

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT, D.I.KHAN.

Service appeal No. 632/2016

Date of institution ... 03.08.2018

Date of decision 26.03.2019

Nasrullah son of Mehr Ullah, Resident of Village Akbari, Tehsil and District Tank, Ex-Police Constable No. 191 of District Police, Tank.
... (Appellant)

Versus

Government of Khyber Pakhtunkhwa through the Secretary Home & Tribal Affairs Department, Peshawar and three others.
... (Respondents)

Present

Mr. Muhammad Ismail Alizai,
Advocate ... For appellant.

Mr. Farhaj Sikandar,
District Attorney ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER.

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. Instant judgment is proposed to decide also Service Appeal No.656/2016 (Ishaq Ahmad Vs. Government of Khyber Pakhtunkhwa through the Secretary, Home & Tribal Affairs Department, Peshawar and

others) as grievance of both the appellants is in respect of similar order of respondents. The departmental proceedings conducted against both the appellants are result of a single incidence while allegations against them are the same.

2. The facts, as noted in the memoranda of appeals, are that the appellants were subjected to departmental proceedings on 12.02.2016 in pursuance of charges as contained in the statement of allegations/charge sheet. It is to be noted that the appellant Nasrullah was serving in Police Department as Constable at Tank District while the appellant Ishaq Ahmad was performing duties as Assistant Sub Inspector in the same district at the relevant time. After issuance of final show cause notices the appellants were imposed upon the penalty of removal from service on 07.03.2016. The appellants submitted departmental appeals which were dismissed on 18.04.2016. Consequently, they submitted review petitions to the Provincial Police Officer under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975. The said petitions were put up before the Review Board, wherein, it was decided to modify and convert the penalty of removal from service into compulsory retirement of appellants from service. The appellants, still feeling aggrieved, preferred the appeals in hand.

3. We have heard learned counsel for the appellants, learned District Attorney on behalf of the respondents and have also gone through the available record.

It was contended by learned counsel for the appellants that the allegations against them were in terms that at the time of occurrence they were present on the spot duly armed with official weapons and in their presence the accused Shahidullah sitting in a rickshaw had made indiscriminate firing upon Constable Muhammad Tariq who got seriously injured and later on embraced Shahadat. The accused succeeded in his escape from the scene of crime without any fear of presence of appellants. The allegations also contained that neither the accused was chased nor any retaliatory firing was made upon him for ensuring his arrest. Further, Shaheed constable fired upon the accused through his official rifle despite his injuries, however, he was not supported by the appellants. The allegation of showing cowardice on the part of the appellants was also contained in the statement of allegations. While referring to the charge against the appellants, learned counsel argued that the record including the site plan prepared after incorporation of FIR did not suggest the presence of appellants at the spot. He also stated that, admittedly, in addition to the Shaheed Constable other officials were posted at Police Post Abdul Latif Shaheed who were never proceeded against departmentally. It was further argued that both the

appellants were performing patrolling duty in the same vehicle and were quite far away from the scene of occurrence at the relevant time.

On the other hand, learned District Attorney contended that it was proved beyond doubt that the appellants committed the act of cowardice by not coming to help Shaheed constable and remained silent spectators throughout. In his view, the penalty awarded to the appellants was unexceptionable in the facts and circumstances of the case.

4. We have carefully examined the available record in the light of arguments of learned counsel for the parties. On the record the statements of appellants are available which suggest that they were present near Riaz Petrol Pump which was quite at distance from the place of occurrence. In the meanwhile they heard fire shots from the direction of P.P Abdul Latif Shaheed. On reaching the spot they found that Constable Muhammad Tariq was lying on road in injured condition and no other police official was with him. The appellants immediately shifted the injured to the official vehicle and took him to Civil Hospital. On the spot of occurrence they required the Driver of official vehicle to make firing in order to avoid further unpleasant situation. As per appellants they considered it more necessary to save the life of injured constable. After taking the injured to the hospital the appellants returned to the spot of occurrence and joined efforts for arrest of the accused in the company of other

officials. Similar stance was taken by the appellants in their respective replies to the show cause notices. We have also considered the site plan prepared on the pointation of complainant of the occurrence namely Kalu Khan SPO No. 1. The appellants are not shown in the said plan.

5. During the enquiry proceedings, the statements of certain police officials, including constable Farman and constable Surat Khan were recorded. The copy of the said statements were provided to the Tribunal by representative of respondents today. In the statement of Kalu Khan the occurrence was repeated, however, the presence of appellants at the spot was not stated. The witness was subjected to cross-examination by the enquiry officer wherein he was made to admit the presence of appellants on the spot. Similarly, Surat Khan was also cross examined by the enquiry officer and was made to state that the ASI Ihaq Ahmad and other constables in his accompany did not make any firing except Driver Farman. In the statement of Farman it was stated that he, alongwith the appellants and other officials, was on mobile patrolling at Tank Jandola Road and at the relevant time he was busy in checking the air pressure of the tyres of the official vehicle near P.P Abdul Latif Shaheed when fire shots was heard from the direction of said Police Post. He immediately took the official weapon from the vehicle and started firing. In the meanwhile, he came to know that Constable Tariq got injured who was shifted to hospital in the official vehicle. That, he left for search of

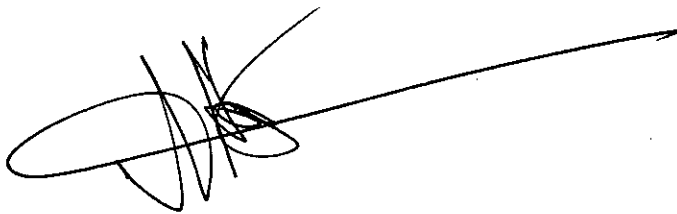
accused towards Jandola Road. This witness was also cross-examined by the enquiry officer, wherein, it was stated by him that Ishaq Ahmad ASI was sitting in the front seat of official vehicle at the time of occurrence while the others were present nearby.

The deposition of above noted witnesses shows that on the one hand the presence of appellants at P.P Abdul Latif Shaheed, the place of occurrence, was not claimed while, on the other, they were not cross-examined by the appellants. Apparently, the cross examination of the witnesses by the enquiry officer was with the attempt to rope the appellants as per allegations against them. It is by now well settled principle of law that during an enquiry against a civil servant it is obligatory upon the enquiry officer or the enquiry committee, as the case may be, to provide fair and full opportunity to the accused for cross examining the witnesses appearing during the proceedings. More-so, such rights of the accused became all the more significant when proceedings result in imposition of major penalty of removal from service.

6. As a sequel to the above, we consider that the departmental proceedings against the appellants were not conducted in the mode and manner required by the rules. We, therefore, allow the appeals in hand and require the respondents to conduct denovo enquiry against the

appellants to be concluded within 90 days of the receipt of copy of instant judgment. Needless to note that the appellants shall be provided fair opportunity of defending their cause and also cross-examination of witnesses appearing during the proceedings. The issue of back benefits in favour of appellants shall be settled in accordance with the outcome of denovo proceedings.

Parties are left to bear their respective costs. File be consigned to the record room.



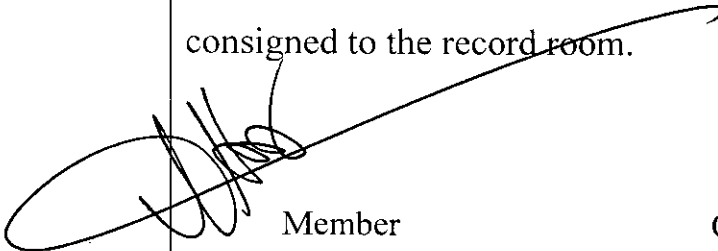
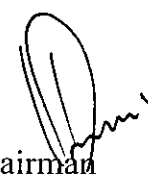
(Ahmad Hassan)
Member



(Hamid Farooq Durrani)
Chairman
Camp Court, D.I.Khan.


ANNOUNCED
26.03.2019


632/16

| S.No. | Date of order/ proceedings | Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary. |
|-------|----------------------------|--|
| 1 | 2 | 3 |
| | 26.3.2019 | <p><u>Present.</u></p> <p>Mr. Muhammad Ismail Alizai, .. For appellant Advocate</p> <p>Mr. Farhaj Sikandar, ... For respondents District Attorney</p> <p>Vide our detailed judgment of today, we allow the appeal in hand and require the respondents to conduct denovo enquiry against the appellant to be concluded within 90 days of the receipt of copy of instant judgment. Needless to note that the appellant shall be provided fair opportunity of defending his cause and also cross-examination of witnesses appearing during the proceedings. The issue of back benefits in favour of appellant shall be settled in accordance with the outcome of denovo proceedings.</p> <p>Parties are left to bear their respective costs. File be consigned to the record room.</p> <p> Member</p> <p> Chairman Camp Court, D.I.Khan</p> <p><u>ANNOUNCED</u> 26.3.2019</p> |

26.02.2019

Learned counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Saleem Ullah, Head Constable for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 26.03.2019 before D.B at Camp Court D.I.Khan.


(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan



(M. Hamid Mughal)
Member
Camp Court D.I.Khan

Service Appeal No. 632/2016

18.12.2018 As per direction of the worthy Chairman Khyber Pakhtunkhwa Service Tribunal, D.I.Khan tour dated 18.12.2018 has been rescheduled and the case is re-fixed for 27.12.2018.


Reader

27.12.2018 Appellant in person present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Nawaz, Head Constable for the respondents present. Written reply on behalf of respondents submitted. Adjourned. To come up for rejoinder and arguments on 21.01.2019 before D.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

21.01.2019 Appellant in person and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Nadeem, LHC for respondents present.

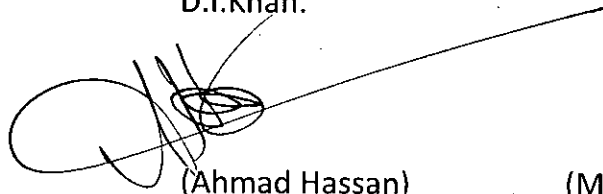
Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, the matter is adjourned to 26.02.2019 for arguments before D.B at camp court, D.I.Khan.


Member


Chairman
Camp Court, D.I.Khan

11.09.2018

Appellant with counsel and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Muhammad Nawaz, Head Constable for the respondents present. Learned counsel for the appellant submitted amended appeal through daily diary, which is placed on file. Copy of the same be also issued to the respondents for reply. To come up for reply on amended appeal on 26.11.2018 before S.B at Camp Court D.I.Khan.



(Ahmad Hassan)
Member
Camp Court D.I.Khan



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

26.11.2018

Appellant alongwith his counsel present. Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Nadeem, LHC for the respondents present. Reply on amended appeal not submitted. Learned District Attorney requested for adjournment. Adjourned. To come up for reply on amended appeal on 18.12.2018 before S.B at Camp Court D.I.Khan.



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

20.06.2018

Appellant Nasrullah in person alongwith Mr. Muhammad Ismail Alizai, Advocate present. Mr. Nadeem Reader alongwith Mr. Usman Ghani, learned District Attorney for the respondents present.

During the course of arguments the learned counsel for the appellant referred to a review order dated 15.11.2016 passed by the Provincial Police Officer but the said order has not been impugned before this Tribunal and in case of any decision in the present appeal, what would be the effect of the said order. The learned counsel for the appellant candidly admitted that to cover this lacuna, he requested this Tribunal to allow the appellant to amend his appeal.

Keeping in view the legal and factual position of the case, particularly the major penalty of the appellant and in the best interest of justice and to overcome the future hurdle in the way of implementation of the of order of this Tribunal, the appellant is allowed to amend his appeal to the extent of that very review order within three weeks with further direction to the appellant to serve/provide copy of the amended appeal to the respondents with further direction again to the latter to submit comments on the next date. Case to come up for comments and arguments on 30.08.2018 before the D.B at camp court, D.I.Khan.



Member



Chairman
Camp Court, D.I.Khan


28.8.18

Appellant with counsel present. Mr. Muhammad Ismail Alizai
S.I.U for respondents present. This is hereby
cancelled, therefore the case is adjourned for the same
on Hr 9.18, at Camp Court D.I.Khan



12.03.2018

Counsel for the appellant and Addl. AG alongwith Allah Nawaz, Inspector (Legal) for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 23.04.2018 at camp court, D.I.Khan. *Copy of enquiry report submitted by sep. of the Deptt.*


Member


Chairman
Camp court, D.I.Khan

25.05.2018

Due to retirement of the worthy Chairman, the Tribunal is non-functional. To come up for the same on 20.06.2018. Notices be issued to the parties accordingly.


Member

22.01.2018

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Abdul Ali, PASI for the respondents also present. Record mentioned in previous order sheet dated 27.12.2017 not produced by the respondents. Learned District Attorney for the respondents requested for further time for production of record. Adjourned. To come up for record and arguments on 21.02.2018 before D.B at Camp Court D.I.Khan.



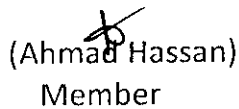
(Ahmad Hassan)
Member
Camp Court D.I.Khan



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

21.02.2018

Appellant with counsel present. Mr. Usman Ghani, District Attorney alongwith Mr. Abdul Ali, ASI for the respondents also present. Representative of the department is directed to produce all the relevant record of inquiry including the statement of witnesses on the next date positively. Adjourned. To come up for record and arguments on 12.03.2018 before D.B at Camp Court D.I.Khan.




(Ahmad Hassan)
Member
Camp Court D.I.Khan




(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

27.11.2017

Appellant in person present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Allah Nawaz, Inspector (legal) for the respondents also present. Due to general strike of the Bar learned counsel for the appellant is not in attendance today. Adjourned. To come up for arguments on 26.12.2017 before D.B at Camp Court D.I.Khan.


(Gul Zeb Khan)
Member



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan


26.12.2017

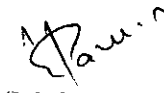
Bench is incomplete. To come up for arguments on 27.12.2017.

(Muhammad Hamid Mughal)
Member
Camp Court D.I.Khan

27.12.2017

 Learned counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Allah Nawaz, Inspector (legal) for the respondents present. Learned District Attorney seeks adjournment for production of complete inquiry record including statement of witnesses recorded during the inquiry proceedings. Adjourned. To come up for record and arguments on 22.01.2018 before D.B at Camp Court D.I.Khan.

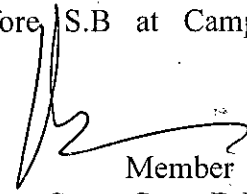

(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan


(Muhammad Hamid Mughal)
Member
Camp Court D.I.Khan

632/2016

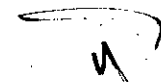
25.10.2016

Appellant with counsel and Mr. Khalid Mehmood, Inspector (legal) alongwith Mr. Farhaj Sikandar, Government Pleader for the respondents present. Written reply by respondents not submitted. Learned GP requested for time for failing of written reply. Request accepted. To come up for written reply/comments on 21.02.2017 before S.B at Camp Court D.I.Khan.


Member
Camp Court D.I.Khan

22.02.2017

Appellant in person and Mr. Khalid Mehmood, Inspector (legal) alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Written reply by respondents submitted and copies handed over to all concerned. To come up for rejoinder on 29.03.2017 before S.B at Camp Court D.I.Khan.


(ASHFAQUE TAJ)
MEMBER
Camp Court D.I.Khan


29.03.2017

Since tour is hereby cancelled, therefore, the case is adjourned for the same on 26.07.2017.


Reader

26.07.2017

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents also present. Learned counsel for the appellant submitted ^{Rejoinder} and copy handed over to learned District Attorney for arguments. Adjourned. To come up for arguments on 27.11.2017 before D.B. at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

25.07.2016

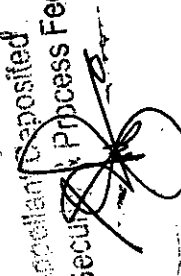
Tour programme of D.I. Khan scheduled for 25.07.2016 and 26.7.2016 is hereby cancelled, therefore the case is adjourned to 29.8.16 for preliminary hearing. Parties be informed accordingly.

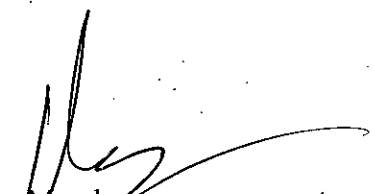

Member

29.08.2016

Appellant with counsel present. Preliminary arguments heard and case file perused. Through instant appeal appellant has impugned order dated 07.03.2016 vide which the appellant was awarded major punishment of removal from service. Against the impugned order referred above, appellant preferred departmental appeal which was also rejected vide order dated 18.04.2016, hence the instant service appeal.

Since the matter pertains to terms and conditions of services of the appellant and the appeal is within time, therefore, admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 25.10.2016 before S.B at camp court D.I. Khan.



Appellant Deposited
Security Process Fee



Member
Camp court D.I Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 632/2016

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 13/06/2016 | <p style="text-align: center;">The appeal of Mr. Nasrullah resubmitted today by post through Mr. Gul Tiaz Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2 | 14-6-16 | <p style="text-align: center;">This case is entrusted to Touring S. Bench at D.I.Khan for preliminary hearing to be put up there on. <u>26-7-16</u></p> <p style="text-align: right;"> CHAIRMAN</p> |

The appeal of Mr. Nasrullah resident of Distt. Tank Ex-ASI No. 173 of Police department Distt. Tank received to-day i.e. on 17.05.2016 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 20 days.

