat, Senior Superintendent of Police, Operations**, hereby charge you **SI Iftikhar & ASI Siraj Muhammad** while posted at **PS Hayatabad, Peshawar** under Rule 5 (4) of the Police Rules 1975 on the basis of following allegations;

That time of occurrence and report in the FIR No. 1505 dated 27.10.2015 u/s 9CCNSA PS Hayatabad has been tempered whereas no time has been mentioned in the murasila. It is further alleged that no card of arrest of the accused has been prepared and report of FSL is still awaited due to which the accused has been released on bail, which clearly shows malafide on the part of Police.

I hereby direct you further under Rule 6 (I) (b) of the said Rules to put forth written defence within 7 days of the receipt of this Charge Sheet to the Enquiry Officer, as to why the action should not be taken against you and also stating at the same time whether you desire to be heard in person.

In case your reply is not received within the specific period to the Enquiry Officer, it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.

ATTESTED

**SENIOR SUPERINTENDENT OF POLICE,
 (OPERATIONS) PESHAWAR**

ORDER

8 AD
Amna

The office order is issued to dispose of the departmental enquiry initiated against SI Ifikhar & HC Siraj Muhammad on the below charges:

That time of occurrence and report in the FIR No. 1505 dated 27.10.2015 u/s 9CCNSA PS Hayatabad has been tempered whereas no time has been mentioned in the murasila. It is further alleged that no card of arrest of the accused has been prepared and report of FSI is still awaited due to which the accused has been released on bail, which clearly shows malafide on the part of Police.

Therefore, charge sheet & summary of allegations were issued to the delinquent officers/officials. Haji Imtiaz Ahmad, the then SP City, Peshawar was appointed as Enquiry Officer.

The E.O after conducting enquiry into the matter has submitted findings on 08.03.2016 and has held that SI Ifikhar may be exonerated from the charges leveled against him. The E.O recommended ASI Siraj Muhammad, FC Javed & SI Haji Rehman (IO) for major punishment while FC Taimur for minor punishment of withholding of increments for a period of two years.

As such Show Cause Notices were issued to the delinquent officers/officials. However, their written replies were not received within stipulated period. All the delinquent officers/officials were called in Orderly Room on 29.04.2016 and heard in person. They were cross examined and were provided ample opportunity to defend themselves against the charges leveled against them but none of them put forward any justification in their self-defense in fact ASI Siraj admitted his guilt.

After going through enquiry file, personal hearing of the accused officers/officials also keeping in view the recommendations of the Enquiry Officer, the undersigned being competent under PR-1975 awarded the below mentioned punishments to the delinquent officers/officials:

Sr#	Name of Officer/Official	Punishment awarded
1	S/ASI Siraj Khan	Reduction from the rank of Head Constable to Constable
2	MM HC Javed	Reversion to the rank of Constable
3	MM HC Taimur	Withholding of 02 annual increments with cumulative effect

ATTESTED

[Signature]

(9)

As far as recommendation of major punishment in respect of SI Haji Rehman (IO) is concerned, he remained IO of the case and is still performing duties in Investigation Wing. Therefore, SSP Investigation may issue Show Cause Notice to him for major penalty as recommended by Enquiry Officer. Final outcome/action taken may be communicated to this office.

my
(ABBAS MAJED KHAN MARWAT) PSP
Senior Superintendent of Police,
Operations, Peshawar

O.B.NO. 1759 / dated 16-8-2016.

No. 1146-SS /PA, dated Peshawar, the 16/05 /2016.

Copy for information and n/a to the:

1. Capital City Police Officer, Peshawar w/r to his office Dy. No. 157/OS dated 08.01.2016 for favour of information.
2. SSP Investigation, CCP, Peshawar for n/a as requested above.
3. SP City, Peshawar.
6. EC-II.
8. AS.
9. PO.
10. OASI.
11. FMC.
12. AD (IT).

