FORM OF ORDER SHEÉT

Court of	
A 1 No	1042/2024

•	1943/2024	eal No.	<u>App</u>	
	ith signature of judge	Order or other pro	Date of order proceedings	S.No.
	3 .		2	1
The appeal of Mr. Shafi ur Rehman re-filed today through registered post by Hamayun Khan Advocate. It is			14/10/2024	1.
	earing before Single Bench			
n informed	I for the appellant has bee	on 29.10.2024 telephonically		
man	By forder of the Chair			
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The appeal of Mr. Shafi ur Rehman received today i.e on 08.10.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Address of appellant and respondents no. 3-to-8-are incomplete be completed according to rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974.

2) Copy of dismissal order dated 07.08.2024 mentioned in the heading of the appeal is not attached with the appeal be placed on it.

No. 882 /Inst./2024/KPST,

Dt. 59/10 /2024.

ADDITIONAL REGISTRAR SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Hamayun Khan Adv. High Court at A.Abad.

Respectively on Survey on



BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1943 /2024

Shafi ur Rehman son of Sarfaraz (Ex- Head Constable CTD Battagram), resident of Malkot cum Gijbori Tehsil & District Battagram,

...APPELLANT

VERSUS

Inspector General of Police Khyber Pakhtunkhwa, Peshawar and others.

...RESPONDENT

SERVICE APPEAL

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...APPELLANT

Through

Dated: 4-10 /2024

(HAMAYUN KHAN)

Advocate High Court, Abbottabad

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR CAMP AT ABBOTTABAD

Service Appeal No. <u>1943</u> /2024

Shafi ur Rehman son of Sarfaraz (Ex- Head Constable CTD Battagram), resident of Malkot cum Gijbori Tehsil & District Battagram.

...APPELLANT

VERSUS

- 1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
- 2. Regional Police Officer/DIG, Hazara Division, Abbottabad.
- 3. District Police Officer, Battagram.

... RESPONDENTS

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED ORDER DATED 07/08/2024 PASSED BY RESPONDENT NO.3 AND ORDER DATED 30/09/2024 WHEREBY APPELLATE AUTHORITY RESPONDENT NO.2 REJECTED APPEAL AND MAINTAINED ORDER OF COMPULSORY RETIREMENT DATED 07/08/2024 PASSED BY RESPONDENT NO.3 BOTH THE IMPUGNED ORDERS PASSED BY RESPONDENT

NO.2 & 3 ARE ILLEGAL, UNLAWFUL, AGAINST THE LAW, AB-INITIO VOID AGAINST THE NATURAL JUSTICE AND LIABLE TO BE SET-ASIDE.

PRAYER:- ON ACCEPTANCE OF INSTANT APPEAL IMPUGNED ORDER DATED 07/08/2024 PASSED BY RESPONDENT NO.3 AND ORDER DATED 30/09/2024 PASSED BY RESPONDENT NO.2 BE DECLARED NULL AND VOID, ILLEGAL, AGAINST THE LAW AND APPELLANT BE REINSTATED WITH ALL BACK BENEFIT W.E.F 12/03/2015.

Respectfully Sheweth;-

This appeal mainly proceeds on bellow stated factual and legal grounds.

1. That appellant was appointed as Constable on 24/01/1995.

- That due to good progress and performance in the year 2007 passed the lower course and similarly in 2014 passed intermediate.
- 3. That due to personal grudges on the direction of SHO Police Station Battagram firstly SHO P.S Cantt. Abbottabad lodged FIR NO. 553 under Section 9C-CNSA dated 27/05/2013 P.S Cantt. Abbottabad and thereafter on 31/10/2014 SHO P.S Shinkiari lodged another FIR No. 392 dated 31/10/2014 under Section 9C-CNSA P.S Shinkiari Mansehra. Copy of FIR is annexed as Annexure "A".
- 4. That on 12/11/2014 Superintendent of police CTD

 Hazara Region Abbottabad issued charge sheet
 alongwith statement of allegation. Copy of charge
 sheet is annexed as Annexure "B".
- 5. That on 18/11/2014 appellant submitted reply of the same. Copy of reply is annexed as Annexure "C".
- 6. That after lodging of FIRs respondents conducted inquiry against the appellant in respect of offences

mentioned in FIR, in consequence of the inquiry report and statement of witness appellant was declared innocent by the inquiry officer. Copy of inquiry report is annexed as Annexure "D".

- 7. That after lodging FIR I.Os of both the police station filed challan for trial before the learned Additional Sessions Judge-II, Abbottabad and Additional Sessions Judge-II, Mansehra.
- 8. That on 27/02/2015 respondent No. 3 issued final show cause notice against the appellant and on 05/03/2015 appellant submitted reply of the same.

 Copies of show cause notice is annexed as Annexure "E".
- 9. That on 12/03/2015 respondent No. 3 issued impugned order, whereby appellant was dismissed from service. Copy of order is annexed as Annexure "F".
- 10. That on 17/01/2018 after recording of evidence of the prosecution, but during trial prosecution fail to proof allegation and on 17/01/2018 learned Additional Sessions Judge-II, Abbottabad

announce judgment and appellant was acquitted and similarly on 22/12/2018 learned Additional Sessions Judge-II, Mansehra passed judgment and appellant was acquitted from the charges leveled against him by the local police. Copy of judgment is annexed as Annexure "G".

- 11. That on 20/03/2015 appellant filed departmental appeal against the impugned order dated 13/03/2015 before the respondent No. 2 and similarly on 21/06/2019 filed another appeal before the respondent No. 1. Copy of appeal is annexed as Annexure "H".
- impugned order on the appeal of the appellant whereby respondent No. 1 modified order dated 13/03/2015 and punishment was converted from dismissed to compulsory retirement. Copy of order is annexed as Annexure "I".
- 13. That on 20/01/2020 appellant filed service appeal No.525/2020 before this Honourable Tribunal. Copy of appeal is annexed as Annexure "J".

- 14. That, on 24/10/2023 after hearing the arguments this Honourable Tribunal allowed the appeal of the appellant and set-aside the impugned orders of respondents No.2 & 3 and remit the matter back to respondent No.3/DPO Battagram for conducting denovo inquiry in accordance with law and rules within 60 days. Copy of judgment is annexed as Annexure "K".
- 15. That on 29/04/2024 after lapse of 06 months, the appellant filed implementation petition No.EP No.337/2024. Copy of petition is annexed as Annexure "L".
- lapse of due time of 60 days initiated so-called denovo inquiry whereby the learned Inquiry Officer, Superintendent of Police Investigation Mansehra and Deputy Superintendent of Police Head Quarter Battagram recommended that inquiry against the appellant be filed without any order because allegation against the appellant was not proved during trial before the learned courts. Copy of inquiry is annexed as Annexure "M".

- 17. That thereafter, respondent No.3 initiated second inquiry against the appellant whereby both the inquiry Officers exonerated appellant from charges leveled against him.
- 18. That on 07/08/2024 respondent No.3 passed impugned order whereby appellant was again compulsory retired from service and original order was not delivered to appellant only information letter was handed to the appellant. Copy of impugned order is annexed as Annexure "N".
- 19. That on 20/08/2024 appellant preferred departmental appeal before respondent No.2 against the impugned order dated 20/08/2024 passed by respondent No.3. Copy of departmental appeal is annexed as Annexure "O".
- 20. That on 30/09/2024 respondent No.2 passed impugned order on departmental appeal of appellant and maintained the impugned order dated 07/08/2024 passed by respondent No.3.

21. That feeling aggrieved from the above mentioned impugned orders hence, this appeal on the following grounds;-

GROUNDS;-

- a. That both the impugned orders are against the law fact, have liable to be set-aside.
- b. That all proceeding were conducted with malafide intention, against the principle of natural justice.
- c. That respondents are miserably failed to proved allegation against the appellant.
- d. That respondent No. 1 passed impugned order dated 13/03/2015 before the final judgments of courts of competent jurisdiction.
- e. That after acquittal from charges leveled against the accused in the FIR, thereafter respondents have no power to issued impugned order, whereas it come to

classically example of misuse of authority and power.

- f. That at the time of passing impugned orders respondents ignored all basic principle of natural justice and equity.
- g. That respondent ignored the finding of inquiry committee and evidence of the record, and issued impugned order, hence both orders are liable to be set-aside.
- h. That respondent No. 3 adopted his own procedure and passed impugned order against the E&D Rules.
- i. That initially appellant was exonerated by inquiry officer two times but due to personal vendetta respondent No.3 passed by impugned order without any justification and reason.
- j. That all proceeding conducted without malafide and after due time have liable to be set-aside.

- k. That impugned order passed after 11 months dispite clear direction of 60 days given by this Tribunal in judgment dated 23/10/2023.
- That the other points would be urged at the time of Arguments with the kind permission of this Honourable Court Tribunal.

It is, therefore, humbly prayed that on acceptance of instant appeal impugned order dated 07/08/2024 passed by respondent No.3 and order dated 30/09/2024 passed by respondent No.2 be declared null and void, illegal, against the law and appellant be reinstated with all back benefit w.e.f 12/03/2015. Any other relief which this Honourable Tribunal deems fit and proper in the circumstances of the case may also be granted to the appellant.

Through

Dated: 4-10 /2024

(HAMAYUN KHAN)
Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of forgoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

APPEVIANT

الريد دار زاد الرسيان للي الهنا حد مل من ديم ع و يايد و يود دريا 2) 20 100 (00) 100 00) 28/00/00 10 (00) 100 000 160 20, 20 FERENCE JAINAGO OF RICHAUSINES MANOS W. Bulliniani بالمالية يما يما يعاد في المال المال المالية المناهدة المناهدة المالية المالية المناهدة المنا 1600 g 20 31 / 16 08 cas 34:41 & district عمادين 3.3 cm ces 400 5cm 00. F12 ANNE XURE AURE A いいりました

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كودنسنة بهركس بإدار بالبائبر 13 الفاعلان من تقداداتي بزادر عشر زمود 201.10 /20.06 إدر فادم مشور بايز) حمل قارم (بايس) ایت اکی اطلاعی را پورٹ ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ ذریر دفعیہ ۱۵ مجموعہ ضابطہ فوجداری فارم نمبر۲۲ ۵ (۱) 28. #15:30 - 10 P/ 1/2 - 191 - 10 4 st £16:30 Les 21/2 1-1/1/26 تاريخ درف رائي على الماريخ على الله الماريخ الماريخ 1911/19/19/19/19/19 نام وسكونت *اطلاع د ب*نده مستنفيت مخفركيف جرمونف عال اكريكولياكيامو الراصع مويدي عوم الراكوري عرف المحالي مراس كالمرر رعب يترك عانب استال لدائدله المكر مرازقان عن ارف وارس فرازق سراله كرمكر فالكرداي المافهام إلى الم كاروائي جِنْتَيْنْ كِي مُعَالَى كَاكُوا طَانَ درن كرنے بيل تو تف بوابوقو وجه بيان كرد تقانه به دوانگی کی تاریخ و دخت ایتدائی اطلاع نیجددج کرو- نستیت صدر خسیر در دسترسر الارد و مداله المارة والمراكم رست كرار كافي ميل برازان بدر مرس اله إلان عام الماران ما المارس من المراد من المراد المارس عال المراد على مناول المار الموارس المارة وكرارا المراد والمراد والمراد والمراد والمراد وكرارا ين الريدال كله/كل عرض للا في الديد ع فرسانه موا را فر مر شرف فر فرا مران فران المراح الله ما المحروس من الا ما ما رص ما والرسارة مرام معرف من مرام الما الما المرام المر 13414 31 . ps - cont Me ted 27-5-13

CHARGE SHEET

L Malik Ahjas khan superimendent of Police CTD Flaxara Region Abbotrabad being competent authority is hereby charge you blead Constable Shafi Ur Relman 26,237 as explained in the attached statement of allegation.

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

Your written defence, if any should reach,the enquiry officer, with in the specified period, failing which it shall be presume that you have no defence to put in and in that case Ex-parte action will be taken against you.

Intimate weather you desire to be heard in person or

osivnətbo

A statement of allegation is enclosed.

Superingondent of Police, CTD, Hazara Region Abbottabad.

The state of the s

DISCIPLINARY ACTION

L Malik Ahjaz superintendent of Police, CTD Hazara Region
Abbottabad is competent authority of the opinion that you Head Constable Shafi ur
Rehman No.237 of CTD District Battagram have rendered yourself liable to be
proceeded against as you committed the following act/omission within the
meaning of Police Disciplinary Rules 1975.

STATEMENT OF THE ALLEGATION

As per report received from Dsp CTD Battagram, on 30-10-2014, you Head Constable Shafi ur Rehman No.237 along with another person namely Zaib Ur Rehman were on way from Battagram to Mansehra Travelling in Alto Motor car bearing registration number 4797/RNG. You were stopped by SHO Shankiari near khanpur and carried out your personal search. One Kg charse along with one 30 bore Pistol and 12 rounds were recovered from your possession while 2 Kg charse was also recovered from your companion a proper case Vide FIR No.392 dated 30-10-2014. U/S 9C-CNSA Police Station Shinkiari was registered against you, which is a gross misconduct on your part. For the purpose of securitizing the conduct of said accused official with the reference of above allegation Mr Muhammad Naway Dsh CTD is deputed to conduct departmental enquiry against you.

The enquiry officer shall in accordance with the provision of P.R 1975 Rules provide reasonable opportunity of hearing the defaulter, furnish findings within 30 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

The accused and a well conversant representation of the departmental shall in the proceeding on the date, time and place fixed by the Enquiry officer.

Superintendent of Police,
CTD, Hazara Region Abbottabad.

No. 455 - 56 /R dated Abbottabad the 12 - 11 - 2014.

Copy of above is forwarded to:

(Enquiry officer) for initiating proceedings against the defaulter officer under provisions of the Police Disciplinary Rules 1975.

2. Flead constable Shafi Ur Rehman No.237 through reader CTD Hazara region with the direction to submit his defense within 7 days of the receipt of this statement of allegations and also to appear before the Enquiry officer on the date, time and place fixed for the purpose of departmental proceedings.

Superintendent of Police, CTD, Hazara Region Abbottabad.

