BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 676/2014

Date of institution ... 13.05.2014 Date of judgment ... 06.11.2017

Rizwan Ullah Khan, Ex-Constable No. 2345, Elite Force, District Bannu

(Appellant)

VERSUS

- 1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 2. The Commandant/Inspector General of Police, Elite Force, Khyber Pakhtunkhwa, Peshawar.
- 3. The Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.

(Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 28.02.2014 WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND AGAINST THE FINAL REJECTION ORDER DATED 30.04.2014 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

Mr. M. Asif Yousafzai, Advocate. Mr. Usman Ghani, District Attorney

For appellant. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI MR. GUL ZEB KHAN MEMBER (JUDICIAL) MEMBER (EXECUTIVE)

Our

JUDGMENT

judgment shall dispose of aforementioned service appeal as well as Service Appeal No. 677/2014 titled "Fawad Khan-Versus-The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others, Service Appeal No. 678/2014 titled Umar Jan Khan-Versus- The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and

MUHAMMAD AMIN KHAN KUNDI, MEMBER: -

others, Service Appeal No. 679/2014 titled "Naseeb Ullah Khan-Versus- The



Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others and Service Appeal No. 680/2014 titled "Imtiaz Ali Khan-Versus- The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others as the aforesaid service appeals have been filed against the order dated 28.02.2014 whereby the competent authority (Deputy Commandant) have imposed major penalty upon the appellants and dismissed them from service on the allegations that they alongwith others were deputed for Naka bandi duty with SI Imam Hussain Shaheed, the then SHO PS Haved District Bannu, proclaimed offender namely Amin Shah started firing upon the then SHO in the area of Skiekh Fareed Baba resultantly he sustained injuries and died, whereas the accused decamped from the scene after occurrence without any hindrance of the appellants and other as they became a silent spectator. Thus they have been ceased to become good police officials as well as guilty of misconduct.

Learned counsel for the appellants argued that the impugned orders as well

the witnesses were recorded during inquiry in the presence of the appellants nor

they were given opportunity of cross examination. It was further contended that

Muhammad Shoaib and Nasir Zaman were also dismissed from service on the

same allegations but their departmental proceeding were conducted separately and

in that departmental proceeding the present appellants were also charge sheeted for

the same allegations alongwith Muhammad Shoaib and Nasir Zaman. It was

as the order passed by the departmental authority are against the law, rules and norms of justice. It was further contended that neither proper inquiry was conducted nor proper opportunity of personal hearing and defence were provided to the appellants, even show-cause notice was also not issued to the appellants before passing the impugned order therefore, the orders passed by the competent authority as well as the departmental authority are illegal and void ab-initio. It was further contended that the occurrence has not taken place in the mode and manner alleged by the respondents. It was further contended that neither the statements of

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further contended that since Muhammad Shoaib and Nasir Zaman were also departmentally proceeded for the same allegations therefore, the respondents were duly bound to initiate one departmental proceeding against the present appellants alongwith Muhammad Shoaib and Nasir Zaman but the respondents have separately initiated departmental proceeding against the two other officials which has rendered the inquiry proceeding illegal and liable to be set-aside.

- On the other hand, Mr. Usman Ghani learned District Attorney opposed the contention of learned counsel for the appellants and contended that the appellants were charged sheeted on the allegations that they alongwith two others namely Muhammad Shoaib and Nasir Zaman were on duty with SI Imam Hussain Shaheed, the then SHO PS Haved district Bannu, proclaimed offender namely Amin Shah started firing upon the then SHO in the area of Skiekh Fareed Baba resultantly he sustained injuries and died, whereas the accused decamped from the scene after occurrence of the offence without any hindrance of the appellants as they became a silent spectator. Thus they have been ceased to become good police officials as well as guilty of misconduct. It was further contended that proper charge sheet was framed, statement of allegations was served upon the appellants and proper inquiry was initiated wherein statement of the appellants alongwith other officials were recorded and after recording evidence the inquiry officer recommended them for major penalty. It was further contended that appellants were also provided opportunity of personal hearing and defence but they have failed to satisfy the high-ups therefore, the competent authority has rightly dismissed them from service.
- 4. We have heard the arguments on both side and gone through the record.
- 5. Perusal of the record reveals that the appellants were charge sheet on the allegations that on 13.01.2013 they were deputed for Naka bandi duty with SI Imam Hussain Shaheed, the then SHO PS Haved district Bannu and proclaimed offender namely Amin Shah started firing upon the then SHO in the area of Skiekh

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Fareed Baba resultantly he sustained injuries and died, whereas the accused decamped from the scene after occurrence of the offence without any hindrance of the appellant as they became a silent spectator. Thus they have been ceased to become good police officials as well as guilty of misconduct. The record further reveals that the departmental proceedings were initiated against the appellants alongwith two other officials namely Muhammad Shoaib and Nasir Zaman but the departmental proceedings against Muhammad Shoaib and Nasir Zaman was initiated separately by the other inquiry officer. The record further reveals that during inquiry, statements of some other officials have been recorded but there is nothing on record to show that the appellants were provided opportunity of cross examination upon the said witnesses. Furthermore, that after completion of inquiry proceeding the competent authority was duly bound to provide copy of inquiry proceeding to the appellants with show cause notice but there is nothing on the record to show that before imposing major punishment the copy of inquiry proceeding were handed over to the appellants. Even a show-cause notice was not issued to the appellants before imposing the major punishment which have rendered all the inquiry proceeding illegal and liable to be set-aside. Therefore, we are constrained to accept the present appeals, set-aside the impugned order and reinstate the appellants in service. However, the respondent-department is at liberty to conduct a de-novo inquiry against the appellants within a period of three months from the receipt of this judgment. In case the de-novo inquiry is conducted the intervening period will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

<u>ANNOUNCED</u> 06.11.2017

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MEMBER

Muligmmane Amin (MUHAMMAD AMIN KHAN KUNDI)

MEMBER

06.11.2017

Appellant with counsel present. Mr. Usman Ghani, District Attorney alongwith Mr. Sheraz, Head Constable for the respondents also present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed on file, we are constrained to accept the present appeals, set-aside the impugned order and reinstate the appellants in service. However, the respondent-department is at liberty to conduct a de-novo inquiry against the appellants within a period of three months from the receipt of this judgment. In case the de-novo inquiry is conducted the intervening period will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 06.11.2017

MUHAMMAD AMIN KHAN KUNDI)
MEMBER

(GUL ZEB KHAN) MEMBER 17.03.2017

Appellant in person and Addl: AG alongwith Mr. Muhammad Shiraz, H.C and Mr. Asghar Ali, H.C for respondents present. Appellant requested for adjournment. To come up for arguments on 08.06.2017.

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(ASHFAQUE TAJ) MEMBER (MUHAMMAD AAMIR NAZIR) MEMBER

08.06.2017

Clerk of the counsel for appellant and Mr. Sheraz Khan, HC alongwith Mr. Muhammad Adeel Butt, Additional AG for the present of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 03.10.2017 before D.B.

(Muhammad Amin Khan Kundi) Member

(Gul Zep Khan) Meynber

03.10.2017

Appellant in person and Asst: AG alongwith Mr. Muhammad Farooq, Inspector (Legal) for respondents present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 06.11.2017 before D.B.

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(AHMAD HASSAN) MEMBER (MUHAMMAD HAMID MUGHAL) MEMBER

ا المسارو کیانی رپورت آزان آمین شاه عرف شاه صداحب ولد محمد نور شاه سده فه شده فرید با با بروید هال جانی میل ممیتن خیل ضدلی بنون

: 47 شاه صاحب شمم بی بی 7 6 8 G G محمرنورشاہ (زیرہ حیات ہے) وافرهن نو ت ہو پنگی ہے۔ . تو _{تن}یت ىلىن ئىيداش: تتريا 1972 . : ال ال ال JL-40/45 اسلام .. فر ذیر . د يو بند ي ، شنی فين بات: ... Nil د بگرز بان جو بول سکتا ہو: ث: پښتو څخ نريد بابا ويد عائے پیدائش: سيد (شاه جي) شادی شده به بیوی کا نام شیم لی بی از دوا جي حثيت: شاري کارو: يرا باشاختي كار ونمبر: يا "يورث نمبر: NIL م و اکل نمبرات: 03329226561,03068021472 زيراستهال ہے۔ يا نچو يں جہاعت د پنی آخایم : بدرسه دا رالعلوم علیم خان ہوید ، مدر سدا مدا دالعلوم در ہے ضلے ،معراج العلوم بنوں شی ، نظا میہ میرعلی عیدک ۔ گا ڑ ي : سركی قیمت . و من لا کھرو ہے بير و ان ملک سفر : أفغالستان ز رايه معاش:

مستاهل پيته:

بيئك اكاؤنك إل

ز بان جولکھ پڑ ھ سکتا ہو: _

ا فغانستان ہو بدا ڈائی جزل اسٹور رگاؤں مین بھی دکان تھا۔ ملک پاکستان سویہ نہبر پچ کیا اور ضلع ہوں کے گاؤں شخ فرید ہا ہا ہوید صرف پشتو ہولتا ہے۔ مرف پشتو ہولتا ہے۔ N

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گاؤں میں دو کنال گھرتقریبا مشترک 8 کنال اراضی

کا ہری شکل ،صورت: جسمانی صحت مضبوط، ،گندی رنگ ، قد " 5 6 11 ، بال ملائیم ، بالوں کارنگ سیاح ، چہرہ ممول ، پیشانی متوازن ، آنکھیں کا لے ، ناک کمبی ،سرگول اور نرل ،کان متوازن ، داڑھی کمبی ،مونچیس متوازن ، ہونی متوازن ،، معذوری NIL ۔تھوڑی متوازن ، چال درمیا شد ، ،اور دائیں آنکھ کے پنچیل کا نشان ۔

دائیں آئکھ کے نیچٹل کا نشان ٹ

میں علاقا کی امن میٹی کا سربراہ ہول -

کا نڈر آئیل قوم افغانی حقانی میٹ ورک سے NWA میں ٹریننگ حاصل کی ۔

جميل كما نذرن انعام اللداسناد

صرف كلاشئون وپيتول -

35/40 دن

خوست ،گر دیز دغیر ۵ -

مجرم اشتہاری ۱۶۱ ہے۔ جوضلع بنوں اورضلع کلی مروت پولیس کومطلوب تھا۔

ظا ہری علامت:

نگيه کلام:

جها دی تربیت ا ٹرینگ:

أستاد كانام: _

اسلحه کی تربیت: ۔

آیام جهاد: په

مقام جهاد: _

معلو مات برائے موجود ہ حالت :

معلومات برائے بیٹے ، بیٹیاں: - ،

(۱) ما د جمر 16 سال (گاؤں ٹن چنگ جی چلاتا ہے)

(2) محد ہجا دہمر 10 سال گاؤں میں سکول پڑ ہنتا ہے۔

(3) محد عربعمر 7 سال سكول و دين نتليم پڙ هتا ہے۔

(4) آمنه بی بی بیم 8 سال گھرخود

(5) طفلكه فهده بعمر 6 سال

(6) طفلكه كلثوم بعمر 5 سال

برا داران: _

(1) فریدالله ولد محمد نورشاه (تحییتی با ژی کرتا تھا آ جکل PO ہے) -

همشيره گان:

(1) سماة آفابه بي بي زوجه اسلم ولدعزيز رحمن سكندتاجي كله ويكان

(2) پروین بی بی زوجه رو مال شاه سکنه شیخ فرید با با هوید

(3) کیلی بی بی زوجه حضرت علی شاه سکنه دیبه ام

(4) رابعیه لی لی زوجه د لا با زسکنه کلیم خان موید

(۵) بلتیس بی بی زوجه عرفان سکنه کالج نز دسبری منڈی بنوں

(6) دلثا د بی بی زوجه مرا دعلی سکنه سره در گه موید

(7) شہبازیی لی روجہ وحید اللہ سکنہ ورے ضلے

(1) كل رجم ثناو دارا جمل شاه نكنه شيخ فريد با با هويد -

ما مول گان :

(1) نورديها ټولدا يوپ خان سكندلنډيواه حال ميال والى پنجا سب

د وست ،اور دیگرگروپ کے بار ہےمعلو مات : ۔

(1) كما نثر رمولوى شير عالم جاني خيل (ڈرون حملے ميں ہلاك شد)

(2) كما نذ رسيف الدين جاني خيل (ہلاك شد)

(3) كمانڈ راختر محمد جانی خيل

(4) مولوی اسحاق جانی خیل (حقانی گروپ)

(5) زرگل عرف آنکل ولدسین کل عرف پاسین گریزه شاه جهان به

(6) كما نذراليا سعرف بلال ولد حضرت على سكنه منديويه

(7) كما نڈر طارق ولدميرگل سكنەنور ژ

(8) كما نذرشيرمحدعر ف سيفي ولدشيرازا دسكنه اخوندخيل نوازآ با دميريان ـ

(9) كما نذرا فسرعلى عرف پشتون ولدمجمة على سكنه مزا تكه ميريان وغيره به

III

ضانت كے متعلق معلومات.