- 1- Memorandum of appeal may be got signed by the appellatant. ✓
- 2- Annexures-C, D and K of the appeal are illegible which may be replaced by legible/better one. ✓
- 3- Annexures of the appeal may be attested. ✓
- 4- Annexures of the appeal may be flagged.
- 5- Approved file cover is not used.
- 6- Departmental ^{part} having no date be dated.
- 7- Seven more copies/sets of the memorandum of appeal along with annexures i.e. complete in all respect may also be submitted with the appeal. ✓

No. 822 /S.T,

Dt. 17/5/2016

Laseer
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Saleem Marwat
Adv. High Court D.I.Khan

Seven days time extended

Sir,

*Resubmitted after
compliance.*

*Laseer
6/6/16.*

Junuz
11/6/16
Sul Tiaz Khan (Marwat)
Advocate High Court
Distt: Bar
era Ismail Khan (KPK)

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 632 of 2016

Nasrullah Vs. Govt. of K.P.K. etc
SERVICE APPEAL

Index:

| S# | DESCRIPTION OF DOCUMENTS | ANNEXURE | PAGE NO. |
|-----|--|----------|----------|
| 1. | Grounds of Service Appeal | --- | 1-6 |
| 2. | Copy of the FIR No.129 dated 12.02.2016 under section 302, 353, 186 PPC read with 15 AA and 7 ATA registered at Police Station City Tank | A | 7 |
| 3. | Copy of Mad No.12 dated 12.02.2016 of P.S. SMA | B | 8 |
| 4. | Copy of the Charge Sheet | C | 9 |
| 5. | Copy of statement of allegations | D | 10 |
| 6. | Copy of reply dated 19.02.2016 of appellant | E | 11 |
| 7. | Copy of inquiry report | F | 12-13 |
| 8. | Copy of final show cause notice | G | 14 |
| 9. | Copy of final show cause notice | H | 15 |
| 10. | Copy of order OB No.149 dated 07.03.2016 | I | 16 |
| 11. | Copy of Departmental Appeal | J | 17-18 |
| 12. | Copy of order bearing No.1633/ES dated 18.04.2016 | K | 19-20 |
| 13. | Copy of the site plan | L | 21-22 |

| | | | |
|-----|-------------|-----|----|
| 14. | Vakalatnama | --- | 23 |
|-----|-------------|-----|----|

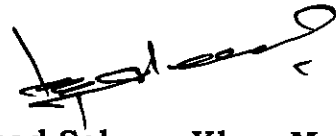
Yours Humble Appellant



(Nasrullah)

Through Counsel

Dt. 16 /05/2016



Muhammad Saleem Khan Marwat
Advocate High Court, D.I.Khan.



Gul Tiaz Khan (Marwat)
Advocate High Court
District Bar
Tara Ismail Khan (K.P.S.)

①

BEFORE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

In: Service Appeal No.632 / 2016.

Amended Appeal no. 632/2016

AMENDED PETITION OF APPEAL

Nasrullah,
Ex-Police Constable No.191 of District Police Tank.

Appellant.

Versus

Govt; of Khyber Pakhtunkhwa, and others.

Respondents.

Service Appeal

I N D E X

| <u>S.No.</u> | <u>Description of Documents</u> | <u>Annexure</u> | <u>Page(s)</u> |
|---------------------|--|------------------------|-----------------------|
| 1. | Petition with Grounds of Appeal & affidavit. | -- | 02 — 04 |
| 2. | Copies of Charge Sheet / records etc. | A, B & C | 05 — 07 |
| 3. | Copies of Final SCN/Reply & Impugned order | D, E & F | 08 — 10 |
| 4. | Copies of Representation/Order of Respondent No.3. | G & H | 11 — 18 |
| 5. | Copies of Review Petition / Final Order. <i>along with copy of order dtd 15.11.16</i> | J & K+L | 17 — 18 |
| 6. | Vakalat Nama | -- | |

Dated: 1. 8 2018

Nasrullah

(Nasrullah) Appellant
Through Counsel

Muhammad Ismail Alizai

(Muhammad Ismail Alizai)
Advocate High Court, DIKhan.

2

BEFORE THE SERVICE TRIBUNAL, KHY:PAKHTUNKHWA,PESHAWAR.

In: Service Appeal No: 632 / 2016.

Amended Appeal No. 632/2016

AMMENDED PETITION OF APPEAL

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1220

Dated 03-8-2018

Nasrullah s/o Mehr Ullah, Caste Marwat,
Resident of Village Akbari, Tehsil & District Tank.
Ex-Police Constable No.191 of District Police Tank,

Appellant.

Versus

1. Government of Khyber Pakhtunkhwa, through
The Secretary, Home & Tribal Affairs Deptt;
Civil Secretariat, Peshawar.
2. The Provincial Police Officer (IGP), Khyber Pakhtunkhwa,
Central Police Office, Peshawar.
3. Deputy Inspector General of Police, D.I.Khan Region,
Dera Ismail Khan.
4. District Police Officer, Tank.

(Respondents)

Note: The addresses given above are sufficient for the purpose of service.

SERVICE APPEAL AGAINST FIRSTLY, ORDER DTD 7.03.2016 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE BY RESPDT: NO. 4, SECONDLY ORDER DATED 18.4.2016 WHEREBY FIRST DEPARTMENTAL APPEAL OF APPELLANT WAS DISMISSED BY RESPONDENT NO.3 AND FINALLY FROM ORDER DATED 15.11.2016 WHEREBY DEPARTMENTAL REVIEW PETITION WAS PARTIALLY ACCEPTED AND PUNISHMENT OF REMOVAL FROM SERVICE WAS CONVERTED TO COMPULSORY RETIREMENT OF APPELLANT BY RESPONDENT NO.2.

Respectfully Sheweth: -

The appellant very humbly submits as under: -

BRIEF FACTS:

1. That the appellant was serving in Police Department as Constable at Tank District.
2. That on 12.2.2016 the appellant was subjected to departmental proceedings under E&D Rules on account of charge as contained in Statement of Allegations / Charge Sheet. The appellant filed his reply thereto in due course, explaining each aspect of the incident and thus claimed his innocence. Copies of Charge Sheet, Statement of Allegations and Reply thereto are placed as Annexures A, B & C, respectively.

for

3. That a Final Show Cause Notice was issued to the appellant by the departmental authority which was promptly responded to denied once again the allegations. However, to the dismay of appellant the authority chose to inflict punishment of Removal from Service upon the appellant. Copies of Final Show Cause Notice, Reply thereto and order on award of punishment are placed at Annexures D, E & F, respectively.
4. That aggrieved from the order dated 07.03.2016 of respondent No.4, the appellant moved petition with respondent No.3 thereby challenging the award of punishment, both on factual grounds as well legal. Unfortunately the petition did not find favour with respondent No.3 and was dismissed vide order dated 18.4.2016. Copies of petition and order are placed herewith as Annexures G & H, respectively.
5. That being aggrieved of the order dated 18.4.2016 of respondent No. 3, a petition for review was moved with respondent No.2 in terms of Rule 11-A of KP Police Rules 1975 which was processed but with no information to the appellant about its fate. The petition however, was put up before Review Board and was decided by it vide order dated 15.11.2016 passed by respondent No.2 whereby the punishment of **removal from service** inflicted upon appellant was converted into **Compulsory Retirement from Service**. Copies of Review Petition and Final Order passed thereon are placed at Annexures J & K, respectively. *A copy of order whereby a similarly placed employee was reinstated is placed at Annex L.*
6. That the appellant while being not informed of the fate of above said review petition by the respondents *per-force*, moved instant Service Appeal with this Hon'ble Tribunal and thereby challenged the orders of respondent No.3 & 4 respectively under the err that said orders were final yet, latter during the course of proceedings in service appeal it transpired that in fact Final Order was that of respondent No.2 issued vide No.S/7353 dated 15.11.2016, hence with the kind permission of Hon'ble Tribunal granted vide order dated 20.06.2018 the instant Amended Petition of Appeal is being filed.
7. That left with no other remedy, the appellant approaches this Hon'ble Tribunal seeking redressing of his grievance on gracious acceptance of the instant appeal to set-aside the orders impugned hereby on grounds hereinafter preferred.

Grounds:

1. That the orders passed by departmental authorities i.e Respondents: No.2 to 4, as impugned hereby, are discriminatory, arbitrary in nature, legally and factually incorrect, ultra-vires, void ab-initio and militate against the principles of natural justice thus are liable to be set-aside and nullified.
2. That the appellant is well within his right to get reinstated in service since no misconduct could be proven against the appellant yet, Respondents No.2 to 4 failed to decide the matter in accordance with the law and as such erred at the very out set of the proceedings and thereby caused grave miscarriage of justice as well as prejudice to the appellant.
3. That it is a matter of record that the appellant has been denied a fair trial as well punished beyond logical assessment of evidence besides in clear defiance of the law and principle laid by the Superior Courts as well as the Tribunals.
4. That the respondents while adjudicating in the matter disposed off the entire proceedings in a slipshod manner through the orders, impugned hereby, thus the acts / orders of respondents are patently unwarranted, illegal, ultra-vires, nullity in law and apparently not maintainable in law.

Ken


5. That the orders passed by the respondents on award of punishment to the appellant, as impugned hereby, have infringed the rights and have caused grave miscarriage of justice to the appellant without any lawful excuse and therefore, are liable to be set aside in the interest of justice.
6. That the amended petition of appeal is being moved with this Hon'ble Tribunal in terms of order dated 20.06.2018 passed by this Hon'ble Tribunal and is duly supported by law and rules, besides the affirmation / affidavit annexed hereto.
7. That this Hon'ble Tribunal is competent and has ample powers to adjudge the matter under reference/appeal.
8. That the counsel for the appellant may very graciously be allowed to add to the grounds during the course of arguments, if need be.

Prayer:

In view of the fore mentioned submissions, it is very humbly requested that the impugned order dated 07.03.2016 passed by respondent No.4, departmental order dated 18.4.2016 of respondent No.3 and Final Order of respondent No.2 dated 15.11.2016 may, on being declared as illegal, arbitrary, discriminatory, void ab-initio, ineffective and inoperable against the appellant, be very graciously set aside and the petitioner may in consequence thereof be very kindly be ordered to be reinstated in service with grant of back benefits. Grant of any other relief deemed appropriate by the Hon'ble Tribunal is solicited, too.

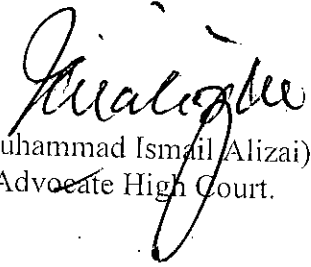
Dated: 1.8.18

Humble Appellant,



(Nasrullah) Appellant,

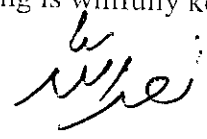
Through Counsel.


(Muhammad Ismail Alizai)
Advocate High Court.

AFFIDAVIT:

I, Nasrullah s/o Mehr Ullah Caste Marwat, R/o Village Akbari, Tehsil & District Tank, the appellant, hereby solemnly affirm and declare on oath that contents of the petition are true and correct to the best of my knowledge, belief and per the official records. Also, that nothing is willfully kept or concealed from this Hon'ble Tribunal.

Dated: 1.8/2018.



Deponent.



CHARGE SHEET.

5
A

WHEREAS, I, am satisfied that a formal enquiry contemplated under Khyber Pakhtunkhwa Police Rules 1975 with amendment 2014 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation(s) if established would call for a Major Penalty including Removal From Service as defined in Rules (4 (i) (B) of the aforesaid Rules.

AND THEREFORE, as required by Police Rules 6(1) of the aforesaid Rules, I, Mr. RASOOL SHAH PSP, District Police Officer Tank being a competent authority hereby charge you Constable Nasrullah No. 191 of Mobile Patrolling with the misconduct on the basis of statement of allegation attached to this Charge Sheet.

AND hereby direct you further under rule 6(1) of the said rules to put in written defence within Seven (7) days of receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state that the same time whether you wish to heard in person or otherwise.

In case your reply is not received within the prescribed period, without sufficient cause, it would be presumed that you have not defence to offer and ex parte action proceedings will be initiated against you.

(RASOOL SHAH) PSP
District Police Officer,
Tank

Muhammad Iqbal Alizai

Muhammad Iqbal Alizai
Advocate High Court
Dera Ismail Khan

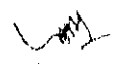
B. B. C.

STATEMENT OF ALLEGATION.

Today (12.02.2016) at about 09:20 hrs, an unfortunate incident of killing / targeting of Constable Muhammad Tariq No. 638 of Police Post Abdul Latif Shaheed was taken vide case FIR No. 129 dated 12.02.2016 U/Ss 302/353/186/15AA/7ATA PS City Tank. According to information, accused Shahidullah s/o Yar Ali Khan caste Mehsud r/o Garra Pathar area of PS SMA Tank came in QINGQI Rickshwa and made indiscriminate firing upon Shaheed Constable Muhammad Tariq No. 638 of PP Abdul Latif Shaheed when he was busy in performance of his duty i.e. Checking of CNIC of suspected persons at PP Latif Shaheed. After commission of offence the accused has made his escape without any fear of presence of other police contingents on the spot which show your cowardness, negligence and inefficiency. Your following acts of cowardness negligence which encourage the Anti-State elements / Accused for commission of such like crimes is liable to be taken into consideration under the relevant disciplinary rules seriously as deterrence for others:-

1. At the time of occurrence you were present on the spot duly armed with official arms/ammunitions.
2. In your presence accused Shahidullah came there in QINGQI Rickshwa and made indiscriminate firing upon Constable Muhammad Tariq as a result Constable Muhammad Tariq was hit and became injured seriously and later on embraced martyred. The accused was succeeded in his escape from the scene of crime without any fear of your presence.
3. Neither the accused was chased nor any retaliatory firing made upon the accused for ensuring his arrest by you.
4. Being lying injured, be lion hearted Shaheed Constable made firing upon accused through his official Rifle which was not supported by you.
5. Driver Constable Farmanullah No. 452 who was also present on the spot, after commission of crime, took the official rifle from the official pickup of mobile patrolling and chased the accused. He also made firing upon the accused.
6. All such proceeding / act of cowardness and inefficiency are safe and available in CCTV Cameras already installed at PP Abdul Latif Shaheed for the security purpose.

This amounts to gross misconduct on his part and punishable under the Khyber Pakhtunkhwa Police Rule 1975 with amendment 2014.
Hence the statement of allegation.


(RASOOL SHAH) PSP
District Police Officer,
Tank

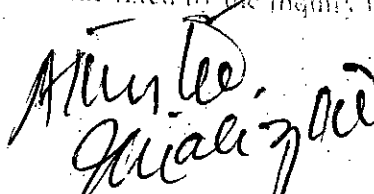
No. 875-76


Dated Tank the 12-2 2016.

Copy to the:-

1- MR. UMAR DARAZ, SDPO/HO: Tank for initiating proceeding against the defaulter under the provision of KPK Police Rules 1975 and submit findings report within stipulated period as per prescribed rules.

2. Constable Nasrullah No. 191 of Mobile Patrolling with the direction to appear before the Inquiry Officer on the date, time and venue fixed by the Inquiry Officer for the purpose of Inquiry proceedings.


Muhammad Ismail Alizai
Advocate High Court
Dera Ismail Khan


(RASOOL SHAH) PSP
District Police Officer,
Tank

جناب عالی بحوالہ مشمولہ چارج شیٹ بمع خلاصہ الزام گذارش بحور انوریہ ہے کہ مجھ پر الزام بابت موجودگی بروقت وقوعہ کا الزام درست نہیں ہے بلکہ غلط ہے اور یقیناً میں وثوق سے تحریر کر رہا ہوں کہ میں موقع پر نہ تھا بلکہ اصل صورتحال یہ ہے کہ میں اپنی موبائل معاون 2- میں ریاض پٹرول پمپ جو کہ وقوعہ سے کافی دور ہے پر بمعہ دیگر ہمراہی نفری کے موجود تھا کہ چونکہ لطیف کی جانب فائرنگ سنی اور فوراً موقع پر پہنچے موقع کی صورتحال کچھ اس طرح پائی کہ چونکہ عبداللطیف کے بالمقابل کچھ گولہ سڑک پر محمد طارق کنسٹیبل کو خون میں لت پت شدید زخمی زندگی کی کشمکش میں بے یار و مددگار پڑا تھا اور اس کے ساتھ کوئی پولیس آفیسر انچارج چوکی وغیرہ تک نہیں تھے۔ میں نے موقع پر پہنچتے ہی اسے فوراً سنبھالا اور اپنے موبائل ڈرائیور کو مزید ناخوشگوار اور واقع کی تدارک کیلئے انچارج نے فائرنگ کی اجازت دے دی۔ جس نے فائرنگ کی اور میں نے بمعہ ہمراہی انچارج و دو کنسٹیبلان ہیبت خان کے زخمی کو گاڑی میں ڈال کر فوری طور پر ابتدائی طبی امداد کے لئے سول ہسپتال کے لئے روانہ ہو کر وقوعہ کی فوری اطلاع انچارج نے دائر لیس کنٹرول کو کر دی۔ ملزم کا کچھ پتہ نہیں تھا اور نہ میں نے ملزم دیکھا ہے۔

موقع کی مناسبت سے جو صورتحال میرے سامنے آئی میں نے بحسبیت ذمہ دار پولیس آفیسر کے احسن طریقے سے سرانجام دی۔ اور سب سے پہلے کنسٹیبل مضروب کی جان کو بچانا ضروری سمجھا۔ ملزم کی گرفتاری کیلئے انچارج کی اطلاع پر پولیس آفسران مطلع ہو کر نکل چکے تھے اس لئے انچارج نے سب سے پہلے مضروب کی جان بچانا ضروری سمجھا۔ ہمارے آنے سے پہلے نفری چوکی لطیف نے رائفل SMG مضروب اور آئل پمپل تیس بوری پسماندہ ملزم سنبھال چکے تھے۔ ہم نے مضروب کا کنسٹیبل محمد طارق 639 کو ہسپتال پہنچایا اور پھر فوراً موقع پر ملزم کی گرفتاری کیلئے پہنچے ہیں اور ڈی پی او صاحب اور دیگر آفسران کیساتھ ملزم کی گرفتاری کی کوشش میں شامل ہو گئے۔

میں نے اپنے جائز فرائض منصبی کی بجا آوری میں کوئی کسر نہیں چھوڑی۔ نہ بزدلی کا موقع کی مناسبت سے جو کچھ کیا وہ درست کیا میں سابقہ 20/21 سالہ کو ایفانڈ سروس کا حامل آفیسر ہوں اور کئی ایک اس سے بڑے واقعات سے نا برد آ مار ہا ہوں یقیناً بروقت وقوعہ اگر میں موقع پر موجود ہوتا تو صورتحال انشاء اللہ قابل دید ہوتی۔

یہ کہ میں موقع پر وقوعہ کے بعد بمعہ انچارج کے پہنچا جس کی من و عن شہادت میرے ہمراہی پولیس آفسران اور فرمان ڈرائیور دے سکتے ہیں۔ میں اس ضمن میں بے گناہ ہوں کیونکہ انچارج نے روزنامچہ میں اس صورتحال اور وقت فائرنگ کا ذکر بحوالہ نمبر 12 واپسی میں کر دیا ہے جس کی نقل لف ہمراہ ہے۔ یہ کہ میں الزام سے بری الذمہ ہوں میں نے کوئی غلطی نہیں کی بلکہ موقع کے مطابق ڈیوٹی دی ہے اس لیے مہربانی فرما کر میری چارج شیٹ انکواری داخل دفتر فرمائیں۔

عین نوازش ہوگی

نصر اللہ 191 متعینہ پولیس لائن ضلع ٹانک۔

Muhammad Imroz Alizai

Muhammad Imroz Alizai
Advocate High Court
Dera Ghokan Khan

0343 9354219

19-2-016

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FINAL SHOW CAUSE NOTICE.