Attested

ANNEXURE "C"

اً رمائل و ناوطور پر خیات میں ناصور ک مقدر میں اوٹ کیا گیاہے حالا نکہ ایک فاقا عند ک نامے مائل اس طرف موق بھی نیم سکتا ہے۔ کے سائل اور مائل کا دشتہ دار ووجہ 30/10/2014 کو بذرایہ و فرکار نسر کی 4797 RNG گاڑی س کے ذریعے ایب آباد جارہ تے میں جووف کیاری انچیزیاں کے قریب پانچ اخواس جیکے ساتھ سفیدر مگ کی ALTO گاڑی تھی اور پانچ اخواص سفید پر جات میں ملبوث تے مقبل جانب

ے 35000 روپیدزیردی نکال کراہے تیفے میں کا تی طرح سائل ہے ایک عدد پہول 30bore نمبر 6931 و 23 عدد کاروس کی مندلا کافاذی درجہ اللہ می زیردی لے کراہے تو یل میں کی اور مجراس تھانہ شکیاری لے جاکرد ہاں پر مہلے سے تعادم جزد SHO جراز اور کوئیٹ کا اور کہا کہ ہم

ند در بر سائی کرے ای ادر کہا کہ ہردو نے ان کے ساتھ زافت بھی گئے۔ جفاقہ انتخاص کے کہنے پر SHO کال تعد اور اکران دیا ہر ال کی اور پر امامہ اور اس کے بعد SHO نے مصلے میں کہا کہ اب آپ لوگوں کے ساتھ تی ہے تمثا جائے گا اور نیس الگ الگ حوالات میں بند کردیا۔

سان مونع پر سوجو وقع یا بی یا ہم سے اس نے موقعہ پر یا تھانہ می کوئی منتیات برآ مدل ہے یا بین تا کریا اب او جائے کر وقع میں برصدات کے یا بین یک ریال بر مجلوا اور تاکر دوجرم ہے۔

عد میکسال کے ظاف درج رجم FIR میں کوئی مدانت ند سی بر مقتت دے بدی ادر مازش ہے نہ

۸۔ یوکسال اور سائل کے دشتہ دارے کوئی برآ مدگی تیں اور آ مدگی ہے ماک کا در سائل کے دشتہ دار کا در کا در اور اسال ارتعاق نے۔

سرک FIR می جمار کہانی خود ماخت میں جملہ واقعات کو SHO ساحب فکیاری نے حقیقت کارنگ دینے کا کام کوشش کے ماالے جمار کہانی فلط بنیادی کنا کام کوشش کے ماالے جمار کہانی فلط بنیادی کنا کام کوشش کے ماالے جمار کہانی فلط بنیادی کن گذریت اور فرض جموت بین ہے اور مداخت سے اس کاکوئی واسط نہ سے د

یرکه SHO فیٹیارٹ نے فض این کارکروگ دکھانے کے لئے سائل اور سائل کے رشتہ دارکو خیات جیسے بقد سدیں اوٹ کیاجو کہ انسان نہ ہے۔ SHO نے ایران الحب ایسنس نبر 302 مورد 10/11/2014 کو ایب آباد جاتے ہوئے تھانہ شکیارٹ میں جھے واپس دیاور ایسنس یافتہ پستول نہ 15AA کا غیر قانو کی مقد سادرج کیا ہے جو کہ فلم ہے۔

به که اینده فی طور پر سفید میر جانب بین ملوث افراه که ساتند یکو تکرار بو فی تقوید میره دید شاکه به له لیس و استفری کنید و اله تکند. بیند فرز مند تا توقی فرز بازی که ایند و در فرز و زمرف تر باز زمنات در زنزات بگار قافر فی برم سید .

ا منظمان کے بیٹ نظر سائل کے حال پر دم فریا کر ماقت پر دری اور خداتری کے بناہ پر اس حقائق کی دوشن میں انگوائزی کر کے جاری شیٹ فائل فریا کہ وائل وفتر کیا جا کر مقل دفریا میں ۔ سائل تا حیات دعا گرر ہے گا۔ وائل وفتر کیا جا کر مقل دفریا میں ۔ سائل تا حیات دعا گرر ہے گا۔

العارش

سال شفح الرتمان بمر 237/HC ستعيد cld بَذَكُوارِثُوا بِيبُ إَ إِنْ أَيْنِ

الرق 18/11/2014

Waster A

ANNEXURE "D"

SINDINGS OF THE ENQUERY

Against Head Constable Shaft or Rehman No. 267 DCIO ABBOYTA6AD, DCT/58 Peshawar

Haspiteted 4.

The undersigned were entrusted with an enquiry against the above captioned have constable with the following allegation:-

- 1. He was arrested by the police of PS Cantt Abbottabad on 26.03.2013 and recovered hashish from his possession then he was charged in a case vides FIR No. 553 dated 27.05.2013 u/s 9CCNSA.
- 2. He remained absent from his lawful duties since 27.05.2013 to 08.06.7013, and was confined to Abbottabad prison by Magistrate Abbotabad in the said case.
- 3. His psychas already been stopped in this regard.
- 4. He was served with a Show Cause Notice No. 2899/EC dated of 05.08.2013 by the Worthy SSP Admin DCT, 58:
- 5. He submitted his written reply to the show cause notice but failed to satisfy the high ups.
- 6. He was then charge sheeted with charge sheet No. 3087-90 dated 05.00.2013 by the worthy SSP Admin DCT/SB for allegations, leveled against him (mentioned above) and an enquiry was initiated against him.

During the course of renquiry the defaulter head constable was summaned and his statement was got recorded, stating thereby that he had gone to Rehmat Hospital Abbottabad for medical treatment on 25.05.2013 and had an altercation with a police personnel, dressed in civiles near the said hospital over body search. He was arrested by the police and was shifted to PP Sikandar Abad from where he was then shifted to PS Contt, after a night confinement in PP Sikandar Abad, where the mentioned case was registered against him.

The witnesses were summoned through summon no. 493/INV dated 19.06.2013 to record their statements but except DCIO Battagram, Inspector Humayun Khan, no one bother to record their statements.

Later on, the statements of ASHO PS Cant Mr. Niaz Mohammad Khan, Sl Tariq Mehrnood, Constable Taugir No. 505 were got recorded by the undersigned, which are quite different from each other.

Moreover, who states that during the course of interrogation, the ASHO PS Cantt Miaz Mohammad Khan confirmed his confinement in the cell on 26.05.2013 and leading of PIR on 27.05.2013.

A Transfer

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in the light of the above facts, it is stated that the defaulter head constable seems to be innecent as he was arrested on 26.05.2013 and was energed on 27.05.2013, and the statements of the witnesses are different which speaks highly soverse on the part of police.

Therefore it is recommended that if approved, the enquiry in hand may be hanged till the decision of district Courts Abbotabad, releasing his pay.

கூடிரைக்கொள்ளன் Please.

PABOUR PEHMAN Inspector DCT, Sa SYED LIAQAT SHAH

RCIO Peshawar, DCT, SB

Peshawar, 2 – 8 – 7 3

AHERNE

Wester Edinglass

The sales

ORDER

My this order of today on <u>6.11</u> 2013 will dispose off the departmental proceedings initiated against Head Constable Shaff-ur-Rehman No 237 of this Unit on the score of allegations that:

The DGIO DCT, SB: Battagram, was reported that he absented himself intentionally and deliberately from his lawful duties without any kind of leave or permission from his superiors since 26-05-2013. Due to his absence his pay was stopped vide this office OB. No. 268 dated 23.05-2013.

During his absence, he was arrested by Sub Inspector Monammad Tariq Khan of Police Station Cantt: Abbottabad recovering 1050 gram of "Hashish" Computer possession and a Case vide FIR No. 553 dated 27-05-2013 under section 9CNSA RS Cantf: Abbottabad was registered against him and he was sent-to District prison Abbott Abad. Being a Police Officer his such act was against Police Rules, 1975 read with Police Ordinance 2002.

He was charge sheeted and an Enquiry Committee was constituted consisting upon the following Officer of this Unit to proceed him against departmentally.

Mr. Syed Liagat Shah, DSP, RCIO Peshawar.

2. Mr. Abdul Rehman, Inspector, DCIO-III Peshawar.

During the course of enquiry the defaulter Head Constable was summoned and his statement was got recorded. The following Power Officers/Officials of Abbottabad district were also summoned and their statements were got recorded which are placed on file:-

1. SI Niaz Muhammad Khan, ASHO PS Cantt, Abbottabad
(Annexed F/A),

2. SI Tariq Mehmood, PS Cantt, Abbuttabad. (Annexed F/B),

3. FC Tauqir, PP Sikandarbad, PS Cantt, Abbottabad.

4. (Annexed F/C),

After perusal of recorded statement of above mentioned officers/officials a contradiction was found present amongst the statements of the Officers in the case against HC Shafi Ur Rehman No 237.

Finding of the Enquiry Committee was also perused. The Enquiry Committee stated that "During the course of interrogation, the ASHO PS Cantt Niaz Muhammad Khan confirmed his confinement in the cell on 26-05-2013 and lodging of FIR on 27:05:2013.

In the light of the above facts, it is stated that the defaulter Head constable seems to be innocent as he was arrested on 26.05.2013 and was charged on 27.05.2013, and the statements of the witnesses are different which creates doubtfulness in the matter on the part of defaulter Head Constable.

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مرح الان كليام المن على حدد حدرم طارق حال سي

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may be stopped till the decision of the Criminal Case registered against defaulter Head Constable so that the facts

Committee, the Enquiry is hereby ordered to be stopped till the decision of a pay is hereby released.

Order announced.

Dated 14 2013

(SHAH ALI KIYANI) PSP
-Sr: Superintendent of Police,

Admin:DCT/SB: Khybe colchtunkhwa, Peshawar

No. 55 70 /PA/DCT

Dated Peshawar the 8 . // . 2013

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TEMENT OF SI NIAZ MUHAMMAD ADL: SHO, PS LORA ABBOTTABAD

Stated on outh that during the days of registration of case FIR No. 553 dated 27-05-2013 u/s 9; CNSA PS Canti, Abbottabari against Constable Shali ur Rehman s/o Sarfaraz, I was posted as wedditional SHO PS Canti Abbottabad. I was present in PS on 26-05-2013. I returned from my foutine patrolling on 26-05-2013 at about 23:45 hrs and four o one Shali ur Rehman, Police constable of DCT inside the Police station. I shake hand with Shali ur Rehman and fell 101-1117 from At this time neither Shali ur Rehman was confined in lock up nor any case was registered nor Murasila was drafted. On confined in lock up nor any case was registered nor Murasila was drafted. On the next day on 27-05-2013 I received a Murasila report drafted by SI Tariq Mehmood, incharge PP Sixandar Abad at about 16:30 hrs in which he had mehmood, incharge PP Sixandar Abad at about 16:30 hrs in which he had recorded the time of incident at 15:30 hrs. I cannot say that whether the recorded the time of incident at 15:30 hrs. I cannot say that whether the accused Shali ur Rehman was released from PS of taken by the SI Tariq Mehmood; for making a false case against the Constable. However it is conformed that I have personally seen Constable Shall ur Rehman s/o Sarfaraz caste Swati r/o Malkot, Ps Koza Banda, District Battagram.

R.O.A.C

SI Niaz Muhammad

ALT.

Enquiry Officer

tested

STATEMEN OF Constable Taugeer No. 505 presently under training

Stated on oath that during the days of registration of case FIR No.

553 dated 27 05-2013 u/s 9 CNSA PS Cantt, Abbottabed against Constable
Shaft ur Rehman s/o Sarfaraz, I was posted as constable in PP Silvandar Abad.

PS. Cantt Abbottabad: A few days pefore inspector Abdul Rehman of DCT recorded my statement on 04-07-2013 in the presence of RCIO Peshawar Syed.

Liaqat Shah. It is correct that I have signed sentence serial No. 01 in which I declared disclosed that Mr. Shaft ur Rehman was arrested on 26-05-2013. It is also correct I have stated in my statement that it was Sunday and constable inflorm. It is also correct that I have stated in my statement that I do not know about the fard (recovery memo). It was remained about 16:00 hrs on 26-05-2013 where we arrested Mr. Shaft ur Rehman. We wis not for patrolling but were walking in cives. I have seen the Hashish recovered from the possession of Shaft ur Rehman but did not noticed regarding its weighting. He took a simple from the Hashish in my presence on 27-05-2013.

R.O.A.C

(Attested)

onstable Taugeer No 505

Enquiry Officer

Markey Mindeline

STATEMENT OF SI TARIO MEHMOOD, INCHARGE PP SIKANDAR ABAD NOW ADDL: SHO PS HAVELIAN, ABBOTTABAD

Stated on oath that during the days of registration of case FIR No. 553 dated 27-05-2013 u/s 9 CNSA PS Cantt, Abbottabad against Constable Shafi ur Rehman s/c Sarfaraz, I was posted as incharge PP Sikandar, Abad; PS Cantt Abbottabad. On 26-05-2013, again added 27-05-2013 I was on routine patrolling in near Rehmat Hospital Abbottabad at about 13:30 hrs; when I saw a suspicious person want to arrest him and hence succeeded in his arrest who declared his name as Shah ur Rehman s/o Sarfaraz caste Swati. I took his personal search and recovered Hashish weighting 1050 gram from his possession. I had taken the scale in my possession and weight about 1050 gram. It is incorrect to suggest I had weight the Hashish in Police station. It is also incorrect to suggest that I have prepared only two parcel. It is also incorrect to suggest that Strait ur Rehman was brought on 26-05-2013. It is also incorrect to suggest that the case was planted by me. It was also incorrect to suggest that I have person grudges with Shafi ur Rehman HC of DCT for sending a report to the headquarter DCT. It is also incorrect to suggest that constable Taugeer does not know what is fard (recovery memo)

R.O.A.C.

(Attested)

Sub Inspector Tario Mehmood,

Enquiry Officer

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To RCIO Hazura. DCIO Abbottabad.

TX:10 Battagram.

Subject: SUMMON UNDER CHAPTER VII. SECTION 94 CR.PC

Memo:

A departmental enquiry is initiated in this Unit against Shaff ur Rehman No. 237/HC of DCT, in which the statement of the following person is required to be recorded in case FIR No. 553 dated 27-05-2013 U/s 9 CNSA PS Cantt, Abbottabad.

- i. Inspector Hamayun Khan DCIO, Battagram. Along with Attested copy of DD report.
- Sub inspector Tariq Mehmood, PS Cantt Abbottabad.
- San Inspector Niaz Khan, PS Cantt, Abbottabad.
- iv. Sub Inspector Ayub Khan OII, PS Cantt presently PS Lora, Abbottabad. Along with attested copy of FIR and recovery memo.
- THC Khan Afsar, PS Cantt Abbottabad.
- vi. Constable Imtiaz No. 182, PS Cantt Abbottabad.
- vii. Constable Togeer No. 505, PS Cantt, Abbottabad.
- Viii. Mad Constable Snafiq ur Rehman No. 237, DCT/Hqr.

you are hereby directed to inform the above mentioned person to attend this office on 25-06-2013 (Tuesday) at 10:00 am in connection with enquiry without fail:

(Syed Liaqat Shah), DSP DCT, SB: Khyber Pakhtunkhwa

Peshawar.

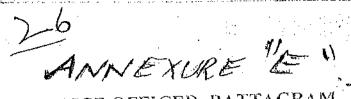
No. 793 /INV/DCT,SB

Peshawar the 19/06/2013.

Copy to SSP/Admir. DCT-SB for information

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OFFICE OF THE DISTRICT POLICE OFFICER, BATTAGRAM

FINAL SHOW CAUSE NOTICE

(Under Rule 5 (3) KPK Police Rules, 1975)

I, Jehanzeb Khan, District Police Officer, Battagram, as Competent Authority under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules-1975, Removal from Service do hereby you Head Constable Shafi Ur Rehman No. 14 as follow:-

1

As per report received from DSP CTD Battagram on 30.10.2014, you Head Consatble Shafi ur rehman No. 14 alongwith another person namely Zaib ur Rehman were on way from Battagram to Manschra traveling in Alto Motor Car bearing registration No. 4797/RNG. You were stopped by SHO Shinkyari near Khanpur and carried out your personal search. One KG Charras alongwith one-30 Bore Pistol and 12- rounds were recovered from your possession while 2-KG Charras was also recovered from your companion a proper case vide FIR No. 392 dated 30.10.2014 U/S 9C-CNSA Police Station

Shinkiari against you.

During interrogation you disclosed that you are earlier remained in another case of smuggling vide case FIR No. 553 dated 02.05.2014 U/S 9C-CNSA Police Station Cantt Abbottabad. On receiving these information DIG CTD directed SP CTD Hazara to initiate departmental enquiry against you Head Constable for your direct involvement in 2- different heinous nature cases. As per direction of DIG CTD, proper departmental enquiry was conducted after fulfillment of all codel formalities and you Head Constable Shafi ur Rehman were found guilty of the allegation leveled against you the enquiry officer recommended you for the major penalty. Your this act is gross misconduct and liable to be punishment.

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3. On going through the findings and recommendation of the enquiry officer, material on the record, reply of the charge sheet/summary of allegations and other connected papers, I am satisfied that you have committed the following acts/omissions specified in rule 5 (3) KPK, Police Rules-1975:

ORDER ANNEXURE

HC Shafi ur Rehman No. 14 was enlisted in Police Department on 24.01.1995. While he was posted at CTD Battagram involved in case FIR No. 553 dated 02.05.2014 U/S 9CNSA Police Station Cantt Abbottabad and Case FIR No. 392 dated 30.10.2014 U/S 9-CNSA PS Shinkiari District Mansehra.

Charge sheet was issued along with the summary of allegation Mr: Muhammad Nawaz DSP CTD was appointed as enquiry officer by the Superintendent of Police CTD, Hazara Region Abbottabad vide Endst: No. 455-56/R dated 12.11.2014.

The enquiry Officer in his findings found him guilty and recommended him for the major Punishment. Final Show Cause Notice was also issued to him vide this office Endst: No136/PA, dated 27.02.2015 as per direction of Addl: Inspector General of Police Enquiry & Inspection, Khyber Pakhtunkhwa, Peshawar office Endst: No. 122-25/E&I dated 13.01.2015.

After perusal of enquiry and other relevant papers available on the record, I, Jehanzeb Khan, PSP, District Police Officer, Battagram, as competent authority, Dismiss from service HC Shafi ur Rehman No.14 under Police Rules-1975, with immediate effect.

3 No 13

Announced.

(JEHANZEB KHAN)PSP.

District Holice Officer.

Bakagram

(Competent Authority)

No 177/DA

/Dated Battagram the, 12 - 63 /2015.

Copy submitted to the Regional Police Officer, (Hazara) Region Abbottabad for favour of information with reference to his office Endst: No. 45/C, dated 19.01.2015 and diary No. 152/C, dated 19.01.2015.

Messed & Attacked

ANNEXURE GI

IN THE COURT OF INAM ULLAH WAZIR, ADDITIONAL SESSIONS JUDGE-II ABBOTTABAD

Case No. 18/III-S of 2013

Date of Institution Date of Decision

25.06.2013 17.01.2018

THE STATE

VERSUS

SHAFI-UR-REHMAN S/O SARFRAZ CASTE SWATI AGED ABOUT 39/40 YEARS R/O MALKOT, GABORI POLICE STATION KOZA BANDA, BATTAGRAM.

.....(ACCUSED FACING TRIAL)

CASE FIR NO.553 DATED 27.05.2013 U/S 9 (C) CNSA, POLICE STATION CANTT: ABBOTTABAD.

Attesto / ba a True Copy

PRESENT:

Mr. Masood-u-Rehman Tanoli advocate for the accused Miss: Bushra Ashraf APP for the State.

JUDGMENT 17.01.2018

Accused Shafi-ur-Rehman has faced trial in the case FIR No.

553 dated 27.05.2013 under Section 9 (c) of Control of Narcotics

Substances Act, of Police Station Cantt, Abbottabad.

Succinctly, facts of the case as depict in the FIR Ex-PA/1 are that, on the relevant date and time, Tariq Mehmood SI, PS Cantt along-with police personnel comprising Khan Afsar HC, constable Imitiaz No.182 and constable Taugeer No.505 reached near Rehmat Hospital in connection with search of drug paddlers. There, a person seeing the police party when

towards the street, who was chased and overpowered. On query, said person disclosed his name as Shafi-u-Rehman son of Sarfaraz whose body search was conducted, and from the folds of his trouser a plastic bag of black colour containing five packets of charas was recovered. The contraband was weighed which was found to be 1050 grams. Five (05) grams of contraband charas were separated from each slab of the contraband and were made into five parcels for chemical analysis, whilst remaining charas, weighing 1025 grams, was sealed in parcel No. 6. Further body search of the accused led to recovery of Rs.20,000/- and a Nokia mobile set with SIM No.0341-9086635, Q mobile set with SIM No.0301-8130346 and mobile set N-73 without SIM. Complainant drafted the Murasila and transpitted the same to the police station through Constable Tauqeer # 505, which later culminated into instant FIR.

- 3. After completion of investigation in the case, challan was put in the court of learned Sessions Judge, where from it was entrusted to this court for trial and decision thereon. After delivering copies to the accused under Section 265-C Cr.P.C, he was formally charged for the offence, to which there however, he pleaded not guilty and rather claimed trial. Accordingly, prosecution was asked to adduce its evidence in support of the charge and its proof against the accused. As a consequence, prosecution produced as many as four (04) PWs, brief resume whereof is as under:
 - 4. PW-1 is Tariq Mehmood, SI ASHO PS Cantt who, during the relevant days, was posted as In-charge Police Post Sikandar Abad. He had apprehended the accused and thus recovered 1050 grams charas which was

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in form of slabs five in number. 5/5 grams of the contraband were separated from each slab for FSL analysis and were sealed in parcels No. 1 to 5, while the remaining proscribed item was sealed in parcel No. 6. That he also recovered cash amount of Rs. 20,000/- and mobiles, three in number, from possession of the accused. That he drafted the Murasila, which was sent to the P.S for registration of FIR Ex-PA through constable Tauquer No. 505. Recovery memo, site plan and docket for transmission of the samples to the FSL were also prepared, which are Ex-W1/1, Ex-PW1/2 and PW-1/3 respectively. The witness, being conversant, also verified the signature of cadet Chanzeb, who had submitted complete challan Ex-PW1/4, and Niaz Khan SI who incorporated FIR Ex-PA/1.

PW-2 is constable Jehanzeb # 101. The witness, during the relevant days was posted in the PS Cantt. Vide road certificate No. 172/21 Ex-PW2/1 he had taken the samples to the FSL on 29.05.2013. The witness had brought original register pertaining to the receipt No. 172/21 and so verified his signature thereon as correct.

PW-3 is Muhammad Ayub, then SI police station Cantt: who is testified in the witness box that he conducted investigation in the instant case and recorded statement of PWs in the police station. That he prepared his card of arrest, which is Ex-PW3/1. That he also produced the accused before the concerned Illaqa Magistrate for obtaining his police custody vide his application Ex-PW3/2 and after expiry of the same accused was produced again before the court for judicial remand vide his application Ex-PW3/3. He placed FSL report on file, which is Ex-PW3/4. After

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completion of investigation, he handed over the case file to SHO for submission of complete challan. The PW also verified his signature upon the above mentioned documents as correct.

PW-4, Khan Afsar IHC police station Nawanshehr is the witness of recovery memo already exhibited as Ex-PWI/I. He verified his signature thereon as correct.

- 5. Prosecution closed its evidence on 19.08.2017 and thereafter statements of accused u/s 342 Cr.P.C. was recorded wherein he again professed innocence and refuted the charge levelled against him. However, he neither wished to be examined on oath u/s 340(2) Cr.P.C and nor Allested to produced evidence in his defense.
- 6. Learned State counsel argues that the prosecution, through consistent, and coherent evidence, has established its case against the accursed beyond shadow of any reasonable doubt. She goes on contending that defense couldn't have made any substantial dent in the case, and while further elaborating her point, she refers to the different documents like; the recovery memo, site plan, and FSL report etc., which, according to her, support each other and thus leave no room so as to cast doubt on the charge against the accused. She also argues that, the PWs have been consistent in their testimony and that they have nowhere fumbled substantially so that defense could claim benefit out of their deposition. She underscores that accused was found involved in a crime which weakens fabric of the society by distracting people, especially young segment of the society, and while

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concluding her arguments in the cited fashion, the learned counsel calls upon the court to pronounce conviction on the accused and sentenced him to the maximum under the law.

Conversely, the learned defense counsel controverts the foregoing contentions of the learned state counsel and argues that, the record is bereft of anything substantial against the accused. The learned counsel further argues that there is not one lacuna but, according to him, the prosecution case is replete with many. He contends that how could names of those witnesses appear on the recovery memo who admittedly were not accompanying the complainant during the relevant time. The learned counsel is also critic of investigation by seizing officer/ complainant against the spirit of the Police Order, 2002. According to him, as the law has been violated hence the entire edifice of the investigation would fall resulting into acquittal of the accused. The learned counsel goes on contending that complainant did not issue card of arrest of the accused against the essence of the Police Order. Being skeptical of recovery of the proscribed item, the learned counsel maintains that no private witness was associated during the exercise of recovery of the contraband. He underscores that how could transmission of the samples take two days when the same were dispatched to the FSL on the same day of registration of FIR. Lastly, the learned counsel argues that accused has fallen victim to vendetta of the seizing officer, who once was penalized by accused in the PTS Hangu. In this regard he refers to the Ex-D1, copies of the documents relating to an inquiry into the allegation against the accused, and asserts that accused was leved to be a True of

innocent. The learned counsel while wrapping up his arguments entreats for extending benefit of doubt to the accused and acquit him accordingly.

- 8. Arguments heard and record perused.
- 9. The court, having appraised record of the case with a discerning eye, is of the considered view that the prosecution's case is not laden with a single, but many defects to count. Having so, the claim that the charge has been proven against the accused beyond shadow of doubt, is an out-of-place assertion owing to the following anomalies and aberrations.
 - daily diary showing departure and arrival of the complainant hasn't been made part of the judicial file.
 - acknowledged in his statement that PWs Khan Afsai IFIC and Imtiaz FC were not accompanying him at the time of leaving the police station but still, admittedly, they are shown withesses to the recovery proceedings and so their names appear on the recovery memo Ex-PW1/1. Albeit the witness tried to clarify that departure of the said witnesses had been recorded in separate daily diary but, proof in this regard in not forthcoming. It also goes without saying that, the detail of the personnel who accompanied the complainant during the relevant time is contradictory in the FIR and the copy of the daily diary showing

departure of the seizing officer. Thus the cited paradox cannot be discounted.

- PW-1, the complainant acknowledges that application dated 27.05.2013 Ex-PW1/3 correctly shows that the samples of the contraband were dispatched to the FSL on the same date of occurrence, but the report of the laboratory Ex-PW3/4 depicts that the same were received there on 29.05.2013. Keeping in view that the laboratory is situated at Peshawar, then how could the parcels of the samples take two days to reach its destination, is a question which puts the prosecution's case in quandary and make the recovery doubtful. Furthermore, another question energies pertaining to the custody of the samples during the intervening two days, which though is not plausibly answered.
- During his statement, complainant admitted it as correct that, he always keep investigation bag. However, he was not sure as to how many items it contains. Furthermore, he admitted that it is nowhere mentioned in his departure entry that during the reference time he was carrying investigation bag.
- olt needs merit to mention that accused produced copies and documents relating to the inquiry, which he alleges to have been initiated at his request. Complainant/PW-1 has admitted that such inquiry had been conducted. It is one of the many defences of the accused that once he was instructor in the PTS Hangu while,

word

during those days, complainant Tariq Khan was a recruit, and owing to misconduct, complainant was front rolled (penalized). It is for this reason that, complainant trapped him in the instant case and so on his application the matter was probed by a team of officers who, finding him innocent, his salary was released.

As depicts from the copies of the inquiry documents Ex-DW1 and also that factum of inquiry has not been denied, a departmental inquiry was conducted against the accused for his involvement in the case. Findings of the inquiry refer to the statement of Niaz Muhammad, then ASHO PS Cantt where in the confirmed confinement of the accused in the cell on 26.05.2013 and lodging of the FIR on the subsequent date i.e. 27.05.2013. The inquiry committee comprising of two police of ficers viewed that accused was innocent as he had been arrested on 26.05.2013 while he was charged on 27.05.2013, but didn't conclude the inquiry till court's decision in the case.

