

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1479/2018

Date of Institution ... 03.12.2018

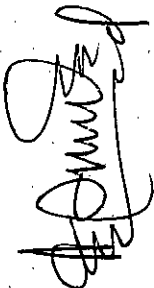
Date of Decision ... 10.11.2021

Muhammad Shoaib, Constable No. 360, District Bannu. ... (Appellant)

VERSUSThe Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and four others.
... (Respondents)Present.Taimur Ali Khan,
Advocate. ... For appellantMr. Kabirullah Khattak,
Deputy District Attorney ... For respondents.MR. AHMAD SULTAN TAREEN. ... CHAIRMAN
MR. MIAN MUHAMMAD ... MEMBER(E)JUDGEMENTAHMAD SULTAN TAREEN, CHAIRMAN.-

1. On 17.01.2018 the District Police Officer Bannu/respondent No. 3 passed an order, whereby, the appellant was although exonerated from the charge, his period of 370 days was converted into leave of the kind due while the remaining period of 1310 days was converted as leave without pay. A departmental appeal was submitted by the appellant which was decided in negative, on 01.10.2018, and the order was communicated to the appellant on 05.11.2018. The appellant has questioned both the orders through the appeal in hand submitted on 03.12.2018.

2. In order to recapitulate the background of the case, it is gathered from the record that the appellant was working in the Police Department as



Constable. During the course of duty charge sheet and statement of allegations were served upon him on the ground of displaying cowardice during an attack by militants on Police Party. Upon conclusion of departmental proceedings the appellant was dismissed from service through order dated 21.05.2013. His departmental appeal against the order was also rejected on 12.06.2013. The appellant thereafter submitted a Service Appeal (No. 1080/2013) before this Tribunal, which was decided on 06.11.2017. Through the judgement in appeal, the penalty awarded to the appellant was set aside and he was reinstated into service. The respondent department was, however, set at liberty to conduct a denovo enquiry within a period of three months from the date of receipt of copy of the judgement. The issue of back benefits for the intervening period was made subject to the outcome of denovo enquiry.

The appellant was consequently reinstated into service on 06.12.2017 and denovo departmental proceedings were commenced against him. Upon the conclusion and based on the enquiry report, the appellant was allowed relief by way of reinstatement in service by the Departmental Appellate Authority. The intervening period was, however, treated as mentioned hereinabove.

3. In essence, the only issue agitated before us through the appeal in hand is regarding the grant of back benefits to the appellant.
4. Learned counsel for the appellant and learned Addl. AG on behalf of the respondents heard. The available record also gone through.
5. Learned counsel for the appellant contended that where a civil servant was exonerated from a charge during departmental proceedings, he was entitled to the grant of back benefits having been reinstated by a



court/Tribunal or the department. The denial of such benefit was an exception. The appellant did not opt to absent himself from duty but was abstained due to the order of dismissal from service passed on 21.05.2013.

On the other hand, learned AAG stated that the departmental appeal of appellant was dismissed on 01.10.2018 while the appeal in hand was submitted on 03.12.2018, therefore, it was barred by time. Being so the appeal in hand was also not maintainable. He relied on judgments reported as 2006-SCMR-453 and 2012-SCMR-195.

6. We are not inclined to subscribe to the arguments of learned AAG for the reason that the endorsement borne on the order dated 01.10.2018 clearly shows the issuance of its copy on 05.11.2018. The appeal was, therefore, preferred before this Tribunal well before the completion of time period allowed for the purpose.

7. It is a matter of law by virtue of second proviso of Section 17 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 that where a civil servant has, under an order which is later set aside, been dismissed or removed from service or reduced in rank, he shall, on the setting aside of such order, be entitled to such arrears of pay as the authority setting aside such order may determine. Examining the merits of instant case in the light of judgments already passed by the Apex Court as well as this Tribunal, the only conclusion we can reach is that the grant of back benefits to an employee, who is reinstated by a court/Tribunal or the Department was a rule and denial of such benefits was an exception on the proof that such person had not remained gainfully employed during such period. In the instant case the conversion of purported absence period into leave without pay was not to be carried out considering non-performance of duty by the appellant out of his

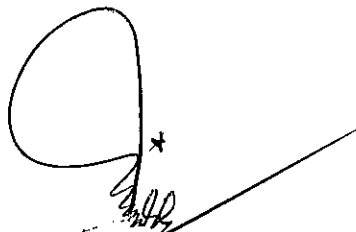


sweet will. It is reiterated that the appellant initially went out of service through order dated 21.05.2013 and was held back from performance of duty till his re-instatement.

In support of the above, the judgement of Apex Court reported as 2013-SCMR-752 is also referred to. It was unequivocally held therein that once an employee was reinstated in service after exoneration of the charges levelled against him, the period in which he remained either suspended or dismissed could not be attributed as a fault on his part. Exoneration of the charge meant that employee stood restored in service, as if he was never out of service. The period during which employee remained dismissed was, therefore, to be considered as period he "remained in service".

8. It is important to note here that the respondents never alleged/agitated that the appellant was gainfully employed during the relevant period.



9. For what has been discussed herein above, the appeal in hand is accepted. Consequently it is directed that the period in between dismissal of the appellant and his reinstatement into service be counted for arrears of pay in the manner that he shall get leave pay to the extent of earned leave available in his leave account and for the remaining period he shall be paid basic pay admissible under the Basic Pay Scale. Parties are left to bear their respective costs. File be consigned to the record room.



(MIAN MUHAMMAD)
MEMBER(E)


(AHMAD SULTAN TAREEN)
CHAIRMAN

ANNOUNCED
10.11.2021

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	10.11.2021	<p><u>Present.</u></p> <p>Mr. Taimur Ali Khan, ... For appellant Advocate</p> <p>Mr. Kabirullah Khattak, Addl. Advocate General alongwith ... For respondents. Yaqub Khan, H.C.</p> <p>Vide our detailed judgment of today, the appeal in hand is accepted. Consequently it is directed that the period in between dismissal of the appellant and his reinstatement into service be counted for arrears of pay in the manner that he shall get leave pay to the extent of earned leave available in his leave account and for the remaining period he shall be paid basic pay admissible under the Basic Pay Scale. Parties are left to bear their respective costs. File be consigned to the record room.</p> <p style="text-align: center;">  (MIAN MUHAMMAD) Member(E) </p> <p style="text-align: right;">  CHAIRMAN </p> <p><u>ANNOUNCED</u> 10.11.2021</p>

Sir,

PUC is a list of cases heard & announced by the then Chairman Justice (RTD) Hamid Farooq Durrani (Late) but judgement could not be written due to his illness & demise later on.

2/N. Submitted for perusal and order, please


Registrar

ew

8/11/2021

3. Worthy Chairman

The cases enumerated in the PUC be fixed before a Special D.B comprising the undersigned and the Worthy Member who sat in the bench with the then Worthy Chairman at the time of hearing, for further dealing with the matter in accordance with law, after notices to the parties


Worthy Chairman

28.12.2020

Due to summer vacation, case is adjourned to
15.3.2021 for the same as before.


Reader

27.10.2020

Proper D.B is on Tour, therefore, the case is
adjourned for the same on 28.12.2020 before D.B.


Reader

30.03.2020

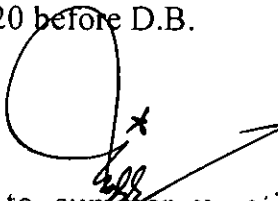
Due to public holiday on account of COVID-19, the case is adjourned to 08.06.2020 for the same as before.


Reader

08.06.2020

Clerk to counsel for the appellant present. Mr. Muhammad Jan, DDA for respondents present. Due to general strike of the Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 17.08.2020 before D.B.

MEMBER


MEMBER

MEMBER

Reader

17.08.2020

Due to summer vacations, the case is adjourned to 27.10.2020 for the same.


Reader

13.12.2019

Clerk to counsel for the appellant present. Addl: AG for respondents present. Due to general strike of the bar the case is adjourned. Case to come up for arguments on 12.02.2020 before D.B.


Member



Member

12.02.2020

Learned counsel for the petitioner present. Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Yaqoob Khan H.C. for respondent No. 1 to 3 and Mr. Sajid Superintendent for respondent No.4 present.

During the course of arguments it was pointed out that the impugned order was passed on 18.01.2018 the appellant filed department appeal (undated) against the impugned order which was rejected on 01.10.2018. Representative of the respondent department is directed to furnish the copy of record including departmental appeal to show that on which date departmental appeal was filed. Adjourned. To come up for record and arguments on 30.03.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

11.07.2019

Counsel for the appellant and Addl. AG alongwith Asghar Ali H.C for respondents No. 1 to 3 and Mr. Sajid Superintendent for the respondent No. 4 present

Written reply by respondents No. 1 to 3 already submitted. Representative of the respondent No. 4 requests for further time. Last opportunity granted. To come up for written reply of respondent No. 4 on 04.09.2019 before S.B.


Chairman

04.09.2019


Counsel for the appellant and Mr. Usman Ghani District Attorney alongwith Muhammad Sajid, Superintendent for respondent No. 4 present.

Representative of the respondent No. 4 states that the said respondent relies on the written reply already submitted by respondents No. 1 to 3. The appeal is, therefore, assigned to D.B for arguments on 06.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.


Chairman

06.11.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourn. To come up for arguments on 13.12.2019 before D.B.


Member



Member

23.04.2019 None for the appellant present. Addl: AG alongwith Mr Asghar Ali, H.C for respondents present. Written reply/comments on behalf of respondent no.4 not submitted. Requested for adjournment. Adjourned. Case to come up for written reply/comments of respondent no.4 on 18.06.2019 before S.B.


(Ahmad Hassan)
Member

18.06.2019

Counsel for the appellant and Mr. Asghar Ali. Head Constable on behalf of respondents No. 1 to 3 alongwith Mr. Kabirullah Khattak, Additional AG present. Joint para-wise comments/written reply on behalf of respondents No. 1 to 3 has already been submitted. None present on behalf of respondent No. 4 nor written reply on his behalf submitted therefore, notice be issued to respondent No. 4 with the direction to direct the representative to attend the court on and submit written reply on the next positively. To come up for written reply/comments on behalf of respondent No. 4 on 11.07.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member

14.01.2019

Counsel for the appellant present.

Contends that the appellant was reinstated into his service in pursuance to the judgment of this Tribunal, handed down on 06.11.2017, in which it was clearly noted that the issue of back benefits of appellant for the intervening period will be subject to the outcome of denovo enquiry. On the other hand, through the impugned order dated 18.01.2018, the appellant was exonerated from the charge but was not extended the back benefits which were due. His leave of 370 days was converted into leave of the kind due and 1310 days was converted into leave without pay. In view of the learned counsel the impugned order was self-contradictory to that extent.

For what has been argued instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 21.03.2019 before S.B.