I MR. RASOOL SHAH (PSP), District Police Officer, Tank as Competent Authority, under the KPK Compulsory Retirement from Service (Police Rules 1975), do hereby serve upon you Constable Nasrullah No. 191 this Final Show Cause Notice as follow:-

1. That consequent upon the completion of Inquiry conducted against you by an Inquiry Officer for which you were given opportunity of hearing.

On going through the findings and recommendations of the Inquiry Officer and the material on record and other connected papers including your defense before the said Inquiry Officer.

I am satisfied that you have committed the following acts/omissions specified in Section-3 of the Khyber PakhtunKhwa (Police Rules 1975).

You Constable Nasrullah No. 191 were charged for serious allegations of cowardness; negligence and inefficiency in case vide FIR No. 129 dated 12.02.2016 U/Ss 302/353/186/15AA/7ATA PS City Tank. The SDPO/HQrs: Tank was nominated as Enquiry Officer. The Enquiry was conducted. The report of Enquiry Officer was received in which the allegations framed against you were stand proved.

2. As a result thereof I, Mr. RASOOL SHAH, (PSP) District Police Officer, Tank as Competent Authority have tentatively decided to impose one of the Major Punishment Under Section-3 of the Khyber PakhtunKhwa, Police Rules 1975.
3. You are therefore required to Show Cause as to why the aforesaid penalty should not be imposed upon you.
4. If no reply to the notice is received within seven days of the receipt of this Final Show Cause Notice, in the normal course of circumstances, it shall be presumed that you have no defense to put in and in that case as ex-parte action shall be taken against you.
5. The copy of the findings of the Inquiry Officer is enclosed.

Attested
Muhammad
Muhammad Ismail Aizai
Advocate High Court
Dera Ismail Khan

MM
(RASOOL SHAH) PSP
District Police Officer,
Tank 17/2/2016

جناب عالی! بحوالہ فائل شوکانہ زونٹس مورخہ 19-02-016 معروض ہو کہ انکوڑی میں مجھ پر بزدلی کا الزام لگایا گیا ہے اگر میں بزدل
جائے وقوعہ تک نہ پہنچتا میں نے گشت کے دوران جائے وقوعہ سے دفتر لانگ دور فائرنگ کی آواز سن کر چونکی لطیف چنچھا تو سڑک کے کنارے
کانٹھیل طارق شہید پڑا ہوا پا کر زندگی بچانے کی کوشش میں انچارج کے ہمراہ ہسپتال چنچھایا ہمارے ساتھ ڈرائیور نے انچارج کو حکم پر گردنوں
میں فائرنگ کی نہ ملزم کو دیکھا نہ ملزم کی سمت کے بارے مجھے کسی نے بتایا میں نے آج تک بزدلی کا مظاہر نہیں کیا اور نہ کرونگا موقع پر چنچھا اور
زخمی کو انچارج کے ہمراہ چنچھانا اور ڈرائیور نے انچارج کی حکم پر فائرنگ کرنا بزدلی کا مرتکب نہیں ہوتا ہوں جہاں تک مجھ پر فائرنگ کرنے کا
سوال ہے اس وقت میں نے ملزم کو نہ دیکھا اور نہ موجود تھا۔ جو فائرنگ کر رہا ہوا اور میں نے اس کے ساتھ مقابلہ نہ کیا ہو کیونکہ ملزم وقوعہ کے فوراً
بعد بھاگ چکا تھا حلائکہ وقوعہ کے وقت کانٹھیل شہید کے ساتھ دیگر 4 اچار ملازمان پولیس چونکی کے موجود تھے جنہوں نے شہید کانٹھیل کا اسلحہ
اور پستل 30 بور پسماندہ آتش ملزم سنبھال چکے تھے اگر وہ اس وقت فائرنگ کرتے جن کے سامنے کانٹھیل شہید کیا تھا۔ چونکی میں تعینات
ملازمان نے اپنے بزدلی چھپانے کے لیے میرے خلاف غلط بیانی کی جو سراسر غلط حقیقت پر مبنی نہیں ہے اور انکوڑی میں انصاف کی تقاضوں کو پورا
نہیں کیا ہے حتیٰ کہ اس کرنے کا موقع بھی نہیں دیا گیا۔
میں بے قصور ہوں میں نے کسی قسم کی بزدلی نہیں کی ہے
لہذا استدعا کی جاتی ہے کہ محکمانہ بلا مزید کارروائی داخل دفتر کرنے کا حکم صادر فرمایا جائے

عین نوازش ہوگی!

نصر اللہ 191 پولیس لائن ٹانک

نصر اللہ 191 مورخہ
26-2-2016

Muhammad Ismail Alizai
Advocate High Court
Dera Ismail Khan

ORDER

My this order will dispose off departmental enquiry initiated against Constable Nasrullah No. 191 under Khyber Pakhtunkhwa Police Rules 1975 with amendment 2014 on the following allegations:

1. At the time of occurrence you were present on the spot duly armed with official arms / ammunitions.
2. In your presence, accused Shahidullah came there in QINGQI Rickshwa and made indiscriminate firing upon Constable Muhammad Tariq as a result Constable Muhammad Tariq was hit and became injured seriously and later on embraced martyred. The accused was succeeded in his escape from the scene of crime without any fear of your presence.
3. Neither the accused was chased nor any retaliatory firing was made upon the accused for ensuring his arrest by you.
4. Being lying injured, the lionhearted Shaheed Constable made firing upon accused through his official Rifle which was not supported by you.
5. Driver Constable Farmanullah No. 452 who was also present on the spot, after commission of crime, took the official rifle from the official pickup of Mobile Patrolling and chased the accused. He also made firing upon the accused.
6. All such proceeding / act of cowardness and inefficiency are safe and available in CCTV Cameras already installed at PP Abdul Latif Shaheed for the security purpose.

For which you was properly Charged Sheeted. The Charge Sheet alongwith statement of allegations were properly served upon delinquent official. The SDPO/HQrs: Tank was nominated as Enquiry Officer. During enquiry the defaulter official has produced his written reply before the enquiry officer with in stipulated period. The Enquiry was initiated and statement of witnesses were recorded properly. The opportunity of cross examination was provided to the accused official. The Enquiry Officer submitted his findings report which revealed that according to the statement of PWs recorded by the Enquiry Officer and CCTV Camera already installed at PP Abdul Latif Shaheed, the accused official was duly armed with weapon was present on the spot. One terrorist riding in rickshaw made indiscriminate firing upon Shaheed Constable Muhammad Tariq which became injured seriously. The injured Constable took the weapon of offence of terrorist. He also made firing upon the terrorist but succeeded in his escape. The entire circumstantial evidence is available in CCTV Cameras.

On receiving finding report of the Enquiry Officer a Final Show Cause Notice was issued to the delinquent official and properly served upon him. The reply to the Final Show Cause Notice was received which was found unsatisfactory. He was also heard in person but no any plausible reason was explained. In light of recommendation of the Enquiry Officer, statement of PWs, reply to the Final Show Cause Notice, record available in the CCTV Cameras and personal hearing of the accused official I, Mr RASOOL SHAH (PSP), District Police Officer, Tank have reached the conclusion that allegations of cowardness, inefficiency and irresponsibility were proved which encourage the terrorists for submission of such offence by causing great definition to the entire Force.

Therefore, I, RASOOL SHAH (PSP) District Police Officer Tank in exercise of Powers vested in me under Khyber Pakhtunkhwa Police Rules 1975 with Amendments 2014 awarded a Major Punishment of Removal From Service with immediate effect.

Announced.

(Signature)
(RASOOL SHAH) PSP
District Police Officer,
Tank

(Signature)
Muhammad
Advocate
Dera Ismael Khan

149
07-3-2016

A.M.J. 

BEFORE THE WORTHY REGIONAL POLICE OFFICER DERA ISMAIL
KHAN REGION

Subject: DEPARTMENTAL APPEAL/REPRESENTATION OF EX-CONSTABLE
EX-CONSTABLE NASRULLAH NO. 191 OF POLICE DEPARTMENT TANK
AGAINST THE IMPUGNED ORDER OF DPO/TANK WHEREBY THE APPELLANT
WERE AWARDED MAJOR PENALTY OF REMOVAL FROM SERVICE VIDE
ORDER BOOK NO. 149/DT. 07.03.2016.

PRAYER IN APPEAL:-

On acceptance of this appeal the impugned order of their Removal from Service vide
Order Books No. noted above, may kindly be set aside and the appellant may be reinstated in service with
full back wages and benefits of service or any other relief may deemed proper also be allowed.

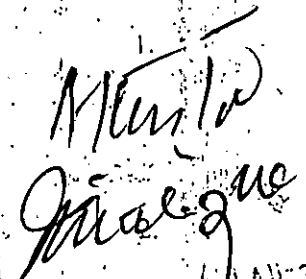
BRIEF FACTS ARE AS UNDER:-

On 12.02.2016 at about 09:20 hrs, I was present on my specified duty. Constable Muhammad Tariq
No. 638 of NPP/Latif Shaheed Tank was busy in routine checking of CNIC of suspected persons. In the
meanwhile, one QINGQI Riksha came there and was stopped by Shaheed Constable for checking.
Accused Shahid Ullah S/o Yar Ali Khan Caste Mehsud R/O Garra Pathar area of PS SMA Tank was
riding therein. The Shaheed Constable asked accused Shahid Ullah for producing his CNIC for
checking. The accused has produced his CNIC. The Shaheed Constable was busy to check / verify
CNIC of the accused. All of a sudden, accused started indiscriminate firing upon Shaheed Constable
through his 30 bore pistol resultantly he was hit and became injured seriously. The Shaheed Constable
also snatched weapon of offence from the accused. The Shaheed made firing upon the accused through
the weapon of offence as retaliation but he escaped luckily vide case FIR No. 129 dated 12.02.2016 U/Ss
302/353/186/15AA/7ATA PS City Tank.

I have tried my best to chase and arrest the accused but due to heavy rush of traffic and tickly
populated area, the accused succeeded in his escape from the scene of crime. Later on, the injured
constable was rushed to hospital for treatment where he succumbed to his injuries and embraced
martyrdom for which I was charge sheeted for the allegations of cowardness, inefficiency and
irresponsibility.

On the following day, during Search & Strike Operation, the wanted accused alongwith his
accomplices were killed vide Case FIR No. 172, dated 16.02.2016 U/Ss 324/353/120B-PPC/3/4 Exp: Sub
Act/15-AA/7-ATA Police Station, Shaheed Mureed Akbar, Tank. This act of gallantry performance
have gave a strong message to terrorists / anti-state elements which brought a good name to the entire
Police Force.

Respectfully submitted:-


Muhammad Ismail
Advocate High Court
Dera Ismail Khan

That the appellant was suddenly placed under suspension and closed to Police Lines,
Tank for departmental proceedings on the allegations of cowardness, inefficiency
and irresponsibility vide Case FIR No. 129 dated 12.02.2016 U/Ss
302/353/186/15AA/7ATA PS City Tank.

That the appellant was issued charge sheet containing allegations of cowardness,
inefficiency and irresponsibility which are Annexure "A".

P-18

- 3. That the Charge Sheets along with statement of allegations containing false, unfounded and baseless allegations was served upon me. The papers were entrusted to DSP/HQrs. Tank for enquiry and submission of finding report.
- 4. That during enquiry, the appellant submitted my detailed reply which is Annexure "B".
- 5. That after completion of enquiry, the enquiry officer has submitted a defective enquiry report against the appellant containing false and fabricated report which is to the Competent Authority Annexure "C".
- 6. That Final Show Cause Notice was issued to the appellant regarding which I was replied. The same was not taken into consideration by the Competent Authority which is against the norms of justice.
- 7. That the Authority without fulfillment of Codal formalities as required under the rules, announced a harsh and Major Punishment of their Removal from Service vide Order Book No. noted above which is illegal and unjustified.
- 8. That the Impugned Order of their Removal from Service are illegal, unlawful and against the express Provisions of law thus liable to be set aside inter alia on the following grounds:-

GROUND'S OF APPEAL:-

- > That the departmental proceedings initiated against the appellant were the result of personal ill will and was based on false statement, the charges were never proved in the enquiry thus the proceedings so conducted were a mere eye wash and nullity in the eyes of law.
- > That all the proceedings conducted against the appellant were violative of law and against the mandatory provision of Khyber PakhtunKhwa Police Rules 1975, the order impugned is thus liable to be set at naught.
- > That the enquiry officer while conducting proceedings did not adhered to the mandatory provisions of Khyber PakhtunKhwa, Police Rules 1975, he conducted the enquiry in a novel way.
- > That all the proceedings conducted against the appellant were illegal and unlawful as it run counter to the express provisions of the Khyber PakhtunKhwa Police Rules 1975.
- > That during proceedings the allegations of cowardness, inefficiency and irresponsibility were not proved and thus the proceedings conducted against the appellant is illegal, malafide and not tenable.
- > That the appellant is jobless since the illegal Removal from Service.
- > That the appellant seek the permission of Hon 'able Appellant Authority to rely on additional grounds at the disposal of this appeal.

It is, therefore requested that on acceptance of this appeal the impugned order of my Removal from Service may kindly be set aside and the appellant may be reinstated in service with full back wages and benefits of service, please.

Muhammad Alizai
 Alizai
 Court
 Dera Ismael Khan

Obediently Yours

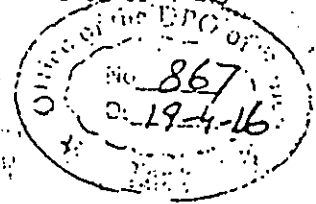
(Nasrullah No. 191)
Ex-Constable Police Deptt. Tank

3rd

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Amr K P-19



ORDER

This order will dispose off the departmental appeal preferred by Ex-Constable Nasrullah No.191 of Tank District against the order of major punishment of Removal from Service passed by DPO/Tank vide OB No.149, dated 07.03.2016. The appellant was proceeded against on the allegations that on 12.02.2016 at about 09:20 hours, an unfortunate incident of killing/targeting of constable Mohammad Tariq No.638 of Police post Abdul Latif Shaheed took place vide Case FIR No.129, dated 12.02.2016 U/S 302-353-186/15-AA/7-ATA PS/City Tank. On the day of occurrence, the accused Shahidullah s/o Yar Ali Khan caste Mehsood R/o Gair Pathar Tank came in Qingqi Rickshwa and opened indiscriminate firing upon Shaheed constable Mohammad Tariq No. 638 of PP Abdul Latif Shaheed who was busy in the discharge of official duties. After commission of the offence, the accused made his escape good without any fear of response on the part of appellant who was present on the spot which showed his cowardness, negligence and inefficiency.

A proper departmental enquiry was initiated against him by DPO Tank and Mr. Umar Daraz DSP/HQrs Tank was appointed as Enquiry Officer. On the recommendations of Enquiry Officer, the said Ex-Constable Nasrullah, 191 was awarded major punishment of Removal from Service by the DPO Tank vide his office order bearing OB No. 149 dated 07.03.2016.

The DPO Tank has based the impugned order of removal of the appellant from Service on the following facts:-

- 1) At the time of occurrence the appellant was present on the spot duly armed with official rifle/ammunition.
- 2) In the presence of appellant, accused Shahidullah came there in a Qingqi Rickshwa and made indiscriminate firing upon Constable Mohammad Tariq. As a result Constable Mohammad Tariq was hit and became seriously injured and later on got martyred. The accused succeeded to make his escape good from the scene of crime without any fear of reprisal on the part of appellant who was present on the spot. This act of appellant showed cowardness, negligence and inefficiency.
- 3) Neither was the accused chased by the appellant nor was any retaliatory firing carried out against the accused to effect his arrest.
- 4) Being lying injured, the lion-hearted Shaheed Constable made firing upon accused with his official Rifle which was not supported by appellant.
- 5) So much so the driver Constable Farmanullah, 452 who was also present on the spot, took an official rifle from the official pickup of mobile patrol and carried out firing to effect the arrest of the accused.
- 6) All such proceedings/act of cowardness and inefficiency at the scene of incident are recorded in CCTV camera already installed at PP Abdul Latif Shaheed for the security purpose.

Muhammad Ali

(14)

~~Asst~~

Feeling aggrieved against the impugned order of DPO Tank the appellant preferred the instant appeal. The appellant was summoned and heard in person in the Orderly Room.

Having gone through the enquiry file and other relevant documents, the undersigned is of the considered opinion that the appellant Ex-Constable Nasrullah, 191 has exhibited cowardness as a police officer being his colleague was martyred in his very presence. He was duty bound to arrest the perpetrator responsible for the ghastly act of killing a police officer busy in the discharge of official duties. During the course of personal hearing, the appellant, however, could not put forward any plausible defence for his inaction and cowardness.