Since the factum of inquiry in the matter has not been defined by the prosecution hence, the defence taken by accused appeals to a prudent mind which further augments the defence's stance that the prosecution has not been able to prove its case beyond shadow of reasonable doubt.

10. It is, thus, safely gathered from the foregoing discourse that, the prosecution has been unable to come up with a well knitted and corroborated evidence, and thus while extending benefit of doubt, the accused namely Shafi-ur-Rehman is hereby acquitted from the charge leveled against him in case FIR No. 553 dated 27.05.2013 under Section 9-C CNSA, Police Station Cantt, Abbottabad. He is on bail, his sureties are discharged from their liabilities of bail bonds.

Case property be dealt with as per law after expiry of period of appeal/revision. File be consigned to the record room after necessary compilation.

<u>Announced</u> 17.01.2018 Inam Ullah Wazir Oler In & Straight Audio

CERTIFICATE

Certified that this judgment consists of nine (09) pages, and each page has been read, checked, corrected and signed by me where ever

necessary

Inam Ullah Wazir
Additional Sessions Judge-II
Abbottabad

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ADDITIONAL SESSIONS JUDGE-HAUDGE SPECIAL COURT, MANSEHRA

WERSUS

(1) Zeb-Ur-Rehman s/o Abdur Rayyan (2) Shafi-Ur-Rehman s/o Sarfaraz, both Caste Swati, residents of Malkot Gajbori P.S Kuzabanda District Battagram.....(Accused facing trial).

Case FIR No.392, Dated 31.10.2014. U/S 9C-CNSA of P.S Shinkiari, Mansehra.

JUDGMENT:

Accused Zeb-Ur-Rehman and Shafi-Ur-Rehman have faced trial in the instant case for the offence under section 9(C) of the Control of Narcotics Substances Act, 1997 registered at Police Station Shinkiari, Mansehra vide FIR No.392 dated 31.10.2014 for recovery of 3000 grams Charas.

2) Precisely narrated facts as mentioned in the F.I.R are that on 30.10.2014, on receiving spy information, Complainant Sheeraz

Ahmed SHO P.S Shinkiari alongwith other police officials laid a barricade at KKH Road near Khanpur Doraha, when a Motorcar No.4797-RNG, white color, came from Ichhrian side, which was stopped. The driver disclosed his name as Zeb-Ur-Rehman, while

Examiner Cont Minisehre

They both were got alighted from the vehicle. On search of accused Zeb-Ur-Rehman, 02 packets of contraband Charas (Garda) weighing 2000 gram (1000 each), one Nokia Mobile (Xi) and cash amount of Rs.19,170/- was recovered. Similarly, during search of accused Shafi-Ur-Rehman, one 30 bore pistol loaded with magazine containing five live rounds, seven other live rounds of same bore kept in bandolier and one packet Charas (Garda) weighing 1000 grams, two mobiles and cash amount of Rs.18,320/- were also recovered. Accused Shafi-Ur-Rehman disclosed that he is owner of the vehicle, Murasila was drafted on the spot, which resulted into registration of instant FIR.

the accused U/S 9C-CNSA was submitted before the Court of learned Sessions Judge, Mansehra on 17.02.2015, who entrusted the same to this Court for disposal. (It is pertinent to mention here that u/s 15-AA KPK, separate challan was submitted against the accused Shafi-Ur-Rehman). Accused were summoned, who attended the Court on 06.04:2015 and provisions of section 265-C Cr.PC were compiled with and the case was fixed for framing of charge.

4) Charge under section 9C-CNSA was framed against the accused on 08.05.2015, to which they pleaded not guilty and claimed

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Examiner Special Mansehra

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Signature

trial. The prosecution was then given the opportunity to produce evidence collected during investigation.

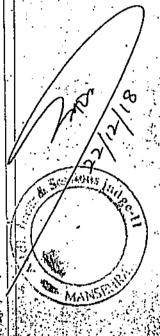
5) Prosecution produced (07) witnesses in support of its charge against accused facing trial. Brief of the prosecution evidence is as under:-

Constable Naseer No.101, P.S Shinkiari appeared and examined as PW-1. He took the case property/parcels of the instant case to FSL Peshawar, vide Road Certificate No.252/21 Ex.PW-1/1 and on return, he handed over the receipt to the Muharrir of the PS.

PW-2. He conducted investigation of the instant case. He recorded the statements of PWs U/S 161 Cr.PC. He produced the accused before the court for obtaining their custody through application Ex.PW-2/1 and one day police custody was granted. He interrogated the accused and recorded his statement u/s 161 Cr.PC. After the expiry of police custody, he again produced the accused before the court for further police custody vide application Ex.PW-2/2. He also received the FSL report. Ex.PW-2/3. After completion of investigation, he handed-over the case file to SHO for submission of complete challan against the accused.

Muhammad Waheed, ASI Police Line Mansehra was examined as PW-3. This PW incorporated the contents of Murasila into FIR Ex.PA/1 in verbatim order, which is correct and correctly bears his signatures. He also handed-over the case property of the instant case to Constable Naseer for safe transmission to FSL vide Road Certificate No.252/21.

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as PW-4. He handed-over the case property of the instant case along with the parcels of other cases to Constable Naseer No.101 for safe transmission to FSL vide Road Certificate No.252/21.

Shoukat Hussain, SI, appeared in the witness box as PW-5. He is the marginal witness of recovery memo Fx.PW-5/1 vide which the SHO took into possession the contraband Charas, mobile phones and cash amount from possession of both the accused. The recovery memo correctly bears his signature and that the signature of other marginal witness.

Habib-Ur-Rehman, Armourer Police Line, Mansehra, was examined as PW-6. He examined pistol 30 bore No.6931 in P.S and made his report on the application (already exhibited as Ex.PW-2/4). His report is Ex.PW-6/1.

PW-7. He was complainant of the instant case, who supported the contents of Murasila in his examination-in-chief. Out of the recovered contraband, he separated 5/5 grams from each packet and sealed into parcels No.1, 2 & respectively, while remaining quantity was sealed into parcels No.3 & 5 respectively as case property. He drafted Murasila Ex.PW-7/1, prepared recovery memo, recovery sketch Ex.PW-7/2. He also drafted application for sending parcels to FSL, which is Ex.PW-7/3. On completion of investigation by the SHO, he submitted complete original against both the accused facing trial on 13.11.2014. He also submitted separate challan under section 15-AA KPK against accused Shafi-Ur-Rehman on we

13.01.2014.

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- 6) Prosecution produced the following documents in support of its case.
 - i. Murasila Ex.PW-7/1
 - ii. FIR Ex.PA/L
 - iii. Recovery memo Ex.PW-5/1.
 - iv. Recovery sketch Ex.PW-7/2.
 - v. Application for physical custody Ex.PW-2/1.
 - vi. Application for confessional statement Ex.PW-2/2
 - vii. Application for FSL analysis Ex.PW-7/3.
 - viii. Copy of Road Certificate Ex.PW-1/1.
 - ix. Application for armourer report Ex.PW-2/4.
 - x. Report of armourer Ex.PW-6/1.
 - xi. FSL report Ex.PW-2/3.
- 7) The prosecution closed its evidence against the accused facing trial on 29.11.2018 and thereafter statements of both the accused were recorded u/s 342 Cr.PC, wherein they professed their innocence, however, accused neither opted to be examined on oath u/s 340(2) Cr.PC, nor wished to produce evidence in their defence.
- 8) Valuable arguments of learned APP for the State and learned counsel for the accused heard.
- directly charged for recovery of 3000 grams Chars from their immediate possession. Recovery memo and other material available on record fully support the prosecution version; the prosecution examined 07 PWs in support of its case and all of them were consistent on the material points and there is no major contradiction.

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in the statements of PWs. It was further argued that FSL report has established that the recovered contraband was Chars which was recovered from the personal and immediate possession of the accused. That the prosecution has proved its case against the accused by producing oral and documentary evidence, hence, requested for conviction of both the accused facing trial.

- 10) On the other hand, learned defense counsel argued that the accused are innocent and have falsely been implicated in the instant case; that the prosecution has failed to establish its charge against the accused through cogent, convincing and confidence inspiring evidence. That all the witnesses examined by the prosecution in the instant case, contradict each other on material points, hence requested for acquittal of the accused facing trial.
- 11) After hearing learned APP for the State and defense counsely available record perused.
- on 30.10.2014 at 17:00 hours, complainant Sheeraz Ahmed Khan, SHO alongwith police party on spy information regarding trafficking of Charas through Alto-Mehran Motor Car No.4797-RNG made Nakabandi at KKH near Khanpur Doraha. During Nakabandi, the vehicle Alto-Mehran (mentioned-above) coming from Ichhrian side was stopped. During search of the said vehicle from accused Zeb-Ur-Rehman sitting on driving seat, 2000 grams Charas (two packets,

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each of 1000 grams) was recovered from his trouser fold, while 1000 grams Charas was recovered from the trouser fold of accused Shafi-Ur-Rehman. Thus total recovered Charas from both the accused was 3000 grams for which they are booked u/s 9C-CNSA. Since prosecution has charged the accused facing trial for alleged possession of 3000 grams of Charas, therefore, burden rested upon the prosecution to prove the same, for which, prosecution produced & examined 07 witnesses; out of whom, PW-7 is the statement of Complainant Sheeraz Ahmed Khan, PW-5 Shoukat Hussain ASI is the marginal witness of recovery memo, while PW-2 Gul Muhammad Khan, SI is Investigating Officer of the case.

- 13) Since, PW-7 & PW-5 are star witnesses of the case, therefore, their statements are most important for establishing guilt of the accused facing trial, however, if their statements are gone through; they are full of contradictions and lacunas, which are discussed herein below:-
 - As per Murasila and FIR, place of occurrence is mentioned as KKH Road near Khanpur Doraha, which is a verbusy road but despite of that they have not associated any privates witness to the recovery proceedings nor have given any plausible explanation for their non-association, thus violating the mandatory provisions of section 103 Cr.P.C

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Though police officials are as good witnesses as affy others but the requirement of association of private witnesses with the recovery proceedings especially in those cases wherein there is prior information is for ruling out chances of false implication of the accused in a criminal case. In this case all the witnesses are police officials who being subordinates of the complainant have though supported the stance of complainant in their examination-in-chief but when they were put to test of cross-examination, they could not stand the same, rather there are number of discrepancies in their statements. As per Murasila Ex.PW-7/1, the date of occurrence is 30.10.2014, time of occurrence is 17:00 hours, the time of report is 17:45 hours, while report is lodged on 31.10.2014 at 18:20 hours despite of the fact that complainant was a police official and the distance between the place of occurrence and the police station is 3/4 km, this inordinate delay is nowhere explained and is sufficient to create clouds of doubt on prosecution case.

the registration of FIR but record transpires that vide Register No.19, complainant of the case Sheeraz Khan SHO handed-over parcels to Muharrar of the P.S on 02.11.2014 i.e. after delay of about three days. There is no explanation on the record, as to where these parcels of alleged recovered contraband remained

lying from 30.10.2014 to 02.11.2014.

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The matter does not end here, rather another intriguing aspect of the prosecution case is that the parcels to the FSL were sent on 11.11.2014 i.e. with delay of about 11 days. This delay has not only created doubt with regard to the sample so received by the FSL but is also violation of the mandatory rules on the subject, according to which, sending of samples for chemical analysis within 72 hours is a must.

The inconsistency in the statements of prosecution witnesses coupled with unexplained inordinate delay in lodging of FIR and other proceedings of the case are instances making doubtful the mode & manner of occurrence and the alleged recovery from the accused facing trial which is further supported from the fact that there is no card of arrest of both the accused available on the record. Similarly, the site-plain does not carry the proper points showing presence of police officials accompanying the complainant at the time of occurrence.

Another fatal discrepancy in the prosecution case cutting its very roots is that the case property produced in the court was incomplete i.e. only one parcel No.3 allegedly shown to be recovered from accused Zeb-Ur-Rehman were produced, while the case property seized on the spot from accused Shafi-Ur-Rehman was not produced nor any plausible explanation was

given for its non-production.

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Another lacuna in the prosecution case is admittedly complainant belongs to Preventive Staff and investigation of the case is required to be conducted by independent Investigation Officer, while in this case the recovery of alleged contraband was effected from possession of the accused by police officer, who was seizing officer, complainant as well as investigation officer in the case in the sense that per record though a formal IO has been shown to have conducted investigation in the case but factually entire proceedings i.e. from seizing of the contraband till preparation of recovery sketch etc were conducted by same Police Officer, meaning thereby that he was three in one. Under the law complainant and accused were two opponents and contesting parties. Role of an Investigation Officer was of a neutral authority, whose object was to unearth the truth and he cannot be part or a member of party in a case, which he was investigating. Concept of honest investigation was based on non-partisanship and neutrality. Reason and spirit of separating Investigating Wing from the Operation Wing of Police also emanated from the said fact, which reflected in Article-18 of the Police Order, 2002. Element of honest. ransparent and fair investigation lacked in the present case, as IO of the case (PW-2) has not bothered to either independently prepare the site-plan in the case after verifying the spot from the complainant and the marginal witnesses nor has even made any

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addition in the recovery sketch after spot inspection, rather it appear that he by considering all that is done by complainant as Gospal truth has endorsed the same without independently verifying the veracity of the allegations. The Hon'ble Supreme Court has analyzed the above point from another angle also. According to the Hon'ble Supreme Court, investigating Officer is an important witness for the defense also and in case he acts as a complainant and raiding officer, the defense is deprived of his very precious right at the same time and is forced not to depend upon the same. (Aashiq alias Kalu VS The State 1989 P.C. L.J. 601).

14) In criminal cases, heavy responsibility rests upon the shoulders of prosecution to prove its case by producing coherent, independent, reliable and confidence inspiring evidence but in the instant case, the prosecution has miserably failed to prove its charge against the accused facing trial beyond any reasonable doubt and it is well settled principle of law that it is not necessary to have many facts for disbelieving the story of the prosecution but even a single slightest circumstance creating reasonable doubt in the prudent mind makes the accused entitled to the benefit of doubt, not only as a matter of grace but as a matter of right; while in the instant case, prosecution has totally failed to establish any charges against accused facing trial and whole prosecution case is full of doubts.

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what to say of a single slightest doubt, in this respect reliance is placed on 2009 SCMR 230 (Supreme Court of Pakistan).

- prosecution has badly failed to prove its case against the accused facing trial beyond reasonable shadow of doubt, hence, both the accused Zeb-Ur-Rehman s/o Abdur Rayyan and Shafi-Ur-Rehman s/o Sarfaraz are hereby acquitted of the charges levelled against him u/s 9C-CNSA. Accused are on bail, therefore their bail bonds are cancelled and sureties are discharged from liabilities under the bail bonds.
- 16) Case property i.e. contraband be destroyed in accordance with law after expiry of period of appeal/revision. Record be returned alongwith copy of this Judgment. File be consigned to record room after necessary completion and compilation.

Announced 22.12.2018

(SADIA ARSHAD)
Additional Sessions Judge-II/
Judge Special Court,
Manschra.

CERTIFICATE

Certified that this judgment consists (12) pages. Each page has been read, checked corrected wherever necessary and signed by

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_(SADIA ARŠIIAD

Additional Sessions Judge-II,

Judge Special Court,

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ANNEXURE H

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بحضور جناب قابل احترام پرادنشل پولیس آ ضرصاحب بھادرصوبه خیبر پختونخواه پشاور

ایل برخلاف تنم دی بی اوساحت نبلع بنگرام محرره 13/03/2015

بحالی ملازمت،ادائی واجبات 🐰

جياب عاليا!

سالن لي الرش كراري_

۔ میکسٹائل مرصطویل سے تکمہ بولیس میں اپن ڈیولی نہایت ویانت داری ،خوش اساد کی ادر جان فشائی سے سرائع ام دیتا چا ارم اتھا۔ سروس کے دوران سائل نے برلحہ تکمہ کے وقارمورال ادرعز سے کومقدم رکھا تھا کہ بھی بھی لا پر دائت تھم عدولی اور عدم دلچیس کا اظہار میں کیا ہے۔ اس طرح حتی اوسٹ کوشش رہی تا کہانسران بالاکوشکایت کا موقع نہ ہے۔

۔ یک سائل نے 2014 میں انٹرمیڈ یٹ کورس پاس کیا تھا انٹرمیڈیٹ کورس پاس ہونے کے نا نظر ایک پولیس آ فسراس طرف سرج بھی نہیں سکتا ہے۔ ایکن سائل کوذا تیات کے تحت ایک ایسے گھٹاوانے جرائم میں طوٹ رکھا۔ جوآ فسران بالا کے ظاہری نظر میں نا تامل سوائی ہے لیکن خدا کے نزدیک سائل یہ گناہ ہے۔

س به که برانکی کے خلاف و آنافو آنا به جادر به بنیاد مقد مات علت نمبر 553 مورد 27/05/2013 جرم 9C.CNSA و پرس سیشن کید و شلم ایب اباد مقد میلاند نمبر 392 مورد در 30/10/2014 جرم 9C.CNSA در پرس میشن شکیاری شلع مانسم و درج روج روج میل سائل کو وین کونت مالی اور مبانی مخالیف بینیایا کمیا ہے۔

الما من من كرزير بحث بالا مردومقد مات من كن سائل برى أو چكائة عدالتي علم نامه جات امراولف قابل الاحقايات

۵ ۔ پیکساکل نبایت بی فریب المت واحد زرید سوائل تھا جس سے بشکل بچوں کا پید بال راتھا۔

٢٤ يكرسائل بي كناه اورنا كرده جرم بيسائل كي خلاف لكايا والزام يلكل خلط من كخرت بي بنيا دادرامل حقا أق يد كاني دورنا بت بوايد

2- یکسائل نے آل ازیں جناب RPO ساحب ایب اباد کو بروت ایس کی تھی تقریبا4 سال بعد کورٹ کے فیصلہ جات کے اپنے پرسائل کو OR پی طلب فرمایا اور بعد میں ڈی پی اوصاحب بگرام کی کمنٹس کو ترجی دیے ہوئے عدالتی فیصلہ جات کونظر افراز کرتے ہوئے سائل کی ایپل فارج کی بو کیانساف کا نقاضیس ہے بچکم RPO صاحب مورد 2019/31/05 ہمراہ لف درنجواست بزاہے۔

۸۔ یہ کہ سائل کخان ف جملیا ختیار کیا ہوالا کھٹل عدالت میں ٹابت نہ ہوسکا ادر سائل عدالت ہے بری ہو چکاہے۔
 لہذا اسلتجیا نیا استدعاہے کہ حالات ، وا تعات بالا کے پیٹر آظر سائل کے حال پر دم فر ماکر ماتحت پر دری اور خدا ترس کے بنا پر سائل کوعدائتی فیصلہ جائے کی روشن میں ما از مست پر ہمال فر ماکر سائل کو جملہ واجبات منابیت فر ماکر مشکل و فرفر مائی سائل تاحیات دعا گورہے گا۔

العادض مائل شخا الرحماني ماابته HC فمبر 14 ذسر کت بگرام شاختی فمبر: 7-13202-5087 مو إکل فبر: 0301-8130346

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بخدمت جناب DIG صاحب بزاره دُویژن ایبه آباد

عنوان: ابْرِل برخلاف آرڈ رنگ تمبر 13 محررہ 13.03.2015 مخانب جناب DPO صاحب بگرام

جناب عالى! ماكل / ابيلانك شفع الرحمن سابقه HC غبر 237 ذيل عرض يرداز ہے:

ا سیک مورود 30.10.2014 بین اور آدم افعال به بینات محدود تعانبه الرحمن رشته دارام بسواری مورو تار انجر بینات بعد در تعانبه الرحمن رشته دارام بسواری مورو تار به بینات بینات این مدود تعانبه شکیاری بینی تو عقبی جانب ست ایک ملاحل کاری بینی تو عقبی جانب ست ایک ملاحل کاری بینی تو عقبی جانب ست ایک ملاحل کاری بینی کاری بوئی جس کا مینات بین آی ادر جارا داراسته روک کر کھڑا ہونے پر مجبور کیاادرا بین آپ کو لیاری جوئی جس کے پیاس تخانبه شکیاری کے ملازم ہونا بتلایا ان کے طرز عمل اور طریقت کار کے باعث ان بین تاری جوئی جس کے مقدر مینائل فون اور قرقی بین جس کا مینادور بینات تعانب بین بین جاری مقدر مینائل و کاری مینات تعانب بین بند کر کے مقدر مالت فیس و 9 و مورود 10 2 0 1 0 0 8 بر علی مقدر مالی تعانب بین بند کر کے مقدر مالی بینات تاریخ کاری مینات تعانب بین بند کر کے مقدر مالت فیس کی و 10 0 1 0 2 0 1 0 0 8 بر ا

۲۔ سیر کہ قبل از ایس کیئے بعد دیگرے موسولہ جارج شیٹ دآخری شوکاز نوٹس کی روشی میں کن ایکا نے تنہیانہ جواب دے ج

س- سیکہ کن سائل نے اسپے تجریری جواب میں استدعا کی تھی کہ مقد مہتنہ کرہ بالا کے فیصلہ تک انکوائری کو Pendignرکھا جائے گرکوئی شنوائی نہ ہوئی اور بے بنیاد یکھرفہ انکوائری کر کے من اپیلانٹ کو بحوالہ آرڈر بگ نمبر 13 کررہ 13.03.2015 جناب DPO ساحب بگرام نے Dismiss from Service کر دیا اور ارد لی زوم میں برائے زبانی عرض معروض پیش ہونے کا موقع بھی نہ دیا اور اس طرح انسان کے نقائے بھی نہ دیا اور اس طرح انسان کے نقائے بھی نہ دیا۔ اور ارد لی زوم میں برائے زبانی عرض معروض پیش ہونے کا موقع بھی نہ دیا اور اس طرح انسان کے نقائے بھی

عالی جاہ! سن اپیلانٹ سال 1995ء میں تکمہ پولیس ضلع بھرام میں بطور کنٹیبل بھرتی ہوکر تکمانہ تو اعدوضوا بط کے مطابق استخانات پاس کرے پرموش لسف D پہلانٹ کی مطابق استخانات پاس کرے پرموش لسف D پہلانٹ کی مطابق استخانات پاس کرے پرموش لسف D

Attested

کوئی عوای و تکاماند شکایت نہیں ہوئی اور کارسرکار انتہائی جانفشانی اور محنت سے سرانجام دیتار ہا۔مقد مہ سنذ کرہ بالا انتہائی جھوٹا ، بے بنیاد اور انتقامی کاروائی کا متیجہ ہے جوزیر ساعت سرالت مجاز ہے جس میں من اپیلانٹ کواپن بے گنائی ثابت کرنادر پیش ہے۔

جناب مال! DPO صاحب بگرام نے عجلت میں بغیر بتجہ مقدمہ و فیصلہ عدالت کے من اپیلائٹ کو DPO جناب مال! DPO صاحب بگرام نے عجلت میں بغیر بتجہ مقدمہ و فیصلہ عدالت کے من اپیلائٹ کو from service کردیا ہے جو قانون اور انساف کے نقاضوں کی تکیل نہیں کی گئے۔ (نقل آرڈ رلف بلا اے) حضور واللا من اپیلا نف ایک غریب اور باعز ت خاندان کا فرد ہے اور چھوٹے بچوں کی تعلیم و تربیت کا ذریعہ بھی مازمت اور تخواہ تھی و گیرکوئی ذریعہ آبدان نہ تھا اور نہ ہے۔ بچی پر منشیات جیسے گھناؤنے کام کا بے بیاداور جبوٹا الزام لگایا گیا ہے جو یقین واتن ہے کہ عدالت سے بچھے انساف بل جائے گا۔

لہذااستدعاہے کہ من سائل/ایبلانٹ کواہیے عہدہ ادر ملازمت پر تافیصلہ مقدمہ بحال فرمایا جاوے تا کہ من سائل کے بچوں کی کفالت اور تعلیمی سلسلہ جاری رہ سکے ۔ سائل حضور والا شان کی اس مہر بانی کا تازیست مشکور و مسوں رہے گا۔

الرقوم:20.03.2015

Tarifi

سائل/ا پیلانث: شفع الرخمن سابقه HC No.237 ولدمرفراز سکنه اکوش مجھوڑی بخصیل دخراج بنگرام شاخی کارڈنمبر:7-13202-5087158 موبائل نمبر:4-8130346-0301

> Attested H DA



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OFFICE OF THE INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA PESHAWAR.

/20, dated Peshawar the <u>59/ø7</u>/2020.

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This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-HC Shafi-ur-Rehman No. 14. The petitioner was dismissed from service by District Police Officer, Battagram vide OB No. 13, dated 3.03.2015 on the allegations of involvement in two criminal cases vide FIR No. 553, dated 02.05.2014 w/s (C) CNSA Police Station Cantt: Abbottabad and FIR No. 392, dated 30.10.2014 u/s 9C CNSA Police Station Shinkiari, Mansehra. His appeal was filed by Regional Police Officer, Hazara at Abbottabad vide order Endst; No. 1951/PA, dated 31.05.2019.

Meeting of Appellate Board was held on 27.12.2019 wherein petitioner was heard in person. During hearing petitioner denied the allegations leveled against him and contended that he has been acquitted from the charges by the court.

The petitioner has long service of 20 years, 01 month & 20 days at his credit. Keeping in view his long service, the Board decided that penalty of dismissal from service is hereby converted into compulsory retirement from service.

This order is issued with the approval by the Competent Authority.

(ZAIB ULLAH KHAN) AIG/Establishment, For Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

No. S/ SD0 - 26

Copy of the above is forwarded to the:

- Regional Police Officer, Hazara at Abbottabad. One Service Roll and one Fauji Missal containing enquiry file of the above named Ex-HC received vide your office Memo: No. 3370/PA, dated 24.09.2019 is returned herewith for your office record.
- 2. District Police Officer, Battagram.
- PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
- PA to Addl IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
- PA to DIG/HOrs: Khyber Pakhtunkhwa, Peshawar.
- PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
- Office Supdt: E-IV CPO Peshawar.

Attented.

ANNEXURE J'53

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 525 /2020

Shafi ur Rehman son of Sarfaraz (Ex-Head Constable), resident of Malkot Cum Gijbori, Tehsil & District Battagram.

...APPELLANT

VERSUS

- 1. Inspector General of Police Khyber Pakhtunkhwa, Poshawar.
- 2. Regional Police Officer/ DIG Hazara Region at Abbottabad.
- 3. District Police Officer Battagram.

...RESPONDENTS

APPEAL AGAINST THE IMPUGNED ORDER DATED 09/07/2020 PASSED BY RESPONDENT NO. 1 AND ORDER DATED 13/03/2015 PASSED BY RESPONDENT NO. 3 ARE AGAINST THE LAW, FACTS CIRCUMSTANCES AND NATURAL JUSTICE AND LIABLE TO BE SET-ASIDE.

PRAYER: ON ACCEPTANCE OF INSTANT

APPEAL ORDER DATED 09/01/2020 PASSED BY

RESPONDENT NO. I AND ORDER DATED 13/03/2015 PASSED RESPONDENT NO. 3 BE DECLARED NULL AND VOID-AB-INITIO AND APPELLANT BE RE-INSTATED IN SERVICE WITH ALL BACK BENEFITS.

Respectfully Sheweth;-

This appeal mainly proceeds on bellow stated factual and legal grounds.

- 1. That appellant was appointed as Constable on 24/01/1995.
- That due to good progress and performance in the year 2007 passed the lower course and similarly in 2014 passed intermediate.
 - SHO Police Station Battagram firstly SHO P.S

 Cantt. Abbottabad lodged FIR NO. 553 under

 Section 9C-CNSA dated 27/05/2013 P.S Cantt.

 Abbottabad and thereafter on 31/10/2014 SHO P.S

 Shinkiari lodged another FIR No. 392 dated

min of the second

31/10/2014 under Section 9C-CNSA P.S Shinkiari Mansehra. Copy of FIR is annexed as Annexure "A".

- 4. That on 12/11/2014 Superintendent of police CTD

 Hazara Region Abbottabad issued charge sheet
 alongwith statement of allegation. Copy of charge
 sheet is annexed as Annexure "B".
- 5. That on 18/11/2014 appellant submitted reply of the same. Copy of reply is annexed as Annexure "C".
- inquiry against the appellant in respect of offences mentioned in FIR, in consequence of the inquiry report and statement of witness appellant was declared innocent by the inquiry officer. Copy of inquiry report is annexed as Annexure "D".
- That after lodging FIR LOs of both the police station filed challan for trial before the learned Additional Sessions Judge-II, Abbottabad and Additional Sessions Judge-II, Manschra.

- 8. That on 27/02/2015 respondent No. 3 issued final show cause notice against the appellant and on 05/03/2015 appellant submitted reply of the same.

 Copies of show cause notice is annexed as Annexure "E".
- 9. That on 12/03/2015 respondent No. 3 issued impugned order, whereby appellant was dismissed from service. Copy of order is annexed as Annexure "F".
 - the prosecution, but during trial prosecution fail to proof allegation and on 17/01/2018 learned Additional Sessions Judge-II, Abbottabad announce judgment and appellant was acquitted and similarly on 22/12/2018 learned Additional Sessions Judge-II, Mansehra passed judgment and appellant was acquitted from the charges leveled against him by the local police. Copy of judgment is annexed as Annexure "G".
 - 11. That on 20/03/2015 appellant filed departmental appeal against the impugned order dated 13/03/2015 before the respondent No. 2 and

similarly on 21/06/2019 filed another appear before the respondent No. 1. Copy of appeal is annexed as Annexure "H".

- impugned order on the appeal of the appellant whereby respondent No. I modified order dated 13/03/2015 and punishment was converted from dismissed to compulsory retirement. Copy of order is annexed as Annexure "1".
- 13. That feeling aggrieved from the above said impugned orders appellant filed this appeal on the following grounds;-

GROUNDS:-

- a. That both the impugned orders are against the law fact, have liable to be set-aside.
- b. That all proceeding were conducted with malafide intention, against the principle of natural justice.

- c. That respondents are miserably failed to proved allegation against the appellant.
- d. That respondent No. 1 passed impugned order dated 13/03/2015 before the final judgments of courts of competent jurisdiction.
 - e. That after acquittal from charges leveled against the accused in the FIR, thereafter respondents have no power to issued impugned order, whereas it come to classically example of misuse of authority and power.
 - f. That at the time of passing impugned orders respondents ignored all basic principle of natural justice and equity.
 - That respondent ignored the finding of inquiry committee and evidence of the record, and issued impugned order, hence both orders are liable to be set-aside.

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- h. That respondent No. 3 adopted his own procedure and passed impugned order against the E&D Rules.
- That the other points would be urge at the time of Arguments with the kind permission of this Honourable Court Tribunal.

It is, therefore, humbly prayed that on acceptance of instant, appeal order dated 09/01/2020 passed by respondent No. 1 and order dated 13/03/2015 passed respondent No. 3 be declared null and void-ab-initio and appellant be re-instated in service with all back benefits. Any other relief which this Honourable Tribunal deems fit and proper in the circumstances of the case may also be granted to the appellant.

...APPELLANT

Through,

Dated: 26 \ /2020

(HAMAYUN KHAN)
Advocate High Court, Abbottabad

<u>VERIFICATION;-</u>

Verified on oath that the contents of forgoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

APPELLANT

ANNEXURE 60

Service Appeal No.525/2020 titled "Shafi Ur Rehman Vs. Inspector General Police, Khyber Pakhtunkhwa, Peshawar and others".

ORDER

Oct. 2023 Kalim Arshad Khan, Chairman: Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

- 2. Learned counsel for the appellant pointed out that the appellant was serving under the District Police Officer, Battagram but the initial departmental proceedings were initiated by the SP CTD, Abbottabad, who was not the authority of the appellant, while the final impugned order was passed by the DPO Battagram. He disputed the proceedings by saying that those were not conducted in the proper manner by proper authorities. There is a letter bearing endorsement No.122-25/E&I dated 13.01.2015 on the file issued by the office of Inspector General of Police. Paragraphs No.2, 3 & 4 of the same are reproduced as under:
- "2. It has reliably reported that on 30.10:2014 during Nakabandi local Police of Police Station Shinkiari has recovered 03 Kg Chars and 01 Pistol 30 bore from the possession of Zaib Ur Rehman and Shafi ur Rehman (an employee of CTD Battagram). During interrogation, accused Shafi Ur Rehman disclosed that he is serving in CTD and has earlier remained in another case of smuggling vide case Fir No.553 data 02.05.2014 u/s 9C-CNSA Police Station Cantt: Abbottabad.
- 3. On receiving these information DIG CTD directed SP CTD Hazarata to initiate departmental enquiry against Head Constable for his direct involvement in two different heinous nature cases. As per direction of DIG CTD, proper departmental enquiry was conducted after fulfillment of all

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codal formalities Head Constable Shafi Ur Rehman was found guilty of the allegations leveled against him and the enquiry officer recommended him for major punishment. During enquiry Head Constable Shafi Ur Rehman is found guilty of gross misconduct and he is recommended for major penalty but Head Constable Shafi Ur Rehman is verying on deputation basis in CTD and FRP is his parent department.

- 4. On perusal of the above report the Worthy IGP has passed the following remarks:-
 - ❖ Orders be issued for repatriation to district Battagram with direction to DPO Battagram to issue him Show Cause Notice and to remove him from service in the light of findings of enquiry officer.
 - * He is placed under suspension'

According to this letter, the stance of the learned counsel for the appellant holds some field because the letter tells us that the appellant was employee of CTD Fiattagrin and was serving on deputation basis with CTD, whereas, FRP was his parent department but the directions were issued to the DPO to issue show cause notice and remove the appellant from service in the light of findings of the inquiry officer. It was then the DPO Battagram issued the original dismissal order, which was assailed by the appellant before the Inspector General of Police in revision petition under Rule 11-A of the Police Rules, 1975. The IGP, on acceptance of the revision petition, converted the punishment of dismissal from service into compulsory retirement. The appellant is aggrieved of the same but as learned counsel has pointed out certain irregularities in the conduct of the departmental

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proceedings by different authorities, the competency of which was also questioned, whereas, according to learned counsel, the departmental proceedings could have been initiated only by the competent authority of the appellant, who according to him is the DPO Battagram.

- 3. Therefore, we allow this appeal, set aside the impugned orders and remit the matter back to the DPO Battagram for conducting de-novo inquiry in accordance with law and rules within 60 days from the date of receipt of judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Consign.
- 4. Pronounced in open Court at Abbottahad and given under our hands and seal of the Tribunal on this 24th day of October, 2023.

(Farceha Paul) Member (E) (Kalim Arshad Khan) Chairman

Mutazem Shah*

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ANNEXURE L 63
BLE SERVICE TRIBUNAL KHYBER

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

E.P No. 337/2024 IN Appeal No. 525/2020

Shafi ur Rehman son of Sarfaraz(Ex-Head Constable), resident of Malkot Cum Gejbori, Tehsil & District Battagram.

...PETITIONER

VERSUS

- 1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
- 2. Regional Police Officer/DIG Hazara Region at Abbottabad.
- 3. District Police Officer Battagram.

... RESPONDENTS

APPLICATION FOR IMPLEMENTATION OF ORDER DATED 24/10/2023 PASSED BY THIS HONOURABLE TRIBUNAL IN APPEAL NO. 525/2020 TITLED "SHAFI UR REHMAN V/S IGP & OTHERS".

Respectfully Sheweth:-

1. That petitioner filed service appeal No. 525/2020 against the impugned order dated 13/03/2015

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passed by respondent No. 3. Copy of appeal is attached as Annexure "A".

- 2. That on 24/10/2023 after hearing of arguments this Honourable tribunal accepted appeal of the appellant and set-aside impugned order dated 15/03/2015. Copy of order dated 24/10/2023 is attached as annexure "B".
- 3. That thereafter, petitioner submitted order passed by this Honourable court in the office of respondent No. 3 for implementation.
- 4. That thereafter respondent No.3 issued conditional re-instatement order on 28/11/2023. Copy of order is attached as Annexure "C".
- 5. That after laps of more than 06 months respondents had not implemented order dated 24/10/2023 of this Honourable tribunal till date and refuse proper implementation of the order for the sake of salary and posting for duty.
- 6. That respondent No. 3 instead of complying with the direction of this Honourable Tribunal,

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straightaway refused to comply with the direction of this Honourable Tribunal.

7. That other point would be raised at the time of arguments kind permission of this Honourable Tribunal.

It is therefore, humbly prayed that on acceptance of instant application respondents be kindly be directed forthwith implement the order dated 24/10/2023 passed by this Honourable Tribunal in its true letter and spirit.

..PETITIONER

Through

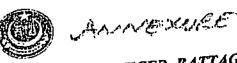
Dated: 29/4/2024

(HAMAYUN KHAN)

(FAZALULLAH KHAN) Advocates High Court, Abbottabad

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ANNEXURE "M"



OFFICE OF THE DISTRICT POLICE OFFICER, BATTAGRAM Phone No. 0997-310036 & Fax No. 0997-311616

ORDER

Ex-Head Constable Shaft or Rehman No. 237 of Battagram District, while posted in Counter Terrorism Department Khyber Pakhtunkhwa Peshawar on deputation basis got involved in case vide FIR No. 553 dated: Peshawar on deputation basis got involved in case vide FIR No. 30.10.2014 alongwith 27.05.2013 U/S 9CCNSA PS Cant Abbottabad. Similarly, on 30.10.2014 alongwith a co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP or e-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accused he again got involved in case FIR No. 392 U/S 9CCNSA / ISAAKP of co-accuse

The said Head Constable filed an appeal before the Worthy Provincial Police Officer Khyber Pakhtunkhwa Peshawar, against the above said dismissal order and the Worthy Provincial Police Officer Khyber Pakhtunkhwa on his appeal, converted his dismissal into compulsory retirement keeping in view his prolong service. Later on the said Head Constable filed an appeal vide No. 525/2020 prolong service. Later on the said Head Constable filed an appeal vide No. 525/2020 before the Honorable Court of Service Tribunal Peshawar Abbottabad bench. The Honorable court of Service Tribunal Peshawar Abbottabad bench vide judgment dated: 24.10.2023, allow his appeal, set aside the impugned orders and remit the matter back to this office for conducting of de-novo inquiry in accordance with law and rules within 60-days and Assistant Inspector General of Police Legal CPO Peshawar office Letter No. 6626/Legal dated: 14.11.2023.

Therefore, Ex-Head Constable Shafi ar Rehman No. 237 is hereby conditionally re-instated in service for the purpose of de-novo enquiry with tramediate effect:

OB 10 29 28-11-2023 istrict Police Officer, Battagrani.

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1 _معروض ہوں کے سائل محکمہ پولیس سے وابسطہ اپنی فرائنس منھی اب تک نہایت دیا نمذاری اورخوش اصلوبی سے سرانجام دیتا پلا آ راہا تھا۔ سروس کے دوران تککہ کے وقار اور عزیت ہرلحہ مقدم رکھا ہے ۔ بھی بھی لا پر واہی ،کو تا ہی اور تکم اووری نہیں کی ہے ہرگھڑی کارسر کار پر اولین ترجے دی ہے۔

2- یدکسائل CTD میں تعینات تھا عرص تعیناتی که دوران پولیس آفسر ان تھا نہ کینٹ ایٹ آباد میں سائل کہ خلاف ایک من گھڑت اور بے بنیا دمقد مدعلت ہمرہ 553 مورخہ 2014 - 30 جرم 90 CNSA تھا نہ کینٹ ایٹ آباد میں درج ہوا جبکہ مقد مدعلت 392 مورخہ 2014 - 30 جرم 90 CNSA تھا نہ شنکیا ری میں بھی من سائل کے خلاف مقد مددرج وجنر کیا گیا ہے ہردومقد بات میں من سائل بھری ہو چکا ہے کیونکہ ہردومقد بات فالم اورائل مقائن سے دورددرج وجنر کئے میں متعلقہ کورٹ آرڈ رہمرادلف قابل ملاحظہ ہے۔

3۔ بیکد کن سائل نے زیر بحث صورت حال کے پیش نظر سروس ٹر بیونل سے دابطہ کیااورا پیل دائر کی جس پر کن سائل کے حق میں نیصلہ ہو چکا ہے جس بناء پر سائل کہ عدالتی احکامات کی روشی میں بحوالدر بٹ نمبر 9 روز نامجہ 2023-12-04 پولیس لائن بگگر ام میں حاضری کی رپورٹ کی ہے آ رڈر کا پی ہمراہ لف ہے

4- بدكه كن سائل نهايت بى غريب ب_ نوكرى واحدز ربيد معاش بجس بي بمشكل بچول كاپيي پالا جاتا ہے۔

5- بیکٹر سائل کردن میں فیصلے صادر ہونچکے ہیں عدالتی فیصلہ مقدم ہے کیونکہ من سائل کوالیک ناکر دہ جرائم میں پھنسانے کی ناکام کوشش کا گئی ہے شائم سائل کے خلاف عدادت کی بنیاد پرگاؤں سطح پرکوئی عضر موجود ہو۔

لہذااستدعا پیکہ حالات اور واقعات بالا کہیش نظر سائل کے حال پر دیم فر ماء کر ماتحت پر دری اور خدا ترس کے بناپرعدالتی احکامات کی روشی میں انکوائری فائل فرماء کر داخل دفتر فرماویں سائل تا حیات دعا گورہے گا۔

> العارض شفیع الرحمٰن HC پولیس لائن بنگرام

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I, Sonia Shamroz Khan (PSP), District Police Officer Battagram, as Competent Authority of the opinion that Head Constable Shaff ur Rehman Police Lines has rendered himself liable to be proceeded against as he committed the following act/omissions within the meaning of Khyber Pakhtunkhawa Police Disciplinary Rules 1975 (amended in 2014).

In compliance of judgment of Service Tribunal Abbottabad Bench Vide order dated 24.10.2023 in service Appeal No. 525/2020 it was directed to conduct denovo enquiry against you in respect of following allegations.

As per report received from DSP CTD Battagram, on 30.10.2014 you Head Constable Shaft ur Rehman No. 237 alongwith another person namely Zaib ur Rehman were on way from Battagram to Mansehra travelling in Alto Motor Car bearing Reg: No. 4797/RNG. You were stopped by SHO Shinkiari near Khan Pur and carried out your personal search. One KG Charras alongwith one 30-bore pistol and 12-rounds were recovered from your possession while 2-KGs Charras was also recovered from your companion. A proper case vide FIR No. 392 dated: 30.10.2014 U/S 9-C CNSA Police Station Shinkiari was registered against you which is a gross misconduct on your part. During the interrogation you disclosed that you are earlier remained in another case of smuggling vide case FIR No. 553 dated: 02.05.2014 U/S 9-CCNSA Police Station Cant Abbottabad.

In this regard proper departmental enquiry was initiated against you by SP CTD Hazara conducted by Muhammad Nawaz DSP CTD Hazara Region. Final Show Cause Notice was Issued to you by District Police Officer Battagram vide No. 136/PA, dated: 27.02.2015. On the recommendation of enquiry officer you were dismissed from service vide this office Order Endst: No. 177/PA, dated: 12.03.2015.

It shows that you are indiscipline and irresponsible police official. It amounts to gross misconduct.

For the purpose of scrutinizing the conduct of the said accused Officer with reference to the above allegations. Mr. Muzammil Shah Khan, SP Investigation Mansehra and Mr. Sajid Nawaz Khan DSP HQRs:

Battagram has been nominated as engulry officers by the Assistant Inspector General of Police Engulry, Internal Accountability branch Khyber Pakhtunkhwa Peshawar vide his office No. 1897-1901/CPO/IAB dated:

12.12.2023 to conduct de-novo engulry against Head Constable Shafl ur Rehman Police Lines Battagram with the direction to finalize the engulry within the stipulated period being court matter.

The Enquiry Officers shall in accordance with the provisions of the Khyber Pakhtunkhwa Police Rules - 1975 (amended in 2014), provide reasonable opportunity of hearing the accused, record findings and make recommendations as to punishment or other appropriate action against the accused within 05-days.

District Police Officer,

No <u>2457-59</u> /PA dated Battagram the <u>15</u> /12/2023

Copy of the above is forwarded for favour of information and necessary action to: -

 The Enquiry Officers for initiating proceedings against the defaulter officer under the provisions of the Khyber Pakhtunkhwa Police Rules-1975 (amended in 2014).

2. Head Constable Shaft or Rehman Police Lines with the direction to submit his written statement to the Enquiry Officer within 02 days of the receipt of this charge sheet/statement of allegations and also to appear before the Enquiry Officer on the date, time and place fixed for the purposes of departmental proceedings.

strict Police Officer, Battagram

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CHARGE SHEET

- 1) I, SONIA SHAMROZ KHAN, District Police Officer, Battagram as competent authority hereby charge you Head Constable Shafi ur Rehman Police Lines as per the enclosed statement of Allegations.
- 2) By reason of the statement of allegations, you appear to be guilty of misconduct and have rendered yourself liable to all or any of the penalty specified under the relevant rules.
- 3) You are therefore, required to submit your written defence within (5) five days of the receipt of this charge sheet to the enquiry Officer.
- 4) Your written defence, if any should reach the enquiry Officer within the specified period failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be followed against you.
- 5) Intimate whether you desire to be heard in person.
- 6) Statement of Allegation is enclosed.

District Police Officer,
Battagram.

AMENTO

OFFICE OF THE SUPERINTENDENT OF POLI INVESTIGATION, MANSEHRA

Ph: No: 0997-920106; Fax: No: 0997-920016

sspinvmsa@gmail.com

/PA/In: Dated-Manschrathe 16/0/-2024

The District Police Officer,

Battagram:

Subject

DENOVE EQUIRY AGAISNT EX-HEAD CONSTABLE SHAFL UR-REHMAN NO.237 AS PER DIRECTION OF SERVICE TŘÍBUNAĽ

Kindly refer to you good office letter No. 2460-61 dated 15,12,2023,on

Enclosed kindly find herewith enquiry file along with findings duly the subject noted above conducted by the undersigned against FIC Shaft-ur-Rehman; posted at Police Lines, District Battagram, entrusted to the undersigned by the good honor, is sent herewith for kind perusal, please.

Investigation Mauschra

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FINDINGS.

Relman, posted at Police Lines, District Battagram. Upon judgment of learned Service Tribunal court, Abbottabad Bench, vide order dated 24.10.2023, in response, to his service appeal No.525/2020, he was conditionally reinstated in service and charge sheeted by the District Police Officer, Battagram, vide charge sheet No.2457-59/PA dated 15.12.2023, and enquiry was entrusted to the undersigned along-with DSP HQRs: Battagram. In response to charge sheet alleged defaulter official submitted his written explanation which was found not satisfactory. Therefore, the formal departmental enquiry was initiated against him. The charges against him are as under:

Constable Shaft ar Rehman No. 237 along-with another person namely Zia ar Rehman were on way from Battagram to Mansehra travelling in Alto Motor Car bearing Region 4797/RNG. You were stopped by SHO Shinkiari near Khan Pur and carried out your personal search. One KG Charras along with one 30-bore pistol and 12-counts were recovered from your possession while 2-KG Charras was also recovered from your companion. A proper case vide FIR NO: 392 dated 30.10.2014 U/S 9-C CNSA Police station Shinkiari was registered against you which is a grass inisconduct on your part. During the interrogation you: disclosed that you are earlier remained involved in another case of snauggling (contraband) vide case FIR NO: 553 dated 27.05:2013 U/S 9-CCNSA Police station cant: Abbottabad.

In this regard proper departmental enquiry was initiated against you by SR CTD Hazara conducted through Muliammad Nawaz DSR CTD Hazara; Region Final Show Case Notice was issued to you by District Police Officer Battagram vide No.136/PA; dated 27.02:2015. On the recommendation of enquiry officer you were dismissed from service vide this officer Order Endst; No. 177/PA; dated 12.03.2015

ENQUIRY PROCEEDING

During course of enquiry FIR of the case vide FIR. No. 392 dated: 31.10.2014 u/s 9C-CNSA-PS Shinkian, District Manschra was produced and perused. Perusal of FIR reveled that on 31:10:2014 for receiving spy information, Insp. Sheeraz Ahmed while then posted as SHO PS Shinkian along with other police officials, laid barricade at KKH Road near Khanpur Doraha; when a Motorear No. 4797 RNG, white color came from tehrhian side which was stopped. The driver disclosed his name as Zeb-Ur-Rehman, while person sitting with him disclosed his name as Shafi-Ur-Rehman. They both were got alighted from the vehicle. On search of accused Zeb-Ur-Rehman, 02 packers of contraband Charas (Garda), weighting 2000 gram (1000 ench), one Nokia Mobile(Xi) and cash amount of Rs 19:170/- was recovered (Similarly, during scarch of accused Shafi-Ur-Rehman, one 30 Bore Pistol loaded with magazine containing five lives as Rounds, seven other live Rounds of same bore kept in bandolic and one packets of Charas (Garda) weighting 1000 grams, two Mobiles and cash amount of Rs 13:220/cwere also had cash amount of Rs 13:320/cwere also had cash amoun

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recovered. Shafi-Ur-Rehman disclosed that he is owner of the vehicle, accused were arrested and Murasila was drafted on the spot; Which resulted in to registration of instant FIR.

During the course of enquiry, the alleged defaulter official HC Shati-ur-Rehman, was summoned for recording his statement and production of witnesses and evidences, if any, in his desence. On 18,12,2023 he appeared, along-with two witnesses namely Zaib-ur-Rehman s/o Abdul Rehman r/o Battagram and Taj-ur-Rehman s/o Muhammad Rehman r/o Battagram, in his defence. I heard them in detail and recorded their statement.

HC Shafi-ur-Rehman, deposed in his statement that both cases, registered against him, regarding drugs/contraband peddling were fake and baseless and learned court, after his trial, acquitted him in both cases, being found not guilty. He was dismissed and reinstated in service by the leaned Service Tribunal Court, Abbottabad-Bench and presently he is posted at Police lines, Battagram, where he submitted his arrival report vide Mad No.09 dated 04.12.2023. He further deposed that he has enmity at village and he was implicated by the opponent party in false cases to make difficulties/hurdle for him in police service.

Taj-ur-Relimin s/o Mahammad Rehman i/oiBattagram, on oath stated. that on 1011 2014 he was contacted by HC Shafi-ur-Rehman via mobile phone and requested to come with him to PS Shinkiari for collection of his pistol along-with Arm licenses He picked Shaff-ur-Rehman, and both were reached at PS Shinkiari, meet with the then SHO PS Shinkian; who served them with tea and on direction of SHO PS Shinkiari: Police official handed-over Pistol along-with Arm Dicense to Shaft-ur-Rehman

Zaib-ur-Rehman stos Abdul Rehman ro Battagram, deposed in his statement that on 30 10:2014, he was accompanied with Shafi-ur-Rehman and were travelling from Battagram towards Mansehra, in Suzuki Mehran, for buying its tire When they reached near to Ichrhiyan, they were stopped by 05 unknown persons in plain. clothes, duly armed with ammunition who get them out from vehicle on gun point. They snatched pistol along with license from HC Shatt-ur-Rehman and grabbed them to Police Station There was nothing else illegal with them, as nurrated in FIR

Similarly, statements of marginal witnesses of the FIR recorded before the learned court was associated with enquiry proceedings, which revealed that Insp. Sheerag-Ahmed Khan complainant of the case, was examined as PW-7, who supported the contents of Murasila in his statement in chief, as discussed above; (copy enclosed).

SI Shouleat Hussain, as I.W-5 of the case marginal witness of recovery memos disclosed in syliness box before the learned court that SHO took into possession the contraband Charas, mobile phones and cash amount from both accused

Both above mentioned PWs are star witnesses of the case; therefore, their statements are most important for establishing guilt of accused. I gone through their statements coupled with judgment dated 22.12.2018, passed by the learned Additional Session Judge-II; Judge Special Court, Mansehra, in said case, which was also produced and associated with enquiry proceedings and observed following:

- Contraband, allegedly, recovered from EX-HC Shaft-ur-Rehman, was showed to be seized by the then SHO PS Shinkiari; on spot but it was neither physically produced before the learned court nor given any plausible explanation for its non-production.
- Record of PS Shinkiari transpired that Insp. Sheeraz Khan while then posted as SHO

 PS Shinkiari, complainant of the case handed-over parcels to Muharrar of PS after

 delay of three days which is also without any explanation or justification. It creates

 serious doubt/dents which supported the narrative of alleged official HC Shaji-ur.

 Rehman regarding his innocence and false implication in narcotic case.
- > Violation of mandatory provision of section 103 Cr-PC was noticed in the case, nor any plausible explanation/reason was given by the complainant of the case despite hesshowed place of occurrence as busy place
- No fustification has been found on record that as to where parcels of alleged recovered contraband remained laying from 30 10 2014 to 02 11 2014
- Parcels were sent to FSL Peshawar, with delay of 11 days instead of 72 hours If contraband was recovered from accused on spot as nurrated in Murasila then why it was not handed-over to the Muharrar for its onward submission to the FSL, timely?
- > Moreover, learned trial count extended benefit of religned placed on 2009 SCMR 230
 (Supreme Count of Pakistan) to accused and after completion of trial, acquitted them
 being not found guilty vide order dated 22/12/2018 passed by the learned Court of
 Additional Session Judge-II. Judge Special Court, Mansehra, (copyrenclosed)

On the other hand another case of same nature; vide FIR NO.553 clated 27.05/2013 u/s 9-C CNSA Police Station cant: Abbottabad was also registered against Shafi-ur-Rohman, in which prior to this enquiry (was stopped by the high-ups (Sri-Superintendent of Police, Admin: DCT SB: KPK, Poshawar) till decision of the trial court vide order dated 08.11/2013 by the Sr. Superintendent of Police, Admin. DCT SB: KPK, Poshawar, being competent authority. The same has been decided by the trial court i.e. Additional Session Judge II. Abbottabad, in which charges against accused Shaft-ur-Rohman have also not been proved and learned court acquitted him from the charges vide judgment order dated 17.01/2018 (copy enclosed)

In the light of sloppage order subject to decision of learned court, in previous enquiry initiated against Shaft-ur-Rehman an case, vide FIR NO 553 daied, 27.05 2013 a/s, 9-C CNSA Police Station cant Abbottabad, by the Sr. Superintendent of Police Admin DCT SB KPK Peshawar in relied on judgment/decision of the learned

trial court, whereby alleged defaulter official HC Shafi-ur-Rehman, is also found innocent.

CONCLUSION.

Keeping in view of above mentioned circumstances, coupled with statements of PWs and available record, besides judgment order dated 17.01.2018 passed by the learned Additional Session Judge-II, Abboitabad and judgment dated 22.12.2018 passed by the learned Additional Session Judge-II, Judge Special Court, Mansehra, charges leveled against alleged defaulter official HC Shafi-ur-Rehamn are not proved. Moreover, it is settle principle of law under provision of section 403 Cr.PC 1898 that person once convicted or acquitted not to be tried for the same offence. Therefore, it is recommended that departmental enquiry initiated against alleged defaulter official HC Shafi-ur-Rehamn, may be filed.

Submitted please.

Supering fent of Police Investigation Manschra

Depos Superintendent of Police,
Hendquarters Battagram
DSP/FQ
Battagram

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FINDINGS

Rehman, posted at Police Lines, District Battagram. Upon judgment of learned Service Tribunal court, Abbottabad Bench, vide order dated 24.10.2023, in response to his service appeal No.525/2020, he was conditionally reinstated in service and charge sheeted by the District Police Officer, Battagram, vide charge sheet No.2457-59/PA dated 15.12:2023, and enquiry was entrusted to the undersigned along-with DSP HQRs: Battagram. In response to charge sheet alleged defaulter official submitted his written explanation which was found not satisfactory. Therefore, the formal departmental enquiry was initiated against him. The charges against him are as under:-

As per report received from DSP CTD Battagram, on 30.10.2014, you Head Constable Shafi ar Rehman No. 237 along-with another person namely Zia ar Rehman were on way from Battagram to Mansehra travelling in Alto Motor Car bearing Reg: No. 4797/RNG. You were stopped by SHO Shinkiari near Khan Par and carried out your personal search. One KG Charras along with one 30-hore pisiol and 12-rounds were recovered from your possession while 2-KG Charras was also recovered from your companion. A proper case vide FIR NO. 392 dated 30.10.2014 U/S 9-C CNSA Police station Shinkiari was registered against you which is a gross misconduct on your part. During the interpogation your disclosed that you are earlier remained involved in another case of smuggling (contraband) vide case FIR NO.553 dated 27.05.2013 U/S.9-CCNSA Police station cant: Abbottabad.

In this regard proper departmental enquiry was initiated against you by SP-CTD Hazara conducted through Muliammad Nawaz DSP-CTD Hazara Region SP-CTD Hazara Region Final Show Case Notice was issued to you by District Police Officer Bailingcam vide No. 136/PA; dated: 27.02:2015. On the recommendation of enquiry officer you were dismissed from service vide this officer. Order Endst; No. 17.7/PA; dated: 12.03.2015.

ENQUIRY PROCEEDING.

During course of enquiry FIR of the case vide FIR No. 392 dated: 31.10.2014 u/s 9C-CNSA-RS Shinkiari. District Manschra was produced and perused. Perusal of FIR revoled that on 31.10.2014, on receiving spy information, Insp. Sheeraz Ahmed while then posted as SHO PS Shinkiari along with other police officials, laid barricade at KKH Road near Khanpur Doraha, when a Motorcar No. 4797-RNG, white color came from Ichrham side, which was stopped. The driver disclosed his name as Zeb-Ur-Rehman while person sitting with him disclosed his name as Shafi-Ur-Rehman. They both were got alighted from the vehicle. On search of accused Zeb-Ur-Rehman, 02: packets of contraband Charas (Garda) weighting 2000, gram (1000 each); one Nokia: Mobile(XI) and cash amount of Rs. 19:1707- was recovered (Similarly, during search of accused Shafi-Ur-Rehman, one 30 Bore Pistol loaded with magazine containing five lives. Rounds, seven other five Rounds of same bore kept in bandolierand one packet of Cliaras (Garda) weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 1000 grams (two Mobiles and cash amount of Rs. 18:186-20/4 weighting 10

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recovered. Shafi-Ur-Rehman disclosed that he is owner of the vehicle, accused were arrested and Murasila was drafted on the spot. Which resulted in to registration of instant

During the course of enquiry, the alleged defaulter official HC Shafi-ur-Rehman, was summoned for recording his statement and production of witnesses and evidences, if any, in his defence. On 18.12.2023 he appeared, along-with two witnesses namely Zaib-ur-Rehman s/o Abdul Rehman r/o Battagram and Taj-ur-Rehman s/o Muhammad Rehman r/o Battagram, in his defence. I heard them in detail and recorded their statement.

against him, regarding drugs/contraband peddling were fake and baseless and learned court, after his trial, acquitted him in both cases, being found not guilty. He was dismissed and reinstated in service by the leaned Service Tribunal Court, Abbottabad-Bench and presently he is posted at Police lines, Battagram, where he submitted his arrival report vide Mad No.09 dated 04.12.2023. He further deposed that he has enmity at village and he was implicated by the opponent party, in false cases to make difficulties/hurdle for him in police service.

Taj-ui-Rehman s/o Muhammad Rehman r/o Battagram, on oath stated that on 10:11.2014 he was contacted by HC Shafi-ur-Rehman via mobile phone and requested to come with him to PS Shinkiari for collection of his pistol along-with Arm license He picked Shafi-ur-Rehman, and both were reached at PS Shinkiari, meet with the then SHO PS Shinkiari, who served them with tea and on direction of SHO PS Shinkiari, who served them with tea and on direction of SHO PS Shinkiari, Police official handed over Pistol along with Arm Dicense to Shafi-ur-Rehman.

Zaib ur Rehman s/o Abdul Rehman r/o Battagram, deposed in his statement that on 30:10:2014, he was accompanied with Shaft-ur Rehman and were travelling from Battagram towards Mansehra, in Suzuki Mehran, for buying its tire. When they reached near to Jehrhiyan, they were stopped by 05 unknown persons in plain clothes; duly armed with ammunition who get them out from vehicle on gun point. They snatched pistol along with license from HC Shaft-ur-Rehman and grabbed them to Police. Station There was nothing else illegal with them, as narrated in FIR.

Similarly statements of marginal witnesses of the FIR' recorded before the learned court was associated with enquiry proceedings; which revealed that Insp. Sheeray Ahmed Khan, complainant of the case, was examined as PW-7, who supported the contents of Murasila in his statement-in-chief, as discussed above; (copy enclosed).

= SI Shoukat Hussain as P.W-5 of the case, marginal witness of recovery memoraliselosed in witness box before the learned court that SHO took into possession the contraband Charas, mobile phones and cash amount from both accused.

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Both above mentioned P.W. ire star, witnesses of the case, therefore their statements are most important for establishing guilt of accused. I gone through their statements coupled with judgment dated 22.12.2018, passed by the learned Additional Session Judge-II; Judge Special Court, Mansehra, in said case, which was also produced and associated with enquiry proceedings and observed following:

- > Contraband: allegedly:recovered from EX-HC Shaft-ur-Rehman, was showed to be seized by the then SHO PS Shinkiari; on spot but it was neither physically produced: before the learned court nor given any plausible explanation for its non-production.
- Record of PS Shinkiari transpired that Insp. Sheeraz Khan while then posted as SHO
 PS Shinkiari, complainant of the case handed-over parcels to Muharrar of PS after
 delay of three days which is also without any explanation or justification. It creates
 serious doubt/dents which supported the narrative of alleged official HC Shaji-ur³
 Rehman regarding his innocence and false implication in narcotic case.
- > Violation of mandatory provision of section 103 Cr.PC was noticed in the case, nor any plausible explanation/reason was given by the complainant of the case despite he showed place of occurrence as busy place.
- > No instification has been found on record that as to where parcels of alleged recovered contraband remained laying from 30-10-2014 to 02 11 2014.
- Parcels were sent to FSE Peshawar, with delay of 11 clays instead of 72 hours, If contraband was recovered from accused on spot as nurrined in Murasila then why it was not handed over to the Muhamar for its onward submission to the ESL, timely?
- Moreover, learned trial court extended benefit of reliance placed on 2009 SCMR 230 (Supreme Court of Pakistan) to accused and after completion of trial acquitted them being not found guilty vide order dated, 22.12.2018 spassed by the learned Court of Additional Session Judge-II. Judge Special Court Mansehra. (copy enclosed)

On the other hand another case of same nature, vide PIR NO.553 dated 27.0512013 u/s 9-C CNSA: Police Station cant: Abbottabad was also registered against Shaft-tir-Rehman (an which prior to this enquiry (was stopped by the high-ups (Sr Superantendent of Police, Admin. DCT SB: KPK, Peshawar) till decision of the trial court vide order dated 08.14.2013 (by the Sr Superintendent of Police, Admin. DCT SB: KPK Peshawar, being competent authority. The same has been decided by the trial court i-e. Additional Session Judge II. Abbottabad, in which charges against accused Shaft-ur-Rehman have also not been proved an interned court acquitted him from the charges vide judgment order dated 17.01.2018 (copy enclosed):

In the light of stoppage order subject to decision of learned court in previous enquiry anitiated against Shaft-ur-Rehman, in case vides FIR NO 553 dated 27:05:2013 u/s 9-C:CNSA Police Station cant Abbottabad, by the Sr. Superintendent of Police Admin. DCT SB KPK: Peshawar, it relied on judgment/decision of the learned.

whereby alleged defaulter official HC Shafi-ur-Rehman, is also found innocent

CONCLUSION.

Keeping in view of above mentioned circumstances, coupled with statements of PWs and available record, besides judgment order dated 17.01.2018 passed by the learned Additional Session Judge-II. Abbottabad and judgment dated 22.12.2018 passed by the learned Additional Session Judge-II, Judge Special Court, Manschra, charges leveled against alleged defaulter official HC Shafi-ur-Rehamn are not proved Moreover, it is settle principle of law under provision of section 403 Cr.PC 1898 that person once convicted or acquitted not to be tried for the same offence. Therefore, it is recommended that departmental enquiry initiated against alleged defaulter official HC Shali-ur-Rehamn; may be filed.

Submitted please.

Investigation Manschra

Depois Superintendent of Police,

dquarters, Battagram DSP/HQ

Battagram

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Phone No. 0997-310036 & Fax No. 0997-311616

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ORDER

Ex-Head Constable Shaft ur Rehman No. 237 cf this District, while posted in Counter-Terrorism Department Khyber Pakhtunkhwa Peshawar on deputation basis got involved in Case vide FIR No. 553 dated: 27.05.2013 U/S 9CCNSA PS Cant: Abbottabad. Similarly on 30.10.2014 alongwith a co-accused he again got involved in Case FIR No. 392 U/S 9CCNSA / IS-AAKP PS Shinkiari District Mansehra. As the said Head Constable was serving in CTD on deputation basis, therefore the Worthy Inspector General of Police Khyber Pakhtunkhwa repatriated him to District Battagram with the direction to issue him Show Cause Notice and remove him from service in the light of findings of enquiry officer. As per directions of Worthy Provincial Police Officer Khyber Pakhtunkhwa Peshawar Final Show Cause Notice was issued to him vide this office No. 136/PA, dated: 27.02.2015. His reply was found unsatisfactory. Hence, he was dismissed from service vide this office OB No. 13 dated: 13.03.2015.

The said Head Constable filed an appeal before the Worthy Provincial Police Khyber Pakhtunkhwa Peshawar, against the above said dismissal order and the Worthy Provincial Police Officer Khyber Pakhtunkhwa on his appeal, converted his dismissal into compulsory retirement keeping in view his prolong service. Later on the said Head Constable filed an appeal vide No. 525/2020 before the Honorable Court of Service Tribunal Peshawar Abbottabad bench vide judgement dated: 24.10.2023, allow his appeal, set aside the impugned order and remit the matter back to this office for conducting of de-novo inquiry in accordance with law and rules within 60-days.

As per directions of Honorable Court of Service Tribunal Peshawar Abbottabad bench; the said Head Constable was re-instated in service for the purpose of de-novo enquiry vide this office OB No. 29 dated: 28.11.2023 and an inquiry panel was constituted by the Deputy Inspector General of Police, Internal Accountability Branch CPO Peshawar consisting of Assistant Inspector General of Police Internal Accountability Branch CPO Peshawar and Superintendent of Police Training CPO Peshawar. The enquiry officers in their findings stated that the said Head Constable was charged in two heinous criminal cases U/S 9CCNSA/15AAKP. His involvement in two different cases

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of drug pedding has been proved beyond reasonable doubt. His retention in a discipline force will further damage the reputation of the department as his guilt has been proved.

Keeping in view the above, and recommendations of the enquiry officers, punishment of compulsory retirement from service of ExHead Constable is hereby upheld as he is not eligible for further leniency.
Announced

District Police Officer,

OB NO.

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OFFICE OF THE REGIONAL POLICE OFFICER HAZARA REGION, ABBOTTABAD

0992-9310021-22 **₹** 0992-9310023

r.rpohazara@gmail.com

DATED: 、3の/09/2024

ORDER

This order will dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkawa Police Rules, 1975 submitted by Ex-HC Shafi Ur Rehman No. 237 of district Battagram against the order of punishment i.e. compulsory retirement awarded by DPO, Battagram vide OB No.54 dated 07-08-2024.

"Brief facts leading to the punishment are that the appellant while posted in Counter-Terrorism Department Khyber Pakhtunkhwa Peshawar on deputation basis involved himself in Case vide FIR No. 553 dated: 27.05.2013 U/S 9C/CNSA PS Cant: Abbottabad. Similarly on 30.10.2014 alongwith a co-accused he again got involved in Case FIR No. 392 U/S 9C/CNSA / 15-AA/KP PS Shinkiari District Mansehra. The Head Constable was serving in CTD on deputation basis, therefore the Worthy Inspector General of Police Khyber Pakhtunkhwa repatriated him to District Battagram with the direction to issue him Show Cause Notice and remove him from service in the light of findings of enquiry officer."

The said Head Constable filed an appeal before the Worthy Provincial Police Khyber Pakhtunkhwa Peshawar, against the above said dismissal order and the Worthy Provincial Police Officer Khyber Pakhtunkhwa on his appeal, converted his dismissal order into compulsory retirement keeping his view his prolong service. Later on the said Head Constable filed service appeal vide No. 525/2020 before the Honorable Court of Service Tribunal Peshawar, Abbottabad bench vide judgment dated 21-10-2023. The service Tribunal set aside the impugned order remitted the matter back for conducting of de-novo inquiry in accordance with law and rule within 60-days.

As per directions of Honorable Court of Service Tribunal Peshawar, Abbottabad bench, the said Head Constable was reinstated in service for the purpose of de-novo inquiry vide OB No. 29 dated 28-11-2023 and an inquiry panel was constituted by Deputy Inspector General of Police, Internal Accountability Branch CPO Peshawar and Superintendent of Police Training CPO Peshawar. The inquiry officer in their findings held that the said Head Constable was charged in two heinous criminal cases U/S 9CCNSA/15AAKP. His involvement in two different cases of drugs peddling has been proved beyond reasonable doubt. His retention in a discipline force will further damage the reputation of the department as his guilt was proved. Consequently, DPO Battagram awarded him punishment of compulsory retirement from service. Hence, the appellant submitted this present appeal.

After receiving his appeal, comments of DPO Battagram were sought and ned/perused. The undersigned called the appellant in orderly room however, he deliberately failed to appear in orderly room. Therefore, in exercise of the powers conferred upon the undersigned under Rule 11-4 (a) of Khyber Pakhtunkawa Police Rules, 1975 the instant appeal is hereby rejected/filed with immediate effect.

> TAHÎR AYÛB KHAN (PSP) Regional Police Officer Hazara Region, Abbottabad

/2024. /PA; dated Abbottabad the 30, -

District Police Officer, Battagram for information and necessary action with reference to his office Memo No. 8742/Legal dated 02-09-2024 and Memo No. 8908 dated 06-09-2024. Service Record of the appellant is returned herewith for office record.

Service Roll

Fauji missal (42pages),

Court Order file (23pages),

Inquiry file (88pages),

letter No. 1258/CPO/IAB dated 30-05-2024 (05 Pages)

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