

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, SWAT.

Service Appeal No.497/2018

Date of Institution ... 10.04.2018
Date of Decision ... 08.12.2021

Aman Ullah Ex-Constable No.35 of Swat Police.

(Appellant)

VERSUS

The Provincial, Police Officer Khyber Pakhtunkhwa Peshawar
and two others.

(Respondents)

Imdad Ullah,
Advocate

For appellant.

Muhammad Riaz Khan Paindakhel,
Additional Advocate General

For respondents.

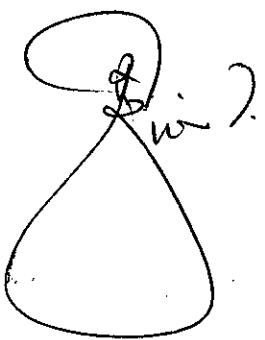
Rozina Rehman
Atiq ur Rehman Wazir

Member (J)
Member (E)

JUDGMENT

Rozina Rehman, Member(J): Brief facts of the case are that appellant was enlisted as Constable. During service he was implicated in a case vide F.I.R No.307 registered as Police Station, Saidu Sharif U/S 302/148/149 PPC. He was dismissed from service after his conviction by learned Additional District & Sessions Judge. He was acquitted by the Apex Court and after getting acquittal, he preferred departmental appeal which was dismissed, hence, the present service appeal.

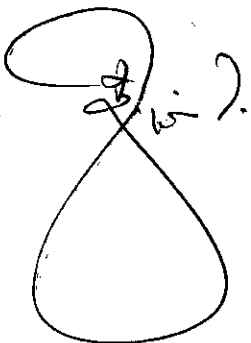
2. We have heard Imdad Ullah Advocate learned counsel for appellant and Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.



3. Imdad Ullah Advocate, learned counsel for appellant, inter-alia, contends that the impugned order is against law, rules and facts as the appellant was not treated in accordance with law. He contended that the appellant was condemned unheard as he was never associated with any inquiry proceedings nor was he ever afforded the chance of defense by way of personal hearing or chance of cross-examination. He argued that this a classic case of its kind which shows an abuse of authority in a very fanciful manner bulldozing every law and rule on the subject which makes the whole proceedings as nullity in the eyes of law. He, therefore, requested for reinstatement of the appellant into service with all back benefits.

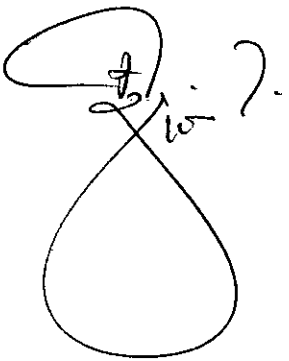
4. Conversely, learned AAG submitted that appellant was charged in case FIR No.307/2018 and after regular trial, he was convicted and was ultimately dismissed from service. He contended that appellant was not acquitted by the Apex Court rather his appeal was partially allowed and he was released from jail after undergoing imprisonment. He argued that the departmental appeal was examined by the respondents and was rejected being time barred.

5. From the record it is evident that appellant Aman Ullah NO.484 while posted to CP Bandai was directly charged in a criminal case vide F.I.R No 307 dated 24.08.2008 registered at Police Station Saidu Sharif U/S 302-324-148-149 PPC and he absented himself from duty vide D.D No.08 dated 24.08.2008 i.e. the date when F.I.R No.307 was registered against him. He was issued charge sheet with statement of allegations and DSP (Legal) was appointed as Inquiry Officer. He was summoned time and again but he did not appear and vide order dated 24.01.2009 he was dismissed from service from the date of his



absence i.e. 24.08.2008. He was reinstated in service by the Regional Police Chief from the date of absence and the period of absence and the period when he remained out of service was treated as leave without pay vide order dated 25.04.2009. His criminal case was tried in a competent court of Law and vide judgment of the learned Additional Sessions Judge dated 18.09.2010, he was sentenced to imprisonment for life, therefore, in the light of court judgment and on the basis of previous departmental inquiry, appellant was dismissed from service w.e.f 18.09.2010 vide order of the District Police Officer, Swat dated 30.09.2010. Criminal appeal was filed in the Apex Court against the judgment dated 22.05.2013 passed by the Peshawar High Court Mingora Bench (Darul Qaza) Swat and vide judgment of the Apex Court dated 10.11.2017 the present appellant alongwith others were individually convicted for the respective murders committed by them. Their appeal was partly allowed. The arguments of the learned counsel for appellant in respect of acquittal of the appellant by the Apex Court has got no force as he was not acquitted rather he was convicted by the Apex Court on one count of the charge U/S 302 (c) PPC and he was sentenced for the individual murder committed by him to rigorous imprisonment for ten years. He then filed departmental appeal on 07.12.2018 against the order dated 30.09.2010 when he was dismissed from service. His appeal was dismissed being badly time barred by the Inspector General of Police vide order dated 16.02.2018.

6. It is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwarul Haq v. Federation of Pakistan



reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

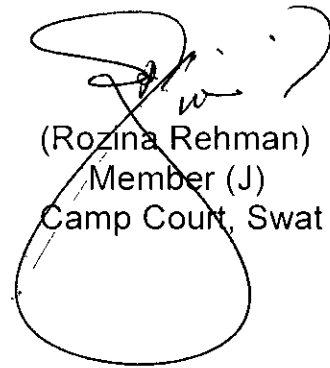
7. Having considered the matter from all angles in the light of material available on file, we do not find any merit in the instant service appeal which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

08.12.2021



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, Swat



(Rozina Rehman)
Member (J)
Camp Court, Swat

Order
08.12.2021

Appellant present through counsel.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General alongwith Ali Rehman S.I (Legal) for respondents present. Arguments heard and record perused.

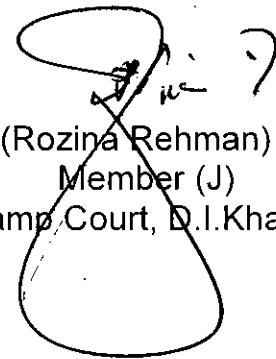
Vide our judgment of today of this Tribunal placed on file, we do not find any merit in the instant service appeal which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

08.12.2021



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, D.I.Khan



(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

05/04/2021

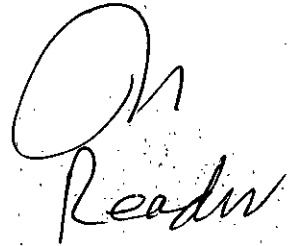
Due to COVID-19, the case is adjourned to

07/06/2021 for the same.



READER

Due to COVID-19, the case is
adjourned to 7/10/21



07.10.2021

Appellant present through representative.

Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Khawas Khan Inspector for respondents present.

Learned Members of the DBA are observing Sogh over the demise of Qazi Imdadullah Advocate and in this regard request for adjournment was made; allowed. To come up for arguments before the D.B on 08.12.2021 at Camp Court, Swat.



(Atiq-Ur-Rehman Wazir)
Member (E)
Camp Court, Swat



(Rozina Rehman)
Member (J)
Camp Court, Swat

07.12.2020

Due to COVID-19, case is adjourned to 01.02.2021 for the same as before.

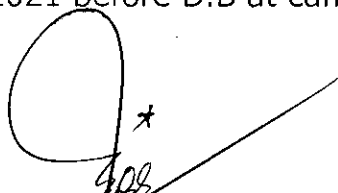

Reader


01.02.2021

Nemo for parties.

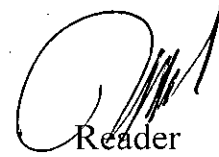
Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents is present.

Preceding date was adjourned on account of Covid-19, therefore, both the parties be put on notice for the date fixed. Issue involved in the instant case is pending before Larger Bench of this Tribunal, therefore, case is adjourned to 05.04.2021 before D.B at camp court Swat.


(Mian Muhammad)
Member(E)


(Rozina Rehman)
Member(J)
Camp Court Swat

03.06.2020 Due to Covid-19, the case is adjourned. To come up for the same on 08.07.2020, at camp court Swat.



Reader

08.07.2020 Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 09.09.2020, at camp court Swat.



Reader

09.09.2020


~~08.02.2020~~

Appellant in person present.

Mr. Muhammad Jan Deputy District Attorney for the respondents present.

Issue involved in the present case is pending before Larger Bench of this Tribunal.

Adjourned to 07.12.2020 for arguments before D.B at Camp Court, Swat.



(Attiq-ur-Rehman)
Member
Camp Court, Swat




(Rozina Rehman)
Member
Camp Court, Swat

03.02.2020

Learned counsel for the appellant and Mr. Riaz Paindakheil learned Assistant Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 04.03.2020 before D.B at Camp Court, Swat.



Member


Member
Camp Court, Swat.

04.03.2020

Appellant in person present. Mr. Usman Ghani learned District Attorney alongwith Khawas Khan Inspector present. Appellant seeks adjournment as his counsel is not available. Adjourn. To come up for arguments on 05.05.2020 before D.B at Camp Court, Swat.


Member


Member
Camp Court, Swat.

*Due to @ coroner vironse
tour to Camp Court Swat has
been cancelled. TO come up for the
same on. 03-06-2020*


Member

03.09.2019

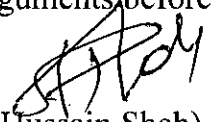
Appellant in person present. Mian Amir Qadir, DDA alongwith Mr. Johar Ali, Sr. CT for respondents present. Learned DDA seeks adjournment. Adjourn. To come up for arguments on 08.10.2019 before D.B at camp court Swat.



Member


Member

08.10.2019


Counsel for the appellant and Mian Amir Qadir, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 02.12.2019 for arguments before D.B at Camp Court Swat.



(Hussain Shah)
Member
Camp Court Swat


(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

02.12.2019

Counsel for the appellant present. Mr. M. Riaz Khan Paindakhel, Assistant Advocate General for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 03.02.2020 before D.B at camp court Swat.


Member


Member
Camp Court Swat

02.04.2019

Appellant with counsel present. Mr. Mian Amir Qadir learned District Attorney alongwith Khawas Khan S.I Legal present and requested for adjournment. Learned counsel for the appellant also seeks adjournment to furnish the judgments of trial court and appellate court (Hon'ble Peshawar High Court). Adjourn. To come up for further proceedings/arguments on 10.06.2019 before D.B at Camp Court Swat.




(M. Amin Kundi)
Member
Camp Court, Swat




(M. Hamid Mughal)
Member
Camp Court, Swat

10.06.2019

Clerk of counsel for the appellant and Mian Ameer Qadir learned District Attorney for the respondents present. Clerk of counsel for the appellant seeks adjournment as learned counsel for the appellant is not available today. Adjourn. To come up for further proceeding/arguments on tomorrow i.e 11.06.2019 before D.B at Camp Court Swat.




(M. Amin Khan Kundi)
Member
Camp Court Swat




(M. Hamid Mughal)
Member
Camp Court Swat

11.06.2019

Clerk of counsel for the appellant and Mr. Mian Ameer Qadir, learned District Attorney for the respondents present. Clerk of counsel for the appellant seeks adjournment as counsel for the appellant is not available today. Adjourn. To come up for further proceedings/arguments on 03.09.2019 before D.B at Camp Court Swat.



(M. Amin Khan Kundi)
Member
Camp Court Swat



(M. Hamid Mughal)
Member
Camp Court Swat

05.09.2018

Appellant in person present. Mr. Khawas Khan, SI alongwith Mr. Usman Ghani, District Attorney for respondents present. Written reply submitted on behalf of the respondents which is placed on file. Case to come up for arguments on 07.11.2018 before D.B at camp court Swat.


Member
Camp Court Swat

07.11.2018


Due to retirement of the Hon'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 08.01.2019 at camp court Swat.


Reader

08.01.2019

Counsel for the appellant present. Mr. Khawas Khan, S.I (Legal) alongwith Mr. Mian Ameer Qadir, ^{District} Attorney for the respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment for arguments. Adjourned. To come up for arguments on 02.04.2019 before D.B at camp court Swat.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member
Camp Court Swat

08.06.2018

Mr. Imdadullah, Advocate counsel for the appellant present and heard.

Contends that the appellant was dismissed from serving after being involved in a murder case but later-on he was acquitted from the charge. Further contends that when he approached the respondents for reinstatement, his request was turned down without showing any reason.

Points raised need consideration. The appeal is admitted to regular hearing subject to all legal objections if raised by the respondents. 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 4.07.2018 before S.B at camp court, Swat.

Appellant Deposited
Security & Process Fee



Chairman
Camp Court, Swat

04.07.2018

Mr. Imdad Ullah Advocate counsel for the appellant present. Mr. Khawas Khan S.I legal alongwith Mr. Usman Ghani learned District Attorney for the respondents present. Written reply not submitted. Representative of the respondents seeks time

07.08.2018

Appellant in person present. Due to summer vacation, the case is adjourned. To come up for the same on 05.09.2018 at camp court Swat.

to file written reply/comments. Granted. To come up for written reply/comments on 07.08.2018 before S.B at camp court Swat.



Chairman
Reader
Camp Court, Swat

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 497/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10/04/2018	<p>The appeal of Mr. Amanullah presented today by Mr. Aziz-ur-Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 10/4/18</p>
2-	11-4-18	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>11-5-18</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
09.05.2018		<p>Due to retirement of the Worthy Chairman, the Tribunal become non-functional. To come up for the same on 08.06.2018 before the S:B at camp court, Swat.</p> <p style="text-align: right;"><i>[Signature]</i> Registrar</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 497 of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

...Appellant

VERSUS

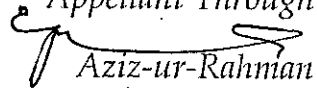
The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and Others.

...Respondents

INDEX

S. #	Description of documents	Annexure	Pages
1.	Memo of Appeal	....	1-4
2.	Affidavit	....	5
3.	Addresses of the parties	....	6
4.	Copy of the Order dated 30-09-2010	A	7
5.	Copy of the Judgment	B	8-12
6.	Copy of the Appeal	C	13
7.	Copy of the Order dated 16-02-2018	D	14
8.	Vakalat Nama	....	15

Appellant Through


Aziz-ur-Rahman
Advocate Swat

Office: Khan Plaza, Gulshone Chowk,
Mingora Swat, Cell 0333 929 7746

Dated: 09-04-2018

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 497 of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 518

Dated 10-4-2018

...Appellant

VERSUS

1. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Malakand at Saidu Sharif, District Swat.
3. The District Police Officer District Swat at Gulkada.

...Respondents

SERVICE APPEAL UNDER SECTION 4
OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER O.B. NO. 177
DATED 30-09-2010, WHEREBY THE
MAJOR PENALTY OF DISMISSAL
FROM SERVICE IS IMPOSED UPON
THE APPELLANT AGAINST THE LAW
AND RULES, FEELING AGGRIEVED OF
THE SAME THE APPELLANT
PREFERRED A DEPARTMENTAL
APPEAL, BUT THE AUTHORITY
DENIED HIM HIS LEGAL RIGHT AND
RETURNED THE APPEAL IN
ORIGINAL TO SUBMIT THE SAME
BEFORE THE RESPONDENT NO. 1. THE
SAME WAS DONE AND THE APPEAL
WAS DISMISSED IN A VERY FLIMSY
AND WHIMSICAL MANNER VIDE

Filed to-day

Registrar

10/9/18

ORDER NO. 779/18, DATED
PESHAWAR THE 16-02-2018, RECEIVED
BY THE APPELLANT ON 21-03-2018,
THUS BOTH THE ORDERS IMPUGNED
ARE AGAINST THE LAW AND RULES
AND ARE LIABLE TO BE SET ASIDE.

Prayer:

That on acceptance of this appeal both the orders impugned may very kindly be set aside and the appellant reinstated back into service with all back/consequential benefits.

Respectfully Sheweth:

Facts:

- i. *That the appellant served the Police Force for about 15 years as constable with efficiency and zeal without any complaint from any quarter.*
- ii. *That the appellant was falsely charged in a case FIR No. 308 / 2008 u/s 302-34-148-149 PPC Police Station Saidu Sharif.*
- iii. *That the respondent department, against the law and rules on the subject, dismissed the services of the appellant after his conviction by the court of Learned Additional District and Session judge / Izafi Zilla Qazi Swat vide order O.B. No. 177 dated 30-09-2010, but strangely with retrospective effect i.e. from 18-09-2010. Copy of the order dated 30-09-2010 is enclosed as Annexure "A".*

- iv. That the appellant was finally acquitted by the August Supreme Court of Pakistan vide judgment dated 10-11-2017, copy of the same is enclosed as Annexure "B".
- v. That after the acquittal the appellant preferred a departmental appeal to the respondent No. 2, but he denied to accept the same thus denying the appellant his statutory right bald of any reasons.
- vi. That the appellant then submitted the same before the respondent No. 1 who rejected the same in a very flimsy, whimsical manner and that too in an arbitrary manner against the law and rules on the subject vide order No. 779/18, dated Peshawar the 16-02-2018, received by the appellant on 21-03-2018. Copy of the appeal is enclosed as Annexure "C" and that of the order dated 16-02-2018 as Annexure "D", respectively.
- vii. That still feeling aggrieved and having no other option this Honourable Tribunal is approached on the following grounds.

Grounds:

- a. That the order impugned is against the law, rules and facts and the appellant has been denied is rights to his utter detriment, thus the appellant has not been treated in accordance with the law.

- b. That the appellant has been condemned as unheard as neither has he been associated with any inquiry nor was he ever afforded the chance of defence by way of personal hearing, chance of cross examination and also to rebut any evidence, if any, used against the appellant.
- c. That this is a classic case of its kind which shows the misuse and abuse of authority in a very fanciful, colourful manner bulldozing every law and rule on the subject, which makes the whole proceedings as nullity in the eyes of law.
- d. That the appellant has every right to be dealt with in accordance with the law and rules, and denial of the same is amounting to infringement of his rights.

It is, therefore, very respectfully prayed that on acceptance of this appeal both the orders impugned may very kindly be set aside and the appellant reinstated back into service with all back / consequential benefits.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

Aman
Appellant

Aman Ullah
Through Counsels,
Aziz-ur-Rahman
Imdad
Imdad Ullah
Advocates Swat

5

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of
this service appeal are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.

Deponent

Aman
Aman Ullah

Identified By:

Imdad
Imdad Ullah
Advocate Swat

ATTESTED

Umar
Sadiq
UMAR SADIQ Advocate,
OATH COMMISSIONER
Distt: Courts Swat.

No. 202 Date 09-04-18

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

...Respondents

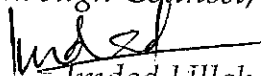
ADDRESSES OF THE PARTIES

Appellant:

Aman Ullah Ex-Constable No. 35 of Swat Police.

Respondents:

1. The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar.
2. The Regional Police Officer Malakand at Saidu
Sharif, District Swat.
3. The District Police Officer District Swat at
Gulkada.

Appellant
Through Counsel,

Imdad Ullah
Advocate Swat

ORDER


Constable Aman Ullah No. 35 of this District being involved in a criminal vide Case FIR No. 308 /2008 u/s 302/34/148/149 PPC Police Station Saidu Sharif was suspended from service vide OB No. 178 dated 09/09/2008 and proceeded against departmentally. Meanwhile he absented/deserted himself from service w.e.from 24/8/2008, he was dismissed from service from the date of his absence vide OB No. 14 dated 24/01/2009.

Later on he was re-instated in service by the Regional Police Chief from the date of absence and the period of absence and he remained out of service is treated as leave without pay vide order No. 2706/E dated 25/4/2009.

Now the official has been convicted life imprisonment for four time by the court of Additional District and Session Judge/Izafi Zilla Qazi Swat vide judgment dated 18/9/2010.

In the light of court judgment dated 18/9/2010 and on the basis of previous departmental enquiry initiated in this regard, Constable Aman Ullah No. 35 is hereby dismissed from service with effect from 18/9/2010.

Order announced.


District Police Officer, Swat
M/Ali

OB No. 177
Dated 30.9/2010

ATTESTED

ADVOCATE

Annexure B

8

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Mushir Alam
Mr. Justice Qazi Faeza Isa

Criminal Appeal No. 89 of 2015

(Against the judgment dated 22.05.2013 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Criminal Appeal No. 826 of 2010 and Criminal Revision No. 182 of 2010)

Inayat Ullah, etc.

...Appellants

versus

The State

...Respondent

For the appellants:

Mr. Astagfirullah, ASC

For the complainant:

Mr. Abdul Fayyaz Khan, ASC

For the State:

Mr. Muhammad Aslam Ghumman,
ASC

Date of hearing:

10.11.2017

JUDGMENT

Asif Saeed Khan Khosa, J.:

Criminal Miscellaneous Application No. 1902 of 2017

This miscellaneous application is allowed and the documents appended therewith are permitted to be brought on the record of the main appeal. Disposed of.

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

ist.
ATTESTED


ADVOCATE


(9)

Criminal Appeal No. 89 of 2015

2. Inayat Ullah, Aman Ullah and Qadarmand appellants and some others had allegedly fired at and killed three persons namely Suleman, Mian Gul Hassan and Mian Syed Hussain belonging to the opposite party at about 11.30 A.M, on 24.08.2008 in an area known as Darang Waqay Puray Gharlaka Gutta Kokri within the jurisdiction of Police Station Saidoo Sharif, District Swat and in the same incident Inayat Ullah appellant's father namely Raheem Ullah had also received a firearm injury and had died. According to the prosecution the said incident had taken place when the parties had quarreled over cutting of grass and wood available at the place of occurrence. With the said allegations the appellants and their co-accused were booked in case FIR No. 307 registered at the above mentioned Police Station on the same day. After a regular trial the appellants were convicted by the trial court on four counts of the charge under section 302(b), PPC and were sentenced to imprisonment for life each on each count and to pay compensation besides having been convicted and sentenced for offences under section 148, PPC, section 324, PPC read with section 149, PPC and section 337-F(iii), PPC read with section 149, PPC. The appellants' co-accused namely Behramand, Arzomand and Bakht Biland had also been convicted and sentenced by the trial court for various offences. The appellants and their co-convicts challenged their convictions and sentences before the High Court through an appeal which was dismissed to the extent of the present appellants and their convictions and sentences recorded by the trial court were upheld by the High Court. The High Court, however, acquitted the appellants' co-accused namely Behramand and Arzomand and the convictions and sentences of Bakht Biland co-convict had been modified by the High Court. Hence, the present appeal by leave of this Court granted on 27.01.2015.

3. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

ATTESTED


 Court Associate

 Supreme Court of Pakistan
 Islamabad
ATTESTED ^{nat.}


ADVOCATE

(10)

4. A perusal of the FIR itself shows that there was no previous enmity between the parties and that the occurrence in this case had taken place all of a sudden without any premeditation. According to the FIR the parties had suddenly flared up over a dispute regarding cutting of grass as the rival parties claimed the relevant parcel of land to be theirs. The record of the case shows that the father of Inayat Ullah appellant had also received a firearm injury during the same incident and he had died on account of receipt of that injury. The record further confirms the fact that even Inayat Ullah appellant had received a firearm injury during the selfsame incident and receipt of a firearm injury by him had been established on the record through a prosecution witness who had also placed on the record the Medico-legal Certificate issued in respect of Inayat Ullah appellant. Through cross-cases lodged in respect of the same incident the rival parties had claimed that the opposite party had launched aggression at the spot. After a detailed assessment of the evidence available on the record the High Court had itself concluded in so many words that the occurrence in this case was a result of a sudden flare-up and that the case in hand was not a case of common object shared by the accused party. The High Court had gone on to observe in the impugned judgment passed by it that initially hot words had been exchanged by the parties at the spot which had led to a sudden flare-up and, thus, there was no preconcert or premeditation on the part of the accused party of this case. The law is settled by now that ordinarily in a case of a sudden occurrence taking place without premeditation the case is of individual liability and each accused person is to be held responsible only for the act committed by him and not for the acts committed by his co-accused. In the present case Inayat Ullah appellant had allegedly fired one shot at Suleman deceased, Aman Ullah appellant had fired one shot at Mian Gul Hassan deceased and Qadarmand appellant had fired one shot at Mian Syed Hussain deceased at a time when during the same incident Inayat Ullah appellant had received a firearm injury at the hands of the opposite party whereas Inayat Ullah

ATTESTED

Y
 Court Associate
 Supreme Court of Pakistan
 Islamabad

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Indel
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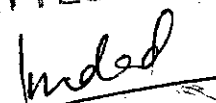
(11)

appellant's father namely Raheem Ullah had also received a fireshot which had killed him. It is, thus, obvious that when fires were being exchanged by the parties and each of the present appellants had fired only one shot at the opposite party in a situation where one of the appellants was himself injured and his father had also received a firearm injury it could not be said that the present appellants had acted in a cruel or unusual manner. As a matter of fact the appellants had acted only in the same manner as the complainant party had and, hence, no undue advantage had been taken by the appellants. The circumstances of this case apparently meet all the ingredients of Exception 4 to the erstwhile section 300, PPC making the case in hand a case of a sudden fight. It was held by this Court in the case of Zahid Rehman v. The State (PLD 2015 SC 77) that the cases covered by any of the Exceptions to the erstwhile section 300, PPC now fall under section 302(c), PPC.

5. As it has already been held by us above that the case in hand was not a case of sharing of common intention or object by the accused party, therefore, each of the appellants is held to be responsible only for the act committed by him during the occurrence in issue. It is not denied that after acquittal of Behramand and Arzomand accused by the High Court sections 148 and 149, PPC no longer stood attracted to this case. It is also not disputed that the present appellants had not caused any injury to Sher Ali complainant (PW6). In this view of the matter the convictions and sentences of the appellants for offences under section 148, PPC, section 324, PPC read with section 149, PPC and section 337-F(iii), PPC read with section 149, PPC are set aside. As regards the murder of Raheem Ullah, father of Inayat Ullah appellant, it is the prosecution's own case that he was accidentally hit while the parties to this case were indulging in cross-firing. Under section 80, PPC anything done as a result of an accident or misfortune does not constitute a criminal offence. The convictions and sentences of all the appellants for the murder of Raheem Ullah are, therefore, also set aside. As regards the murders of Suleman,

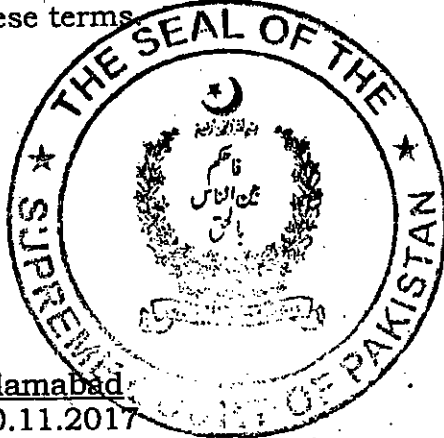
ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad


ADVOCATE

12

Mian Gul Hassan and Mian Syed Hussain the present appellants are to be individually convicted for the respective murders committed by them. This appeal is, therefore, partly allowed even on that score, the convictions and sentences of the appellants for the murders of Suleman, Mian Gul Hassan and Mian Syed Hussain recorded under section 302(b), PPC are set aside and they are substituted by conviction of each of the three appellants on one count of the charge under section 302(c), PPC each and they are sentenced for the individual murder committed by each of them to rigorous imprisonment for ten years each. No order is being passed regarding payment of compensation by the appellants to the heirs of the respective deceased because in the same incident the appellants were also fired at by the opposite party causing a firearm injury not only to Inayat Ullah appellant but also to his father who had died. The benefit under section 382-B, Cr.P.C. shall be extended to the appellants. This appeal is disposed of in these terms



Islamabad
10.11.2017

Not approved for reporting.

Arif

and 14/11/17

Sd/-Asif Saeed Khan Khosa, J

Sd/-Mushir Alam, J

Sd/-Qazi Faez Isa, J

Certified to be True Copy

ef
Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED

Indef
ADVOCATE

کتابخانه حاجی عبدالعزیز خان صاحب دہلی

13

تہ

Annexure

عنوان - درخواست کے لئے عدالت عالیہ کی درخواست

19 Establishment

سپنا عالیہ کی درخواست کے لئے عدالت عالیہ کی درخواست

مہتمم دہلی کی درخواست کے لئے عدالت عالیہ کی درخواست

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02/07/18

مہتمم دہلی کی درخواست کے لئے عدالت عالیہ کی درخواست

0342-0912375

570 7/12/18

ATTESTED

ADVOCATE

Sub: Request For Re-Instatement Service

359/R
07/3/18

Annexure D (14)



662/E
05/3/18
No. 779

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE
PESHAWAR.

1722
6/13/18

/18, dated Peshawar the 16/02/2018.

To : The Regional Police Officer,
Malakand Region, Swat.
Subject: APPEAL (EX-FC AMAN ULLAH NO. 35)
Memo :

Ex-Constable Aman Ullah No. 35 of District Police Swat had submitted appeal to the Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for reinstatement into service. His appeal was processed / examined at Central Police Office, Peshawar and filed by the competent authority being badly time barred for about 07 years.

The applicant may please be informed accordingly.

Plase
(SYED ZIA ALI SHAH),
Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

No 2332/E
dt 5-3-2018

E of DPO Swat
For info. The applicant
may be informed accordingly
please.

Leh
Regional Police Officer,
Malakand at Saidu Sharif, Swat.

PEC/PAISI

Not rejection

District Police Officer
SWAT.

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Indef
ADVOCATE

No-5826/R
dt-07-3-18
Sopo saidu circle.

informed the applicant
accordingly on the below address.
Address: Village kokrai ps
saidu sharif.

11/1
جول لورک
کوکرائی پوسٹ
سیدو شریف
SHO-PSSS
8-03-18

SHO/Saidu
for info and
inaction.

SDPO/Saidu
7/3/18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

15

In the matter of:-

Aman Ullah

Appellant

VERSUS

The PPO K.P.
and others

Respondent 5

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

AZIZ-UR-RAHMAN and IMDAD ULLAH

Advocates High Court

To be the advocate for the Appellant in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this 07 day of 04 2018.

Aman

(Signature or thumb impression)

(Signature or thumb impression)

(Signature or thumb impression)

Accepted subject to terms regarding fees

(AZIZ-UR-RAHMAN)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk

G.T. Road Mingora, District Swat.

Cell No. 0300 907 0671

امان اللہ خان

Imdad

(IMDAD ULLAH)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk,

G.T. Road, Mingora, District Swat

Cell No. 0333 929 7746

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.497/2018

Amanullah Ex-Constable No.35, District Police, Swat.

----- (Appellant)

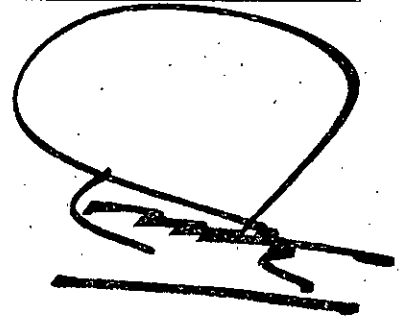
Versus

1. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat.

----- (Respondents)

INDEX

S.No:	Description of Documents	Annexure	Page
1	Para-wise Comments	-	1-2
2	Affidavit	-	3
3	Authority Letter	-	4



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

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No.497/2018

Amanullah Ex-Constable No.35, District Police, Swat.

----- (Appellant)

Versus

1. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat.

----- (Respondents)

Parawise comments on behalf of Respondents.

Respectfully shewith:

Preliminarily objection:-

1. That the service appeal is time barred.
2. That the service appeal is not maintainable in its present form.
3. The instant appeal is bad due to mis-joinder and non-joinder of necessary parties.
4. That the appellant is estopped due to his own conduct.
5. That the appellant has concealed material facts from this Honorable Tribunal.
6. That the appellant has got no cause of action and locus standi to prefer the instant appeal.
7. The appellant has not come to this Tribunal with clean hands.

ON FACTS

- I. Para No.1 of appeal pertains to service record of appellant, hence need no comments.
- II. Para No.II of appeal to the extent of registration of FIR No. 308/2018 u/s 302/324/148/149 PPC P.S Saidu Sharif is correct, however after regular trial, the trial Court convicted the appellant on the basis of which, he was dismissed from service vide order dated 30/09/2010 by the respondent No.3
- III. Para No.III of appeal is incorrect. Appellant was dismissed from service, on account of conviction by the trial Court in murder case.
- IV. Para No. IV of appeal is incorrect. The appeal of appellant and two other co-accused was partially allowed and the conviction was submitted and they were sentenced for rigorous imprisonment for ten years.


- 2
- V. Para No V of appeal to the extent of acquittal is incorrect. However appellants after undergoing imprisonment released from jail, filed departmental appeal which was examined by the respondents No.1 and rejected being time barred.
- VI. Para No.VI to the extent of rejection of departmental appeal by respondent No.1 is correct.
- VII. Appellant being convicted has got no cause of action to file the instant appeal and the grounds of appellant are devoid of merit.


GROUNDS


- a. Incorrect. The orders of respondents are quite legal in accordance with law/rules.
- b. Incorrect. Appellant being convicted in criminal case was rightly dismissed from service, however during criminal trial appellant was found guilty.
- c. Incorrect. The orders of respondents are quite legal and in accordance with law/rules.
- d. Incorrect. The respondents have not violated any right of appellant, however he was treated in accordance with law/rules.

PRAYER:-

In view of the above comments of answering respondents, it is prayed that instant appeal may be dismissed with cost.


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


Regional Police Officer,
Mafakand
(Respondent No.2)


District Police Officer,
Swat
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.497/2018

Amanullah Ex-Constable No.35, District Police, Swat.

----- (Appellant)

Versus

1. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat.

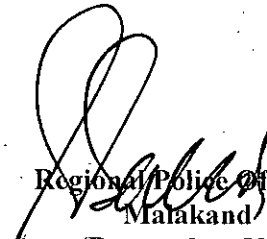
----- (Respondents)

AFFIDAVIT

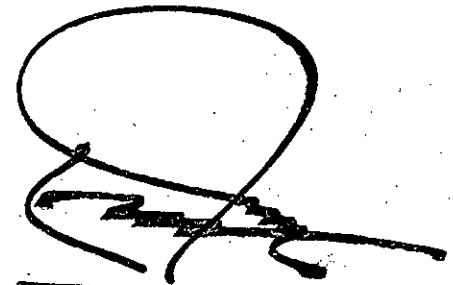
We, the above respondents do hereby solemnly affirm and declare on oath that the accompanying Para-wise comments submitted in reply to above cited service appeal are correct to the best of our knowledge and nothing has been concealed from this Honorable Tribunal.



**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.01)**



**Regional Police Officer,
Malakand
(Respondent No.02)**



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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.497/2018

Amanullah Ex-Constable No.35, District Police, Swat.

----- (Appellant)

Versus

1. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat.

----- (Respondents)

AUTHORITY LETTER

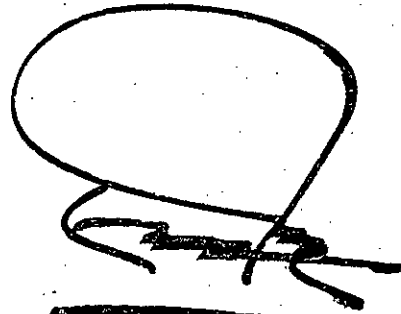
We, the above respondents do hereby authorize Mr. Khawas Khan SI Legal Swat to appear in the Apex Supreme Court of Pakistan on our behalf on each date fixed in connection with titled case and do whatever is needed.



**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.01)**



**Regional Police Officer,
Malakand
(Respondent No.02)**



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

ORDER

(18) 5

484

This order will dispose off the enquiry initiated against Constable Aman Ullah Khan No.484, who while posted to CP Bandai was directly charge in a criminal case vide FIR No.307, dated 24/08/2008 u/s 302/324/148/149, PPC Police Station Saidu Sharif and absented himself from duty vide DD No.08, dated 24/08/2008.

He was issued charge sheet with statement of allegations. Enquiry was initiated against him and DSP Legal was appointed as Enquiry Officer. The Enquiry Officer in his finding report submitted that the defaulter Constable was summoned time and again, but did not appear to record his statement. Hence he was recommended for Major punishment of the Enquiry Officer. He was issued Final Show Cause Notice No. 381/E, dated 09/01/2009 but no reply has been received.

This constitutes misconduct, cowardice on his part and as such he is liable for action under section 5 sub section (4) of the Removal from service (Special Powers) Ordinance 2000 (Amendment) Ordinance 2001.

This constitutes misconduct/disinterest on his part and as such he is liable for action under section 5 Sub Section (4) of the Removal from service (Special Power) Ordinance 2000 (Amendment) Ordinance 2001 and dispose with the enquiry proceeding as laid down in the Ordinance and am further satisfied that there is no need of holding further departmental enquiry. Since the defaulter Constable has been found guilty of gross misconduct as defined in the said Ordinance, I Mr. Dilawar Khan Bangash DPO Swat. as a competent authority, therefore impose major penalty by dismissing him from service from the date of absence i.e 24/08/2008.

Order announced.


District Police Officer, Swat

O.B. No. 141

Dated. 24.1.09

ٹاڈرنٹ ریکورڈ

خبریں

حوالہ انکویری آرڈر کنٹریبل ایمان اللہ 484 صفحہ ایک ریورٹ بڑھائی

علاقہ قلعہ بیل موضع حضرت بلوں کہ ذکوہ کنٹریبل فقیر، کٹ 307 (ج) 302-324

148-149 24/8/08

تھانہ سید خورشید میں ڈائریٹیج چارج ہو کر اس سلسلہ میں انکویری شروع ہو کر زبردستی کو حیران ہو گیا۔

دوران انکویری کنٹریبل ایمان اللہ 484 کی بریڈری

پر لایا گیا 13/08، 28/08، 10/08، 18/08، 2/08 ایک ملک لیا گیا۔

ہوا۔ Asi کا کچھ کے ریورٹ کے مطابق ذکوہ کنٹریبل 24/08 سے برہنہ ہو گیا۔

ذکوہ کنٹریبل فقیر میں چارج ہونے کے بعد حوالہ آرڈر کیلئے 178 Suspend

ہو کر لائن ملوز لیا گیا۔ لیکن ذکوہ کنٹریبل نے لائن میں تاحال حاضری نہیں لی ہے

اس سلسلہ میں حوالہ عد 33 روزانہ 9/08 لائن بندھ میں ریورٹ درج ہوئی ہے۔

حوزہ ذکوہ کنٹریبل فقیر میں چارج ہو کر اسی دن گرفتار ہو کر 9/08 جیل سے

برفائی رہا ہوا ہے۔ لیکن ذکوہ نے رہائی کے بعد نہ تو لائن میں حاضری کی ہے

اور نہ کوئی راجم لیا ہے۔ جس کے کنٹریبل ذکوہ کی کارسکر میں ختم و ختم

اور غیر ذمہ داری ظاہر کر کے جس کوہ سے کنٹریبل ایمان اللہ 484 لیا گیا حوالہ

ہو گیا۔ لہذا ذکوہ کنٹریبل کو سزا دینے کی سفارشی کہانی ہے

ٹاڈرنٹ ریکورڈ عرض ہے۔

EC
98800 Final Show Cause Notice.
DSP/ Legal Suwat.
6/13/08

DSP/ Legal Suwat

CHARGE SHEET

I Mr. Dilawar Khan Bangash, DPO Swat as competent authority, hereby charge you, Constable Aman UIH Khan No. 484 as following that you, while posted in CP Bandai committed the following irregularities:

You Constable Amanullah No. 484 while posted to CP Bandai was directly charged in a criminal case vide FIR No. 307 dated 24/08/2008 u/s 302/324/148/149 PPC Police Station Saidu Sharif .

2. By reasons of the above, you appear to be guilty of misconduct under Section-3 of the NWFP (Removal from Service) Special powers ordinance 2000, and have rendered yourself liable to all or any of penalties specified in section-3 of the ordinance.

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Enquiry officer / Committee, as the case may be.

4. Your written defense, if any, should reach the Enquiry Officer/ Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case exparte action shall follow against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.


District Police Officer, Swat

No. 321 /EB

Dated 24/9 / 2008

DISCIPLINARY ACTION

8

I Mr. Dilawar Khan Bangash, DPO, Swat District Police Officer, Swat as competent authority, am of the opinion that Constable Amanullah No. 484, has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning of section 3 of the N.W.F.P Removal from Service (Special Powers) Ordinance, 2000.

STATEMENT OF ALLEGATIONS

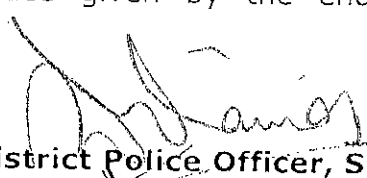
Constable Amanullah No. 484 while posted to CP Bandai was directly charged in a criminal case vide FIR No. 307 dated 24/08/2008 u/s 302/324/148/149 PPC Police Station Saidu Sharif.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry committee consisting of the following is constituted under section 3 of the Ordinance.

1. Mr. Muhammad Ayaz Khan DSP/Legal, Swat
2. _____

3. The enquiry Committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make within, 25 Days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place given by the enquiry Committee.


District Police Officer, Swat

No. 381 /E, Dated Gulkada the, 24/9 2008.

Copy of above is forwarded to the:-

1. Mr. Muhammad Ayaz Khan DSP/Legal, Swat
 2. _____
- } for initiating proceeding against the Officer/Official under the provisions of the NWFP/Removal from Service (Special Powers) Ordinance 2000.

3. Constable Amanullah No. 484

With the direction to appear before the enquiry Committee on the date time and place fixed by the Committee for the purpose of he proceeding

منعاً

بعد ازاں جناب سردار خان امین پٹیل کیشن جج جہانگیر میں دئے

حقوقات زیر سماعت تھے۔ بمقام عدالت 308/2008 جس میں 302.34/PP-748-749

میں تیسری سٹیج میں پٹیل جج کے فیصلے کے خلاف اپیل کی گئی تھی۔ جج جہانگیر نے 307/2008

کا فیصلہ دیا ہے جس میں پٹیل جج کے فیصلے کو برقرار رکھا گیا ہے۔ 302.34/PP-748-749

جس کے تحت پٹیل جج کے فیصلے کو برقرار رکھا گیا ہے۔ 307/2008

W.P. No. 195J/IV
20.9.2010

pay stopped and
issue charges sheet

OAS

OB. No. 171
21.9.10

DPO. surant

E.C.

Issue orders for action
in the light of
judgment of
IV date 18.9.10.

DPs/waged
for contracts
whether fresh enquiry
is initiated or
disposal order in the light
of court judgment will
depend on the facts.

DSP/ Legal List
20/09/10

27/9/10

فارم نمبر 23

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 153 مجموعہ ضابطہ فوجداری

میدان	ضلع
307	تاریخ 24/8 وقت 11:30

رپورٹ	48
میدان	وقت 11:30 حالت بدیدہ 24/8 وقت 14:40
اطلاع دہندہ	سفیر علی ولد او بیبرے، ساکن محلہ سیدان احمدی 35 سال ساکن چیتور
جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔	149
محلہ تھانیہ اور سمت تیب و افتر ایرریبے غیر ملکہ گڑھ کمری اپنا محلہ قریب 5/6 کلورہ پیر حیات جنوبی اریبیانہ زمین تیب 2، آسان اللہ لیدان زیم الدردی قدر مند 4 بجت باند لیدان سید منال ای بکیر 16 اررو، بند لیدان ای بکیر ساکنان کوثری	PC 302-324-148
ش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کریں۔	بندیدتی غیر اسلحہ ہتھیار کما جاتا ہے۔
لی کی تاریخ و وقت	لاہور اسپتال رپورٹ

ابتدائی اطلاع نئے درج کروانے وقت آئی کی بری صراحتہ لفظوں میں رپورٹ
 میدان عالم ایچ ایچ ایچ سیدو شراف بدیت کیٹیل بک خان 172 در سرب پیکر ذیل ہے۔ بخدمت اہل
 تیار سیدو شراف۔ افریزہ آجٹ بالا کر اجرت مالا ایڈا بن کھنیر کواٹی میں یات ڈرویت پاکر کما میں
 رہتے ہیں۔ گراہ لوشن پائے و تبولن سلیمان ناچہ، سید فضل حسین ناچہ اور میاں سید حسین ناچہ لیدان
 میاں ساکنان چیتور جرایلیان چیتور نے ہتال ہی نے ہیں۔ ہتال مالا نے یوں رپورٹ کی۔ کہ آج میں
 ان وقتوں میں بالا اور وقت بالا لجر فٹ کاٹنے گیا۔ سہ سوتی ملری اپنے چارہ دوسو تھکے گئے تھے۔ اور
 پیکری اور گھاس کاٹنے میں صرف تھے۔ کہ اس دوران میں ان عبادت اللہ، آسان اللہ لیدان
 لدا، قدر مند، بجت باند لیدان سید منال اور کھیر، سدا اررو اندا پیران میاں تیسرا آسان کوثری
 اسلی، آئین آکر میں کیا کیا آپ کیوں گھاس اور ملری کاٹ رہے ہیں۔ ہم نے وہاں گیا کہ ای ہمارے اہلی
 بلائے ہم اس میں آٹائی کھڑی ہیں۔ اتنے ہی پہنچے پیدر چھہ کہ ان مالا نے ہم پر یہ ارادہ قتل خائونہ کرنا
 ہائے طور پر ملزمان عبادت اللہ کی ٹھانڈنگ سے سلیمان ناچہ، ملزم آسان اللہ کی ٹھانڈنگ سے مہار مل حسین
 دروند کی ٹھانڈنگ سے میاں سید حسین ناچہ کہ دروند پیر جان کی پوئے۔ حکمہ ملزم بک باند کے مایڈنگ سے میں
 کہ کی بازو پر بنگ کر زخمی ہوا اور اسی طرہ ملزم عبادت اللہ کے مایڈنگ سے اس کا والد جو کہ سو ہم پر موجود
 زخمی ہوا۔ وجہ عداوت گھاس اور سوتی ملری کی دشمنی پر وہ سوتی ڈرویت تدار ہوا ہے۔ وہ سوتی کو سید سے علاوہ
 مچاندر میاں اور ناچہ سیدو لداہم سدا ان داسا نام وغیرہ نے بھی شہر خورد دیا ہے۔ میں اسی پر وقت اور
 ناچہ پیران بلا کی قتل کا بد خلاصہ ہے کہ ان ملزمان بالا دروند یوں۔ رپورٹ کہ تاہوں غور ہوئے۔ کہ
 ناچہ علی سار والی قتل ہوا ہے۔ جب کہ ملزمان سائل رپورٹ صرف درج مالا لداہم سدا ان داسا نام وغیرہ
 رستا اسلم کرے زیر رپورٹ خورد ہوئی ہے۔ جس میں ابتدائی کتاہوں۔ پیرہ 7 کا لفظ صراحتہ ہے۔

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 497 of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

...Respondents

REJOINDER BY THE APPELLANT

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, baseless, against the law, rules, facts and Shariah, hence are specifically denied. Moreover the appellant has got a prima facie case in his favour and the appellant has approached this Honourable Tribunal well within time with clean hands and this Honourable Tribunal has got the jurisdiction to adjudicate upon the same.

On Facts:

- I. Para 1 of the comments amounts to admission, hence needs no reply.
- II. Para 2 of the comments as drafted shows the arbitrary use of authority not vested in the respondents, however the respondents did wait

for the final judgment imposed major penalty in a very hasty manner, thus the para is denied.

III. Para 3 of the comments as drafted is incorrect, misconstrued and based on complete misstatement as is evident from the record, thus the para is denied.

IV. Para 4 of the comments as drafted also is incorrect and based on misstatements as is clear from the record, thus the para is denied specifically.

V. Para 5 of the comments as drafted is incorrect and against the record, as the respondent No. 2 never entertained the departmental appeal of the appellant and returned the same to the appellant, copy of which is enclosed herewith, thus the para is denied.

VI. Para 6 of the comments as drafted is incorrect, baseless, vague and evasive thus needs no reply.

VII. Para 7 of the comments as drafted is incorrect and baseless and against the facts, thus the same is denied.

On Grounds:

a. Ground A of the comments as drafted is incorrect, against the law and rules on the subject, hence is denied specifically.

- b. Ground B of the comments as drafted amounts to admission, thus needs no reply.
- c. Ground C of the comments as drafted is baseless, incorrect and devoid of merits, thus the para is denied.
- d. Ground D of the comments as drafted is vague and evasive and against the record available which speaks volumes of the colourful exercise of the authority, thus the para is denied.

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be decided as prayed for originally.

Aman Appellant

Aman Ullah
Through Counsel,
Amjad
Amjad Ullah
Advocate Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 497 of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has either been misstated or kept concealed before this Honourable Tribunal.

Aman Deponent

Aman Ullah

ATTESTED

U R
UMAR SADIQ Advocate,
OATH COMMISSIONER
Distt: Courts Swat.

No. 108 Date 08/11/19

جناب - ٹی - آئی - جی صاحب دفتر سید و شریف سوات:

درخواست برادر: بجالی ملازمت

جناب عالی!

گزارش حسب ذیل ہے -

15

(1) - یہ کہ میں سابقہ پولیس ملازم ہوں اور سروس پذیرہ سا،

(2) - یہ کہ جرم بے گناہ میں 9/18 کو میری برخاستگی ہوئی تھی

(3) - یہ کہ سات سال قید پانے کے بعد 11/17 کو سپریم کورٹ

کے فیصلے کی مطابقت ہمیں رہائی ملی -

(4) - یہ کہ آپ کے حضور استدعا کی جاتی ہے کہ اگر بجالی ملازمت

کا حکم صادر فرمائی جائیں تو تازہ لیت دعا گو

رہوں گا -

عرفیہ / 22-18 / سکتہ کوکری
آمان اللہ خان بلٹ نمبر 35 سابقہ پولیس ملازم سوات

Mob: 0342-0910375

Amir

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 497 of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and Others.

...Respondents

INDEX

S. No.	Description of documents	Annexure	Pages
1.	Memo of Appeal	....	1-4
2.	Affidavit	....	5
3.	Addresses of the parties	....	6
4.	Copy of the Order dated 30-09-2010	A	7
5.	Copy of the Judgment	B	8-12
6.	Copy of the Appeal	C	13
7.	Copy of the Order dated 16-02-2018	D	14
8.	Vakalat Nama	....	15

Appellant Through
Aziz-ur-Rahman
Advocate Swat

Office: Khan Plaza, Gulshone Chowk,
Mingora Swat, Cell 0333 929 7746

Dated: 09-04-2018

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 497 of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

...Appellant

VERSUS

1. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Malakand at Saidu Sharif, District Swat.
3. The District Police Officer District Swat at Gulkada.

...Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER O.B. NO. 177 DATED 30-09-2010, WHEREBY THE MAJOR PENALTY OF DISMISSAL FROM SERVICE IS IMPOSED UPON THE APPELLANT AGAINST THE LAW AND RULES, FEELING AGGRIEVED OF THE SAME THE APPELLANT PREFERRED A DEPARTMENTAL APPEAL, BUT THE AUTHORITY DENIED HIM HIS LEGAL RIGHT AND RETURNED THE APPEAL IN ORIGINAL TO SUBMIT THE SAME BEFORE THE RESPONDENT NO. 1. THE SAME WAS DONE AND THE APPEAL WAS DISMISSED IN A VERY FLIMSY AND WHIMSICAL MANNER VIDE

ORDER NO. 779/18, DATED
PESHAWAR THE 16-02-2018, RECEIVED
BY THE APPELLANT ON 21-03-2018,
THUS BOTH THE ORDERS IMPUGNED
ARE AGAINST THE LAW AND RULES
AND ARE LIABLE TO BE SET ASIDE.

Prayer:

That on acceptance of this appeal both the orders impugned may very kindly be set aside and the appellant reinstated back into service with all back/consequential benefits.

Respectfully Sheweth:

Facts:

- i. That the appellant served the Police Force for about 15 years as constable with efficiency and zeal without any complaint from any quarter.
- ii. That the appellant was falsely charged in a case FIR No. 308 / 2008 u/s 302-34-148-149 PPC Police Station Saidu Sharif.
- iii. That the respondent department; against the law and rules on the subject, dismissed the services of the appellant after his conviction by the court of Learned Additional District and Session judge / Izafi Zilla Qazi Swat vide order O.B. No. 177 dated 30-09-2010, but strangely with retrospective effect i.e. from 18-09-2010. Copy of the order dated 30-09-2010 is enclosed as Annexure "A".

- iv. That the appellant was finally acquitted by the August Supreme Court of Pakistan vide judgment dated 10-11-2017, copy of the same is enclosed as Annexure "B".
- v. That after the acquittal the appellant preferred a departmental appeal to the respondent No. 2, but he denied to accept the same thus denying the appellant his statutory right bald of any reasons.
- vi. That the appellant then submitted the same before the respondent No. 1 who rejected the same in a very flimsy, whimsical manner and that too in an arbitrary manner against the law and rules on the subject vide order No. 779/18, dated Peshawar the 16-02-2018, received by the appellant on 21-03-2018. Copy of the appeal is enclosed as Annexure "C" and that of the order dated 16-02-2018 as Annexure "D", respectively.
- vii. That still feeling aggrieved and having no other option this Honourable Tribunal is approached on the following grounds.

Grounds:

- a. That the order impugned is against the law, rules and facts and the appellant has been denied his rights to his utter detriment, thus the appellant has not been treated in accordance with the law.

- b. That the appellant has been condemned as unheard as neither has he been associated with any inquiry nor was he ever afforded the chance of defence by way of personal hearing, chance of cross examination and also to rebut any evidence, if any, used against the appellant.
- c. That this is a classic case of its kind which shows the misuse and abuse of authority in a very fanciful, colourful manner bulldozing every law and rule on the subject, which makes the whole proceedings as nullity in the eyes of law.
- d. That the appellant has every right to be dealt with in accordance with the law and rules, and denial of the same is amounting to infringement of his rights.

It is, therefore, very respectfully prayed that on acceptance of this appeal both the orders impugned may very kindly be set aside and the appellant reinstated back into service with all back / consequential benefits.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

Aman
Appellant

Aman Ullah
Through Counsels,
Aziz-ur-Rahman
Imdad
Imdad Ullah
Advocates Swat

5

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

...Appellant

VERSUS

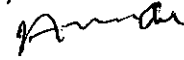
The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

...Respondents

AFFIDAVIT

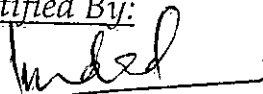
It is solemnly stated on Oath that all the contents of
this service appeal are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.

Deponent



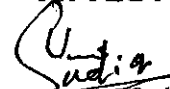
Aman Ullah

Identified By:



Imdad Ullah
Advocate Swat

ATTESTED



UMAR SADIQ Advocate,
OATH COMMISSIONER
Distt: Courts Swat.

No. 202 Date 09-04-18

6

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

...Respondents


ADDRESSES OF THE PARTIES

Appellant:

Aman Ullah Ex-Constable No. 35 of Swat Police.

Respondents:

1. The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar.
2. The Regional Police Officer Malakand at Saidu
Sharif, District Swat.
3. The District Police Officer District Swat at
Gulkada.

Appellant
Through Counsel,

Imdad Ullah
Advocate Swat

Annexure P

7

ORDER

Constable Aman Ullah No. 35 of this District being involved in a criminal vide Case FIR No. 308 /2008 u/s 302/34/148/149 PPC Police Station Saidu Sharif was suspended from service vide OB No. 178 dated 09/09/2008 and proceeded against departmentally. Meanwhile he absented/deserted himself from service w.e.from 24/8/2008, he was dismissed from service from the date of his absence vide OB No. 14 dated 24/01/2009.

Later on he was re-instated in service by the Regional Police Chief from the date of absence and the period of absence and he remained out of service is treated as leave without pay vide order No. 2706/E dated 25/4/2009.

Now the official has been convicted life imprisonment for four time by the court of Additional District and Session Judge/Izafi Zilla Qazi Swat vide judgment dated 18/9/2010.

In the light of court judgment dated 18/9/2010 and on the basis of previous departmental enquiry initiated in this regard, Constable Aman Ullah No. 35 is hereby dismissed from service with effect from 18/9/2010.

Order announced.


District Police Officer, Swat
M/Ali

OB No. 177
Dated 30.9/2010

ATTESTED

ADVOCATE

Annexure B
⑧

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Mushir Alam
Mr. Justice Qazi Faeza Isa

Criminal Appeal No. 89 of 2015

(Against the judgment dated 22.05.2013 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Criminal Appeal No. 826 of 2010 and Criminal Revision No. 182 of 2010)

Inayat Ullah, etc.

...Appellants

versus

The State

...Respondent

For the appellants: Mr. Astagfirullah, ASC
For the complainant: Mr. Abdul Fayyaz Khan, ASC
For the State: Mr. Muhammad Aslam Ghumman, ASC
Date of hearing: 10.11.2017


JUDGMENT

Asif Saeed Khan Khosa, J.:

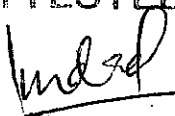
Criminal Miscellaneous Application No. 1902 of 2017

This miscellaneous application is allowed and the documents appended therewith are permitted to be brought on the record of the main appeal. Disposed of.

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED


ADVOCATE


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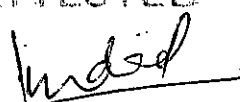
Criminal Appeal No. 89 of 2015

2. Inayat Ullah, Aman Ullah and Qadarmand appellants and some others had allegedly fired at and killed three persons namely Suleman, Mian Gul Hassan and Mian Syed Hussain belonging to the opposite party at about 11.30 A.M, on 24.08.2008 in an area known as Darang Waqay Puray Gharlaka Gutta Kokri within the jurisdiction of Police Station Saidoo Sharif, District Swat and in the same incident Inayat Ullah appellant's father namely Raheem Ullah had also received a firearm injury and had died. According to the prosecution the said incident had taken place when the parties had quarreled over cutting of grass and wood available at the place of occurrence. With the said allegations the appellants and their co-accused were booked in case FIR No. 307 registered at the above mentioned Police Station on the same day. After a regular trial the appellants were convicted by the trial court on four counts of the charge under section 302(b), PPC and were sentenced to imprisonment for life each on each count and to pay compensation besides having been convicted and sentenced for offences under section 148, PPC, section 324, PPC read with section 149, PPC and section 337-F(iii), PPC read with section 149, PPC. The appellants' co-accused namely Behramand, Arzomand and Bakht Biland had also been convicted and sentenced by the trial court for various offences. The appellants and their co-convicts challenged their convictions and sentences before the High Court through an appeal which was dismissed to the extent of the present appellants and their convictions and sentences recorded by the trial court were upheld by the High Court. The High Court, however, acquitted the appellants' co-accused namely Behramand and Arzomand and the convictions and sentences of Bakht Biland co-convict had been modified by the High Court. Hence, the present appeal by leave of this Court granted on 27.01.2015.

3. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

ATTESTED


 Court Associate

 Supreme Court of Pakistan
 Islamabad
ATTESTED ^{mk.}


ADVOCATE

(10)

4. A perusal of the FIR itself shows that there was no previous enmity between the parties and that the occurrence in this case had taken place all of a sudden without any premeditation. According to the FIR the parties had suddenly flared up over a dispute regarding cutting of grass as the rival parties claimed the relevant parcel of land to be theirs. The record of the case shows that the father of Inayat Ullah appellant had also received a firearm injury during the same incident and he had died on account of receipt of that injury. The record further confirms the fact that even Inayat Ullah appellant had received a firearm injury during the selfsame incident and receipt of a firearm injury by him had been established on the record through a prosecution witness who had also placed on the record the Medico-legal Certificate issued in respect of Inayat Ullah appellant. Through cross-cases lodged in respect of the same incident the rival parties had claimed that the opposite party had launched aggression at the spot. After a detailed assessment of the evidence available on the record the High Court had itself concluded in so many words that the occurrence in this case was a result of a sudden flare-up and that the case in hand was not a case of common object shared by the accused party. The High Court had gone on to observe in the impugned judgment passed by it that initially hot words had been exchanged by the parties at the spot which had led to a sudden flare-up and, thus, there was no preconcert or premeditation on the part of the accused party of this case. The law is settled by now that ordinarily in a case of a sudden occurrence taking place without premeditation the case is of individual liability and each accused person is to be held responsible only for the act committed by him and not for the acts committed by his co-accused. In the present case Inayat Ullah appellant had allegedly fired one shot at Suleman deceased, Aman Ullah appellant had fired one shot at Mian Gul Hassan deceased and Qadarmand appellant had fired one shot at Mian Syed Hussain deceased at a time when during the same incident Inayat Ullah appellant had received a firearm injury at the hands of the opposite party whereas Inayat Ullah

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 Court Associate
 Supreme Court of Pakistan
 Islamabad

ATTESTED ^{mk}


Indef
 ADVOCATE

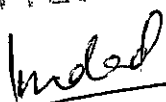
(11)

appellant's father namely Raheem Ullah had also received a fireshot which had killed him. It is, thus, obvious that when fires were being exchanged by the parties and each of the present appellants had fired only one shot at the opposite party in a situation where one of the appellants was himself injured and his father had also received a firearm injury it could not be said that the present appellants had acted in a cruel or unusual manner. As a matter of fact the appellants had acted only in the same manner as the complainant party had and, hence, no undue advantage had been taken by the appellants. The circumstances of this case apparently meet all the ingredients of Exception 4 to the erstwhile section 300, PPC making the case in hand a case of a sudden fight. It was held by this Court in the case of Zahid Rehman v. The State (PLD 2015 SC 77) that the cases covered by any of the Exceptions to the erstwhile section 300, PPC now fall under section 302(c), PPC.

5. As it has already been held by us above that the case in hand was not a case of sharing of common intention or object by the accused party, therefore, each of the appellants is held to be responsible only for the act committed by him during the occurrence in issue. It is not denied that after acquittal of Behramand and Arzomand accused by the High Court sections 148 and 149, PPC no longer stood attracted to this case. It is also not disputed that the present appellants had not caused any injury to Sher Ali complainant (PW6). In this view of the matter the convictions and sentences of the appellants for offences under section 148, PPC, section 324, PPC read with section 149, PPC and section 337-F(iii), PPC read with section 149, PPC are set aside. As regards the murder of Raheem Ullah, father of Inayat Ullah appellant, it is the prosecution's own case that he was accidentally hit while the parties to this case were indulging in cross-firing. Under section 80, PPC anything done as a result of an accident or misfortune does not constitute a criminal offence. The convictions and sentences of all the appellants for the murder of Raheem Ullah are, therefore, also set aside. As regards the murders of Suleman,

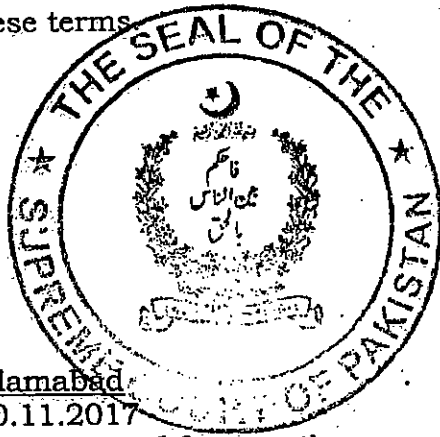
ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad


ATTESTED
ADVOCATE

12

Mian Gul Hassan and Mian Syed Hussain the present appellants are to be individually convicted for the respective murders committed by them. This appeal is, therefore, partly allowed even on that score, the convictions and sentences of the appellants for the murders of Suleman, Mian Gul Hassan and Mian Syed Hussain recorded under section 302(b), PPC are set aside and they are substituted by conviction of each of the three appellants on one count of the charge under section 302(c), PPC each and they are sentenced for the individual murder committed by each of them to rigorous imprisonment for ten years each. No order is being passed regarding payment of compensation by the appellants to the heirs of the respective deceased because in the same incident the appellants were also fired at by the opposite party causing a firearm injury not only to Inayat Ullah appellant but also to his father who had died. The benefit under section 382-B, Cr.P.C. shall be extended to the appellants. This appeal is disposed of in these terms.



Islamabad
10.11.2017

Not approved for reporting.

Arif

Arif 14/11/17

Sd/-Asif Saeed Khan Khosa, J
Sd/-Mushir Alam, J
Sd/-Qazi Faez Isa, J
Certified to be True Copy

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED

[Signature]
ADVOCATE

محکمہ اعلیٰ عدالتیں، لاہور

13

عنوان - درخواست کے لئے عدالت عالیہ کی درخواست

16 Establishment

Annexure

سزا عالیہ کی درخواست

میں نے دیا تھا، پھر فوراً 08/2002ء کو سامنے درج کیے جانے پر اس کی کاپی

کہ اس کے دوران سامنے لے کر FIR درج کیا گیا (فونڈیشنل نوٹس وغیرہ) اور اسے

بار بار سامنے لے کر درخواست کی گئی تاکہ عدالت عالیہ میں اسے منظور کیا

رہے اور سامنے لے کر درخواست کی گئی تاکہ عدالت عالیہ میں اسے منظور کیا

گیا تاکہ FIR درج کیا جائے اور سامنے لے کر درخواست کی جائے تاکہ عدالت عالیہ

اس کے سامنے لے کر درخواست کی جائے تاکہ عدالت عالیہ میں اسے منظور کیا

جائے تاکہ عدالت عالیہ میں اسے منظور کیا جائے تاکہ عدالت عالیہ میں اسے منظور کیا

جائے تاکہ عدالت عالیہ میں اسے منظور کیا جائے تاکہ عدالت عالیہ میں اسے منظور کیا

المستقدم
02/07/18

ساتھ ساتھ کاپی ارسال کی گئی ہے تاکہ عدالت عالیہ میں اسے منظور کیا

موریل کے نمبر 0912375-0342

570
7/12/18

ATTESTED
[Signature]

ADVOCATE

Subj: Request For Re-instatement in seizure

359/R
07/3/18

Annexure D 14



662/E
0513/18
No. 779

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE
PESHAWAR.

OFFICE OF THE D.P.O.
1722
6/13/18

/18, dated Peshawar the 16/02/2018.

To : The Regional Police Officer,
Malakand Region, Swat.
Subject: APPEAL (EX-FC AMAN ULLAH NO. 35)
Memo :

Ex-Constable Aman Ullah No. 35 of District Police Swat had submitted appeal to the Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for reinstatement into service. His appeal was processed / examined at Central Police Office, Peshawar and filed by the competent authority being badly time barred for about 07 years.

The applicant may please be informed accordingly.

Plaza
(SYED ZIA ALI SHAH),
Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

15/2

No 2332/E
dt 5-3-2018

ECP DPO Swat
For information. The applicant
may be informed accordingly
please.

[Signature]
Regional Police Officer,
Malakand as Saidu Sharif, Swat.
2/13/2018

No-5826/R
dt-07-3-18
SDPO Saidu Circle.

informed the applicant
accordingly on the below address.
Address: Village Kokrai PS
Saidu Sharif.

PEC/DAISI

Not in action

11/1
15/03/18
SHO-PSSS
8-03-18

District Police Officer
SWAT
4/3

ATTESTED

[Signature]
ADVOCATE

SHO/Saidu
for info and
inaction

SDPO/Saidu
7/3/18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

15

In the matter of:-

Aman Ullah Appellant

VERSUS

The PPO K.P. Respondent 5
and others

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

AZIZ-UR-RAHMAN and IMDAD ULLAH
Advocates High Court

To be the advocate for the Appellant in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this 07 day of 04 2018.

(Signature or thumb impression)

(Signature or thumb impression)

(Signature or thumb impression)

Accepted subject to terms regarding fees

(AZIZ-UR-RAHMAN)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk

G.T. Road Mingora, District Swat.

Cell No. 0300 907 0671

(IMDAD ULLAH)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk,

G.T. Road, Mingora, District Swat

Cell No. 0333 929 7746

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.497/2018

Amanullah Ex-Constable No.35, District Police, Swat.

----- (Appellant)

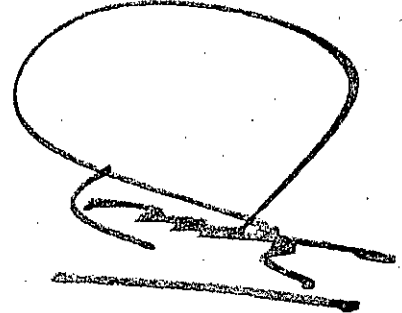
Versus

1. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat.

----- (Respondents)

INDEX

S.No:	Description of Documents	Annexure	Page
1	Para-wise Comments	-	1-2
2	Affidavit	-	3
3	Authority Letter	-	4



District Police Officer, Swat
(Respondent No.03)

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No.497/2018

Amanullah Ex-Constable No.35, District Police, Swat.

----- (Appellant)

Versus

1. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat.

----- (Respondents)

Parawise comments on behalf of Respondents.

Respectfully shewith:

Preliminarily objection:-

1. That the service appeal is time barred.
2. That the service appeal is not maintainable in its present form.
3. The instant appeal is bad due to mis-joinder and non-joinder of necessary parties.
4. That the appellant is estopped due to his own conduct.
5. That the appellant has concealed material facts from this Honorable Tribunal.
6. That the appellant has got no cause of action and locus standi to prefer the instant appeal.
7. The appellant has not come to this Tribunal with clean hands.

ON FACTS

- I. Para No.1 of appeal pertains to service record of appellant, hence need no comments.
- II. Para No.II of appeal to the extent of registration of FIR No. 308/2018 u/s 302/324/148/149 PPC P.S Saidu Sharif is correct, however after regular trial, the trial Court convicted the appellant on the basis of which, he was dismissed from service vide order dated 30/09/2010 by the respondent No.3
- III. Para No.III of appeal is incorrect. Appellant was dismissed from service, on account of conviction by the trail Court in murder case.
- IV. Para No. IV of appeal is incorrect. The appeal of appellant and two other co-accused was partially allowed and the conviction was submitted and


- V. Para No V of appeal to the extent of acquittal is incorrect. However appellant after undergoing imprisonment released from jail, filed departmental appeal which was examined by the respondents No.1 and rejected being time barred.
- VI. Para No.VI to the extent of rejection of departmental appeal by respondent No.1 is correct.
- VII. Appellant being convicted has got no cause of action to file the instant appeal and the grounds of appellant are devoid of merit.


GROUND

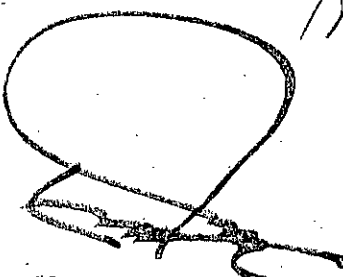
- a. Incorrect. The orders of respondents are quite legal in accordance with law/rules.
- b. Incorrect. Appellant being convicted in criminal case was rightly dismissed from service, however during criminal trail appellant was found guilty.
- c. Incorrect. The orders of respondents are quite legal and in accordance with law/rules.
- d. Incorrect. The respondents have not violated any right of appellant, however he was treated in accordance with law/rules.

PRAYER:-

In view of the above comments of answering respondents, it is prayed that instant appeal may be dismissed with cost.


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


Regional Police Officer,
Malakand
(Respondent No.2)


District Police Officer,
Swat
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.497/2018

Amanullah Ex-Constable No.35, District Police, Swat.

----- (Appellant)


Versus

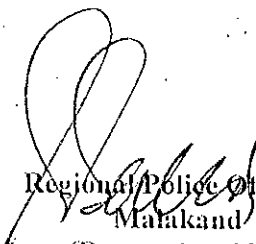
1. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat.

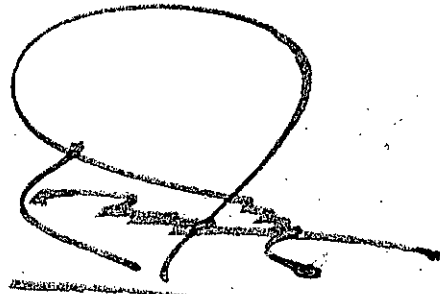
----- (Respondents)

AFFIDAVIT

We, the above respondents do hereby solemnly affirm and declare on oath that the accompanying Para-wise comments submitted in reply to above cited service appeal are correct to the best of our knowledge and nothing has been concealed from this Honorable Tribunal.


 Provincial Police Officer,
 Khyber Pakhtunkhwa, Peshawar.
 (Respondent No.01)


 Regional Police Officer,
 Malakand
 (Respondent No.02)


 District Police Officer, Swat
 (Respondent No.03)

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.497/2018

Amanullah Ex-Constable No.35, District Police, Swat.

----- (Appellant)

Versus

1. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
3. District Police Officer, District Swat.

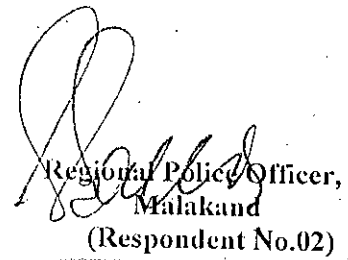
----- (Respondents)

AUTHORITY LETTER

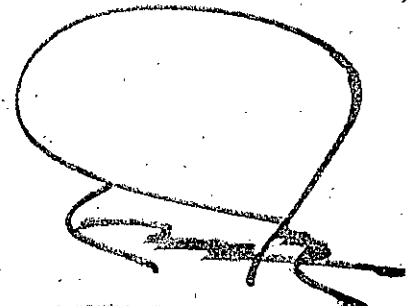
We, the above respondents do hereby authorize Mr. Khawas Khan SI Legal Swat to appear in the Apex Supreme Court of Pakistan on our behalf on each date fixed in connection with titled case and do whatever is needed.



Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.01)



Regional Police Officer,
Malakand
(Respondent No.02)



District Police Officer, Swat
(Respondent No.03)

(484) 18/5

ORDER

This order will dispose off the enquiry initiated against Constable Aman Ullah Khan No.484, who while posted to CP Bandai was directly charged in a criminal case vide FIR No.307, dated 24/08/2008 u/s 302/324/148/149, PPC Police Station Saidu Sharif and absented himself from duty vide DD No.08, dated 24/08/2008.

He was issued charge sheet with statement of allegations. Enquiry was initiated against him and DSP Legal was appointed as Enquiry Officer. The Enquiry Officer in his finding report submitted that the defaulter Constable was summoned time and again, but did not appear to record his statement. Hence he was recommended for Major punishment of the Enquiry Officer. He was issued Final Show Cause Notice No. 381/E, dated 09/01/2009 but no reply has been received.

This constitutes misconduct, cowardice on his part and as such he is liable for action under section 5 sub section (4) of the Removal from service (Special Powers) Ordinance 2000 (Amendment) Ordinance 2001.

This constitutes misconduct/disinterest on his part and as such he is liable for action under section 5 Sub Section (4) of the Removal from service (Special Power) Ordinance 2000 (Amendment) Ordinance 2001 and dispose with the enquiry proceeding as laid down in the Ordinance and am further satisfied that there is no need of holding further departmental enquiry. Since the defaulter Constable has been found guilty of gross misconduct, as defined in the said Ordinance, I Mr. Dilawar Khan Bangash DPO Swat, as a competent authority, therefore impose major penalty by dismissing him from service from the date of absence i.e 24/08/2008.

Order announced.


District Police Officer, Swat

O.B. No. 141

Dated. 24.1.09

ٹاڈنگ رپورٹ

جی اے اے

حوالہ نمبر 1000/1000 آرڈر کنٹریل ایمان اللہ 484 صفحہ ایک کورٹ بڑھانڈی
 علاج قانونی اصول سے متعلق صورت میں کہ مذکورہ کنٹریل صفحہ 307 (ب) 302-324
 146-149 24/8/08
 تمام سرکاری نوٹوں میں ڈاؤنڈنگ جاری ہو کر اس سلسلہ میں ایکویٹی شروع ہو کر
 زبردستی کو دور کرنے ہوگی۔

دوران آئندہ آرڈر کنٹریل ایمان اللہ 484 کو برقرار رکھیں

پرمانہ جی 13/08، 28/08، 10/08، 18/08، 2/08 کیسے ملک کیا گیا۔ مگر حاکم
 ہوا۔ Asi کا کچھ رپورٹ کے مطابق مذکورہ کنٹریل 24/08 سے برسرِ عمل ہے

مذکورہ کنٹریل قورہ میں جاری ہونے کے بعد حوالہ آرڈر پر 178 Suspend
 ہو کر لائن ملوز کیا گیا۔ لیکن مذکورہ کنٹریل نے لائن میں تاحال حاکم رہی ہے

اس سلسلہ میں حوالہ عد 33 روزانہ 9/08 لائن بند ہے رپورٹ درج ہوئی ہے۔
 چونکہ مذکورہ کنٹریل قورہ میں جاری ہو کر اسی دن گرفتار ہو کر 9/08 صبح سے

برفانی رہا ہوا ہے۔ لیکن مذکورہ نے رہائی کے بعد نہ تو لائن میں حاکم رہی ہے
 اور نہ کوئی رالغ کیا ہے۔ جس سے کنٹریل مذکورہ کی کارسکار میں حاکم رہی ہے
 اور بند رہے داری ظاہر کرتے ہیں جس لیے سے کنٹریل ایمان اللہ 484 لائن سٹارٹ ہو گیا

ہو گیا۔ لہذا مذکورہ کنٹریل کو سٹینڈرڈ دینے کی سفارشی کہانی ہے
 ٹاڈنگ رپورٹ میں ہے

EC
 988/08 final show cause notice.
 DSP/ Legal Suwat
 23/12/08 6/13/08

CHARGE SHEET

I Mr. Dilawar Khan Bangash, DPO Swat as competent authority, hereby charge you, Constable Aman Ullh Khan No. 484 as following that you, while posted in CP Bandai committed the following irregularities:

You Constable Amanullah No. 484 while posted to CP Bandai was directly charged in a criminal case vide FIR No. 307 dared 24/08/2008 u/s 302/324/148/149 PPC Police Station Saidu Sharif .

2. By reasons of the above, you appear to be guilty of misconduct under Section-3 of the NWFP (Removal from Service) Special powers ordinance 2000, and have rendered yourself liable to all or any of penalties specified in section-3 of the ordinance.

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Enquiry officer / Committee, as the case may be.

4. Your written defense, if any, should reach the Enquiry Officer/ Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case exparte action shall follow against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.


District Police Officer, Swat

No. 381 /EB

Dated 24/9 / 2008

8

DISCIPLINARY ACTION

I Mr. Dilawar Khan Bangash, DPO, Swat District Police Officer, Swat as competent authority, am of the opinion that Constable Amanullah No. 484, has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning of section 3 of the N.W.F.P Removal from Service (Special Powers) Ordinance, 2000.

STATEMENT OF ALLEGATIONS

Constable Amanullah No. 484 while posted to CP Bandai was directly charged in a criminal case vide FIR No. 307 dated 24/08/2008 u/s 302/324/148/149 PPC Police Station Saidu Sharif.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry committee consisting of the following is constituted under section 3 of the Ordinance.

1. Mr. Muhammad Ayaz Khan DSP/Legal, Swat
2. _____

3. The enquiry Committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make within, 25 Days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place given by the enquiry Committee.


District Police Officer, Swat

No. 381 /E, Dated Gulkada the, 24/9 2008.

Copy of above is forwarded to the:-

1. Mr. Muhammad Ayaz Khan DSP/Legal, Swat
 2. _____
- } for initiating proceeding
- against the Officer/Official under the provisions of the NWFP/Removal from Service (Special Powers) Ordinance 2000.

3. Constable Amanullah No. 484

With the direction to appear before the enquiry Committee on the date time and place fixed by the Committee for the purpose of he proceeding

حکومت

بعد ازاں جناب سرمد خان ایڈووکیٹ جنرل کیشن جج چیمبر میں دئے

حقوقات زیر سماعت تھے۔ بمقام عدالت 308/2008 (ص) 302.34/19-748-149

میں پیڑھالی بیٹہ ایڈووکیٹ جنرل کے دیکر کسٹیاں کے بری تھے تھے۔ جیسا کہ بعد 307/2008

19-748-149 302.34/19-748-149 کے بارے میں ایڈووکیٹ جنرل ایمان الہ 35 بجے سامنے

نے چار حصہ تہ عمر پیدگی سزا کا حکم صادر کیا۔ ڈائری گزارش ہے۔

20.9.2010
NE-RSJ
20.9.2010

pay stopped and
issue charges sheet

OAS

OB. No 171
21.9.10

DPO submitted E.C.

DPs/w/afed
for contracts as
whether fresh enquiry
is initiated or
dismissal order in the
of court judgment was
deposited: E/typing place

Issue orders for action
in the light of
judgment of
IV date 18.9.10
DSP/ Legal Sect
20/09/10

27/9/10

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 497 of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

...Respondents

REJOINDER BY THE APPELLANT

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, baseless, against the law, rules, facts and Shariah, hence are specifically denied. Moreover the appellant has got a prima facie case in his favour and the appellant has approached this Honourable Tribunal well within time with clean hands and this Honourable Tribunal has got the jurisdiction to adjudicate upon the same.

On Facts:

- I. Para 1 of the comments amounts to admission, hence needs no reply.
- II. Para 2 of the comments as drafted shows the arbitrary use of authority not vested in the respondents, however the respondents did wait

for the final judgment imposed major penalty in a very hasty manner, thus the para is denied.

III. Para 3 of the comments as drafted is incorrect, misconstrued and based on complete misstatement as is evident from the record, thus the para is denied.

IV. Para 4 of the comments as drafted also is incorrect and based on misstatements as is clear from the record, thus the para is denied specifically.

V. Para 5 of the comments as drafted is incorrect and against the record, as the respondent No. 2 never entertained the departmental appeal of the appellant and returned the same to the appellant, copy of which is enclosed herewith, thus the para is denied.

VI. Para 6 of the comments as drafted is incorrect, baseless, vague and evasive thus needs no reply.

VII. Para 7 of the comments as drafted is incorrect and baseless and against the facts, thus the same is denied.

On Grounds:

a. Ground A of the comments as drafted is incorrect, against the law and rules on the subject, hence is denied specifically.

BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 497 of 2018

Aman Ullah Ex-Constable No. 35 of Swat Police.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has either been misstated or kept concealed before this Honourable Tribunal.

Aman Deponent

Aman Ullah

ATTESTED

U R

UMAR SANIQ Advocate,
OATH COMMISSIONER,
Distt. Court Swat.

No. 108 Date 08/11/19