Appellant Deposited
Security & Process Fee

Chairman

21.03.2019

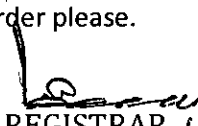

Nemo for the appellant. Mr. Kabirullah Khattak learned Addl: AG alongwith Mr. Asghar Ali Head Constable for the respondents present. Written reply submitted on behalf of respondents No. 1 to 3. Written reply not submitted on behalf of respondents No.4. Adjourn. To come up for written reply/comments on behalf of respondent No.4 on 23.04.2019 before S.B.

Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. _____ 1479/2018 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/12/2018	<p>The appeal of Mr. Muhammad Shoaib resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 12/12/18.</p>
2-	13/12/2018	<p>This case is entrusted to touring S. Bench for preliminary hearing to be put up there on <u>14/01/2019</u>.</p> <p> CHAIRMAN</p>


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The appeal of Mr. Muhammad Shoib Constable No. 360 Distt. Bannu received today i.e. on 03.12.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Annexures C & D of the appeal are missing.
- 5- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 6- Wakalat nama in favour of appellant be placed on file.
- 7- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2343 /S.T,

Dt. 4-12-2018.



REGISTRAR 4/12/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv. Pesh.

Respected Sir,

- 1- Removed.
- 2- Removed
- 3- Removed
- 4- Annexure C is attached at page 8 and D at page-9.
- 5- copy of departmental appeal is attached at page-31.
- 6- Removed.
- 7- Removed

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Resubmitted after
compliance

12/12/18

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1479/2018

Muhammad Shoaib

VS

Police Deptt:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	P. NO
1.	Memo of Appeal	-----	01-05
2.	Copies of charge sheet and statement of allegation	A,B	06-07
3.	Copies of order dated 21.05.2013 and rejection order dated 12.06.2013	C&D	08-09
4.	Copy of judgment dated 06.11.2017	E	10-14
5.	Copy of order dated 06.12.2017	F	15
6.	Copies of charge sheet and statement of allegations and reply to charge sheet	G,H&I	16-23
7.	Copy of inquiry report	J	24-29
8.	Copy of order dated 18.01.2018	K	30
9.	Copies of departmental appeal and rejection order 01.10.2018	L&M	31-32
10.	Vakalat nama	-----	33

APPELLANT

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,
&

(ASAD MAHMOOD)
ADVOCATE HIGH COURT.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1479/2018

Khyber Pakhtukhwa
Service Tribunal

Diary No. 1722

Dated 03/12/2018

Muhammad Shoaib, Constable No.360,
District, Bannu.

APPELLANT

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, Bannu.
4. The Secretary, Finance, KPK, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 01.10.2018 COMMUNICATED TO THE APPELLANT ON 05.11.2018, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR MONITORY BACK BENEFITS IN THE SHAPE OF SALARIES FOR 1310 DAYS HAS BEEN REJECTED FOR NO GOOD GROUNDS AND AGAINST THE ORDER DATED 18.01.2018, WHEREBY APPELLANT'S REMAINED OUT OF SERVICE PERIOD WHICH IS EQUAL TO 1680 DAYS IN WHICH 370 DAYS WAS CONVERTED INTO KIND LEAVE, WHILE THE REMAINING PERIOD OF 1310 DAYS WAS CONVERTED AS LEAVE WITHOUT PAY.

Filed to-day

Registrar

3/12/18

Re-submitted to -day
and filed.

Registrar

12/12/18

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 01.10.2018 MAY BE SET ASIDE AND THE RESPONDENTS MAY KINDLY BE DIRECTED TO MODIFY THE ORDER DATED 18.01.2018 AND CONVERTED 1310 DAYS ON FULL PAY, AS ALREADY RECOMMENDED BY

THE INQUIRY OFFICER IN HIS DE-NOVO INQUIRY REPORT THAT THE APPELLANT MAY BE DEEMED REINSTATED FROM DATE OF HIS DISMISSAL WITH ALL BACK BENEFITS WHICH WAS CONDUCTED ON THE BASIS OF JUDGMENT DATED 06.11.2017 OF THIS AUGUST SERVICE TRIBUNAL IN WHICH IT WAS MENTIONED THAT THE BACK BENEFITS OF INTERVENING PERIOD WILL BE SUBJECT TO THE OUTCOME OF DENOVO INQUIRY. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWTH:

FACTS:

1. That the appellant, while working in the police department as Constable, Charge sheet and statement of allegations were issued to the appellant. **(Copies of charge sheet and statement of allegation are attached as Annexure-A&B)**
2. That on the basis of above allegations, the appellant was dismissed from service 21.05.2013 against which the appellant filed departmental appeal which was also rejected on 12.06.2013. **(Copies of order dated 21.05.2013 and rejection order dated 12.06.2013 are attached as-C&D)**
3. That against the impugned orders, the appellant filed service appeal No.1080/2013 in this august Service Tribunal which was finally decide on 06.11.2017 which was accepted, set aside the impugned orders and reinstate the appellant in service. However, the respondent department is at liberty to conduct a de-novo inquiry in the mode and manner prescribed by the rules against the appellant within the period of three months from the date of receipt of the judgment. In case de-novo inquiry is conducted the issue of back benefits of intervening period will be subject to the outcome of de-novo inquiry. **(Copy of judgment dated 06.11.2017 is attached as Annexure-E)**
4. That in compliance of the judgment dated 06.11.2017, the appellant was provisionally reinstated into service for the purpose of denovo inquiry vide order 06.12.2017. **(Copy of order dated 06.12.2017 is attached as Annexure-F)**

5. That charge and statement of allegations of previous charges were issued to the appellant which was duly replied by the appellant in which he denied the allegations. **(Copies of charge sheet and statement of allegations and reply to charge sheet are attached as Annexure-G,H&I)**
6. That de-novo inquiry was conducted against the appellant and the inquiry officer gave his finding in the inquiry report that the charges have not been proved against the appellant and the appellant has already been reinstated conditionally in service may be deemed reinstated from the date of his dismissal with all back benefits. **(Copy of de-novo inquiry report is attached as annexure-J)**
7. That on the basis of de-novo inquiry report, the respondent No.3 passed an order dated 18.01.2018, wherein it was mentioned that the inquiry officer submitted his finding report and reported that the allegations/charges leveled against the appellant have not been proved. He has already been reinstated conditionally in service and may be deemed reinstated from date of his dismissal with all back benefits, but despite the finding of the inquiry officer, out of service period of the appellant w.e. from from dismissal to reinstatement i.e which is equal to 1680 days, in which 370 days period was converted into kind leave, while the remaining period of 1310 days was converted as leave without pay. **(Copy of order dated 18.01.2018 is attached as Annexure-K)**
8. That the appellant filed departmental appeal to be converted hid b1310days on full pay, which was already recommended by the inquiry in his finding which was also rejected on 01.10.2018 and the rejection was communicated to the appellant on 05.11.2018. **(Copies of departmental appeal and rejection order 01.10.2018 are attached as Annexure-L&M)**
9. That now the appellant come to this august Tribunal for redressal of grievance on the following grounds amongst others.

GROUND:

- A) That the rejection order dated 01.10.2018 communicated to the appellant on 05.11.2018 and order dated 18.01.2018 to the extent of conversion of 1310 days as leave with out pay are against the law, facts, norms of justice and de-novo inquiry report recommendation, violation of judgment dated 06.11.2017, therefore not tenable and

the order dated 01.10.2018 is liable to be set aside and the order dated 18.01.2018 is liable to be modified to extent of conversion of 1310 days on full pay.

- B) That this august Service Tribunal mentioned in its judgment that the issue of back benefits of intervening period will be subject to the outcome of de-novo inquiry and the inquiry officer gave his finding that the appellant may be deemed to be reinstated from the date of his dismissal with all back benefits, but despite that 1310 days was converted as leave without pay by the respondent department which is violation of judgment dated 06.11.2017 of this Honourable Service Tribunal.
- C) That inquiry officer gave his finding in the de-novo inquiry report that the charges/allegations have not been proved against the appellant and the appellant has already been reinstated conditionally in service may be deemed reinstated from the date of his dismissal with all back benefits, but 1310 days was converted as leave without pay by respondent No.3 without giving reason, which is against the norms of justice and fair play.
- D) That the allegations/charges were not proved against the appellant and was exonerated, therefore there remain no ground to deprive the appellant from his back benefits and converted 1310 days as leave without pay.
- E) That the appellant was dismissed from service on 21.05.2013 on certain allegations which was not proved during the denovo inquiry proceeding, therefore the appellant should not be punished for no fault on his part by depriving from his legal right of back benefits and converted 1310 days as leave without pay.
- F) That the appellant remained unpaid employee (not remained gainfully employed) for period from dismissal from service till reinstatement into service and per superior courts judgment, he is entitled for back benefits in the shape of 1310 days to be converted into full pay.
- G) 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 may be accepted as prayed for.



APPELLANT

Muhammad Shoaib

THROUGH:



(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT,

&

(ASAD MAHMOOD)

ADVOCATE HIGH COURT.

CHARGE SHEET.

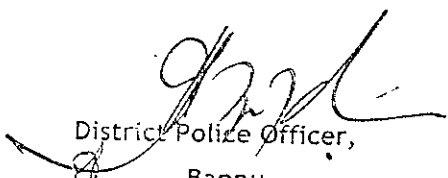
WHEREAS I am satisfied that a formal enquiry as contemplated in the NWFP, Police Rules, 1975 is necessary and expedient.

AND WHEREAS, I am of the view that the allegations if established would call for a major penalty as defined in Rules 4(b) of the aforesaid Rule.

NOW, THEREFORE, as required in 6-1 (a) of the aforesaid Rule I, ABDUL GHAFUOR KHAN AFRIDI District Police Officer, Bannu, as competent authority, hereby charge them FC Umer Jan 2342/EF, FC Rizwan Ullah 2345/EF, FC Imtiaz 1625/EF, FC Nasib Ullah 4072/EF, FC Fawad 379/EF of Platoon No.55 and FC Nasir Zaman 1469, FC Shoaib 331 DFC for the allegations, attached with this charge sheet.

AND I direct you further under rules 6-1 (b) of the aforesaid Rules to put in written defense within 7 days of the Receipt of this Charge sheet as to whether major OR Minor punishment as defined in Rules 4-1(a)-(b) should not be awarded to you. Also state at the same time whether you desire to be heard in person.

In case, your reply is not received within the prescribed period without sufficient reason, it would be presumed that you have nothing to say in your defence and the undersigned would be at liberty to take ex-parte action straight away against you.


District Police Officer,
Bannu.

11/04/2013

ATTESTED


437
A (6)

B (7)

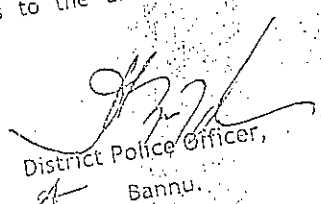
SRC 421


SUMMARY OF ALLEGATIONS.

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

- That after conducting preliminary Enquiry 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, become a silent spectator. 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.

DSP/ P. I. Leghari of Bannu District is appointed to hold departmental proceedings and submit his findings to the undersigned after observing legal formalities.


District Police Officer,
Bannu.
11/04/2013.

ATTESTED


ORDER:

My this order will dispose of departmental proceedings initiated under police rules 1975 against FC Umer Jan 2342/EF, FC Rizwan Ullah 2345/EF, FC Imtiaz 1625/EF, FC Nasib Ullah 4072/EF, FC Fawad 379/EF of Police Station No.55 and FC Nasir Zaman 1469, FC Shoab 331/118 BBI DFC PS. Haved on the following allegations.

- That after conducting preliminary Enquiry by DSP/HQrs and SDPO, Rural they while posted to PS Haved have been found negligence and cowardice.
- That on 13-01-2013, they have been 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 been, become a silent spectator. Thus they have ceased to become good police officials as well as guilty of misconduct.

Proper charge sheet based upon summary of allegations were issued and the enquiry papers were entrusted to Mr Mir Faraz Khan PI Legal, DPO, Office, Bannu for enquiry and report, who (Enquiry Officer) conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended that the allegations leveled against the accused officials are stand established and they are found guilty.

Keeping in view the recommendation of Enquiry officer, SI ABDUL GHAFUOR KHAN AFRIDI, District police officer, Bannu, being a competent authority, in exercise of the power vested in me under police rules 1975, hereby award them Major Punishment of Dismissal from Service to Constable Muhammad Shoab No. 331/118 BBI and Constable Nasir Zaman No. 1469 /5868 with immediate effect.

OB No. 575
Dated 21-05-2013

District Police Officer,
Bannu.

No. 6356-64 /SRC dated Bannu, the 21-5 /2013.

Copy of above is submitted to :

1. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar with the request that Commandant Elite Force be directed to award them Major punishment of Dismissal to the accused officials of Elite Force please.
2. The Commandant Elite Force Khyber Pakhtunkhwa, Peshawar along with Preliminary Enquiry file /complete departmental enquiry file i.e (3 pages) with the request that the above mentioned Elite Force Constables be awarded Major punishment of Dismissal from Service under intimation to all concerned please.
3. The Regional Police Officer, Bannu Region, Bannu for favour of information please.
4. SI Investigation, Bannu for favour of information and necessary action please.
5. SP/FRP, Bannu Region, Bannu with the direction and necessary action that the pay of the said constable Nasir Zaman No. 1469 /5868 has been drawn from FRP Establishment.
6. Pay Officer, SRC and OASI R.I Police Line for necessary action and completion of record.

District Police Officer,
Bannu.

ATTESTED

ATTESTED

ORDER

D
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My this order will dispose off the appeal in respect of Ex: LHC Mohammad Shoib No. 331 of Bannu District Police against the order of Major punishment of dismissal from service, passed by DPO/Bannu vide OB: NO. 575 dated 21.5.2013 for committing of the following omissions:-

- That on 13.1.2013, he along with other Police officials were deputed for Naka bandi duty with SI Imam Hassan shaheed, the then SHO PS: Haved, one accused namely Amin Shah started firing upon SI Imam Hassan shaheed in the premises of Sheikh Farid Baba. Resultantly, he was sustained injuries and after then he got embraced martyrdom. The accused decamped from the scene after the commission of offence without any hindrance, while they including appellant became silent spectators. Thus they including appellant ceased to become good police officials as well as guilty of misconduct.

The appellant was properly proceeded against departmentally. Mr. Mir Faraz Khan Inspector Legal DPO-Office, Bannu was appointed as enquiry officer, who conducted proper departmental proceedings and submitted his findings, wherein, the delinquent Police official was found guilty. After proper departmental proceedings, the delinquent Police official was awarded the aforementioned punishment (dismissal from service) by DPO/Bannu vide OB: No. 575 dated 21.5.2013.

The appellant appeared in orderly room on 11.6.2013 and personally heard. After personal interview, the undersigned can not be persuaded by the appellant about his innocence. Therefore, I Azad Khan Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me under Police Rules, 1975 can not interfere in the order passed by DPO/Bannu vide OB: No. 575 dated 21.5.2013, being one, in consonance with law and hereby file the subject appeal of Ex: LHC Mohammad Shoib o. 331.

Order announced.

(Azad Khan), TST, PSP
Regional Police Officer,
Bannu Region, Bannu.

No. 1372 /EC, dated Bannu the 12 / 06 / 2013.

Copy to the District Police Officer, Bannu for information w/r to his office Memo: No. 7097 dated 10.6.2013.. His S: Roll along with departmental proceedings file received with the above quoted reference are sent herewith for record.

(Azad Khan), TST, PSP
Regional Police Officer,
Bannu Region, Bannu

12/6/13

ATTESTED
A

ATTESTED
A

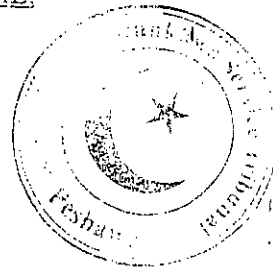
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E (10)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 1080/2013

Date of institution ... 11.07.2013
Date of judgment ... 06.11.2017



Mohammad Shuaib Ex³ Constable No. 331
P.S Haved, Bannu

... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Bannu Range Bannu.
3. The District Police Officer Bannu.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE
ORDER DATED 21.05.2013 WHEREBY THE APPELLANT HAS BEEN
DISMISSED FROM SERVICE AND AGAINST THE FINAL REJECTION
ORDER DATED 12.06.2013 WHEREBY THE DEPARTMENTAL APPEAL
OF THE APPELLANT WAS REJECTED.

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

For appellant.
For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. GUE ZEB KHAN

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

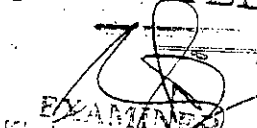
JUDGMENT

MUHAMMAD AMIN KHAN KUNDI MEMBER:-

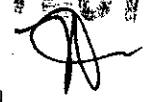
Our this

judgment shall dispose of aforementioned service appeal as well as Service Appeal No. 1081/2013 titled "Nasir Zaman-Versus-The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others, as the aforesaid service appeals have been filed against the order dated 21.05.2013 whereby the competent authority (District Police Officer) have imposed major penalty upon the appellants and dismissed them from service on the allegations that they alongwith others were deputed for

ATTESTED


EXAMINERS
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

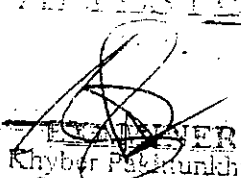
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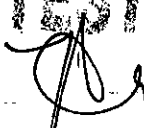


11
ka bandi duty with SI Imam Hassan Shaheed, the then SHO PS Haved District Bannu, and proclaimed offender namely Amin Shah started firing upon the then SHO in the area of Skiekh Fareed Baba resultantly he sustained injuries and died, whereas the accused decamped from the scene after occurrence without any hindrance of the appellants and other as they became a silent spectator. Thus they have ceased to become good police officials as well as guilty of misconduct. The appellants also filed departmental appeal which was rejected vide order dated 12.06.2013 hence, the present service appeal.

2: Learned counsel for the appellants argued that the impugned order as well 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 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 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 five other police officials namely Rizwanullah etc were also dismissed from service on the same allegations but their departmental proceeding were conducted separately. It was further contended that in the present inquiry proceedings the other police officials namely Rizwanuallh etc were also charge sheet ^m _{ed} alongwith the present appellants and after conducting inquiry the competent authority also dismissed the present appellants alongwith five other police officials namely Rizwanullah etc vide order dated 21.05.2013. Although a separate departmental inquiry was also conducted against the five other police officials and they were dismissed from:

ATTESTED


REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED


vice vide order dated 28.02.2014 which have rendered the inquiry proceedings illegal and liable to be set-aside.

3. 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 five others police officials namely Rizwanullah etc were on duty with SI Imam Hassan 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 Fareed Baba resultantly he sustained injuries and died, whereas the accused decamped from the scene after occurrence without any hindrance of the appellants as they became a silent spectator. Thus they have 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 sheeted on the allegations that on 13.01.2013 they alongwith five other police officials were deputed for Naka bandi duty with SI Imam Hassan 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 Fareed Baba resultantly he sustained injuries and died, whereas the accused decamped from the scene after occurrence without any hindrance of the appellant as they became a silent spectator. Thus they



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATT/STED

(13)

have 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 five other officials narnely Muhammad Rizwanullah etc. 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 on the said witnesses. Furthermore, after completion of inquiry proceeding the competent authority was ~~not~~ 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 in the mode and manner prescribed by rules against the appellants within a period of three months from the date of receipt of this judgment. In case the de-novo inquiry is conducted the issue of back benefits of 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

SD/- M. Anwar Khan Kundi, Member
SD/- Qudus Khan, Member

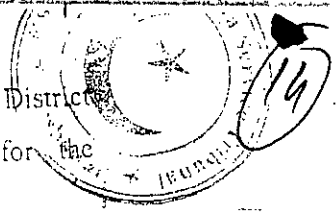
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Date of Presentation 06-11-17
Number of Pages 1600
Copy fee 10.00
Total 10.00
Name M. O.
Date of Issue 28-11-17
Date of Delivery of 28-11-17

TESTED

AA

Hyderabad No. 151
Nasir Zaman vs Govt



06.11.2017

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

Vide our detailed judgment of today consisting of four pages placed in connected Service Appeal No. 1080/2013 "titled Mohammad Shuaib-Versus-The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others, we are constrained to accept the present appeals, set-aside the impugned order and reinstate the appellant in service. However, the respondent-department is at liberty to conduct a de-novo inquiry in the mode and manner prescribed by rules against the appellant within a period of three months from the date of receipt of this judgment. In case the de-novo inquiry is conducted the issue of back benefits of 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

SD/- M. Amin Khan Kundi
Member

SD/- Gulzar Khan
Member

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation: 06-11-17
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Total: 6
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Date of Completion: 28-11-17
Date of Delivery of Copy: 28-11-17

ATTESTED
[Signature]

F (15)

ORDER:

In compliance with the order of Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment in the appeal No. 1080/13, dated 06.11.2017 of Ex: Constable Mohammad Shoaib No. 331 and appeal No. 1081/13, dated 06.11.2017 of Ex: Constable Nasir Zaman No. 1469 received from Khyber Pakhtunkhwa Service Tribunal Peshawar vide letter No. 2530/ST, dated 24.11.2017, the following Ex: Constables, who had been dismissed vide this office OB No. 575, dated 21.05.2013 are hereby provisionally re-instated into service for the purpose of de-novo departmental enquiry. The issue of back benefits of intervening period will be subject to the outcome of de-novo enquiry.

- 1. Ex: Constable Mohammad Shoaib No. 331
- 2. Ex: Constable Nasir Zaman No. 1469

OB No. 1146
Dated: 06-12- /2017.


District Police Officer,
Bannu.

No. 17296-99 /EC dated Bannu, the 06/12 /2017.

- Copy of above is submitted for favor of information to:
- 1. The Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to letter No. 2530/ST, dated 24.11.2017.
 - 2. Pay officer, Reader, SRC, OASI, Line Officer Bannu, for information and necessary action.


District Police Officer,
Bannu.

ATTESTED



STATEMENT OF ALLEGATIONS:

G 16

I, Sadiq Hussain District Police Officer, Bannu as competent authority, to initiate denovo departmental proceedings against Constable Mohammad Shoalb No. 331, who has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (As amended vide Khyber Pakhtunkhwa gazette Notification, No. 27th of August 2014).

SUMMARY OF ALLEGATIONS:

- > That after conducting preliminary Enquiry by DSP/HQrs and SDPO, Rural-I he while posted to PS Haved been found negligent and cowardice.
- > That on 13.01.2013, he was deputed for Naka Bandi duty with SI Iman Hassan Shaheed the then SHO PS Haved, one accused namely Amin Shah started firing upon SI Iman 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 he had been becomes a silent spectator. Thus he had ceased to become good Police officer as well as guilty of misconduct.
- > Such act on his part is against service discipline and amounts to gross misconduct/carry bad name to the Police Force.

1. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations DSP/HQrs is appointed as Enquiry Officer.

2. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within the targeted days after the receipt of this order.

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

(SADIQ HUSSAIN)PSP
District Police Officer,
Bannu.

No. 524-25 ISRC dt. 06-12-2017

Copies to :-

1. The Enquiry Officer
2. The Accused Officer/Official.

ATTACHED
A

CHARGE SHEET:

H (17)

I, SADIQ HUSSAIN, District Police Officer, Bannu, as competent authority, hereby charge you Constable Mohammad Shoaib No. 331 for the purpose denovo departmental enquiry proceedings as follows:-

- That after conducting preliminary Enquiry by DSP/HQrs and SDPO, Rural-I you while posted to PS Haved been found negligent and cowardice.
- That on 13.01.2013, you were deputed for Naka Bandi duty with SI Iman Hassan Shaheed the then SHO PS Haved, one accused namely Amin Shah started firing upon SI Iman 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 you had been becomes a silent spectator. Thus you had ceased to become good Police officer as well as guilty of misconduct.
- Such act on your part is against service discipline and amounts to gross misconduct/carry bad name to the Police Force.

1. By reason of the above you appear to be guilty of misconduct under the Police Rules 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014) and have rendered yourself liable to all or any of the penalties specified in the said rules.

2. You are therefore, directed to submit your defense within 07 days of the receipt of this Charge Sheet to the enquiry officer.

3. Your written defense, 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 ex-parte action shall be taken against you.

4. You are directed to intimate whether you desire to be heard in person.

5. A statement of allegation is enclosed.

(SADIQ HUSSAIN)PSP
District Police Officer,
Bannu.

APPROVED
A

صحت عالی (1)

I
(18)

حوالہ مشمولہ (1) چارج شیٹ (2) خلیفہ الزمان
معرض ہوں

(مزا) کہ (1) وکرم پڑا میں کھانہ پھولوں میں جھشت سے وہ نصیحت
کھا اور اسی ڈلوٹی کے علاوہ فوری کمی کمی ہی بنا کر کشت،
ناگہ نڈی وغیرہ وغیرہ بھی لیا کرتا تھا

عمر (2) چ کہ مورخ 13 جنوری سال 2012ء کو میں سے

نامہ زمان 1469، حیات اللہ 1622، (4) عنوان اللہ 345
عمر جان 2392، اعتبار 1622، نصیب اللہ 4072

فواد 379 پھواری کا بڑی سرکاری محفل ڈرائیور حامد 1808

بھواد کشت، ناگہ نڈی ہمراہ SHO صاحب (صاحبہ) جن خان کفایت
بیوی سے بھرت 16150 کے روزانہ پونے - بیماری دوران کے بعد 12
روز تاخیر 03-01-13 درج ہوئی (نوٹ نکلن عمر ہمراہ ہے)

مزا (3) بدودان کشت دانے میں لوگوں سے جا بھلائی ہے کہ ایسے
اسی دوران میں کشتی موٹر سائیکل پر آ رہا تھا۔ کہ SHO صاحب
نے روکا۔ اور اسے سمجھنے سے دوران حامد کھڑی ایسا فوجی
کشتی کا ڈرائیور تھا۔ SHO صاحب نے کہا اسے سمجھا
P. T. O

ATTENDED

19) گوٹاڑی میں بسٹاؤٹ

اور اسکا موٹر سائیکل بکر حواد 379 نے گاڑی پر رکھی
 اور انہ ہوا کہ اس دوران ہم علامہ شیخ فرید بابا کوٹہ
 گوٹا SHO صاحب نے گاڑی پر گاڑی سے اتر کر نزدیکی مکان
 کے جانب پیدل روانہ ہوئے کنسٹیبلوں نصیب اللہ، اسرار
 اور ناصر خان نے پیچھے سے بھی SHO صاحب کے عقب روانہ
 ہوئے۔ SHO صاحب نے ایک مکان جی دروازہ زور زور
 سے مارا۔ گو اس دوران وہاں دروازے سے موجود
 دھوٹے کے موجود تھے۔ گو انہوں نے کہا کہ یہ دروازہ بند
 ہے۔ اس کو کارروازہ ملی ہے۔ گو نگلی کے دروازے
 SHO صاحب اسرار کے عقب میں ناصر خان، نصیب اللہ
 اسرار خان اور میں جی اس نے دیکھتے دھل ہوا۔ گو اس
 دوران SHO صاحب نے مکان کے چھتے میں ایک تختی چمک
 کن کو لیا اور ساتھ ہی نزدیکی کمرے میں داخل ہوا۔ اسی
 وہ اس کمرے میں درگس باڑوں دکھتے ہی اندر سے اس پر
 تلاش کوف کا ایک برائشٹ ہوا۔ جس سے SHO صاحب نے
 کر دروازہ میں چھتے کی طرف گرا دیا۔ گو میں نے بلڑنا سے
 غائب کوں کہتے اس کمرے کے کونے لگاؤ گو کے اندر چمک
 دیں کنسٹیبلوں نے وہاں آگے لگاؤ گو کے اندر چمک
 کیا گو دروازے سے نکالی۔

P.T.O

ATTESTED

پندرہ (15) برس سنہ 1970ء میں شہرہ منڈی میں پیدا ہوئے۔ ابتدائی تعلیم گھر پر ہی حاصل کی۔ پندرہ سال کی عمر میں تعلیم کے خاطر ہجرت کر کے لاہور آئے۔ وہیں سے ایم اے کیا۔ پندرہ سال کی عمر میں شہرہ منڈی میں اپنے والدین کے ساتھ رہ رہے۔ وہیں سے ایم اے کیا۔ پندرہ سال کی عمر میں شہرہ منڈی میں اپنے والدین کے ساتھ رہ رہے۔ وہیں سے ایم اے کیا۔

اس دوران میں شہرہ منڈی نے باہر چھٹی میں تعلق کر کے دیہی علاقوں کو گزرتے ہوئے لاہور میں آئے۔ وہیں سے ایم اے کیا۔ پندرہ سال کی عمر میں شہرہ منڈی میں اپنے والدین کے ساتھ رہ رہے۔ وہیں سے ایم اے کیا۔

پندرہ سال کی عمر میں شہرہ منڈی نے باہر چھٹی میں تعلق کر کے دیہی علاقوں کو گزرتے ہوئے لاہور میں آئے۔ وہیں سے ایم اے کیا۔ پندرہ سال کی عمر میں شہرہ منڈی میں اپنے والدین کے ساتھ رہ رہے۔ وہیں سے ایم اے کیا۔

P.T.O

ATTESTED

جسپر SHO صاحب کینسل عمر جانا سے کر جوگو کے اوارزہ سے بار
دیکھ کر لے لو۔

8 (7) ڈاکس بھی وہاں سے اس جلی گئی۔ میں تم کو یہی فوری
فائرنگ کرنا ہے۔ اس کے سوا کوئی بھی نہیں ہے۔

اور ایسی گولیاں کوئی بھی نہیں ہے۔ بس سوراخ رہا۔ ملزم
ملزمان سزا سے رہا ہے۔ کوئی بھی انداز سے فائرنگ اور موقع
سے بند کرنا نہیں ہے۔ جن کا یہاں اس سے اوکھا ہوا ہے۔

8 (8) فائرنگ کا دوران ملزمان کے امدادیاں بھی تھیں نا؟ وہاں سے
بار سے پوچھیں۔ ہوا ہی فائرنگ کر کے اسے پوری علم ہے کہ
اس کوئی بار اس کے گینے کو دیکھ کر فائر کرنا والا
کوئی نہیں ہے۔

9 (9) اس دوران اس کوئی سے ایسا کتنی علم بار فائرنگ
رہے نا اس بار کوئی بھی نہیں ہے۔ فائرنگ کی جس
سے وہ لگا کر اس کوئی میں داخل ہوا۔ اس کے امدادی
بار سے جو وہاں فائرنگ کر رہے۔

10 (10) جسے وہاں دہرے فوری ہی امداد کا بار سے فائرنگ
سے ہوتا رہا ہے لگا۔
SHO صاحب جوگو کے بار بھی میں دیکھ لے۔ مجھے کچھ نہیں کرنا۔

Handwritten signature/initials

مقررین پر توجہ سے دیا گیا اور ان کے بارے میں جانچا گیا۔ اس کے بعد
 نے سوچا کہ SHO صاحب کو جو اعداد کی تصدیق ملے جاوے گا۔
 اور سری ایجوکیشن ڈیپارٹمنٹ کے قریب بھی حاصل
 کرونگا اور کوئی سے بھی ارا۔

پیر (1) SHO صاحب کے پاس آیا۔ فائبرنگ دونوں جانب سے
 جانچ لیا۔ یہ ایک بات ہے کہ SMA جس پر فائبرنگ
 کر رہا تھا اور اس بات سے SHO صاحب کو اتفاق
 ملے گا کہ SHO صاحب جو زخمی تھا جو چھج کر آیا
 اعداد حاصل کرنے اور ایسی گاڑی جو بائیس کے پاس آیا
 وارڈ میں رہا کہ موقع پر ڈاکٹر اور نرسی آنے کا کیا
 دیکھ رہے تھے۔ کہ کافی تھی اور اگر موجود ہے۔ یہ سن
 کے پاس آیا۔ جو فائبرنگ سے متعلق ہے اور SHO صاحب
 سب سے اور فائبرنگ کے بارے میں بھی۔ یہ سن ہو کر اس
 کھینچا جو فائبرنگ کے بارے میں جانچا گیا۔
پیر (2) آخر کار قریب پر توجہ سے دیا گیا اور اس کے بارے میں
 جانچ لیا گیا۔ کہ وہ ایسی گاڑی اور نرسیوں کے ساتھ
 موجود تھے۔ ان کے بارے میں جانچ لیا گیا۔
 جو وارڈ کے قریب سے اٹھائے ہوئے تھے اور موجود ہے۔
 P.T.O

ATTESTED

(6)

(پڑھا) یہ کہ میں نے اپنی ڈیوٹی انتہائی اہمیت داری اور جاننا کہ
 کھلی کر لی ہے۔ میرے مکمل بیان کی حد انتہائی تہہ پہلی
 کی جا سکتی ہے اور اگر میری جگہ کوئی اور ہوتا۔ تو
 شاید مجھ سے بہتر کارائی نہ دیکھی سکتے۔

اسد عا ہے کہ چارج سپر بلا مندر کاروانی داخل انتہائی
 جا۔

کون سپرنٹنڈنٹ کی موجودگی اور اپنی ہی تفہیمات سے صدر کی جانک
 ہے۔ جس میں انہوں نے کسی کسی مائٹرننگ کی ہے۔

علم نفس عدت ف ہے۔ قابل مدد فہ ہیں۔

اسی طرح میرے ساتھ جو سرسٹنڈنٹ و سپر و سپر

یکل اسٹیل برانچ ڈیوٹی اور ابھی مزہ جو کرتا ہے۔
 اسکی بیان جو ف ہے۔

لکھ

محمد نصیب 331/242
 حال لائن I

16-12-017

ATTESTED



OFFICE OF THE
DY. SUPERINTENDENT OF POLICE,
HQRS. BANNU.