Handwritten notes and signatures are present in the lower half of the page, including a large signature and the word 'ATTESTED'.
ATTESTED

To

The Capital City Police Officer,
Khyber Pakhtunkhwa, Peshawar.

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 16.05.2016, WHEREBY THE PENALTY OF REVERSION TO THE RANK OF CONSTABLE WAS IMPOSED UPON THE APPELLANT.

Respected Sir,

1. That the appellant was appointed as Constable in the year 2006 and was promoted to Head Constable in the year 2015.
2. That the charge sheet was issued to the SI Iftikhar and ASI Siraj Muhammad on the basis of which inquiry was conducted against these officials.
3. That during the inquiry proceeding, inquiry officer also recommended major punishment for the appellant.
4. That on the basis of that one sided inquiry, penalty of reversion to the rank of constable was imposed upon the appellant vide order dated 16.5.2016. (Copy of order is attached).
5. That now the appellant filed the departmental appeal on the following grounds.

GROUND:

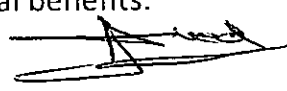
- A) That the impugned order dated 16.5.2016 is against the law, rules and material on record, therefore liable to be set aside.
- B) That the name of the appellant was not mentioned in the charge sheet, but the inquiry officer held responsible the appellant in his inquiry report and recommended major punishment to the appellant.
- C) That the name of SI iftkhar was mentioned in the charge sheet but he was exonerated by the inquiry officer, while the appellant was held responsible by the inquiry officer, which means that the appellant was made scapegoat and has been punished for the fault of the other.

ATTESTED

20

- D) That no show cause notice was issued to the appellant before imposing major punishment of reversion to lower rank and the whole action was taken on one sided inquiry which is the violation of law and rules.
- E) That the allegation of tempering of date in FIR NO 1505 dated 27.10.2015, it is necessary to mention here that there is no change of time in FIR No.1505 dated 27.10.2015 and in Chakedgi.
- F) That the FIR was prepared by appellant, however it was not signed by the appellant which means that the appellant was not responsible for fault if any.
- G) That it is the also responsibility of prosecution to scrutinize the case before the case to put in court. Therefore the appellant should not penalized alone for fault if any.
- H) That the penalty order of the appellant is the violation of FR-29 as in the penalty order it was not mentioned the period of reversion to rank of constable to be effective.
- I) That the appellant was condemned un-heard and has not been treated according to law and rules.
- J) That no statement of was recorded in the presence of the appellant nor opportunity of cross examination was provided to the appellant which is the violation of law and rules.
- K) That the penalty of reversion to rank of constable is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.

It is therefore, most humbly requested that impugned order dated 16.05.2016 may be set aside and reinstated the appellant on his original post of Head Constable with all back and consequential benefits.



Appellant
Javid Khan,
Constable No2554,
Landi Akhoon Ahmad
District Peshawar.

ATTESTED


343/PA

Date: 3/06/2016

Cell No. 0321.9013902

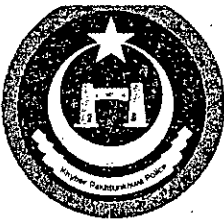
15000/-

steno = 500,
doc = 1000/-

10/10/10

10/10/10

10/10/10



**OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR**

Phone No. 091-9210989
Fax No. 091-9212597


ORDER

This order will dispose off departmental appeal of constable **Javed No. 2554**, who was awarded the major punishment of **Reversion from the rank of HC to the rank of Constable** by SSP-Ops: vide OB No. 1759 dated 16.5.2016.

2- Short facts of the case are that the appellant while posted as MM PS Hayatabad, chalked out a criminal case vide FIR No. 1505 dated 27.10.2015 u/s 9C-CNSA at PS Hayatabad in pursuance of written murasila drafted by ASI Siraj who seized 04 K.Gs Charas at Nakabandi Kharkhano Market from the possession of Lady accused namely Ulfata w/o Mukhtiar r/o Dalazak Road on 27.10.2015, but during chalking of FIR, time of occurrence was not mentioned in the murasila and tempering in report of FIR was made. This lope-hole and tempering was pin pointed by the Honorable court while granting bail to the accused.