Based on the appreciation of the situation painted above, I Sher Akbar, PSP, S.St, Regional Police Officer, D.I Khan, being the competent authority, do not see any cogent reason to interfere with the orders passed by DPO Tank. Hence this appeal is dismissed and filed, being meritless.

Regional Police Officer
Dera Ismat Khan

No. 1633 /ES dated 18-4-2016

Copy to District Police Officer, Tank for information with reference to this office Memo: No.1364, dated 29.03.2016. Service record of said Ex-Constable is also returned herewith.

Abdul Oasi

Regional Police Officer
Dera Ismat Khan

En Ma

District Police Officer
Tank

A. Mustafa
M. Ali

W. M. Khan
M. Ali

ORDER

~~Amended~~

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Better Copy

This order will dispose off the department appeal preferred by Ex-Constable Nasrullah No. 191 of Tank District against the order of major punishment of removal from service passed by DPO/Tank vide OB No. 149 dated 07-03-2016. The appellant was proceeded against on the irrigations that on 12-02-2016 at about 09:20 hours an unfortunate incident of killing/targeting of constable Muhammad Tariq No. 638 of Police post Abdul Lati Shaheed tool place vide case FIR No. 129, dated 12-02-2016 U/S 302/353/186/PPC/15-AA/7-ATA PS/City/Tank. On the day of occurrence, the accused Shahidullah S/o Yar Ali Khan caste Mehsood R/o Gara Pathar Tank came in Qingqi Rickshaw and opened indiscriminate firing upon Shaheed Constable Muhammad Tariq No. 638 Of PP Abdul Latif Shaheed who was busy in the discharge of official duties. After commission of the offence, the accused made his escape good without any fear of response on the part of appellant who was present on the spot which showed his cowardness, negligence and inefficiency.

A proper departmental enquiry was initiated against him by DPO Tank and Mr. Umar Daraz DSP/HQrs Tank was appointed as Enquiry Officer. On the recommendations of Enquiry officer, the said Ex-Constabel Nasrullah. 191 was awarded major punishment of Removal from service by the DPO Tank and his office order bearing OB No. 149 dated 07-03-2016.

The DPO Tank has based the impugned order of removal of the appellant from service on the following facts.

1. At the time of occurrence the appellant was present on the spot duly armed with official rifle/ammunition.
2. In the presence of appellant, accused Shahidullah came there in a Qingqi Rickshaw and made indiscriminate firing upon constable Muhammad Tariq. As a result constable Muhammad Tariq was hit and became seriously injured and later on got martyred. The accused succeeded to make his escape good from the scene of crime without any fear of reprisal on the part of appellant who was present on the spot. This act of appellant showed cowardness, negligence and inefficiency.
3. Neither was the accused chased by the appellant nor was any retaliatory firing carried out against the accused to effect his arrest.
4. Being lying injured, the lion-hearted Shaheed constable made firing upon accused with his official Rifle which was not supported by appellant.
5. So much so the driver constable Farmanullah No. 452 who was also present on the spot, took an official rifle from the official pickup of mobile petroleum and carried out firing to effect the arrest of accused.
6. All such proceedings/act of cowardness and inefficiency at the scene of incident are recorded in CC Tv camera already installed at PP Abdul Latif Shaheed for the security purpose.

Aliza
Alizai
Advocate
Dera Ismail Khan

Feeling aggrieved against the impugned order of DPO Tank, the appellant preferred the instant appeal. The appellant was summoned and heard in person in the Orderly Room.

Having gone through the enquiry file and other relevant documents, the undersigned is of the considered opinion that the appellant Ex-Constable Nasrullah, 191 has exhibited cowardness as a police officer being his colleague was martyred in his very presence. He was duty bound to arrest the perpetrator responsible for the ghastly act of killing a police officer busy in the discharge of official duties. During the course of personal hearing the appellant, however, could not put forward any plausible defense for his inaction and cowardness.

Based on the appreciation of the situation painted above, I Sher Akbar, PSP, SSt Regional Police Officer, D.I.Khan being the Competent Authority, do not see any cogent reason to interfere with the orders passed by DPO Tank. Hence this appeal is dismissed and filed, being meritless.

Signed: _____
Regional Police Officer
Dera Ismail Khan

No. 1633/ES dated 18-04-2016

Copy of District Police Officer, Tank for information with reference to his office Memo No. 1364 dated 29-03-2016. Service record of Said Ex-Constable is also returned herewith.

Signed: _____
Regional Police Officer
Dera Ismail Khan

Muhammad Iqbal Alizai
Muhammad Iqbal Alizai
Advocate High Court
Dera Ismail Khan

عزت مآب انیسکٹر جنرل آف پولیس صوبہ خیبر پختونخوا پشاور

جناب عالی!

مشمولہ ریکارڈ معروض ہوں سائل پر بزدلی کا جو الزام لگایا گیا ہے جو کہ سراسر غلط اور بے بنیاد ہے انکو آفری آفیسر نے صرف CCTV کیمرے پر اور چونکہ میں گناہ گار ملازماں کے بیانات پر من سائل کو گناہ گار کیا چونکہ ملازماں نے بزدلی چھپانے کیلئے غلط بیانی کی حالانکہ من سائل کی علاقہ سٹی ٹانک میں گشت نہ تھا اور نہ وہاں پر چونکہ پر تعیناتی تھی بلکہ تعیناتی تھا نہ SMA میں تھی اور موبائل گشت پر ہمراہ انچارج ASI اسحاق تھا کہ فائرنگ کی آواز سنی جو برطابق FIR وقوعہ 9:20 بجے ہے اور ہم 9:33 بجے جائے وقوعہ پر پہنچے تو سڑک کے کنارے کنشیل طارق شدید زخمی حالت میں پڑا پا کر کی زندگی بچانے کی خاطر ہسپتال پہنچایا ملزم کی آگے قتل عمل زخمی کنشیل کی اسلحہ SMG وجیکٹ پہلے سے چونکہ ملازماں نے سنبھال چکے تھے میرے اوپر بزدلی کا الزام لگانا بالکل درست نہیں اگر میں بزدل ہوتا تو جائے وقوعہ تک نہ پہنچتا سائل آج تک برسر پیکار محکمہ میں ڈیوٹی کرتا رہا ہوں جو کہ مورخہ 12/02/2016 کو بعد وقوعہ بحوالہ آرڈر بک نمبر 149 مورخہ 07/03/2016 کو جناب DPO صاحب نے محکمہ سے ریمول فرام سروس کیا جس کے بارے میں DIG صاحب ڈیرہ اسماعیل خان ریج کو اپیل دائر کی جو کہ DIG صاحب نے اپیل کو خارج کیا۔ سائل کے چھوٹے چھوٹے بچے ہیں اور سکول میں زیر تعلیم ہیں من سائل کے بچے مزدوری کے قابل نہیں ہیں من سائل کی 20/21 سال سروس ہے محنت مزدوری کے قابل نہیں ہے۔ (نقولات ہمراہ لف درخواست ہیں)

لہذا استدعا کی جاتی ہے کہ جملہ حالات واقعات کو مد نظر رکھتے ہوئے من سائل کی درخواست سلسلہ بحوالہ Review Board مارک کرنے کا حکم صادر فرمائیں تاکہ سائل دوبارہ سروس پر بحال ہو جائے

عین نوازش ہوگی

مورخہ 24.04.2016

ارضی

سائل نصر اللہ 191 سابقہ کنشیل ضلع ٹانک

موبائل 03439354219

Muhammad Ali Alizai
Advocate

Muhammad Ali Alizai
 Advocate
 Dera Ismail Khan



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 7353 /16, dated Peshawar the 15/11/2016.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Constable Nasrullah No. 191. The appellant was removed from service by DPO/Tank vide OB No. 149, dated 07.03.2016 on the allegations that he was present on duty along with Constable Muhammad Tariq, an accused Shahidullah came there in QINGQI rikshaw and made indiscriminate firing upon ~~Constable Muhammad Tariq~~ as a result Constable Muhammad Tariq was hit and seriously injured and later on embraced shahadat. The accused was succeeded in his escape from the scene of crime without any fear of presence. Ex-Constable Nasrullah No. 191 neither chased the accused nor made any retaliatory firing upon accused and failed to arrest the accused. His act of cowardness and in-efficiency are safe and available in CCTV Cameras installed at PP Abdul Latif Shaheed for the security purpose.

His appeal was filed by RPO, D.I.Khan vide order Endst: No. 1633/ES, dated 18.04.2016.

Meeting of Appellate Board was held on 08.09.2016 wherein appellant was heard in person. During hearing petitioner contended that he did not show cowardice and also retaliated the firing of the accused Shahidullah and made all efforts for chasing the accused. Petitioner also contended that he shifted the injured Constable Muhammad Tariq to Hospital for treatment.

Appellant Nasrullah Ex-FC No. 191 alongwith Ishaq Ahmad ASI, Nasrullah Ex-FC No. 559 and Asmat Ullah Ex-FC No. 553 were removed from service on charges of displaying cowardice as they failed to effectively retaliate the firing of Shahidullah accused who attempted on their lives by way of making firing which hit co-constable namely Muhammad Tariq who later on embraced Shahadat. The appellant and others did not chase the accused who succeeded in making good his escape.

The penalty of Ishaq Ahmad ASI was converted into compulsory retirement from service vide order dated 28.06.2016. Therefore, principle of consistency is involved the Board decided that penalty of Nasrullah Ex-FC No. 191 is hereby converted into major penalty of compulsory retirement from service.

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

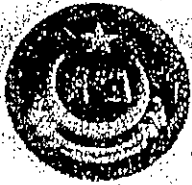
Najeeb
(NAJEEB-UR-REHMAN BUGTI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. S/ 7354-60 /16,

Copy of the above is forwarded to the:

1. Regional Police Officer, DIKhan.
2. District Police Officer, Tank.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-IV CPO Peshawar.
7. Central Registry Cell, CPO.

Muhammad Alizai
Muhammad Alizai
Advocate
Dera Ismail Khan



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 7369 /16, dated Peshawar the 15/11/2016.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules 1975 submitted by Ex-Constable Nasrullah No. 559. The appellant was removed from service by DPO/Tank vide OB No. 152, dated 07.03.2016 on the allegations that he was present on duty alongwith Constable Muhammad Tariq, an accused Shahidullah came there in QINGQI rikshaw and made indiscriminate firing upon Constable Muhammad Tariq as a result Constable Muhammad Tariq was hit and seriously injured and later on embraced shahadat. The accused was succeeded in his escape from the scene of crime without any fear of presence. Ex-Constable Nasrullah No. 559 neither chased the accused nor made any retaliatory firing upon accused and failed to arrest the accused. His act of cowardness and In-efficiency are safe and available in CCTV Cameras installed at PP Abdul Latif Shaheed for the security purpose.

His appeal was filed by RPO, D.I.Khan vide order Endstr: No. 1632/ES, dated 18.04.2016.

Meeting of Appellate Board was held on 08.09.2016 wherein appellant was heard in person. During hearing petitioner contended that he did not show cowardice and also retaliated the firing of the accused Shahidullah and made all efforts for chasing the accused. Petitioner also contended that he shifted the injured Constable Muhammad Tariq to Hospital for treatment.

Appellant Nasrullah Ex-FC No. 559 alongwith Ishaq Ahmad ASI, Nasrullah Ex-FC No. 191 and Asmat Ullah Ex-FC No. 552 were removed from service on charges of displaying cowardice as they failed to effectively retaliate the firing of Shahidullah accused who attempted on their lives by way of making firing which hit co-Constable namely Muhammad Tariq who later on embraced Shahadat. The appellant and others did not chase the accused who succeeded in making good his escape.

The penalty of Ishaq Ahmad ASI was converted into compulsory retirement from service vide order dated 28.06.2016. Therefore, principle of consistency is involved and Ex-FC Nasrullah No. 559 is hereby re-instated in service and his penalty is converted into major penalty of time scale for five years as his service is less than ten years for imposing penalty of compulsory retirement and he was a Constable and Ishaq Ahmad was a senior officer in the rank of ASI. The intervening period be considered as period in service but not on duty and he will not be entitled for salary of the intervening period. He will remain under special watch for one year.

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

Najeeb
(NAJEEB-UR-REHMAN BUGYI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. S/ 7370-76 /16,

Copy of the above is forwarded to the:

1. Regional Police Officer, D.I.Khan.
2. District Police Officer, Tank.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-IV CPO Peshawar.
7. Central Registry Cell, CPO.

Amir
Malik

Mu:
Adv
Date: _____
Court
an

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VAKALATNAMA

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IN THE COURT OF HON'BLE

KP Service Tribunal

In Suit / Case "

Nasrullah vs Govt of KP etc

I/WE

Appellant Nasrullah

Pet; / Compl; / Accd; / Applt; / Respd; hereby appoint,
M/s. Muhammad Ismail Alizai,

Farmanullah Kundi, Ahmad/Shahbaz Alizai, Advocates High Court, DIKhan,

in the above mentioned matter / case and authorize him/them to do all or any of the following acts, in my/our name and on my/our behalf, that is to say,

1. To appear, act and plead for me/us in the above mentioned case in this Court/ tribunal in which the same may be tried or heard or any other proceedings what so ever, ancillary thereto including appeal, revision etc; on payment of fees separately for each court by me / us,
2. To sign, verify, file, present or withdraw all/any proceedings, petitions, appeals, cross objections and application for compromise or withdrawal, or for submission to arbitration of the said case or any other documents, as may be deemed necessary or advisable by him/them and to conduct prosecution or defense of the said case at all its stages,
3. To undertake execution proceedings, deposit, draw and receive money, cheques cash and grant receipts thereof and to do all other acts and things which may be conferred to be done for the progress and in the course of prosecution of the said case,
4. To appoint and instruct any other Advocate/ legal practitioner authorizing him to exercise the power and authority conferred upon the advocate whenever he/they may think fit to do so and to sign Power of Attorney on our behalf,

I / we, the undersigned do hereby agree to ratify and confirm all acts done by the advocate or his authorized substitute in the matter as my /our own acts, as if done by me/us to intent and purposes, and I / we undertake that I /we or my/our duly authorized agent shall appear in the court on all hearings and will inform the advocate(s) for appearance when case is called and I/we the undersigned agree hereby not to hold the advocate(s) or his/their substitute responsible if the said case be proceeded ex-parte or dismissed in default in consequence of my/our absence from court when it is called for hearing and for the result of the said case, the adjournment costs whenever ordered by the court shall be of the advocate(s) which he/they may receive and retain himself/themselves. I/we the undersigned do hereby agree that in the event of the whole or part of the fees agreed by me/us to be paid to the advocate(s), if remain unpaid, he/they shall be entitled to withdraw from prosecution of the above said case until the same is paid and fee settled is only for the above said case and above court and I /we agree hereby that once fee is paid, I/we shall not be entitled for refund of the same in any case whatsoever.

IN WITNESS WHEREOF, I /we do hereby set my/our hand to these presents, the contents of which have been read / read over, explained fully and understood by me/us on this.....Day of.....201.....

Accepted By:

Muhammad Ismail Alizai
Muhammad Ismail Alizai,
Advocate High Court.

Thumb Impression / Signature(s) of Executant(s)

Signature

N.I.C.: 12201 - 1460045-5

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 632 of 2016.

A.W.F. Provincial
Service Tribunal
Diary No. 494
dated 17-5-2016

Nasrullah resident of District Tank. Ex-Constable No.191 of Police
Department District Tank. 0301-63 77216

0343 9354219

Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Peshawar.
2. Secretary to Govt. of K.P.K. Home & Tribal Affairs Department, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
4. Deputy Inspector General of Police, Dera Ismail Khan Region, Dera Ismail Khan.
5. District Police Officer, Tank.

Respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE K.P.K.
SERVICE TRIBUNALS ACT, 1974, AGAINST ORDER OB
No.149 DATED 07.03.2016 OF THE RESPONDENT
No.5 WHEREBY THE APPELLANT WAS REMOVED FROM
SERVICE AND ALSO AGAINST THE ORDER BEARING
No.1633/ES DATED 18.04.2016 OF THE
RESPONDENT No.4 WHEREBY APPEAL OF APPELLANT
WAS DISMISSED.**

PRAYER:

ON ACCEPTANCE OF PRESENT SERVICE APPEAL AND BY
SETTING ASIDE IMPUGNED ORDER OB No.149 DATED
07.03.2016 AND WELL AS ORDER BEARING
No.1633/ES DATED 18.04.2016, THE APPELLANT
MAY PLEASE BE REINSTATED INTO SERVICE WITH ALL

Re-submitted to -day and filed. BACK BENEFITS.


Registrar

13/5/16

Respectfully Sheweth,

1. That the appellant was serving in the Police Department, District Tank, as Constable. On 12.02.2016 when the appellant was posted as Constable at Police Station Shaheed Mureed Abbas (SMA), District Tank, the appellant along with Ishaq Ahmad ASI left the Police Station SMA for the purpose of routine patrol duty and at about 09:20 AM when appellant along with police party reached at Ayaz Pump, Wazir Abad, he heard the noise of fire shots from the side of Police Post Lateef, falling within the jurisdiction of Police Station City, Tank. At this appellant along with said ASI and police party rushed towards the said police post and arrived there at 09:33 AM. There the police party found that a constable namely Muhammad Tariq was lying in the police post in injured condition while other staff of the police post were not present over there. The ASI, in-charge of police party, for security measures, asked another constable to made aerial firing and to shift the injured to hospital for medical attention/treatment. However, said constable namely Muhammad Tariq succumbed to his injuries. Thereafter, about the said incident, FIR No.129 dated 12.02.2016 under section 302, 353, 186 PPC read with 15 AA and 7 ATA was registered at Police Station City Tank. The ASI/In-charge after his arrival at PS SMA noted down the Mad No.12 dated 12.02.2016. Copies of the FIR No.129 and Mad No.12 are enclosed as **Annexure A & B** respectively.
2. That thereafter, the District Police Officer, initiated inquiry against the appellant on the allegation that despite his presence on the spot, the appellant did not make any efforts to counter the attack on the constable; and in this regard appellant was charge sheeted and served with statement of allegations. The appellant filed report of the same. Copies of the Charge Sheet, Statement of allegations and reply dated 19.02.2016 of appellant are respectively enclosed as **Annexure C, D & E**.