NIL

معلو مات بيرون ملك شهريت

<u>سوانح عمری: _</u>

ا بین شاہ عرف شاہ صاحب ولد محمد نور شاہ سکنے شخ فرید باباہ وید کو پیدا ہو کر زیر ساید والدین پرورش پاکر جب ہوش سنبالا تو غربت کی وجہ ہے تعلیم سے پانچویں تک حاصل کیں ۔ آئ سے تقریبا 23 سال قبل ساۃ شمیم بی بی دختر بڑ ٹی رحمٰی سکند تا ہی کلہ کے ساتھ شاہ کی ۔ جس کے بطن سے تین بیٹے اور تین بیٹیاں پیدا ہو کیں ۔ چو نکد آج سے دس سال پہلے شالی ، جنو بی وزیر سنان وصلی ہوا ۔ میرا ایشاہ جہا دی مرکز میں 03 ماہ تک ٹرینگ کی ۔ بعد جو سے تقریبا 20 ماہ تک ٹرینگ کی ۔ بعد ٹرینگ کی ۔ بعد ٹرینگ کی تقریبا 2008 سے وقا فو قا افغا نستان کے صوبہ خوست وگر دیز وغیرہ میں کما بقر رشیر عالم وغیرہ کی قیا وت میں جملے کئے ۔ تقریبا مارے ساتھ ٹرینگ کی تقریبا 200 میں میں مائنگ کی ۔ بعد ٹرینگ کے تقریبا مارے ساتھ والی میں گرا دا ۔ بھر افظاہ میں میرا نشاہ سے جانی خیل ، عثان ہوید ہم والی ہیں برانشاہ ، شوال میں گرا دا ۔ 2014ء میں جب ضرب عضب شروع ہوا ۔ قبل میں نو پر ایسا میں میں میں میں میں میں دہا ہو ہے میں دہا ہو ہو میں میں میں میں میں میں دہا ہو ہو میں میں دہا ہو ہو میں میں میں دہا ہو ہو ہوا ۔ تبد میں میں دہا ہو ہو ہوا ۔ تبد میں است میرا نشاہ سے جانی خیل اس میں عرصہ جانی خیل سوئی غرضیوں ، میرعلی میرا نشاہ ، شوال میں گرا دا ۔ 2014ء میں جب ضرب عضب شروع ہوا ۔ قبل میں دہا کئی پر بر تھا ۔ اور بعد میں مین خیل جانی خیل میں میں دہا کئی میں دہا کئی ساتھ کو ککہ شاہد خان داخلی والی نور میں دہا کئیں پر بر تھا ۔ اور بعد میں میں خیل میں دہا کئی میں دہا کئی بر بر ہوا ۔

<u>وقوعه جات: _</u>

(۱) سب سے پہلے 2008ء میں ہمراہ طالبان گروپ عالی شیر، خالد سکنہ ہوید ، ملک رحمٰن عرف اسلم ،اسلم ولد نزیرا ورغلام فرید سکنہ درے دڑیز کے ہوید آڈاہ میں موجود تھا۔ رات کا وقت تھا کہ SHO ہوید نواب خان مروٹ (شہد) کے ساتھ ہما را مقابلہ ہوا۔ جس میں ڈرائیورعمران شہید ہوا۔ جبکہ ہماری طرف عالی شیر سکنہ ہوید جان بحق ہوا۔ بعد وقوعہ کے ہم واپس مرکز جانی خیل چلے گئے ۔

(۲) 2008ء میں معداختر محد الیاس عرف بلال ، طارق ، شیرمحد اور اضرعلی عرف پشتون ، کمانڈرسیف الدین ، کمانڈرت صدر خیاب ولد وکیل ، کمانڈ رشیر عالم جانی خیل ، کے ساتھ بمقام زندی اکبرخان چوک پرموجود ہتھے ۔ معانیٰ خدیجہ القبعا رکینڈین نژو وہاں ہے گزر رہی تھی ۔ تو میں نے ہ و گرگروپ کے 13/14 طالبان کے ہمراہ انواء کر کے کمانڈر خافلاگل بہور NWA کومیرانشاہ پہنچایا۔ چونکہ کمانڈر خافظاگل بہا در بنے عکومت پاکتنان سے ڈاکٹر عافیہ صدیقی کی رہائی کا مطالبہ کیا تھا۔ صحانی خدیجہ ہم قریب 55/60 سال زیاخراست سپریم کمانڈر خافظاگل بہا در جان بجق ہوئی۔ ۔ وکی۔

(۳) 2013ء میں ہمراہ دیگر گروپ کے بوقت عصر ویلہ گھر خود سکنہ ویہہ ام میں موجود تھا۔ کہ اس دوران امام حسن SHQ ہوید نے ہم پر چھا پہ ارا۔ اور جو ہی امام حسن SHQ میر ہے گھر داخل ہوا۔ نورا بچھ پر بذریعہ کا شکوف فائز کیا۔ جبکہ بیس نے بھی اپنے کلاشکوف ہے فائز کیا۔ جبکہ دوہر ہے ساتھیوں نے فائز بھی کی۔ اور ہینڈ گرنیڈ بھی پھینکا۔ میرے فائزے امام حسن SHO لگ کرزخی ہو گیا۔ جبکہ امام حسن SHO کی فائز بیگ ہے بیس دائیس کی کائی پرزخی ہوا۔ بعد وقوعہ کے میں FR جانی خیل سوئی غرچلا گیا۔

(س) کمانڈ رشیر عالم نے مجھے اور حیدر پکی جانی خیل ، فتح اللہ ولد سند من خیل جانی خیل کو ہمراہ دیگر طالبان سائقی ، أنه بک طالبان سے تشکیل وی کہتم چوکی شخ لنڈک PS ہوید پر حملہ کرو۔ یہ تجویز میں نے کمانڈ رشیر عالم کو دی تھی جائے گھر ہے نز دیکے تھی اور میری نقل ، خرکت ہے ہا خبر رہتے تھے۔اوراس جمڑپ میں ہارا بہت نفصان ہوا۔ اس میں ، مارے دوسائتی جان بحق ہو کمیں۔ یہ وقوعہ 2014 ہومیں ہوا تھا۔

(۵) مورخہ 015-02-03 ماشین ویلا برقام کچہ روڈ بخد ماموخیل مشران ماویز خان ولد در یوب خان سکنہ عالی خیل ، وگیرمشران بسواری گاڑی Vigo جوآری قلعہ سے بعداختام جرگہار ہے تھے۔ برقام ہالا پر بیس معہ فتح اللہ سکنہ ممتن خیل جانی خیل ، رحمٰن ولی جانی خیل ، نصیب الرحمٰن ، خافظ یونس ، ضیاءاللہ ، یسین اور حیدرعلی سکنہ پکی جانی خیل نے کما نار را خرج مجر کے کہنے پر IED بلاسٹ کی۔

(۲) بمقام زندې اکبرخان چوک میں مور خد 2016-02-18 ، کو امراه فاروق ارف خارویه ولد حبیب البلد سکنه کو مکه میا نوالی داخلی سره در گه بمهه دیگر اُز بک طالبان کے شمس الرحمٰن عرف هممروقه ولد مبدالرحمٰن سکنه کو نکه میا نوالی سره در که کو ایم نفه الله سنگی بیمی وه جان بحق ایوا اور دیگر زخمی بهوکیل ۔

ملزم آمین شاہ سے برآ مدشد و آشیاء

(۱) ایک عد د کلاشنگوف بمعه ایمونیشن

(۲) د وعد د بینڈ گر نیڈ

(۳) ایک عدو Q مارکه موبائل سیب (۱) IMEI نمبر Q مارکه موبائل سیب (۱) 353857069805479 نمبر 353857069805477

مو بائل ميم نمبرات: _

0332-9226561(1)

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(150/50 10 0 10 8 HO WE TO SULTER SOLD) 9-5 cerà 200 210 19:15 - 19:15 (200 200) 13 0/ 6,00 سے سول ھیسال بنوں دیورڈ کرنا ہے ۔ کہ اسروز سے سے گوری کو رکاری گا رس عیدهم می گست پر تھا۔ دید کھا) کے راستر روندہ ور سے سے موجود میں نا اوس ساہ ور جرانور سنہ سے فرم رہے دیگر دو آسکان اسم، حسن تولوم سلی بے کلد تشکوف یا در دی بم م پوت پوس کوری دانش رکاری سے اثر تر ہی ۔ کاری دلوی كس- دور دسى بم معى تعنائي - حبك ما شاك كور دسى كم عقيد سوس ر المرك بور الرواد و و المرك ا م فاترنگا برادم واری ریا - نسن منزمان یج لفان می دیارسود سى أين قروها لورد كر يون بارى راب سنة قدا فالر ما رسالور دىكى بم ينك كا برطان بير قركسان مائوان تسافره بالدولومرارسول 1/2.00 Ch vain win Volo V 5 50 ml كرا ور المان و المان و المان و المان مورك فرد این دسخط شبت كار حمل میں المامی کار بی دروج زیامی خان کا گفتتر مر رمزت کر سالی عدع ما بجر، در نادر در کار کران کا کوران کار میافت باندل بوبار 187 تحریم درکسرهام کوال مفرن بورد سامردی (324-353-4ESA) (366) (18 324-353-4ESA) (186) (18

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f admitted Date of admission 13/1/13	aspert of Right Foream,
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Space for particulars as to further reference to the case date of giving evidence in Court of despatch of articles said to contain poison. Shifted to OiT	Bone 42 FA graze wound on Right side of abdoman. Done 4 xx FA entry wound in Left side of abdoman.
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28.07.2016

Counsel for the appellant and Mr. Yaqoob Khan, Naib Court alongwith Assistant AG for respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 29.8. before D.B alongwith connected appeals.

Member

Member

29.08.2016

Appellant with counsel and Mr. Javed Iqbal, DSP (legal) alongwith Additional AG for respondents present. Due to non-availability of D.B comprising of Mr. Pir Bakhsh Shah, Learned Member (Judicial) and Mr. Abdul Latif, Learned Member (Executive) today the instant appeal be placed before said Bench.

In view of the order dated 15.06.201 office is directed to place the instant service appeal alongwith other identical appeals before the said bench for final hearing for 01.12.2016.

Member

Chairman

01.12.2016

Counsel for the appellant and Mr. Javed Iqbal, Inspector alongwith Mr. Ziaullah, GP for respondents present. The D.B is incomplete due to relinquishment of charge by Judicial Member. To come up for arguments on 17-3.17.

13

Member -

Counsel for the appellant and Mr. Javed Iqbal, Inspector (Legal) alongwith Assistant AG for respondents present. Learned counsel for the appellant submitted before the court that the present case has been heard and fixed for order by the other bench vide order sheet dated 26.2.2015 however, later on other connected cases were clubbed and the case was fixed for re arguments. Learned counsel for the appellant requested that the case be sent to bench which has already heard the case and fixed it for order.

Perusal of the case file reveals that vide order sheet dated 26.2.2015 the case was heard and fixed for order however, due to consolidation of connected cases, the case was fixed for rearguments, therefore, it would be appropriate that the case be fixed before bench which has already heard the case and fixed it for order. Case file to sent learned Chairman for making appropriate order.

Member

Member

29.6.2016.

File received and order sheet dated 15.06.2016 perused.

This appeal is entrusted to D.B comprising of Mr. Pir Bakhsh Shah, learned Member (Judicial) and Mr. Abdul Latif, learned Member (Executive) for final hearing and disposal 28 - 7 - 20/6

Charman

11.02.2016

Counsel for the appellant and Mr. Muhammad Jan, Government Pleader with Javed Iqbal, DSP for the respondents present. Since the Court time is over, therefore, arguments could not be heard. To come up for arguments on

28.4.16

MEMBER

MEMBER

28.04.2016 Agent of counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) alongwith Mr. Muhammad Jan, GP for respondents present. Due to strike of the Bar learned counsel for the appellant is not available today before the Court, therefore, case is adjourned for

Member Member

General Assistant Assistant Assistant responsions present rearner counses for a grant for responsions present rearner counses for a grant for responsion and the second responsibility of the second respons

4.08.2015

Junior to counsel for the appellant and Addl. AG with Javed Iqbal, SI (Legal) for the respondents present. Counsel for the appellant was stated to be busy in hon'ble Darul Qaza. Therefore, case to come up for requisite record and further arguments on 08 - 10 - 20/5.

MEMBER

MEMBER

08.10.2015

Counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) alongwith Addl: A.G for respondents present. The Bench is incomplete therefore, case is adjourned to 2-12-15 for arguments.

MENDER

02.12.2015

Counsel for the appellant and Mr. Javed Iqbal, Inspector (Legal) alongwith Asst: AG for respondents present. During course of arguments copy of enquiry report was not found on record. Representative of the respondent-department is directed to produce the same on next date. To come up for arguments on

11-7-2011

Member

Menuber

4.08.2015

Junior to counsel for the appellant and Addl. AG with Mir Faraz Inspector (Legal) for the respondents present. Counsel for the appellant was stated to be busy in hon ble Darul Qaza. Therefore, case to come up for requisite record and further arguments on ______.

MEMBER

MEMBER

4.08.2015

Clerk of Counsel for the appellant and Mr. Muhammad Javed Supdt. with Muhammad Jan, GP for the respondents present. Clerk of learned counsel for appellant stated that cases of similar nature have already been fixed on 13.11.2015 and requested for adjournment to the same date. Therefore, case to come up for arguments along with connected appeals on

MEMBER

MEMBER

09.02.2015

6

Counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) on behalf of respondents alongwith Addl: AG present. Written reply submitted. The case is assigned to D.B for rejoinder and final hearing for 26.02.2015.

Chairman

26.2.2015

Counsel for the appellant and Addl. AG with Inspector Javed Iqbal for the respondents present. Arguments heard. To come up for order on 09.4.2015.

MEMBER.

MEMBER

09.04.2015

Appellant with counsel Addl: A.G for respondents present. Arguments partly heard.

It transpired that seven officials of police department, the appellants were removed from service on the charge of cowardice in the background of incident martyrdom of SHO Imam Hassan. Since the relevant record has been requisitioned in the connected cases of Muhammad Shoaib and Nasir Zaman of the regular police officials, therefore, these cases also be clubbed with the same. To come up for further arguments alongwith connected appeals on 4.8.2015.

MEMBER

MEMBER

14.07,2014

Appellant Deposited
Security & Process Fee
Rs..... Sharped with File
Receipt is Attached with File

14.07.2014

AppealNo. 676/2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the original order dated 28.02.2014, he filed departmental appeal on 14.03.2014, which has been rejected on 30.04.2014, hence the present appeal on 13.05.2014. He further contended that the impugned order dated 30.04.2014 has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules 1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written really/comments 17.10.2014.

This case be put before the Final Bench_

for further proceedings.

17.10.2014

Counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. To come up for written reply/comments alongwith connected appeals on 9.2.2015.

Chairman

Form- A FORM OF ORDER SHEET

Court of	 , - : -				
Case No		· · ·	_676/:	<u> 2014 </u>	

	Court of		
	Case No	676/2014	
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate	
1	2	3	· ·
1	13/05/2014	The appeal of Mr. Rizwan Ullah Khan presented today by Mr. M. Asif Yousafzai Advocate may be lentered in the	ingsplant [Security :
		Institution register and put up to the Worthy Chairman for preliminary hearing.	Injoos,9
2	19-5-201	This case is entrusted to Primary Bench for preliminary hearing to be put up there on $\frac{14-7-2}{1}$	
		CHAIRMAN	
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No	676	/2014
• •		

Mr. Riazwan Ullah Khan

V/S

Elite Force, KPK, Peshawar.

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2.	Copy of Charge Report	- A -	05
3.	Copy of Statement of	- B -	06
	Allegations		
4.	Reply to Charge Sheet	- C -	07-08
5.	Copy of Inquiry Report	D -	09-13
6.	Copy of Penalty Order	- E -	14
7.	Copy of Appeal	- F -	15-16
8.	Copy of Rejection Order	-G-	17
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APPELLANT Rizwan Ullah Khan

THROUGH:

(M. ASIF YOUSAFZAI) ADVOCATE, PESHAWAR.

and

(TAIMUR ALI KHAN) Advocate, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 676 /2014

Mr. Rizwan Ullah Khan, Ex-Constable No.2345, Elite Force, District Bannu.



APPELLANT

VERSUS

- 1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- The Commandant/Inspector General of Police, Elite Force, Khyber Pakhtunkhwa, Peshawar.
- 3. The Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 28.05.2013, WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND AGAINST THE FINAL REJECTION ORDER DATED 30.04.2014 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

13/5/14

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 22.02.20124 AND 30.04.2014 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

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- 1. That the appellant joined the police force in the year 2007 and complete various courses successfully and also has good service record. The appellant as per Court judgments and definition was a civil servant of the province of Khyber Pakhtunkhwa.
- 2. That the appellant was charge sheeted under Police Rules 1975 for not properly performing his duty while on gasht with the then SHO Imam Hussain Shaheed on 13.1.2013. The P.I. Bannu was also nominated as Inquiry Officer in the statement of allegations. Copies of the charge sheet and Statement of Allegations are attached as Annexure-A and B.
- 3. That the appellant filed reply to the charge sheet and denied all the allegations with proofs. Cop of the Reply to Charge sheet is attaché as Annexure-C.
- 4. That then the inquiry was conducted and statement of all the accused constables were recorded but the statement of other officials were not recorded in the presence of appellant nor they were put to cross examination. However, the inquiry officer held the appellant guilty and recommended for major punishment. Copy of the Inquiry Report is attached as Annexure-D.
- 5. That then after the inquiry on 28,5,2013, the appellant was dismissed from service. The appellant filed departmental appeal against the penalty order but the same was also rejected by the appellate authority on 30.04.2014. Copies of Order, Appeal and Rejection Order are attached as Annexure-E, F and G.
- 6. That now the appellant comes to this Honourable Tribunal on the following grounds amongst the others.

GROUNDS:

A) That the order dated 21.5.2013 and 30.4.2014 are against the law, rules, norms of justice and material on record. Therefore, not tenable.

- C) That no chance of personal hearing was provided to the appellant and as such the appellant was condemned unheard which is the violation of Audit Altram Partem.
- D) That none of the other official's statement was recorded in the presence of appellant nor were they put to cross examination, which is also the violation of law and rules.
- E) That the appellant never shown any cowardice and fought for long time nor left the premises. That was also reported by the other officials in their diaries. That aspect was not considered by the inquiry officer.
- F) That then appellant was a civil servant of the province and he was to be dealt according to E&D Rules 2011, but in the instant case the appellant was dealt under Police Rules, 1975 which is gross illegality.
- G) That the appellant was punished for no fault on his part and the given penalty is also very harsh.
- H) That the appellant has not been treated according to law and rules.
- I) That the rejection is not a speaking order and has been passed by incompetent authority despite the fact that the appeal was made to the Commandant Elite Force, K.P.K. but the same was rejected on 30.04.2014 by the Deputy Commandant, Peshawar.
- J) That though the rejection order dated 30.04.2014 is also violation of the 24 Act of the General Clauses as well as Supreme Court's Judgment reported 1981 SCMR Page-2330.

K) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT Rizwan Ullah Khan

THROUGH:

(M. ASIF YOUSAFZAI) ADVOCATE, PESHAWAR.

AND

(TAIMUR ALI KHAN) Advocate, Peshawar.

AB

CHARGE SHEET

I, Dilawar Khan Bangash, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority hereby charge you Constables Rizwan Ullah No. 2345, Company No. 22 Elite Force as follows;

That on 13.01.2013, You were deputed for Naka Bandi duty with SI Imam Hassan Shaheed the then SHO-PS Haved, 01 accused namely Amin Shah started firing upon him in the premises of Sheikh Fareed Baba, Resultantly, He was sustained injured and after then he got embraced martyrdom. The accused decamped from the scene after the commission of offence without any hindrance while they have, become a silent spectator. Thus you have ceased to become good Police officials as well as guilty of misconduct.

- 2. By reason of the above, you appear to be guilty of misconduct under the Police Rules (amended vide NWFP gazette, 27th January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.
- 3. You are, therefore, directed to submit your defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.
- 4. Your written defense, if any, should reach the Enquiry Officer within the specified period, failing which, it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.
- 5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

(DILAWAR KHAN BANGASH)

Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.

SUMMARY OF ALLEGATIONS

I, Dilawar Khan Bangash, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, am of the opinion that Constables Rizwan Ullah No. 2345, Company No. 22 has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette, 27th January 1976).

SUMMARY OF ALLEGATIONS

That on 13.01.2013, they were deputed for Naka bandi duty with SI Imam Hassan Shaheed the then SHO PS Haved, 01 accused namely Amin Shah started firing upon him in the premises of Sheikh Fareed Baba, Resultantly, He was sustained injured and after then he got embraced martyrdom. The accused decamped from the scene after the commission of offence without any hindrance while they have, become a silent spectator. Thus they have ceased to become good Police officials as well as guilty of misconduct.

- 2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Inspector Shabir Ahmad of Elite Force Bannu is appointed as Enquiry Officer.
- 3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.
- 4. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.

(DILAWAR KHAN BANGASH)

Deputy Commandant,

Elite Force, Khyber Pakhtunkhwa, Peshawar.

No. <u>10434 - 38</u>/EF, dated Peshawar the 12408/2013.

Copies to;

- 1. Office Superintendent, Elite Force Khyber Pakhtunkhwa Peshawar.
- 2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
- 3. Inspector Shabir Khan of Elite Force Bannu.
- 4. SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
- FC Rizwan Ullah No. 2345, of Elite Force through reader SP/Elite Bannu.

(DILAWAR KHAN BANGASH)

Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar

12 KK SPEF Lb 2016 C3-60 C1 3 journel - 1 C/2 m 7, 6 - 13. Un to 2345 WI USO 13 1 00 pi 1617 - 18 1/1/ 21 - 2- 1- 6/2 13/2 an injegullile salecold of فكة ولا رن ص أساحة نام ندى ورأيط بروودي - بروانها زارت كاطف على "اس شاه ای شف میدک برنا رنا بین 3 مید زخی سر لوس حال دی س منى بندلى أفظام و عن مكر و وقع واردت سى الح تدلا دماً i La Sin i La Sin il la colo sin il la colo sin il DFe inii فايرنه ما - د سه س زيد و را سال سوار سه و زيسا شل فيه درا و در کا ليکل د 3/10.50 مسور الأرائس ما عف درانه مول ص حدود سن فرسها فرسها لرفت رسا مندار سال سالد در اس دک ای مهای ادر می الرائی می الم الى الرے - (مالك ما ت في - 3 اد فال الر محرفان ك من - الم الى ك الله على codin) -10/6, local vigor dis sie co sie a DFc 3/01- (in 60) أشرن علات 3 سكور لود سي ال فعال من دخل مل - حساً أحد الله سع كفلا رس سان عدا مر الرسس فا مرتب سوى - حد طحالور دو زوردارد حوال سرة مادر فعال مع د فقوال اورلرد وغمار الحفا مردع الو - اع ما نسكان 3 كدان سى بالركوفية كي - كدر الله ام ما الله - فرز لزلشن سحمال ليے - اور تعان ك دولوں ليك عنيون كئ- اور عفالمي سرال نازند عرد عی - درزن س لئل اسیاز نعلا-ادر سایا - که ملا ما ترجی وا اسدور لر ما ما الله سعب الدر سے لئ عاصروع لئے - الدراطاف- ما الدراطاف- ما الدراطاف- ما الدراطاف- ما تعالی ٥٠٠٤ ما- كرا ير نسالي - احساران ادر يرسان دولان عان عالى ما ادر ملي لا اورس الدروزر مى لورسن لي دسي أوادكا فائرند في عان عالمرسوى دى - المه مراک ما کر رحی مالت میں را برنگال - اور سال دولہ میا - بر دول شام ا رام حل تھا

تها عما - لمورى دارلد ا فدرى لفرى الى لو ك تى - مكان كى شريع كى - فلرلى ك سمن كون مه - اوركن داست سي كاردا سي المت المت المت المت المت المالية مرد دن لند ما اک من ول المسال طبقی احران جم بیری فاور ما یکی صب فراد ما یکی مست فراد ما یکی مست فراد سے صلاکی داوئے کی تر تیب دی ۔ اوروق نے مک ک سے اور کوروا ۔ وؤم عدوس دن المان ساف والرن س من ك ما حد وسط والم سا م صاك منا ع القا اس كما - آ من شاه عامد مار رسى فشك كى چه - دوراره ما مرارى وقبل ك ن ك ك ورس من - ما منعوا- ك معرك الموالا- ودن مالاً - { (في 13 - من المهولية) EN ASKULLUIPS 110. 9 @ Skill 602- @ USI WILDFEN م ما س سن رجم نه فسند اوروا المرا ي آخر كم إلى طان لى - إلى سي معلى بم إلى فسي الله ورائد الكراف في عن الأقف كمع - الما من الول في EF لفرى و درسرى منزل الررا التي المروافيا تاكه ذكى سرون ما يمين على من يو - أسى دن ملك المندن كوف الى سد موا. و رئين وقت م سانم نه کشت ما مسام درانی در ادر FiR س قرر اول م من می میان ای عالی ای ع

23h5 المر وموان الر 23h5 منوان ال

ENQUIRY REPORT

During the encounter with militant Amin Shah, Imam Hassan Khan SHO PS Haved was injured and later on succumbed to the injuries. Case FIR No. 9, dated 13-01-2012 u/s 324-353-7ATA PS Haved has been registered in this regard. Police party present with him failed to encounter or to arrest the accused. Constable Rizwanullah No. 2345 Platoon No. 89 was also present with SHO on the spot. Constable Rizwanullah No. 2345 was charge sheeted with the allegations that "the accused decamped from the scene after the commission of the offence without any hindrance while they have become silent spectators. Thus they have ceased to become good police officials as well as guilty of misconduct". I was appointed as enquiry officer.

During the enquiry I recorded the statement of the following Police officers/ officials

- 1. Inspector Murad Ali Khan, Investigation officer.
- 2. Umer Khitab ASHO PS Haved.
- > 3. Constable Hayat Ullah No. 636 PS Haved.
- χ 4. Constable Hamid No. 1808 PS Haved (Pickup driver).
 - 5. Constable Umer Jan No. 2342 Elite Force Bannu
 - 6. Constable Naseebullah No. 4072 Elite Force Bannu
 - 7. Constable Fawad No. 379 Elite Force Bannu
 - 8. Constable Imtiaz Ali No. 1625 Elite Force Bannu
 - 9. Asmat Ullah Reader to DSP Elite Force Bannu.
 - 10. Constable Rizwanullah No. 2345 Elite Force (accused official).

BRIEF OF THE STATEMENTS

- 1. Murad Ali Khan Inspector stated that he has investigated the case FIR No. 13, dated 13-01-2013 u/s 324-353-7ATA PPC PS Haved. He has prepared site plan on the pointation of ASHO and police officials present with SHO on the spot. He has also recorded the statements of the police officials.
 - He has recorded the statements of all police officials on the spot.
 - The incident has occurred outside the house of Amin Shah as pointed by police officials.
 - He has prepared site plan on the pointation of police officials present with Imam Hassan Khan SHO.
 - If the statements of the accused police officials are produced in the court during the trial it will damage the case.

ATTESTED

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- During the investigation he did not find any proof that Imam Hassan Khan SHO had gone to the house of Amin Shah for receiving "MONTHLY".
- Imam Hassan Khan was morally sound.
- 2. Umer Khitab ASHO PS Haved stated that he got information through wireless in police station. He along with police party reached to the spot where DPO and other police nafri had been reached already. They took the injured SHO to hospital and combed the area for arresting the accused but in vain.
 - They reached to the spot after 50 minutes of the incident.
 - Imam Hassan, the injured SHO was taken to the hospital in APC
- 3. Constable Hayat Ullah stated that he along with other police officials went out in police pickup with SHO. They arrested a man namely Hazrat Umer riding by Motor bike in the way. They went towards the house of Amin Shah. When they reached there, SHO directed him to remain with Hazrat Umer, the arrested man and he along with other police officials went towards the house of Amin Shah. After a short while they heard firing, later on they were informed that SHO has been injured.
 - SHO was accompanied by all police officials except him.
 - SHO had gone to the house of Amin Shah for his arrest and not for receiving "MONTHLY".
 - SHO remained injured on the spot for long time that shows their inefficiency.
 - Imam Hassan SHO was morally sound.
 - 4. Hamid Khan No. 1808 stated that he was pickup driver and went out with SHO along with police party. In the way they arrested one man riding by motorbike. When they reached to Sheikh Farid Baba, SHO directed Hayat Ullah to remain with the arrested man. When SHO along with police party went, after short while they heard firing. Constable came and told them that the SHO has been injured. He informed all concerned about the incident. Police nafri came for their assistance with APC. SHO was taken to the hospital in APC.
- I have no knowledge that the SHO was in link with the household of accused Amin Shah.





- 5. Constable Umer Jan No. 2342 stated that he along with other police officials went out along with SHO from Police Station. SHO went towards Sheikh Farid Baba and on the way he arrested one man riding on motorbike. Then they went to Sheikh Farid Baba where SHO entered to one house. After short while he heard firing and came to know that SHO has been injured. He remained present at the spot other police party came for help and SHO was taken to hospital for treatment. He was unaware about raid. Later on he got information that SHO had gone to the house of Amin Shah for receiving "MONTHLY".
 - They were unaware about the raid.
 - SHO had gone to the house of Amin Shah for receiving "MONTHLY".
- 6. Constable Naseebullah No. 4072 stated that he along with other police officials went out along with SHO from Police Station. SHO went towards Sheikh Farid Baba and on the way he arrested one man riding on motorbike. Then they went to Sheikh Farid Baba where SHO entered to one house. He also entered with him. SHO want towards one room, as he reached suddenly someone fired on SHO and SHO was injured. He remained present at the spot and other police party came for their help and SHO was taken to hospital for treatment. He was unaware about raid. Later on he got information that SHO had gone to the house of Amin Shah for receiving "MONTHLY".
 - They were unaware about the raid.
 - SHO had gone to the house of Amin Shah for receiving "MONTHLY".
- 7. Constable Fawad No. 379 stated that he along with other police officials went out along with SHO from Police Station. SHO went towards Sheikh Farid Baba and on the way he arrested one man riding on motorbike. Then they went to Sheikh Farid Baba where SHO entered to one house. After short while he heard firing and came to know that SHO has been injured. He remained present at the spot and other police party came for their help and SHO was taken to hospital for treatment. He was unaware about raid. Later on he got information that SHO had gone to the house of Amin Shah for receiving "MONTHLY".
 - They were unaware about the raid.
 - SHO had gone to the house of Amin Shah for receiving "MONTHLY".



- 8. Constable Imtiaz Ali No. 1625 stated that he along with other police officials went out along with SHO from Police Station. SHO went towards Sheikh Farid Baba and on the way he arrested one man riding on motorbike. Then they went to Sheikh Farid Baba where SHO entered to one house. After short while he heard firing and came to know that SHO has been injured. He remained present at the spot and other police party came for help and SHO was taken to hospital for treatment. He was unaware about raid. Later on he got information that SHO had gone to the house of Amin Shah for receiving "MONTHLY".
 - They were unaware about the raid.
 - SHO had gone to the house of Amin Shah for receiving "MONTHLY".
- 9. **Asmat Ullah** reader to DSP Elite Force Bannu stated that he informed both Shoaib No. 331 and Nasir Zaman No. 1467 time and again by their mobile numbers to come for their statement in the enquiries of Elite constables but they refused and said that they have been dismissed from their service and have no work with police.
- 10. Constable Rizwanullah No. 2345 stated that he along with other police officials went out along with SHO from Police Station. SHO went towards Sheikh Farid Baba and on the way he arrested one man riding on motorbike. Then they went to Sheikh Farid Baba where SHO entered to one house. After short while he heard firing and came to know that SHO has been injured. He remained present at the spot and other police party came for their help and SHO was taken to hospital for treatment. He was unaware about raid. Later on he got information that SHO had gone to the house of Amin Shah for receiving "MONTHLY".
 - They were unaware about the raid.
 - SHO had gone to the house of Amin Shah for receiving "MONTHLY".





CONCLUSION

I have gone through all the statements recorded in the process of enquiry and also police file of the case. This shows that as Constable Imtiaz Ali No. 1625, platoon No. 82 Elite Force Bannu reached to the spot, SHO was injured but he remained silent and unmoved. He neither encountered the accused nor showed any resistance even he failed to take injured SHO in pickup and bring him to hospital for treatment. Constable Imtiaz Ali No. 1625 has recorded his statement to the investigation officer according to Site plan and FIR that the incident occurred outside the house but in the enquiry statement he stated that incident occurred inside the house. His statement is helpful for the accused and harmful for the case. He also stated that the SHO had gone to the house of Amin Shah for receiving "MONTHLY".

His following actions recommend him for penalty.

- 1. His cowardice at the spot.
- 2. Blaming the martyred SHO for corruption.
- 3. His statement in the enquiry against FIR and the statement recorded in the case.

RECOMMENDATIONS

Constable Rizwanullah No. 2345, platoon No. 89 is recommended for major punishment i.e. **DISMISSAL FROM SERVICE**.

Deputy Superintendent of Police Elite Force Bannu

Dismissed MV

(SH)

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Peshawa:



Office of the Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar



No. 2712 - 19/EF

Dated 28 / 02 /2014.

<u>ORDER</u>

Constable Rizwan Ullah No. 2345, Platoon No. 89 of Elite Force Khyber Pakhtunkhwa was found guilty of gross misconduct on the following grounds.