3- At the conclusion of enquiry conducted by SP-City, held him responsible and recommended him for award of major punishment. As such the SSP-Ops: Peshawar issued him Show Cause Notice, but he failed to submit his written reply within stipulated period, therefore awarded him the above major punishment.

4- He was called in O.R. on 31.8.2016, and heard in person. Enquiry papers were thoroughly examined. He was provided full opportunity to defend himself but he failed to produce any cogent reason in his favour. There is no justification to interfere in the order passed by SSP-Ops: Peshawar. The allegations levelled against him stand proved, hence his appeal is **rejected/filed**.

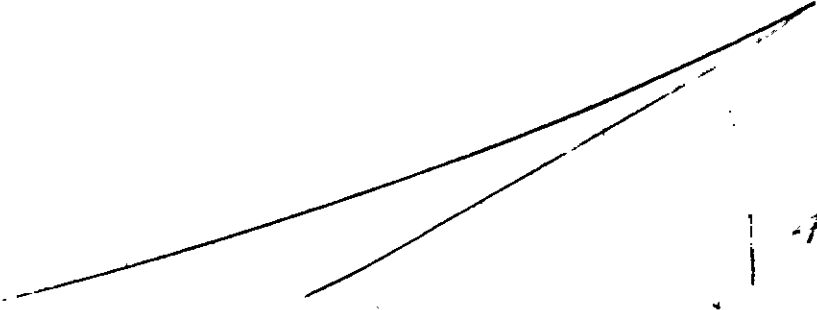

(MUHAMMAD TAHIR)
CAPITAL CITY POLICE OFFICER
PESHAWAR 31/8/16

No. 1661-66 /PA dated Peshawar the 2 /9/2016.

Copies for information and n/a to the:-

- 1/ SSP-Ops: Peshawar
- 2/ PO/OASI/ CRC along with S.Roll.
- 3/ FMC along with FM
- 4/ Official concerned.

ATTESTED

P



OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No. 091-9210989
Fax No. 091-9212597

13

ORDER

This order will dispose off departmental appeal preferred by Constable Siraj Khan No. 4149 who was awarded the punishment of Reduction from the rank of Head Constable to Constable under P/R 1975 vide OB No. 1759 dated 16.5.2016 of SSP D/o Peshawar.

2 Short facts of the case are that the appellant was arrested on 14.10.2015 and seized/recovered 4 kg charas from the possession of his accused brother, Muhammad Danish Road on 27.10.2015. He drafted murasila on the spot and set the same in motion for filing of FIR. As such a criminal case vide FIR No. 1505 dated 27.10.2015 of the CNSA was registered at PS Hayatabad. During chalking of FIR, time of occurrence was not mentioned in the murasila and tempering in FIR was made. This lapse/bole and tempering was pointed out by the appellant while granting bail to the accused.

3 Proper departmental proceedings were initiated by the appellant's superior officer, SSP City Peshawar, who was appointed as the enquiry officer. Due to negligence and tempering in FIR the accused was biased and the enquiry officer, the competent Authority issued him Final Settlement. The appellant did not submit written reply within stipulated period. As such the appellant was awarded the punishment.

4 The appellant was called in OR on 17.8.2016. The appellant's explanation was perused in detail along with his explanation. It was found that the appellant was not proved but the punishment awarded to him seems to be harsh. In view of the appellant's long service of 24 years and his good conduct, it is recommended that the appellant be granted Reversion from the rank of Head Constable to the rank of Constable with 02 (two) years increments with cumulative effect. Besides, he will be kept on probation for one year.

