

Sr. No	Date of order/ proceeding s	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	19.07.2018	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;">Service Appeal No. 72/2018</p> <p style="text-align: center;">Date of Institution ... 19.01.2018 Date of Decision ... 19.07.2018</p> <p style="text-align: center;">Tahir Ahmad, Ex-PASI, resident of Village & P.O Madey Baba, Tehsil Takht Bhai & District Mardan.</p> <p style="text-align: right;">Appellant</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"> 1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa. 2. The Regional Police Officer, Mardan Region-1, Mardan. 3. The District Police Officer, Mardan. <p style="text-align: right;">Respondents</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Appellant</p> <p>with counsel and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Atta Ur Rehman S.I legal for the respondents present.</p> <ol style="list-style-type: none"> 2. The appellant (Ex-PASI) has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 27.11.2017 whereby he was awarded major penalty of dismissal from service and against the order dated 10.01.2018 whereby his departmental appeal was rejected. 3. Learned counsel for the appellant argued that the appellant was charge sheeted on the ground that while he was posted as

Incharge P.P Shago Naka (Police Station Sher Garh) on account of his inability to protect the lives of his under command through meticulous briefing and to ensure due security protocols, as a result LHC Farhad No.1759 and Constable Muhammad Nawaz No.385 were killed by two (02) unknown accused vide FIR No.763 dated 06.11.2017 u/s 302/324/34 7 ATA P.S Lund Khwar. Further argued that the appellant submitted reply to the charge sheet and the inquiry officer furnished inquiry report; that without communicating the inquiry report and issuance of any show cause notice the major punishment of dismissal from service was awarded to the appellant and that too without affording him chance of personal hearing. Further argued that the departmental appeal of the appellant also failed. Further argued that the inquiry officer in his report observed that the appellant has established illegal Naka Bandi near Hathyan outside the territorial jurisdiction of his Police Station and he did not inform his Senior Officer about such illegal Naka Bandi and that the inquiry officer gave finding to the effect that illegal Naka Bandi was established with two (02) police officials whereby two (02) martyrs were not wearing the protective gear thus ASI Tahir Khan (appellant) violated the instructions provided in OG-3 and such grave negligence and misconduct by the ASI Tahir Khan resulted in loss of two (02) precious lives and demoralizing the Police Force. Learned counsel for the appellant contended that the observation and finding of the inquiry officer as mentioned above has no relevancy with the accusation conveyed to the appellant in the shape

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of charge sheet/statement of allegation hence the impugned order of punishment is not sustainable on this score too and in this respect referred the judgment reported in 2011 SCMR page 1. Learned counsel for the appellant in support of his contention to the effect that the impugned order is not tenable having been passed without observing the legal requirements relied upon the judgments reported in 1995 SCMR page 1593, 2009 PLC (C.S) page 161, 2003 SCMR page 1126, 2006 SCMR page 1641, PLD 2008 page 412, 1989 SCMR 1690 and 2009 SCMR page 605, judgments of this Tribunal passed in Service Appeal No.613/2017 and Service Appeal No.1300/2015. Learned counsel for the appellant further argued that the appellant has not committed any misconduct/negligence and that the inquiry officer has not gathered any concrete evidence against the appellant. Learned counsel for the appellant also referred the judgments reported in 1994 SCMR page 418, 2010 PLC (C.S) page 435 and 2003 PLC (C.S) page 759.

4. As against that learned Deputy District Attorney while opposing the present service appeal argued that from the report of the inquiry officer it is evident that the appellant had established illegal Naka Bandi and two (02) police officials under the command of the appellant embraced martyrdom/Shahadat due to the illegal act and negligence of the appellant. Further argued that the findings of the inquiry officer are compatible with the charge sheet. Further argued that misconduct of establishing illegal Naka Bandi was admitted by the appellant in his report culminated into FIR and in

the reply to charge sheet as well. Further argued that the appellant was served with charge sheet and he also appeared before the inquiry officer during the inquiry proceedings and that all the legal requirements under the Police Disciplinary Rules were observed before the issuance of impugned order of awarding punishment.

5. Arguments heard. File perused.

6. Perusal of the impugned order of punishment would show that the Competent Authority afforded opportunity of personal hearing to the appellant. However there is no dispute that neither the inquiry report was served upon the appellant nor he was issued any show cause notice before passing of dismissal order against him.

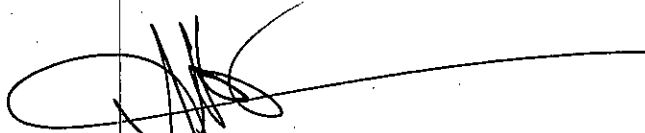
7. Learned counsel for the appellant remained unable to substantiate his plea that the findings of the inquiry officer in his inquiry report are different in nature or otherwise furnish no answer to the accusations leveled against the appellant in the charge sheet.

8. It is also not disputed that both the martyred police officials were under the command of the appellant and in view of the material available on file particularly the documents available in the shape of F.I.R lodged by the appellant himself and reply of the appellant to the charge sheet it cannot be held that the appellant should not have been departmentally proceeded at all.

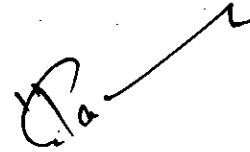
9. Due to the non observance of legal requirements as mentioned above the impugned order of punishment could not withstand even if a prudent mind reaches to the conclusion that sufficient material is available on record against the appellant.

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Hence in the stated circumstances without touching the merits of the case, the impugned orders are set aside and the appellant is reinstated in service. The departmental proceeding against the appellant shall be deemed pending and the respondent department is at liberty to conduct and conclude the same by observing all the legal requirements and codal formalities. The present service appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room after its completion.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

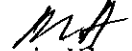
ANNOUNCED
19.07.2018

21.06.2018

Counsel for the appellant and Adll: AG alongwith Mr. Atta ur Rehman, S.I for respondents present. Rejoinder submitted which is placed on file. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 19.07.2018 before D.B.



(Ahmad Hassan)
Member

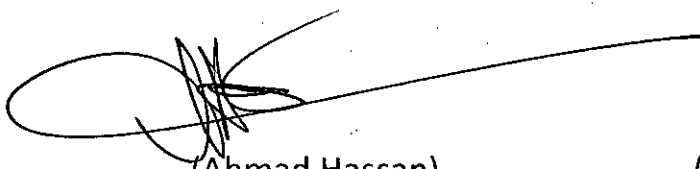


(M. Amin Khan Kundi)
Member

19.07.2018

Appellant with counsel and Mr. Muhammad Jan learned Deputy District Attorney present.

Vide separate judgment of today of this Tribunal placed on file, without touching the merits of the case, the impugned orders are set aside and the appellant is reinstated in service. The departmental proceeding against the appellant shall be deemed pending and the respondent department is at liberty to conduct and conclude the same by observing all the legal requirements and codal formalities. The present service appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED
19.07.2018

06.02.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. The appellant was serving as ASI in Police Department. Disciplinary proceedings were initiated and upon culmination major penalty of dismissal from service was imposed on him vide impugned order dated 27.11.2017. He preferred departmental appeal on 13.02.2017 which was rejected on 10.01.2018, hence, the instant service appeal. Enquiry has not been conducted in accordance with the prescribed rules, hence, opportunity of fair trial was not provided and he was condemned unheard.

Appellant Deposited
Security & Process Fee

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 26.03.2018 before S.B.

(AHMAD HASSAN)
MEMBER

26.03.2018

Appellant alongwith clerk of the counsel present. Mr. Kabir Ullah Khattak, Addl: AG alongwith Atta-ur-Rahman, ASI for the respondent present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 10.04.2018 before S.B.

Member

10.04.2018

Appellant in person and Addl: AG alongwith Mr. Atta-ur-Rahman, Inspector for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 21.06.2018 before D.B.



Member

Form-A

FORM OF ORDERSHEET

Court of _____

Case No. 72/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19/1/2018	<p>The appeal of Mr. Tahir Ahmad presented today by Mr. Rizwanullah Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	23/01/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>06/02/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 72 /2018

1. Tahir Ahmad, Ex-PASI, R/O Village & P.O Madey Baba, Tehsil Thakht Bahi & District Mardan.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa etc.

RESPONDENTS

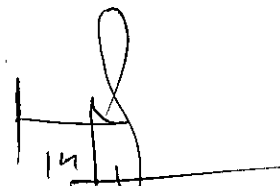
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6	Copy of impugned order dated 27-11-2017	E	16
7	Copy of departmental appeal dated 13-12-2017	F	17-19
8	Copy of rejection order dated 10-01-2018	G	20
9	Wakalatnama	-	-


Appellant

Through

Dated: 19-01-2018


Rizwanullah
Advocate High Court, Peshawar

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 72 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 61

Dated 19-1-2018

1. Tahir Ahmad, Ex-PASI, R/O Village & P.O Madey Baba, Tehsil Thakht Bahi & District Mardan.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Mardan Region-I, Mardan.
3. The District Police officer, Mardan.