3. That thereafter inquiry officer submitted inquiry report **(Annexure F)** to the respondent No.5 upon which final show cause notice **(Annexure G)** was given to the appellant. The appellant submitted reply to final show cause notice, copy whereof is enclosed as **Annexure H**.
4. That after the completion of biased and partial departmental inquiry the respondent No.5, vide order OB No.149 dated 07.03.2016 **(Annexure I)** awarded major punishment of removal from service to the appellant.
5. That discontented with the impugned order OB No.149 dated 07.03.2016, the appellant preferred a Departmental Appeal **(Annexure J)** before the respondent No.4 and the same was also dismissed vide order bearing No.1633/ES dated 18.4.2016 **(Annexure K)** which received to appellant on 19.04.2016.
6. That aggrieved of the Order OB No.149 dated 07.03.2016 of respondent No.5 and order bearing No.1633/ES dated 18.04.2016 of respondent No.4, the appellant wants to impugn the same before this Honourable Tribunal on, inter alia, the following grounds:

GROUND:

- i. That the both the impugned orders dated 07.03.2016 and 18.04.2016, issued by the respondents No.5 & 4 respectively, are ultra-vires, whimsical, outcome of malafide, based on discrimination, against law and facts therefore, the same are liable to be set aside.
- ii. That at the time of incident happened in the jurisdiction of Police Station City Tank, the appellant was posted at Police Station SMA Tank and after hearing fire-shots when appellant arrived at the spot, no one except an injured constable Muhammad Tariq was present over the police post. The ASI In-charge of

appellant informed his high-ups and shifted the injured constable to the Hospital. The entire departmental inquiry proceedings are biased and as such both the impugned orders are not having any legal sanctity.

- iii.* That besides injured constable Muhammad Tariq, other police officials too were deputed on the police post and were required to counter the attack effectively but they omitted to do so and when appellant arrived on the spot, accused had already escaped from there and no other staff of the police post were present there. The respondents without taking into considering this important aspect of the case, levelled false allegations of inefficiency and coward-ness ; hence, a great injustice has been done to the appellant.
- iv.* That the incident took place at 09:20 AM while petitioner arrived on the spot at 09:33 AM. Moreover, in the site plan of FIR No.129, presence of appellant has not been shown which fact itself is sufficient to prove that the appellant was not present on the spot at the relevant time of occurrence. Copy of the site plan is enclosed as **Annexure L**. Hence, impugned orders are illegal, unlawful and are not tenable in the eyes of law.
- v.* That in the past too the appellant performed his duties efficiently and bravely. The allegations levelled against the appellant are incorrect and without any sound footings. The appellant has a transparent and efficient past service record.
- vi.* That no proper inquiry has been conducted into the matter and the inquiry officer without going into ground realities has submitted biased inquiry report and the respondent No.5 too, in a hasty and slipshod manner relied the said inquiry report and passed the impugned order without jurisdiction and lawful

authority. On this score too the impugned orders are not worth to be maintained.

- vii.** That the circumstances of the case are not such that this Honourable Tribunal ought not to exercise its equitable jurisdiction in the matter and the appellant thus seeks the indulgence of this Honourable Tribunal for redress of his grievances against the respondents.
- viii.** That the counsel for appellant may be allowed to raise additional grounds at the time of arguments.

It is, therefore, humbly prayed that on acceptance of the present appeal and by setting aside the impugned orders, appellant may please be reinstated into service along with all back/future benefits; and any other appropriate relief, which this Honourable Tribunal, in the given circumstances, may deem fit in the interest of justice may also be granted to the appellant.

Yours Humble Appellant



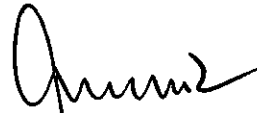
(Nasrullah)

Through Counsel

Dt. 16 /05/2016



Muhammad Saleem Khan Marwat
Advocate High Court, D.I.Khan.



Gul Tiaz Khan (Marwat)
Advocate High Court
Dist. Bar
Tara Ismail Khan (K.P.O.)

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. _____ *of 2016*

Nasrullah Vs. Govt. of K.P.K. etc
SERVICE APPEAL

CERTIFICATE

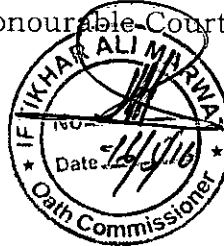
I, *the appellant*, do hereby certify that it is the first Service Appeal on behalf of appellant and no appeal on the subject has earlier been filed.



Appellant

AFFIDAVIT

I, *the Appellant*, do hereby solemnly affirm and declare on oath that all the Para-wise contents of above **Service Appeal** are true & correct to the best of my knowledge and belief and nothing has been deliberately concealed from this Honourable Court.





DEPONENT

فصلح لائن

نقل اور نام

تھانہ SMA

12 دسمبر 1976 کو اسحاق خان ایچا جوڑا 22 اور وقت 14:00 بجے میں
 فتح پور اقلان کے رقبہ جو الہ آباد سے 5 سال بعد ان گنت لائن
 میں اول اور ڈیک والیج آجیوں میں الیج تھا اس
 روانہ ہو کر جس وقت 20:29 کے راجس میں اور ڈیک آگیا
 لینی فائننگ آجی اور اس میں جوئی رقبہ لیا تو
 اور ڈیک کنٹرولر نے جس حالت میں لیا یا یا صدو تھا
 کر کنٹرولر کو اس وقت اطلاع دی گئی کہ وہ کوئی
 طرح کی چیز کو لے گیا ہے اور اس وقت میں اس
 حال میں اور ڈیک لے کر ہے ہم اس کے والیج آجیوں

صاف لکھی

نقل اور نام

MAI-SMA-TU

MAI-SMA-TU
12-2-16

Attested

Signature

MAI-SHO-SMA-TU

Attested
Signature
MAI



Better copy

Annexure - C

9

CHARGE SHEET

WHEREAS, I, am satisfied that a formal enquiry contemplated under Khyber Pakhtunkhwa Police Rules, 1975 with amendment 2014 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation(s) if established would call for a Major Penalty including Removal From Service as defined in Rules(4 (i)(B) of the aforesaid Rules.

AND THEREFORE, as required by Police Rules 6(I) of the aforesaid Rules I, MR. RASOOL SHAH, PSP District Police Officer Tank being a competent authority hereby charge you Constable Nasrullah No.191 of Mobile Patrolling with the misconduct on the basis of statement of allegation attached to this Charge Sheet.

AND hereby direct you further under rule 6(I) of the said Rules to put in written defence within Seven(7) days of receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state that the same time whether you wish to heard in person or otherwise.

In case your reply is not received within the prescribed period, without sufficient cause, it would be presumed that you have not defence to offer any exparte action proceedings will be initiated against you.

Sd/- x x x
(RASOOL SHAH)PSP
District Police Officer,
Tank.

Attested
Jun 2
2014

Amc P-9

CHARGE SHEET.

WHEREAS, I, am satisfied that a formal enquiry contemplated under Khyber Pakhtunkhwa Police Rules 1975 with amendment 2014 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation(s) if established would call for a Major Penalty including Removal From Service as defined in Rules (4 (i) (B)) of the aforesaid Rules.

AND THEREFORE, as required by Police Rules 6 (I) of the aforesaid Rules, I, Mr. RASOOL SHAH PSP, District Police Officer Tank being a competent authority hereby charge you Constable Nasrullah No: 191 of Mobile Patrolling with the misconduct on the basis of statement of allegation attached to this Charge Sheet.

AND hereby direct you further under rule 6(I) of the said rules to put in written defence within Seven (7) days of receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state that the same time whether you wish to heard in person or otherwise.

In case your reply is not received within the prescribed period, without sufficient cause, it would be presumed that you have not defence to offer and exparte action proceedings will be initiated against you.

(RASOOL SHAH) PSP
District Police Officer,
Tank

Attested
Jamil
Adv.


ANNEX-D-P-10

STATEMENT OF ALLEGATION.

Today (12.02.2016) at about 09:20 hrs, an unfortunate incident of killing / targeting of Constable Muhammad Tariq No 638 of Police Post Abdul Latif Shaheed was taken vide case FIR No. 129 dated 12.02.2016 U/Ss 302/353/186/15AA/7ATA PS City Tank. According to information, accused Shahidullah s/o Yar Ali Khan caste Mehsud r/o Garra Pathar area of PS SMA Tank came in QINGQI Rickshwa and made indiscriminate firing upon Shaheed Constable Muhammad Tariq No. 638 of PP Abdul Latif Shaheed when he was busy in performance of his duty i.e. Checking of CNIC of suspected persons at PP Latif Shaheed. After commission of offence the accused has made his escape without any fear of presence of other police contingents on the spot which show your cowardness, negligence and inefficiency. Your following acts of cowardness negligence which encourage the Anti-State elements / Accused for commission of such like crimes is liable to be taken into consideration under the relevant disciplinary rules seriously as deterrence for others:-

1. At the time of occurrence you were present on the spot duly armed with official arms/ammunitions.
2. In your presence accused Shahidullah came there in QINGQI Rickshwa and made indiscriminate firing upon Constable Muhammad Tariq as a result Constable Muhammad Tariq was hit and became injured seriously and later on embraced martyred. The accused was succeeded in his escape from the scene of crime without any fear of your presence.
3. Neither the accused was chased nor any retaliatory firing made upon the accused for ensuring his arrest by you.
4. Being lying injured, he lion hearted Shaheed Constable made firing upon accused through his official Rifle which was not supported by you.
5. Driver Constable Farmanullah No. 452 who was also present on the spot, after commission of crime, took the official rifle from the official pickup of mobile patrolling and chased the accused. He also made firing upon the accused.
6. All such proceeding / act of cowardness and inefficiency are safe and available in CCTV Cameras already installed at PP Abdul Latif Shaheed for the security purpose.

This amounts to gross misconduct on his part and punishable under the Khyber Pakhtunkhwa Police Rule 1975 with amendment 2014.
Hence the statement of allegation.

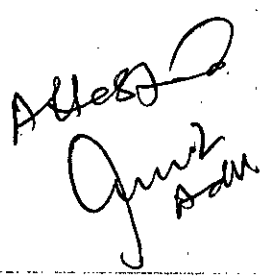

(RASOOL SHAH) PSP
District Police Officer,
Tank


No. 875-76 Dated Tank the 12.2 /2016

Copy to the:-

1- MIR. UMAR DARAZ, SDPO/HQ: Tank for initiating proceeding against the defaulter under the provision of KPK Police Rules 1975 and submit findings report within stipulated period as per prescribed rules.

2 Constable Nasrullah No. 191 of Mobile Patrolling with the direction to appear before the Inquiry Officer on the date, time and venue fixed by the Inquiry Officer for the purpose of Inquiry proceedings.


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(RASOOL SHAH) PSP
District Police Officer,
Tank

STATEMENT OF ALLEGATION.

Today (12.02.2016) at about 09:20 hrs, an unfortunate incident of killing/targeting of Constable Muhammad Tariq No.638 of Police Post Abdul Latif Shaheed was taken vide case FIR No.129 dated 12.02.2016 U/Ss 302/353/186/15AA/7ATA PS City Tank. According to information, accused Shahidullah s/o Yar Ali Khan caste Mehsud r/o Garra Pathar area of PS SMA Tank came in QINGQI Rickhsha and made indiscriminate firing upon Shaheed Constable Muhammad Tariq No.638 of PP Abdul Latif Shaheed when he was busy in performance of his duty i.e. Checking of CNIC of suspected persons at PP Latif Shaheed. After commission of offence the accused has made his escape without any fear of presence of other Police contingents on the spot which show your cowardness, negligence and inefficiency. Your following acts of cowardness negligenc which encourage the Anti-State elements/Accused for commission of such like crime is liable to be taken into consideration under the relevant disciplinary rules seriously as deterrence for others:-

1. At the time of occurrence you were present on the spot duly armed with official arms/ammunitions.
2. In your presence accused Shahidullah came there in QINGQI Rickhsh and made indiscriminate firing upon Constable Muhammad Tariq as a result Constable Muhammad Tariq was hit and became injured seriously and later on embraced martyred. The accused was succeeded in his escape from the scene of crime without any fear of your presence.
3. Neither the accused was chased nor any retaliatory firing made upon the accused for ensuring his arrest by you.
4. Being lying injured, be lion hearted Shaheed Constable made firing upon accused through his official Rifle which ~~was~~ was not supported by you.
5. Driver Constable Farmanullah No.452 who was also present on the spot after commission of crime, took the official rifle from the official pickup of mobile patrolling and chased the accused. He also made firing upon the accused.
6. All such proceeding/act of cowardness and inefficiency are safe and available in CCTV Cameras already installed at PP Abdul Latif Shaheed for the security purpose

This amounts to gross misconduct on his part and punishable under the Khyber Pakhtunkhawa Police Rules 1975 with amendment 2014.

Hence the statement of allegation.

Sd/- x x x
(RASOOL SHAH)PSP
District Police Officer
Tank.

No.875-76 Dated Tank the 12.2.2016
Copy to the:-

1-MR.UMAR DARAZ, SDPO/HQ; Tank for initiating proceeding against the defaulter under the provision of KPK Police Rules 1975 and submit findings report within stipulated period as per prescribed rules.

2-Constable Nasrullah No.191 of Mobile Patrolling, with the direction to appear before the Inquiry Officer on the date, time and venue fixed by the Inquiry Officer for the purpose of Inquiry proceedings.

Sd/- x x x
(RASOOL SHAH)PSP
District Police Officer,
Tank.

Alleged
Just
AWI

جناب عالی بحوالہ مشمولہ چارج شیٹ بمع خلاصہ الزام گذارش بحور انوریہ ہے کہ مجھ پر الزام بابت موجودگی بروقت وقوع کے الزام درست نہیں ہے بلکہ غلط ہے اور یقیناً میں وثوق سے تحریر کر رہا ہوں کہ میں موقع پر نہ تھا بلکہ اصل صورتحال یہ ہے کہ میں اپنی موبائل معاون 2- میں ریاض پٹرول پمپ جو کہ وقوع سے کافی دور ہے پر بمعہ دیگر ہمراہی نفری کے موجود تھا کہ چونکہ لطیف کی جانب فائرنگ سنی اور فوراً موقع پر پہنچے موقع کی صورتحال کچھ اس طرح پائی کہ چونکہ عبداللطیف کے بالمقابل کچھ گولہ سڑک پر محمد طارق کنسٹیبل کو خون میں لت پت شدید زخمی زندگی کی کشمکش میں بے یار و مددگار پڑا تھا اور اس کے ساتھ کوئی پولیس آفیسر انچارج چونکہ وغیرہ تک نہیں تھے۔ میں نے موقع پر پہنچتے ہی اسے فوراً سنبھالا اور اپنے موبائل ڈرائیور کو مزید ناخوشگوار اور واقع کی تدارک کیلئے انچارج نے فائرنگ کی اجازت دے دی۔ جس نے فائرنگ کی اور میں نے بمعہ ہمراہی انچارج و دو کنسٹیبلان ہیبت خان کے زخمی کو گاڑی میں ڈال کر فوری طور پر ابتدائی طبی امداد کے لئے سول ہسپتال کے لئے روانہ ہو کر وقوع کی فوری اطلاع انچارج نے وائس کنٹرول کو کر دی۔ ملزم کا کچھ پتہ نہیں تھا اور نہ میں نے ملزم دیکھا ہے۔

موقع کی مناسبت سے جو صورتحال میرے سامنے آئی میں نے بحسب ذمہ دار پولیس آفیسر کے احسن طریقے سے سرانجام دی۔ اور سب سے پہلے کنسٹیبل مضروب کی جان کو بچانا ضروری سمجھا۔ ملزم کی گرفتاری کیلئے انچارج کی اطلاع پر پولیس آفسران مطلع ہو کر نکل چکے تھے اس لئے انچارج نے سب سے پہلے مضروب کی جان بچانا ضروری سمجھا۔ ہمارے آنے سے پہلے نفری چونکہ لطیف نے رائفل SMG مضروب اور آلہ قتل پستل میں بور پسماندہ ملزم سنبھال چکے تھے۔ ہم نے مضروب کا کنسٹیبل محمد طارق 639 کو ہسپتال پہنچایا اور پھر فوراً موقع پر ملزم کی گرفتاری کیلئے پہنچے ہیں اور ڈی پی اوصاحب اور دیگر آفسران کیساتھ ملزم کی گرفتاری کی کوشش میں شامل ہو گئے۔

میں نے اپنے جائز فرائض منصبی کی بجا آوری میں کوئی کسر نہیں چھوڑی۔ نہ بزدلی کا موقع کی مناسبت سے جو کچھ کیا وہ درست کیا میں سابقہ 20/21 سالہ کو ایف انڈسروس کا حامل آفیسر ہوں اور کئی ایک اس سے بڑے واقعات سے نا برد آ مار ہا ہوں یقیناً بروقت وقوع اگر میں موقع پر موجود ہوتا تو صورتحال انشاء اللہ قابل دید ہوتی۔

یہ کہ میں موقع پر وقوع کے بعد بمعہ انچارج کے پہنچا جس کی من وعن شہادت میرے ہمراہی پولیس آفسران اور فرمان ڈرائیور دے سکتے ہیں۔ میں اس ضمن میں بے گناہ ہوں کیونکہ انچارج نے روزنامچہ میں اس صورتحال اور وقت فائرنگ کا ذکر بحوالہ نمبر 12 واپسی میں کر دیا ہے جس کی نقل لف ہمراہ ہے۔ یہ کہ میں الزام سے بری الذمہ ہوں میں نے کوئی غلطی نہیں کی بلکہ موقع کے مطابق ڈیوٹی دی ہے اس لیے مہربانی فرما کر میری چارج شیٹ انکوائری داخل دفتر فرمائیں۔

عین نوازش ہوگی

نصر اللہ 191 متعینہ پولیس لائن ضلع ٹانک۔

Attested
Jinn
DAN

تاریخ 31 مئی 1971ء کو لکھی گئی ہے۔

موجودہ میں کہ

موجودہ میں کہ 12/2/76

موجودہ میں کہ 12/2/76

موجودہ میں کہ 12/2/76

موجودہ میں کہ 12/2/76

(i) وقت و غیرہ...

(ii) آپکی موجودگی...

اور دیگر...

(iii) نہ تو سلام...

(iv) نہ آپکی...

موجودہ میں کہ

(v) آپکی...

موجودہ میں کہ

(vi) آپکی...

موجودہ میں کہ

موجودہ میں کہ

موجودہ میں کہ

موجودہ میں کہ

موجودہ میں کہ

Alleged
June
1971

4 H2 کا ٹو خان، کینڈل پورٹ میں 310 پینے کی خریدی جان کر اس میں کسی اور کا جانب سے تاثیر نہ کرنے کی نشاندہی

4 CCTV کیوں کر لیکار ڈنگ H2 کا ٹو خان، ڈیپارٹمنٹ کے ذریعہ، صورت میں 310 کے بیانات کے مطابق ذمہ جتنی سہانے آتے ہیں

(1) کینڈل پورٹ، 2019 اسحاق صہبت 649 ڈیپارٹمنٹ میں 310 کے ساتھ سے 50/49 اقدام کے لئے ضروری ہے

(2) اسی طرح آپوں نے تاثیر نشانی کے وجود اور کینڈل پورٹ کے جانب سے عدم برہ تاثیر سے ماہ وجود کوئی رد عمل تاثیر نشانی وغیرہ میں آ کر اس کی آہ نسبت ڈیپارٹمنٹ عدم برہ تاثیر کی

مذکورہ کے کردہ عمل سے محکمہ پولیس کے دفتر کوٹ ڈیڑھ لگانا بنی ہے بیانات نردی کا مظاہرہ کیا ہے

کردہ انکوٹری سے آدرہ ہے، بکے آ رکازنگ اور بیانات سے لگاتے گئے اسراریت نسبت موئے ہیں

ہر ایک شخص کو

سید حکیم ای - کا ایف ایم ستر ہیں

Handwritten signature and initials

Attested
Handwritten signature

(F.O.)
19/2/16

FINAL SHOW CAUSE NOTICE.

Annex G P-14

I MR. RASOOL SHAH (PSP), District Police Officer, Tank as Competent Authority, under the KPK Compulsory Retirement from Service (Police Rules 1975), do hereby serve upon you Constable Nasrullah No. 191 this Final Show Cause Notice as follow:-

1. That consequent upon the completion of Inquiry conducted against you by an Inquiry Officer for which you were given opportunity of hearing.

On going through the findings and recommendations of the Inquiry Officer and the material on record and other connected papers including your defense before the said Inquiry Officer.

I am satisfied that you have committed the following acts/omissions specified in Section-3 of the Khyber PakhtunKhwa (Police Rules 1975).

You Constable Nasrullah No. 191 were charged for serious allegations of cowardness; negligence and inefficiency in case vide FIR No. 129 dated 12.02.2016 U/Ss 302/353/186/15AA/7ATA PS City Tank. The SDPO/HQrs: Tank was nominated as Enquiry Officer. The Enquiry was conducted. The report of Enquiry Officer was received in which the allegations framed against you were stand proved.


2. As a result thereof I, Mr. RASOOL SHAH, (PSP) District Police Officer, Tank as Competent Authority have tentatively decided to impose one of the Major Punishment Under Section-3 of the Khyber PakhtunKhwa, Police Rules 1975.

3. You are therefore required to Show Cause as to why the aforesaid penalty should not be imposed upon you.

4. If no reply to the notice is received within seven days of the receipt of this Final Show Cause Notice, in the normal course of circumstances, it shall be presumed that you have no defense to put in and in that case as ex-parte action shall be taken against you.

5. The copy of the findings of the Inquiry Officer is enclosed.

Attest
Gunn
AM


(RASOOL SHAH) PSP
District Police Officer,
Tank. 13/2/2016

جناب عالی! بحوالہ فائل شوکاژ نوٹس مورخہ 19-02-016 معروض ہو کہ انکوٹری میں مجھ پر بزدلی کا الزام لگایا گیا ہے اگر میں بزدل ہوتا تو جائے وقوعہ تک نہ پہنچتا میں نے گشت کے دوران جائے وقوعہ سے دفتر لانگ دور فائرنگ کی آواز سن کر چونکی لطیف پنچھیا تو سڑک کے کنارے کانٹیل طارق شہید پڑا ہوا پا کر زندگی بچانے کی کوشش میں انچارج کے ہمراہ ہسپتال پنچھایا ہمارے ساتھ ڈرائیور نے انچارج کو حکم پر گردنوخ میں فائرنگ کی نہ ملزم کو دیکھا نہ ملزم کی سمت کے بارے مجھے کسی نے بتایا میں نے آج تک بزدلی کا مظاہر نہیں کیا اور نہ کرونگا ہونے پر پنچھا اور زخمی کو انچارج کے ہمراہ پنچھانا اور ڈرائیور نے انچارج کی حکم پر فائرنگ کرنا بزدلی کا مرتکب نہیں ہوتا ہوں جہاں تک مجھ پر فائرنگ کرنے کا سوال ہے اس وقت میں نے ملزم کو نہ دیکھا اور نہ موجود تھا۔ جو فائرنگ کر رہا ہو اور میں نے اس کے ساتھ مقابلہ نہ کیا ہو کیونکہ ملزم وقوعہ کے فوراً بعد بھاگ چکا تھا حالانکہ وقوعہ کے وقت کانٹیل شہید کے ساتھ دیگر 4 اچار ملازمان پولیس چونکی کے موجود تھے جنہوں نے شہید کانٹیل کا اسلحہ اور پٹل 30 بور پیمانہ آگ قتل ملزم سنبھال چکے تھے اگر وہ اس وقت فائرنگ کرتے جن کے سامنے کانٹیل شہید کیا تھا۔ چونکی میں تعینات ملازمان نے اپنے بزدلی چھپانے کے لیے میرے خلاف غلط بیانی کی جو سراسر غلط حقیقت پر مبنی نہیں ہے اور انکوٹری میں انصاف کی تقاضوں کو پورا نہیں کیا ہے حتیٰ کہ اس کرنے کا موقع بھی نہیں دیا گیا۔

میں بے قصور ہوں میں نے کسی قسم کی بزدلی نہیں کی ہے

لہذا استدعا کی جاتی ہے کہ محکمانہ بلا مزید کارروائی داخل دفتر کرنے کا حکم صادر فرمایا جائے

عین نوازش ہوگی!

نصر اللہ 191 پولیس لائن ٹانک

Attest
Jamil
Adm

ORDER

Ann I P-16

My this order will dispose off departmental enquiry initiated against Constable Nasrullah No. 191 under Khyber Pakhtunkhwa Police Rules 1975 with amendment 2014 on the following allegations:

1. At the time of occurrence you were present on the spot duly armed with official arms / ammunitions.
2. In your presence, accused Shahidullah came there in QINGQI Rickshwa and made indiscriminate firing upon Constable Muhammad Tariq as a result Constable Muhammad Tariq was hit and became injured seriously and later on embraced martyred. The accused was succeeded in his escape from the scene of crime without any fear of your presence.
3. Neither the accused was chased nor any retaliatory firing was made upon the accused for ensuring his arrest by you.
4. Being lying injured, the lionhearted Shaheed Constable made firing upon accused through his official Rifle which was not supported by you.
5. Driver Constable Farmanullah No. 452 who was also present on the spot, after commission of crime, took the official rifle from the official pickup of Mobile Patrolling and chased the accused. He also made firing upon the accused.
6. All such proceeding / act of cowardness and inefficiency are safe and available in CCTV Cameras already installed at PP Abdul Latif Shaheed for the security purpose.

For which you was properly Charged Sheeted. The Charge Sheet alongwith statement of allegations were properly served upon delinquent official. The SDPO/HQrs: Tank was nominated as Enquiry Officer. During enquiry the defaulter official has produced his written reply before the enquiry officer with in stipulated period. The Enquiry was initiated and statement of witnesses were recorded properly. The opportunity of cross examination was provided to the accused official. The Enquiry Officer submitted his findings report which revealed that according to the statement of PWs recorded by the Enquiry Officer and CCTV Camera already installed at PP Abdul Latif Shaheed, the accused official was duly armed with weapon was present on the spot. One terrorist riding in rickshaw made indiscriminate firing upon Shaheed Constable Muhammad Tariq which became injured seriously. The injured Constable took the weapon of offence of terrorist. He also made firing upon the terrorist but succeeded in his escape. The entire circumstantial evidence is available in CCTV Cameras.

On receiving finding report of the Enquiry Officer a Final Show Cause Notice was issued to the delinquent official and properly served upon him. The reply to the Final Show Cause Notice was received which was found unsatisfactory. He was also heard in person but no any plausible reason was explained. In light of recommendation of the Enquiry Officer, statement of PWs, reply to the Final Show Cause Notice, record available in the CCTV Cameras and personal hearing of the accused official I, Mr RASOOL SHAH (PSP), District Police Officer, Tank have reached the conclusion that allegations of cowardness, inefficiency and irresponsibility were proved which encourage the terrorists for submission of such offence by causing great definition to the entire Force.

Therefore, I, RASOOL SHAH (PSP) District Police Officer Tank in exercise of Powers vested in me under Khyber Pakhtunkhwa Police Rules 1975 with Amendments 2014 awarded a Major Punishment of Removal From Service with immediate effect.

Announced.

(RASOOL SHAH) PSP
District Police Officer,
Tank

OB No 149
07-3-016

Attested
Jun 2
Adv

Am J P-17

BEFORE THE WORTHY REGIONAL POLICE OFFICER DERA ISMAIL
KHAN REGION.

Subject:- DEPARTMENTAL APPEAL/REPRESENTATION OF EX-CONSTABLE
EX-CONSTABLE NASRULLAH NO. 191 OF POLICE DEPARTMENT TANK
AGAINST THE IMPUGNED ORDER OF DPO/TANK WHEREBY THE APPELLANT
WERE AWARDED MAJOR PENALTY OF REMOVAL FROM SERVICE VIDE
ORDER BOOK NO. 149 DT: 07.03.2016.

PRAYER IN APPEAL:-

On acceptance of this appeal the impugned order of their Removal from Service vide Order Books No. noted above may kindly be set-aside and the appellant may be reinstated in service with full back wages and benefits of service or any other relief may deemed proper also be allowed.

BRIEF FACTS ARE AS UNDER:-

On 12.02.2016 at about 09:20 hrs, I was present on my specified duty. Constable Muhammad Tariq No. 638 of PP Latif Shaheed, Tank was busy in routine checking of CNIC of suspected persons. In the meanwhile, one QINGQI Riksha came there and was stopped by Shaheed Constable for checking. Accused Shahid Ullah S/o Yar Ali Khan Caste Mehsud R/O Garra Pathar area of PS SMA Tank was riding therein. The Shaheed Constable asked accused Shahid Ullah for producing his CNIC for checking. The accused has produced his CNIC. The Shaheed Constable was busy to check / verify CNIC of the accused. All of a sudden, accused started indiscriminate firing upon Shaheed Constable through his 30 bore pistol resultantly he was hit and became injured seriously. The Shaheed Constable also snatched weapon of offence from the accused. The Shaheed made firing upon the accused through the weapon of offence as retaliation but he escaped luckily vide case FIR No. 129 dated 12.02.2016 U/Ss 302/353/186/15AA/7ATA PS City Tank.

I have tried my best to chase and arrest the accused but due to heavy rush of traffic and tickly populated area, the accused succeeded in his escape from the scene of crime. Later-on, the injured constable was rushed to hospital for treatment where he succumbed to his injuries and embraced martyrdom for which I was charge sheeted for the allegations of cowardness, inefficiency and irresponsibility.

On the following day, during Search & Strike Operation, the wanted accused alongwith his accomplices were killed vide Case FIR No. 172, dated 16.02.2016 U/Ss 324/353/120B-PPC/3/4 Exp: Sub Act/15-AA/7-ATA Police Station, Shaheed Murced Akbar, Tank. This act of gallantry performance have gave a strong message to terrorists / anti-state elements which brought a good name to the entire Police Force.

Respectfully submitted:-

1. That the appellant was suddenly placed under suspension and closed to Police Lincs, Tank for departmental proceedings on the allegations of cowardness, inefficiency and irresponsibility vide Case FIR No. 129 dated 12.02.2016 U/Ss 302/353/186/15AA/7ATA PS City Tank.
2. That the appellant was issued charge sheet containing allegations of cowardness, inefficiency and irresponsibility which are Annexure "A".

Attended
Am J P-17

P-18

3. That the Charge Sheets along with statement of allegations containing false, unfounded and baseless allegations was served upon me. The papers were entrusted to DSP/HQrs. Tank for enquiry and submission of finding report.
4. That during enquiry, the appellant submitted my detailed reply which is Annexure "B".
5. That after completion of enquiry, the enquiry officer has submitted a defective enquiry report against the appellant containing false and fabricated report which is to the Competent Authority Annexure "C".
6. That Final Show Cause Notice was issued to the appellant regarding which I was replied. The same was not taken into consideration by the Competent Authority which is against the norms of justice.
7. That the Authority without fulfillment of Codal formalities as required under the rules, announced a harsh and Major Punishment of their Removal from Service vide Order Book No. noted above which is illegal and unjustified.
8. That the Impugned Order of their Removal from Service are illegal, unlawful and against the express Provisions of law thus liable to be set aside inter alia on the following grounds:-

GROUND OF APPEAL:-

- > That the departmental proceedings initiated against the appellant were the result of personal ill will and was based on false statement, the charges were never proved in the enquiry thus the proceedings so conducted were a mere eye wash and nullity in the eyes of law.
- > That all the proceedings conducted against the appellant were violative of law and against the mandatory provision of Khyber PakhtunKhwā Police Rules 1975, the order impugned is thus liable to be set at naught.
- > That the enquiry officer while conducting proceedings did not adhered to the mandatory provisions of Khyber PakhtunKhwā, Police Rules 1975, he conducted the enquiry in a novel way.
- > That all the proceedings conducted against the appellant were illegal and unlawful as it run counter to the express provisions of the Khyber PakhtunKhwā Police Rules 1975.
- > That during proceedings the allegations of cowardness, inefficiency and irresponsibility were not proved and thus the proceedings conducted against the appellant is illegal, malafide and not tenable.
- > That the appellant is jobless since the illegal Removal from Service.
- > That the appellant seek the permission of Hon 'able Appellant Authority to rely on additional grounds at the disposal of this appeal.

It is, therefore requested that on acceptance of this appeal the impugned order of my Removal from Service may kindly be set aside and the appellant may be reinstated in service with full back wages and benefits of service, please.

Attested
Jinn
D.M.

Obediently Yours

(Nasrullah No. 191)

Ex-Constable Police Deptt. Tank

10-3-16

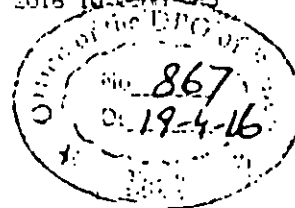
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P-19

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ORDER

This order will dispose off the departmental appeal preferred by Ex-Constable Nasrullah No.191 of Tank District against the order of major punishment of Removal from Service passed by DPO/Tank vide OB No.149, dated 07.03.2016. The appellant was proceeded against on the allegations that on 12.02.2016 at about 09:20 hours, an unfortunate incident of killing/targeting of constable Mohammad Tariq No.638 of Police post Abdul Latif Shaheed took place vide Case FIR No.129, dated 12.02.2016 U/S 302-353-155/15-AA/7-ATA PS/City Tank. On the day of occurrence, the accused Shahidullah s/o Yar Ali Khan caste Mchsood R/o Gara Pathar Tank came in Qingqi Rickshwa and opened indiscriminate firing upon Shaheed constable Mohammad Tariq No.638 of PP Abdul Latif Shaheed who was busy in the discharge of official duties. After commission of the offence, the accused made his escape good without any fear of response on the part of appellant who was present on the spot which showed his cowardness, negligence and inefficiency.

A proper departmental enquiry was initiated against him by DPO Tank and Mr Umar Daraz DSP/HQrs Tank was appointed as Enquiry Officer. On the recommendations of Enquiry Officer, the said Ex-Constable Nasrullah, 191 was awarded major punishment of Removal from Service by the DPO Tank vide his office order bearing OB No. 149 dated 07.03.2016.

The DPO Tank has based the impugned order of removal of the appellant from Service on the following facts:-

- 1) At the time of occurrence the appellant was present on the spot duly armed with official rifle/ammunition.
- 2) In the presence of appellant, accused Shahidullah came there in a Qingqi Rickshwa and made indiscriminate firing upon Constable Mohammad Tariq. As a result Constable Mohammad Tariq was hit and became seriously injured and later on got martyred. The accused succeeded to make his escape good from the scene of crime without any fear of reprisal on the part of appellant who was present on the spot. This act of appellant showed cowardness, negligence and inefficiency.
- 3) Neither was the accused chased by the appellant nor was any retaliatory firing carried out against the accused to effect his arrest.
- 4) Being lying injured, the lion-hearted Shaheed Constable made firing upon accused with his official rifle which was not supported by appellant.
- 5) So much so the driver Constable Farmanlal, 452 who was also present on the spot, took an official rifle from the official pickup of mobile patrolling and carried out firing to effect the arrest of the accused.
- 6) All such proceedings/act of cowardness and inefficiency at the scene of incident are recorded in CCTV camera already installed at PP Abdul Latif Shaheed for the security purpose.