He along with other constables of Elite Force on 13.01.2013, were deputed for Naka bandi duty with SI Imam Hassan Shaheed, the then SHO PS Haved district Bannu, 01 PO namely Amin Shah started firing upon him (SHO) in the area of Skiekh Fareed Baba. Resultantly, he sustained injured and after that he got embraced martyrdom. The accused constable decamped from the scene after occurrence of the offence without any hindrance as they became a silent spectator. Thus they have ceased to become good Police officials as well as guilty of misconduct. Proper departmental enquiry was conducted against him by the DPO/Bannu office and DPO/Bannu has dismissed him from service vide his office order No. 6356-64/SRC dated 21.05.2013.

Being a member of Elite Force Khyber Pakhtunkhwa a proper departmental enquiry was initiated against him and Mr. Shabir Ahmad Acting DSP. Elite Force Bannu was appointed as enquiry officer. After the completion of enquiry process the Enquiry Officer found him guilty of the charges leveled against him and recommended him for major punishment. Consequently, A Final Show Cause Notice was also issued to him by the undersigned, but his reply was found unsatisfactory. He was also heard in person in orderly room on 27.02.2014, but he failed to satisfy the undersigned.

I, Sajid Khan Mohmand, Deputy Commandant, Flite Force Khyber Pakhtunkhwa Peshawar as competent authority, agreed with the decision of DPO Bannu as well as the recommendation of Acting DSP/Elite Force Bannu and impose major penalty of dramssal from service upon him, with immediate effect.

ATTES TED

(SAJID KANA) MOHMAND)

Deput \Commandant

Elite Force Khyber Pakhtunkhwa Peshawar.

DY. CONCE

Copy of the above is forwarded to the:-

Acting Deputy Superintendent of Police, Elite Force. Bannu.

- , L. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
- 3. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
- 4. Incharge Kot /OASI, Elile Force Khyber Pakhtunkhwa Peshawar.
- 5. SRC/FMC, Élite Force Khyber Pakhtunkhwa Peshawar
- 6. FC Rizwan Ullah No. 2345 of Elite Force through reader DSP Flite Bannu.

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للجضور جناب والاشان كمانذنث صاحب ايليث فورس صوبه خيبر پختونخواه بشاور

ابیل: کاالعدم فرمانے تھم جناب ڈپٹی کمانڈنٹ صاحب ایلیٹ فورس اور بحال فرمانے طازمت سائل جو حقیقت پربٹی آپ بیتی کومسر د کرکے ایک فرضی جگ بیتی کومملی جامہ پہنا کر بحوالہ آرڈر بک نبر علی ہے کہ 27/2 سائل کو طازمت سے دسمس کیا ہے۔ دسمس کیا ہے۔

جناب عالى!

سائل آنجاب کے صورعا جزاند امود باندا پیل پیش کرتاہے کہ

- 1) سائل مورخت**رہ ، 7- 7.0 کو بھرتی ہوکرر یکروٹ کورس کے علاوہ ایلیٹ کورس کمل کیااور صوبائی سطح پر مختلف اصلاع میں** ایمر جنسی ڈیوٹیاں دیں۔سال 2013 میں ضلع ہوں کے تھانہ ہوید میں تعینات تھا۔
- مورخہ SHO -13-01 2018 تھانہ ہوید نے ہم 5 کانسٹیلان E.F کے اپنے ساتھ مقصد بتائے بغیر سرکاری گاڑی بیس روانہ کئے۔ SHO نے ہمیں گاڑی کے پاس روانہ کئے۔ SHO نے ہمیں گاڑی کے پاس رہنے کا کہااور خود ہمراہ DFC تھانہ ہویداورا کے کانشیبل کے اس مکان یا بیشک کے اندر نہایت خوشگوار مُو ڈ میں داخل ہوا۔ لیکن چند ہی لمحے بعد اُس مکان کے اندرایک پُرسٹ فائر ہوئی۔ ہم گھبرا کرالرٹ ہوئے کہ اس اثناء میں DFC اور اُس کسٹیل نے ہمیں آوازیں دیں کہ اندرا کے بُرسٹ فائر ہوئی۔ ہم گھبرا کرالرٹ ہوئے کہ اس اثناء میں DFC اور اُس کسٹیل نے ہمیں آوازیں دیں کہ اندرا و تاکہ OHO صاحب کو نکال لیں۔ چو نہی ہم مکان کے گیٹ پر ہنچے نو اندر مکان میں سے ہرایک دیگر دوگر نیڈ کے دھا کے ہوئے۔ جو مکان کے اندرا کہ خوار اور دھواں اُٹھا۔ ہمیں کوئی شخص دکھائی نہیں دیتا تھا۔ ہم میں سے ہرایک نے ایپ ایٹ ایزان مکان کے کھولے جات کی طرف فائر نگ شروع کیں۔ گردوغبار کے ختم ہونے پر SHO کو زخی حالت میں ہیتال پہنچایا گیا۔ دات کے اندھیرے کی وجہ سے ملز مان بارے کوئی سُر اغ نہ ملا۔ وہ مکان کے دیوار بھاند کرنگل چکے تھے۔
 - زخی SHO امام حسن نے ہیتال میں FIR درج کرتے وقت بیان کیا کہ وہ معمول کے گشت پرتھا۔ جب بوقت 17:00 ہج کچہ راستہ شخ فرید بابا پہنچا تو وہاں پر پہلے ہے موجو دملز مان آمین شاہ وغیر ہ نے اُن پر فائز نگ شروع کیں۔
 - 4) کیکن وقوعہ کے دوسرے دِن تھانہ ہو بیسٹاف والوں نے آپس میں باتیں کرتے ہوئے SHO صاحب کے غلط کام بارے نقید شروع کیں۔جس کا ذکر ہم نے اپنے سابقہ بیانات میں کیا ہے۔
 - ہمارے خلاف محکمانہ انکوائری شروع ہوئی فیسلعی افسران نے باہمی مشورہ سے ہمارے لئے نا کہ بندی کالفظ پُن کرالزام عائد کیا کہ بدوران نا کہ بندی ہمراہ SHO صاحب ہم E.F جوانوں نے بزدِلی کا مظاہرہ کیا ہے اور خاموشی اختیار کرکے ملز مان کے ساتھ کوئی مقابلہ نہیں کیا ہے۔ کیونکہ ان کومعلوم تھا کہ گشت E.F کے شینڈنگ آرڈر میں نہیں۔ میں نے حقیقت پرمبنی جواب دیا

ر کس ہے جوانکوائری فائل پر موجود ہے۔

- ، دوبارہ انکوائری کے لئے شبیراحمد خان DSP/E.F بنوں انکوائری افسر مقرر ہوا۔ لیکن وہ خود کرپٹن کے سلسلہ میں زیرانکوائری گئے۔ تھا۔ اس نے انکوائری بنوں آفس کے میر فراز P.1 کوحوالہ کی۔ جس نے اپنے دفتر کے بند کمرے میں اپنے تجربہ کے مطابق انکوائری رپورٹ تیار کی۔
 - 7) مجھے فائنل شو کا زنوٹس جناب ڈپٹی کمانڈنٹ صاحب نے ایشو کیا۔ جس کامیں نے تفصیلاً جواب پیش کیا۔ (بیان کی فوٹو کا پی لف ہمراہ قابل ملاحظہ ہے۔)
 - 8) لیکن جناب ڈپٹی کمانڈنٹ صاحب نے حقیقت کومستر دکر کے فرضی اور من گھڑت الزام کوحقیقت تسلیم کرتے ہوئے سائس کو ملازمت سے ڈسپس کیا ہے۔

عاليجاء!

میں نے برد کی نہیں کی ہے۔ میں نے 80 کارتوس فائر کئے ہیں لیکن مکان نے اندرونی نقشہ ہے ہم لاعلم رہے۔ SHO صاحب نے گشت بتایا ہے اور الزام نا کہ بندی میں برد ولی عاکد ہے۔ نہ گشت تھا اور نہ ہی نا کہ بندی سٹینڈ نگ آرڈر کی خلاف ورزی کیطرف کسی بھی آفسر نے توجہ نہیں دی ہے۔ سٹینڈ نگ آرڈر نمبر 2 کے شمن 14 میں گشت ممنوع اور نا کہ بندی بارے P.O. P.O یا D.P.O کیطرف کسی بھی آفسر نے توجہ نہیں دی ہے۔ سٹینڈ نگ آرڈر نمبر 2 کے شمن 14 میں گشت ممنوع اور نا کہ بندی بارے E.F کی بدنا می کی صاحبان کا تھم ضروری ہے اور مقام نا کہ بندی کا تعین اور E.F کی نفری کی تعداد 10 نفر سے کم نہ ہوگے۔ ضلعی سطح پر E.F کی بدنا می کوشش کی گئی ہے۔ میرے ساتھ ظلم ہوا ہے۔

لہذااستدعا کرتاہوں کے سائل کی ملازمت بحال فرمائی جادے۔ ماتحت پروری ہوگ۔

الــــارض

Ex كانطيبل وبنوان التدعن نبر 345 هناع بنون موماكل نبر 34048 هم 346

3 = A) of





Office of the Addl: Inspector General of Police Elite Force Khyber Pakhtunkhwa Peshawar



No. \$237-41/EF

Dated 20/04 / 2014.

To

1. Mr. Rizwan Ullah s/o Mir Zaban Khan

2. Mr.Imtiaz Ali s/o Izzat Khan

3. Mr. Naseeb Ullah s/o Hanif Ullah Khan

4. Mr.Fawad Khan s/o Ghulam Daud Khan

5. Mr.Umer Jan s/o Noor Ali Khan

Subject:

APPEAL FOR RE-INSTATEMENT IN SERVICE

Memo:

Your appeals for re-instatement in service have not been accepted and filed by the competent authority.

(SAJID KHAN MOHMAND)

Deputy Commandant
Elite Force, Khyber Pakhtunkhwa Peshawar

FINAL SHOW CAUSE NOTICE

I, Sajid Khan Mohmand, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority under Police Rules (amended vide NWFP gazette, 27th anuary 1976), do hereby serve you Constable Rizwan Ullah No. 2345, Platoon No. 89 of Elite Force as follows;

That on 13.01.2013, you were deputed for Naka Bandi duty with SI Imam Hassan Shaheed the then SHO PS Haved, 01 accused namely Amin Shah started firing upon him in the premises of Sheikh Fareed Baba, Resultantly, He was sustained injured and after then he got embraced martyrdom. The accused decamped from the scene after the commission of offence without any hindrance while they have, become a silent spectator. Thus you have ceased to become good Police officials as well as guilty of misconduct.

- That consequent upon the completion of enquiry conducted against you by Mr. i. Shabir Ahmad acting DSP/Elite Force Bannu, you were given full opportunity of hearing but failed to satisfy the enquiry officer. Enquiry Officer recommended you for major punishment.
- On going through the finding and recommendation of the enquiry officer, the ii. material available on record, I am satisfied that you have committed the omission/commission specified in Police Rules (amended vide NWFP gazette, 27th January 1976) and charges leveled against you have been established beyond any doubt.
- As a result therefore, I, Sajid Khan Mohmand, Deputy Commandant Elite Force, 2. Khyber Pakhtunkhwa Peshawar as competent authority have tentatively decided to impose major penalty upon you including removal from service, under Police Rules (amended vide NWFP gazette, 27th January 1976) of the said ordinance.
- You are therefore, directed to show cause as to why the aforesaid penalty should 3. not be imposed upon you.
- If no reply to this show cause notice is received within seven days of its delivery, 4. in the normal course of circumstances, it shall be presumed that you have no defense to put and in that case an ex-parte action shall be taken against you.
- A copy of the finding of the Enquiry Officer is enclosed. 5.

Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar

EF, dated Peshawar the 20/01/2014.

Constable Rizwan Ullah No. 2345, of Elite through reader DSP/Elite Force Bannu.

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 676/2014

Rizwan Ullah Khan

VS

Police Deptt:

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

(a-f) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- Admitted correct by thee respondents, which mean that para 1 of the para of the appeal is correct.
- It is correct that the charge sheet based on statement of allegation was served to the appellant, but he did not show cowardice on the occasion of the occurrence vide order dated 13.01.2012 while on gasht with the then SHO Iman Hussan Shahed and when the miscreants attempted on the lives of Police Party the appellant along with other Police party fought for the long time and never left the premises.
- Incorrect. The appellant denied all allegations with proofs in his reply submitted in response to the charge sheet.
- 4 Incorrect. No proper inquiry was conducted as the statement of all accused constables were

recorded, but the statement of other officials were not recorded in the presence of the appellant, nor they were put to cross examination which means that the appellant condemned unheard, which is the violation of law and rules.

- Admitted correct by the respondents that the appellant was dismissed from the eservice. However the rejection order on the departmental appeal is not speaking order which is against the judgment of Supreme Court of Pakistan reported in 1991-SCMR, page 2330.
- No comments endorsed by respondents which means that they have admitted para-6 of appeal is correct.

GROUNDS:

- A) Incorrect. The orders dated 21.5.2013 and 30.4.2014 are unjust, illegal and were not passed in accordance with law and rules on the subject. Therefore liable to be set aside.
- B) Incorrect. While para B of the appeal is correct.
- C) Incorrect. No chance of personal hearing was provided to the appellant and as such the appellant was condemned unheard which is against the law and rules
- Incorrect. While para D of the appeal is correct.
- E) Incorrect. The appellant along with other police official fought for the long time and did not left the premise which was also reported by the other officials in their diaries.
- F) Incorrect. E&D Rules 2011 was promulgated in 2011 and after the promulgation of this Rules all civil servant of the Province are dealt by this rules. The appellant is also a civil servant of the Province and should be dealt by E&D Rules 2011 but the appellant was dealt under Police rules 1975, which is gross illegality.

- G) Incorrect. While para G of the appeal is correct.
- H) Incorrect. Hence denied.
- I) Incorrect. The rejection order is not speaking order and also passed by incompetent authority which is violation of law and rules.
- J) Not replied according to para J of the appeal. Moreover the para J of the appeal is correct.
- K) Legal.

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

APPELLANT

Rizwan Ullah Khan

Through:

(M. ASIF YOUSAFZAI) ADVOCATE, PESHAWAR.

&

(TAIMUR ALI KHAN)

ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

> *ya:* DEPONENT

Prilimmery Empiry
Total => 27 Pages

_____ بحواله مد12 روزنام ميد 13.01.2013 تعانه بويدا عكوائز كى برخلاف كانسليطان ناصرز مان 1469 ،حيات الله 636 ،شعيب 331/DFC

رك مورك المورك DSP/HQاورDSP/R-I انگوائری افسران مقرر کئے گئے ہیں۔اس ضمن میں جملہ کانسٹیلان مندرجہ نقلمد بالاطلب کئے جاکران کے بیانات قلمبند کئے گئے۔ 1_كانشيبل ناصرز مان 1469 تعاند بويد _ 2-كانشيبل حيات الله 636 بويد _ 331/DFC تعاند بويد _ 4_رضوان لله 2345/EF پلاڻون نمبر 55 تھاندہوید ۔5۔عمرجان 2342/EF پلائون نمبر 55 تھاندہوید ۔6۔اخیاز 1625/EF پلائون نمبر 55 تھاندہوید۔ 7_نصيب الله 4072/EF بلانون نمبر 55 تقانه بويد_8_فواد 379/EF بلانون نمبر 55 تقانه بويد_9_حامد 1808 ذرا تيور تقانه بويد_

10_ابراهيم نمبر 1295 محرر تفانه بويد _ 11 _ مرادعلى خان CO/HQ سركل بنول -

كانطيبل ناصرز مان 1469/5868/FRP تقاند مويد سلسلة نبر 1 في بتلايا كدوه مورجه 13.01.2013 كوبصورت بتا دله تقاند مويد عاضر آيا تقا- وتوعد · کےدنSHOصاحب کے ساتھ ڈیوٹی پرتھا۔ جب شخ فرید بابازیارت پنچے تو SHO امام حسن گاڑی سے اتر کرایک کھر کی طرف جا کر مین دروازے کودستک دی ۔ تو وہاں پرموجود بچوں نے بتایا کہ میدروازہ بند ہے دوسری طرف ایک چھوٹا دروازہ ہے جو کھلا ہے۔اس طرف علے جائیں۔اس دروازے سےوہ SHO صاحب كي مراه كأسميران التياز ،نعيب بشعيب كمريس وافل موئ _اندرجات موك SHO صاخب برايك كمر ي سي فائرنگ موئى -جس سيوه شدیدزخی ہوئے۔ہم نے پوزیش کے کرفائز تگ شروع کردی۔اورای دوران SHO صاحب نے ہمیں بتلایا کرفائز تگ بند کرواور جھے نکالو۔ہم نے SHO صاحب کوزخی حالت میں باہرنکالا۔اورمقابلہ بھی کرتار ہا۔ کافی عرصے بعد APC بمعنفری موقع پر پہنچ گئی۔اور SHOصاحب کوعلاج معالجہ کی خاطر APC

مين سيتال روانه كيا-ئا المراء كانتيبل حيات الله 636 مويدسلسله نمبر 2 نے بتلايا كدوه مورخه 13.01.2013 كومراه SHO ماحب كشت ، نا كد بندى دُيو في پرموجود تفار جب نزد یکی شیخ انڈک بنچے و SHO صاحب نے ایک مشتبہ تخص سمی حضرت عمر سکند شکنی موٹر سائنکل پرسوار پاکر گرفتار کیا۔ جس کی نگرانی کے لئے SHO صاحب نے اس کوگاڑی میں بٹھایا تھا۔اس اثناء میں وقوعہ بذارونما ہوا۔ تا ہم اس نے ملزم اورموٹر سائنکل کی تکرانی کی ہے۔اوراپنی ڈیوٹی سرانجام دی ہے۔

شعیب331/DFC تھاندہویدسلسلہ نمبر3نے بتلایا کہ وہ مورجہ 13.01.2013 کوہمراہ SHOصاحب ودیگرنفری ڈیوٹی پرتھا۔ جب زرشے فرید بابا زیارت پنچیو SHO صاحب مجرم اشتهاری امین شاه کے گھر داخل ہوا۔ جو فائر تک کے تباد لے میں شدیدزخی ہوا۔ اس دوران وہ حجیت پرتھا۔ اور SHO صاحب نے اسے بتلایا کہاپ مجھے اٹھاو کیکن خطر ہے کی دجہ سے وہ اٹھا نے سے قاصر رہا۔ کافی دیر بعد جب APC معذفری پیچی تو SHO صاحب کو اٹھا کر علاج معالجرك لئے مبتال روانه كيا-

رضوان لله 2345/EF پلانون نمبر 55 تھانہ ہو پدسلسله نمبر 4 نے بتلایا۔ کروہ مورخہ 13.01.2013 کوہمراہ SHO صاحب ودیگرنفری ڈیوٹی پرتھا۔ تو SHO صاحب نے اچا تک PO امین شاہ کے محر پردیڈ کیا۔ جس میں SHO صاحب شدیدزخی ہوا۔ انھوں نے مختلف پوزیشنوں سے فائز تک کا تبادلہ کیا۔ اس كے علاوہ اس نے ندتو كس خص كو نكلتے ديكھا ہے اور ند نكلنے دیا ہے۔ ديكروہ لاعلم ہے۔

عمر جان 2342/EF بِلاثُون نبر 55 تھاند ہو بدیسلسلہ نبر 5 نے بتلایا کہ وہ مور دے 13.01.2013 کوہمراہ SHO صاحب ودیگرنفری ڈیوٹی پرتھا۔ کہ وتو عہ ہذارونماہوا۔جس میں SHO صاحب فائرنگ کے تباد لے میں شدیدزخی ہواتھا۔جس کواٹھانے کی غاظراس نے کی بارکوشش کی جس پر فائرنگ بھی ہوتی رہی۔ تاہم ندکورنے SHO صاحب کو PO این شاہ کے گھرے باہر نکالا۔اور APC میں ہپتال روانہ کیا۔

التياز £1625/E پلاٹون نمبر 55 تھاندہو پيرسلسلىنمبر 6نے بتلايا كەمورىد 13.01.2013 كوہمراه SHO صاحب وديگرنفرى ڈيوٹى پرتھا-كدرا سے میں ایک موٹر سائکل سوار کو شتبہ حالت میں گرفتار کیا۔اور موٹر سائکل کو کا تشییل فواد کے حوالے کیا۔ جب SHO صاحب نے PO امین شاہ کے گھر پر رفی کہا او فائرنگ كا تبادله بوار بيند كرنيد كى بلاست بوكى يو خوف كى وجه سے تمام كانسيوا ن خواس باحد بوت _جوانى فائرنگ كى كيكن اس سے پہلے SHO صاحب زخى ہوئے تھے۔جس کوعلاج معالجہ کی خاطر APC میں سپتال روانہ کیا۔ لیکن PO امین شاہ نے اندھیرے کا فائدہ اٹھاتے ہوئے گھرے نکل گیا تھا۔ SHO صاحب نے ایک تو غلط FIR درج کیا ہے اور دوسرایہ کہ ایلٹ نفری کوشینڈ تک آرڈر کے خلاف استعمال کی ہے۔

نصیب اللہ 4072/EF پلاٹون نمبر 55 تھا فہ ہو پرسلسلہ نمبر 7 نے بتلایا کہ مورخہ 13.01.2013 کوہمراہ SHO صاحب ودیگرنفری ڈیوٹی پرتھا۔ کہ راستے میں ایک مورخہ 300،2013 کیا۔ ای اثناء میں SHO صاحب ایک گھر کے اندرداخل ہوا ہے۔ مورکن نمبیں بیٹایا کہوہ کس مقصد کے لئے اندر جارہا ہے۔ جونمی وہ اندرداخل ہوا تو سامنے ایک کوٹھہ رہائتی سے فائر نگ ہوئی۔ جس کے نتیج میں ہوا۔ لیکن آئیس پنیس بتایا کہوہ کس مقصد کے لئے اندر جارہا ہے۔ جونمی وہ اندرداخل ہوا تو سامنے ایک کوٹھہ رہائتی سے فائر نگ ہوئی۔ جس کے نتیج میں محال صاحب ذخی ہوئے۔ اور کانسیملا ن خوف زدہ ہو کرخواس باحد ہوئے۔ SHO صاحب کو علاج معالجی خاطر محالجی خاطر محالجی کوٹھیں نیزی کوسٹینڈ نگ آرڈر امین شاہ نے ایک تو کا کہ دوسرا یہ کہ ایک فیل کوٹھینڈ نگ آرڈر کے خلاف استعال کی ہے۔

فواد 379/EF پانون نمبر 55 تھانہ ہو پیسلسله نمبر 8 نے بتاایا کہ مور نہ 13.01.2013 کوہمراہ SHO صاحب ودیگر نفری ڈیوٹی پر تھا۔ کہ داستے ہیں ایک موٹرسائکیل سوار کو مشتبہ حالت میں گرفتار کیا۔ اور موٹرسائکیل کواسے حوالہ کی۔ جو کہ وہ موٹرسائکیل کو لئے کہ نیولیس نفری کے عقب جارہا تھا۔ ای اثناء میں SHO صاحب ایک گھر کے اندر داخل ہوا کی آئیں نہیں بتایا کہ وہ کس مقصد کے لئے اندر جارہا ہے۔ جو نمی وہ اندر داخل ہوا تو سامنے ایک کو ٹھر دہائتی سے فائر تگ ہوئے۔ جس کو طاح معالی خالم APC میں ہیتال روانہ کیا۔ لیکن PO امین شاہ نے اندھرے کا فائر تگ ہوئے۔ جس کو طاح استعمال کی ہے۔ فائدہ اٹھا نے ہوئے گھر سے نکل گیا۔ SHO صاحب نے ایک تو غلط SHO درج کیا ہے اور دوسرا ایہ کہ ایک نیور کی کوشینڈ نگ آرڈر کے ظاف استعمال کی ہے۔ مزید بتالیا کہ دقو عدراسے میں نہیں بلکہ ایک گھر کے اندروٹما ہوا ہے۔ اور گھر کے اندر کے حالات وہ کانسٹیمال ن بتا سکتے ہیں جو SHO صاحب کے ساتھ اندر وفائل ہو ۔ کے تھے۔ داخل ہو کہ تھے۔

عاد نمبر 1808 ڈرائیورتھانہ ہویدسلسلہ نمبر 9 نے بتلایا کہ مور ند 13.01.2013 کووہ ہمراہ SHO صاحب گشت، نا کہ بندی پر بطرف چوکی شخ لنڈک روانہ ہوئے۔ تواجا بحک SHO صاحب نے تعبر کرنے کی اجازت دی ہے۔ میں اور انہ ہوئے۔ تواجا بحک SHO صاحب نے تعبر کرنے کی اجازت دی ہے۔ جب اور این شاہ کے گھر پنچے تو SHO صاحب نے چوڑ دیا۔ اور بقایا نفری PO امین شاہ جب PO ابین شاہ کے گھر پر دانہ ہوئی۔ تقریباً 510 کی مند بعد فائر تک کی اوازی تواس نے کنٹرول روم کو کال کی کہ SHO صاحب اور PO امین شاہ کے مابین فائر نگ ہور ہی ہے۔ اور گاڑی کو گھر کی طرف روانہ کیا۔ ای اثناء میں دو ہینڈ گرنیڈ کے دھا کے ہوئے۔ لیکن وہ خوش شمتی سے فائر گے کے ۔ فائر تک کا تبادلہ ہوتا رہا۔ لیکن ملز مان اندھرے کا فائدہ اٹھا تھیں۔ وہ بینڈ گرنیڈ کے دھا کے ہوئے۔ لیکن وہ خوش شمتی سے فائے گئے۔ فائر تک کا تبادلہ ہوتا رہا۔ لیکن ملز مان اندھرے کا فائدہ اٹھا تھیں۔ وہ بینڈ گرنیڈ کے دھا کے ہوئے۔ لیکن وہ خوش شمتی سے فائر گئے گئے۔ فائر تک کا تبادلہ ہوتا رہا۔ لیکن ملز مان

ابراهيم نمبر 1295/MHC مقاند بويدسلساني بر 10 نے بتاليا كيمور ند 13.01.2013 كوانام حسن SHO معد كأشيران بوالد مد 1295/MHC وزنام به المد 1295/MHC معد 1295/MHC معد 1295/MHC معد 1295/MHC معد 1295/MHC وزنام به الله 13.01.2013 معد 13.01.

مرادعلی خان CO/HQ سرکل بنون سلسله نمبر 11 نے بتلایا کدائ نے مقدمه علت 09مرورد 13.01.2013م ESA/TATA مرادعلی خان تقانه دیدی تفتیش کی ہے۔ جن میں کانسٹیلان ہمراہ SHO صاحب کے بیانات لئے بھے ہیں۔ جومقدمہ کی تق میں ہے۔

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This findings report is the result of departmental probe against police officials namely:-

FC Umer Jan No.2342/EF, FC Rizwan Ullah No.2345/EF, FC Imtiaz No.1625/EF, FC Nasib Ullah No.4072/EF, FC Fawad No.379/EF of Platoon No.55, FC Nasir Zaman No.1469 and FC Shoaib No.331 DFC while posted to PS Haved were found to indulge in misconduct under the following allegations:

That after conducting preliminary inquiry by DSP/HQrs and SDPO, Rural-I they while posted to PS Haved were found negligence and cowardice.

- That on 13.01.2013, they were deputed for Naka Bandi duty with SI Imam Hassan Shaheed the then SHO PS Haved, 01 accused namely Amin Shah started firing upon SI Imam Hassan Shaheed in the premises of Sheikh Farid Baba. Resultantly, he was sustained injured and after then he got embraced martyrdom.
- The accused decamped from the scene after the commission of offence without any hindrance while they have, became a silent spectators. Thus they have ceased to become good police officials as well as guilty of misconduct.

That they have ceased to become good police officials by committing the above commission/omissions.

Charge sheets with summary of allegations to all the aforesaid officials were issued on 11.04.2013 by worthy DPO Bannu and the undersigned was appointed as inquiry officer to hold department proceedings against the accused officials.

Prior to the issuance of above, preliminary inquiry through DSP/HQ and SDPO Rural-I was conducted and the above mentioned officials were held responsible for cowardice and negligence during the encounter with the militant? PO Amin Shah.

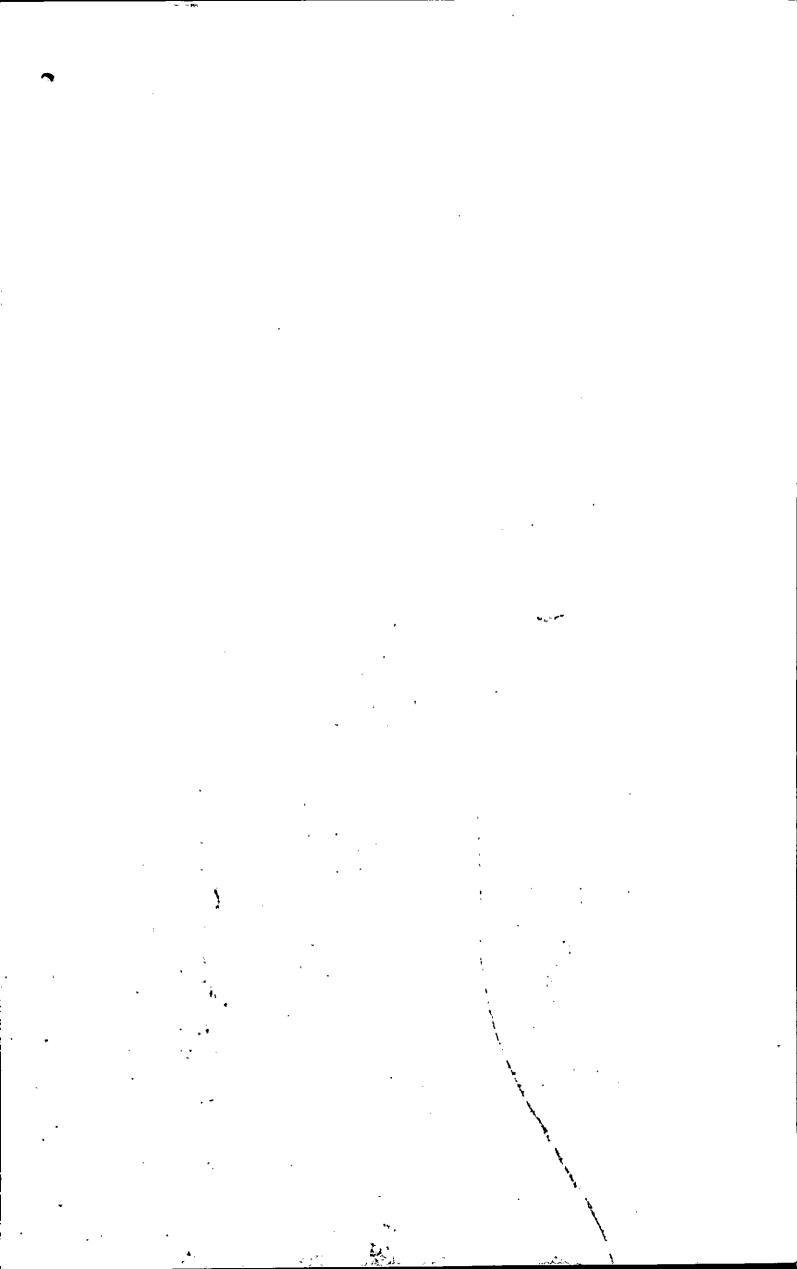
On receipt of the papers from the dealing hands SRC, all the accused officials were summoned and copy of charge sheet with summary of allegations were supplied to them for reply and explanation. Their replies to charges received, placed on file and reproduced below.

1) REPLY OF CONSTABLE UMER JAN NO.2342/EF.

He explained that he had accompanied the SHO Imam Hassan Shaheed for patrolling in area Sheikh Farid. SHO stopped the mobile in front of one house and asked him, Fawad and Rizwan to stand alert with the mobile vehicle while he along with other strength entered the house. After some while, firing and two blasts were made in side the house. Imtiaz constable came out hurriedly and told about the injury of SHO. Shoaib DFC present inside the house called him (Umerjan) to enter the house for shifting injured Imam Hassan outside the house. He went inside the house and firing was made at him but escaped unhurt. He has not witnessed any accused nor identified. He blamed the SHO for getting some illegal gratification from the accused and scribed/ prepared wrong report for his martyrdom.

He stated that in fact SEO Imam Hassan had gone to the house of PO Amin Shah for getting illegal monthly gratification and due to non paying the same wrong FIR was made. He with Rizwan and Umer Jan were standing alert with the mobile vehicle while SHO with other police entered the house. After some while firing was heard. SHO Imam Hassan in injured condition was brought and thereafter shifted to hospital. Due to spread of evening darkness, the accused

2) REPLY OF CONSTABLE FAWAD:-



3) REPLY OF CONSTABLE RIZWAN NO.2345/EF.

He explained that mobile vehicle stopped in front of one house. He constables Fawad and Umerjan were asked by SHO Imam to stand alert with vehicle while SHO with other police entered the house. Firing was heard. SHO Imam in injured condition was brought and shifted to hospital. At the spreading of evening darkness, police nafri reached and searched the house but no accused was found. He blamed the SHO for getting illegal gratification from the PO/Amin Shah and prepared wrong statement/ report for his getting package of martyred. He used derogatory words for the SHO Imam Hassan.

4) REPLY OF CONSTABLE NASIB ULLAH NO.4072/EF

He stated that he with SHO Imam, Imtiaz, Nasir, and Shoaib DFC entered the house. Meanwhile burst fire was made from the room, SHO Imam Hassan was hit and injured. Two bombs were blasted. Due to smoke, nothing was visible. After sufficient time, injured SHO was shifted to hospital and passed away. He blamed that the FIR of SHO Imam was wrong and his intention was not to arrest the PO but to receive/ get illegal gratification from the PO Amin Shah.

5) REPLY OF CONSTABLE NASIR ZAMAN NO.1469/FC:

He stated that he with SHO Imam, Imtiaz, Nasir, and Shoaib DFC entered the house. Meanwhile burst fire was made from the room, SHO Imam Hassan was hit and injured. Two bombs were blasted. Due to smoke, nothing was visible. After sufficient time, injured SHO was shifted to hospital and passed away. He blamed that the FIR of SHO Imam was wrong and his intention was not to arrest the PO but to receive/ get illegal gratification from the PO Amin Shah.

6) REPLY OF CONSTABLE IMTIAZ ALI NO.1625/EF

He stated that on the day of occurrence, he along with other constables accompanied the late Imam Hassan ex-SHO PS haved to the house of accused Amin Shah. As they entered into the house, firing was made from the room. Resultantly SHO was hit and fell on the ground. Two blasts were also made. Due to heavy smoke, nothing was visible. At the evening darkness time police nafri came and the injured SHO was shifted to the hospital where he passed away. He blamed SHO and DFC Shoaib for the alleged incident. He was unaware about the area and did not know for what purpose the SHO had gone to the house of accused. However, it was rumored that the SHO had gone to the house for the purpose of getting illegal monthly gratification from the accused. He claimed himself to be innocent in the incident.

7) REPLY OF FC MUHAMMAD SH DAIB NO.331 DFC PS HAVED.

He stated that he along with late Imam Hassan SHO PS Haved and other police party were on patrol duty in area of Sheikh Farid Baba. When they reached to the place of Sheikh Farid Baba, SHO deboarded from the official vehicle and set out on foot to the nearby house. Constable Naseeb Ullah, Imtiaz, Nasir Zaman and he accompanied the SHO. They entered into the house. In the courtyard one person was searched and they were entering into a room, abrupt firing was made from the room. Resultant y SHO was hit and fell on the ground. He and other constables took the position near the corner as well as on the roof of the room. They made firing with the accured for about 15 minutes. After sufficient time, constable Umer Jan was directed to shift the injured SHO to the official vehicle. During this process, Amin Shah threw has directeds which was blasted. He along with other



EVIDENCE:

(1) STATEMENT OF MURAD ALI INSPECTOR INVESTIGATION OFFICER PS HAVED::

He has conducted investigation of case FIR No.09 dated 13.01.2013~u/s 302,324,34~PPC/ 7ATA PS Haved. He prepared site plan on the pointation of eye witnesses and recorded statement of eye witnesses namely constable Nasir Zaman , Shoaib DFC, Naseeb Ullah, Imtiaz, Umer Jan, Rizwan Ullah, Fawad Khan, Hayat Ullah and driver Hamid Khan under 161 CrPC. As per the statement of witnesses the occurrence has taken place in the street outside the house. He has also collected blood stained earth from the place of deceased Imam Hassan, empty shells from the places of accused and police constable who had fired in self defense. 5 spent bullets from the wall of once Sabir Shah and taken into possession. He also recovered one liver of hand grenades from the gate of accused Amin Shah. After completion of investigation, he submitted complete challan against the accused for 512 CrPC proceedings.

(2) STATEMENT OF UMER KHETAB ADDL: SHO PS HAVED:

He stated that on receipt of information regarding the incident, he along with police party went to the spot in a private vehicle and sieged the place of occurrence. Meanwhile DSP Rural Musanif Shah with police party also reached to the spot. Injured Imam Hassan SHO was found in the street near the house of accused Amin Shah and shifted to the hospital. He along with nafri of SHO Imam Hassan started search of the accused in the surrounding area but due to darkness, they had decamped from the spot.

(3) STATEMENT OF FAYAZ ALI SHAH IHC EMERGENCY STAFF DISTRICT HEAD QURTER HOSPITAL BANNU.

He stated that late Imam Hassan ex-SHO PS Haved in injured condition was brought to the emergency and was able to speak. The report of Imam Hassan was recorded in shape of murasla which was read and signed by him. Imam stated in his report that during patrolling when he reached to the thoroughfare of village Sheikh Farid where accused Amin Shah along with unknown accused duly armed with Kalashnikov made firing at police party and also threw hand grenades. Resultantly he was hit and got injured. Imam Hassan had received different fire arms injuries on his body and due to said injuries, he passed away in Peshawar hospital. In a cross examination, he (Fayaz Ali Shah) refused the suggestions of accused officials that he has not written the murasla report nor signed the same from Imam Hassan.

4) STATEMENT OF MUHAMMAD IBRAHIM IHC EX-MUHARRER PS HAVED.

He explained that the book of Roznamcha was in his possession and all the entries of departure and arrival of officials were used to made by himself or through Addl: Muharrer. Daily diary report No.12 dated 13.01.2013 PS Haved wherein SHO Imam Hassan along with constable Nasir Zaman, Haya Ullah, Shoaib DFC, Rizwan, Umer jan, Imtiaz, Naseeb Ullah, Fawad and driver Hamid in official vehicle had departured for patrolling and naka bandi in the area. All the officials were equipped with official rifles, bullet proof jackets and helmets.

He received information through wireless that firing had taken place between terrorist Taliban and police in the area Sheikh Farid Baba. Addl; SHO Umer Khetab along with police party departured to the spot while information were conveyed to high ups. Daily dairy report No.19 dated 14.01.2013 with nafri of SHO has returned to PS Haved. Attested copies of all the DD reports were produced and placed on file. In a question, he explained that police party had fired 1023 rounds of 7.62 Bore in an encounter with the terrorists but no single empty shell produced to him.

8:03

(5) STATEMENTS OF ACCUSED CONSTABLES:

All the accused constables relied on their written reply already submitted and they did not wish to produce any defense witness in support of their plea.

CONCLUSION:

Careful study of statements of witnesses/ accused officials, replies of accused officials and record of case FIR No.9 dated 13.01.2013 u/s 302,324,34 PPC/7ATA PS Haved reveals that late Imam Hassan SHO Haved along with police party / constables namely FC Umer Jan No.2342/EF, FC Rizwan Ullah No.2345/EF, FC Imtiaz No.1625/EF, FC Nasib Ullah No.4072/EF, FC Fawad No.379/EF of Platoon No.55, FC Nasir Zaman No.1469, FC Shoaib No.331 DFC and driver Hamid in official vehicle were on patrol duty in the area when they reached to the thoroughfare village Sheikh Farid Baba where accused Amin Shah with unknown accused duly armed with Kalashnikovs and hand grenades made firing and threw hand grenades over them resultantly, Imam Hassan was hit, fell on the ground and remained there for sufficient time. On the arrival of police nafri from the station, he was taken and shifted to hospital where his report as dying declaration was recorded by Fayaz Ali Shah IHC Emergency Staff Civil Hospital Bannu. The accused officials have stated in their statements recorded by the Investigating Officer under 161 CrPC that the occurrence has taken place in the street supporting the version of complainant late Imam Hassan but their replies to the charge sheets were contradictory to the above statements and they had stated that the occurrence has taken place inside the house of PO Amin Shah and they (except DFC Shoaib) blamed Imam Hassan for getting monthly illegal gratification from the accused and lodging wrong report with the intention to get package from the Government. The Investigating Officer has explained categorically that the occurrence has taken place in the street from where he has collected blood stained earth, empty shells of 7.62 Bore and liver of hand grenade etc.

In view of the dying declaration statement of Imam Hassan Shaheed coupled with statement of Investigating Officer, Murad Ali Inspector, Fayaz Ali Shah IHC and report of preliminary inquiry, the self defense plea of the accused officials is incorrect, frivolous and based on mala fide in order to conceal their cowardice and negligence while facing the militant accused who martyred the Imam Hassan Ex-SHO PS Haved in their presence. During the incident neither the accused officials have received any fire arms/ bomb blasts injury nor injured/ killed the accused Amin Shah or his colleague which clearly speaks their cowardice, inefficiency and negligence. The charges leveled against the accused officials are established and they are found guilty.

Both the constables F. C. Shear & 331 Mil Faraz Khan Inspector Inquiry Officer for Service of the Service of the Service of the findings be port the force constables, the certified that the findings be port to force constables, the certified that the findings be port to force constables, the certified that the findings be port to force constables, the certified that the findings be port to force constables, the certified that the findings and force and force is coursed by many that there are hard to service. There is supposed by the constable of the constable o

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سان ازان مرفظات الدلتام ٥١٥٥ تعان مورهم ان الله على المراقة علقا مان ما د وقوعه ی الحدی علقے بی ص فور (عمر لوری) سراله ماری براسوش موقع واردات واقع سنے وسر ماما روانه مع الم وقع ورين عام وقويم ما كفير دال ديا-رس دوران نوی زرف ری می وجود أرفيني - ١٥٠١ كا حتى زعى عالت مين امين نشاه ما يو لسما يو (id of the smill & mid I'm a de l'és العام حن ٥١٥٥ عنزم إطنوان كي تهرشي شروم كي عكر شام كي عار بي المعلاقة ما فات ما فاتره الفار فراد مول في . بروران وا ارات موهما ور فراری نوی ساتو دور ک · W V) 200 NIL . UM LOGO COM. William J. Asi / P.P. Basia phel ROJAC Altested 1 1 g.0 23.4.2613=

عال اوال فياض عي شاه عدا المحتنبي مح عمرك عيركو الرحسسال بيول ملفا بان المرس المرضيي س د نوالي در دو جود کھا۔ الي و مرور المرور الم or fein of huly by out of out of the washingoned تحرمر در در در در انبون عرانیا دسترط شدی سا- رامل . W JUJUS - 6 134 i Sell wind Soul July 8 ... ولورت س الم حسن نے بان ہو کے دوہ کسنت بر کھا من کی راستم رونده دیس سفیم ونر پنتی کوومال کر عانوی ایس شاه و دار ما معلی کسمان بعد کلیشنانی ما یک ان برفازنگ کی صفی دستی م می بستی ص سی وه مد کاری سرا . کیم و زخون تا - نه لاک لیتاور من طان حق الوا - المام حس عصب برقعاف فازارم ك جرح من ماس ملزم كالنشييرن ، معلط ع كم امام مس ن ربورگ بر رستخط شن کیا ہے. مولط

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13 Jan. 2013 10:05AM P1 13.01.2013 بحالياطا ي ريادت ببر PB 13 جورى مريدمكومات كمطابق بوليس العظمالاك واين قائر كار كاسلىد يند بنوچكا ب واقع ك اطلاع مع الا DPO بنول وديكر بولس نفرى بمد يمانى القعيار اور يكتر بندگاؤيول كم موق يرق كا يوليس في كادروازه تو تركما عردافل موع اور بوت 2046 ي كي فرد ين كمرول كاسريج آيريش كيا كيافيكن ملز مان فرار موسله على كامياب موسة مر يدمطومات جاري بين-ميش براغي بصوب يبره بختونخوا، پشاور جيف سيكرثري مهوبة يبريخونخوا RPO/Banner ر ادشل بوليس آفيسر صوب عيبر پخوشوا-الديش الكير جزل آف يوليس آريش موسفير يمتوخواto arrest the بوم سيرتري صوب شير يختو نخوار دُورِيْ شِيرَ بنول-دُورِيْ شِيرَ بنول-(°a ر يجنل پوليس آفيسر ۽ بنولaced. **(**1 ى الس اولو دزىراعلى جعوب خيبر يختو نخوا-(4 ايمالين أوكورز موبد شير يخونخوا-Spo/phill. To immediate 13.01.2013 AN R417-24 IPBALLOW RUENT Val 1902 & 14/1 Office of the star was reshing SOPO RURAL 1099/13 BANNU 1873 Dates 14-01-2013 DSP/Rusal-1 Decond efforts Ale wexused. d RPO BAM 14/1/13

(فائيل) ابتدائي اطلاع نسبت نرم Ho Obinoply فتقر كيفيت جرًا (معدد فعه) حال اگر مجھ ليا گيا ہو جائے وقوعہ فاصلہ تھانہ سے اور سمت نام وسكونت ملزم فاروائی جو تفتیش سرمتعلق کی گئی اگراطلاع درج کرنے میں توقف ہوا ہوتو دجہ بیان کرو۔ ابتدائی اط لماع ینچ دری کرد رسوزت دمت مترسین حرمه که مندان در اندانی ہےروائلی کی تاریخ ووقت مام المراض من المراض المرض المراض ال Su o W Mo Ubicoply the عنيرتا والمعام كراب المعادة وليه للغام المالية في المالية الما معالید مع دود سی مرد کور مارش از مراس مرد می دود می از از از می مرد می دارد از مرد می می از مرد می از مرد از م می میران دارد می در می مرد کی بارد از مراس می اورد در می می از می از مرد می می از می از می از می از می از می ا interior interior in the state of the continue is for ما و فالما المان الم الله من المان الم المان الم المان المراكة is so de din de porte de la constante de la primero م رقان شرفت کان دونان ستدکره اه دو Shaker Jadi Chi Bans to 1 se de propriet de la Juli Est & 1924-353-560 per con con con con de la como per 20120 de de de la contra del la contra de la contra del la contra del la contra del la contra de la contra de la contra del la co

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