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED 27-11-2017
PASSED BY THE DISTRICT POLICE
OFFICER MARDAN (RESPONDENT
NO.3) WHEREBY THE APPELLANT
WAS AWARDED MAJOR PENALTY
OF DISMISSAL FROM SERVICE
AGAINST WHICH A DEPARTMENTAL
APPEAL WAS FILED ON 13-12-2017 BUT
THE SAME WAS REJECTED ON
10-01-2018.**

Filed to-day

Registrar

19/1/18

Prayer in Appeal

By accepting this appeal, the impugned orders dated 27-11-2017 & 10-01-2018 may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

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

Respectfully Sheweth,

Short facts giving rise to the present appeal are as under:-

1. That the father of appellant namely Shah Jehan was serving in the Police Department as Sub-Inspector who had sacrificed his life for the sake of "Nation" during the course of employment and embraced "Shahadat".
2. That the appellant being his real son was appointed as Assistant Sub-Inspector on 09-01-2014 under the "Shaheed Son's Quota".
3. That the appellant was performing his duty with great zeal, zest and devotion. Therefore, he was awarded commendation certificates by his superiors in recognition of his meritorious service and outstanding performance.
4. That the appellant being Incharge Police Post Shago Naka (PS Sher Garh) received information that some smugglers were transporting huge quantity of Charas through motor car (Suzuki FX). The informer was a reliable person who had also conveyed accurate and correct information to the Police in the past. Therefore, two police officials namely Farhad LHC No.1759 and Constable Muhammad Nawaz No.385 duly armed with rifles, were briefed, instructed regarding security measures and then deputed to the relevant point just to inform the appellant about the said car as and when they noticed it.

The appellant also tried to contact the SHO so as to inform him regarding the matter but he could not attend the call.

5. That after about 20-25 minutes of their departure, the appellant received information that two unknown accused/terrorists had opened fire at the said police officials and they sustained injuries.
6. That upon the above information, the appellant alongwith others, immediately reached the spot where Constable Muhammad Nawaz embraced "Shahadat" while Farhad LHC was shifted to hospital who also succumbed to his injuries in a way and embraced "Shahadat".
7. That thereafter, the appellant alongwith police party cordoned off the area so as to arrest the accused or to get some information. But it was only learnt that two persons having a bag were intercepted by the said police officials and they wanted to search their bag. But the above persons infuriated and opened fire at them. Resultantly, both the officials embraced "Shahadat" and FIR thereof was lodged accordingly.

(Copy of FIR is appended as Annex-A).

8. That the appellant was served with a charge sheet alongwith statement of allegations and that Superintendent of Police (Operation) was also nominated to conduct enquiry in the matter. It would be advantageous to reproduce herein the allegations contained in the charge sheet so as to know the legal and factual aspect of the case:

That ASI Tahir Khan, while posted as Incharge PP Shago Naka (PS Sher Garh) Mardan is recommended for departmental proceeding on account of his inability to protect lives of his under command through meticulous briefing and to ensure due security protocols as a

result LHC Farhad No.1759 and Constable Muhammad Nawaz No.385 were killed by two unknown accused vide FIR No.763 dated 06-11-2017 u/s 302/324/34 7ATA PS Lund Khwar. He is suspended and close to Police Lines Mardan in pursuance of worthy Inspector General of Police, Khyber Pakhtunkhwa Peshawar order Endorsement No.7217-19/17 dated 06-11-2017 and this office OB No.2562 dated 06-11-2017.

For the purpose of scrutinizing the conduct of the said official with reference to the above allegations SP(OPS) is appointed as Enquiry Officer.

(Copy of charge sheet alongwith statement of allegations are appended as Annex-B & C).

9. That the appellant submitted elaborate reply, denied the allegations and also termed it as fallacious, malicious and misconceived. He clarified that he received information that some smugglers were transporting huge quantity of Charas through motor car (Suzuki FX) and as such the martyred police officials were duly briefed, instructed regarding security measures and then deputed to the relevant point just to inform the appellant about the car when they noticed the same. But after about 20-25 minutes of their departure, he received information that two unknown accused had opened fire at them and they sustained injuries. He further clarified that upon the above information, the appellant alongwith others forthwith reached the spot where Constable Muhammad Nawaz embraced "Shahada" while Farhad LHC was shifted to hospital who also succumbed to his injuries in a way and embraced "Shahadat". He also added that he had acted in good faith so as to eradicate the crimes from the society. Therefore,

the act of the appellant does not constitute any misconduct. He prayed that he being innocent may kindly be exonerated of the allegations leveled against him in the charge sheet.

(Copy of reply to charge sheet is appended as Annex-D)

10. That the above reply was not found satisfactory and enquiry was conducted in utter violation of law as neither the statement of appellant was recorded nor any witness was examined in his presence. The appellant was also not provided any opportunity of cross-examination. Similarly, he was also not provided any chance to produce his defence in support of his version. But the Enquiry Officer found him guilty and recommended him for major punishment and report thereof was submitted to the Competent Authority. However, no copy of such report was provided to the appellant to enable him to prepare his defence.

11. That thereafter, the appellant was straightaway awarded major penalty of dismissal from service vide order dated 27-11-2017 passed by the District Police Officer, Mardan (respondent No.3).

(Copy of impugned order is appended as Annex-E).

12. That the appellant felt aggrieved by the said order, filed departmental appeal with the Regional Police Officer, Mardan on 13-12-2017 praying therein for reinstatement in service with full back wages and benefits but the same was rejected on 10-01-2018.

(Copy of departmental appeal and rejection order are appended as F & G).

13. That the appellant is jobless since his dismissal from service.

14. That the appellant now files this service appeal before this Hon'ble Tribunal inter-alia on the following grounds:

GROUND OF APPEAL

- A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned orders are not sustainable in the eye of law.
- B. That the so-called enquiry was conducted in utter violation of law as neither the statement of appellant was recorded nor any witness was examined in his presence. The appellant was also not provided any opportunity of cross-examination. Similarly, he was also not provided any chance to produce his defence in support of his version. The above defect in enquiry proceeding is sufficient to declare entire process as sham and distrustful. Right of fair trial is a fundamental right by dint of which a person is entitled to a fair trial and due process of law. The appellant has been deprived of his indispensable fundamental right of fair trial as enshrined in **Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the findings of the Enquiry Officer are perverse and are not sustainable under the law. Thus, the impugned orders passed on the basis of such findings are not warranted under the law.
- C. That the Competent Authority (respondent No.3) was under statutory obligation to have considered the case of appellant in its true perspective and also in accordance with law and to see whether the enquiry was conducted in consonance with law and the allegations thereof were proved against the appellant without any shadow of doubt or otherwise. But he has overlooked this important aspect of the case without any cogent and valid reasons and awarded harsh and extreme penalty of dismissal from service to the appellant despite the fact that there was no iota of evidence to connect the appellant with

the commission of the allegations. Therefore, the impugned orders are liable to be set aside on this count alone.

D. That it was also incumbent upon the Competent Authority (respondent No.3) to have served the appellant with the show cause notice before passing the impugned order being the mandatory requirement of law laid down by august Supreme Court of Pakistan in cases reported as **1995-SCMR-1593 (citation-f) & 2009-SCMR-605 (citation-c)**. The relevant citations of the judgments are as under:

1995-SCMR-1953(citation-f)
(f) Civil Servants Act (LXXI of 1973)

---S. 13---Constitution of Pakistan (1973), Arts. 203-F, 212 & 14---Repugnancy to Injunctions of Islam---Civil service---Compulsory retirement of a civil servant---Order of compulsory retirement of a civil servant without giving due notice of the action proposed to be taken and opportunity of showing cause against such action shall be deemed to be repugnant to the injunctions of Islam and cannot be justified.

2009-SCMR-605 (citation-c)
(c) Civil service---

---Misconduct, charge of--- Employee's right to show-cause notice before passing of termination order against him by competent authority---

It is well settled law that the decision of august Supreme Court of Pakistan is binding on each and every organ of the state by virtue of **Article 189 & 190 of the Constitution of Islamic Republic of Pakistan, 1973**. Reliance can be placed on the judgment of apex court of the country reported in **1996-SCMR-284 (citation-c)**. The relevant citation is mentioned below:

1996-SCMR-284 (citation-c)

----Arts. 189 & 190---Decision of Supreme Court---Binding, effect of--Extent--Law declared by Supreme Court would bind all Courts, Tribunals and bureaucratic set-up in Pakistan.

But despite thereof, the Competent Authority (respondent No.3) has failed to do so and blatantly violated the above dictums of august Supreme Court of Pakistan. Therefore, the impugned orders are not tenable under the law.

E. That the Appellant Authority (respondent No.2) was legally bound to have applied his independent mind to the merit of the case by taking notice about the illegality and lapses committed by the Enquiry Officer as well as respondent No.3 as enumerated in Para-B & C above. But he failed to do so. Hence, the impugned orders are against the spirit of administration of justice.

F. That every person is responsible for his own acts and deeds and not for the faults of others as per law laid down by august Supreme Court of Pakistan in case reported as **2001-SCMR-1959(citation-c)**. The relevant citation is reproduced herein for facility of reference:

2001-SCMR-1959(citation-c)

---"Nemo punitur pro alieno delicto": No person can be condemned for the faults of others.

In the instant case, the appellant had acted in consonance with law and as such he cannot be made as scapegoat for the acts or omissions of others. Thus, the impugned orders are bad in law.

G. That the impugned orders are against law, facts of the case and norms of natural justice. Therefore, the same are not tenable under the law.

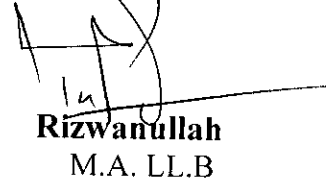
- H.** That the respondents No.3 has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice. Thus, the same is not warranted under the law.
- I.** That the impugned orders are based on conjectures and surmises. Hence, the same are against the legal norms of justice.
- J.** That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned orders dated 27-11-2017 & 10-01-2017 may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.

Through


Appellant


Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar.

Dated: 19/01/2018

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2018

1. Tahir Ahmad, Ex-PASI, R/O Village & P.O Madey Baba, Tehsil Thakht Bahi & District Mardan.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa etc.

RESPONDENTS

AFFIDAVIT

I, Tahir Ahmad, Ex-PASI, R/O Village & P.O Madey Baba, Tehsil Thakht Bahi & District Mardan, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Oath Commissioner
 Lt. Muhammad Khalid (ASO)
 Peshawar
 DEPONENT

18-1-2018

CHARGE SHEET UNDER KPK POLICE RULES 1975

I, Dr. Mian Saeed Ahmed District Police Officer, Mardan as competent authority hereby charge you ASI Tahir Khan, as follows.

That you ASI Tahir Khan, while posted as Incharge PP Shago Naka (PS Sher Garh) Mardan, is recommended for departmental proceeding on account of your inability to protect lives of your under command through meticulous briefing and to ensure due security protocols as a result LHC Farhad No. 1759, and Constable Muhammad Nawas No. 385 were killed by two unknown accused vide FIR No. 763 dated 06.11.2017 u/s 302/324/34/7ATA PS Lund Khwar. You are suspended and closed to Police Lines Mardan in pursuance of worthy Inspector General of Police Khyber Pakhtunkhwa Peshawar order Endorsement No. 7217-19/17, dated 06.11.2017 and this office OB No. 2562 dated 06.11.2017.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense within seven days of the receipt of this charge sheet to the enquiry officer,
3. Your written defence if any, should reach to 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, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.


(Dr. Mian Saeed Ahmed) PSP
District Police Officer,
Mardan

ATTESTED



OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

Annex-C

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpomardan650@gmail.com
Facebook: District Police Mardan
Twitter: @dpomardan

No. 171 /R/D.A-P.R-1975.
Dated 14-11- /2017.

DISCIPLINARY ACTION UNDER KPK POLICE RULES - 1975

I, Dr. Mian Saeed Ahmed District Police Officer, Mardan as competent authority am of the opinion that ASI Tahir Khan, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.

STATEMENT OF ALLEGATIONS

That ASI Tahir Khan, while posted as Incharge PP Shago Naka (PS Sher Garh) Mardan, is recommended for departmental proceeding on account of his inability to protect lives of his under command through meticulous briefing and to ensure due security protocols as a result LHC Farhad No. 1759, and Constable Muhammad Nawas No. 385 were killed by two unknown accused vide FIR No. 763 dated 06.11.2017 w/n 302/324/34/7A/TA PS Lund Khwar. He is suspended and closed to Police Lines Mardan in pursuance of worthy Inspector General of Police Khyber Pakhtunkhwa Peshawar order Endorsement No. 7217-19/17, dated 06.11.2017 and this office OB No. 2562 dated 06.11.2017.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations SP (ops) is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(Dr. Mian Saeed Ahmed) PSP
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. _____ /R, dated Mardan the _____ /2017.

Copy of above is forwarded to the:

1. _____ for initiating proceedings against the accused official / Officer namely ASI Tahir Khan, under Police Rules. 1975.
2. ASI Tahir Khan, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

***** !!! *****

ATTESTED

جواب عالی

کوالہ چارج شیٹ نمبری 1975-D.A-R/171 مورخہ 14/17/14 خارج

جواب DPo صاحب صدران معروض خدمت ہوں کہ

- 1 میں شہید سب انسپکٹر بنیاد چھان کا بیٹا ہوں اور SHUHUDA SONS کوٹہ میں بھرتا ہوں۔ ل 2014 سے فرائض منصبی انجام دے رہا ہوں
- 2 دوران ملازمت مختلف فائدہ جات میں ڈپوٹی انچارج دیکر افسران بالا سے داد رشتہ نش و حصول کرنا آ رہا ہوں۔
- 3 عرصہ تقریباً پانچ بیسے پیلے پولیس چوٹی شگونامہ پر نہایت امانداری اور جانفشانی سے ڈپوٹی انچارج رہا ہوا تھا۔
- 4 اس چوٹی پر لٹننٹ کے دوران کروڑوں روپے مالیت کی کپڑا سیٹر پارٹس گاڑیاں اور منشیات پکڑ کر ملزمان کے خلاف قانونی کارروائی پوری کی۔
- 5 مورخہ 14/17/6 کو صبح کے وقت ناکہ بندی پر موجود تھا۔ نرا اطلاع ملی کہ علاقہ نمبر سے آپ سوزوٹی F.X برٹک بلیو کافی مقدار میں عرس براسٹہ بنیاد ملائند اجنسی میں سمگل کیا جائیگا۔ اس خبر پر اطلاع پر پیلے بھی منشیات پکڑ چکا تھا۔ اسلئے اس اطلاع کو مستند جانکر میں خود ناکہ بندی پر موجود رہا۔ اور LHC فریڈ 1759 اور کنیل محمد نواز 385 کو سٹیورٹی ہدایات دیکر پہلے چوٹی سے کچھ فاصلے پر جانے اور وہاں ہر منٹ کردہ فوٹر مار پر نظر رکھنے اور من Asi کو اطلاع دینے لیکے بھجوا دیا۔ تقریباً 2/25 منٹ بعد مجھے اطلاع ملی کہ دو نامعلوم ملزمان نے ان دونوں پولیس اہلکاروں کو گولی مار دی ہے۔ جب اطلاع فوراً جائے وقوع پر آ کر LHC فریڈ کنورٹی یا یا جب کنیل محمد نواز موقع پر شہید پڑا یا دونوں کو ہسپتال بھجوا دیا اور خود دیکر صدران کے ہمراہ فرب جواری میں ملزمان کی تلاش جاری رکھی۔ پکڑ بھر پور کوشش کے باوجود ملزمان کو گرفتار نہ کر سکے۔
- 6 جہاں تک الزامات کا تعلق ہے کہ میں نے ان اہلکاروں کو ہینر افسران اور حفاظتی ہدایات کے ڈپوٹی پر بھجوا دیا تھا۔ بالکل ماننا

ATTACHED

ہے۔ کیونکہ آنکو ڈپوٹی پر بھنے ہوئے مناسب حفاظتی اقدامات اختیار کرنے کی ہدایات کی تھی۔ مگر بد قسمتی سے نا معلوم ملازمین نے اسے اوپر فائرنگ کر کے آنکو شہید کیا۔

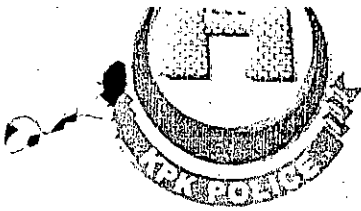
7 میں بالکل بے گناہ یوں۔ میں نے کارسز کار کے قتل میں اپنی فریق میں بھی نہایت اہم ندری سے اکرے ہوئے مشتات کے سمگلروں کو گرفتار کرنے اور مشتات بکرے کی کوشش کی ہے۔

3 میرے اوپر لگائے ہوئے الزامات کے بنیاد ہے۔ لہذا چارج شیٹ

کو داخل دسترس مافی حاد ہے

ASi. P. Lines
15-11-2017
پولیس لائن مدراس

ATTESTED



Annex-E
OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

16

No. _____ /GB,
Dated _____ /2017.

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpomardan650@gmail.com
Facebook: District Police Mardan
Twitter: @dpomardan

ORDER

This order will dispose-off the departmental inquiry, which has been conducted against PASI Tahir Khan, on the allegation that he while posted as Incharge PP Shago Naka, Police Station Sher Garh, Mardan was recommended for departmental proceeding on account of his inability to protect the lives of his under command through meticulous briefing and to ensure due security protocols. As a result LHC Farhad No. 1759, and Constable Muhammad Nawas No. 385 were killed by two unknown accused vide FIR No. 763 dated 06.11.2017 u/s 302/324/34/7ATA PS Lund Khwar. He was suspended and closed to Police Lines Mardan in pursuance of worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar order Endorsement No. 7217-19/17, dated 06.11.2017 and this office OB No. 2562 dated 06.11.2017. This attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.

In this connection, PASI Tahir Khan, was charge sheeted vide this office No. 171/R, dated 14.11.2017 and also proceeded him against departmentally through Mr. Abdur Rauf Babar Qisrani, SP/Operations/HQrs: Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 3077/PA/OPS, dated 23.11.2017, The allegations have been established against him and recommended for major punishment.

The undersigned agreed with the findings of the enquiry officer and also heard him in Orderly Room on 27.11.2017, the alleged PASI Tahir Khan, is hereby awarded major punishment of "Dismissal from Service", with immediate effect in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 2738

Dated 27/11 /2017.

ATTESTED

Dr. Mian Saeed Ahmed (PSP)
District Police Officer,
Mardan.

No. 10260-62 GB. dated Mardan the _____ /2017.

Copy for information and necessary action to the:-

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, E&I, Khyber Pakhtunkhwa, Peshawar w.r.t his office Memo: No. 1476-77/E&I, dated 10.11.2017.
3. Deputy Inspector General of Police, Mardan Region-I, Mardan.
4. S.P Operations, Mardan.
5. DSP/ HQrs. Mardan.
6. Pay Officer (DPO) Mardan.
7. E.C (DPO) Mardan.
8. OSI (DPO) Mardan.

The Regional Police Officer

Mardan.

Subject:

APPEAL AGAINST DISMISSAL ORDER OB No. 238
DATED 27.11.2017

Respected Sir,

It is submitted:

1. That the appellant is the son of shaheed Sub Inspector Shah Jehan who 'martyred' during duty. The appellant has been appointed as ASI on 09.01.2014 against Shaheed's Son Quota.
2. That during service, the appellant has been awarded commendation certificates due to his honesty, efficiency, professionalism etc.
3. That the appellant has performed his duties in a number of Police Stations with efficiency, honesty, dedication and professionalism. During duty, the appellant has seized cloth, spare parts, Non Custom paid Vehicles and Narcotics, and has been awarded commendations.
4. That the Police Post Shago Naka Check post consists of 12 Strength. One Police Officer was on casual leave "Shahbbashi", 04 constables performed 2nd night duty & they were on rest, while rest 6 constables were on duty at that day. Out of 6, 1 left 04 Police official on road, while deputed 02 Police official (Deceased). Namely LHC Farhad and Constable Muhammad Nawaz after briefing them that they had only pass on information to the appellant and nothing else. They were properly briefed regarding the security instructions. They were further briefed that when they happened to see the said car, they should immediately inform the appellant. Further I tried to contact my SHO to share the said information with him but he did not pick my call even after I dialed his number time and time again. I therefore, had to do according to my own thinking and within the limited resources of the Police Post.
5. That after about 20-25 minutes, the appellant received information that two unknown accused/terrorist had opened fire upon the two deputed Police official, and they sustained injuries.
6. That upon the said information, the appellant alongwith others, immediately reached the spot where Constable Muhammad Nawaz embraced Shahadat while

ATTESTED

- LHC Farhad was shifted to Hospital who also scammed to his inj. and embraced shahadat during shifting to hospital.
8. That after shifting the injured and dead body of Shaheed, the appellant ... oned off the area tried his best level to arrest the accused or got some information but in vain. It was only came to light that two persons carrying a bag were intercepted by the said police officers, the police officers were insisting upon the search of the bag during which an altercation took place and the unknown accused opened fire upon the police officers, An F.I.R No.736 dated.06.11.2017 u/s 302/324/34 . PC read with 7-ATA was lodged in Police Station Lundkhwar upon the ... written by the appellant. The appellant is the complainant in the case.
 9. That upon the directives of the PO, KPK vide order No. S/7216/17 dated 06.11.2017, the appellant was suspended.
 10. That the DPO Mardan vide Disciplinary Action No.171/R/D.A-P.R-1975 dated 14.11.2017 served the appellant alongwith Charge Sheet with nomination of Operation as Investigation Officer. The appellant submitted written reply to Charge Sheet on 15.11.2017 and after that the appellant has been dismissed from service hence this Appeal inter Alia on the following grounds:

GROUNDS:

- A. That the order passed by the DPO Mardan is against the facts, law, rules etc. hence untenable.
- B. That no Departmental Inquiry has been conducted in the instant case and as per judgments of the superior courts, major penalty cannot be awarded in summary proceedings hence the order is not sustainable in the eyes of law.
- C. That neither proper Departmental Inquiry is conducted nor any witness is examined nor any proof/ document is presented nor the appellant is confronted with any such evidence thus the Order of DPO is nullity in the eyes of law.
- D. That so far, the charge of inability to protect lives of under command through meticulous briefing is concerned, the appellant had not only briefed the deceased police officials but had also directed them to take all security measures. They had further been directed just to inform the appellant if they happened to see the particular car and nothing else. Even as per law, every person is responsible for his own acts and deeds and not the acts and omissions of other. In the instant case, the appellant had performed all his lawful acts in accordance with law, therefore, for omission of other could not vicariously be liable. Thus the punishment awarded to

ATTESTED

- the appellant is not warranted by law. The accident was a sudden attack of a terrorist for which in my opinion major penalty may not be awarded.
- E. It is, therefore, prayed that on acceptance of this appeal, the order passed by the DPO may very kindly be set aside and the appellant reinstated in service with all back and consequential benefits.
 - F. I being remained in service for the last 04 years during this entire period even a single inquiry/complaint of misconduct/inefficiency is not available, which shows that the undersigned/appellant is honest & devoted to his service.
 - G. That neither even the copy of the so called inquiry report is provided to the appellant to prepare his defence thus all the proceedings are sham proceedings, upon which no action can legally be taken, leave alone the dismissal of the appellant.
 - H. That the DPO has not only violated all the norms of justice including the principles of natural justice but has also violated Article-10A, of the constitution of Islamic Republic of Pakistan-1973 which provides for fair trials. It is therefore, most respectfully prayed that no acceptance of this appeal, the order dated 27.11.2017 passed by DPO Mardan may very kindly be set aside and the appellant reinstated into service with all back and consequential benefits.

Thanks.

Yours obediently,

[Signature]
PASI FAHIR AHMAD

316/MR.
 R/O Village & P.O Madey Baba
 Thesil Thakht Bhai & Distt; Mardan
 Contact#: 0343-1323131

Dated: 13-12-2017

ATTESTED

ORDER.

This order will dispose-off the appeal preferred by Ex- PASI Tahir Akhbar No. 316/MR of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded Major punishment of dismissal from service vide District Police Officer, Mardan G.O No. 2738 dated 27.11.2017.

Brief facts of the case are that the appellant while posted as I/C PP Shago Laska PS Shergarh was recommended for departmental proceeding on account of his inability to protect the lives of his under command through meticulous briefing and to ensure due security protocols. As a result LHC Farhad No. 1759 and Constable Muhammad Nawas No. 385 were killed by two unknown persons accused vide FIR No. 763 dated 06.11.2017 u/s 302/324/34/7A/TA Police Station Lund Khwar. He was suspended and closed to Police Lines in pursuance of Worthy Provincial Police Officer Khyber Pakhtunkhwa, Peshawar order endorsement No. 7217-19/17, dated 06.11.2017. This attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part. In this connection, he was Charge Sheeted and also proceeded against departmentally through MR. Abdul Rauf Babar Qisrani, SP/Operations/IIQrs Mardan. The Enquiry Officer after fulfilling necessary process, submitted his findings to the District Police Officer, Mardan, holding responsible the defaulter officer of negligence/misconduct and recommended him for awarding Major punishment. The alleged PASI was heard in person in Orderly Room by the District Police Officer, Mardan on 27.11.2017 and awarded him Major Punishment of dismissal from service.

He was called in orderly room held in this office on 05.01.2018 and heard him in person. The appellant did not produce any cogent reason for his innocence. Therefore, I find no grounds to intervene the order passed by District Police Officer, Mardan. Appeal is rejected.

ORDER ANNOUNCED.

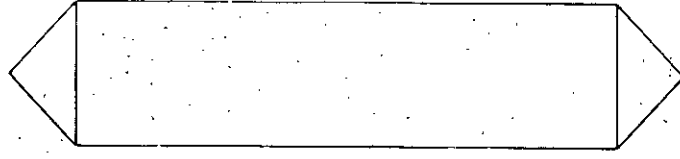
(Muhammad Ajam Shinwari) PSP
o/c Regional Police Officer,
Mardan

No. 196 /ES, Dated Mardan the 10/01 /2018.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 707/LB dated 28.12.2017. The Service Record is returned herewith.

(*****)

ATTESTED



Service Appeal

2 مخائب
بنام

Tahir Khan
VERSUS

مورخہ

مقدمہ

دعویٰ

The Provincial Police Officer ^{جزم}

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام ^{کیلئے} Peshawar Ryzwanullah Adv

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

المرقوم

15

ماہ

حصوری

2018

مقام

پشاور

کے لئے منظور ہے۔

Attested & Accepted
2018

C

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 72/2018.

Tahir Ahmad Ex-PASI.....Appellant.

VERSUS.

District Police Officer, Mardan & others.....Respondents.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.

REPLY ON FACTS.

1. Correct, hence, no comments.
2. Correct, hence, no comments.
3. Pertains to record, hence, no comments.
4. Incorrect. The appellant, being In-charge Police Post Shago Naka, had established illegal Naka Bandi near Hatyan, outside territorial jurisdiction of his deputed Police Station. **Besides**, it has been reported that the same Naka Bandi was routine matter and used to establish this without permission of the high-ups. **Worth mentioning** that the alleged Naka Bandi was established with only two officials, neglecting the sensitivity of the area and instructions of the seniors. The appellant also ignored the instructions issued under OG-03 and thereby resulted into loss of two precious lives. Hence, the appellant was proceeded against departmentally and punished as he deserved under rules. **(Copy of Inquiry is attached as Annexure-A)**
5. Incorrect as appellant had established illegal Naka Bandi outside territorial jurisdiction of the Police Station/Post concerned and ignored instructions issued under OG-03 and by the high-ups as well. **(Copy of OG-03 is attached as Annexure-B)**
6. Pertains to record, hence, no comments.
7. Pertains to record, hence, no comments.
8. Correct to the extent of Charge Sheet and departmental inquiry against the appellant.
9. Incorrect. The appellant had, infact, established an illegal Naka Bandi by avoiding instructions issued under OG-03 and th at b y the Police high-ups and in consequence thereof an unfortunate incident took place which led to the loss of two precious Police lives. Appellant's misconduct has also resulted into demoralizing the Police Force.
10. Incorrect. Proper departmental inquiry as per rules/law has been conducted through SP Operations by fulfilling all codal formalities. The appellant has been provided all that he required/requested thereof. Hence, denied.
11. Correct, hence, no comments.
12. Correct, hence, no comments.
13. Subject to proof.


14. Incorrect. The appellant holds no grounds, legal or moral, to stand here on in this Honorable tribunal.


REPLY ON GROUNDS:-

- A. Incorrect. The appellant has been treated as per rules/law and there is no violation of any article of the constitution of Pakistan.
- B. Incorrect. Proper departmental inquiry, as required under rules/law, has been conducted and all codal formalities has been complied with. Hence, denied.
- C. Correct to the extent of statutory obligations, however, the respondent No. 03 has proceeded to the extent of impugned penalty after proper inquiry and under rules/law. Hence, the impugned order is sustainable in the eyes of law.
- D. Correct to the extent of judgment of Supreme Court of Pakistan, and the respondent No. 03 has proceeded against under relevant rules/law by keeping in view the misconduct committed by the appellant and the loss of two precious Police lives.
- E. Incorrect. No lapses has been committed by the respondent No. 02 and appellant's departmental appeal was rejected on genuine grounds. The impugned orders are, therefore, in accordance with rules/law and tenable in the eyes of law.
- F. Incorrect. The appellant has committed grievous misconduct by violating the rules/law. Hence, punished as he deserved.
- G. Incorrect. The impugned order are just, legal and in accordance with norms of natural justice. The same are, therefore, tenable in the eyes of law.
- H. Incorrect. The impugned orders are speaking ones and in accordance with the basic principle of administration of justice. Hence, justifiable in the eyes of law.
- I. Incorrect, hence, denied.
- J. The respondents also seek permission to raise additional grounds, if any, at the time of arguments.

PRAYER:-

The prayer of the appellant, being baseless & devoid of merits, is liable to be dismissed with costs.


**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.**
(Respondent No. 01)


**Deputy Inspector General of Police,
Mardan Region-I, Mardan**
(Respondent No. 02)


**District Police Officer,
Mardan**
(Respondent No. 03)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 72/2018.

Tahir Ahmad Ex-PASI.....Appellant.

VERSUS.

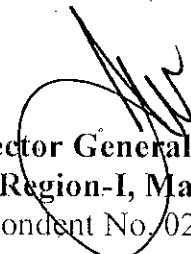
District Police Officer, Mardan
& others.....Respondents.

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.



Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)



Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)



District Police Officer,
Mardan
(Respondent No. 03)

OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

Tel: 0937-9230109
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Email: dpomardan650@gmail.com
Facebook: District Police Mardan
Twitter: @dpomardan

No. 171 /R/D.A-P.R-1975.
Dated 14-11- /2017.

DISCIPLINARY ACTION UNDER KPK POLICE RULES – 1975

1, Dr. Mian Saeed Ahmed District Police Officer, Mardan as competent authority am of the opinion that ASI Tahir Khan, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.

STATEMENT OF ALLEGATIONS

That ASI Tahir Khan, while posted as Incharge PP Shago Naka (PS Sher Garh) Mardan, is recommended for departmental proceeding on account of his inability to protect lives of his under command through meticulous briefing and to ensure due security protocols as a result LHC Farhad No. 1759, and Constable Muhammad Nawas No. 385 were killed by two unknown accused vide FIR No. 763 dated 06.11.2017 u/s 302/324/34/7ATA PS Lund Khwar. He is suspended and closed to Police Lines Mardan in pursuance of worthy Inspector General of Police Khyber Pakhtunkhwa Peshawar order Endorsement No. 7217-19/17, dated 06.11.2017 and this office OB No. 2562 dated 06.11.2017.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations SP (Ops) is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official. record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(Dr. Mian Saeed Ahmed) PSP
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. _____ /R, dated Mardan the _____ /2017.

Copy of above is forwarded to the:

1. _____ for initiating proceedings against the accused official / Officer namely ASI Tahir Khan, under Police Rules, 1975.
2. ASI Tahir Khan, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

***** !!! *****

اسٹیشن ہاؤس
15.11.17

CHARGE SHEET UNDER KPK POLICE RULES 1975

I, **Dr. Mian Saeed Ahmed** District Police Officer, Mardan as competent authority hereby charge you **ASI Tahir Khan**, as follows.

That you **ASI Tahir Khan**, while posted as Incharge PP Shago Naka (PS Ser Garh) Mardan, is recommended for departmental proceeding on account of your inability to protect lives of your under command through meticulous briefing and to ensure due security protocols as a result LHC Farhad No. 1759, and Constable Muhammad Nawas No. 385 were killed by two unknown accused vide FIR No. 763 dated 06.11.2017 u/s 302/324/34/7ATA PS Lund Khwar. You are suspended and closed to Police Lines Mardan in pursuance of worthy Inspector General of Police Khyber Pakhtunkhwa Peshawar order Endorsement No. 7217-19/17, dated 06.11.2017 and this office OB No. 2562 dated 06.11.2017.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to 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, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.


(Dr. Mian Saeed Ahmed) PSP
District Police Officer,
Mardan

جناب عالی!

بحوالہ چارج شیٹ نمبری 171/R/D-A-P-R-1975 مورخہ 14.11.2017 مجاریہ جناب DPO

مردان معروض خدمت ہوں کہ،

1۔ میں شہید سب انسپکٹر شاہ جھان کا بیٹا ہوں۔ اور Shuhuda, Sons کوٹہ میں بھرتی ہو کر سال 2014ء سے فرائض منصبی انجام دے رہا ہوں۔

2۔ دوران ملازمت مختلف تھانہ جات میں ڈیوٹی انجام دیکر افسران بالا سے داد و شتابش وصول کرتا رہا ہوں۔

3۔ عرصہ تقریباً 4 مہینے پہلے سے پولیس چوکی شوگونا کہ پر نہایت ایمان داری اور جانفشانی سے ڈیوٹی انجام دیتا رہا تھا۔

4۔ اس چوکی پر تعیناتی کے دوران کروڑوں روپے مالیت کا کپڑا، سپیر پارٹس، گاڑیاں، منشیات پکڑ کر ملزمان کے خلاف قانونی کارروائی پوری کی۔

5۔ مورخہ 6.11.2017 کو صبح کے وقت نا کہ بندی پر موجود تھا، کہ اطلاع ملی کہ علاقہ غیر سے ایک سوزی FX موٹر کار برنگ نیلا (بلو) کافی مقدار میں چرس براسٹہ پشاور ملاکنڈ ایجنسی میں سمگل کیا جائے گا، اس محبر کی اطلاع پر پہلے بھی منشیات پکڑ چکا تھا اس لئے اس اطلاع کو مستند جان کر میں خود نا کہ بندی پر موجود رہا اور فرہاد 1759/LHC، کنسٹیبل محمد نواز 3385/FC کو سیکورٹی ہدایات دیکر باس مسلح چوکی سے کچھ فاصلے پر واقع ریل پٹری پر جانے اور وہاں پر متذکرہ موٹر کار پر نظر رکھنے اور من ASI کو اطلاع دینے کیلئے بھجوایا، تقریباً 20/25 منٹ بعد مجھے اطلاع ملی کہ 2 نامعلوم ملزمان نے ان دونوں پولیس اہلکاروں کو گولی ماری ہے، حسب اطلاع پورا جائے وقوعہ پر آکر تو فرہاد LHC کو زخمی حالت میں جبکہ کنسٹیبل محمد نواز موقع پر شہید پڑا اور دونوں کو ہسپتال بھجوایا اور خود دیگر افسران کے ہمراہ قرب و جوار میں ملزمان کی تلاش جاری رکھی مگر بھر پور کوشش کے باوجود ملزمان کو گرفتار نہ کر سکے۔

جناب عالی!

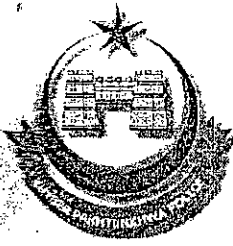
6۔ جہاں تک الزامات کا تعلق ہے کہ میں نے ان اہلکاران کو بغیر احتیاطی اور حفاظتی ہدایات کے ڈیوٹی پر بھجوایا تھا۔ بلکل نامناسب ہے، کیونکہ انکو ڈیوٹی پر بھیجتے ہوئے مناسب حفاظتی اقدامات اختیار کرنے کی ہدایات کی تھی۔ مگر بد قسمتی سے نامعلوم ملزمان نے ان کے اوپر فائرنگ کر کے ان کو شہید کیا۔

7۔ میں بلکل بے گناہ ہوں، میں نے کارسروکار کے مفاد میں اپنی فرائض منصبی نہایت ایمان داری سے ادا کرتے ہوئے منشیات کے سمگلروں کو گرفتار کرنے اور منشیات پکڑنے کی کوشش کی ہے۔

8۔ میرے اوپر لگائے ہوئے الزامات بے بنیاد ہے لہذا چارج شیٹ کو داخل دفتر فرمائی جائے۔

المورخہ 15.11.2017

طاہر احمد Pasi متعینہ معطل پولیس لائن مردان



OFFICE OF THE
SUPERINTENDENT OF POLICE
OPERATIONS & HEADQUARTERS
MARDAN

Tell: 0937-9230117

Fax: 0937-9230111

E.Mail: Spops1506@gmail.com

No. 3077 /PA,(Ops)

Dated 23 / 11 / 2017.

To The District Police Officer,
Mardan.

Subject: DEPARTMENTAL ENQUIRY AGAINST ASI TAHIR KHAN.

Memo:

Kindly refer to your office dairy No. 171/R/D.A-P.R-1975 dated 14.11.2017 on the subject noted above.

2. In this regard it is submitted that on receipt of enquiry ASI Tahir Khan was called in the office. His statement is placed on the enquiry file. He was questioned and counter questioned. From enquiry following facts transpired:-

- a. ASI Tahir Khan, being In-charge of police post Shago Naka established an illegal Naka bandi near Hatyan, outside the territorial jurisdiction of his police station. He did not inform his senior officer about such illegal Naka Bandi.
- b. As per information from locals of the area, the same illegal Naka bandi was a routine matter and previously was also established without knowledge / approval of senior officers.
- c. Moreover, such illegal Naka bandi was established with two police officials, neglecting the sensitivity of the area and orders of the senior officers.
- d. Illegal Naka bandi was established whereby the two martyrs were not wearing the protective gear. Thus ASI Tahir Khan violated the instructions provided in OG-3. Such grave negligence and misconduct by ASI Tahir Khan resulted in loss of two precious lives and demoralizing the police force.

3. *Keeping in view the above ASI Tahir Khan is recommended for Major Punishment of Dismissal from Service.*

Submitted please.

OR 1 S
23/11/17

Superintendent of Police
Operation & Headquarters
Mardan

﴿ جملہ محرران SHOs تحت بھائی سرکل ﴾

ہدایات بمطابق OG-3

- ☆ تحریر ہے کہ ہرنا کہ بندی پوائنٹ پر اہلکاران کیساتھ جیکٹ حملت موقع پر بیریز، کولر، ٹارچ، فرسٹ ایڈ سامان، موجودہ جوہشتی عملہ تحت بھائی سرکل بدوران ڈیوٹی بولٹ پروف جیکٹ اور ہلٹ لازمی استعمال کریں گے اس میں کوتاہی برداشت کیے گی۔ ہر موبائل افسر اور ڈائریکٹر پر بھی لاگو ہوگا۔ جبکہ موبائل افسر جملہ بیٹ میں اس پر عمل درآمد یقینی بنائیں گے۔
- ☆ پولیس پک اپ موبائل کے سائیڈز کے ارد گرد گرل لگائے تاکہ ہینڈ گرنیڈ حملہ سے بچا جاسکے۔
- ☆ دور میں جہت موبائل ڈرائیور روڈ کے عین وسط میں گاڑی چلائے اور حس راستے سے گزر جائے اسکی بجائے واپسی کیلئے دستہ استعمال کرے تاکہ کسی بھی IED سے بچا جاسکے۔
- ☆ کھانہ چونکہ تھانہ جاتوں میں باقاعدہ میس میں مہیا کیا جاتا ہے لہذا کبھی بھی کھانے وغیرہ کیلئے کھڑا ہونا قابل قبول نہیں ہوگا، ایمر جمعیہ دیگر گنج بھی ضرورت کی صورت میں اہلکاران موبائل سے اتر کر الٹ کھڑے ہوں گے۔ اسی طرح کسی مستقل مقام پر موبائل کو کھینچا ہونا سبوزون نہیں جگہ تبدیل کرنا لازمی ہوگا۔
- ☆ کسی بھی اطلاع پر جانے سے پہلے اس اطلاع کی تسلی ہونا چاہیے اور موقع پر اہلکاران جم گھب نہ بنائیں۔
- ☆ IED کی اطلاع پر جانے سے پہلے سینئر افسر کو مطلع کرنا ضروری ہوگا اسی طرح کنٹرول روم کو بھی بروقت مطلع کیا جائے اور BDS موبائل کو طلب کریں اور BDS سے Sweeping کے بعد موقع جانا چاہیے۔
- ☆ بدوران ہونا کہ بندی ہرنا کہ بندی پوائنٹ پر ایک ASI اور 6 کانسٹیبلان جیکٹ حملت کے ساتھ الٹ ہوں گے۔ اور علیحدہ علیحدہ کھڑے ہوں گے۔
- ☆ دور اور ڈیوٹی موبائل فون کے استعمال پر سخت پابندی ہوگی جو کہ اسکے استعمال سے ڈیوٹی سے اہلکاران غافل ہو جائے ہیں۔
- ☆ موبائل افسران اپنے پاس علاقہ کے اہم مقامات سکولز، کالجز، ہوٹلز، اور دیگر فہرست رکھیں گے۔ اور ان کو احتیاط سے چیک کریں گے۔ کئی بیشی وغیرہ تحریر کر کے بھیجیں گے۔
- ☆ محرران تحت بھائی سرکل بالا ہدایات کی ایک کاپی نوٹس بورڈ پر لگائے۔ ایک کاپی پولیس موبائل میں رکھے اور اس ضمن تفصیلی رپورٹ درج روزنامہ چھپ کرے۔
- ☆ تحت بھائی سرکل کے دائرہ آپریشن بالا ہدایات روزانہ 5 دفعہ بڑی وائرس مشتمل کریگا۔ جبکہ ان کا باقاعدہ روزنامہ اپنے الگ بگ میں کریگا۔
- ☆ تمام محرران SHOs، کئی انفری اور دیگر کمی کے بارے میں لکھ کر ارسال کریں۔ از حد ضروری ہے۔
- ☆ نوٹ: پروانہ نمبر ان تھانہ کے ریکارڈ میں محفوظ رکھیں اور OG-3 فائل میں بھی کاپی رکھیں۔

31.10.2017 2521/ST

ڈی، ایس، پی سرکل تحت بھائی

5/1



OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpomardan650@gmail.com
Facebook: District Police Mardan
Twitter: @dpomardan

No. _____/GB,
Dated _____/2017.

ORDER

This order will dispose-off the departmental inquiry, which has been conducted against **PASI Tahir Khan**, on the allegation that he while posted as Incharge PP Shago Naka, Police Station Sher Garh, Mardan was recommended for departmental proceeding on account of his inability to protect the lives of his under command through meticulous briefing and to ensure due security protocols. As a result LHC Farhad No. 1759, and Constable Muhammad Nawas No. 385 were killed by two unknown accused vide FIR No. 763 dated 06.11.2017 u/s 302/324/34/7ATA PS Lund Khwar. He was suspended and closed to Police Lines Mardan in pursuance of worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar order Endorsement No. 7217-19/17, dated 06.11.2017 and this office OB No. 2562 dated 06.11.2017. This attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.

In this connection, **PASI Tahir Khan**, was charge sheeted vide this office No. 171/R, dated 14.11.2017 and also proceeded him against departmentally through **Mr. Abdur Rauf Babar Qisrani, SP/Operations/HQrs: Mardan**, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 3077/PA/OPS, dated 23.11.2017. The allegations have been established against him and recommended for major punishment.

The undersigned agreed with the findings of the enquiry officer and also heard him in Orderly Room on 27.11.2017, the alleged **PASI Tahir Khan**, is hereby awarded major punishment of "**Dismissal from Service**". with immediate effect in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 2738

Dated 27/11/2017


Dr. Mian Saeed Ahmed (PSP)
District Police Officer,
Mardan.

No. 10060-68/GB, dated Mardan the 27-11-2017.

Copy for information and necessary action to the:-

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, E&I, Khyber Pakhtunkhwa, Peshawar w.r.t his office Memo: No. 1476-77/E&I, dated 10.11.2017.
3. Deputy Inspector General of Police, Mardan Region-I, Mardan.
4. S.P Operations, Mardan.
5. DSP/ HQrs. Mardan.
6. Pay Officer (DPO) Mardan.
7. E.C (DPO) Mardan.
8. OSI (DPO) Mardan.

(1)

ORDER.

This order will dispose-off the appeal preferred by Ex- PASI Tahir Ahmad No. 316/MR of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded Major punishment of dismissal from service vide District Police Officer, Mardan OB No. 2738 dated 27.11.2017.

Brief facts of the case are that the appellant while posted as I/C PP Shago Naka PS Shergarh was recommended for departmental proceeding on account of his inability to protect the lives of his under command through meticulous briefing and to ensure due security protocols. As a result LHC Farhad No. 1759 and Constable Muhammad Nawas No. 385 were killed by two unknown accused vide FIR No. 763 dated 06.11.2017 u/s 302/324/34/7ATA Police Station Lund Khwar. He was suspended and closed to Police Lines in pursuance of Worthy Provincial Police Officer Khyber Pakhtunkhwa, Peshawar order endorsement No. 7217-19/17, dated 06.11.2017. This attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part. In this connection, he was Charge Sheeted and also proceeded against departmentally through MR. Abdur Rauf Babar Qisraani, SP/Operations/HQrs Mardan. The Enquiry Officer after fulfilling necessary process, submitted his findings to the District Police Officer, Mardan, holding responsible the defaulter officer of negligence/misconduct and recommended him for awarding Major punishment. The alleged PASI was heard in person in Orderly Room by the District Police Officer, Mardan on 27.11.2017 and awarded him Major Punishment of dismissal from service.

He was called in orderly room held in this office on 05.01.2018 and heard him in person. The appellant did not produce any cogent reason for his innocence. Therefore, I find no grounds to intervene the order passed by District Police Officer, Mardan. Appeal is rejected.

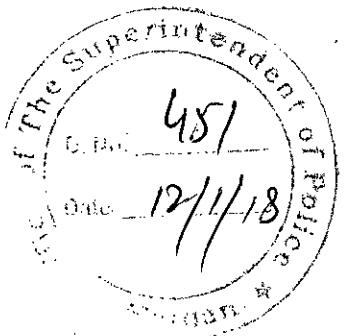
ORDER ANNOUNCED.

(Muhammad Alam Shinwari)PSP
Regional Police Officer,
Mardan

No. 194 /ES, Dated Mardan the 10/01 /2018.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office
Memo: No. 707/LB dated 28.12.2017. The Service Record is returned herewith.

(*****)



EC / msp / Legal
For n action

8
DPO / Mardan
11/01/17

CR 27/11/17

District Police Officer
Mardan

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BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 72/2018.

Tahir Ahmad Ex-PASI.....Appellant.

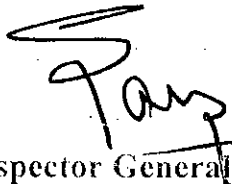
VERSUS.

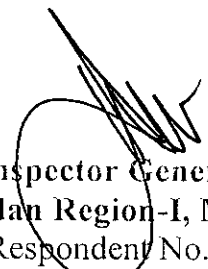
District Police Officer, Mardan


& others.....Respondents.

AUTHORITY LETTER.

Mr. Atta-ur-Rahman Sub-Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)


Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)


District Police Officer,
Mardan
(Respondent No. 03)

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Rejoinder in Service Appeal No. 72/2018

1. Tahir Ahmad, Ex-PASI, R/O Village & P.O Madey Baba, Tehsil Thakht Bahi & District Mardan.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa etc.

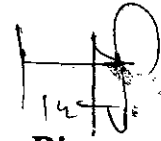
RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Rejoinder alongwith affidavit	-	1-4
2	Letters of Shuhada Package	R-1 & R-2	5-6


Appellant

Through


Rizwanullah
M.A LL.B

Dated: 20/06/2018

Advocate High Court, Peshawar.

1

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 72 /2018

1. Tahir Ahmad, Ex-PASI, R/O Village & P.O Madey Baba, Tehsil Thakht Bahi & District Mardan.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa etc.

RESPONDENTS

**REJOINDER ON BEHALF OF APPELLANT IN
THE ABOVE CAPTIONED APPEAL**

RESPECTFULLY SHEWETH,

PRELIMINARY OBJECTIONS

- 1-6. All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped by their own conduct to raise any objection.

ON FACTS

1. Para-1 of reply is incorrect as the respondents were legally bound to have scanned the relevant record and clarified the real position of appellant. But they failed to do so and "beat around the bush". Hence, Para is deemed as admitted by the respondents.
2. Para-2 is also incorrect and misconceived as it was incumbent upon the respondents to have confirmed the issue of appointment of appellant from the relevant record but they did not bother for the same. Thus, Para is deemed as admitted by the respondents.

3. Incorrect as the respondents were required to check the record in respect of awarding "Commendation Certificates" to the appellant. But they took no pain to do so. Hence, Para is deemed as admitted by the respondents.
4. Para-4 is incorrect, misconceived and hence denied. The appellant acted justly, fairly, honestly and also in accordance with law. He had never travelled beyond his jurisdiction in the performance of his official duty and as such the question of so-called "Naka Bandi" outside the territorial jurisdiction of his Police Station does not arise. Moreover, the above allegation regarding the "Naka Bandi" beyond the territorial jurisdiction of concerned Police Station was also not the part of charge sheet and as such no employee can be punished for such allegations which were not included in the charge sheet and statement of allegations as per law laid down by august Supreme Court of Pakistan in various judgments. The Inquiry Officer was not justified to travel beyond the parameter of allegations contained in the charge sheet. But he failed to do so and roped the appellant in quite a new allegation. Besides, both the constables embraced "Shahadat" during the performance of their official duty within the frame work of law and therefore, they were duly allowed "Shuhada Package" vide copy Annex-R-1 and R-2.
5. Incorrect and detail reply offered in Para-4 of the facts above.
6. Incorrect as the respondents were under statutory obligation to have gone through the relevant record and verified the real position. But they failed to do so and "beat around the bush". Hence, Para is deemed as admitted by the respondents.
7. Incorrect and detail reply furnished in Para-6 of the facts above.
8. Respondents have candidly admitted Para-8, hence needs no rejoinder.
9. Incorrect and detail reply offered in Para-4 of the facts above.
10. Para-10 is incorrect and that of appeal is correct. Moreover, the respondents appended inquiry report with their reply which reveals that none of the witness was examined in order to prove the allegations levelled against the appellant in the charge sheet. It is also well settled law that mere oral assertion is not sufficient to justify the stance of any party unless proved by

cogent and concrete evidence. Thus, the inquiry report is perverse and is not sustainable under the law and as such the impugned orders are also against the spirit of administration of justice.

11. Respondents have candidly admitted Para-11, hence needs no rejoinder.
12. Same reply as offered in Para-11 above.
13. Incorrect as the respondents were bound to have verified the factual aspect of appellant regarding the issue of "jobless" since his dismissal from service. But they failed to do so and "beat around the bush".
14. Incorrect as the appellant has a good prima facie case to invoke the jurisdiction of this Hon'ble Tribunal.

ON GROUNDS

- A. Para-A is incorrect and that of appeal is correct.
- B. Para-B is incorrect and that of appeal is correct.
- C. Same reply as offered in Para-B above.
- D. Incorrect as the respondents failed to give reply regarding the issuance of show cause notice on the appellant. Hence, Para is deemed as admitted by them.
- E. Para-E is incorrect and that of appeal is correct
- F. Para-F is incorrect and that of appeal is correct.
- G. Incorrect as both the orders were passed in utter violation of law.
- H. Para-H is incorrect and that of appeal is correct.
- I. Para-I is incorrect and that of appeal is correct.
- J. Arguments are restricted to positions taken in pleadings.

It is therefore, respectfully prayed that while considering the above rejoinder, the appeal may kindly be accepted with special costs.

Ahmad
Appellant

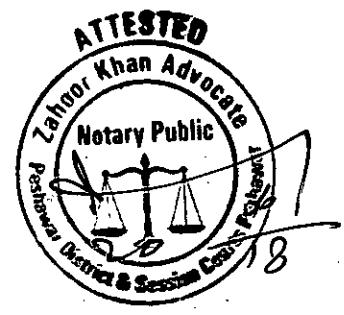
Through

Rizwanullah
Rizwanullah
M.A. LL.B
Advocate High Court, Peshawar.

Dated: 20-06-2018

AFFIDAVIT

I, Tahir Ahmad, Ex-PASI, R/O Village & P.O Madey Baba, Tehsil Thakht Bahi & District Mardan, Peshawar do hereby solemnly affirm and declare that the contents of the accompanied rejoinder are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



Ahmad
DEPONENT



Annex R-1 (5)
OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

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Email: dpo_mardan@yahoo.com
Facebook: District Police Mardan
Twitter: @dpomardan

ORDER.

Constable Muhammad Nawaz No. 385 of this District Police had embrace martyrdom vide Case FIR No. 763 dated 6.11.2017 u/s 302/324/34/7ATA P.S Lund Khwar. His name is hereby struck off from Police Force book with effect from 06.11.2017. However his pay will be drawn according to Government instructions conveyed vide letter No. 1/1/B. O.III/FB 2007-08 dated 15.12.2007.

OB No. 2667

Dated 16-11 /2017.


District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER MARDAN

No. 9775-78/EC, dated Mardan the, 17-11 2017.

Copy forwarded to the:

1. The Deputy Inspector General of Police, Mardan Region-I, Mardan for favor of information.
2. Pay Officer DPO Mardan.
3. PC
4. OSI.



OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

Annex-R-2 (6)

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpo_mardan@yahoo.com
Facebook: District Police Mardan
Twitter: @dpomardan

ORDER.

Constable Farhad Ali No.1759 of this District Police had embrace martyrdom vide Case FIR No. 763 dated 6.11.2017 u/s 302/324/34/7ATA P.S Lund Khwar. His name is hereby struck off from Police Force book with effect from 06.11.2017. However his pay will be drawn according to Government instructions conveyed vide letter No. 1/1/B. O.III/FB 2007-08 dated 15.12.2007.

OB No. 2668

Dated 16-11 /2017.


District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER MARDAN

No. 9779-82/EC, dated Mardan the, 17-11 2017.

Copy forwarded to the:

1. The Deputy Inspector General of Police, Mardan Region-I, Mardan for favor of information.
2. Pay Officer DPO Mardan.
3. PC
4. OSI.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

No. 1511/ST

Dated 1 / 8 / 2018

To

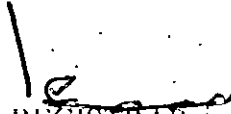
The District Police Officer,
Government of Khyber Pakhtunkhwa,
Mardan.

Subject:

JUDGMENT IN APPEAL NO: 72/2018, TAHIR AHMAD.

I am directed to forward herewith a certified copy of Judgment dated 19.7.2018 passed by this Tribunal on the above subject for strict compliance.

Enc: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Sr. No. Date of order/proceeding

1

2

3

Order or other proceedings with signature of Judge or Magistrate



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 72/2018

Date of Institution ... 19.01.2018

Date of Decision ... 19.07.2018

Tahir Ahmad, Ex-PASI, resident of Village & P.O Madey Baba,
Tehsil Takht Bhai & District Mardan.

Appellant

Versus

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Mardan Region-1, Mardan.
3. The District Police Officer, Mardan.

Respondents

19.07.2018

JUDGMENT


MUHAMMAD HAMID MUGHAL, MEMBER: - Appellant

with counsel and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Atta Ur Rehman S.I legal for the respondents present.

2. The appellant (Ex-PASI) has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 27.11.2017 whereby he was awarded major penalty of dismissal from service and against the order dated 10.01.2018 whereby his departmental appeal was rejected.


3. Learned counsel for the appellant argued that the appellant was charge sheeted on the ground that while he was posted as

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Incharge P.P Shago Naka (Police Station Sher Garh) on account of his inability to protect the lives of his under command through meticulous briefing and to ensure due security protocols, as a result LIC Farhad No.1759 and Constable Muhammad Nawaz No.385 were killed by two (02) unknown accused vide FIR No.763 dated 06.11.2017 u/s 302/324/34 7 ATA P.S Lund Khwar. Further argued that the appellant submitted reply to the charge sheet and the inquiry officer furnished inquiry report; that without communicating the inquiry report and issuance of any show cause notice the major punishment of dismissal from service was awarded to the appellant and that too without affording him chance of personal hearing. Further argued that the departmental appeal of the appellant also failed. Further argued that the inquiry officer in his report observed that the appellant has established illegal Naka Bandi near Hathyan outside the territorial jurisdiction of his Police Station and he did not inform his Senior Officer about such illegal Naka Bandi and that the inquiry officer gave finding to the effect that illegal Naka Bandi was established with two (02) police officials whereby two (02) martyrs were not wearing the protective gear thus ASI Tahir Khan (appellant) violated the instructions provided in OG-3 and such grave negligence and misconduct by the ASI Tahir Khan resulted in loss of two (02) precious lives and demoralizing the Police Force. Learned counsel for the appellant contended that the observation and finding of the inquiry officer as mentioned above has no relevancy with the accusation conveyed to the appellant in the shape

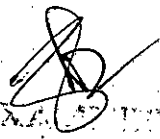
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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

of charge sheet/statement of allegation hence the impugned order of punishment is not sustainable on this score too and in this respect referred the judgment reported in 2011 SCMR page 1. Learned counsel for the appellant in support of his contention to the effect that the impugned order is not tenable having been passed without observing the legal requirements relied upon the judgments reported in 1995 SCMR page 1593, 2009 PLC (C.S) page 161, 2003 SCMR page 1126, 2006 SCMR page 1641, PLD 2008 page 412, 1989 SCMR 1690 and 2009 SCMR page 605, judgments of this Tribunal passed in Service Appeal No.613/2017 and Service Appeal No.1300/2015. Learned counsel for the appellant further argued that the appellant has not committed any misconduct/negligence and that the inquiry officer has not gathered any concrete evidence against the appellant. Learned counsel for the appellant also referred the judgments reported in 1994 SCMR page 418, 2010 PLC (C.S) page 435 and 2003 PLC (C.S) page 759.

4. As against that learned Deputy District Attorney while opposing the present service appeal argued that from the report of the inquiry officer it is evident that the appellant had established illegal Naka Bandi and two (02) police officials under the command of the appellant embraced martyrdom/Shahadat due to the illegal act and negligence of the appellant. Further argued that the findings of the inquiry officer are compatible with the charge sheet. Further argued that misconduct of establishing illegal Naka Bandi was admitted by the appellant in his report culminated into FIR and in

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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

the reply to charge sheet as well. Further argued that the appellant was served with charge sheet and he also appeared before the inquiry officer during the inquiry proceedings and that all the legal requirements under the Police Disciplinary Rules were observed before the issuance of impugned order of awarding punishment.

5. Arguments heard. File perused.


6. Perusal of the impugned order of punishment would show that the Competent Authority afforded opportunity of personal hearing to the appellant. However there is no dispute that neither the inquiry report was served upon the appellant nor he was issued any show cause notice before passing of dismissal order against him.

7. Learned counsel for the appellant remained unable to substantiate his plea that the findings of the inquiry officer in his inquiry report are different in nature or otherwise furnish no answer to the accusations leveled against the appellant in the charge sheet.

8. It is also not disputed that both the martyred police officials were under the command of the appellant and in view of the material available on file particularly the documents available in the shape of F.I.R lodged by the appellant himself and reply of the appellant to the charge sheet it cannot be held that the appellant should not have been departmentally proceeded at all.

9. Due to the non observance of legal requirements as mentioned above the impugned order of punishment could not withstand even if a prudent mind reaches to the conclusion that sufficient material is available on record against the appellant.

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 Service Tribunal,
 Peshawar

Hence in the stated circumstances without touching the merits of the case, the impugned orders are set aside and the appellant is reinstated in service. The departmental proceeding against the appellant shall be deemed pending and the respondent department is at liberty to conduct and conclude the same by observing all the legal requirements and codal formalities. The present service appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room after its completion.

Announced
19.07.2018

Sd/- M. Hamid Nughal,
Member

Certified to be true copy

Sd/- Ahmad Hassan
Member

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application _____
Number of Words _____
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Urgent _____
Total _____
Name of Copyist _____
Date of Completion of Copy _____
Date of Delivery of Copy _____