Attal
Jm

Amend: K

19

ORDER

Better Copy

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1. At the time of occurrence the appellant was present on the spot duly armed with official rifle/ammunition.
2. In the presence of appellant, accused Shahidullah came there in a Qingqi Rickshaw and made indiscriminate firing upon constable Muhammad Tariq. As a result constable Muhammad Tariq was hit and became seriously injured and later on got martyred. The accused succeeded to make his escape good from the scene of crime without any fear of reprisal on the part of appellant who was present on the spot. This act of appellant showed cowardness, negligence and inefficiency.
3. Neither was the accused chased by the appellant nor was any retaliatory firing carried out against the accused to effect his arrest.
4. Being lying injured, the lion-hearted Shaheed constable made firing upon accused with his official Rifle which was not supported by appellant.
5. So much so the driver constable Farmanullah No. 452 who was also present on the spot, took an official rifle from the official pickup of mobile petroleum and carried out firing to effect the arrest of accused.
6. All such proceedings/act of cowardness and inefficiency at the scene of incident are recorded in CC Tv camera already installed at PP Abdul Latif Shaheed for the security purpose.

Affidavit

P-20

Feeling aggrieved against the impugned order of DPO Tank the appellant preferred the instant appeal. The appellant was summoned and heard in person in the Orderly Room.

Having gone through the enquiry file and other relevant documents, the undersigned is of the considered opinion that the appellant Ex-Constable Nasrullah, 191 has exhibited cowardness as a police officer being his colleague was martyred in his very presence. He was duty bound to arrest the perpetrator responsible for the ghastly act of killing a police officer busy in the discharge of official duties. During the course of personal hearing, the appellant, however, could not put forward any plausible defence for his inaction and cowardness.

Based on the appreciation of the situation painted above, I Sher Akbar, PSP, S.St, Regional Police Officer, D.I Khan, being the competent authority, do not see any cogent reason to interfere with the orders passed by DPO Tank. Hence this appeal is dismissed and filed, being meritless.

Regional Police Officer
Dera Ismail Khan

No: 1633 IES

dated 18-4-2016

Copy to District Police Officer, Tank for information with reference to his office Memo: No.1364, dated 29.03.2016. Service record of said Ex-Constable is also returned herewith.

Sher Akbar

Sher Akbar

Regional Police Officer
Dera Ismail Khan

District Police Officer
Tank

Sher Akbar

*Attested
Sher Akbar*

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Having gone through the enquiry file and other relevant documents, the undersigned is of the considered opinion that the appellant Ex-Constable Nasrullah, 191 has exhibited cowardness as a police officer being his colleague was martyred in his very presence. He was duty bound to arrest the perpetrator responsible for the ghastly act of killing a police officer busy in the discharge of official duties. During the course of personal hearing the appellant, however, could not put forward any plausible defense for his in action and cowardness.

Based on the appreciation of the situation painted above, I Sher Akbar, PSP, SSt Regional Police Officer, D.I.Khan being the Competent Authority, do not see any cogent reason to interfere with the orders passed by DPO Tank. Hence this appeal is dismissed and filed, being meritless.

Signed: _____
Regional Police Officer
Dera Ismail Khan

No. 1633/ES dated 18-04-2016

Copy of District Police Officer, Tank for information with reference to his office Memo No. 1364 dated 29-03-2016. Service record of Said Ex-Constable is also returned herewith.

Signed: _____
Regional Police Officer
Dera Ismail Khan

*Attested
Jinnah
Adm*

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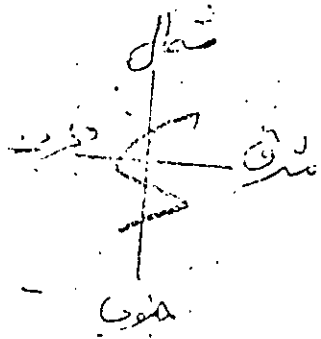
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بعدالت جناب سرور سید محمد امجد علی پک پتہ ۱۰
 بمقام گورنمنٹ لائبریری
 بنام گورنمنٹ لائبریری پک پتہ ۱۰
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 تفصیل دعویٰ یا جرم _____

باعث تحریر آنکہ

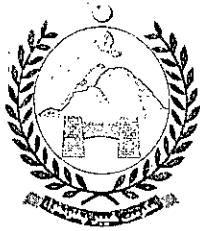
مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے بیروی وجوہاً ہی برائے پیشی یا تصفیہ مقدمہ بمقام گورنمنٹ لائبریری
 کوسب ذیل شرائط پر اختیار کیا ہے، کہ جس برقی پر خود بذریعہ اختیار خاص رو برو عدالت حاضر ہوتا ہوں گا۔ اور ہر وقت ہمارے ہاں مقدمہ وکیل صاحب
 موصوف کو اطلاع دیکر حاضر عدالت کروں گا، اگر پیشی پر مظہر حاضر نہ ہوں اور مقدمہ بیروی فیہ حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا۔ تو صاحب موصوف
 اس کے ضمن ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیروی کرنے کے
 ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیروی کرنے کے ذمہ دار نہ
 ہوں گے۔ اور مقدمہ صدر کچہری کے علاوہ اور جگہ سامت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ
 دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا عتقانہ واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل سامت پر داخل صاحب موصوف مثل کردہ
 ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی، دعویٰ یا جواب دعویٰ یا درخواست اجراءے ڈگری و نظر ثانی اپیل و ہر قسم درخواست پر دستخط و تصدیق کرنے کا
 بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر چالشی یا راضی نامہ و فیصلہ بر
 حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا۔ اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ بیرون از کچہری صدر بیروی مقدمہ مذکورہ نظر ثانی و اپیل و ہر قسم کی
 مقدمہ یا مستثنیٰ ڈگری یا طرف یا درخواست حکم انتہائی یا ترقی یا گرفتاری نسل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا سنگی علیحدہ عتقانہ بیروی کا اختیار ہوگا
 اور تمام سامت پر داخل صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزو
 کی کاروائی یا بصورت درخواست نظر ثانی اپیل یا گرفتاری یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا ایئر سز کو اپنے بجائے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو
 بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور ذمہ داران مقدمہ میں جو کچھ ہر جائزہ التزام ہوگا، وہ صاحب
 موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیروی نہ کریں اور ایسی
 صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھنا ہے۔ تاکہ سند ہے
 مورخہ ۱۱ مارچ ۲۰۱۶ء

مضمون وکالت نامہ سن لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

Attested & Accepted
 Jinnat Advocate

لضر اللہ
 نصر اللہ



MOST IMMEDIATE/INMEDIATOCASE
GOVERNMENT OF KHYBER PAKHTUNKHWA,
HOME & TRIBAL AFFAIRS DEPARTMENT.
PHONE: 091-9210032 FAX # 9210201.

No. SO (Courts)/HD/4-313/2016.
Dated Peshawar the, 14th February, 2017.

To

The Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

Attention: AIG/Legal

Subject: - **SERVICE APPEAL NO. 632/2016.**

Dear Sir,

I am directed to refer to your letter No.418/Legal, dated 13/01/2017 on the subject noted above and to return herewith (enclosed) Para wise comments duly signed by Secretary Home. Khyber Pakhtunkhwa, for further necessary action, please.

Yours truly,

Section Officer (Courts)

Copy to.

The PS to Secretary Home, Khyber Pakhtunkhwa.

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Subject: Service Appeal No. 632/2016

Mr. Nasrullah No. 191 Ex- Constable
Police Department, Tank

(Appellant).

Versus

- 1) Secretary, H&TAs Deptt: Khyber PakhtunKhwa, Peshawar. }
- 2) Inspector General of Police, Khyber PakhtunKhwa, Peshawar.....}
- 3) Deputy Inspector General of Police, DIKhan Range, DIKhan.....} Respondents.
- 4) District Police Officer, Tank

Subject:- **REPLY/ PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.**

Respectfully Shewith.

Para-wise comments on behalf of Respondents are submitted as under:-.

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action and locus standi to file the present appeal.
2. That the appeal is bad for mis-joinder/non-joinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come with clean hands.
5. That the appellant is estopped due to his own conduct.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appeal is not maintainable & is incompetent.

Reply on Facts:-.

- 1) 1ST Portion regarding posting of appellant and taking of occurrence regarding targeting and martyring of Constable Muhammad Tariq is correct to the extent while the remaining portion of the Para is incorrect because the appellant who was Incharge Police Mobile Patrolling Moavin-II deputed from PS SMA Tank, at the time of occurrence, was present at a close distance from the spot but deliberately neglected to respond and rushed the injured constable Muhammad Tariq well in time and committed high act of cowardness due to which precious life of the constable was succumbed to his injuries and the terrorist was also succeeded in his escape good.
- 2) Correct to the extent that all the codal formalities were committed.
- 3) Correct to the extent that all the proceedings were completed under the rules.
- 4) This Para is correct to the extent that the charges were proved against the delinquent official and in light of the enquiry, he was removed from service.
- 5) Correct to the extent that the departmental appeal was considered, examined and rejected.
- 6) It is incorrect, the Hon; able Service Tribunal has got no jurisdiction to entertain this appeal in its present form.

REPLY TO GROUNDS:


- i. In correct because proper departmental enquiry was conducted. Proper opportunity of self defense was provided to the appellant. In light of recommendation of the Inquiry Officer and other circumstantial evidence collected during the enquiry, the serious allegations of cowardness were stand proved, thus the orders passed by the Competent Authorities under existing law and rules thus both the orders are legal and justified.
- ii. Incorrect because the appellant along with Police Party was deputed from PS SMA Tank to Conduct Police Mobile Patrol on Tank-Wana Road and at the time of occurrence he was present at a very close distance of the scene of crime but due serious negligence and act of cowardness he could not respond to the injured constable Muhammad Tariq and the terrorists escaped from the sport; thus as a result of departmental enquiry, the punishment awarded to the appellant is in accordance with the relevant law and justified.
- iii. Incorrect because, including appellant, the remaining Police Officials found involved in inefficiency and cowardness were also dealt with departmentally and after completion of enquires, in light of recommendation of the Inquiry Officer and other circumstantial evidence collected during enquiry, proper punishment were awarded in accordance with the existing relevant law; therefore the allegation of appellant regarding taking no action against other Police Officials is wrong and false. All the lawful opportunities of defense were provided to him including personal hearing thus the order of punishment passed by the Competent Authority is justified.
- iv. Incorrect because at the time of incident, the appellant along with his party was present just at short distance of the scene of crime but due to inefficiency and act of cowardness he closed his eyes and could not response well in time intentionally; thus the proceeding initiated / completed against him and as a result of which order of punishment passed by the Competent Authority and filing of departmental appeal by the Appellant Authority is legal and in accordance of existing law / rules.
- v. 1st Portion relates to record whereas the remaining Portion of the Para is incorrect.
- vi. Incorrect because to ascertain factual position of the circumstances, the appellant was properly charged sheeted. The charge sheet along with statements of allegations was got served upon the appellant. The Inquiry Officer was nominated. During enquiry, sufficient opportunities of self defense were provided. In light of recommendation of the Inquiry Officer, a Final Show Cause Notice was issued and got served upon the appellant properly. He was also heard in person. Therefore, the order passed by the Competent Authority is in accordance with the relevant existing law / rules which is legal and justified.
- vii. As stated above that the impugned order of punishment is in accordance with the relevant law / rules.
- viii. Needs no comments.

PRAYER

It is, therefore most respectfully prayed that on acceptance of the instant Para-wise Comments / Reply the appeal of the appellant being devoid of legal footings & merit may graciously be dismissed.


Secretary

**Home & Tribal Affairs Department,
Khyber Pakhtunkhwa Peshawar
Respondent**


Inspector General of Police
Khyber Pakhtunkhwa Peshawar
Respondent


Deputy Inspector General of Police,
Dera Ismail Khan Region.
Respondent


District Police Officer,
Tank.
Respondent

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Subject: Service Appeal No. 632/2016

Mr. Nasrullah No. 191 Ex- Constable
Police Department, Tank

(Appellant).

Versus

- 1) Secretary H& TAs Deptt: Khyber PakhtunKhwa, Peshawar } Respondents.
- 2) Inspector General of Police, Khyber PakhtunKhwa, Peshawar.....}
- 3) Deputy Inspector General of Police, DIKhan Range, DIKhan.....}
- 4) District Police Officer, Tank}

Subject: **AUTHORITY LETTER.**

Inspector Legal Tank of this district police is hereby authorized to appear before the Honorable the Service Tribunal Khyber Pakhtunkhwa Peshawar on our behalf. He is also authorized to deposit any reply/documents/record etc before the Court on our behalf.



Secretary
Home & Tribal Affairs Department:
Khyber PakhtunKhwa, Peshawar
Respondent.



Inspector General of Police
Khyber PakhtunKhwa Peshawar
Respondent



Deputy Inspector General of Police,
Dera Ismail Khan Region.
Respondent



District Police Officer,
Tank.
Respondent



MOST IMMEDIATE/ATIME DIVISION/CASE
GOVERNMENT OF KHYBER PAKHTUNKHWA,
HOME & TRIBAL AFFAIRS DEPARTMENT.
PHONE: 091-9210032 FAX # 9210201.

No. SO (Courts)/HD/4-313/2016.
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Peshawar.

Attention: AIG/Legal

Subject: - **SERVICE APPEAL NO. 632/2016.**

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Section Officer (Courts)

Copy to.

The PS to Secretary Home, Khyber Pakhtunkhwa.

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Subject: Service Appeal No. 632/2016

Mr. Nasrullah No. 191 Ex- Constable
Police Department, Tank

(Appellant).

Versus

- 1) Secretary, H&TAs Deptt: Khyber PakhtunKhwa, Peshawar. }
- 2) Inspector General of Police, Khyber PakhtunKhwa, Peshawar.....} Respondents.
- 3) Deputy Inspector General of Police, DIKhan Range, DIKhan.....}
- 4) District Police Officer, Tank

Subject:- REPLY/ PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Shewith,

Para-wise comments on behalf of Respondents are submitted as under:-

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action and locus standi to file the present appeal.
2. That the appeal is bad for mis-joinder/non-joinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come with clean hands.
5. That the appellant is estopped due to his own conduct.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appeal is not maintainable & is incompetent.

Reply on Facts:-

- 1ST Portion regarding posting of appellant and taking of occurrence regarding targeting and martyring of Constable Muhammad Tariq is correct to the extent while the remaining portion of the Para is incorrect because the appellant who was Incharge Police Mobile Patrolling Moavin-II deputed from PS SMA Tank, at the time of occurrence, was present at a close distance from the spot but deliberately neglected to respond and rushed the injured constable Muhammad Tariq well in time and committed high act of cowardness due to which precious life of the constable was succumbed to his injuries and the terrorist was also succeeded in his escape good.
- 2) Correct to the extent that all the codal formalities were committed.
- 3). Correct to the extent that all the proceedings were completed under the rules.
- 4) This Para is correct to the extent that the charges were proved against the delinquent official and in light of the enquiry, he was removed from service.
- 5) Correct to the extent that the departmental appeal was considered, examined and rejected.
- 6) It is incorrect, the Hon; able Service Tribunal has got no jurisdiction to entertain this appeal in its present form.

REPLY TO GROUNDS:

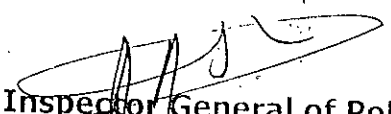
- i. In correct because proper departmental enquiry was conducted. Proper opportunity of self defense was provided to the appellant. In light of recommendation of the Inquiry Officer and other circumstantial evidence collected during the enquiry, the serious allegations of cowardness were stand proved, thus the orders passed by the Competent Authorities under existing law and rules thus both the orders are legal and justified.
- ii. Incorrect because the appellant along with Police Party was deputed from PS SMA Tank to Conduct Police Mobile Patrol on Tank-Wana Road and at the time of occurrence he was present at a very close distance of the scene of crime but due serious negligence and act of cowardness he could not respond to the injured constable Muhammad Tariq and the terrorists escaped from the sport; thus as a result of departmental enquiry, the punishment awarded to the appellant is in accordance with the relevant law and justified.
- iii. Incorrect because, including appellant, the remaining Police Officials found involved in inefficiency and cowardness were also dealt with departmentally and after completion of enquires, in light of recommendation of the Inquiry Officer and other circumstantial evidence collected during enquiry, proper punishment were awarded in accordance with the existing relevant law; therefore the allegation of appellant regarding taking no action against other Police Officials is wrong and false. All the lawful opportunities of defense were provided to him including personal hearing thus the order of punishment passed by the Competent Authority is justified.
- iv. Incorrect because at the time of incident, the appellant along with his party was present just at short distance of the scene of crime but due to inefficiency and act of cowardness he closed his eyes and could not response well in time intentionally; thus the proceeding initiated / completed against him and as a result of which order of punishment passed by the Competent Authority and filing of departmental appeal by the Appellant Authority is legal and in accordance of existing law / rules.
- v. 1st Portion relates to record whereas the remaining Portion of the Para is incorrect.
- vi. Incorrect because to ascertain factual position of the circumstances, the appellant was properly charged sheeted. The charge sheet along with statements of allegations was got served upon the appellant. The Inquiry Officer was nominated. During enquiry, sufficient opportunities of self defense were provided. In light of recommendation of the Inquiry Officer, a Final Show Cause Notice was issued and got served upon the appellant properly. He was also heard in person. Therefore, the order passed by the Competent Authority is in accordance with the relevant existing law / rules which is legal and justified.
- vii. As stated above that the impugned order of punishment is in accordance with the relevant law / rules.
- viii. Needs no comments.

PRAYER

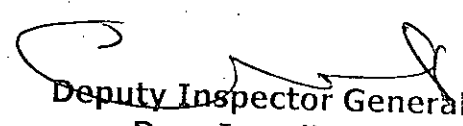
It is, therefore most respectfully prayed that on acceptance of the instant Para-wise Comments / Reply the appeal of the appellant being devoid of legal footings & merit may graciously be dismissed.