2909
18.8.16
D.O. Peshawar

9222
(MUHAMMAD FAHRI)
CAPITAL CITY POLICE OFFICER
PESHAWAR

No 1609-16 P/A dated Peshawar the 19.08.2016

- Copies for Information and to be to the
- 1. SSP D/o Peshawar to be placed on file with
- 2. P/O ANS/CC/11
- 3. CRC along with S Roll for making necessary entries in S Roll
- 4. FMC along with FM
- 5. Official concerned

ATTESTED

(14)

VAKALAT NAMA

NO. _____/20

IN THE COURT OF K.P.K. Service Tribunal, Peshawar

Mr. Javed Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt (Respondent)
(Defendant)

I/We Javed Khan

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

[Signature]
(CLIENT)

ACCEPTED

[Signature]
M. ASIF YOUSAFZAI
Advocate

[Signature]
S. Noman Ali Bukhari

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.1030/2016.

Javed Khan Constable No.2554 Police Line Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Senior Superintendent of Police, Operation, Peshawar.....Respondents.

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

Respectfully shewth:-

PRELIMINARY OBJECTIONS.

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

FACTS:-

- (1) Para No.1 pertains to record, hence needs no comments.
- (2) Para No.2 is correct to the extent that the appellant was charge sheeted on allegations that he while posted as MM PS Hayatabad chalked out a criminal case vide FIR No.1505 dated 27.10.2015 u/s 9C-CNSA at PS Hayatabad. But during chalking of FIR, time of occurrence was not mentioned in the Murasila and tempering in report of FIR was made. This lope-hole and tempering was pin-pointed by the Hon'able Court while granting bail to the accused.
- (3) Para No.3 is incorrect. After proper enquiry, he was recommended for major punishment.
- (4) Para No.4 is incorrect. In fact after fulfilling all codal formalities, the charges leveled against him were stand proved, hence he was awarded major punishment of reversion from the rank of Head Constable to the rank of Constable.
- (5) Para No.5 is correct to the extent that he preferred a departmental appeal but after due consideration was rejected/filed.
- (6) That appeal of appellant being devoid of merits may kindly be dismissed.


GROUNDS:-


- (A) Incorrect. The punishment orders are in accordance with law/rules.
- (B) Incorrect. Proper charge sheet was issued to him. All codal formalities were fulfilled.

- (C) Incorrect. The appellant was held responsible after fulfilling all codal formalities.
- (D) Incorrect. All codal formalities were fulfilled.
- (E) Incorrect. As above.
- (F) Incorrect. The charges leveled against him were stand proved.
- (G) Incorrect. As above.
- (H) Incorrect. The appellant committed gross negligence.
- (I) Incorrect. No discrimination was done. He was treated as per law/rules.
- (J) Incorrect. The punishment order is per the law/rules.
- (K) Incorrect. The appellant was called and heard in person in OR on 31.08.2016.
- (L) Incorrect. The punishment order is lawful hence liable to be upheld.
- (M) Incorrect. As above.
- (N) Incorrect. All codal formalities were fulfilled.
- (O) Incorrect. As above.
- (P) Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

PRAYER.

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


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


**Capital City Police Officer
Peshawar.**


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

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.1030/2016.


Javed Khan Constable No.2554 Police Line Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Senior Superintendent of Police, Operations, Peshawar.....Respondents.

AFFIDAVIT

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



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



**Capital City Police Officer
Peshawar.**



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



OFFICE OF THE
SUPERINTENDENT OF POLICE
CITY DIVISION, CCP, PESHAWAR

Memorandum

No. 1592 /PA

dated Peshawar the 08/03/2016

To: The Senior Superintendent of Police,
Operations, Peshawar.

Subject: DEPARTMENTAL ENQUIRY.

A departmental enquiry against the SI Iftikhar and ASI Siraj Muhammad while posted at PS Hayatabad, Peshawar was entrusted to the undersigned vide your office Endst: No. 421 E/PA dated 08.02.2016 with the following allegations.

STATEMENT OF ALLEGATION.

"That time of occurrence and report in the FIR No. 1505 dated 27.10.2015 u/s 9-CCNSA PS Hayatabad has been tempered whereas no time has been mentioned in the Murasila. It is, further alleged that no card of arrest of the accused has been prepared and report of FSL is still awaited due to which the accused has been released on bail, which clearly shows malafide on the part of Police.

PROCEEDING.

In this regards statements of the concerned Police officers/officials were recorded which are reproduced below:-

STATEMENT OF SI IFTIKHAR HUSSAIN PS HAYATABAD.

SI Iftikhar Hussain stated in his statement vide at "F/A" that he did not prepared the case registration of 9-CCNSA on 27.10.2015 nor he signed the FIR. Furthermore, the Moharrar Staff of Police station Hayatabad did not brought in to his notice regarding the registration of case.

STATEMENT OF HAJI REHMAN SI INVESTIGATION PS HAYATABAD.

SI Haji Rehman IO of the case FIR No. 1505 dated 27.10.2015 u/s 9-CCNSA stated in his statement vide at "F/B" that ASI Siraj sent a Murasila on 27.10.2015 at 1650 hours and stopped at 1700 hours. SI Ifikhar Khan prepared the case and registered proper case, handed over to him for investigation. In FIR the date and time of occurrence, time of report was filled but the MM tempered and got signed from preparation of FIR officer. It also on the record of Police Station that after the registration of proper case and handed over to SI Haji Rehman for proper investigation and duly signed by SI Ifikhar Khan. ASI Siraj Khan did not bother to write the date, time on Mursila nor prepared the card of arrest and entry of recovery Memo. He further stated that he asked to ASI Siraj complainant of the case that correct the recovery memo, issue the card of arrest and correct the Murasila but he did not do so. He also advised to ASI Siraj Khan that sent the sample to FSL for opinion but in vain. The initial process of the case completed by

the ASI Siraj and SI Iftikhar which was judicially weak. After the registration of case he is investigating the case rightly.

STATEMENT OF ASI SIRAJ MUHAMMAD OF PS HAYATABAD.

ASI Siraj stated in his statement vide at "F/C" that during the Nakabandi at kharkhano Market he recovered the 04kg cahrs from the possession of lady accused on 27.10.2015 and prepared the Murasila on the spot. On his Murasila case vide FIR No. 1505 dated 27.10.2015 u/s 9-CCNA was registered at PS Hayat Abad and handed over to the investigation staff for investigation alongwith case property. The place of Nakabandi is a busy place and there is too rush of crowd which is too difficult for on duty officer to avoid untoward incident, due to which may be occurred some clerical mistake during the preparation of Murasila. Later on during preparation of case it can be corrected by the preparation officer or investigation officer. He stated on oath that he did not deliberately do this act for help of the accused. He further stated that he did not know about the tempering in FIR, investigation, opinion of FSL and on this he is innocent.

STATEMENT OF LHC JAVID KHAN NO. 2554 MM PS HAYATABAD.

LHC Javid MM stated in his statement vide at "F/D" that he received a written Murasila from ASI Siraj Muhammad and prepared from SI Iftikhar Khan and handed over the FIR register to MM Taimor for signature from SI Iftikhar Khan, duly signed from him and kept it on record. He further stated that he writes the FIR but he did not know about the signed and tempering.

STATEMENT OF MM TAIMOR HEAD CONSTABLE NO. 351 POLICE STATION HAYATABAD.


MM Taimor Head constable stated in his statement at "F/E" that on 27.10.2015 he was busy in correspondence register meanwhile this time one Mursila received from ASI Siraj Muhammad HC Javid MM write the FIR and preparation signed from SI Iftikhar Hussain. He did not know about the preparation of FIR nor some one handed over to him.

FINDINGS.

1. SI Ifikhar submits the previous FIRs copies to the undersigned with the tempered FIR copy, in which clear contradictory/differences between the signatures (Copies of FIRs are enclosed for perusal at Annex "A & B").
2. Due to weak investigation of the IO (SI Haji Rehman) the accused bail out easily. The IO of the case did not bother to submit the complete case file to the honorable court.
3. The SI Haji Rehman IO of the case submit the case file in which in recovery memo ASI Siraj shows 3 kilo 980 grams chars but mentioned in FIR/Murasila 04 kilo gram chars.
4. The ASI Siraj Muhammad filed to writes the time of occurrence and sent incomplete Murasila to Police Station for registration the proper case.
5. ASI Siraj Muhammad not prepare the card of arrest, recovery memo: nor sent the sample for legal opinion to FSL.
6. HC Javid 2554 also stated in his statement that he write the FIR but badly filed to mention the date and time of occurrence and report.
7. The tempering on FIR is clearly shows which are the negligence of MMs.

RECOMMENDATION.

Keeping in view the aforementioned facts that due to their negligence and tempering in FIR the accused was bail out easily. Therefore, HC Taimor 351 is recommended for minor punishment i.e stoppage of two annual increments for two years, while SI Haji Rehman IO of the case, ASI Sirj Muhammad and MM HC Javid 2554, are hereby recommended for major punishment and SI Ifitikhar is exonerated from the charges level against him.


(IMTIAZ AHMAD)

SUPERINTENDENT OF POLICE,
CITY, CCP, PESHAWAR

PA

Before The KPK Service Tribunal Peshawar

Appeal NO. 1030/2016

Javid Khan U/S Police Deptt:
Subject: Application for deletion of Respondent NO. 4
in the instant appeal.

R. Sheweth:

- 1- That the appellant has filed the instant appeal against the orders dated 31-8-2016 and 16-5-2016
- 2- That the instant appeal is in reply stage and fixed for today i.e. 27-3-2017
- 3- That respondent no. 4 has inadvertently written in the instant appeal which may be deleted as DPO ^{is not} Peshawar is not present in Peshawar

It is therefore most humbly prayed that on acceptance of this application Respondent NO. 4 may be deleted in the instant appeal.

Through
Taimur Ali Khan

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1030/2016

Javed Khan

vs

Police Deptt:

REJOINDER ON BEHALF OF THE APPELLANT

PRILIMINARY OBJECTION:

(1-7) All objection raised by the department is incorrect and baseless. Rather the respondent's department estoped to raised objection due to their own conduct.

RESPECTFULLY SHEWETH:

Facts:

1. Para-1 of the appeal is admitted correct by the respondents department as record is already in the custody of the respondent's department.
2. Para-2 of the appeal is correct. Moreover, the contention of the appellant is incorrect and misconceived. And the allegation leveled against the appellant is baseless.
3. Incorrect and misconceived. While para-3 of the appeal was correct as mentioned in the main appeal of the appellant.
4. Incorrect and misconceived. While para-4 of the appeal was correct as mentioned in the main appeal of the appellant.
5. Half para-5 of the appeal is admitted correct by the respondents as mentioned in the main appeal of the appellant. Moreover, rest of the contention of the appeal is incorrect and misconceived.
6. Incorrect. The appellant has good cause of action and appeal of the appellant is liable to be accepted.

GROUNDS:

- A. Incorrect. That the impugned order is against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B. Incorrect. While para-B of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- C. Incorrect. While para-C of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- D. Incorrect. While para-D of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- E. Incorrect. While para-E of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- F. Incorrect. While para-F of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- G. Incorrect. While para-G of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- H. Incorrect. While para-H of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- I. Incorrect. While para-I of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- J. Incorrect. While para-J of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- K. Incorrect. While para-K of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- L. Incorrect. While para-L of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- M. Incorrect. While para-M of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- N. Incorrect. While para-N of the ground of appeal was correct as mentioned in the main appeal of the appellant.
- O. Incorrect. While para-8 of the ground of appeal was correct as mentioned in the main appeal of the appellant.

P. Legal.

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

APPELLANT

Javed khan

Through:

Asif Yousafzai
(M. ASIF YOUSAFZAI)

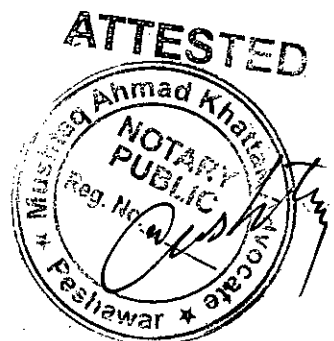
Noman Ali Bukhari
SYED NOMAN ALI BUKHARI

& *Taimur Alkhan*
TAIMUR ALFKHAN
ADVOCATES, PESHAWAR

AFFIDAVIT

I, do hereby, affirm that the contents of the appeal and rejoinder are true to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.

Ar
Deponent



16-05-2017



**OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR**

Phone No. 091-9210989

Fax No. 091-9212597

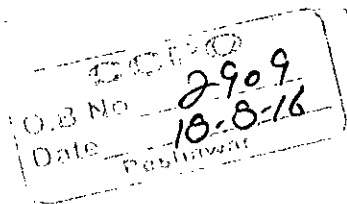
ORDER

This order will dispose off departmental appeal preferred by Constable **Siraj Khan No. 4149** who was awarded the punishment of **Reduction from the rank of Head Constable to Constable** under P.R 1975 vide OB No. 1759 dated 16.5.2016 by SSP/Ops:, Peshawar.

2. Short facts of the case are that the appellant while posted as IHC at PS Hayatabad, seized/recovered 4 kg charas from the possession of lady accused Ulfata w/o Mukhtiar r/o Dalazak Road on 27.10.2015. He drafted murasila on the spot and sent the same to PS for lodging of FIR. As such a criminal case vide FIR No. 1505 dated 27.10.2015 u/s 9C CNSA was registered at PS Hayatabad. During chalking of FIR, time of occurrence was not mentioned in the murasila and tempering in FIR was made. This lope hole and tempering was pin pointed by the Honorable court while granting bail to the accused.

3. Proper departmental proceedings were initiated against him and Mr. Imtiaz Ahamd, SP/City Peshawar was appointed as the enquiry officer who in his report mentioned that due to his negligence and tempering in FIR the accused was bailed out. On receipt of findings of the enquiry officer, the Competent Authority issued him Final Show Cause Notice but he failed to submit his written reply within stipulated period. As such the Competent Authority awarded him the above punishment.

4. The appellant was called in O.R. on 17.8.2016, and heard in person. The enquiry file was perused in detail alongwith his explanation. Though the negligence committed by the appellant is proved but the punishment awarded to him seems harsh and will affect his carrier. Therefore, keeping in view his 23 years long service a lenient view is hereby taken and the punishment of Reversion from the rank of Head constable to the rank of constable is converted into stoppage of 02 (two) years increments with cumulative effect. Besides, he will be kept under watch for 1 (one) year.



(Handwritten signature)

(MUHAMMAD TAHIR)
CAPITAL CITY POLICE OFFICER,
PESHAWAR. 18/8

No. 1609-16 /PA dated Peshawar the 19/08/2016.

Copies for Information and n/a to the:-

1. SSP/Ops: Peshawar to keep him under watch.
2. PO/OASI/EC-I/EC-II.
3. CRC along with S.Roll for making necessary entry in his S.Roll.
- ✓ 4. FMC along with FM
5. Official concerned.

(Handwritten signature)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 1463 /ST

Dated 23 /07/2018

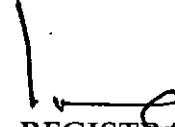
To

The Senior Superintendent of Police (Operation),
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: **ORDER/JUDGEMENT IN APPEAL NO. 1030/2016, MR. JAVED KHAN.**

I am directed to forward herewith a certified copy of Judgment/Order dated 13/07/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

OK