FORM OF ORDER SHEET

Court of _____

Appeal No. 1676/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30 /09/2024	The appeal of Mr. Muhammad Asif presented today by Mr. Ashraf Ali Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 03.10.2024. Parcha Peshi given to counsel for the appellant. By order of the Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1676 /2024

Muhammad Asif S/o Zahir Shah.
Police Force, Kohat .....**Appellant.**

VERSUS

The Regional Police Officer,
Kohat Region, Kohat & other.....**Respondents.**

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal along with Affidavit.			1-10
2.	Copy of judgment of acquittal	14-06-2024	A	11-28
3.	Copy of charge sheet and statement of allegation.	14-03-2022	B	29-30
4.	Reply to charge sheet.		C	31
5.	Copy of final show cause notice.	01-06-2022	D	32
6.	Reply to final show cause notice.		E	33
7.	Copy of impugned order of dismissal from service.	12-08-2022	F	34-35
8.	Copy of application to RTI Kohat.		G	36
9.	Copy of Order of Trial Court requiring inquiry report.		H	37-50
10.	Copy of application filed by father of the appellant before respondent No.1		I	38
11.	Copy of Departmental Appeal		J	39-46
12.	Copy of impugned order of rejection of departmental appeal.	29-08-2024	K	47
13.	Wakalat Nama			48

Appellant

Through

Ashraf Ali Khattak
Advocate,
Supreme Court of Pakistan

Dated :____/_____/2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 1676 /2021

Mr. Sajjad Ali, Ex-CT,
GHS Behlola Charsadda.

(APPELLANT)

VERSUS

1. The Secretary, (E&SE) Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Director, (E&SE) Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The District Education Officer (Male), Charsadda.

(RESPONDENTS)

APPLICATION FOR RESTORATION OF INSTANT APPEAL WHICH WAS DISMISSED IN DEFAULT ON NON-PROSECUTION ON 20.09.2024

RESPECTFULLY SHEWETH:

1. That the appeal of the appellant was fixed for arguments in this Honorable Tribunal on 20.09.2024.

2. That the counsel for the appellant was busy in other court on 20.09.2024, therefore, he could not attend the instant case on the date fixed due to which the instant appeal was dismissed in non-prosecution on 20.09.2024. **(Copy of order sheet dated 20.09.2024 is attached as Annexure-A)**

3. That the appellant has good prime facie case and interest of justice demand that the case of the appellant to be decided on merit to the meet the ends of justice.

It is, therefore, most humbly prayed that on the acceptance of this application the instant appeal may kindly be restored and to decide on merit to meet the ends of justice.

APPELLANT
Sajjad Ali

THROUGH:

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO.204/2022

Iftikhar Ahmad Khan, Ex-DM,
R/O Mohallah Babran Dag Behsud District Nowshera.

(APPELLANT)

VERSUS

4. The Secretary, (E&SE) Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. The Director, (E&SE) Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
6. The District Education Officer (Male), Nowshera.

(RESPONDENTS)

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APPELLANT
Iftikhar Ahmad khan

THROUGH:

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1676 /2024

Muhammad Asif S/o Zahir Shah.
R/o Paya Jaykia, Kohat.
Ex Constable Belt No.1538
Police Force, Kohat .....**Appellant.**

VERSUS

1. The Regional Police Officer,
   Kohat Region, Kohat.

2. The District Police Officer, Karak.....**Respondents.**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH RULE 11 OF THE KHYBER PAKHTUNKHWA POLICE RULES, 1975 AGAINST THE IMPUGN ORDER OF RESPONDENT NO.1 VIDE Endst. NO. 6995/EC DATED 29-08-2024 WHEREBY HE REJECTED THE DEPARTMENTAL APPEAL OF THE APPELLANT PREFERRED AGAINST THE IMPUGNED ORDER OF RESPONDENT NO.2 OB NO. 264 DATED 12-05-2022 WHEREBY HE IMPOSED UPON THE APPELLANT MAJOR PENALTY OF DISMISSAL FROM SERVICE WITH IMMEDIATE EFFECT.

Respected Sir,

Appellant humbly submits as to the following:-

1. That appellant was enrolled in Police Force in the year, 2015.He has about 10 year at his credit.

2. That appellant was booked in case FIR NO.133, dated 05-03-2022 under section 9D KP CNSA, Police Station MRS, Kohat on certain

flimsy and concocted accusation. Appellant was arrested and put up behind judicial custody till order of acquittal dated 14-06-2024. Copy of judgment of acquittal is attached as **Annexure-A.**

3. That it is pertinent to bring into the notice Of Hon'ble Tribunal that the competent authority was under legal obligation to notify the appellant as suspended under the rules (CSR-394) and wait for the outcome of the Criminal Trial, but he failed to comply with CSR-394 and got him suspended but also without waiting for the outcome of the Criminal proceedings; directly imitated departmental disciplinary proceeding against the appellant, which culminated into the dismissal order of the appellant dated 10-08-2022.

4. That appellant was served with charge sheet and statement of allegation dated 14-03-2022 (**Annexure-B**) to which he submitted reply (**Annexure-C**). Appellant was not associated with inquiry proceedings and the whole inquiry procedure was conducted in the absence and at the back of the appellant. No witness has been examined in presence of appellant. The question of cross examination in circumstance could not be raised. Appellant does not know as whether the inquiry officer has examined any prosecution witness or not.

5. That appellant was served with final show cause notice No.3421/PA dated 01-06-2022 (**Annexure-D**) without providing him copy of the inquiry report. Appellant submitted reply to the final show cause notice (**Annexure-E**) wherein he again requested the competent authority to stop the inquiry proceedings till the decision of criminal case but no heed was paid to the legitimate request of the appellant and vide impugned order OB No.264 dated 10-08-2022 and Endst. No.9273-75/PA dated 12-08-2022 (**Annexure-F**), appellant was penalized with major penalty of dismissal from service with immediate effect.

6. That it is worth mentioning that appellant has also requested RTI Kohat for directing the concerned authorities to provide copy of the inquiry report (**Annexure-G**) but that too was not complied with.

7. That it is also worth mentioning that appellant also requested the Trial Court for requisitioning the inquiry report (**Annexure-H**) and despite of the directions of the Trial Court, the inquiry report was not submitted before the Trial Court.

8. That it is also pertinent to bring into the notice of this Hon`ble Tribunal that appellant was in Jail therefore, the father of the appellant through a separate application requested the respondent No.1 for initiating denovo inquiry proceedings through transparent and legal prescribed procedure (**Annexure-I**) but the same was not responded and no proceedings were initiated.

9. That appellant immediately after acquittal from criminal case and being aggrieved from the impugned original order OB No.264 dated 10-08-2022 and Endst. No.9273-75/PA dated 12-08-2022, submitted departmental appeal before the respondent No.1 (**Annexure-J**) which has now been rejected vide Endst No.6995/EC dated 29-08-2024 (**Annexure-K**) hence, the present appeal inter alia on the following amongst other grounds;

GROUNDS

A. That the penal authority has not treated the appellant in accordance with law, rules and policy and acted in violation of Articles 4, 10-A, 25 and 27 of the Constitution of Islamic Republic of Pakistan, 1973. Appellant has been penalized with major penalty on the ground of being allegedly involved in a criminal case. The Criminal case has been decided on 14-06-2024 and appellant has been Honorably acquitted from the charge. In circumstance the base of charge is no more in the field, therefore the whole superstructure built upon the alleged departmental

(4)

proceeding has no legal sanctity and is liable to be set aside by re-instating the appellant with all back benefits.

B. That it has been repeatedly held by the Hon,ble Supreme Court of Pakistan, Service Tribunal and High Court that when an accused is acquitted of the charge on which the departmental proceeding have been initiaed; re-instatement of civil servant is a rule. Wisdom may derived from reported Judgment as to the following:-

When facts and circumstances of the criminal case and disciplinary proceeding are the same..... Civil Servant entitle for re-instatement... (2011 TD 164). Acquittal from criminal charge. Re-instatement is a Rule under Article 4 and 25 of the Constitution, 1973. 1997 PLC (CS) 752.

Dismissal... Registration of FIR... Acquitted... Such dismissal could not be insisted to be retained in field (2009 PLC (CS) 471, 1986 PLC (CS) 130.

2001 SCMR 269, 2003 PLC (CS) 814, 2002 SCMR 57.

Charge of Corruption... Dismissed...Acquittal by competent court of law....Civil servant shall be deemed not to have committed the charge offence....Authority would be bound to re-instate the civil servant. (2013 PLC (CS) 1398(a) (b).

Acquittal of civil servant from a criminal case. Civil servant in case of acquittal was to be considered to have committed no offence because the competent criminal court had freed/cleared him from accusation or charge of crime. Such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of murder case against him. 1998 SCMR 1993.

Where the departmental proceedings were initiated only on the basis of criminal charge, which was not subsequently proved in the competent court of law and resulted in acquittal, Order of service Tribunal upholding the order of compulsory retirement by the department was set aside by the Supreme Court. PLD 2003 SC 187.

C. That the impugned order has been passed in violation of the law laid down by the Hon`ble Supreme Court of Pakistan which provides that in case of major penalty and factual controversy, regular inquiry was obligatory and in absence of regular inquiry penal order of major penalty

(dismissal from service) cannot be clothed with validity and was liable to be struck down on this score alone.

Citation Name : 2019 PLC(CS) 224 PESHAWAR-HIGH-COURT

Side Appellant : SALEEM WAZIR PROFESSOR COMMUNITY MEDICINE

Side Opponent : GOVERNMENT OF KHYBER PAKHTUNKHWA

Major penalty, imposition of---Requirements---Any disciplinary proceedings relating to misconduct of an employee/officer of any department which entails major penalty of removal/dismissal from service must be inquired through **regular inquiry** which cannot be dispensed with in matter where controversial facts and ticklish questions are involved.

Citation Name : 2019 PLC(CS) 475 KARACHI-HIGH-COURT-SINDH

Side Appellant : IQBAL HUSSAIN

Side Opponent : FEDERATION OF PAKISTAN through Secretary Ministry of Information and Technology, Government of Pakistan

Holding of **regular inquiry** in case of imposition of major penalty was prerequisite and mandatory condition.

D. That Section 16 of the Civil Servant Act, 1973 provides that every civil servant in case of misconduct is liable for prescribed disciplinary action only in accordance with law. It has also been settled down by the Hon'ble Supreme Court of Pakistan that when law prescribes something to be done in a particular manner, it has to be done in that manner or not at all. In the instant case no prescribed procedure has been adopted by the competent authority and as well by the inquiry officer. On this score alone the impugned order is liable to set aside.

E. That appellant was in jail but he was not associated with inquiry proceedings and no prosecution witness has been examined in his presence and what to say the opportunity of cross examination ? The inquiry officer has totally failed to collect an iota of incriminating evidence against the appellant. In absence of any incriminating evidence how a civil servant can be penalized with major penalty and that too of

dismissal from service therefore, this Hon'ble Tribunal is under legal obligation to interfere with and set aside the impugned order.

F. That the basic concept of penal order was the formation of issues, its determination and reason for determination but the same are absolutely missing as evident from the context of the impugned order, which is against the provisions of General Clauses Act, 1897.

G. That appellant was served with final show cause notice without providing copy of inquiry report plus incriminating documents (if any). The appellant has been condemned unheard. No opportunity of personal hearing has been provided to him. The impugned penal order passed by the competent authority is flimsy in its nature and does not provide legal justification for imposition of major penalty. On this score as well, the impugned penal order is liable to be set aside.

H. That appellant submitted his departmental appeal after acquittal from criminal case in accordance with the principle laid down by the Hon'ble Supreme Court of Pakistan in a Judgment reported as *PLD 2010 SC 695* that "It is unjust and oppressive to penalize a civil servant for not filing his departmental appeal before earning his acquittal in criminal case which had formed the function for his removal from service....Appeal before Service Tribunal was not barred by limitation."

I. That the well-known principle of law "Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.

....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been

afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

The Executive have to show source of authority:-

The Executive is not above law and it must, on challenge to its action, show the legal authority from where it derives the source of its authority. In case the executive fails to show the source of its power, its acts, as so far they conflict with legal protected interests of individuals, must be declared by courts Ultra vires and without jurisdiction. [PLD 1990 Kar 9].

Things must be done in prescribed manner or not at all....; Expressio unius est exclusion alterius..... When an action is required to be done in a particular manner that must be done in that manner only or not at all.

J. That appellant is jobless since his dismissal order and under heavy financial burden therefore liable to be re-instated with all back benefits.

Re-instated employee would be entitled to back benefits as a matter of course unless employer is able to establish by cogent evidence that concerned employee had been gainfully employed elsewhere. In this respect, initial burden would lie upon the employer and not upon the employee to prove that such employee was gainfully employed during period of termination from his service. 2010 TD (Labour) 41.

Civil servant who was dismissed from service through arbitrary and whimsical action of the government functionaries and re instated through judicial order of Service Tribunal would have every right to recover arrears of salaries by way of back benefits due to them during the period of their dismissal and re instatement. It would be very unjust and harsh to deprive them of back benefits for the period for which they remained out of job without any fault on their part and were not gainfully employed during that period.....Supreme Court allowing their appeal and directing payment of back benefits to the appellant. 2006 T D (SERVICE) 551 (a).

Citation Name : 2018 SCMR 376 SUPREME-COURT

Side Appellant : KHALID MEHMOOD

Side Opponent : STATE LIFE INSURANCE CORPORATION OF

Sched., S.O 12(3)--- Permanent employee---Dismissal without assigning reasons---**back benefits**, entitlement to---Appellant's services were terminated without assigning any reason whatsoever, which termination was found illegal by the Labour Court as well as by the Labour Appellate Tribunal---In terms of Standing Order 12(3) of the Schedule to the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, the services of a permanent employee could

be terminated only by giving explicit reasons---Supreme Court ordered payment of **back benefits** to the appellant for the intervening period between his date of termination and date of his reinstatement in service.

Citation **Name** : 2018 PLC 182 SUPREME-COURT

Side Appellant : KHALID MEHMOOD

Side Opponent : STATE LIFE INSURANCE CORPORATION OF PAKISTAN

Reinstatement in service---**back benefits** ---Employer obtaining consent from employee to forgo **back benefits** as a condition for reinstatement---Practice of obtaining such consent from employee was deprecated by the Supreme Court.

Burden of proof:-

Burden of proof lie is on authority to prove misconduct. [1997 SCMR 1543].

Burden of proof lies on the department for communication of orders. [1994 PLC (CS) 46].

Burden of proof on the prosecution to prove the charge.

The law in the country is still unchanged and is governed by law of Qanoon-e-Shahadat in Vogue and by virtue of the same, we have to see, that it is for the prosecution to establish the guilt of the person and if it fails to do so, the result is that benefit goes to the accused of the said failure.

If the allegation against the accused civil servant/employee is of serious nature and if he denies the same, a regular inquiry cannot be dispensed with. In such a case, the initial burden on the department to prove the charge, which cannot be done without producing evidence [1983 PLC (CS) 211 + 1997 PLC (CS) 817 (S.C) + 1997 SCMR 1543].

Standard of proof.....To be akin to one required in criminal cases.

It is significant that while referring to civil servant, who is being proceeded against under the Govt: Servant (Efficiency and Discipline) Rules the word "accused" has been used which indicates that the proceedings conducted by the inquiry officer are akin to a criminal trial [1996 SCMR 127]. A person is presumed to be guilty of misconduct if evidence against him establishes his guilt. The use of the world "guilty" is indicative of the fact that the standard of proof should be akin to one required in criminal cases [PLD 1983 SC (AJ & K) 95].

Prosecution to stand on its legs to prove the allegations.

Accused is stated to be a favorite child of law and he is presumed to be innocent unless proved otherwise and the benefit of doubt always goes to the accused and not to the prosecution as it is for the prosecution to stand on its own legs by

proving all allegations to the hilt against the accused. Mere conjectures and presumption, however strong, could not be made a ground for removal from service of civil servant [1999 PLC (CS) 1332 (FST)]..... Unless and until prosecution proves accused guilty beyond any shadow of doubt, he would be considered innocent [1983 PLC (CS) 152 (FST)].

K. That appellant would like to seek the permission of this Hon'ble Tribunal to advance more grounds at the time of arguments.

Prayer:

On acceptance of this Service Appeal, this Hon'ble Tribunal may kindly be pleased to;

(i) **Declare** the impugned orders dated OB No.264 dated 10-08-2022 and Endst. No.9273-75/PA dated 12-08-2022 and Endst No.6995/EC dated 29-08-2024 as illegal, unlawful, against law and rules on policy on subject and set aside the same.

(ii) **Direct** the respondents to reinstate the appellant into service with all back benefits.

(iii) **Any other relief** as deemed appropriate in the circumstances of the case not specifically asked for may also be granted in favour of the appellant.

Appellant

Through

Ashraf Ali Khattak
Advocate,
Supreme Court of Pakistan

Ali Bakht Mughal
Advocate,
High Court, Peshawar

Dated :____/_____/2024

(10)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No._____/2024

Muhammad Asif S/o Zahir Shah.
R/o Paya Jaykia, Kohat.
Ex Constable Belt No.1538
Police Force, Kohat .....**Appellant.**

VERSUS

The Regional Police Officer,
Kohat Region, Kohat & other.....**Respondents.**

AFFIDAVIT

I, Muhammad Asif S/o Zahir Shah. R/o Paya Jaykia, Kohat. Ex Constable Belt No.1538, Police Force, Kohat do hereby solemnly affirm and declare on oath that the contents of this service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the notice of this Hon`ble Tribunal.

DEPONENT

ANX (A) (11)

IN THE COURT OF KHALID HUSSAIN
ADDITIONAL SESSION JUDGE-VI/CPC/JSC, KOHAT

CASE No.105/CNSA of 2022

Date of Institution:	*24.05.2022*
Date of Decision:	*14.06.2024*

The State.....Versus.....**Muhammad Asif** s/o Zahir Shah, r/o Paya Jawaki, Kohat.....*(Accused Facing Trial)*

Piomeen s/o Zari Badshah r/o Khial Mat Khel Kalay Palosa Sar Orakzai.....**(Absconding accused)**

FIR No.133, Dated 05.03.2022, U/s 9D KP CNSA, OF PS Cantt Kohat.

JUDGMENT:
14.06.2024

1. Accused named above has faced trial in case FIR No.133, dated 05.03.2022 U/S 9D-KP CNSA, PS MRS, Kohat.

2. Brief facts of the prosecution's case, as per contents of FIR, are that on 05.03.2022 at 16:45 hours, complainant Ayatullah Khan Babar SHO alongwith other police contingent, has laid a picket (Nakabandi) at Nisar Chowk, in the meanwhile a motorcar bearing Registration No.PC-944/Islamabad coming from Ublan camp side was stopped. Alongwith the driver another person was also sitting on the front seat in the said Motorcar. Both of them were deboarded

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from the motorcar, wherein the driver disclosed his name as Muhammad Asif s/o Zahir Shah r/o Paya Jawaki, who on cursory interrogation was found to be an employee of the same department (Police department) while the person sitting next to the diiver disclosed his name as Muzammil s/o Jameel r/o Togh Bala (absconding accused), nothing incriminating was recovered from the their personal search, however, search of the motorcar led to the recovery of 21 packets of chars, from the boot/Digi of the motorcar, each packet weighing, 1200 grams, 25200 grams in total. Complainant/SHO separated 5/5 gram from each of the recovered packets and sealed the same into parcels No.1 to 21 for sending it to FSL while the remaining stuff was sealed into parcel No.22. Both the accused were apprehended, Murasila was drafted and sent to Police Station for registration of FIR. Hence the case in hand.

3. During the course of investigation, one Piomeen who also arrayed as an accused in the case on the allegations that it was he who delivered the said chars to both the aforementioned accused.

4. After completion of necessary investigation, complete challan against accused Muhammad Asif was submitted while challan u/s 512 Cr.P.C was submitted against the absconding accused Piomeen. Separate challan under the Juvenile Justice System Act, 2018 was submitted against accused Muzammil, being juvenile. Accused

(13)

Muhammad Asif was provided copies within the meaning of section 265-C Cr.P.C and charge against him was framed on 07.07.2022, to which he pleaded not guilty and claimed trial. Resultantly prosecution was asked to produce evidence.

5. In order to prove the case, prosecution has produced as many as Nine (09) witnesses and following is the gist of their statements;

i) ***Sami ur Rehman IHC posted at casualty KDA Kohat (PW-1),*** deposed that he reduce the contents of Murasila into FIR ExPA. The witness next stated that he kept the case property in maal khana of Police Station and parked the subject motorcar in the Police Station premises. To this effect, he also made relevant entries in the register No.19.

ii) ***Ajmal 206 Police Station Cantt Kohat (PW-2),*** who took the Murasila to Police Station for registration of case.

iii) ***Muhammad Tahir 57/LHC Police Station Jawaki (PW-3),*** who took the sample parcels to FSL Peshawar.

iv) ***Naseeb ur Rehman SHO Police Station Jawaki (PW-4),*** deposed that he submitted interim challan against accused Muhammad Asif and Muzammil as ExPK.

v) ***Ayatullah Khan SHO Police Station Shah Salim District Karak (PW-5),*** being complainant of the case, when appeared before the court, he reiterated his previous stance in the shape of Murasila (ExPA/1), recovery memo (ExPC)

14/06/2024

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(14)

and card of arrest (Ex.PW.5/1).

vi) ***Shafiq Hussain ASI Police Station KDA Kohat, (PW-06)***, being marginal witness, he endorsed his association with recovery memo (ExPC), vide which, complainant/seizing officer took into possession one motorcar No.PC-944/Islamabad and twenty one packets chars, each weighing 1200 gram, 25200 grams in total.

vii) ***Shah Doran SHO Police Station Ustarzai Kohat (PW-7)***, who is the investigating officer of the present case. The following documents were exhibited during his statement;

- Ex.PB is the site plan.
- Ex.PW-7/1 is the application for obtaining police custody of accused facing trial.
- Ex.PW-7/2 is the information regarding the accused Muhammad Asif being police official.
- ExPW-7/3 is the application for recording confessional statements of accused facing trial.
- ExPW-7/4 is the application for sending the sample to FSL.
- ExPW-7/5 is the route certificate.
- ExPZ is the FSL report.
- ExPW-7/6 is the memo for nominating Pioneen

14/05/2019

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s/o Zari Badshah as accused.

> ExPW-7/7 is the notice u/s 160 Cr.P.C.

> ExPW-7/8 is the docket to DPO for arrest of accused Piomeen Khan.

> ExPW-7/9 is the application for issuing warrant u/s 204 Cr.P.C against accused Piomeen Khan.

> ExPW-7/10 is the application for issuing proclamation notice u/s 87 Cr.P.C.

> ExPW-7/11 are the daily diaries No.13 and 19 dated 05.03.2022.

> ExPW-7/12 are the daily diaries No.3 and 13.

> ExPW-7/13 & ExPW-7/14 are the Mad No.7,8 and 16 dated 05.03.2023.

> ExPW-7/15 is the Mad No.20 dated 14.02.2022.

> ExPW-7/16 is the mad No.09 dated 14.02.2022.

> ExPW-7/17 is the documents of Rent A Car office regarding the motorcar in question.

14/06/2024

viii) *Mubasshir Khan s/o Naseem Khan r/o Ghari Risaldar Hangu Road Kohat (PW-08),* who deposed that in his presence Muhammad Shareef Khan entered into contract with one Qasim, manager of Saif Afridi Rent A Car, regarding the motorcar No.PC-944 in lieu of monthly Rent i-e Rs.40,000/-.

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ix) ***Muhammad Qasim (manager of Saif Afridi Rent A Car) (PW-09)***, who deposed that he entered into a rent contract ExPW-9/1 with Muhammad Shareef. The witness next testified that on 17.02.2022, accused Muhammad Asif came to his office and rented out the motorcar No.PC-944 in lieu of Rs.70,000/- for one month and paid Rs.8000/- on the spot.

6. After closing the prosecution's evidence, the accused facing trial has been examined u/s 342 Cr.P.C, wherein he denied the allegation of the prosecution's case and has refused to produce defense evidence or to give statement on oath. Thereafter, arguments of learned defense counsel and DyPP for the State were heard.

7. Learned DyPP has argued that prosecution has proved its case against the accused facing trial through trustworthy and unimpeachable evidence. He further submitted that all the prosecution witnesses have provided consistent statements and they are one voice regarding the recovery of narcotics and presence of accused Muhammad Asif and accused Muzammil (absconding juvenile accused) at the spot. He further submitted that in narcotics cases, presumption is in favour of the prosecution and rebuttal of which is on the defense. There is nothing on the record that the complainant and other witnesses have any ill will against the

(17)

accused. He further argued that in case of recovery of narcotics, minor contradictions in prosecution case are negligible and did not strike the route of prosecution case. He stressed that factum of recovery of chars find mention in murasila, FIR and recovery memo which is further supported by positive FSL report. He argued that police officials are as much competent witnesses as private persons unless and until any malafide shown on their behalf. He further submitted that prosecution has proved the safe transmission of case property from the spot, its safe custody in Malkhana and safe transmission of samples to FSL. He lastly submitted that the prosecution has proved its case against the accused facing trial beyond the reasonable doubts, thus accused may be convicted and sentenced according to law.

14/06/2024

8. As against the above, learned counsel for accused Muhammad Asif submitted that the burden of proof was on the prosecution to prove its case beyond any reasonable doubt but the statements of prosecution witnesses are full of contradictions, and there are major discrepancies in the time, manner and place of the alleged recovery. The learned counsel argued that the mode and manner as given by the prosecution witnesses suggests that no recovery whatsoever has been effected by the local police from the possession of accused, hence, the same creates serious doubts, which benefit must be given

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to accused being a favorite child of law. He voiced that there is no confession on behalf of accused facing trial Muhammad Asif. He argued that the prosecution failed to establish the safe transmission and safe custody of case property, hence, even the positive FSL report is of no avail to the prosecution case. Lastly, he prayed that the prosecution has badly failed to prove its case against accused Muhammad Asif beyond shadow of reasonable doubt, therefore, the accused may be acquitted of the charges levelled against him.

9. I have considered the above submissions and perused the available record and evidence produced by the prosecution.

10. Perusal of the record reveals that it is the case of prosecution that on 05.03.2022 at 16:45 hours, complainant Ayatullah Khan Babar SHO alongwith other police contingent, has laid a picket (Nakabandi) at Nisar Chowk, in the meanwhile a motorcar bearing Registration No.PC-944/Islamabad coming from Ublan camp side was stopped. Alongwith the driver another person was also sitting on the front seat in the said Motorcar. Both of them were deboarded from the motorcar, wherein the driver disclosed his name as Muhammad Asif s/o Zahir Shah r/o Paya Jawaki, who on cursory interrogation was found to be an employee of the same department (Police department) while the person sitting next to the driver disclosed his name as Muzammil s/o Jameel r/o Togh Bala (absconding juvenile accused),

14/06/2022

(19)

nothing incriminating was recovered from the their personal search, however, search of the motorcar led to the recovery of 21 packets of chars, from the boot/Digi of the motorcar, each packet weighing, 1200 grams, 25200 grams in total. It is alleged that the said chars was delivered by absconding accused Piomeen to accused Muhammad Asif and absconding Juvenile accused Muzammil.

11. An important aspect of the matter is, that as the superior courts have repeatedly held in their various judgments that safe transmission of the narcotics from the spot of recovery till its receipt by the FSL must be satisfactorily established. This chain of custody is fundamental as the FSL report is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was un-broken, unsuspicious, safe and secure. Any break or foul play in the chain of custody impairs and vitiates the reliability of FSL report. Reliance in this regard is placed on 2018 SCMR 2039.

In the case inhand, after apprehending the accused and completion of spot proceeding the case property including the sample parcels were shifted from spot to police station by the complainant/SHO (PW-5) himself, where he handed over the same to Moharrir of the Police Station for its deposit in Police Station Malkhana. Prosecution produced Sami ur Rehman, Moharrir of the Police Station as PW-1. The witness endorsed the stance of

(20)

complainant/SHO and stated that on 05.03.2022 he received case property from complainant/SHO, whereafter, he deposited the same in Police Station Malkhana and entered the details of the same in register No.19. PW-1 failed to produce copy or extract of Register No.19 in his evidence nor the investigating officer made the same as part of the challan. The Maalkahna register (store room register) is required to be maintained in every Police Station under rule 22.70 of the Police Rules 1934 and every article deposited in or removed from Police Station Maalkhana is required to be entered in the appropriate column in this register.

It is cardinal rule of evidence that where written document exists, it shall be produced as being best evidence of its own contents. Furthermore, according article 102 of Qanoon-e-Shahadat Order 1984 any matter required by law to be reduced to the from of document, no oral evidence shall be given for proof of that matter except the document itself. As maintaining register No.19 and making entries in the said register is a legal requirement under the police rules 1934. Hence, to my mind, the safe custody of the case property including the sample parcel could be proved only if the copy or extract of register No.19 was formally brought on record before the court and the oral statement of PW-1, to the extent of safe custody is inadmissible in evidence under Article 102 of Qanoon-e-Shanadat

14/06/2024

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06 JUL 2024
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(21)

Order 1984, for failure of the investigating officer to make the said register or certified copy thereof, as part of the record.

Hence, in the circumstances, the safe custody of case property has not been established for failure to produce register No.19.

12. Furthermore, recovery memo (ExPC) and card of arrest (ExPW-5/1) carried the FIR number. According to prosecution's case these documents were prepared at spot, when no FIR was yet registered at police station, however, the mentioning of FIR number on the aforementioned documents, suggest that the same were prepared after registration of the FIR, which negates the mode and manner of the search/recovery as alleged in the prosecution case. In this regard reliance is placed on **1996 PCr.LJ 706**.

13. Moreover, there are glaring contradictions in the statements of PWs regarding the time, mode and manner of the occurrence. According to the crime report the occurrence which formed basis of the instant case, took place 16:45 hours, report of the same was scribed in the shape of Murasila at 18:00 hours, whereafter the same was sent to Police Station, on the basis whereof, formal FIR was registered at 18:40 hours. Complainant/SHO (PW-5) during cross examination, while explaining the timing of these events has stated that 16:45 hours is the time when we stopped motorcar of the accused. The witness further stated that they consumed 05 minutes on personal search of

(22)

the accused and it took 01 hour and 25 minutes in completion of recovery proceedings. Relevant extracts of his statement are as under;

> *"At 16:45 hours neither the accused was handcuffed nor he was arrested, witness volunteered that after recovery the accused was handcuffed and was arrested meaning thereby after 16:45 hours i-e time of stopping of the car, we make personal search of accused facing trial within five minutes and thereafter when recovery was effected, the total time consumed is one hour and 25 minutes."*

However, constable Ajmal (PW-2) who took Murasila from spot to Police Station, during cross examination has stated that on the relevant day he was handed over the Murasila and other related documents for taking the same to Police Station at 16:45 hours.

According to Shafiq Hussain (Pw-6) marginal witness to recovery memo ExPC, the alleged chars was recovered on the pointation of accused, however, the witness did not give any farther details/explanation that on whose pointation, out of the two accused, the recovery was effected. Relevant extract of his statement is as under;

> *"The boot/Dicky was pointed out by the accused to the SHO and the accused opened the boot/dicky to the SHO. Though the factum of pointation of the recovered chars on the*

14/06/2024

(23)

part of accused has not been mentioned in the recovery memo, however, the same were pointed out to the complainant by the accused himself."

However, the complainant/seizing officer PW-5, while negating this stance of PW-6, has stated that he did not make the recovery of contraband chars on the pointation of any of the accused, rather he did this recovery himself. Relevant extract of his statement is as under;

"*It is also correct that nothing incriminating has been recovered upon the pointation of accused. We had not made the recovery upon the pointation of accused. The witness volunteered that the recovery proceedings were conducted by us by our own.*"

14. Furthermore, according to complainant/seizing officer (PW-5) the recovered packets of chars were of the same size and having the same weight. The witness further stated that the recovered contraband chars were in shape of slabs, solid in nature and brown in color. However, according to PW-6 the packets of chars were in different sizes and the chars was back in color.

The afore-referred contradictory statements of the PWs regarding the description and color of the recovered chars, as alleged, strikes in the mind regarding the veracity of the prosecution's case.

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06 JUL 2021
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(29)

15. In the case in hand 25200 grams Charas was recovered contained in twenty one packets and samples were separated from each packet. In such like scenario, the prosecution was duty bound to connect each sample with its origin

To avoid such doubt prosecution was required to mark numbers on each parcel as well as numbers on each representative sample. In other words, this separate numbering was essential in order to dislodge the doubt of preparation of samples from one parcel or / and to confirm that there is representative sample from each parcel.

In this respect, **Shafiq Hussain ASI (PW.06)** in his cross examination stated that,

"The parcels were not given their respective numbers. No representative sample numbers were given to the other parcels."

These extracts of the statement of **Shafiq Hussain ASI (PW.06)** are suggestive of the fact that the parcels as well as its representative samples were not separately numbered. In absence of separate numbers there is strong probability that the samples could have been taken from one parcel or / and there is strong probability that the samples sent for FSL could have not been the correct representative of each parcel. This material aspect of the case makes the recovery proceedings highly doubtful.

(25)

16. Last but not the least, it is further observed that FSL report Ex.PZ suffers from material lacuna that no chemical analysis etc were conducted in respect of each sample separately. No doubt, twenty one samples of Chars were received by FSL for examination. The chemical examiner was duty bound to conduct analysis of each sample separately and mention the results alongwith protocols accordingly. This mandatory requirement is substantially missing in FSL report Ex.PZ. At this stage, it is relevant to reproduce a para from the case of **Ameer Zeb reported in PLD 2012 SC P-380 of the Hon'ble Supreme Court of Pakistan,** as:

"As is evident from the resume of the precedent cases mentioned above, the trend of authority of this Court leans overwhelmingly in favour of obtaining and sending for chemical analysis a separate sample of every separate packet/cake/slab of the substance allegedly recovered from an accused person's possession and for its separate analysis by the Chemical Examiner in order to confirm and establish beyond doubt that the entire quantity of the allegedly recovered substance was indeed narcotic substance. It is our considered opinion that a sample taken of a recovered substance must be a representative sample of the entire substance recovered and if no sample is taken from any particular packet/cake/slab or if different samples taken from different packets/cakes/slabs are not kept separately for their separate

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06 JUL 2023
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(26)

analysis by the Chemical Examiner then the sample would not be a representative sample and it would be unsafe to rely on the mere word of mouth of the prosecution witnesses regarding the substance of which no sample has been taken or tested being narcotic substance." (Underlining is mine).

The same principles of chemical analysis of each sample separately were also followed in recent cases of **Zafar Iqbal reported in 2019 YLR P-1916 (Lahore High Court), Safdar Iqbal reported in 2019 MLD P-1518 (Lahore), Muhammad Yaseen reported in 2020 P.Cr.L.J P-1295 (Lahore) and Khalid Razzaq reported in 2020 YLR P-2524 (Lahore).** This deficiency makes the FSL report Ex.PW.4/4 as inconsequential.

17. Now so far as the motorcar bearing Registration No.PC-944/Islamabad (ExP-1), having the contraband chars and was allegedly driven by accused Muhammad Asif, is concerned. In this regard prosecution produced Muhammad Qasim, manager of Saif Afridi Rent A Car as PW-9, the witness deposed that on 17.02.2022 accused Muhammad Asif came to his office, and a rent agreement for renting the car bearing registration No.PC-944/Islamabad was executed between them. The rent was fixed as 70,000/- per month and the accused paid to him Rs.8000/- as advanced rent. However, during cross examination the witness stated;

(27)

"It is correct that neither I know the accused facing trial nor had seen any secret cavity in the car. It is also correct that neither in my presence the motorcar was handed over to the accused nor to anyone in my presence."

Under the circumstances, prosecution's contention that accused Muhammad Asif had obtained a rented car from Saif Afridi Rent A Car, and attempted to transport chars in it while being arrested, appears to be a fantasy story. Besides, in absence of any driving license of accused Muhammad Asif, mere disclosing him as driver of the vehicle is not sufficient qua corroboration of version of prosecution particularly when no recovery was affected from the immediate/personal possession of accused.

14/06/24

18. Prosecution is always duty bound of full proof and failure thereof would always benefit accused facing trial. Benefit of even a single reasonable doubt, appeared from evidence of prosecution, is always golden principle of Administration of Criminal Justice.

In this respect, reliance is placed upon the **cases of "Muhammad Akram" reported in 2009 SCMR P-230, "Tariq Parveez" reported in 1995 SCMR P-1345, "Hashim Qasim" reported in 2017 SCMR P-986, "Nasarullah alias Nasaro" reported in 2017 SCMR P-724 and "Muhammad Mansha"**

(28)

reported in 2018 SCMR P-772, Abdul Jabbar 2019 SCMR 129, Mst.Asia Bibi PLD 2019 SC Page-64, Khurshed Ahmad vs the State reported in 2020 MLD P-649, Mst.Asia Bibi vs The State and another reported in PLD 2019 SC P-64 and Abdul Jabbar and another vs the State reported in 2019 SCMR P-129.

19. In view of decisions on points for determination, accused facing trial is found not guilty and by exercising powers u/s 265-H(1) Cr.P.C, 898, accused **Muhammad Asif** is hereby **acquitted** of the charge leveled against him. He is in custody, be released forthwith, if not required in any other case.

20. So for as the case of absconding accused Pioneen s/o Zari Badshah is concerned; prima facie case exists against him, hence, he is declared proclaimed offender and the concerned authority is directed to enlist his name in the register of POs maintained for the purpose. Perpetual warrant of arrest be issued against him.

21. Case property be kept intact till arrest and trial of absconding accused. Attested copy of the judgment be sent to the In-charge Prosecution, District Kohat within the meaning of Section 373 Cr.PC as well.

22. File of the case be consigned to record room after its completion and compilation.

Announced
14.06.2024

KHALID HUSSAIN
Additional Session Judge-VI/CPC/JSC
Kohat

Office of the
District Police Officer,
ANX "B" (29) Kohat

No. 213-31/PA Dated 14-3-/2022

CHARGE SHEET

I, MUHAMMAD SULEMAN, DISTRICT POLICE OFFICER, KOHAT, as competent authority under Khyber Pakhtunkhwa Police Rules (amendments 2014) 1975, am of the opinion that you **Constable Muhammad Asif No. 1538** rendered yourself liable to be proceeded against, as you have omitted the following act/omissions within the meaning of Rule 3 of the Police Rules 1975.

i. *That on 05.03.2022, during inception of a Motor bearing No. PC-944 – Islamabad. On search 25200 gms Charas was recovered from secret cavaity of the motor car, hence a case vide FIR No. 133 dated 05.03.2022 u/s 9DCNSA PS Cantt was registered against you.*

ii. *That thus you being member of a disciplined force found involved in dealing / trafficking of narcotics and committed gross professional misconduct.*

2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 of the Rules ibid and have rendered yourself liable to all or any of the penalties specified in the Rule 4 of the Rules ibid.

3. You are, therefore, required to submit your written statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

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

4. A statement of allegation is enclosed.

DISTRICT POLICE OFFICER,
KOHAT

ATTESTED

Office of the
District Police Officer,
Kohat

No. 2130-31/PA

Dated 14-3-/2022

DISCIPLINARY ACTION

I, MUHAMMAD SULEMAN, DISTRICT POLICE OFFICER, KOHAT as competent authority, am of the opinion that you Constable Muhammad Asif No. 1538 have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

i. *That on 05.03.2022, during inception of a Motor bearing No. PC-944 – Islamabad. On search 25200 gms Charas was recovered from secret cavaity of the motor car, hence a case vide FIR No. 133 dated 05.03.2022 u/s 9DCNSA PS Cantt was registered against you.*

ii. *That thus you being member of a disciplined force found involved in dealing / trafficking of narcotics and committed gross professional misconduct.*

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations SP Sub: Kohat - is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Rule-1975, provide reasonable opportunity of hearing to the accused official, record his findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

DISTRICT POLICE OFFICER,
KOHAT

No. 2130-31/PA, dated 14-3-/2022.

Copy of above to:-

1. SP Sub: Kohat:- The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.
2. The Accused official:- with the directions to appear before the Enquiry Officer, on the date, time and place fixed by him, for the purpose of enquiry proceedings.

....

ATTESTED

جناب ڈی پی او صاحب سرگودھا

ANX-L (31)

جناب عالی بحوالہ شوکاز نوٹس نمبری 2130-31/PA مورخہ 14/03/2022

معروض خدمت ہوں۔

1) یہ کہ فقرہ نمبر 1 غلط ہے نہ تو میں فقرہ سے کوئی بھی ممنوعہ شے/چیز برآمد کی گئی ہے اور نہ ہی مائل کسی بھی ممنوعہ فعل میں ملوث تھا۔ مذکورہ حد/جرم کیا تو میں کا کوئی واسطہ یا تعلق نہ ہے بلکہ SHO کی ساری کاروائی میں فقرے کے خلاف بدنیتی مبنی ہے۔

2) یہ کہ میں فقرہ کنٹیبل محمد آصف کا مذکورہ جرم سے کسی قسم کا کوئی تعلق نہیں۔ بلکہ سرزد ہونے کا سوال بھی پیدا نہیں ہوتا۔

3) یہ کہ میں فقرہ کے خلاف مذکورہ نادہندہ محکمانہ کاروائی تا فیصلہ ہونے حتمی stay/stop کیا جائے۔ اور کسی بھی قسم کی انکوائری برائے مہربانی دوکنے کے احکامات صادر فرمائیں مشکور فرمادیں

آپکا تابعدار
کنٹیبل محمد آصف نمبر 1538

11-04-022

ATTESTED

ANNEX "D" 33

OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT

Tel: 0922-920116 Fax 920125

No. 3430/PA dated Kohat the 01/6/2022

FINAL SHOW CAUSE NOTICE

1. I, **Muhammad Suleman, District Police Officer, Kohat** as competent authority, under the Khyber Pakhtunkhwa Police Rules 1975, (amended 2014) is hereby serve you, **Constable Muhammad Asif No. 1538** as fallow:-

i. That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide office No. 1981-82/PA dated 05.03.2022.

ii. On going, through the finding and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the inquiry officer.

I am satisfied that you have committed the following acts/omissions, specified in section 3 of the said ordinance.

a ***You while posted at MT Staff Kohat has absented yourself from official duty vide daily diary report No. 09 dated 14.02.2022 till date without any leave or permission from your seniors.***

b. ***It has been notice through reliable source / secret information that you constable Muhammad Asif No. 1538 indulged yourself smoking of Charas & Ice, links with Charas smugglers and Narcotics sellers.***

2. As a result thereof, I, as competent authority, I have tentatively decided to impose upon you major penalty provided under the Rules **ibid.**

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 07 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

5. The copy of the finding of inquiry officer is enclosed.

ATTESTED

DISTRICT POLICE OFFICER,
KOHAT

ANX "E" (33)

بخدمت جناب D.P.O صاحب ضلع کوہاٹ

جناب عالی :- بحوالہ شوکاز نوٹس نمبری 27 ح/22 dt 04 32/21-1 ح/22/3420

معروض خدمت ہوں۔

① یہ کہ فقرہ نمبر ا غلط ہے۔ نہ تو سن مقرر سے کوئی نمبر ممنوعہ شدہ / چیز برآمد کی گئی ہے۔ اور نہ ہی سائل کسی غیر ممنوعہ نمبر میں ملوث تھا۔ مذکورہ مقدمہ/جرم کے ساتھ سن کا کوئی واسطہ یا تعلق نہ ہے۔ بلکہ SHO کی یہ ساری کارروائی سن مقرر کے خلاف بدنیتی پر مبنی ہے۔

② یہ کہ سن مقر کنیٹبل محمد آصف کا مذکورہ جرم سے کسی قسم کا کوئی تعلق نہیں۔ بلکہ سرزد کرنے کا سوال ہی پیدا نہیں ہوتا۔

③ یہ کہ سن مقر کے خلاف مذکورہ تاحال محکمانہ کارروائی تا فیصلہ ہونے تک Stay/stop کیا جائے اور کسی بھی قسم کی انکوائری برائے سزا دہی کے احکامات صادر نہ کرا کر اور سائل آصف کا مقدمہ عدالت میں زیر سماعت ہے۔ آئندہ پیشی مورخہ 27 ح/22 مقررہ ہے۔

آپکا تابعدار کنیٹبل نمبر 1538

ATTESTED

OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT

ANX «F» (34)

ORDER

This order will dispose of departmental proceedings initiated against Constable Muhammad Asif No. 1538 under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendment 2014).

2. Short facts of the case are that on 05.03.2022, SHO Police station Cantt Kohat alongwith Police contingents had made Nakabandi in his jurisdiction at Nisar square. At about 16:45 hrs, he intercepted a motor car No. PC 944 – Islamabad, on query, driver of the vehicle disclosed his identity as Muhammad Asif, employee of Police and other person occupied front seat as Muzamil. From their body search nothing was recovered, while on search of vehicle 25 packet of charas total weighing 25200 gms were recovered. Therefore, both named above were booked under the law vide FIR No. 133 dated 05.03.2022 u/s 9 DCNSA PS Cantt and arrested.

3. On the above grave misconduct, the accused was served with charge sheet alongwith statement of allegations through Superintendent District Jail, Kohat and SP Investigation, Kohat was appointed as inquiry officer to probe into the matter under the rules ibid. Reply to charge sheet of accused was received through Superintendent Jail by inquiry officer, placed on file and proceeded further.

4. The inquiry officer visited District Jail, Kohat called and examined concerned witnesses in presence of accused and afforded him ample opportunity of defense. On conclusion, the enquiry officer held him guilty of the charge and recommended him for major punishment.

5. In view of enquiry report, Final Show Cause Notice was issued and served upon the accused through Superintendent Jail, Kohat. Reply received and accused failed to advance any plausible explanation or defense, hence the reply is found unsatisfactory.

6. Record, gone through which indicates that accused while trafficking narcotics (charas) in a motor car was apprehended by SHO PS Cantt and a huge quantity of narcotics was recovered. The enquiry proceedings were carried out inside Jail premises in presence of accused and he was afforded ample opportunity of cross examination of witnesses, by the enquiry officer, but he failed to put any question regarding his defense / innocence himself, nor submitted any stance regarding his false implication in case and malafide on the part of SHO / Police record, further indicates, the accused being member of disciplined department indulged himself in trafficking of narcotics, moral turpitude offence and committed a grave misconduct, which has been established against him beyond any shadow of doubt. The accused has earned a bad name to the department, he is a stigma on Police and his retention in a disciplined department is unwarranted in the interest of department. Therefore, in exercise of

(35)

powers conferred upon me under the rules ibid. I Muhammad Suleman PSP, District Police Officer, Kohat award accused constable Muhammad Asif No. 1538 a **major punishment of dismissed from service** provided under rules 4 (b) (iv) of the rules ibid with immediate effect. Kit etc be recovered from him.

(MUHAMMAD SULEMAN) PSP
DISTRICT POLICE OFFICER,
KOHAT

OB No. 264
Date 10-5-**/2022**
No 8273-75/PA dated Kohat the 12-5-2022.

Copy of above to the:-

1. Reader, Pay officer, SRC and OHC for necessary action.
2. Accused through Superintendent District Jail Kohat for information

(MUHAMMAD SULEMAN) PSP
DISTRICT POLICE OFFICER,
KOHAT

M. Asif
10/8/2022

ATTESTED

D#101
18/8/2022.

ANX"G" (36)

بخصور جناب R.T.I کمشنر ضلع کوئٹہ

Right To Information

درخواست ہمراہ فراہم کرنے انکوائری رپورٹ ہر خلاف
بدایت رشتہ SHO کینٹ تھانہ ویشل ہر خلاف
انکوائری بدایت رشتہ SHO تھانہ کینٹ

جناب عالی! سائل حسب ذیل عرض کرتا ہے۔

یہ کہ محمد آصف ولد ظاہر شاہ ضلع کوئٹہ کا رہائشی ہے اور
کمشنر پولیس ہیں کانسٹیبل تعینات ہے۔

یہ کہ آصف کو بے گناہ مقدمہ میں ملوث کیا گیا جو کہ نا کردہ
گناہ ہے۔ جس بارے سے لڑ تعلق ہے۔

یہ کہ سائل محمد آصف کی شوکاز نوٹس بھی دیا گیا اور نوٹس کا
جواب اسکی اطمینان دیا گیا جبکہ اس مقدمہ میں بدایت رشتہ
SHO کے خلاف انکوائری ہوئی اور سائل کو انکوائری کی
ارشد ضرورت ہے۔ کیونکہ سائل بے گناہ ہے۔ اور مقدمہ
میں ملوث کیا گیا۔

یہ کہ سائل محمد آصف نے انکوائری ہر خلاف SHO دی جائے
کہ سائل اپنے مقدمہ پیش کرے کیونکہ سائل بے گناہ ہے

لہذا استدعا ہے کہ سائل کی انکوائری رپورٹ بدایت SHO دی جائے

سائل آصف بذریعہ محمد آصف ولد ظاہر شاہ تھانہ کوئٹہ

ATTESTED

علت نمبر 133 مورخہ 05/03/22 جرم 90/CNSA تھانہ کینٹ۔

(92)

ANX "H" (87)

درخواست بمراد کروائے از سرِ نو انکوائری

جناب عالی

سائل ذیل عرض رساں ہے

1) یہ کہ محمد آصف میرا بیٹا ہے جو پولیس میں بحیثیت کانسٹیبل اپنی ڈیوٹی سرانجام دیتا ہے

2) یہ کہ محمد آصف کو علت نمبر 133 مورخہ 05/03/22 کو جرم 9D-CNSA تھانہ کینٹ میں نامزد کیا گیا ہے

3) یہ کہ محمد آصف خوش اسلوبی سے محکمہ پولیس میں اپنی ڈیوٹی سرانجام دیتا مذکورہ مقدمہ میں ملبل بے گناہ ہے اور اس سے کسی قسم کی کوئی برآمدگی نہ ہوئی ہے اور نہ مذکورہ F.I.R میں بتائی گئی جگہ وقوع نشار چوک میں موجود تھا

4) یہ کہ جتنی بھی برآمدگی ہوئی وہ پولیس S.H.O تھانہ کینٹ ہدایت اللہ خان بابر کی غیر موجودگی میں اری والوں نے ایک سویلین کار سے کی ہے اور S.H.O کینٹ کو بلا کر ہدایت کی کہ اس میں آصف نامی شخص ملوث ہے

5) یہ کہ مذکورہ مقدمہ میں از سرِ نو انکوائری مطلوب ہے۔

لہذا استدعا ہے کہ میری درخواست بمراد کروائے از سرِ نو انکوائری منظور کی جائے

مورخہ 16-03-2022

ظاہر شاہ والد شرم محمد آصف (ملزم) سکنہ چابا جوا کی بلی ٹنگ ضلع کوہاٹ

شناختی کارڈ نمبر۔ 42101-1927828-3

موبائل نمبر۔ 03339129923

اصل وصول ہے

ATTESTED

بعدالت جناب ایڈیشنل سیشن جج صاحب IV کوہاٹ

ANX "A" "B" "I" (38)

اصف سکنہ چاپا جوالی بلی ٹنگ ضلع کوہاٹ

بنام

سرکار بذریعہ ہدایت اللہ خان بابر SHO

علت نمبر 133 مورخہ 03/22 05 جرم 9DCNSA تھانہ کینٹ

درخواست بمراد طلبی انکوائری رپورٹ

جناب عالی: سائل حسب ذیل عرض رساں ہے

① یہ کہ سائل عنوان بالا مقدمہ میں بلکل بے گناہ ہے۔

② یہ کہ سائل نے بابت بے گناہی درخواست برائے از سرنو انکوائری مورخہ 16-3-2022 بحضور جناب DIG صاحب کوہاٹ گزاری تھی۔

③ یہ کہ طلبی انکوائری رپورٹ مطلوب ہے۔

④ یہ کہ عنوان بالا مقدمہ میں درخواست ضمانت 2-J جج صاحب زیر سماعت ہے۔

لہذا استدعا ہے کہ سائل کی درخواست بمراد طلبی انکوائری رپورٹ منظور فرمائی جائے۔

22-03-2022.

سائل بذریعہ مرکین ملک عماد اعظم ایڈووکیٹ

ATTESTED

ANX (J) (39)

To

The Worthy,
Regional Police Officer,
Kohat Region, Kohat.

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER OB NO. 264 DATED 12-05-2022 WHEREBY THE DISTRICT POLICE OFFICER, KOHAT HAS IMPOSED UPON THE APPELLANT MAJOR PENALTY OF DISMISSAL FROM SERVICE WITH IMMEDIATE EFFECT.

Respected Sir,

Appellant humbly submits as to the following:-

1. That appellant was enrolled in Police Force in the year, 2015.He has about 10 year at his credit.
2. That appellant was booked in case FIR NO.133, dated 05-03-20022 under section 9D KP CNSA, Police Station MRS, Kohat on certain flimsy and concocted accusation. Appellant was arrested and put up behind judicial custody till order of acquittal dated 16-06-2024. Copy of judgment of acquittal is attached as Flage-1.
3. That it is pertinent to bring into the notice Of Your Kind Honour that the competent authority was under legal obligation to notify the appellant as suspended under the rules and wait for the outcome of the Criminal Trial, but he failed to suspend the appellant and without waiting for the outcome of the Criminal proceedings; directly started disciplinary proceeding against the appellant, which culminated into the dismissal order of the appellant dated 12-05-2002.
4. That appellant has neither been serviced with charge sheet and statement of allegation. He has been deprived from his defense in shape of reply to the charge sheet and statement of allegation. No inquiry has been

ATTESTED

(40)

conducted and if there was any inquiry, the same would be certainly in the absence of the appellant. The question of cross examination in such circumstance could not be raised.

5. That the penal authority without waiting for the out come of the Criminal case; dismissed the appellant with immediate effect, hence the present departmental appeal inter alias on the following grounds:-

GROUNDS

A. That the penal authority has not treated the appellant in accordance with law, rules and policy and acted in violation of Articles 4, 10-A, 25 and 27 of the Constitution of Islamic Republic of Pakistan, 1973. Appellant has been penalized with major penalty on the ground of being allegedly involve in a criminal case. The Criminal case has been decided on 14-06-2024 and appellant has been Honourably acquitted from the charge. In circumstance the base of charge is no more in the field, therefore the whole superstructure built upon the alleged departmental proceeding has no legal santity and is liable to be recersed by re-instating the appellant with all back benefits.

B. That it has been repeatedly held by the Hon,ble Supreme Court of Pakistan, Service Tribunal and High Court that when an accused is acquitted of the charge on which the departmental proceeding have been initiaed; re-instatement of civil servant is a rule. Wisdom may derived from reported Judgment as to the following:-

When facts and circumstances of the criminal case and disciplinary proceeding are the same..... Civil Servant entitle for re-instatement... (2011 TD 164). Acquittal from criminal charge. Re-instatement is a Rule under Article 4 and 25 of the Constitution, 1973. 1997 PLC (CS) 752.

Dismissal... Registration of FIR... Acquitted... Such dismissal could not be insisted to be retained in field (2009 PLC (CS) 471, 1986 PLC (CS) 130.

2001 SCMR 269, 2003 PLC (CS) 814, 2002 SCMR 57.

ATTESTED

Charge of Corruption... Dismissed...Acquittal by competent court of law....Civil servant shall be deemed not to have committed the charge offence....Authority would be bound to re-instate the civil servant. (2013 PLC (CS) 1398(a) (b).

Acquittal of civil servant from a criminal case. Civil servant in case of acquittal was to be considered to have committed no offence because the competent criminal court had freed/cleared him from accusation or charge of crime. Such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of murder case against him. 1998 SCMR 1993.

Where the departmental proceedings were initiated only on the basis of criminal charge, which was not subsequently proved in the competent court of law and resulted in acquittal, Order of service Tribunal upholding the order of compulsory retirement by the department was set aside by the Supreme Court. PLD 2003 SC 187.

C. That the respondents have not treated the appellant in accordance with law, rules and policy and acted in violation of Articles 4, 10-A, 25 and 27 of the Constitution of Islamic Republic of Pakistan, 1973. Appellant has been penalized as a result of counter blow organized and acted upon by the present elite rulers. Appellant has not been dealt with in accordance with law and rules provided for in the statute and statutory rules and have also been deprived from fair defense guaranteed under Article 10A of the Constitution of Pakistan, 1973.. In circumstance the impugned order cannot not be clothed with validity and is liable to be reversed back by re-instating the appellant with all back benefits.

D. That the alleged charge sheet and statement of allegations has never been served upon the appellant.

E. That the impugned order has been passed in violation of the law laid down by the Hon'ble Supreme Court of Pakistan which provides that in case of major penalty and factual controversy, regular inquiry was obligatory and in absence of regular inquiry penal order of major penalty (dismissal from service) cannot be clothed with validity and was liable

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to be struck down on this score alone.

Citation Name : 2019 PLC(CS) 224 PESHAWAR-HIGH-COURT

Side Appellant : SALEEM WAZIR PROFESSOR COMMUNITY MEDICINE

Side Opponent : GOVERNMENT OF KHYBER PAKHTUNKHWA

Major penalty, imposition of---Requirements---Any disciplinary proceedings relating to misconduct of an employee/officer of any department which entails major penalty of removal/dismissal from service must be inquired through **regular inquiry** which cannot be dispensed with in matter where controversial facts and ticklish questions are involved.

Citation Name : 2019 PLC(CS) 475 KARACHI-HIGH-COURT-SINDH

Side Appellant : IQBAL HUSSAIN

Side Opponent : FEDERATION OF PAKISTAN through Secretary Ministry of Information and Technology, Government of Pakistan

Holding of **regular inquiry** in case of imposition of major penalty was prerequisite and mandatory condition.

F. That section sixteen of the Civil Servant Act, 1973 provides that every civil servant in case of misconduct is liable for prescribed disciplinary action only in accordance with law. It has also been settled down by the Hon'ble Supreme Court of Pakistan that when law prescribe something to be done in a particular manner, it has to be done in that manner or not at all. In the instant case no prescribed procedure has been adopted by the competent authority and as well by the inquiry officer. On this score alone the impugned order is liable to set aside.

G. That appellant was in jail and he does not know as to whether any inquiry has been conducted in the case of the appellant and if there was any inquiry; the would certainly an exparte inquiry and the inquiry shall be a slipshod inquiry and that too in the absence and at the back of the appellant. The inquiry officer has totally failed to collect an iota of

ATTESTED

incriminating evidence against the appellant. In absence of any incriminating evidence how a civil servant can be penalized with major penalty and that too of dismissal from service therefore, this Hon'ble Tribunal is under legal obligation to interfere with and set aside the impugned order.

H. That the basic concept of regular inquiry was the formation of issues, its determination and reason for determination along with recommendations but the same are absolutely missing as evident from the context of the impugned order, which is against the provision of General Clauses Act, 1897.

I. That appellant was served with final show cause notice but provided a copy of inquiry report plus incriminating documents (if any). The appellant has been condemned unheard. No opportunity of personal hearing has been provided to him. The impugned penal order passed by the competent authority is flimsy in its nature and does not provide legal justification for imposition of major penalty. On this score as well, the impugned penal order is liable to be set aside.

J. That the well-known principle of law " Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.

....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

ATTESTED

(44)

The Executive have to show source of authority:-

The Executive is not above law and it must, on challenge to its action, show the legal authority from where it derives the source of its authority. In case the executive fails to show the source of its power, its acts, as so far they conflict with legal protected interests of individuals, must be declared by courts Ultra vires and without jurisdiction. [PLD 1990 Kar 9].

Things must be done in prescribed manner or not at all..... Expressio unius est exclusion alterius**.....** When an action is required to be done in a particular manner that must be done in that manner only or not at all.

K. That appellant is jobless since his dismissal order and under heavy financial burden therefore liable to be re-instated with all back benefits.

Re-instated employee would be entitled to back benefits as a matter of course unless employer is able to establish by cogent evidence that concerned employee had been gainfully employed elsewhere. In this respect, initial burden would lie upon the employer and not upon the employee to prove that such employee was gainfully employed during period of termination from his service. 2010 TD (Labour) 41.

Civil servant who was dismissed from service through arbitrary and whimsical action of the government functionaries and re instated through judicial order of Service Tribunal would have every right to recover arrears of salaries by way of back benefits due to them during the period of their dismissal and re instatement. It would be very unjust and harsh to deprive them of back benefits for the period for which they remained out of job without any fault on their part and were not gainfully employed during that period.....Supreme Court allowing their appeal and directing payment of back benefits to the appellant. 2006 T D (SERVICE) 551 (a).

Citation Name : 2018 SCMR 376 SUPREME-COURT

Side Appellant : KHALID MEHMOOD

Side Opponent : STATE LIFE INSURANCE CORPORATION OF PAKISTAN

Sched., S.O 12(3)--- Permanent employee---Dismissal without assigning reasons--- **back benefits**, entitlement to---Appellant's services were terminated without assigning any reason whatsoever, which termination was found illegal by the Labour Court as well as by the Labour Appellate Tribunal---In terms of Standing Order 12(3) of the Schedule to the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, the services of a permanent employee could be terminated only by giving explicit reasons---Supreme Court ordered payment of **back benefits** to the appellant for the intervening period between his date of termination and date of his reinstatement in service.

ATTESTED

Citation Name : 2018 PLC 182 SUPREME-COURT

(45)

Side Appellant : KHALID MEHMOOD

Side Opponent : STATE LIFE INSURANCE CORPORATION OF PAKISTAN

Reinstatement in service---**back benefits** ---Employer obtaining consent from employee to forgo **back benefits** as a condition for reinstatement---Practice of obtaining such consent from employee was deprecated by the Supreme Court.

Burden of proof:-

Burden of proof lie is on authority to prove misconduct. [1997 SCMR 1543].

Burden of proof lies on the department for communication of orders. [1994 PLC (CS) 46].

Burden of proof on the prosecution to prove the charge.

The law in the country is still unchanged and is governed by law of Qanoon-e-Shahadat in Vogue and by virtue of the same, we have to see, that it is for the prosecution to establish the guilt of the person and if it fails to do so, the result is that benefit goes to the accused of the said failure.

If the allegation against the accused civil servant/employee is of serious nature and if he denies the same, a regular inquiry cannot be dispensed with. In such a case, the initial burden on the department to prove the charge, which cannot be done without producing evidence [1983 PLC (CS) 211 + 1997 PLC (CS) 817 (S.C) + 1997 SCMR 1543].

Standard of proof.....To be akin to one required in criminal cases.

It is significant that while referring to civil servant, who is being proceeded against under the Govt: Servant (Efficiency and Discipline) Rules the word "accused" has been used which indicates that the proceedings conducted by the inquiry officer are akin to a criminal trial [1996 SCMR 127]. A person is presumed to be guilty of misconduct if evidence against him establishes his guilt. The use of the world "guilty" is indicative of the fact that the standard of proof should be akin to one required in criminal cases [PLD 1983 SC (AI & K) 95].

ATTESTED

(46)

Prosecution to stand on its legs to prove the allegations.

Accused is stated to be a favorite child of law and he is presumed to be innocent unless proved otherwise and the benefit of doubt always goes to the accused and not to the prosecution as it is for the prosecution to stand on its own legs by proving all allegations to the hilt against the accused. Mere conjectures and presumption, however strong, could not be made a ground for removal from service of civil servant [1999 PLC (CS) 1332 (FST)]..... Unless and until prosecution proves accused guilty beyond any shadow of doubt, he would be considered innocent [1983 PLC (CS) 152 (FST)].

In view of the above narrated positions, it is humbly requested before Your Kind Honour that the instant departmental appeal may kindly be allowed and the impugned order OB No.264 dated 12-05-2022 passed by District Police Officer, Kohat be set aside and the appellant may kindly be reinstated into service with all back benefits.

Yours faithfully,

Muhammad Asif S/o
Zahir Shah R/o Paya Jaykia,
Kohat.
Ex Constable Belt No.1538
Police Force, Kohat.
Cell#0333-8315891.

Dated :_____11/07/2024

ATTESTED

ANX "K" (47)

ORDER.

This order will dispose of the departmental appeal preferred by Ex-Constable Muhammad Asif No. 1538 of district Kohat against the order of District Police Officer, Kohat whereby he was awarded major punishment of dismissal from service vide OB No. 264, dated 10.08.2022. Brief facts of the case are that on 05.03.2022, SHO Police Station Cantt: Kohat along with Police contingent had made nakabandi in his jurisdictions at Nisar square. At about 16:45 hrs, he intercepted a motor car No. PC 944 Islamabad. On his query, driver of the vehicle disclosed his identity as Muhammad Asif, an employee of the Police and the other person, who occupied front seat, was identified as Muzamil. From their body search nothing was recovered. However, on search of vehicle, 25 packets of chars weighing 25200 grams were recovered. Both named above were charged vide FIR No. 133 dated 05.03.2022 u/s 9DCNSA PS Cantt: and arrested.

Proper departmental enquiry proceedings were initiated against him and Superintendent of Police Investigation, Kohat was appointed as Enquiry Officer. The Enquiry Officer, after fulfillment of codal formalities, submitted his findings wherein the appellant was found guilty of the charges leveled against him. He was, therefore, recommended for major punishment under the relevant rules.

Keeping in view the recommendations of the Enquiry Officer and the above cited circumstances of the case, the delinquent officer was awarded major punishment of dismissal from service vide OB No.264, dated 10.08.2022.

Feeling aggrieved from the order of District Police Officer, Kohat, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in the office of the undersigned on 20.08.2024. During personal hearing, the appellant did not advance any plausible explanation in his defense.

Foregoing in view, I, **Sher Akbar, PSP, S.St, Regional Police Officer, Kohat,** being the appellate authority, am of the considered opinion that the charges leveled against him have been fully established. The punishment of dismissal from service awarded by the District Police Officer, Kohat is justified and, therefore, warrants no interference. Hence, appeal of Ex-Constable Muhammad Asif No.1538 is hereby **rejected,** being badly time barred.

Order Announced
20.08.2024

Regional Police Officer,
Kohat Region

No. 6995 **/EC, Dated Kohat the** 29/8 **/2024**

Copy forwarded to District Police Officer, Kohat for information and necessary w/r to his office Memo: No. 4551/LB, dated 22.07.2024. Service Record and Fuji Missal are returned herewith.

****

ATTESTED

بعدالت سروس ٹریبونل پشاور

منجانب
محمد اصف بنام حکومت

موزخہ _30/9/24_
مقدمہ ________
دعویٰ ________
جرم ________

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے [illegible] مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث و فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 30 ماہ 9 2024

العبد ________ گواہ العبد

Accepted and attested by
کے لئے منظور ہے
Asl

بمقام پشاور