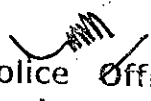
Secretary
Home & Tribal Affairs Department,
Khyber Pakhtunkhwa Peshawar
Respondent



Inspector General of Police
Khyber Pakhtunkhwa Peshawar
Respondent



Deputy Inspector General of Police,
Dera Ismail Khan Region.
Respondent



District Police Officer,
Tank.
Respondent

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Subject: Service Appeal No. 632/2016

Mr. Nasrullah No. 191 Ex- Constable
Police Department, Tank

(Appellant).

Versus

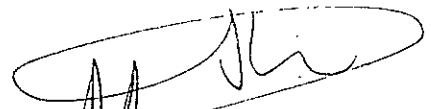
- 1) Secretary H& TA's Deptt: Khyber PakhtunKhwa, Peshawar } Respondents.
- 2) Inspector General of Police, Khyber PakhtunKhwa, Peshawar.....}
- 3) Deputy Inspector General of Police, DIKhan Range, DIKhan.....}
- 4) District Police Officer, Tank

Subject: **AUTHORITY LETTER.**

Inspector Legal Tank of this district police is hereby authorized to appear before the Honorable the Service Tribunal Khyber PakhtunKhwa Peshawar on our behalf. He is also authorized to deposit any reply/documents/record etc before the Court on our behalf.



Secretary
Home & Tribal Affairs Department:
Khyber PakhtunKhwa, Peshawar
Respondent.



Inspector General of Police
Khyber PakhtunKhwa Peshawar
Respondent



Deputy Inspector General of Police,
Dera Ismail Khan Region.
Respondent



District Police Officer,
Tank.
Respondent

Before The Service Tribunal, Khyber Pakhtun-khwa, Peshawar.

Service Appeal.No; 632/2016

Nasrullah, Police Constable.

(Appellant)

Versus

Secy; H&TA's, KPK etc.

(Respondents)

.....

Rejoinder to written statement.

Respectfully, the appellant very humbly submits as under: -

On Preliminary Objections:-

Assertions made by the answering respondents from paras 1 to 7 are denied being incorrect, misconceived, against the law, without any substance or proof and an effort to colour the facts according to their own whims yet factually non-sustainable.

On Factual Objections:-

1. First part of reply pertaining admission by respondents regarding posting of appellant needs no response by the appellant except that it suffices to negate the wrong conclusions drawn by the punishing authority / respondents on neglect in discharge of duties etc by the appellant.
2. Needs no comments since averment of appellant stands admitted by respondents.
3. Though reply appears to be misconceived by the respondents in that proceedings undertaken by respondents were in conflict with law & rules on the subject however, it needs no further comments since averment of appellant stands admitted by respondents.
4. Denied being factually and legally incorrect. Neither there is any sustenance of charges nor the proceedings conformed to the law and rules on the subject. The appellant relies on his averments made in corresponding para of his appeal. Since the entire official records are in

custody of respondents the Tribunal may, in the ends of justice, call for actual records to see and evaluate the facts for itself, however, bias and prejudice on part of the respondents may not be ruled out in light of the relevant records.

5. Except that departmental appeal of appellant stands dismissed rest of contents of corresponding para are denied being factually and legally incorrect. The Tribunal may conveniently assess the high handedness of the respondents while dealing with the case of the appellant who has throughout been denied a fair trial.
6. Pertains to law thus needs no reply.

On Objections to Grounds:-

1. Denied being factually and legally incorrect. Appellant relies on averment made in corresponding para of his appeal.
2. Denied being factually and legally incorrect. The appellant also relies on his averments made in corresponding para of his appeal besides law on the subject. Also that the records of criminal case registered vide FIR No.129/2016 of P.S. Tank speak otherwise than involvement of appellant in any misconduct.
3. Denied being factually and legally incorrect. The criteria adopted by the respondents in treating other similarly placed persons /employees differently than appellant would speak volumes about the impropriety of action on part of the respondents. The appellant also relies on his averments made in corresponding para of his appeal.
4. Denied being factually and legally incorrect. The appellant also relies on his averments made in corresponding para of his appeal besides law on the subject. Also that the records of criminal case registered vide FIR No.129/2016 of P.S. Tank speak otherwise than involvement of appellant in any misconduct.
5. Since records are held by the respondents the same may be requisitioned to adjudged the issue by this Hon'ble Tribunal. The appellant however, relies on his averments made in corresponding para of his appeal.
6. Denied being factually and legally incorrect. The appellant relies on his averments made in corresponding para of his appeal.

7. Denied being factually and legally incorrect. The appellant relies on his averments made in corresponding para of his appeal.
8. Needs no comments.


PRAYER:

In view of the facts and grounds, as mentioned above as well as in the main appeal, it is requested that by setting-aside the impugned orders of Respondents as prayed through appeal, declaring the same as illegal, void ab-initio, nullity in law and ultras-virus thus of no consequence on the rights of the appellant, to kindly allow re-instatement of the appellant in service together with grant of all back benefits from the date when he was actually deprived of the same. Any other remedy deemed appropriate by the Hon`ble Tribunal in the circumstances of the matter is solicited, too.

Humbly,

Dated 26.7.2017.

Appellant,
Through Counsel.



(Muhammad Ismail Alizai)
Advocate High Court.

Affidavit.

I, Nasrullah, the appellant, affirm and declare on oath that contents of this rejoinder are true & correct to the best of my knowledge and belief and that nothing is willfully concealed or kept from the Tribunal.

Dated: 26.7.17




Deponent.

Before The Service Tribunal, Khyber Pakhtun-khwa, Peshawar.
Service Appeal No; 632/2016

Nasrullah, Police Constable.

(Appellant)

Versus

Secy; H&TA's, KPK etc.
.....

(Respondents)

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2. Needs no comments since averment of appellant stands admitted by respondents.
3. Though reply appears to be misconceived by the respondents in that proceedings undertaken by respondents were in conflict with law & rules on the subject however, it needs no further comments since averment of appellant stands admitted by respondents.
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custody of respondents the Tribunal may, in the ends of justice, call for actual records to see and evaluate the facts for itself, however, bias and prejudice on part of the respondents may not be ruled out in light of the relevant records.

5. Except that departmental appeal of appellant stands dismissed rest of contents of corresponding para are denied being factually and legally incorrect. The Tribunal may conveniently assess the high handedness of the respondents while dealing with the case of the appellant who has throughout been denied a fair trial.
6. Pertains to law thus needs no reply.

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8. Needs no comments.

PRAYER:

In view of the facts and grounds, as mentioned above as well as in the main appeal, it is requested that by setting-aside the impugned orders of Respondents as prayed through appeal, declaring the same as illegal, void ab-initio, nullity in law and ultra-virus thus of no consequence on the rights of the appellant, to kindly allow re-instatement of the appellant in service together with grant of all back benefits from the date when he was actually deprived of the same. Any other remedy deemed appropriate by the Hon'ble Tribunal in the circumstances of the matter is solicited, too.

Dated 26.7.2017

Humbly,

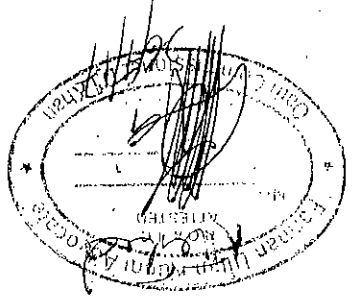
Appellant,
Through Counsel.

Muhammad Ismail Alizai
(Muhammad Ismail Alizai)
Advocate High Court.

Affidavit.

I, Nasrullah, the appellant, affirm and declare on oath that contents of this rejoinder are true & correct to the best of my knowledge and belief and that nothing is willfully concealed or kept from the Tribunal.

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Deponent.

M.A.

Before The Service Tribunal, Khyber Pakhtun-khwa, Peshawar.
Service Appeal No; 632/2016

Nasrullah, Police Constable.

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Versus

Secy; H&TA's, KPK etc.

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6. Pertains to law thus needs no reply.

On Objections to Grounds:-

1. Denied being factually and legally incorrect. Appellant relies on averment made in corresponding para of his appeal.
2. Denied being factually and legally incorrect. The appellant also relies on his averments made in corresponding para of his appeal besides law on the subject. Also that the records of criminal case registered vide FIR No.129/2016 of P.S. Tank speak otherwise than involvement of appellant in any misconduct.
3. Denied being factually and legally incorrect. The criteria adopted by the respondents in treating other similarly placed persons /employees differently than appellant would speak volumes about the impropriety of action on part of the respondents. The appellant also relies on his averments made in corresponding para of his appeal.
4. Denied being factually and legally incorrect. The appellant also relies on his averments made in corresponding para of his appeal besides law on the subject. Also that the records of criminal case registered vide FIR No.129/2016. of P.S. Tank speak otherwise than involvement of appellant in any misconduct.
5. Since records are held by the respondents the same may be requisitioned to adjudged the issue by this Hon'ble Tribunal. The appellant however, relies on his averments made in corresponding para of his appeal.
6. Denied being factually and legally incorrect. The appellant relies on his averments made in corresponding para of his appeal.

7. Denied being factually and legally incorrect. The appellant relies on his averments made in corresponding para of his appeal.
8. Needs no comments.

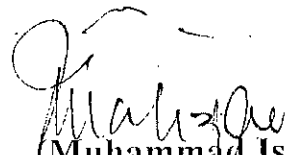
PRAYER:

In view of the facts and grounds, as mentioned above as well as in the main appeal, it is requested that by setting-aside the impugned orders of Respondents as prayed through appeal, declaring the same as illegal, void ab-initio, nullity in law and ultra-virus thus of no consequence on the rights of the appellant, to kindly allow re-instatement of the appellant in service together with grant of all back benefits from the date when he was actually deprived of the same. Any other remedy deemed appropriate by the Hon'ble Tribunal in the circumstances of the matter is solicited, too.

Humbly,

Dated 26.7.2017.

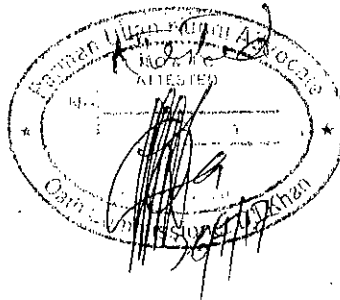
Appellant,
Through Counsel.

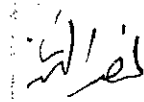

(Muhammad Ismail Alizai)
Advocate High Court.

Affidavit.

I, Nasrullah, the appellant, affirm and declare on oath that contents of this rejoinder are true & correct to the best of my knowledge and belief and that nothing is willfully concealed or kept from the Tribunal.

Dated: 26.7.17




Deponent.

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER AKHTUNKHWA
PESHAWAR.**

AMENDED PETITION IN SERVICE APPEAL No. 632/2016.

Ex-Const. Nasrullah No. 191

(Appellant).

Versus

1. Inspector General of Police,
Khyber PakhtunKhwā, Peshawar.


2. Regional Police Officer,
Dera Ismail Khan Region.


)Respondents.

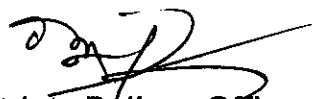
3. District Police Officer,
Tank.

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS.

We, the respondents do hereby solemnly affirm and declare on oath that the contents of Comments / Written reply to Appeal are true & correct to the best of our knowledge and nothing has been concealed from this Honorable Tribunal.


Inspector General of Police
Khyber PakhtunKhwā Peshawar
Respondent No. 2


Regional Police Officer,
Dera Ismail Khan Region.
Respondent No. 3


District Police Officer,
Tank.
Respondent No. 4

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
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AMENDED PETITION IN SERVICE APPEAL No. 632/2016.

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(Appellant).

Versus

1. Inspector General of Police,
Khyber PakhtunKhwa, Peshawar.

2. Regional Police Officer,
Dera Ismail Khan Region.

3. District Police Officer, Tank.

) Respondents.

Para-wise comments on behalf of Respondents

Respectfully Shewith,

Para-wise comments on behalf of Respondents are submitted as under:-.

PRELIMINARY OBJECTIONS:

1. That the petitioner has got no cause of action and locus standi to file the present amended petition in appeal.
2. That the amended petition in appeal is bad for misjoinder/non-joinder of necessary parties.
3. That the amended petition in appeal is not maintainable and badly time barred.
4. That the petitioner has not come with clean hands to the Hon'able Tribunal.
5. That the petitioner is estopped due to his own conduct.
6. That the petitioner has concealed the material facts from Honorable Tribunal.

BRIEF ON FACTS.

1. Correct to the extent.
2. Pertains to record.
3. Correct to the extent.
4. Incorrect because the Appellant Authority i.e. RPO/Dera Ismail Khan Region has called on the appellant called on in Orderly Room and heard in person. The enquiry file along with reply to the departmental appeal was also perused. After perusal of enquiry file and personal hearing, the RPO/Dera Ismail Khan Region

(Appellant Authority) has dismissed the departmental appeal of the appellant vide order Endst. No. 1633/ES, dated 18.04.2018 which is legal and justified.

5. Incorrect because the appellant has further lodged review departmental representation before the Provincial Police Officer, Khyber Pakhtunkhwa Peshawar against the impugned order of DPO/Tank wherein the appellant was awarded major punishment of Removal from Service and RPO/Dera Ismail Khan Region wherein the departmental appeal of the appellant was dismissed vide Endst. No. 1633/ES, dated 18.04.2018. As per Policy of CPO/KP Peshawar, the appellant was summoned with the direction to appear before the Appellant Board for personal hearing. He has appeared and heard in person. After perusal of the enquiry file along with order of RPO/Dera Ismail Khan Region, the Appellant Board has converted the punishment of removal from service of the appellant into Compulsory Retirement from Service vide Order No. S/7353-60/16, 15.11.2016 which is correct.
6. Incorrect because the appellant was summoned by the Appellant Board, CPO/KP, Peshawar. He has appeared before the Board and heard in person thus the order passed by the Appellant Board regarding conversion of punishment of appellant from Removal from Service into Compulsory Retirement from Service vide Order No. S/7353-60/16, 15.11.2016 is legal and justified; therefore the amended petition is meritless and not maintainable.
7. Incorrect because the appellant has got no cause of action and the instant amended petition in Service Appeal is not maintainable.

GROUND:

1. Incorrect because while passing orders, the Competent Authorities have observed all legal formalities required under the existing law / rules thus the orders passed by the Competent Authorities are legal and justified.
2. Incorrect because during enquiry and hearing of departmental appeals of the appellant lodged by him against the impugned orders of DPO/Tank wherein the appellant was awarded major punishment of Removal from Service and RPO/Dera Ismail Khan Region wherein the departmental appeal of the appellant was dismissed and order of Review Board wherein the punishment of Removal from Service was converted into Compulsory Retirement from Service, all legal formalities were strictly observed thus the order passed by the Competent Authorities are within the parameter of existing relevant law / rules.

3. Incorrect the appellant was properly charge sheeted. The Inquiry Officer was nominated. The departmental enquiry was conducted. Opportunities of self defense were provided. After completion of departmental enquiry, the punishment of Removal from Service was awarded to the appellant by the Competent Authority which is legal and correct.

4. Incorrect because while passing orders, the Competent Authorities have observed all legal formalities required under the existing law / rules thus the orders passed by the Competent Authorities are legal and justified.

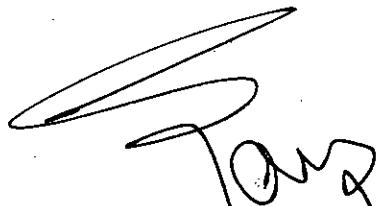
5. As discussed above in Para No. d above.


6. Incorrect because the appellant has got no cause of action and the instant amended petition in Service Appeal is being meritless and not maintainable.


7. As discussed in Para No. f above.

8. That the Respondents may also be allowed to raise additional objection at the time of arguments

In view of above, it is humbly prayed that on acceptance of Para-wise comments, the Amended Petition in Service Appeal may kindly be dismissed being meritless and badly time barred.


Inspector General of Police
Khyber Pakhtunkhwa Peshawar
Respondent No. 2


Regional Police Officer,
Dera Ismail Khan Region.
Respondent No. 3


District Police Officer,
Tank.
Respondent No. 4

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER AKHTUNKHWA
PESHAWAR.

AMENDED PETITION IN SERVICE APPEAL No. 632/2016.

Ex-Const. Nasrullah No. 191


(Appellant).


Versus

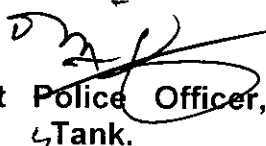
1. Inspector General of Police,
Khyber PakhtunKhwa, Peshawar.
2. Regional Police Officer,
Dera Ismail Khan Region.)Respondents.
3. District Police Officer,
Tank.

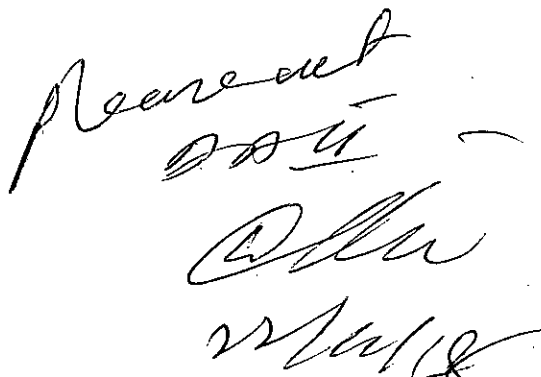
COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS.

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Khyber PakhtunKhwa Peshawar
Respondent No. 2


Regional Police Officer,
Dera Ismail Khan Region.
Respondent No. 3


District Police Officer,
Tank.
Respondent No. 4



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 734 /ST Dated 10-4-2019


To,

1. District Police Officer,
Tank,

SUBJECT: - ORDER IN APPEAL NO. 632/2016, NASRULLAH & (1) OTHER VS GOVT.

I am directed to forward herewith a certified copy of Order/Judgment dated 26.03.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR