

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	10.03.2015	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;">Service Appeal No. 1244/2013 Muhammad Yousaf Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc.</p> <p style="text-align: center;"><u>PIR BAKHSH SHAH.-</u> Appellant with counsel (Mr. Khalid Rahman, Advocate) and Mr. Ziaullah, Government Pleader with Akhlaq Hussain, Inspector (Legal) for the respondents present.</p> <p>2. Appellant Muhammad Yousaf was issued charge sheet and statement of allegation on 31.3.2011 on the charge of his involvement in case FIR No. 265 dated 07.3.2011 u/s 9 CNSA registered in Police Station City Mansehra as a result whereof disciplinary proceedings were initiated against him. The competent authority vide his order dated 18.05.2011 dismissed the appellant from service under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000. Subsequently his departmental appeal dated 31.05.2011 was partially allowed and the major penalty of "dismissal from service" was reduced into as follows:-</p> <p style="text-align: center;">"reduction in pay as time pay scale constable".</p> <p>Feeling aggrieved, the appellant filed the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p>

3. Arguments heard and record perused.

4. It was submitted by the learned counsel for the appellant that the case FIR No. 265 dated 07.3.2011 U/S 9 CNSA P.S City Mansehra was a baseless and concocted case, therefore, the appellant was quite wrongly punished on the basis of this case. In this respect it was stressed that the appellant in fact had recovered 40 Kgs narcotics in the jurisdiction of P.S Cantt. Mansehra, vide FIR No. 119 dated 03.4.2009 for which reason the concerned DSP was annoyed and in retaliation it resulted into this concocted case against the appellant. The learned counsel for the appellant stressed that as the case against the appellant was baseless, therefore, his BBA was confirmed vide order dated 21.3.2011 of the learned Addl. Sessions Judge-II Mansehra followed by judgment of acquittal dated 22.09.2012. It was further submitted that the punishment awarded to the appellant was not warranted by law and the procedure adopted against him was also against the law and rules as the appellant was not given opportunity to cross examine the witnesses of the enquiry nor opportunity of personal hearing was afforded to him. It was further stated that no show cause notice was given to the appellant. Reliance was placed on 2009-PLC (C.S)19, 2009-SCMR-615, 2012-PLC(C.S)166, and PLD 2010 Supreme Court-65. It was also stressed that the penalty awarded by the appellate authority is not according to law having no specified time.

5. Conversely, the learned Government Pleader submitted that the appeal is not within time and that departmental proceedings cannot be quashed for acquittal in the criminal proceedings.

6. We have heard arguments of the learned counsel for the parties at length and have also gone through the record carefully particularly in the light of provision of Section 3-A of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. This cannot be disputed that the appellant in the instant case was never convicted in the criminal case. We have gone through the BBA confirmation order dated 21.3.2011 as well as acquittal dated 22.9.2012 available on record delivered by the learned criminal court as a result of which, we are of the firm opinion that the criminal case worked out against the appellant vide FIR No. 265 dated 07.3.2011 U/S 9 CNSA was a false case. This being so, the question would be as to why the appellant was proceeded against on the basis of a false FIR, much less for any conviction of the appellant in such FIR, so that the provision of Section 3-A of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000 would have been applied. This may also be added here that except said FIR there is no further allegations against the appellant for the impugned proceedings. This may also be observed that the impugned order bears ambiguity wherein the period has not been

specified and seems to be in conflict with the requirement of Rule-29 of Fundamental Rules.

7. For the said reasons, the appeal is accepted and the impugned order dated 07.08.2013 is set aside. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
10.03.2015.



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

12.3.2014

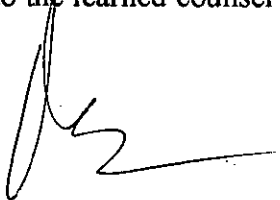
Appellant present in person. Respondents are absent despite their service through registered post/concerned official for the previous date, when the case was adjourned on note Reader. However, AAG is present and would be contacting respondents for written reply/comments on 10.6.2014.



Chairman

10.6.2014

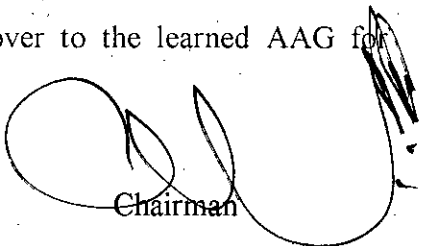
Appellant in person and Mr. Sadaqat Nisar, SI on behalf of respondents with AAG present. Written reply received on behalf of the respondents, copy whereof is handed over to the learned counsel for the appellant for rejoinder on 10.9.2014.



Member

10.9.2014

Appellant in person and Mr. Muhammad Adeel Butt, AAG for the respondents present. Rejoinder received on behalf of the appellant, copy whereof is handed over to the learned AAG for arguments on 10.3.2015.



Chairman

Appeal No. 1244/2013
Mr. Muhammad Yousaf

3.

21.11.2013

Appellant deposited
Security & process fee
Rs 2000. Bank receipt
is attached with file
Jad
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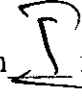
Counsel for the appellant present and heard. Counsel for

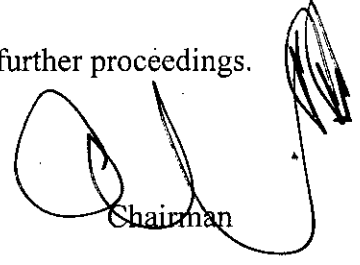
the appellant contended that the appellant has not been treated in accordance with law/rules and Rule-5 of the Civil Servants (appeal) rules 1986 has been grossly violated as no opportunity of hearing given to the appellant. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days.. Notice be issued to the respondents for submission of written reply on 23.01.2014.


Member.

4.

21.11.2013

This case be put before the Final Bench  for further proceedings.


Chairman

23-1-14

The Honorable bench is on recess,
therefore case is adjourned to



12/1/14


Bench

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1244/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/08/2013	<p>The appeal of Mr. Muhammad Yousaf presented today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	29-8-2013.	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 21-11-2013.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

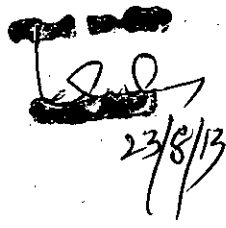
Service Appeal No. 1244 /2013

Muhammad Yousaf,
Constable No.403,
Police Lines, District Tor Ghar.....Appellant.

1273
23/8/13

Versus

1. The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police
Hazara Region, Abbottabad.
3. The District Police Officer,
District Mansehra.
4. The District Police Officer, //
District Tor Ghar.....Respondents

 SERVICE APPEAL UNDER SECTION-10 OF THE
KHYBER PAKHTUNKHWA REMOVAL FROM
SERVICE (SPECIAL POWER) ORDINANCE, 2000
READ WITH SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974
AGAINST THE IMPUGNED APPELLATE ORDER
DATED 07.08.2013 WHEREBY THE DEPARTMENTAL
APPEAL OF THE APPELLANT WAS PARTIALLY
ALLOWED AND THE MAJOR PENALTY OF
DISMISSAL FROM SERVICE WAS MODIFIED AS
REDUCTION IN PAY AS TIME PAY SCALE
CONSTABLE.

PRAYER:

On acceptance of the instant appeal, the impugned
appellate order dated 07.08.2013 passed by the

Respondent No.2 alongwith the original order dated 18.05.2011 passed by Respondent No.3 may graciously be brushed aside and appellant be reinstated into service w.e.f. 18.05.2011 alongwith back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant joined the Police Force on 15.08.1988 and at the moment he has at his credit about 25 years service.
2. That while posted at Police Station Shinkyari, Mansehra appellant was enroped in a false case under Section-9 CNSA Police Station City, Mansehra vide F.I.R. No.265 dated 07.03.2011 (*Annex:-A*). Appellant was not arrested on the spot therefore, he applied for BBA which was accordingly confirmed vide order dated 21.03.2011 (*Annex:-B*).
3. That based on the same allegations appellant was issued Charge Sheet and Statement of Allegations (*Annex:-C*) which was duly replied (*Annex:-D*) by the appellant. Thereafter, a summary enquiry was conducted by one DSP Rasool Shah and then without issuing final Show Cause Notice the impugned order dated 18.05.2011 (*Annex:-E*) was issued whereby appellant was imposed upon the major penalty of dismissal from service.
4. That being aggrieved of the impugned order ibid, appellant preferred a departmental appeal (*Annex:-F*) before Respondent No.2 which

remained pending for long time and in the meanwhile the trial of the case of the appellant was concluded and appellant was acquitted by the Court of Additional Sessions Judge-II/Judge Special Court, Mansehra vide Judgment dated 22.09.2012 (*Annex:-G*).

5. That thereafter the departmental appeal of appellant was taken up and vide the impugned appellate order dated 07.08.2013 (*Annex:-H*) the penalty of dismissal from service was modified to that of reduction in Pay as Time Pay Scale Constable. Consequently appellant was reinstated into service, posted at District Tor Ghar and the period appellant remained out of service was counted as leave without pay. It will not be out of context to mention here that the appellate authority had asked for the report about the history of the appellant who vide his report dated 14.03.2013 (*Annex:-I*) has recommended the unconditional reinstatement of the appellant.
6. That appellant, being aggrieved of the impugned orders challenges the same through this appeal inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully, issued the impugned orders, which are unjust, unfair and hence not sustainable in the

eye of law.

- B. That once the appellant was charged for an offence and subsequently he was departmentally proceeded against for the same charge and the charge was proved by the competent court of law to be false and acquitted the appellant of the same then no justification whatsoever can arise to impose any sort of penalty upon the appellant. Keeping in view the acquittal of the appellant in the main case the imposition of the penalty muchless major is without lawful authority and hence liable to be struck down.
- C. That no regular enquiry was contemplated and only a fill-in-the-blank enquiry was conducted that too at the back of the appellant without associating appellant to the same. By now it is a settled law that major penalty cannot be imposed on a civil servant without holding a regular enquiry.
- D. That neither copy of the Enquiry Report was provided to the appellant nor appellant was served with the Final Show Cause Notice which are also mandatory requirements of law, therefore, the impugned order, in this view of the matter, is unlawful, illegal and hence not maintainable.
- E. That the action has been taken at the back of the appellant which is violative of the principle of natural justice.
- F. That the appellant has 25 years service at his credit and he has never been found involved in such like

cases previously. The instant case was a conspiracy against the appellant inas much as at the instance of the appellant a huge of *Charas* weighing 40 Kg was recovered and F.I.R No.119 dated 03.04.2009 (*Annex:-J*) was registered against the culprits who were highly influential people and thus got the instant case registered malafide and for ulterior motives against the appellant.

- G. That the keeping in view the facts and circumstances of the case and the longstanding service of the appellant, the impugned penalty is extremely harsh and does not commensurate with the guilt of the appellant.
- H. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through


Appellant


Khaled Rahman,
Advocate, Peshawar.

Dated: 23 / 08/ 2013

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردستہ 152 مجموعہ ضابطہ نو جدارتی

6

ضلع مالٹہ

کیا تم کو

تاریخ 7/3/11 وقت 17:30

ANNE A نوڈل نمبر 265

تاریخ و وقت رپورٹ	7/3/11 وقت 17:30
نام و سکونت اطلاع دہندہ	افتخار احمد بیگ خان صاحب مالٹہ
مختصر کیفیت جرم (معدہ دفعہ) حال اگر کچھ لیا گیا ہو۔	9 CNSA برآمدگی 2200/12/11
جائے وقوعہ یا سابقہ تھانہ سے درست	ضلع آباد ٹیپ نزد کھان چیم
نام و سکونت	عبدالرحمن ولد محمد حیران خان
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرد	برآمدگی سر اسٹور نوڈل نمبر 265
تھانہ سے روانگی کی تاریخ و وقت	7/3/11

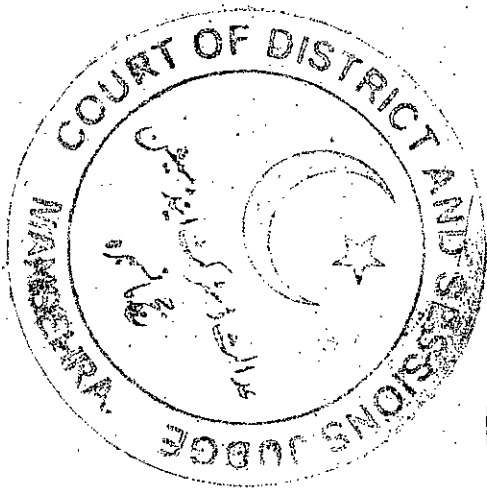
ابتدائی اطلاع نیچے درج کرد۔ بر وقت 2009 سر اسٹور نوڈل نمبر 265
 اور ایک بدلت مالٹہ 1029 نمبر پر واقع ہے۔ بدلت آفسر انچارج خان
 صاحب مالٹہ 15 نمبر میں ہے۔ نوڈل نمبر 265 کا مالک احمد 707 نوڈل نمبر
 کے پھلنگ ٹیپ صاحب و کھان صاحب ہر دو کھان صاحب نے اطلاع حکام سر
 کسٹمر فروشن حضرت اللہ ولد محمد حیران خان مالٹہ کھان صاحب
 پٹری ٹیپ افسر فی سے اس اطلاع کے تفریح لے لیج آباد ٹیپ نزد کھان
 چیم انتہائی حضرت اللہ کے نوڈل نمبر ایک شخص نے نام میں سیاہ رنگ کا ساڈا
 رنگ کے ٹکڑے آئے دکھائی دیا جو پولیس مارڈی کو دیکھا گیا ہے اس میں
 بیگ بھنگا لے گیا تھا۔ بیگ بھنگا کے بیگ مالٹہ کے نوڈل نمبر 265
 اندر سے دو بیگ جس پر آمد ہوئے جو بر خروج وزن کرنے کے 2200
 گرام تولی کے بیگ سے 5 گرام جس میں باہر سے لیا گیا ہے۔
 اور تقابلاً جس کا باہر سے لیا گیا ہے۔ نوڈل نمبر 265 کے نوڈل نمبر
 معلومات بھانے والے شخص کا نام عبدالرحمن ولد محمد حیران خان
 کو دیا گیا ہے۔ نوڈل نمبر 265 کے نوڈل نمبر 265 کے نوڈل نمبر
 کے بر خروج سے لیا گیا ہے۔ نوڈل نمبر 265 کے نوڈل نمبر 265 کے
 ار سال تھا۔ نوڈل نمبر 265 کے نوڈل نمبر 265 کے نوڈل نمبر 265 کے
 انبی راجہ بیگ خان نے نوڈل نمبر 265 کے نوڈل نمبر 265 کے نوڈل نمبر 265 کے
 کار تولی کے نوڈل نمبر 265 کے نوڈل نمبر 265 کے نوڈل نمبر 265 کے
 جان نثار

AST - Ps - City
7-3-2011

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Annex B (7)

Order- 04
21.03.2011

Accused/petitioner Muhammad Yousaf alongwith counsel present. Complainant Iftikhar Ahmed S.I and SPP for state present.

Accused petitioner Muhammad Yousaf having been involved in case FIR No.265, dated 07.03.2011 u/s 9CNSA registered in Police Station City Mansehra, seeks confirmation of his BBA through the instant petition.

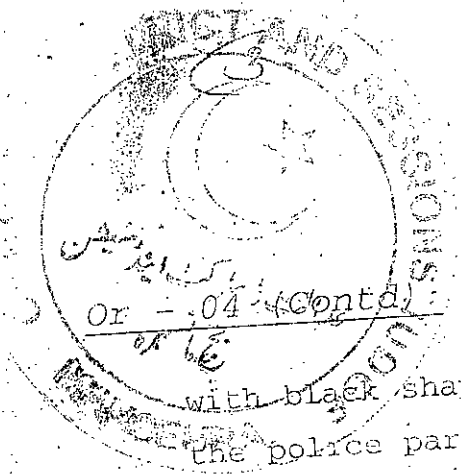
Brief facts of the case are that complainant Iftikhar Ahmed, S.I of P.S City Mansehra, on 07.03.2011 at 17.30 hrs alongwith other police officials were on routine patrolling at Punjab Chowk. On the information that in the house of famous narcotics seller namely Hafeezullah, a huge quantity of narcotic was being unloaded, he alongwith police party reached Sheikhabad Camp near the house of absconder Hafeezullah, a person

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with black shaping bag in hand were seen, who sighting the police party, throw the shaping bag and run away. During the search of the shaping bag, two packets of charas weighing 2200 grams were recovered. During investigation, the name of accused was disclosed as Muhammad Yousaf, hence this BBA petition.

Arguments heard and record perused.

Learned counsel for the petitioner stated at the bar that accused petitioner is police official and is posted at Mansehra and has service of 24 years and also remained posted with the complainant and he has falsely implicated him in the case only for the reason that petitioner got recovered huge quantity of narcotics through police of P.S Saddar Mansehra and police official of City Mansehra being annoyed with him has fabricated the case against him.

The complainant Iftikhar Ahmed S.I was summoned to explain the abovementioned facts and he admitted that accused petitioner is a police official and also remained posted with him being his junior. When enquired that why he has mentioned that his name was disclosed by someone during investigation, as the accused was known to him, he could not offer any satisfactory explanation. As per site plan, accused petitioner was in the street when came in cross with the police and his non arrest and recognition, is beyond imagination. The contention of the petitioner appears to be true and mala fide on the part of complainant is apparent on the face of record, which is valid ground for confirmation of BBA.

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Or - 04 (Contd):

Consequently, this petition is accepted and ad interim Bail already allowed to the accused petitioner stands confirmed on the existing bail bonds. Record returned. File be consigned to Record Room.

Announced:
21.03.2011


(Shafiq Ahmad Tanoli)
ASJ-II, Mansehra.



AD, No. 3149
Date 11-4-11
Court Fee *one lang*
Urgent *yes*
Total Fee *not given*
Name of Copyist *M. Khalid*
Date of Completion 11-4-11
Date of Initiation
Date of Delivery 11-04-2011

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CHARGE SHEET.

Amir C

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I, Sohail Khalid, District Police Officer, Mansehra as competent authority hereby charge you Muhammad Yousaf No. 582 as follows.

While posted in district security staff at PS Shinkiari you have involved yourself in case FIR No. 265 dated 05-03-2011 u/s 9 CNSA PS City.

You are therefore, required to submit your written defence within 07 days of the receipt of this charge sheet to the enquiry officer.

Your written defence, if any, should reach the enquiry office within the specified period, failing which it shall be presumed that you have no defence to put in hand and in the case ex parte action shall follow against you.

Intimate whether you desire to be heard in person or otherwise.

Statement of allegation is enclosed.

District Police Officer,
Mansehra.

Case No. 582

ATTESTED

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DISCIPLINARY ACTION

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I, Sohail Khan, District Police Officer, Mansehra as competent authority of the opinion that FC Muhammad Yousaf No. 582 has rendered himself liable to be proceeded against as he committed the following act/omissions within the meaning of section 3 of the North West Frontier Province Removal from service (Special Powers) Ordinance, 2001.

STATEMENT OF ALLEGATION

While posted in district enquiry staff at PS Shinkhari you have involved yourself in case FIR No. 265 dated 07-03-2011 u/s 9 CNSA PS City.

For the purpose of scrutinizing the conduct of the said accused Officer with reference to the above allegation, Rasool Shah Dal-Shinkhar is deputed to conduct departmental enquiry against FC Muhammad Yousaf No. 582.

The Enquiry Officer shall in accordance with the provisions of the ordinance provide reasonable opportunity to the accused, record findings and make within thirty days of the receipt of the report recommendations as to punishment or other appropriate action against the accused.

The accused shall be allowed a representative of the department shall in the proceedings on the date, time and place fixed by the Enquiry Officer.

District Police Officer,
Mansehra

No 985-56 /ra/07/11.

the 31 -03-2011.

> A copy of the above is

sent to:-

1. The Enquiry Officer for conducting proceedings against the accused under the provisions of the Removal from service (Special Powers) Ordinance 2001 at PS City is enclosed.
2. FC Muhammad Yousaf No. 582 Police Lines with the direction to submit his written statement to the Enquiry Officer within 7 days of the receipt of this charge sheet to the Enquiry Officer on the date, time and place fixed for the purposes of departmental enquiry.

District Police Officer,
Mansehra.

ATTESTED

BEFORE THE DISTRICT POLICE OFFICE
MANSEHRA

11

Subject:- REPLY TO CHARGE SHEET

Drus D

Respected Sir,

The petitioner begs to submit the following:-

1. That the petitioner has been served with a charge sheet alleging therein that the petitioner got himself involved in case FIR No.265 dated: 07.03.2011 U/S 9C-CNS P.S. Mansehra.
2. That the petitioner was posted in District Security and during his posting the petitioner has unearth/dug out various hidden hands involved in nefarious activities. While exposing one of the parties situated in Ghazikot the petitioner informed the local police of P.S. Saddar Mansehra, who raided the house of accused and recovered huge quantity of Chars. The case was accordingly registered against the accused who know stands convicted and sentenced to imprisonment for life. The local police of P.S. City Mansehra ^{DSP} got annoyed with the petitioner and for not apprising them or affording them a chance to raid the house of the said accused. The local police of P.S. City Mansehra nourished a grudge and

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they did not spare the occasion to involve the petitioner.

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3. That from the contents of the FIR and the site plan, it is worth mentioning that the person who escaped from the clutches of police was shown in a corner in front of a shop, but being sub-ordinate to Iftikhar S.I. he could not recognize or identify the petitioner. Later on he made an inquiry and got the petitioner involved. It does not stand to reason that Iftikhar Khan S.I. with whom petitioner remained as sub-ordinate could not recognize or identify, the petitioner from a distance of arms length. The allegations relating to involvement of petitioner are based on malafide and revenge as mentioned in the above paragraphs.

It is therefore, requested that the petitioner may kindly be absolved from the charges leveled against him.

Dated:05.04.2011

.....
Muhammad Yousuf Constable NO.582, presently posted at Police Line Mansehra.

M. Yousuf

ATTESTED

ORDER

Amir E. (13)

Constable Muhammad Yousaf No. 582 was proceeded against departmentally with the allegation that while posted in district security staff at PS Shinkiri has involved himself in case FIR No. 265, dated 07-03-2011 U/S 9CNSA PS City.

The enquiry officer i.e. Mr. Rasool Shah DSP Shinkiri, after conducting proper departmental enquiry against the accused constable has submitted his report and has proved the defaulting constable guilty. The constable was also heard in person in orderly room held on 16-05-2011 but he could not satisfied the undersigned with his verbal arguments. I, the District Police Officer Mansehra, therefore, order for the Dismissal of Constable Muhammad Yousaf No.582 under Removal form Service (special power) Ordinance 2000.


Order announced.


District Police Officer,
Mansehra.

OB 99
18-5-2011

ATTESTED

RECEIVED ON
23.05.2011
M. Jaffer


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ATTESTED

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(14)

10/11/11 F

**BEFORE THE DEPUTY INSPECTOR
GENERAL OF POLICE HAZARA RANGE
ABBOTTABAD**

**APPEAL AGAINST THE ORDER OF D.P.O.
MANSEHRA DATED: 18.05.2011 COMMUNI-
CATED/ DELIVERED ON 23.05.2011 VIDE
WHICH THE APPELLANT HAS BEEN
DISMISSED FROM SERVICE.**

Respected Sir,

The brief facts leading to the instant appeal are as follows:-

1. That the appellant was serving in police department and had served the department for about 24 years.
2. That the appellant was served with a charge sheet alleging therein that he got himself involved in a case vide FIR No.265 U/S 9C CNS P.S. City Mansehra and the appellant submitted a detailed reply refuting all the allegations leveled against him.
3. That the appellant during his service has unearthed hidden hands who were involved in nefarious activities. While exposing/unearthing, suchlike episode, a case was registered against one Akmal who had been convicted and sentenced

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and not he stands confined in Haripur Jail. The police of P.S. City Mansehra got annoyed over the registration of such case and they nourished a grudge against the appellant and were looking for an opportunity to involve him malafidely. The D.S.P. Rasool Shah was than posted at the Head Quarter and he also got annoyed with the appellant and they all joined their hands were looking for an opportunity against the appellant.

4. That from the contents of the FIR it is crystal clear that who so-ever was, could not be apprehended nor identified and after making an inquiry, the appellant was made an escape goat on account of the reasons mentioned above. The appellant remained sub-ordinate to Iftikhar Khan S.I. who is the complainant and he could have identified the appellant had he (appellant), been there, as narrated/reported by Iftikhar Khan. They fabricated the instant case after deliberation and consultation and got him involved in a fake case.
5. That the inquiry has been conducted by the inquiry officer in a very haphazard manner and the very mandatory provisions of law has been violated. The inquiry was conducted not in accordance with law rather it was conducted

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according to the whims and wishes of the inquiry officer.

- 6. That the appellant had served the department for sufficient long time and became instrumental in the exposure of very important persons involved in the cases, but instead of rewarding the appellant, he was blessed with dismissal from service.

It is therefore, requested that on acceptance of appeal the impugned order of dismissal may kindly be set aside and the appellant may kindly be reinstated in service.

Dated: 31.05.2011

.....
 Muhammad Yousuf S/O Gohar Ur Rehman,
 resident of Ichrian, Tehsil and District Mansehra,
 P.C. No.582..... *M. Yousuf* Appellant

[Signature]
ATTESTED

Amir G² (17)

**IN THE COURT OF MUNAWAR KHAN,
ADDITIONAL SESSIONS JUDGE-II/JUDGE SPECIAL
COURT, MANSEHRA, CAMP COURT AT Oghi.**

Case No. 05/9CNSA3 of 2011.

Date of Institution.....16.05.2011

Date of Decision.....22.09.2012

The StateVs.....*Muhammad Yousaf* s/o Gohar
Aman, aged about 43 years, caste
Kohistani, r/o Ichhrian, Tehsil &
District, Mansehra.
.....(Accused)

JUDGMENT:

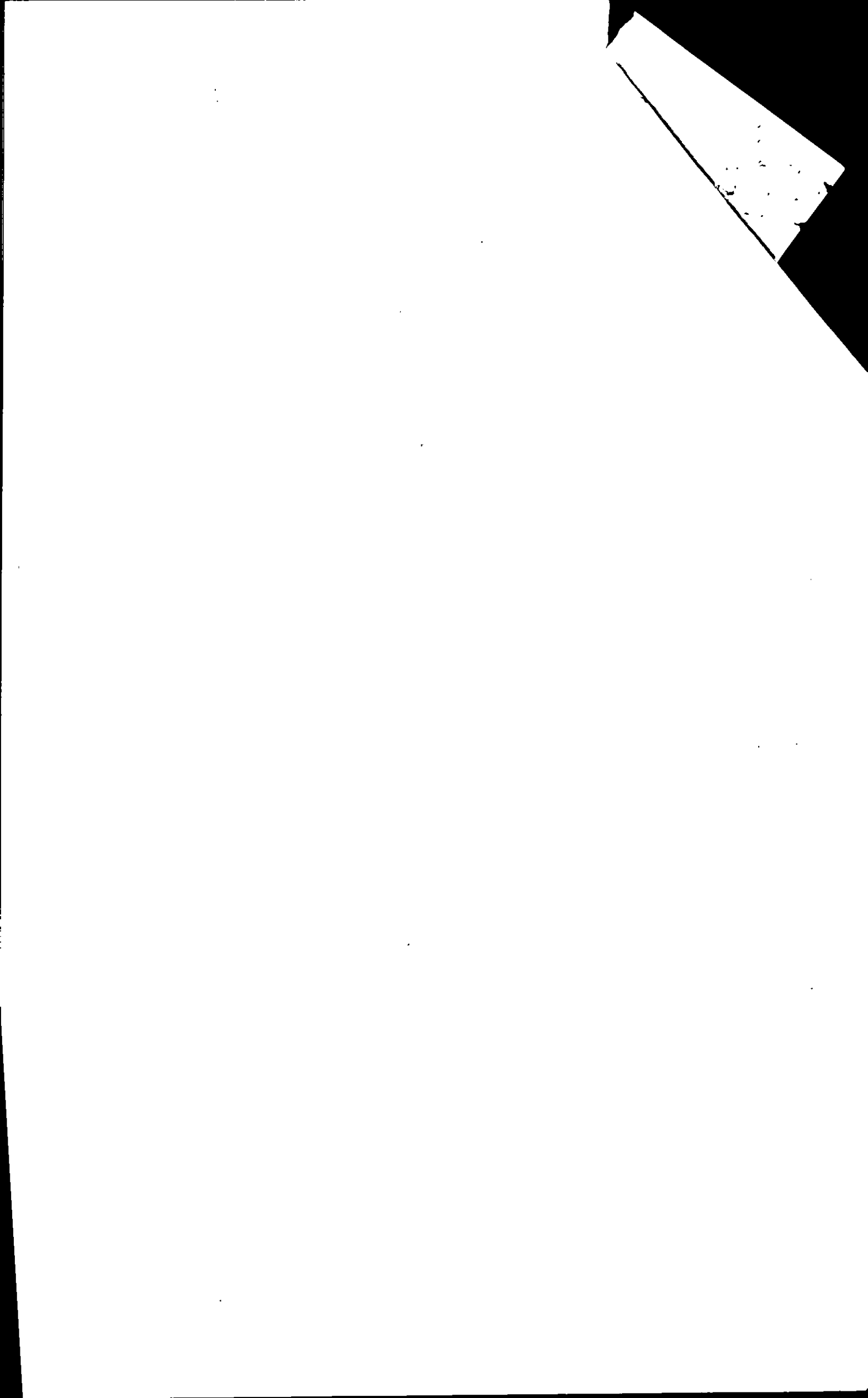
The accused named above faced his trial in the above noted case.

Brief facts of the prosecution case are that the complainant Iftikhar Ahmed, S.I of P.S City Mansehra, on 07.03.2011 at 17:30 hours alongwith other police party was on routine patrolling at Punjab chowk. On the information that in the house of famous narcotics seller namely Hafeezullah, a huge quantity of narcotic was being unloaded, he alongwith police party reached Sheikhabad Camp near the house of absconder Hafeezullah, a person with black shopping bag in hand was seen, who on seeing the police party, throw the shopping bag and run away. During the search of the shopping bag, two packets of charas weighing 2200 grams were recovered. He came to know that name of the said

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as PW-2 and stated that on 07.03.2011 he was
Kajjo Sajjad Ahmed SI put his appearance

his signature.
verbatim, the same is Ex.PA and correctly bears
correctly recorded its contents into FIR in
Ahmed SI through consible Shahzad No.1029

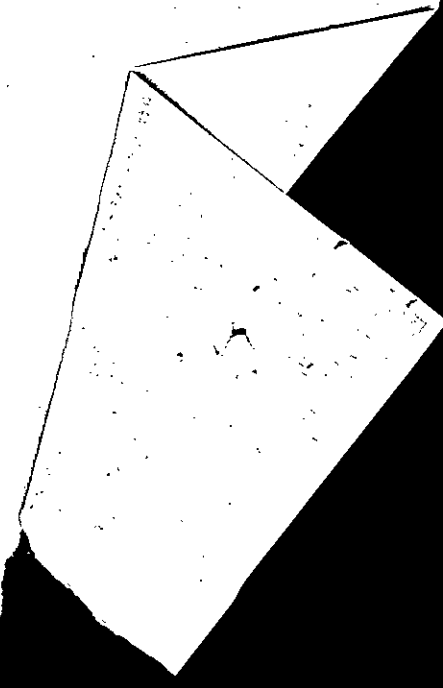
stated that on receipt of Murasilla sent by Iftikhar
Jan Nisar ASI was examined as PW-1 who
Brief account of prosecution evidence is as under:-
against the accused produced five (05) witnesses.
The prosecution to substantiate its charge

claimed trial.
but he pleaded not guilty to the charge and
C.P.C. formal charge u/s 9-C CNSA was framed
in compliance with the provisions of section 265-C
The accused was summoned and delivered copies
was submitted against the accused for his trial.
Complete challan, after usual investigation,

against the accused facing trial.
into another parcel. Hence this case was registered
analysis while he sealed the remaining quantity
for sending the same to the FSL for chemical
grams as sample from the recovered contraband
Kohistan, r/o Ichhrian. The SI separated five
Muhammad Yousof s/o Gohar Aman, caste
person who throw the shopping bag was

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Cadet Khurshheed Inspector/SHO appeared as PW-3 and stated that on completion of investigation conducted by the I.O. He submitted complete challan against the accused for trial on 23.03.2011

G.P.C. witness. His statement was also recorded u/s 161 which correctly bears his signature as marginal prepared the recovery memo, Ex.PC to this effect, of Gohar Aman, r/o Ichhrian/Dadar. The S.I into parcel No.2, P-1. The person was Yousaf son chemical analysis. Remaining charas was sealed grams from each and sealed into parcel No.1 for came out to be 2200 grams and S.I separated 5/5 charas was found in it. The same on weighing by the police and on checking two packets of and fled away. The shopping bag was picked up on seeing the police party threw the shopping bag carrying a black shopping bag in his hand, who house of P.O. Hafeezullah and noticed a person information, the police party reached near the quantity of narcotics is unloaded. Upon such narcotics peddler namely Hafeezullah, huge situated at Sheikhabad Camp of a renowned informer informed the S.I that in the house Manshra at Punjab chowk. In the meanwhile, an present alongwith Htikhar Khan, S.I P.S City

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and stated that on 07.03.2011, he alongwith Raja Sajjad S.I/Platoon Commander, constable Wahid and other police officials were present at Punjab Chowk on routine gusht. In the meantime, the informer informed that the renowned peddler Hafeezullah would receive the huge quantity of narcotics at his house situated at Sheikh Abad camp. Upon such information, he alongwith police party reached near the house of P.O. Hafeezullah and noticed a person carrying a black shopper in his hand, who on seeing the police party threw the shopping bag and fled away. He picked up the shopping bag and on checking, he found two packets of charas in it, the same was weighed at the spot, which came out to be 2200 grams. 5/5 grams was separated from each slab for chemical analysis and sealed into parcel No.1, while the remaining 2190 grams (P-1) was sealed into parcel No.3 and he affixed 3/3 seals of "LV" on it. On inquiry he came to know that the person who threw the bag-contraband was Muhammad Yousaf (accused facing trial). He prepared the recovery memo at the spot which is already exhibited as Ex.P.C which is correct and correctly bears his signature besides the signatures of the marginal witnesses. He also

M. Yousaf

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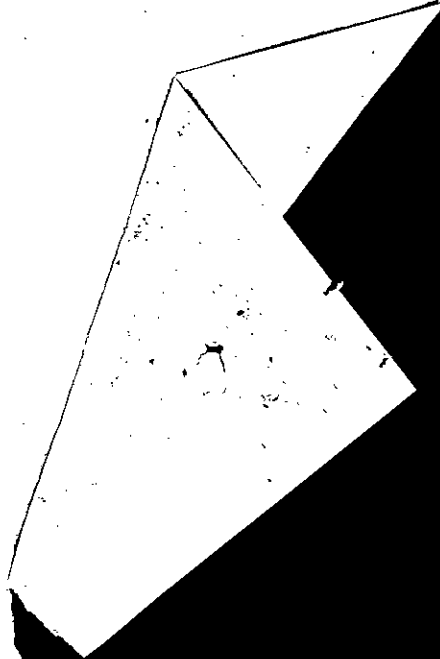
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drafted Murasilla for registration of the case at the spot and sent the same through constable Shahzad No.1029 and on the strength of Murasilla, the instant case was registered. The Murasilla is correct and correctly bears his signature and is Ex-PA/1. He also drafted application for sending the sample to the ISI for analysis, which is correct and correctly bears his signature and is Ex-PW4/1.

Abdul Maroof Inspector/SHO appeared as PW-5 and stated that after the registration of the case, the investigation of instant case was entrusted to him on the same date i.e. 07.03.2011, in late hours. On the following day i.e. 08.03.2011, he visited to the spot, where on the pointation of complainant and eyewitness prepared the site plan, which is correct along with all its foot notes and is Ex-PB. He also recorded the statements of PWS u/s 161 Cr.P.C. The accused was handed over to him. He prepared card of arrest of the accused, which is correct and correctly bears his signature and is Ex-PW-5/1. The application for sending the contraband to ISI, Peshawar is drafted by the recovery officer S.I. Iftikhar and result thereof received in positive, which is Ex-PZ and he placed the same on the file. After completion of the investigation, handed over the

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evidence on record.
 Perusal of record would reveal that the
 accused was neither arrested at the spot nor
 recovery was effected from his direct possession.
 No source of information regarding knowing
 name of the accused was given by the recovery
 officer. No one from the public was associated
 with the recovery proceedings nor was examined
 to the extent that it was the accused who threw
 the alleged recovered material. In the Murasila
 Ex.PA/1, the complainant/Hikhar Khan S.I.
 shows himself, Raja Sajjad S.I, constable Sajjad
 and other police official at the time of alleged
 recovery. PW-2 Raja Sajjad in his cr
 examination told the distance between the p
 party and the accused at the time of throwi
 bag, as 15/20 paces. Question arise that l

case file to SIO P.S City Manshura for
 submission of complete challan against the
 accused, who submitted complete challan against
 the accused on 23.03.2011.
 The prosecution thereafter closed its
 evidence and statement of accused under section
 342 Cr.P.C. was recorded but he pleaded
 innocence and claimed false implication.
 I heard arguments and gone through the

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accused made good his escape and why the police party could not arrest/apprehend the accused. Pw-2 further told that after coming back from chasing the accused. Itikhar Khan, SI already had taken the shopping bag in his possession. Meaning thereby that Pw-2 (witness of the recovery memo) was not present at the time of the alleged recovery. He further told that there are 30/32 slabs in the shopping bag while in Murasila there is nothing about the number of slabs. Even Pw-4 (complainant) in his cross examination told that there were slabs in the shopping bag but he did not count the same. There are many contradictions between the statement of Pw-2 (witness of the recovery memo and Pw-4 (complainant) on many points. Pw-2 in his cross examination told that the weighing was made with a scale and bots taken from a nearby shop while the complainant told that the scale and bots were available with him in the investigation bag. Pw-2 told that the I.O came to the spot after about 30/45 minutes of the recovery while the complainant told that the I.O came to the spot on next day. There is also delay about of about eight day in receiving the sample in the ISI but no explanation has been given in this regard. Moreover non of the witness said

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Case No. 6716
Date: 24-9-12
Name: M. J. Khan

(Minawar Khan)
ASJ-II/Judge Special Court,
Manshehra

It is certified that my this judgment consists of 08 pages. Each page has been read, signed and corrected by me wherever necessary.

CERTIFICATE

(Minawar Khan)
ASJ-II/Judge Special Court,
Manshehra

Announced: 22.09.2012

anything about sending the samples to the FSL. There is also nothing on record that in whose custody the samples were lying for the said eight days. All these make the case of prosecution highly doubtful. The prosecution could not be able to bring home the charge against the accused. Accused facing trial Muhammad Yousof is therefore, acquitted from the charges by giving him benefit of doubt. He is on bail, his bail bonds stand cancelled and sureties are discharged from the liabilities of bail bonds. Case properly be dealt in accordance with law after expiry of period of appeal/revision. File be consigned to the Record Room after completion.

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M. J. Khan

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ORDER

Amx 'H' (25)

This is an order on the representation of Ex-Constable Muhammad Yousaf No.582 of Mansehra District against the order of major punishment i.e. dismissal from service under RSO-2000 by the District Police Officer, Mansehra vide his OB No.99 dated 18-05-2011.

Facts leading to his punishment are that while posted in District Security Staff at PS Shinkiari has involved himself in Case FIR No.265 dated 07-03-2011 U/S 9 CNISA PS City Mansehra.

A departmental enquiry was conducted by Mr. Rasool Shah DSP Shinkiari Mansehra. After conducting a detail enquiry, the E.O proves the charges leveled against him. On the recommendation of E.O, the District Police Officer Mansehra awarded him punishment of dismissal from service under RSO-2000.

As the case was under trial in the court, his appeal was kept pending till the decision of court. Now he has been acquitted from charge leveled against him by the ASJ-I Mansehra.

The comments of DPO Mansehra were obtained. The enquiry file, appeal & the comments of the DPO were perused. He was heard in person during the OR on 05-08-2013.

Keeping in view the above & in lieu of acquittal by court, I take a lenient view & convert the order passed by the District Police Officer Mansehra from major punishment i.e. "dismissal from service" into major punishment i.e. "reduction in pay as time pay scale constable". He is reinstated in service & posted to Torghar District. The period he remained out of service is to be counted as leave without pay. He is placed under watch (special report) for a period of six months.

[Signature]
Regional Police Officer
Hazara Region Abbottabad
2013.

No. *6840-41* /PA Dated Abbottabad the *7/8*

Copy of above is forwarded to:

- 1) The District Police Officer, Mansehra for information and necessary action with reference to his Memo: No.19332/GB dated 19-11-2012. The Service Roll alongwith Faulty Missal containing Enquiry File of the appellant are returned herewith.
- 2) The District Police Officer, Torghar for information and necessary action, please.

Attest
[Signature]
District Police Officer
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Annex I" (26)

Reference attached.

Ex-FC -Muhammad Yousaf No. 582 of District Mansehra while posted in District Security Staff in Police Station Shinkari remained involved in case FIR No. 265 dated 07-03-2013 U/S 9-CNSA Police Station City Mansehra. After Departmental enquiry he was dismissed from service by the DPO Mansehra. The Constable made representation against this order which was kept pending in this office till the decision of the Court.

The accused constable has been acquitted by the Learned Court of ASJ-II Mansehra on 22-09-2012, copy of which is placed on file.

The accused Constable Muhammad Yousaf was enrolled as Constable on 15-09-1988 having an approximate service of 24 years. Comparatively he is good record except 2 red entries (Minor Punishment). Since the accused official has been acquitted by the Court against the allegations so leveled. Similarly charges leveled against him during departmental enquiry were also the same.

Keeping in view the acquittal order and service record I am the opinion that he may be reinstated in service if agreed please.

WRPO

A/DIC 14/03/13

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گورنمنٹ پبلسٹک ٹرانسپورٹ کارپوریشن 6540/19م نمبر۔ تعداد دروازوں جنرل۔ مورخہ 23 مارچ 2006ء (فارم نمبر جاز) (فارم نمبر پولیس)

فارم نمبر 15-13

پولیس موبیلس ایف 23 فارم نمبر 23
 قابل

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 152 مجموعہ ضابطہ نوچداری

شمارہ	19	صدر	ضلع	حالیہ
تاریخ و وقت رپورٹ	119	مدرسہ	مدرسہ	مدرسہ
نام و سکونت اطلاع دہندہ		مدرسہ	مدرسہ	مدرسہ
مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔		مدرسہ	مدرسہ	مدرسہ
جائے وقوعہ فاصلہ قحانہ سے اور سمت		مدرسہ	مدرسہ	مدرسہ
نام و سکونت ملزم		مدرسہ	مدرسہ	مدرسہ
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو		مدرسہ	مدرسہ	مدرسہ
یقیناً سے روانگی کی تاریخ و وقت		مدرسہ	مدرسہ	مدرسہ

ابتدائی اطلاع درج کرو۔ ایف 23 فارم نمبر 15-13 میں درج ہے کہ 19/03/2011ء کو ڈرائیور نے ایک بسیں نمبر 6540/19 میں ایک کرسی چھین کر لے لی۔ ایف 23 فارم نمبر 15-13 میں درج ہے کہ 19/03/2011ء کو ڈرائیور نے ایک بسیں نمبر 6540/19 میں ایک کرسی چھین کر لے لی۔ ایف 23 فارم نمبر 15-13 میں درج ہے کہ 19/03/2011ء کو ڈرائیور نے ایک بسیں نمبر 6540/19 میں ایک کرسی چھین کر لے لی۔ ایف 23 فارم نمبر 15-13 میں درج ہے کہ 19/03/2011ء کو ڈرائیور نے ایک بسیں نمبر 6540/19 میں ایک کرسی چھین کر لے لی۔

ایف 23 فارم نمبر 15-13 میں درج ہے کہ 19/03/2011ء کو ڈرائیور نے ایک بسیں نمبر 6540/19 میں ایک کرسی چھین کر لے لی۔ ایف 23 فارم نمبر 15-13 میں درج ہے کہ 19/03/2011ء کو ڈرائیور نے ایک بسیں نمبر 6540/19 میں ایک کرسی چھین کر لے لی۔ ایف 23 فارم نمبر 15-13 میں درج ہے کہ 19/03/2011ء کو ڈرائیور نے ایک بسیں نمبر 6540/19 میں ایک کرسی چھین کر لے لی۔ ایف 23 فارم نمبر 15-13 میں درج ہے کہ 19/03/2011ء کو ڈرائیور نے ایک بسیں نمبر 6540/19 میں ایک کرسی چھین کر لے لی۔

3/4/09

WAKALAT NAMA

IN THE COURT OF

KPK Senuke

Tribunal, Raw

Muhammad Younis Appellant(s)/Petitioner(s)

Gaet etc VERSUS

Respondent(s)

I/We Muhammad Younis do hereby appoint Mr. Khaled Rehman, Advocate in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case; or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Khaled Rehman,
Advocate, Peshawar.

9-B, Haroon Mansion
Khyber Bazar, Peshawar

M. Younis
Signature of Executants