Phone No: 0928-9270078.

Fax No: 0928-9270045

No. 33 /HQ, Dated. 05.01.2018.

DEPARTMENTAL ENQUIRY.

Reference. Charge sheet No. 524-25/SRC, dated 06.12.2017, issued by the District Police Officer, Bannu.

Accused. Constable Mohammad Shoaib-331.

Allegations.

Allegations conveyed to him in shape of charge sheet were as under:-

That after conducting preliminary Enquiry by DSP/HQrs and SDPO, Rural-1 you while posted to PS Haved has been found negligent and cowardice.

That on 13.01.2013, he was deputed for Naka Bandi duty with SI Imam Hassan Shaheed the then SHO PS Haved, one 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 he had been becomes a silent spectator. Thus he had ceased to become good police as well as guilty of misconduct.

Such act on his part is against service discipline and amounts to gross misconduct/carry bad name to the Police force. Page-8-11

Order sheet. Order sheet maintained. Page-7

Reply to charge sheet.

Constable Mohammad Shoaib replied to charge sheet, which is placed herewith. Page- 12-17

Statements.

Statement of the accused Official and Driver Hamed Khan-808 recorded and placed herewith.

ATTESTED

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Questions/Answers.

Opportunity for self defence given.

Questions answers took place between the E.O (undersigned) & accused official.

Accused LHC Mohammad Shoaib-331 replied that:-

Ans-1.

They were ten police officials including martyred SHO Imam Hassan at the time of occurrence.

Ans-2.

He had fired 95 cartridges upon the accused..

Ans-3.

They were on patrolling, when they reached near Sheikh Farid Baba area, they knocked the door, the kids told them that the door has been closed and the second door is in the street, go there, than the SHO Imam Hassan along with Constable Nasir Zaman, Nasib Ullah, Imtiaz and he entered into the house and a man was standing in the courtyard of the house, the SHO Imam Hassan directed to check this person, constable Nasib Ullah and Imtiaz went behind the man for checking and the SHO started going to the nearest room, when he was entering into the room, a rapid SMG firing was made at him and the SHO hit and fell down towards courtyard of the room, Constable Imtiaz and Nasib came there and we started firing towards the room and such firing was continued upto 15/20 minutes and he went to the roof of the room and started firing, there was a woman in the courtyard of the house and he told her to may not come and she shouted to the accused to may not come out of the room as the police is present on the roof and he fired upon her and she went back, when he saw in the street, constable Umer Jan was standing and he told him that the SHO is lying and go there, upon this constable Imtiaz, Nasib Ullah, Nasir Zaman and Umer Jan went and picked up the SHO, the accused Amin Shah fired hand grenade at them and the SHO Imam Hassan fell down from the hands of the constables in the outer area of the main door and he was doing firing and constables were also doing firing in the street and the official pick up was driven away by the driver from the street and the accused Amin Shah was throwing hand grenades, he stopped firing for a while and the accused was trying to get out of the room and took an ambush near by the door, he fired upon him and accused Amin Shah hit and again entered into room and the accused also shouted to their colleagues and in the meanwhile, they started firing at police and the SHO was directing him to come down and to bring him out of the house, after a while, he went towards Mohalla and caught the hands of the SHO and started pulling of the SHO

ATTESTED

CA

Imam Hassan and also did fire shots at the door, SHO was shouting to pick him up, in the meanwhile, a woman told him that she may come there, he replied to her to do not come, there was cold & fog, the woman brought a blanket and he put it upon the SHO Imam Hassan and the ammunition was to end with him, he went towards the pickup and shouted to the colleagues to give him ammunition and he also aired on wireless that accused are in circle and bring Rocket luncher with aid of Police men power, reply received from Police station Haved that police has been sent, a Magazine was empty and another was full and he took it up and again went towards SHO and again firing was made at him from the opposite side, the driver told him to do not fire shots more, in the meanwhile at 18:45 hours, the police reached at the spot and he told to the police that SHO Imam Hassan is lying there but no one was going there, he and Constable Sifat Ullah, Mumtaz Alam, Driver, Gunman and Incharge sit in the A.P.C and started going towards SHO Imam Hassan and picked him up in injured condition and it was 20:30 hours and after that the SHO was got transferred from the A.P.C to the Ambulance and than the Police went to the house of accused Amin Shah in A.P.C but accused Amin Shah was succeeded in decamping, taking the benefit of the darkness and the accused had also taken away the SMG of the SHO, which was returned by the accused through the elders of the locality to ASI Umer Khaitab of PS Haved.

Ans-4

The dismissal of the driver Hamid and Constable Hayat Ullah-636 was not ordered in this incident and other seven dismissed constables have already been re-instated into police service.

Statement.

Statement of the driver Constable Hamed-1808 Police Lines, Bannu is placed at page No.74.

He replied that :-

Ans-1.

He has equipped with SMG and he had made firing shots in aerial towards the accused.

Ans-2.

LHC Shoaib-331 was on the roof of the room in which the accused Amin Shah was present and LHC Shoaib-331 was doing firing at Amin Shah etc, the compound was opened towards stream area and taking the benefit of darkness, the accused Amin Shah had made his good escape from the room, might be gone towards stream in injured condition.

ATTESTED
[Signature]

Special Branch.

Special Branch informative diary dated 13.01.2013 shows that D.P.O Bannu along with police party did entry using the A.P.C at 20:45 hours but the accused had gone out safely, copy attached.

FIR.

The report of injured Imam Hassan Khan SHO of PS Haved was lodged on his report vide Case FIR No.09 dated 13.01.2013 u/s 324-353-3/4 EXA- 34 PPC-7ATA PS Haved, who later on succumbed due to injuries and section 302 PPC was added accordingly.

Site plan.

According to the site plan, the following police officials were present at the spot, when the exchange of fire shots took place between police and accused Amin Shah.

- a. Martyred SHO Imam Hassan Khan.
- b. Constable Naser Zaman-1469.
- c. Constable Mohammad Shoaib-331.
- d. Constable Nasib Ullah-4072.
- e. Constable Umer Jan-2342.
- f. Constable Rizwan Ullah-2345.
- g. Constable Fawad Khan-379.
- h. Constable Hayat Ullah-636.
- i. Driver Constable Hanid Khan.
- j. Constable Imtiaz-1625.

Departmental Appeal.

It was rejected vide order dated 12.6.2013.

Fire shots.

LHC Mohammad Shoaib-331 had fired 95 rounds of 7.62 bore upon the accused during the course of this occurrence.

Report of ASHO Umer Khaatab PS Haved.

ASHO Umer Khaatab Khan has lodged his return report after going to the spot vide DD No.19 dated 14.1.2013 at 02:00 hours PS Haved, in which no charges has been mentioned by him against the above LHC etc, copy attached.

ATTESTED
[Signature]

Occurrence.

The occurrence took place on 13.1.2013 at 17:00 hours and it was reported by the injured SHO Imam Hassan Khan on the same day at 19:15 hours and the then D.P.O was reached at the spot at 20:45 hours along with Police contingent but the accused had already been fled away from the spot. The distance of the crimes spot is about 18 K.M from Police lines, Bannu, hence the police party reached for the support of the injured SHO Imam Hassan Khan etc with delay of 2 and half hours, however according to LHC Mohammad Shoaib-331 some police officials were reached there at 18:45 hours.

Re-instatement

LHC Mohammad Shoaib-331 has already been re-instated into service vide OB No.1146 dated 06.12.2017.

Judgment.

In the service Appeal No.1080/2013, the judgment was announced on 06.11.2017 by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, under which appeal of the said LHC accepted for re-instatement into police department with directions that the respondent department is at liberty to conduct a de-novo enquiry in the mood and manner prescribed by Rules against the appellant within a period of three months of date receipt of this judgment and in case the de-novo enquiry is conducted the issue of back benefit of intervening period will be subject to the outcome of the de-novo enquiry.

Conclusion.

- a. A case FIR No.09 dated 13.01.2013 u/s 302-324-353-3/4 EXP Sub: Act - 34 PPC-7ATA PS Haved was registered and investigated but the I.O and SHO while submitting complete challan in the case have not been leveled any allegation against the LHC Mohammad Shoaib-331 etc.
- b. Similarly, the ASHO Umer Khaitab has recorded his return report from the spot vide DD No.19 dated 14.01.2013 at 02:00 hours and he has not been leveled any allegation against the accused official (S).

ATTESTED

c. The accused LHC Mohammad, Shoaib-331 had fired 95 rounds upon the accused Amin Shah etc, hence he had tried to make the arrest or to kill the accused, but in vain, however accused Amin Shah was injured at right hand's wrist.

d. Other seven below mentioned officials are serving in Police department, who were accompanied with the martyred SHO Imam Hassan Khan of PS Haved.

- a. Constable Nasib Ullah-4072. Already Re-instated.
- b. Constable Umer Jan-2342. -do-
- c. Constable Rizwan Ullah-2345. -do-
- d. Constable Fowad Khan-379. -do-
- e. Constable Imtiaz-1625. -do-
- f. Driver Constable Hamid Khan. He was not dismissed.
- g. Constable Hayat Ullah-636 -do- Rtd:

In the presence of the available record, statements, cross examinations, the charges leveled against LHC Mohammad Shoaib-331 have not been proved against him, he was present at the roof top of the room, where the accused Amin Shah was present duly armed and the said LHC had made 95 fire shots at him up to the very last and the accused Amin Shah became injured at right hand's wrist and after spreading darkness, the accused Amin Shah had made his good escape from the room towards the nearby stream and open area as there was no compound wall at that side. Supportive police party was reached late too.

LHC Mohammad Shoaib-331 has already been re-instated conditionally in service and may be deemed re-instated from the date of his dismissal with all back benefits please

(74 Pages).

(EO)
(AQIQ HUSSAIN)
DSP/HQrs, BANNU.

ATTESTED

Handwritten signature/initials

ORDER:

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This order of the undersigned will dispose of the de-novo departmental proceeding, initiated against accused Constable Mohammad Shoaib No. 331 in the light of Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 06.11.2017 under general proceeding of police rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014) for committing the following commissions/omissions:-

- That after conducting preliminary Enquiry by DSP/HQrs and SDPO, Rural-I he while posted to PS Haved been found negliget and cowardice.
- That on 13.01.2013, he was deputed for Naka Bandi duty with SI Iman Hassan Shaheed the then SHO Haved, one 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 he had been becomes a silent spectator. Thus he had ceased to become good Police officer as well as guilty of misconduct.

Charge sheet and statement of allegation were issued to him. DSP HQrs: Bannu was appointed as Enquiry Officer to scrutinize the conduct of the accused official. The Enquiry Officer submitted finding report and reported that the allegations/charges leveled against LHC Mohammad Shoaib No. 331 have not been proved. He has already been re-instated conditionally in service and may be deemed re-instated from the date of his dismissal with all back benefits, placed on file.

The Official heard in person in orderly room on 16.01.2018. Record perused. In the light of de-novo departmental enquiry proceedings, recommendation of Enquiry Officer, the undersigned reached to the conclusion that the official already re-instated into service. Hence, I, Sadiq Hussain, District Police Officer, Bannu in exercise of the power vested in me under Police Rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014), he is exonerated from the charge. From the perusal of service his record, 370-days leave is in his credit. The Constable was out of service for a period of 04-years, 01-months and 15-days, which is equal to 1680-days. Therefore, 370-days period is converted into kind leave subject to provision of back benefits, while the remaining intervening period of 1310-days is converted as leave without pay.

OB No. 73
Dated 17-01 /2018.


(SADIQ HUSSAIN) PSP
District Police Officer
Bannu.

No. 823-27/SRC dated Bannu, the

18/01/2018

Copies for necessary action to:

1. Reader, Pay officer, SRC, OASI
2. Fauji Misal Clerk along with enquiry file for placing it in the Fauji Missal of the

ATTACHED


L (B1)

Better Copy

بخدمت جناب ریجنل پولیس آفیسر بنوں ریجن بنوں

عنوان: درخواست بدیں استدعا کہ سائل کو سروس ٹریبونل نے جملہ حقوق کے ساتھ بحال فرما کر جناب DPO صاحب نے سائل کے حقوق بحوالہ OB نمبر 73 مورخہ 17/01/2018 طلب فرما کر باوجود ہات ذیل حقوق دیئے جانے کی استدعا ہے

جناب عالی! گزارش ہے سائل ذیل عرض رساں ہے۔

1- یہ کہ سائل 02/10/2004 کا بھرتی شدہ ہے، سائل کو بحوالہ OB نمبر 575 مورخہ 21/05/2013 محکمہ سے ڈس مس کر کے جس کے خلاف سائل نے ریگولر ابلاتا تاخیر محکمانہ اپیل دائر فرما کر بالآخر سروس ٹریبونل نے جملہ حقوق کے ساتھ بحال فرمانے کا حکم جاری کر کے سائل کے حق میں فیصلہ سنایا، جملہ دستاویزی ریکارڈ کے نقول ہمراہ لف ہے۔

2- یہ کہ جناب DPO صاحب نے سائل کو جملہ حقوق نہیں دیئے اور سائل نے آؤٹ آف سروس پیریڈ میں 1310 دن بلا تنخواہ شمار کرنے کا حکم صادر فرمایا کیونکہ سائل نے ریگولر اپیل دائر فرمایا تھا اور سائل کو بلا تصور محکمہ سے ڈس مس کیا گیا تھا، نتیجتاً سروس ٹریبونل نے بحال فرمایا لہذا مروجہ رولز اور قانونی کے تحت سائل کے آؤٹ آف سروس پیریڈ کو بلا تنخواہ شمار کرنا خلاف قانون بنیادی حقوق سے متصادم اور فطری انصاف کے منافی ہے بدیں وجہ درخواست ہذا کی ضرورت لاحق ہوئی۔

لہذا استدعا ہے کہ بالا وجوہات کو مد نظر رکھتے ہوئے سائل کے آؤٹ آف سروس پیریڈ متذکرہ بالا کو ریگولر سروس میں شمار کرنے کا حکم صادر فرمائیں، دعا گور ہوں گا۔

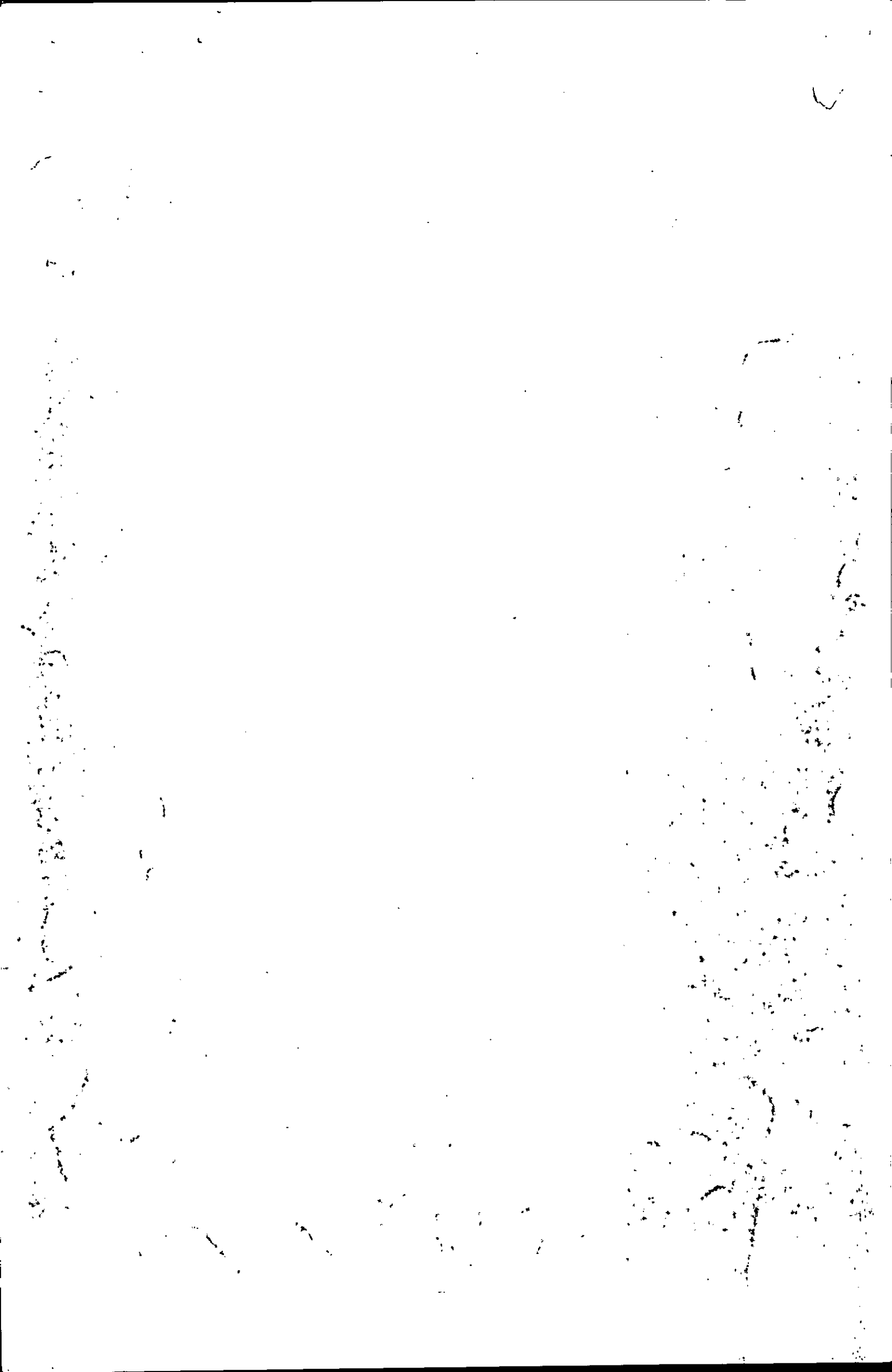
العارض

-Sd-

سائل محمد شعیب LHC/360 قبضہ پولیس لائن بنوں

0334-8813706

ATTACHED



[Handwritten text, likely a list or a set of instructions in Urdu or Persian script. The text is dense and partially obscured by shadows and bleed-through from the reverse side of the page.]

306-307-308-309-310

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ORDER

My this order will dispose of application, preferred by LHC Shoaib No.360, wherein, he has requested for converting the out of service period (1310 days). His inquiry file and service record was asked from DPO Bannu vide this office Endst: No.1862/EC dated 13.07.2018 and Memo: reminder No.2432/EC dated 29.08.2018. His inquiry file was perused and it was found:-

That on 13.01.2013, the applicant was deputed on nakabandi duty with Shaheed SI Imam Hassan the then SHO PS Haved. That in the meantime accused/terrorist Amin Shah started firing upon SI Imam Hassan in the premises of Sheikh Farid Baba PS Haved. Resultantly, SI Imam Hassan sustained injuries and later on embraced martyred. The accused decamped from the scene after the commission of offence while the appellant displaying cowardice became silent spectator. As a result of which, he was proceeded departmentally and Mr. Faraz Khan, the then Inspector Legal conducted inquiry into the allegations. He was found guilty of the charges. In the light of the said findings, the then DPO Bannu imposed upon major punishment of dismissal from service upon the applicant on 21.05.2013. Aggrieved from the order, he preferred an appeal to the appellate authority (then RPO Bannu) which was filed on 12.06.2013.

That on 11.07.2013, he instituted an appeal before KP, Service Tribunal. His appeal was accepted and set aside the impugned order by reinstating the appellant into service. It was further ordered in the judgment that the respondent department is at liberty to conduct a de novo inquiry in the mode and manner prescribed by rules against the applicant.

That as a result of said judgment, the appellant was reinstated into service by DPO Bannu on 06.12.2017 and subsequently proceeded departmentally. DSP/HQr: conducted inquiry into the allegations and submitted his findings on 05.01.2018, wherein, it was opined that the charges leveled against the appellant did not stands proved. In the light of findings of DSP/HQr: Bannu, the appellant was exonerated from the charges and out of his out-of-service period, (04 years, 07 months & 15 days), 370 days was converted into his kind leave while the remaining intervening period of 1310 days was treated as leave without pay vide DPO office order dated 17.01.2018.

The applicant was heard in orderly room, inquiry file perused and it was found that he has displayed extreme cowardice as he became a silent spectator while his senior officer was hit by militants. The Inquiry Officer and competent authority has already provided him undue favor by exonerated him from the charges though he was not deserve for the same. The application of the applicant is hereby filed with immediate effect as he does not deserve for any leniency.

ORDER ANNOUNCED

No. 2869 /EC, dated Bannu the

01/10/2018

(MUHAMMAD KARIM KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

Copy to the District Police Officer, Bannu for information and n/action w/r to his office Memo: No.11503/EC dated 29.08.2018 along with the service record containing the inquiry file of the appellant for record in office which may be acknowledged. The appellant may be informed please.

Attested
SRC, BxU
5-11-018
District Police Officer
Bannu

SRC
For further action.
The appellant may be
informed accordingly.

2
District Police Officer
BANNU
02/10/18

(MUHAMMAD KARIM KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

ATTESSED

VAKALAT NAMA

NO. _____/2018

IN THE COURT OF Service Tribunal Peshawar

Muhammad Shoab

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt:

(Respondent)
(Defendant)

I/We, Muhammad Shoab

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2018

[Signature]

(CLIENT)

ACCEPTED

[Signature]

TAIMUR ALI KHAN
Advocate High Court

ASAD MAHMOOD
Advocate High Court

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9390916)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Appeal No.1479 /2018

Muhammad Shoaib, Constable No.360.
District Bannu

Appellant

Versus

The Provincial Police Officer, KPK, Peshawar and others

Respondents

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DEPONENT

11101-1483421-1

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No.1479 /2018

Muhammad Shoaib, Constable No.360.
District Bannu

.....

Appellant

Versus

The Provincial Police Officer, KPK, Peshawar and others

.....

Respondents

PARA WISE COMMENTS/REPLY ON BEHALF OF RESPONDENTS NO.1,2 & 3

Preliminary Objections

1. That the appeal of the appellant is badly time-barred.
2. That the appeal is not maintainable in its present form.
3. That the appellant has concealed the actual facts from this Honourable Tribunal.
4. That the appeal is bad in law due to non-joinder and mis-joinder of necessary parties.
5. That the appellant has approached the Honourable Tribunal with unclean hands.
6. That the appellant has got no cause of action and locus-standi to file the instant appeal.
7. That the appellant has been estopped by his own conduct.

OBJECTIONS ON FACTS:

Respectfully Sheweth

1. Correct to the extent that the appellant was serving in Police Department as constable, charge sheet and statement of allegations were issued on 13.01.2013 (Annexed as annexure "A"). He along with his other colleagues deputed for naka bandi duty with SI Imam Hassan Shaheed the then SHO PS Haved, one accused/terrorist namely Amin Shah started indiscriminate firing upon SI Imam Hassan Shaheed near to Sheikh Farid Baba, resultantly he was sustained serious injuries and later on, he succumbed to his injuries and embraced shahadat. The accused decamped from the scene after the commission of offense without any hindrance, due to the appellant became silent spectator and showed negligence and cowardice being a responsible police official.

2. Correct. Needs no comments.
3. Correct to the extent that the appellant was reinstated into service for the purpose of de novo inquiry but he badly failed to rebut the allegations during inquiry proceedings.
4. Correct. Needs no comments.
5. Pertains to record. Hence, Needs no comments.
6. Pertains to record. Hence, Needs no comments.
7. Correct to the extent that on the basis of de novo inquiry report, the respondent No.3 passed an order dated 18.01.2018, wherein it was mentioned that the inquiry officer submitted his findings report and reported that the allegations/charges leveled against the appellant have not been proved. He has already been reinstated conditionally in service and may be deemed reinstated from date of his dismissal with all back benefits. (Copy of order annexed as annexure "B".) However, from the perusal of appellant service record, the appellant was out of service for a period of 4 years 07 months and 15 days, which is equal to 1680 days. According to leave rules 1981, Section (2) there was 370 days leave on his credit, so therefore, 370 days period is converted into kind leave subject to provision of back benefits, while the remaining intervening period of 1310 days was converted as leave without pay.
8. Correct to the extent that the appellant filed departmental appeal for converting the out of service period 1310 days on full pay. (Copy annexure as annexure "C"). However, the appeal of the appellant was filed rejected by the Respondent No.2 as he (appellant) does not deserve for any more leniency.
9. The respondent Department also submit his reply on the following grounds:-

OBJECTIONS ON GROUNDS

- A. Incorrect. The rejection order was delivered to the appellant on his request. Moreover, the order dated 18.01.2018 regarding the conversion of 1310 days as leave without pay is according to leave rules 1981, Section (2), there was 370 days leave on his credit, so therefore, 370 days period is converted into kind leave subject to provision of back benefits, while the remaining intervening period of 1310 days was converted as leave without pay.
- B. Correct to the extent that Honourable Service Tribunal vide order dated 06.12.2017 that in case the de novo inquiry is conducted, the issue of back benefits of intervening period will be subject to the outcome of de novo inquiry. While rest of the para is incorrect because the appellant was dealt according to leave rules 1981 section (2).
- C. Incorrect. Reply has already been given in the above para.

- D. Correct to the extent the allegations/ charges were not proved against appellant and was exonerated, however, the issue of back benefits was decided as per law according to leave rules 1981 section (2).
- E. Correct to the extent that the appellant was dismissed from service on 21.05.2013 on certain allegations which was not proved during the de novo inquiry proceedings however, rest of the para is incorrect. (Copy of order annexed as annexre "D"). After completion of de novo inquiry, the appellant was not punished, he was dealt according to law/rules.
- F. Pertains to record. Hence, needs no comments.
- G. That the respondents may be allowed to advance any other grounds & material as evidence at the time of arguments.

PRAYER:

In view of the above replies, it is most humbly prayed that the appeal of the appellant may kindly be dismissed with cost please.

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District Police Officer,
Bannu
(Respondent No.3)

Regional Police Officer,
Bannu Region, Bannu
(Respondent No.2)

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar
(Respondent No.1)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No.1479 /2018

Muhammad Shoaib, Constable No.360.
District Bannu

.....

Appellant

Versus

The Provincial Police Officer, KPK, Peshawar and others

.....

Respondents

AUTHORITY LETTER.

Mr. Muhammad Farooq Khan, Inspector Legal is hereby authorized to appear before The Service Tribunal Khyber PakhtunKhwa Peshawar on behalf of the undersigned in the above cited case.

He is authorized to submit and sign all documents pertaining to the present appeal.

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District Police Officer,
Bannu
(Respondent No.3)


Regional Police Officer,
Bannu Region, Bannu
(Respondent No.2)


Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar
(Respondent No.1)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No.1479 /2018

Muhammad Shoaib, Constable No.360.
District Bannu

..... Appellant

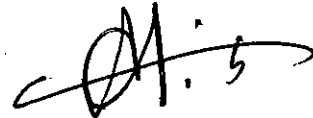
Versus

The Provincial Police Officer, KPK, Peshawar and others

..... Respondents

AFFIDAVIT

I, **Muhammad Farooq Khan**, Inspector Legal representative for Respondent Nos. 1,2 and 3, do hereby solemnly affirm and declare that the contents of the accompanying comments submitted by me are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.



DEPONENT

11101-1483421-1

CHARGE SHEET


WHEREAS I am satisfied that a formal enquiry as contemplated in the NWFP, Police Rules, 1975 is necessary and expedient.

AND WHEREAS, I am of the view that the allegations if established would call for a major penalty as defined in Rules 4(b) of the aforesaid Rule.

NOW, THEREFORE, as required in 6-1 (a) of the aforesaid Rule I, ABDUL GHAFOOR KHAN AFRIDI District Police Officer, Bannu, as competent authority, hereby charge them FC Umer Jan 2342/EF, FC Rizwan Ullah 2345/EF, FC Imtiaz 1625/EF, FC Nasib Ullah 4072/EF, FC Fawad 379/EF of Platoon No.55 and FC Nasir Zaman 1469, FC Shoaib 331 DFC for the allegations, attached with this charge sheet.

AND I direct you further under rules 6-1 (b) of the aforesaid Rules to put in written defense within 7 days of the Receipt of this Charge sheet as to whether major OR Minor punishment as defined in Rules 4-1(a)-(b) should not be awarded to you. Also state at the same time whether you desire to be heard in person.

In case, your reply is not received within the prescribed period without sufficient reason, it would be presumed that you have nothing to say in your defence and the undersigned would be at liberty to take ex-parte action straight away against you.


District Police Officer,
Bannu.

11/04/2013

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SUMMARY OF ALLEGATIONS:

they FC Umer Jan 2342/EF, FC Rizwan Ullah 2343/EF, FC Imtiaz 1625/EF, FC Nasib Ullah 4072/EF, FC Fawad 379/EF of Platoon No.55 and FC Nasir Zaman 1469, FC Shoaib 334 DFC while posted to PS Haved, Bannu was found to indulge in misconduct under the following allegations:

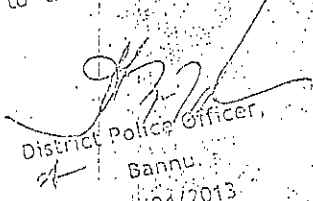
• That after conducting preliminary Enquiry by DSP/HQrs and SDPO, Rural they while posted to PS Haved were found negligence and cowardice.

• 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 become a silent spectator. 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.

DSP, P. Lal of Bannu District is appointed to hold departmental proceedings and submit his findings to the undersigned after observing legal formalities.


District Police Officer,
Bannu.
11/04/2013

ORDER:

360 شعیب ظفر

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This order of the undersigned will dispose of the de-novo departmental proceeding, initiated against accused Constable Mohammad Shoaib No. 331 in the light of Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 06.11.2017 under general proceeding of police rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014) for committing the following commissions/omissions:-

- That after conducting preliminary Enquiry by DSP/HQrs and SDPO, Rural-I he while posted to PS Haved been found negligent and cowardice.
- That on 13.01.2013, he was deputed for Naka Bandi duty with SI Iman Hassan Shaheed the then SHO PS Haved, one 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 he had been becomes a silent spectator. Thus he had ceased to become good Police officer as well as guilty of misconduct.

Charge sheet and statement of allegation were issued to him. DSP HQrs: Bannu was appointed as Enquiry Officer to scrutinize the conduct of the accused official. The Enquiry Officer submitted finding report and reported that the allegations/charges leveled against LHC Mohammad Shoaib No. 331 have not been proved. He has already been re-instated conditionally in service and may be deemed re-instated from the date of his dismissal with all back benefits, placed on file.

The Official heard in person in orderly room on 16.01.2018. Record perused. In the light of de-novo departmental enquiry proceedings, recommendation of Enquiry Officer, the undersigned reached to the conclusion that the official already re-instated into service. Hence, I, Sadiq Hussain, District Police Officer, Bannu in exercise of the power vested in me under Police Rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014), he is exonerated from the charge. From the perusal of service his record, 370-days leave is in his credit. The Constable was out of service for a period of 04-years, 07-months and 15-days, which is equal to 1680-days. Therefore, 370-days period is converted into kind leave subject to provision of back benefits, while the remaining intervening period of 1310-days is converted as leave without pay.

OB No. 73
Dated: 17-01 /2018.


(SADIQ HUSSAIN) PSP
District Police Officer
Bannu.

823-27 /SRC dated Bannu, the 18 /01 /2018

Copies for necessary action to:

Reader, Pay officer, SRC, OASI
Fauji Misal Clerk along with enquiry file for placing it in the Fauji Missal of the concerned official.

عنوان: درخواست بدیں استدعا کہ سائل کو سروس ٹریبونل نے جملہ حقوق کے ساتھ بحال فرما کر جناب DPO صاحب نے سائل کے حقوق بحوالہ OB نمبر 73 مورخہ 17/01/2018 طلب فرما کر باوجود ہات ذیل حقوق دیئے جانے کی استدعا ہے

جناب عالی! گزارش ہے سائل ذل عرض رساں ہے۔

1- یہ کہ سائل 02/10/2004 کا بھرتی شدہ ہے، سائل کو بحوالہ OB نمبر 575 مورخہ 21/05/2013 محکمہ سے ڈس مس کر کے جس کے خلاف سائل نے ریگولر ابلاتا تاخیر حکمانہ اپیل دائر فرما کر بالآخر سروس ٹریبونل نے جملہ حقوق کے ساتھ بحال فرمانے کا حکم جاری کر کے سائل کے حق میں فیصلہ سنایا، جملہ دستاویزی ریکارڈ کے نقول ہمراہ لف ہے۔

2- یہ کہ جناب DPO صاحب نے سائل کو جملہ حقوق نہیں دیئے اور سائل نے آؤٹ آف سروس پیریڈ میں -1310 دن بلا تنخواہ شمار کرنے کا حکم صادر فرمایا کیونکہ سائل نے ریگولر اپیل دائر فرمایا تھا اور سائل کو بلا قصور محکمہ سے ڈس مس کیا گیا تھا، نتیجتاً سروس ٹریبونل نے بحال فرمایا لہذا مروجہ روڈ اور قانونی کے تحت سائل کے آؤٹ آف سروس پیریڈ کو بلا تنخواہ شمار کرنا خلاف قانون بنیادی حقوق سے متصادم اور فطری انصاف کے منافی ہے بدیں ذبحہ درخواست ہذا کی ضرورت لاحق ہوئی۔

لہذا استدعا ہے کہ بالا وجوہات کو مد نظر رکھتے ہوئے سائل کے آؤٹ آف سروس پیریڈ متذکرہ بالا کو ریگولر سروس میں شمار کرنے کا حکم صادر فرمادیں، دعا گور ہوں گا۔

اعراض

-Sd-

سائل محمد شعیب LHC/360 قبضہ پولیس راجن بنوں

0331-8813700

By this order will dispose of application, preferred by LHC Shoaib No.360, wherein, he has requested for converting the out of service period (1310 days). His inquiry file and service record was asked from DPO Bannu vide this office Endst: No.1862/EC dated 13.07.2018 and Memo: reminder No.2432/EC dated 29.08.2018. His inquiry file was perused and it was found:-

That on 13.01.2013, the applicant was deputed on nakabandi duty with Shaheed SI Imam Hassan the then SHO PS Haved. That in the meantime accused/terrorist Amin Shah started firing upon SI Imam Hassan in the premises of Sheikh Farid Baba PS Haved. Resultantly, SI Imam Hassan sustained injuries and later on embraced martyred. The accused decamped from the scene after the commission of offence while the appellant displaying cowardice became silent spectator. As a result of which, he was proceeded departmentally and Mr. Faraz Khan, the then Inspector Legal conducted inquiry into the allegations. He was found guilty of the charges. In the light of the said findings, the then DPO Bannu imposed upon major punishment of dismissal from service upon the applicant on 21.05.2013. Aggrieved from the order, he preferred an appeal to the appellate authority (then RPO Bannu) which was filed on 12.06.2013.

That on 11.07.2013, he instituted an appeal before KP, Service Tribunal. His appeal was accepted and set aside the impugned order by reinstating the appellant into service. It was further ordered in the judgment that the respondent department is at liberty to conduct a de novo inquiry in the mode and manner prescribed by rules against the applicant.

That as a result of said judgment, the appellant was reinstated into service by DPO Bannu on 06.12.2017 and subsequently proceeded departmentally. DSP/HQR: conducted inquiry into the allegations and submitted his findings on 05.01.2018, wherein, it was opined that the charges leveled against the appellant did not stands proved. In the light of findings of DSP/HQR: Bannu, the appellant was exonerated from the charges and out of his out of service period (04 years 07 months & 15 days), 370 days was converted into his kind leave while the remaining intervening period of 1310 days was treated as leave without pay vide DPO office order dated 17.01.2018.

The applicant was heard in orderly room, inquiry file perused and it was found that he has displayed extreme cowardice as he became a silent spectator while his senior officer was hit by militants. The inquiry Officer and competent authority has already provided him undue favor by exonerated him from the charges though he was not deserve for the same. The application of the applicant is hereby filed with immediate effect as he does not deserve for any leniency.

ORDER ANNOUNCED

No. 2869 /EC, dated Bannu the 01/10/2018

(MUHAMMAD KARIM KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

Copy to the District Police Officer, Bannu for information and n/action w/r to his office Memo: No.11503/EC dated 29.08.2018 along with the service record containing the inquiry file of the appellant for record in office which may be acknowledged. The appellant may be informed please.

*SRC
For further on action.
The appellant may be
informed accordingly.*

District Police Officer
Bannu
02/10/18

(MUHAMMAD KARIM KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

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ORDER:

My this order will dispose of departmental proceedings initiated under police rules 1975 against FC Umer Jan 2342/EF, FC Rizwan Ullah 2345/EF, FC Imtiaz 1625/EF, FC Nasib Ullah 4072/EF, FC Fawad 379/EF of Police Station No.55 and FC Nasir Zaman 1469, FC Shoaib 331/118 BBI DFC PS. Haved on the following allegations.

- That after conducting preliminary Enquiry by DSP/HQrs and SDPO, Rural they while posted to PS Haved have been found negligence and cowardice.
- That on 13-01-2013, they have been 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 been, become a silent spectator. Thus they have ceased to become good police officials as well as guilty of misconduct.

Proper charge sheet based upon summary of allegations were issued and the enquiry papers were entrusted to Mr Mir Faraz Khan PI Legal, DPO, Office, Bannu for enquiry and report, who (Enquiry Officer) conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended that the allegations leveled against the accused officials are stand established and they are found guilty.

Keeping in view the recommendation of Enquiry officer, ABDUL GHAFOOR KHAN AFRIDI, District police officer, Bannu, being a competent authority, in exercise of the power vested in me under police rules 1975, hereby award them Major Punishment of Dismissal from Service to Constable Muhammad Shoaib No. 331/118 BBI and Constable Nasir Zaman No. 1469/5868 with immediate effect.

OB No. 525
Dated 21-05-2013

District Police Officer,
Bannu.

No: 6356-14 /SRC dated Bannu, the 21-5 /2013.

Copy of above is submitted to :

1. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar with the request that Commandant Elite Force be directed to award them Major punishment of Dismissal to the accused officials of Elite Force please.
2. The Commandant Elite Force Khyber Pakhtunkhwa, Peshawar along with Preliminary Enquiry file /complete departmental enquiry file i.e (pages) with the request that the above mentioned Elite Force Constables be awarded Major punishment of Dismissal from Service under intimation to all concerned please.
3. The Regional Police Officer, Bannu Region, Bannu for favour of information please.
4. SP Investigation, Bannu for favour of information and necessary action please.
5. SP/FRP, Bannu Region, Bannu with the direction and necessary action that the pay of the said constable Nasir Zaman No. 1469 /5868 has been drawn from FRP Establishment
6. Pay Officer, SRC and OASI R.I Police Line for necessary action and completion of record.

District Police Officer,
Bannu.

ATTESTED

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1479/2018

Muhammad Shoaib

VS

PPO & others

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-7) 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:

1. Incorrect. The inquiry officer mentioned in his re[port that the appellant present on the roof top of where the accused Amin Shah was present duly arm in the appellant had made ninety five fire shoots upto the the very last and the accused Amin Shah Became injured on right hand rest, and after spreading darkness the accused Amin Shah has made good escape from the room toward the nearby stream and open area as there was no compound wall at that5 side and the basis of that observation the inquiry office mention in his report that the charges of negligence and cowardice has not been proved against the appellant and gave his finding in the inquiry report that the appellant already reinstated conditionally and may be deemed re-instated from the date of his dismissal with all back benefits.
2. Admitted correct hence no comments.
3. First portion of para 3 is correct, hence no comments, while the rest of para is incorrect as this august Service Tribunal reinstated the appellant and the respondent department were placed at liberty to conduct denovo inquiry against the appellant and in the denovo inquiry charge has not been approved against the appellant and inquiry officer mentioned in his report that the appellant already reinstated conditionally and may be deemed re-instated from the date of his dismissal with all back benefits.
4. Admitted correct hence no comments.

5. Admitted correct by the respondent as the service record of the appellant is present with the department.
6. Admitted correct as the service record of the appellant is present with the department.
7. Incorrect. This Honorable Tribunal reinstated the appellant and the respondent department was placed at liberty to conduct denovo inquiry in the manner prescribed by the rules against the appellant within the period of 3 months and in case the denovo is conducted the issue of back benefits of intervening periods will be subject to the outcome of denovo inquiry and denovo inquiry was conducted against the appellant in which no charges have been approved against the appellant and inquiry officer mentioned in his report that the appellant already reinstated conditionally and may be deemed re-instated from the date of his dismissal with all back benefits, but despite the respondent No. 03 converted 370 days into kind leave which was already in his credit, while the intervening period of 1310 days converted into leave without pay.
8. Incorrect. The departmental appeal of the appellant was rejected without observing judgment dated 6.11.2017 of this august Service Tribunal and inquiry report finding.
9. No comments.

GROUND:

- A. Incorrect, the order dated 18.01.2018 to the extent of converting of 1310 days leave without pay into is against the judgment of this Tribunal dated 06.11.2017 and the finding of the inquiry officer.
- B. It is correct that the Honorable Service Tribunal in its judgment dated 06.11.2017 mentioned that in case of denovo inquiry was conducted the issue of back benefit will be subject to the denovo inquiry and the inquiry officer in his report mentioned that the appellant already reinstated may be deemed reinstated from the date of his dismissal with all back and consequential benefits. but the despite that intervening period of 1310 days was converted into leave of kind leave.
- C. Incorrect as already replied in above para.
- D. Incorrect. While para D of the appeal is correct.
- E. Incorrect. While para E of the appeal is correct.

F. In this respect the appellant will furnish affidavit regarding the fact that he did not remain gainfully employed during the period of dismissal till his reinstatement into the service, if need be.

G. Legal.

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

Through:

APPELLANT



(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

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



DEPONENT





**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 2342 /ST

Dated: 26/11 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262


To

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

Subject: JUDGMENT IN APPEAL NO. 1479/2018 MR. MUHAMMAD SHOAIB.

I am directed to forward herewith a certified copy of Judgement dated 10.11.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR