

S.A 965/2013

05.06.2017

Appellant in person present. Mr. Saifullah, ASI alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Due to strike of the bar learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 28.09.2017 before D.B.

(GUL ZIYB KHAN)  
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

28.09.2017

Counsel for the appellant and Addl. AG alongwith Farmanullah, ASI for the respondents present. Counsel for the appellant seeks adjournment. Granted. To come up for arguments on 21.11.2017 before the D.B.

Member

Chairman

**21.11.2017,** Learned counsel for the appellant present. Mr. Zia Ullah, Learned Deputy District Attorney for the respondents present. Vide our separate judgment of today placed on file of appeal bearing No. 966/2013 titled Deen Naeem versus The Provincial Police Officer, Government of Khyber Pakhtunkhwa, the present appeal is accepted in terms that the impugned order/penalty of stoppage of one (01) annual increment with accumulative effect is modified and converted to stoppage of one (01) annual increment for a period of three (03) years. Parties are left to bear their own costs. File be consigned to the record room.

(GUL ZIYB KHAN)  
MEMBER

(MUHAMMAD HAMID MUGHAL)  
MEMBER

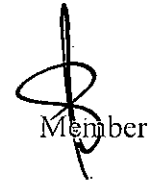
**ANNOUNCED**

**21.11.2017**

9.6.2016

Agent to counsel for the appellant and Mr. Tariq, SI  
alongwith Mr. Usman Ghani, Sr. GP for respondents present.  
Arguments could not be heard due to strike of the bar. To come up  
for arguments on 26.9.2016.

  
Member

  
Member

26.09.2016

Appellant in person and Mr. Rehan, ASI alongwith Addl.  
AG for respondents present. Appellant requested for adjournment.  
Request accepted. To come up for arguments on 30.01.2017 before  
D.B.

Member

  
Chairman

30.01.2017

Counsel for the appellant and Mr. Muhammad Jan, GP  
alongwith Mr. Farman Ullah, ASI for respondents present. Counsel  
for the appellant requested for adjournment. To come up for  
arguments on 05.06.2017 before D.B.

  
(ASHFAQUE TAJ)  
MEMBER

  
(MUHAMMAD AMIR NAZIR)  
MEMBER

11.11.2014

Clerk of counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for rejoinder alongwith connected appeals on 27.02.2015.

  
Reader

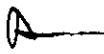
27.02.2015

Agent of counsel for the appellant and Addl: A.G for respondents present. Requested for adjournment as learned counsel for the appellant has not prepared rejoinder due to illness of his wife. The appeal is assigned to D.B for rejoinder and final hearing for 22.09.2015.

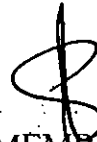
  
Chairman

22.09.2015

Clerk of counsel for the appellant and Mr. Kabbeerullah Khattak, Asstt. AG for the respondents present. Counsel for the appellant is not available, therefore, case is adjourned to 15-3-16 for arguments.



MEMBER



MEMBER

15.03.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on

9.6.16 before D.B.



MEMBER

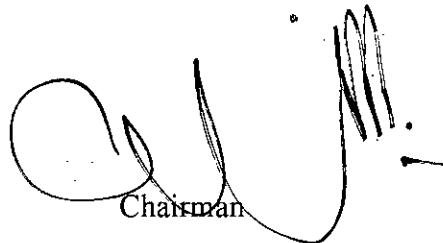


MEMBER

965/13

09.01.2014

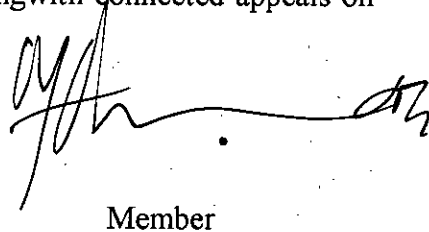
Appellant with counsel present. Respondents have been served through registered post/concerned officials, but they are not present. However, Mr. Muhammad Adeel Butt, AAG is present and would be contacting the respondents for written reply/comments on 24.2014.



Chairman

02.4.2014

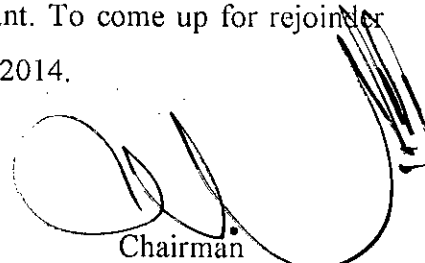
Counsel for the appellant and Mr. Muhammad Tariq Usman, ASI on behalf of the respondents with AAG present. Written reply/para-wise comments on behalf of the respondents received, copy whereof is handed over to the learned counsel for the appellant for rejoinder alongwith connected appeals on 3.7.2014.



Member

03.7.2014

Counsel for the appellant and Mr. Muhammad Tariq, ASI on behalf of respondents with Mr. Usman Ghani, Sr. GP present. Rejoinder has not been received, and request for further time made by the learned counsel for the appellant. To come up for rejoinder alongwith connected appeals on 11.11.2014.




Chairman

Appeal No. 965/2013  
Mr. Ghanshyam-Ramrao

19.09.2013

Counsel for the appellant present and requested for


adjournment to amend the instant appeal. To come up for amended appeal/preliminary hearing on 01.11.2013.

  
Member

3.

01.11.2013

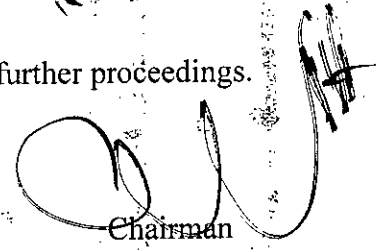
Appellant with counsel present and submitted amended copy of page No.1 of the instant appeal with spare sets. Preliminary arguments heard. Counsel for the appellant contended that the appellant has not been treated in accordance with the law/rules. Appellant filed departmental appeal against the original order dated 30.04.2012 which was upheld vide order dated 18.07.2012 received to the appellant on 09.10.2012 and the instant appeal on 05.11.2012. He further contended that the final order dated 18.07.2012 is violation of rule-5 of the Khyber Pakhtunkhwa appeal rule 1986. No further enquiry was conducted and the order was issued without taking into consideration the spirit of FR-29. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notices be issued to the respondents. Case adjourned to 09.01.2014 for submission of written reply.

  
Member.

4.  
Security deposit

01.11.2013

This case be put before the Final Bench D for further proceedings.


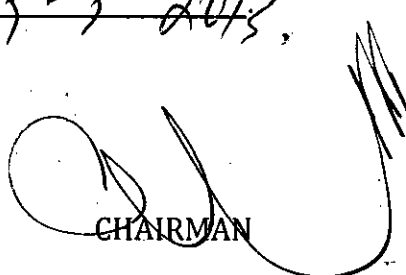
  
Chairman

5-

Form- A  
FORM OF ORDER SHEET

Court of: \_\_\_\_\_

Case No. 965 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12/06/2013	<p>The appeal of Mr. Ghani-ur-Rehman was received on 05-11-2012 which was returned to the counsel for the appellant for completion and resubmission within 15 days. Today he has resubmitted the appeal late by 203 days. The same be entered in the Institution Register and put up to the Worthy Chairman for further order please.</p>
2	15-7-2013	<p style="text-align: right;">   REGISTRAR </p> <p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>19-8-2013</u>.</p> <p style="text-align: right;">   CHAIRMAN </p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 965 /2013

Ghani Ur Rehman No.274, Police  
line Karak  
.....Appellant

Versus

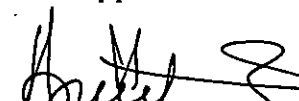
Provincial Police Officer,  
Government of Khyber  
Pakhtunkhwa, Peshawar and  
others.....Respondents

**INDEX**

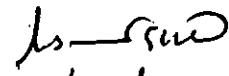
S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-6
2.	Application for condonation of delay with Affidavit			7-8
3. ✓	Copy of FIR and Naqsh Moqa(Map Skitch)		A	9-10
4. ✓	Copy of FIR No.539 U/S 155 Police Order 2002 against appellant	21-12-2011	B	11
5. ✓	Copy of Charge Sheet and Statement of allegation		C	12-13
6. ✓	Copy of reply to charge sheet		D	14
7. ✓	Copy of inquiry report		E	15-18
8. ✓	Copy of Impugned order	28-04-2012	F	19
9.	Copy of departmental appeal		G	20-21
10.	Copy of impugned rejection Order	18-07-2012	H	22-24
11.	Wakalat Nama			25

  
Appellant

Through

  
Abdul Haleem Khattak  
Advocate, Peshawar

Dated: 5 / 10/ 2012


  
Ashraf Ali Khattak  
Advocate, Peshawar

The appeal of Mr.Ghani-ur-Rehman No.274, Police Line Karak received today i.e. on 05/11/2012 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days:-

- 1- Index of the appeal may be prepared according to Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Address of appellant is incomplete which may be completed.
- 3- Copies of FIR s and Naqsh Moqa mentioned in para-3 & 4 of the memo of appeal (Annexure-A&B) are not attached with the appeal which may be placed on it.
- 4- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 5- Copies of impugned order dated 28/04/2012 and departmental appeal against it are not attached with the appeal which may be placed on it.
- 6- Application for condonations of delay may be supported with an affidavit attested by Oath Commissioner.
- 7- Annexures of the appeal may be attested.
- 8- Appeal may be got signed by the appellant.
- 9- Five more copies/sets of the appeal alongwith annexures i.e. complete in all respect may also be submitted with the appeal.

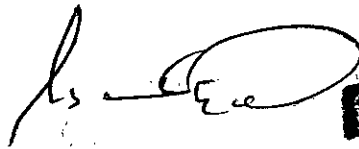
No. 1236 /S.T,

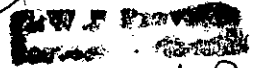
Dt. 06/11 /2012.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

MR.ABDUL HALEEM KHATTAK ADV. PESH.

*See; Re-Submitted after completion.*



  
1028  
12/10/13



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. \_\_\_\_\_/2013

Ghani Ur Rehman No.274 Police Line Karak  
 .....Appellant.

Versus

The Provincial Police Officer, Government of Khyber  
 Pakhtunkhwa, Peshawar etc.....Respondents

---

**Application for amendment in the heading of the appeal.**

---

Respectfully Sheweth,

1. That appellant has filed the above mentioned service appeal before this Honourable Court, which is fixed for preliminary hearing on 01-11-2013.
2. That appellant has erroneously made an error in the heading of the appeal.
3. That the heading of the appeal may kindly be read as follow:-  
 "Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with section 10 of the Removal from Service (Special Power) Ordinance 2000 against the final order of respondent No.2 dated 18-07-2012 passed on the departmental appeal of the appellant, wherein he upheld the order of respondent No.3

and maintain the penalty and set aside the same by granting him with all back benefits.”

4. That the same may also be considered in the pray portion as well.

It is therefore humbly prayed that the application may kindly be accepted as prayed.

Through

Appellant

*Ashraf Ali*

Ashraf Ali Khattak,  
Advocate, Peshawar.

Dated: 01 / 10 / 2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 965/2012

S.W.F. Peshawar  
No. 1219  
Date 05/11/12

Versus

Ghani Ur Rehman No.274, Police line Karak  
.....Appellant.

Verses

1. Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region Kohat.
3. The District Police Officer, District Karak  
.....Respondents

SERVICE APPEAL UNDER SECTION 10 OF THE KHYBER PAKHTUNKHWA REMOVAL FROM SERVICE (SPECIAL POWER) ORDINANCE, 2000 READ WITH SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

Prayer:

On acceptance of the instant service appeal this Honourable Tribunal may graciously be pleased to set aside the impugned order dated 28-04-2012 of the respondent No.3, who vide the same imposed upon the appellant penalty of stoppage of one annual increment with accumulative effect on appellant vide OB No.465 dated 28-04-2012 and the impugned Order of respondent No.2 dated 18-07-2012 passed on the departmental appeal of the appellant, wherein he upheld

*[Handwritten signature]*  
5/11/12

re-submitted to ~~the~~  
and filed.

*[Handwritten signature]*  
12/6/13

**the order of respondent No.3 and maintain the penalty and to set aside the same with all back benefits.**

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That in the year 2011, appellant was posted at Police Line, Karak.
2. That on 09-12-2011, appellant was detailed with court duty in connection with famous Uzma Ayub alleged rape case. There was also a procession who chanted slogans in favour of Hakeem Khan ASI (alleged accused) of the cited case.
3. That on the same day brother of Mst: Uzma Ayub, namely Alam Zeb was killed outside the Court Premises and the killers succeeded in making the escape good (Copy of the FIR and Naqsh Moqa are attached as Annexure-A).
4. That later on case FIR No.539 dated 21-12-2011 under section 155 Police Order 2002 P/S Yaqoob Khan Shaheed was registered against appellant and others on charge of displaying cowardice and avoiding arrest of the killers of Alam Zeb(brother of Mst: Uzma Ayub). (Copy of the FIR is attached as Annexure-B).
5. That in addition to registration of case appellant was also served with charge sheet and statement of allegation (Annexure-C) to which he submitted reply (Annexure-D), slipshod inquiry was held (Anxure-E) at the back of the appellant. Neither

final show cause has been served upon the appellant nor has opportunity of personal hearing been afforded to the appellant. The departmental proceeding culminated into passing of the impugned order of imposing penalty of stoppage of annual increment with accumulative effect on appellant vide OB No.465 dated 28-04-2012 (Annexure-F).

6. That being aggrieved of the illegal and unlawful penal order, appellant submitted departmental appeal before the respondent No.2 (Annexure-G), who vide order dated 18-07-2012 rejected the same and upheld the order of respondent No.3 (Annexure-H).
7. That appellant, being aggrieved of the acts and actions of Respondents and having no other adequate and efficacious remedy, files this appeal inter-alia on the following grounds:-

**Grounds:**

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Section 16 of the Civil Servant Act, 1973 provides that every civil servant is liable for prescribed disciplinary action and penalty only through prescribed procedure. In the instant case no prescribed procedure has been adopted by the respondents, hence the action taken by them is

illegal, coarm non judice and liable to be set aside.

- B. That the inquiry officer conducted ex-parte proceedings and no chance of defense was provided to appellant. No one was examined in presence of appellant and no chance of cross examination of witnesses was provided to the appellant. Again inquiry officer has allegedly examine co police officer in support of the charges, who were also facing departmental charge on same set of allegation. The testimony of the co accused officer was not worth credence, therefore, the authority wrongly believed the tainted evidence of the co accused officer.
- C. That the inquiry officer has based his opinion on no evidence as nothing was brought on record in support of the charges leveled against appellant. No direct or indirect evidence was available on file, which may connect the appellant with the alleged charges.
- D. That appellant was implicated in criminal charge vide FIR No.539/2011 under Article 155 Police Order and was also charged departmentally on the same set of allegation, which amounts to double jeopardy.
- E. That under the law as provided under FR-29, the authority will specify the period of stoppage of increment, but in case of appellant the period has not been specified, therefore, the impugned order

was passed in violation of rules.

- F. That penalty of stoppage of one annual increment was imposed on appellant without adhering to the legal and procedural formalities including procurement of evidence in support of the charges.
- G. That this on the record that appellant was subordinate. Therefore, appellant was wrongly punished for the in action of other police officer.
- H. That the departmental proceeding were carried out against the settle principle of disciplinary rules. Therefore, the impugned order is worth set aside.
- I. That appellant is a low paid employee, he has highly been discriminated. The recommendations of fact finding inquiry on the basis of which criminal case against the appellant has been registered and subsequent departmental disciplinary action has been initiated has also recommended action against higher Officer including DST-Investigation and DPO, but these recommendation has been ignored in case of high officer and only constables rank have been subjected to departmental proceedings and penal action and that too without any sort of evidence.
- J. The whole record of service of appellant was unblemished and appellant was noted for good performance and impugned penalty was based on single intendance of escape of killers after the

commission of offence with no fault and negligence in duty on the part of the appellant.

It is therefore humbly prayed that on acceptance of this appeal, this honourable Tribunal may graciously be pleased to set aside both the impugned orders as prayed for above.

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

Through

*[Signature]*  
Appellant

*[Signature]*  
Abdul Haleem Khattak,  
Advocate, Peshawar.

Dated: 5 / 10 / 2012

*[Signature]*  
Ahsanul Ali Khattak  
Advocate Peshawar.

Affidavit.

I, Ghani Ur Rehman No.274 , Police line Karak hereby solemnly affirms on Oath that the contents of the instant Service Appeal are true to the best of my Knowledge and belief and nothing has been concealed from this Honourable Tribunal.

*[Signature]*  
Deponent.







**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. \_\_\_\_\_/2010

①

Ghani Ur Rehman No.274, Police line Karak  
.....Appellant.

Verses

Provincial Police Officer, Government of Khyber  
Pakhtunkhwa, Peshawar and others .....Respondents.

---

Application for condonation of delay if any.

---

Respectfully Sheweth,

1. That appellant has filed the accompanying appeal before this Honourable Tribunal.
2. That the impugned rejection order has allegedly been issued on 18-07-2012, but neither a copy of the same has been endorsed to the appellant nor the fate of the same has been communicated to the appellant.
3. That appellant after getting knowledge applied for copy of the impugned rejection order and the same was granted on 09-10-2012. (Copy of application and attested copy of the impugned order dated 18-07-2012 has already been annexed with memo of appeal).

4. That the delay in filing appeal was/is not intention but due to above stated reason. 8
5. That the law favour adjudication/disposal of cases on merit rather than on technicalities including limitation.
6. That value able rights of the applicant is involved in the case.

It is, therefore, humbly prayed that on acceptance of this application this Honourable Tribunal may graciously be pleased to condone the delay if any in the best interest of justice fair play and equity.

*Khalid*  
Applicant/Appellant.

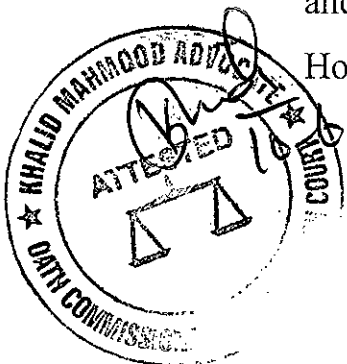
Through

*Ashraf Ali Khattak*  
Ashraf Ali Khattak, & *Abdul Hameed*  
Advocate, Peshawar.

Dated: 5 / 10 / 2012

### Counter Affidavit

I, Ghani Ur Rehman No.274, Police line Karak , do hereby affirm and declare on oath that the contents of this reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



*Ghani Ur Rehman*  
Deponent



خان صاحب

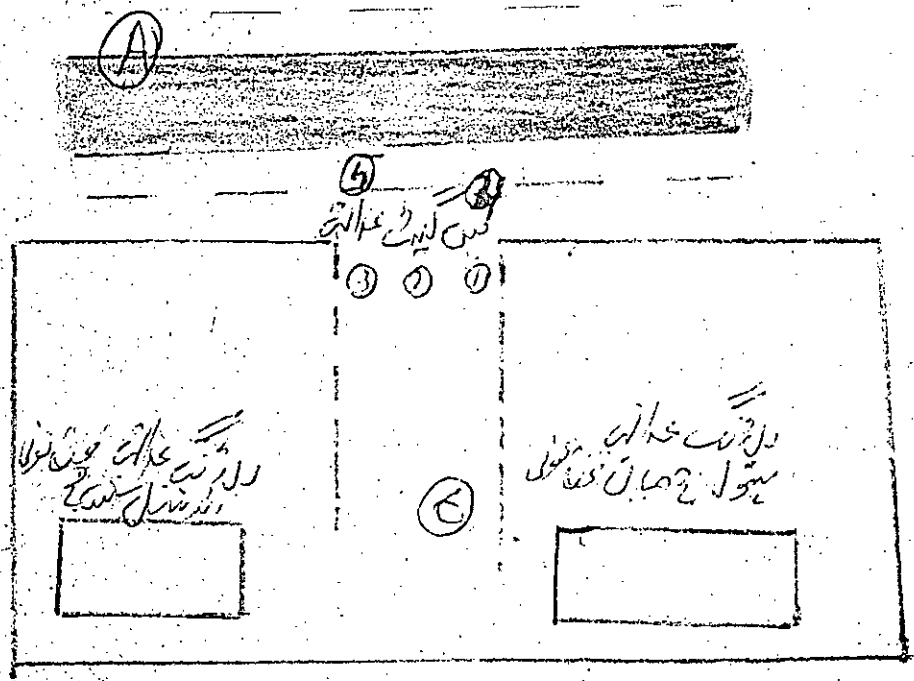
لقد تم وقوع حادثہ

تقریباً 539 حصہ 12/2/2011 اور 15/2/2011 اور 15/2/2011 اور 15/2/2011

پرنسپل

سلسلہ درمات

10



قول وقوع: وقوعہ ہذا لنگر پھری قیمت مالک قابل مارکیٹ فائی حیدر  
 میں بوجھ ہو چکا ہے۔ حالت شمال سلسلہ درمات، مارکیٹ لنگر  
 فائی حیدر تخت واقع ہے۔ حالت جنوب بلڈنگ پھری قیمت قول  
 واقع ہے۔ حالت شرق، غنر ہے جو لنگر قیمت قول تا  
 شاہ سیم عبید ہو جا ہے۔

قتا غنر A یہ وہ ققام ڈاکٹر شاہ ہے۔ جہاں پر فققول عالمزیر ہے  
 قتل لنگر ہے۔  
 ققام غنر یہ وہ ققام ہے۔ جہاں پر بوتے وقوعہ پرنسپل سید شاہ  
 بدوز وقوعہ بوتے وقوعہ اپنے وقوعہ کی ڈھولگی پر وقوعہ پرنسپل شاہ  
 ہوگا درمات پھری قیمت قول میں لینا ہے۔ وقوعہ ہذا  
 قسم ریل پرنسپل شاہ ہے۔ جو میں کہتے ہیں پرنسپل لنگر  
 پرنسپل شاہ ہے۔

ASHRAF ALI KHATTAK  
 ADVOCATE



دیڈر حساب DPo صاحب

Aug 13

گورنمنٹ پبلسٹک سٹور ہاؤس، سٹور نمبر 2286/13، سٹور نمبر 20.06.2011، لاہور (نام شوبھان) کی نام (پولیس)

فارم نمبر 23-15 (1)

کاؤنٹر فائل

ابتدائی اطلاع رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 155 (مخفیہ) ضابطہ نو جداری لیبھوت خان

تھانہ 539 ضلع 9<sup>12</sup> 2011 وقت 1400

نمبر 7 تاریخ 9<sup>12</sup> 2011 وقت 1345 جاکر کی پیم 1410

1- تاریخ و وقت رپورٹ	تاریخ و وقت رپورٹ
2- نام و سکونت اطلاع دہندہ مستغیث	تاریخ و وقت رپورٹ
3- مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔	تاریخ و وقت رپورٹ
4- جائے وقوعہ (اصلہ تھانہ سے اور سمت)	تاریخ و وقت رپورٹ
5- نام و سکونت ملزم	تاریخ و وقت رپورٹ
6- کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	تاریخ و وقت رپورٹ
7- تھانہ سے رانگی کی تاریخ و وقت	تاریخ و وقت رپورٹ

12684 جاریہ حساب DPo صاحب اطلاع دہندہ کی کہانی کے مطابق خلاصہ یہ ہے کہ DPo صاحب نے 529 حرم 9<sup>12</sup> 2011 جس نمبر 302-109 سے تھانہ لیبھوت خان سٹیڈیٹ انٹری میں جا کر پولیس اسٹیشن بالا نے بوقت وقوعہ ملزمان محمد امجد علی بیگ ولد جیہان شاہ شاہ شاہ شاہ شاہ شاہ شاہ وغیرہ کی گرفتاری میں سہاری اور قصداً غفلت کا مظاہرہ کیا کہ ملزمان پولیس اسٹیشن بالا جس نمبر بالا کے فریک بائی جاکر ہر چار ملزمان بالا کے خلاف مقدمہ درج رہیٹر ہو کر ایک پر 10 لکھ لکھتے ہوئے حرم KBI شہادت کیا جاتا ہے۔ حکم فرمایا کہ کارروائی تیز ہے۔

Handwritten signature and date: 9<sup>12</sup> 2011

ASHRAF ALI KHATTAK  
ADVOCATE

No. 12802 /EC

Dated 26/12/2011

CHARGE SHEET

Amir: C<sup>3</sup>

93  
29

I, Sajjad Khan, District Police Officer, Karak as competent authority, hereby charge you Constable Ghani Rehman No 274 Police Station Karak as follow

(12)

"You Constable Ghani Rehman No.274 exhibited cowardice and avoided arrest of accused who committed offence vide FIR No. 529 dated 09.12.2011 under section 302, 109, 148, 149 PPC Police Station. Yaqoob Khan Shaheed despite the fact that you were present on the spot."

"You also avoided follow up of the accused who succeeded in making good their escape due to your lethargic conduct. Such act on your part is against service discipline and good order."

2. By reason of your commission / omission, constitute miss-conduct under Police rules-1975 and have rendered your-self liable to all or any of the penalties specified in Police rules-1975 ibid.


3. You are, therefore, required to submit your written defense within 15 days of the receipt of this charge sheet to the enquiry officer **Mr. Mir Chaman Khan SDPO Banda Daud Shah.**

Your written defense if any should reach the Enquiry Officers within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

4 Intimate whether you desire to be heard in person.

5 A statement of allegation is enclosed.

  
ASHRAF ALI KHATTAK  
ADVOCATE

  
District Police Officer, Karak

M.v

## DISCIPLINARY ACTION

(B)

I, Sajjad Khan, District Police Officer, Karak as competent authority, is of the opinion that Constable Ghani Rehman No.274 Police Lines Karak has rendered himself liable to be proceeded against departmentally on the charges of committing misconduct and negligence in duty.

### STATEMENT OF ALLEGATION

"Constable Ghani Rehman No 274 exhibited cowardice and avoided arrest of accused who committed offence vide FIR No. 529 dated 09.12.2011 under section 302, 109, 148, 149 PPC Police Station Yaqoob Khan Shaheed, despite the fact that he was present on the spot."

"He also avoided follow up of the accused who succeeded in making good their escape due to his lethargic conduct. Such act on his part is against service discipline and good order."

2. The enquiry Officer **Mr. Mir Chaman Khan SDPO Banda Daud Shah** shall in accordance with provision of the Police rules-1975 may provide reasonable opportunity of hearing to the accused official, record his finding and make within 15-days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.
3. The accused official shall join the proceeding on the date, time and place fixed by the enquiry committee.

  
District Police Officer, Karak.

No. 12803-4 /EC (enquiry), dated 26/12 /2011

Copy to:-

1. The enquiry Officer for initiating proceeding against the accused under the Provision of Police rules-1975.
- ✓ 2. Constable Ghani Rehman No.274 Police Lines Karak

  
**ASHRAF ALI KHATTAK**  
ADVOCATE



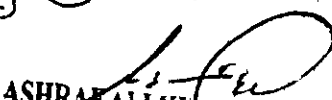
جیل عالی

1980ء فروری تا ستمبر 1980ء قیامہ صواب 060 صاحب

(14)

کرت صبر سے اور مجسم آسٹریا ان خاصاں کو برا سکولہ میں نصیحت کیا  
 صبح 9:30 بجے افواج کو برا سکولہ میں ملتمس ہوا کہ دیکھ جائیں  
 ڈیوٹی پر کیا ہے یہ ایک جلیوں بلکہ وقت نصرتی سے شروع ہوا۔ شہرہ جلیوں  
 عدالت کھیری کی طرف آ رہا تھا۔ عدالت کھیری وقت نصرتی شہرہ کا۔ جلیوں آ کر  
 پراسن طور پر منتظر ہوا۔ افواج کے حکم پر میں نے جیم دیکھ لیا، اظالم عدالت  
 کے اندر چلے گئے جسے افواج احاطہ عدالت کے اندر چلے گئے۔ ہم نے باہر دیکھا  
 کی آواز سننی سہ ہوا کہ اسٹریٹ کسی نے بتلایا کہ جیسے افواج عدالت کے  
 تلاش۔ گرفتاری کے قیام میں تھیں۔ پانڈہ شہیدین دہلیہ پانڈہ عدالت میں  
 پانڈہ کی تلاش۔ گرفتاری کے قیام۔ تھیں پانڈہ۔ شہیدین دہلیہ پانڈہ عدالت  
 میں پانڈہ کی تلاش کر کے حکم پانڈہ نہ ملے۔ ڈائری آئی ہے۔ پانڈہ عدالت  
 پانڈہ ہوا۔ SHS صاحب کے حکم پر سہراج پانڈہ سے پانڈہ والی پانڈہ رہتے ہیں  
 پانڈہ پانڈہ کی تلاش۔ گرفتاری رات 12:00 بجے پانڈہ والی آئے  
 پانڈہ پانڈہ خالات کے پیشتر تھیں۔ پانڈہ پانڈہ کی تلاش۔ گرفتاری  
 حکم آسٹریا والا کو برا سکولہ میں ڈیوٹی اقام دینا دیا۔ افواج کے حکم سے  
 نہیں کی ہے اور نہ شکایت کا نسخہ دیا ہے۔ پانڈہ پانڈہ کی تلاش۔ گرفتاری  
 کے گرفتاری میں سہراج کوئی قصور نہیں۔  
 اسٹریٹ صاحب شہرہ پانڈہ پانڈہ کی تلاش۔ گرفتاری پانڈہ پانڈہ  
 پانڈہ پانڈہ

کنیشن عتی الرحمن 274 سطل ڈپلیمین لائن کورٹ

  
 ASHRAF ALI KHATTAK  
 ADVOCATE

FINDING

10

05

Amir E

Before unfolding our opinion, it is deemed appropriate to reproduce the brief facts forming the background of present departmental proceedings initiated against Ghani-ur-Rehman constable No.305 (hereinafter referred to as accused officer), which are as follows:-

On 25.09.2010, Mst: Balqisam Jana wife of Muhammad Ayub resident of village Marwatan Banda, Tehsil Takht-e-Nasrati preferred an application before the Court of Additional Session Judge, Takht-e-Nasrati within the meaning of 22-A Cr. P.C with prayer of registration of case on charges of abduction of her daughter namely Mst: Uzma Ayub. She initially charged Gul Marjan, Sardar Ali Khan sons of Ghazi Marjan, Nazar Ali son of Malak Jan and Muhammad Karim son of Faiz Ullah for the abduction of her daughter. Complainant contended that a month prior to submission of the petition, Police conducted raid on her house and made recovery of arms & ammunitions from her house. Later on the above named accused committed trespass into their house and forcibly abducted Mst: Uzma Ayub her daughter. The application was accepted and accordingly case vides FIR No.363, dated 09.10.2010 under section 496-A PPC Police station Yaqoob Khan Shaheed was registered.

Later on, Mst: Balqisam Jana submitted petition before the Honourable Chief Justice Peshawar High Court Peshawar contending therein that her daughter was abducted and the Police failed to recover her daughter despite lapse of 02-months. She also leveled allegations against Pir Mohsin Shah Inspector, Amir Khan SI and Hakeem Khan ASI. The Honourable Court examined the applicant, the petition was converted into writ petition 370/2010 and the court issued order for the recovery of alleged abductee.

Mst: Uzma Ayub abductee appeared before the Judicial Magistrate on 19.09.2011 and her statement was recorded, wherein she stated that she managed her release from the clutches of accused and charged 13-accused including 03-Police officers named above for her abduction and rape. She was also pregnant of five months and now she has delivered a female child.

The press and media highlighted the rape case of Mst: Uzma Ayub. Therefore the Honourable Chief Minister, Khyber Pakhtunkhwa constituted high level committee headed by Secretary Home for enquiry in the case. The committee made certain recommendations including handing over investigation of the case to the officer not below the rank of Superintendent of Police. The investigation in the case was

ASHRAF ALI KHAN  
XIL  
ADVOCATE

(16)

entrusted to Senior Superintendent of Police, Investigation Wing Kohat by Provincial Police Officer. Khyber Pakhtunkhwa. Peshawar vide order bearing Endst: No.2179-82/C.Cell dated 12.11.2011.

All the three Police officers charged in the abduction and rape case of Mst: Uzma Ayub were arrested on 03.12.2011. The Judicial Magistrate granted five days physical custody in respect of all the three Police officers and they were produced before the court on 09.12.2011 by Kohat Police.

On 09.12.2011, well wishers of Hakeem Shah ASI (charged and arrested in abduction / rape case of Mst: Uzma Ayub) scheduled a protest procession. Therefore the entire Police strength of Sub-division Takht-e-Nasrati including strength of Police stations Yaqoob Khan Shaheed, Shah Salim, Cobra mobile, Janbaz mobile under the command of SDPO, Takht-e-Nasrati were detailed for security duty at the occasion of procession.

At 1400 hours, Alamzeb brother of Mst: Uzma Ayub (abduction and rape victim) came out of the court premises and accused first hit his motorcycle by motorcar followed by pistol firing on him, resultantly he lost life. Zafran Ullah brother of Alamzeb charge Ibrahim Shah and Waheed Ullah brother and friend of Hakeem Shah ASI respectively by name and also charge three unknown accused for the murder of Alamzeb. Hakeem Shah ASI was also charged for abetting the offence. Mst: Balqisam Jana was cited as eyewitness of the occurrence. Police registered proper case FIR No.529 dated 09.12.2011 under section 302,148,149,109 PPC Police station Yaqoob Khan Shaheed. The accused succeeded in making good their escape.

The honourable High Court Peshawar took adverse notice of the occurrence and Suo-Moto action was taken vide Writ Petition No.3419/2011. The Honourable Court issued direction for conduct of judicial enquiry as well as enquiry through high ranking Police officers.

Accused officer along with other Police officers were charge sheeted on the score of allegations that they displayed cowardice, avoided duty and abandoned follow up of accused who committed murder of Alamzeb despite the fact that they were present on the spot of occurrence and thus malafidely supported the escape of accused.

Enquiry to scrutinize the conduct of accused officers was entrusted to SDPO, Banda Daud Shah and he submitted finding report but your good office constituted enquiry committee comprising us for de-novo enquiry vide order bearing No.105/EC, dated 07.02.2012.

ASIM ALI KHAN  
J.L.L.  
ADVOCATE

We examined the relevant record. Accused officer has admitted in his statement submitted in response to the charge sheet that on the day of occurrence of the murder of Alamzeb, he was on duty in the premises of court. However, he contended that he was inside the court area and the occurrence took place outside the court on the road. He admitted hearing the reports of fire shots made by the accused while committing the murder of Alamzeb.

Investigation in the murder case of Alamzeb was transferred to Investigation Wing CPO, Peshawar. Investigation team headed by Deputy Inspector General of Police, Investigation-II, Khyber Pakhtunkhwa Peshawar conducted investigation in the case and also submitted various progress reports before the high court and Police high-ups. The investigation team also made recommendation for registration of case against accused officer and others on charges of displaying cowardice and negligence in duty vide report received for compliance vide No.502/CRC/Inv: dated 17.12.2011 and 16/CRC/Inv: dated 03.01.2012. Copies are place on file. In compliance with the above reports, case vides FIR No.539 dated 21.12.2011 under section 155 Police Order 2002 Police station Yaqoob Khan Shaheed was registered against accused officer and others.

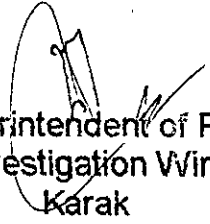
Accused officer was arrested in the case and he is still behind the bar in judicial lockup Sub-Jail Karak. The Court of Judicial Magistrate has also refused grant of bail to accused officer, meaning thereby that a prima facie case exists against the accused officer. This is also on the record that the killers of the Alamzeb were only armed with pistol and heavy strength of Police including accused officer was present on the spot. Furthermore, the entire strength was detailed for provision of security cover on the occasion of procession but the strength failed to perform their duty diligently as the ugly occurrence of the murder of Alamzeb took place at the same spot. The killers of Alamzeb also succeeded in making good their escape after the commission of offence. The lethargic conduct of the Police officers present on duty brought bad name for the Karak Police.

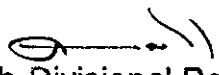
It is proved from the record and statement of accused officer, that he was present on the spot of the occurrence of murder of Alamzeb and the killers made good their escape despite the fact they were not armed with lethal weapons. The accused officer and others also avoided follow up of the accused as no one was arrested on the same day. Investigation team comprising senior officers made observations and

ASHIRAF ALI KHAN I.A.S.  
J.M.  
ADVOCATE


recommendations that the accused officer and others had played cowardice and negligence in duty and according criminal case on charges of displaying cowardice was registered against accused officer and others FIR No.539 under article 155 Police Order Police station Yaqoob Khan Shaheed. Judicial Magistrate also refused grant of bail to the accused officer and others in case FIR No.539 referred above. All this proves the commission of misconduct and negligence in duty on the part of accused officer and others. No doubt criminal action has been taken against the accused officer and others on charges of displaying cowardice and avoiding duty but presently there is no cavil with the proposition that criminal charge and departmental charge can go side by side and both are distinct in nature. The finding of one forum is not binding on the other forum as separate mechanism is adopted for arriving at the correct conclusion.

As a sequel to our above discussion, we are safe to hold that the charges are proved against the accused officer, however, he was constable and he was performing duty under the command and supervision of his senior officers, therefore we recommend leniency in award of penalty to the accused officer.

  
 Superintendent of Police,  
 Investigation Wing,  
 Karak

  
 Sub-Divisional Police Officer,  
 Headquarter, Karak

  
 Inspector Legal, Karak

  
 ASHRAF ALI KHATTAK  
 ADVOCATE

ORDER

Aug. 19<sup>th</sup> F 19

This order is passed on the departmental proceeding initiated against Constable Ghani ~~Uzma Rehman 274~~ then posted Police Station Shah Salim. Succinct facts leading to the instance departmental proceedings against him are as follows:-

That on 09.12.2012 the inhabitants of village Takht-e-Nastrati had arranged protest procession in favour of Hakeem Shah ASI arrested in Uzma Ayub rape and abduction case FIR No. 363/2010 Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati). The strength of Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati) and Shah Salim under the direct supervision of Muhammad Subhan the then SDPO Takht-e-Nastrati (now compulsory retired) was detailed for security duty at the premises of Takht-e-Nastrati Court. However, Alam Zeb brother of Uzma Ayub was killed vide FIR No. 529, dated 09.12.2011 under section 302,109,148,149 PPC Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati) in the premises of Court. The killer also succeeded in making good their escape from the scene of occurrence despite the fact Police strength was present on the spot. Departmental action was initiated against the strength on duty at the premises of Court including Constable Ghani Uz Rehman 274 No. ~~274~~.

Charge sheet based on allegations of displaying cowardice on the occasion of murder occurrence vide FIR No. 529 referred above and also avoiding follow up of accused involved in the above occurrence was issued to Constable Ghani Uz Rehman 274 No. ~~274~~.

SDPO Banda Daud Shah was appointed as enquiry Officer vide this Office Endst: No. 11330-32/EC (Enquiry) dated 09.12.2011 to scrutinize the conduct of the accused with reference to the charges leveled against him. He submitted stereotype finding report. Therefore, another enquiry committee headed by Superintendent of Police, Investigation Wing Karak was constituted for conducting proper enquiry vide order bearing OB No. 105/EC, dated 07.02.2012. The enquiry committee has submitted detailed report and has recommended award of minor punishment to the accused Official because he was performing duty on the spot of occurrence under the command of other senior Officers.

Keeping in view the recommendation of enquiry committee and subordinating role of accused Official, penalty of stoppage of one annual increment with accumulative effect imposed on Constable Ghani Uz Rehman 274 No. ~~274~~. He is reinstated in service from the date of suspension.

O.B.No. 465  
Dated 28/04/2012

  
District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

No. 5015 /EC, dated Karak the 30/4 /2012.

Copy of above is submitted to the Deputy Inspector General of Police, Kohat Region, Kohat for favour of information.

1114 s 265  
3/12/12  
3

  
ASHRAF ALI KHATTAK  
ADVOCATE

  
District Police Officer, Karak

شخصیات طبی انکیز جنرل آف پولیس کوٹلی میں رجسٹریشن کو کھانٹ

بوساطت = ڈسٹرکٹ پولیس آفیسر صاحب منہا گرن

عنوان = سرزنداشت برحرف اردو بک ڈسٹری بیوٹرز

تاریخ 28 جولائی 2012ء جاریہ منہا DP صاحب گرن

20

جناب عالی! مسائل ذیل سب سے متعلق

حقوق = 1۔ یہ کہ جو 12/9 کو مسائل عدلیہ کانٹریبل ٹریم ایچ کوٹلی " عدلیہ کانٹریبل، دیگر نفی پولیس سرکاری گاڑی میں موجود تھا ایسی روز گرفتار شدہ پولیس آفسران کے حقوق اور گیس فراہمی کے مابین حلوس اور ایئر انگڈ ٹنٹ نفی میں شروع ہوا اور برآمن طور پر ختم ہوا؟

2 = یہ کہ مسائل اطوار عدالت کے اندر ٹیوٹ پر موجود تھے اور باہر سے فائٹنگ کی آواز سنی اور ایچ نے ہمیں فرار ایسے عقب آنے کا حکم دیا اور صلح ہو کر عدلیہ (عظمیٰ ایس) کا قتل کیا گیا۔ اور ایچ اور ایچ کی زیر قیادت ملزم / فلزمان کی تعاقب کرنے لگے۔ مگر فلزمان کا کوئی سراغ نہ مل سکا۔

3 = جناب ڈسٹرکٹ پولیس آفیسر گرن نے مسائل کو چارج شدہ بوجہ فلزمان کو گرفتار کرنے اور بندش کا حکم دینے جاری کیا۔

4 = اور یہ کہ مسائل نے چارج ٹیوٹ کا مکمل اور دور بہت جواب دیا۔

5 = اور یہ کہ DP صاحب نے جواب اردو بک منبر مذکورہ بالا مسائل کا ایک سالہ انڈیکس مکمل طور پر بند کیا۔ لہذا اس بناء پر

P-30

ASHRAF ALI KHATTAK  
ADVOCATE

صدرم و جوہات پر مذکورہ آرڈر کی طرف اعتراض شدت پیش کی

(21)

جوہات =  
 $x - + - x - x$

یہ مذکورہ آرڈر خلاف قانون ہے اور خلاف واقعات ہے = 9

یہ آرڈر ایڈمنسٹریٹو طاقت سپاہی کے طور پر نہیں دیکھنا ان کی گزرائی  
ڈیوٹی سپاہی کے لئے رکھنا۔ لہذا ایڈمنسٹریٹو ان ہی الزامات کی  
بنیاد پر حکماً نہ لے کر ایڈمنسٹریٹو قانون ہے۔ کیونکہ ان ہی الزامات  
کی بنیاد پر ایڈمنسٹریٹو اور دیگر کی ان کے خلاف جو جبراً ہی مقدمہ  
بھی رہے ہیں۔

10 = یہ کہ ایڈمنسٹریٹو نفع دیگر لغوی سلیڈز میں کا تقاب کیا۔ وگرہ زمان فرار  
ہونے میں کافیا ہوئے۔ میں کچھ کے اندر غائب ہونے کے مظاہرے  
کا سوال پیدا نہیں ہوتا۔

11 = یہ کہ ایڈمنسٹریٹو کا ساتھ رکھنے کا وعدہ اور شفاء ہے۔ وزیر انکو نہیں کہیں  
نے یکطرفہ کارروائی کر کے کہا بیان ہے۔ بغیر رائے قائم کیا ہے۔

نہیں اس لئے کہ صدرم بالا امور کو مدنظر رکھ کر حکم معوضہ کے معنوی  
کا حکم صادر فرمائیں اور فرمائیں۔

Six  
Porwarah  
40/1/11  
k

سائل غنی الرحمن 274 متصنہ یو ایس ایس آرٹ

ASHRAF ALI KHATTAK  
Advocate



Handwritten signature and initials: "A. H. 2" and "H".  
A circular stamp with the number "22" inside.  
Handwritten numbers: "3127" and "2017/10/22".

POLICE DEPTT:

KOHAT REGION

ORDER

This order shall dispose of representations moved by the following constables against the impugned punishment order passed by DPO Karak. As the theme & nature of punishment awarded to the appellants / their representations is same, therefore, this single order is passed.

- |    |                                 |
|----|---------------------------------|
| 1  | Const: Anar Gul No. 347         |
| 2  | Const: Din Naeem No. 492        |
| 3  | Const: Hazratullah No. 673      |
| 4  | Const: Qismatullah No. 732      |
| 5  | Const: Ghani ur Rehman No. 274  |
| 6  | Const: Muhammad Ishfaq No. 616  |
| 7  | Const: Imran Ullah No. 774      |
| 8  | Const: Javed Iqbal No. 718      |
| 9  | Const: Saeed ur Rehman No. 623  |
| 10 | Const: Shakir Ullah No. 707     |
| 11 | Const: Khalil ur Rehman No. 305 |

The precise facts of the case are that on 09.12.2012 the inhabitants of village Takht-e-Nasrati had arranged a procession in favour of accused Hakeem Shah (ASI) arrested in Uzma Ayub Rape case who was produced before the court of Takht-e-Nasrati. A heavy strength of Police contingent under the command of SDPO Takht-e-Nasrati (now compulsory retired) was deployed at court premises for security duty. However, Alam zeb brother Uzma Ayub was killed outside the court premises and accused succeeded to escape from the spot. The appellants exhibited cowardice and negligence in duty therefore, they were charge sheeted by the DPO Karak and an enquiry committee headed by SP Investigation Karak was constituted to scrutinize the conduct of the contingent deployed at the venue. The appellants were held guilty of the charges, which resulted a penalty of stoppage of one annual increment with accumulative effect vide DPO Karak office O.B No. 465 dated 28.04.2012.

Feeling aggrieved from punishment orders the appellants preferred the instant representations individually.

The appellant were heard in Orderly Rcom held on 11.07.2012 individually and record perused.

The appellants stated that they were deployed inside the court premises at the time of incident and they did not watch the incident. They further stated that they were deployed under the command of senior officers.

The undersigned has gone through the available record which revealed that preliminary enquiry was also conducted by the SP Inv: Karak in order to ascertain deployment of the appellant which was shown out side the court premises adjacent to the place of incident and their presence on the spot was proved. Despite of above heavy contingent deployment the accused succeeded to escape from the place of incident and the appellants had exhibited cowardice & negligence in duty. Therefore, the charge leveled against them has been proved beyond any shadow of doubt. The plea taken by the appellants was

ASHRAF ALI KHAN  
ADVOCATE

23

under the penal law and the case is yet to be decided by the competent court of law.

Therefore, in view of the above and available record, the undersigned came to conclusion that the competent authority has already taken a lenient view in awarding punishment to them and the undersigned seems no justification to interfere in the punishment orders passed by DPO Karak, which are upheld, hence the representations of above appellants are hereby dismissed.

This order is exclusively passed on departmental proceedings and shall not effect the prosecution of criminal case(s) registered against the appellants.

Announced

11.07.2012

*[Signature]*

(MOHAMMAD IMTIAZ SHAH)  
PSP, QPM

Dy: Inspector General of Police  
Kohat Region, Kohat.

No. 6514 /EC *A-1817/12*

Copy for information and necessary action to the District Police Officer, Karak. Appellants service record is returned herewith.

*[Signature]*

(MOHAMMAD IMTIAZ SHAH)  
PSP, QPM

Dy: Inspector General of Police  
Kohat Region, Kohat.

*Attested.*

*[Signature]*  
Dy. Supdt. of Police  
Karak  
09/10/2012

*OB / SRC / OASI / PO*  
*Formation*

*OB No 785*  
*dt 25/7/12*

*[Signature]*  
District Police Officer  
Karak  
27/10/2012

گذریش ہیلہ بحوالہ آرڈر انٹروی معنی 6514/EC سہ ماہیہ  
2012-07-18

دفتر صاحب دیس و نوٹس پر سائل کی درخواست  
بابت سزا و عاقبت کے ایک ایسے نوٹس کی درخواست  
میں سہ ماہیہ دیس و نوٹس کی درخواست کے فائل  
پر تعلق حکم فرمایا ہے۔

مزید درخواست معروض خدمت میں  
سائل کو آرڈر کا یہ صاحب دیس و نوٹس  
میں نوٹس پر رقم درخواست دینے کی بات  
میں حکم صادر فرمایا گیا۔

ان کے لئے  
دفعہ 274 میں جوئی ایضاً  
ملاحظہ فرمائیں

Forwinded

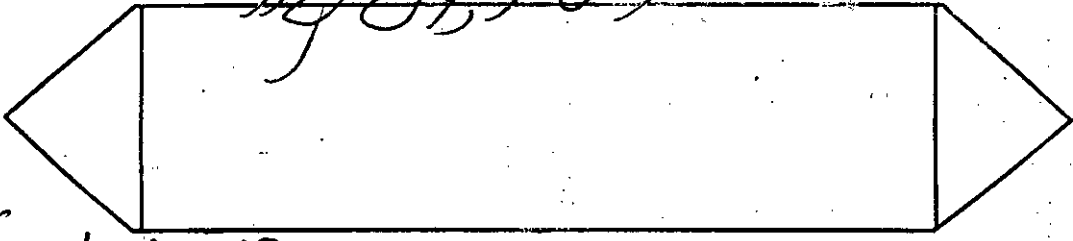
Allowed  
As per rules

Inspector  
Karak

District Police Office  
Karak

ASHRAF ALI KHATTAK  
ADVOCATE

# بعدالت سرویس ریگرنیشنل ایسوسی ایشن



2017ء پنجاب اسٹریٹ  
تعمیر العین بنام پیپلز ٹرسٹ

مورخہ  
مقدمہ  
دعویٰ  
جرم

## باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی حلقہ  
آن مقام \_\_\_\_\_ کیلئے \_\_\_\_\_ کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
دہن صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ  
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے دہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

\_\_\_\_\_

المرقوم \_\_\_\_\_ ماہ \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_ واہ العب \_\_\_\_\_

کے لئے منظور ہے۔

\_\_\_\_\_

بمقام

Attenu  
and  
Aufbau

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 967/2013 titled

Muhammad Ishfaq Constable No. 616 Police Lince Karak (Appellant)

Versus

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
2. Deputy Inspector General of Police, Kohat Region Kohat
3. District Police Officer, Karak..... (Respondents)

Subject: PARAWISE COMMENTS /REPLY TO APPEAL BY RESPONDENTS

Respectfully Sheweth:-

In compliance of direction vide notice dated 29.11.2013, Parawise comments /reply to appeal on behalf of the respondents No. 1 to 3 is submitted as below:-

Preliminary objections

1. That the appellant has got no cause of action to file appeal
2. The appellant is estoped by his own conduct to file the present appeal.
3. The appeal is badly time bared.
4. The appeal is liable to be rejected on the ground of non joinder & mis-joinder of necessary parties.
5. The appellant has not come to court with clean hands.
6. The appeal is not maintainable in its present form.

FACTS

1. Correct according to record, need no comments.
2. Correct, need no comments.
3. Correct, need no comments.
4. Correct, need no comments.
5. Correct, proper charge sheet and summary of allegations were served upon the appellant and DSP Mir Chaman Khan SDPO Circle Banda Daud Shah was appointed as an enquiry officer to conduct proper enquiry and to submit findings of enquiry. The enquiry officer recorded the statement of appellant and submitted finding vide his office No. 21 dated 10.01.2013 recommended the appellant for major punishment. The report of enquiry officer was rejected by Respondent No. 03 and a new


officer was rejected by Respondent No. 03 and a new enquiry committee was constituted vide OB No. 105 dated 28.04.2012 under the chairmanship of SP Investigation District Karak (copy enclosed as Annexure "A". The punishment order vide OB No. 465 dated 23.04.2012 was passed on the recommendations of enquiry committee to the effect of taking lenient view in award of punishment and the enquiry committee fulfilled all the codal formalities.


6. Correct to the extent of D/A.
7. Incorrect, need no comments.

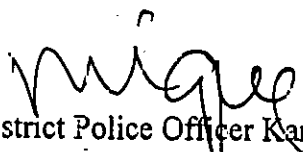
### GROUNDS

- A. Incorrect, the appellant was treated in accordance with law/ rules, proper charge sheet and summary of allegations were served upon the appellant and proper Departmental enquiry was entrusted to a Police officer of the rank of DSP, his finding report to the effect of award of major punishment without recording evidence was refused by the competent Authority i.e Respondent No. 3 being not plausible and Enquiry committee was constituted to ensure detailed probe and to submit proper finding report. Lenient view was taken by Respondent No. 3 while passing impugned order on the recommendations of enquiry committee. Copy enclosed as Annexure "B".
- B. Incorrect, as in the first enquiry no proper enquiry was conducted by initial enquiry officer and statements of concerned Police officers were not recorded due to which finding report submitted by DSP Mir Chaman vide his office No. 21 dated 10.1.2013 was not entertained and proper enquiry committee under the chairmanship of superintendent of Police Investigation Karak was constituted with a view to ensure proper compliance of law/ rules and the committee fulfilled all the requirements of law/ Rules.
- C. Incorrect, the appellant was proved guilty and was right given the punishment.

- D. Incorrect
- E. Incorrect, the impugned order was passed by the competent Authority Respondent No. 3 in exercise of Powers conferred rule 5(5) r/w section 4 a(v) of NWFP and Khyber Pakhtunkhwa Police Rules 1975.
- F. Incorrect,
- G. Incorrect,
- H. Incorrect, already explained vide ground A and B above.
- I. Incorrect, the appellant has properly been dealt with in accordance with rules on the subject and no discrimination whatsoever is exercised in award of minor punishment on detailed recommendations of Enquiry Committee.
- J. Incorrect,
- It is therefore submitted that service appeal filed by the appellant may be dismissed being time barred and based on flimsy ground.

  
Provincial Police Officer  
Khyber Pakhtunkhwa Peshawar  
Respondent: No. 1  
*2/11/42*

  
Deputy Inspector General of Police  
Kohat Region Kohat  
Respondent: No.2

  
District Police Officer Karak  
Respondent No. 3  
*L*

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 967/2013 titled


*Muhammad Ishaq Cont. no 616* Police Lirce Karak (Appellant)


Versus

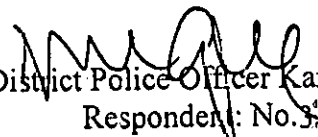
1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
2. Deputy Inspector General of Police, Kohat Region Kohat
3. District Police Officer, Karak..... (Respondents)

Subject: AUTHORITY

We the respondents No. 01 to 03 do hereby authorize Mr. Ghulam Hussain Inspector Legal District Karak to represent us in the above cited service appeal. He is also authorized to submit reply etc on our behalf before Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar and to assist Govt: Pleader/ Addl: Govt: Pleader attached to Service Tribunal till the decision of appeal.

  
Provincial Police Officer  
Khyber Pakhtunkhwa Peshawar  
Respondent: No.1  
*M. Ishaq*

  
Deputy Inspector General of Police  
Kohat Region Kohat  
Respondent: No.2

  
District Police Officer Karak  
Respondent: No.3  
✓



BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR


Service Appeal No. 567/2013 titled  
*Mohammad Ishfaq Cont no 616* Police Lince Karak (Appellant)

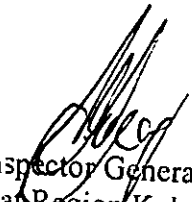
Versus

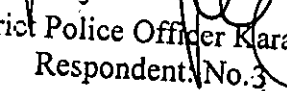
1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
2. Deputy Inspector General of Police, Kohat Region Kohat
3. District Police Officer, Karak..... (Respondents)

Subject: AFFIDAVIT

We the respondents No. 01 to 03 do hereby solemnly affirm and declare that the contents of reply to appeal are true and correct to the best of our knowledge and belief. Nothing has been concealed from this honourable tribunal.

  
Provincial Police Officer  
Khyber Pakhtunkhwa Peshawar  
Respondent: No. 1

  
Deputy Inspector General of Police  
Kohat Region Kohat  
Respondent: No. 2

  
District Police Officer Karak  
Respondent: No. 3

ORDER

Charge sheet and statement of allegations based on displaying cowardice and avoiding arrest of accused brahim Shah who allegedly committed murder of Alamzeb brother of Mst. Uzma Ayub (abduction and rape victim) in their presence, was issued to the Police officers cited in the appended list. SDPO Banca Daud Shah was appointed as Enquiry Officer to scrutinize the conduct of the delinquent Police Officers with reference to the charges leveled against them. Enquiry officer submitted finding report and recommended that the accused officers were guilty of the charges. The enquiry officer did not bring any evidence on file in support of his finding report.

The undersigned is of the opinion that imposing penalty on accused officers on the basis of hollow and stereo type finding report of the enquiry officer will amount to futile exercise. Therefore enquiry committee comprising the following officers is constituted for conducting de-novo enquiry proceedings in accordance with the rules and regulations

1. Superintendent of Police, Investigation Wing, Karak.
2. Deputy Superintendent of Police, Headquarter, Karak.
3. Inspector Legal, Karak.

The committee shall submit finding report within seven (07) days positively.

  
District Police Officer, Karak

O.P. No. 105 /EC,

Dated 27-02 2012

FINDING

Annex = B

Before unfolding our opinion, it is deemed appropriate to reproduce the brief facts forming the background of present departmental proceedings initiated against Javed Iqbal constable No.718 (hereinafter referred to as accused officer), which are as follows:-

On 25.09.2010, Mst. Balqisam Jana wife of Muhammad Ayub resident of village Marwan Banda, Tehsil Takht-e-Nasrati preferred an application before the Court of Additional Session Judge, Takht-e-Nasrati within the meaning of 22-A Cr. P.C with prayer of registration of case on charges of abduction of her daughter namely Mst. Uzma Ayub. She initially charged Gul Marjan, Sardar Ali Khan sons of Ghazi Marjan, Nazar Ali son of Malak Jan and Muhammad Karim son of Faiz Ullah for the abduction of her daughter. Complainant contended that a month prior to submission of the petition, Police conducted raid on her house and made recovery of arms & ammunitions from her house. Later on the above named accused committed trespass into their house and forcibly abducted Mst. Uzma Ayub her daughter. The application was accepted and accordingly case vides FIR No.363, dated 09.10.2010 under section 496-A PPC Police station Yaqoob Khan Shaheed was registered.

Later on, Mst. Balqisam Jana submitted petition before the Honourable Chief Justice Peshawar High Court Peshawar contending therein that her daughter was abducted and the Police failed to recover her daughter despite lapse of 02-months. She also leveled allegations against Pir Mohsin Shah Inspector, Amir Khan SI and Hakeem Khan ASI. The Honourable Court examined the applicant, the petition was converted into writ petition 370/2010 and the court issued order for the recovery of alleged abductee.

Mst. Uzma Ayub abductee appeared before the Judicial Magistrate on 19.09.2011 and her statement was recorded, wherein she stated that she managed her release from the clutches of accused and charged 13-accused including 03-Police officers named above for her abduction and rape. She was also pregnant of five months and now she has delivered a female child.

The press and media highlighted the rape case of Mst. Uzma Ayub. Therefore the Honourable Chief Minister, Khyber Pakhtunkhwa constituted high level committee headed by Secretary Home for enquiry in the case. The committee made certain recommendations including handing over investigation of the case to the officer not below the rank of Superintendent of Police. The investigation in the case was

entrusted to Senior Superintendent of Police, Investigation Wing Kohat by Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar vide order bearing Endst: No.2179-82/C. Cell dated 12.11.2011.

All the three Police officers charged in the abduction and rape case of Mst. Uzma Ayub were arrested on 03.12.2011. The Judicial Magistrate granted five days physical custody in respect of all the three Police officers and they were produced before the court on 09.12.2011 by Kohat Police.

On 09.12.2011, well wishers of Hakeem Shah ASI (charged and arrested in abduction / rape case of Mst. Uzma Ayub) scheduled a protest procession. Therefore the entire Police strength of Sub-division Takht-e-Nasrati including strength of Police stations Yaqoob Khan Shaheed, Shah Salim, Cobra mobile, Janbaz mobile under the command of SDPO, Takht-e-Nasrati were detailed for security duty at the occasion of procession.

At 1400 hours, Alamzeb brother of Mst. Uzma Ayub (abduction and rape victim) came out of the court premises and accused first hit his motorcycle by motorcar followed by pistol firing on him, resultantly he lost life. Zafran Ullah brother of Alamzeb charge Ibrahim Shah and Waheed Ullah brother and friend of Hakeem Shah ASI respectively by name and also charge three unknown accused for the murder of Alamzeb. Hakeem Shah ASI was also charged for abetting the offence. Mst. Balqisam Jana was cited as eyewitness of the occurrence. Police registered proper case FIR No.529 dated 09.12.2011 under section 302,146,149,105 PPC Police station Yaqoob Khan Shaheed. The accused succeeded in making good their escape.

The honourable High Court Peshawar took adverse notice of the occurrence and Suo-Moto action was taken vide Writ Petition No.3419/2011. The Honourable Court issued direction for conduct of judicial enquiry as well as enquiry through high ranking Police officers.

Accused officer along with other Police officers were charge sheeted on the score of allegations that they displayed cowardice, avoided duty and abandoned follow up of accused who committed murder of Alamzeb despite the fact that they were present on the spot of occurrence and thus malafidely supported the escape of accused.

Enquiry to scrutinize the conduct of accused officers was entrusted to SDPO, Banda Daud Shah and he submitted finding report but your good office constituted enquiry committee comprising us for de-novo enquiry vide order bearing No.105/EC, dated 07.02.2012.

We examined the relevant record. Accused officer has admitted in his statement submitted in response to the charge sheet that on the day of occurrence of the murder of Alamzeb, he was on duty in the premises of court. However, he contended that he was inside the court area and the occurrence took place outside the court on the road. He admitted hearing the reports of fire shots made by the accused while committing the murder of Alamzeb.

Investigation in the murder case of Alamzeb was transferred to Investigation Wing CPO, Peshawar. Investigation team headed by Deputy Inspector General of Police, Investigation-II, Khyber Pakhtunkhwa Peshawar, conducted investigation in the case and also submitted various progress reports before the high court and Police high-ups. The investigation team also made recommendation for registration of case against accused officer and others on charges of displaying cowardice and negligence in duty vide report received for compliance vide No.502-TRC/Inv: dated 17.12.2011 and 16/CRC/Inv: dated 03.01.2012. Copies are placed on file. In compliance with the above reports, case vides FIR No. 5 dated 21.12.2011 under section 155 Police Order 2002 Police station Yaqoob Khan Shaheed was registered against accused officer and others.

Accused officer was arrested in the case and he is still behind the bar in judicial lockup Sub-Jail Karak. The Court of Judicial Magistrate has also refused grant of bail to accused officer, meaning thereby that a prima facie case exists against the accused officer. This is also on record that the killers of the Alamzeb were only armed with pistol and heavy strength of Police including accused officer was present on the spot. Furthermore, the entire strength was detailed for provision of security cover on the occasion of procession but the strength failed to perform their duty diligently as the ugly occurrence of the murder of Alamzeb took place at the same spot. The killers of Alamzeb also succeeded in making good their escape after the commission of offence. The letting go of the Police officers present on duty brought bad name for the Force, Police.

It is proved from the record and statement of accused officer, that he was present on the spot of the occurrence of murder of Alamzeb and the killers made good their escape despite the fact they were not armed with lethal weapons. The accused officer and others also avoided follow up of the accused as no one was arrested on the same day. Investigation team comprising senior officers made observations and

recommendations that the accused officer and others had played cowardice and negligence in duty and according criminal case on charges of displaying cowardice was registered against accused officer and others FIR No.539 under article 155 Police Order Police station Yaqoob Khan Shaheed. Judicial Magistrate also refused grant of bail to the accused officer and others in case FIR No.539 referred above. All this proves the commission of misconduct and negligence in duty on the part of accused officer and others. No doubt criminal action has been taken against the accused officer and others on charges of displaying cowardice and avoiding duty but presently there is no cavil with the proposition that criminal charge and departmental charge can go side by side and both are distinct in nature. The finding of one forum is not binding on the other forum as separate mechanism is adopted for arriving at the correct conclusion.

As a sequel to our above discussion, we are safe to hold that the charges are proved against the accused officer, however, he was constable and he was performing duty under the command and supervision of his senior officers, therefore we recommend leniency in award of penalty to the accused officer.

Superintendent of Police,  
Investigation Wing,  
Karak

  
Sub-Divisional Police Officer,  
Headquarter, Karak

  
Inspector Legal, Karak

ORDER

This order is passed on the departmental proceeding initiated against Constable Muhammad Ishfaq No. 616 then posted as Gunner with DSP Takht-e-Nastrati. Succinct facts leading to the instance departmental proceedings against him are as follows:-


That on 09.12.2012 the inhabitants of village Takht-e-Nastrati had arranged protest procession in favour of Hakeem Shah ASI arrested in Uzma Ayub rape and abduction case FIR No. 363/2010 Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati). The strength of Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati) and Shah Salim under the direct supervision of Muhammad Subhan the then SDPO Takht-e-Nastrati (now compulsory retired) was detailed for security duty at the premises of Takht-e-Nastrati Court. However, Alam Zeb brother of Uzma Ayub was killed vide FIR No. 529, dated 09.12.2011 under section 302,109,148,149 PPC Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati) in the premises of Court. The killer also succeeded in making good their escape from the scene of occurrence despite the fact Police strength was present on the spot. Departmental action was initiated against the strength on duty at the premises of Court including Constable Muhammad Ishfaq No. 616.

Charge sheet based on allegations of displaying cowardice on the occasion of murder occurrence vide FIR No. 529 referred above and also avoiding follow up of accused involved in the above occurrence was issued to Constable Muhammad Ishfaq No. 616.

SDPO Banda Daud Shah was appointed as enquiry Officer vide this Office Endst: No. 11330-32/EC (Enquiry) dated 09.12.2011 to scrutinize the conduct of the accused with reference to the charges leveled against him. He submitted stereotype finding report. Therefore, another enquiry committee headed by Superintendent of Police, Investigation Wing Karak was constituted for conducting proper enquiry vide order bearing OB No. 105/EC, dated 07.02.2012. The enquiry committee has submitted detailed report and has recommended award of minor punishment to the accused Official because he was performing duty on the spot of occurrence under the command of other senior Officers.

Keeping in view the recommendation of enquiry committee and subordinating role of accused Official, penalty of stoppage of one annual increment with accumulative effect imposed on Constable Muhammad Ishfaq No. 616. He is reinstated in service from the date of suspension.


O.B.No. 465  
Dated 28/4 /2012

  
District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

No. 5024 /EC, dated Karak the 30/4 /2012.

Copy of above is submitted to the Deputy Inspector General of Police, Kohat Region, Kohat for favour of information.

  
District Police Officer, Karak

دستور = 15  
12/3/12  
15/3/12

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 967/2013 titled

Muhammad Ishfaq Constable No. 616 Police Lince Karak (Appellant)

Versus

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
2. Deputy Inspector General of Police, Kohat Region Kohat
3. District Police Officer, Karak..... (Respondents)

Subject: PARAWISE COMMENTS /REPLY TO APPEAL BY RESPONDENTS

Respectfully Sheweth:-

In compliance of direction vide notice dated 29.11.2013, Parawise comments /reply to appeal on behalf of the respondents No. 1 to 3 is submitted as below:-

Preliminary objections

1. That the appellant has got no cause of action to file appeal
2. The appellant is estopped by his own conduct to file the present appeal.
3. The appeal is badly time bared.
4. The appeal is liable to be rejected on the ground of non joinder & mis-joinder of necessary parties.
5. The appellant has not come to court with clean hands.
6. The appeal is not maintainable in its present form.

FACTS

1. Correct according to record, need no comments.
2. Correct, need no comments.
3. Correct, need no comments.
4. Correct, need no comments.
5. Correct, proper charge sheet and summary of allegations were served upon the appellant and DSP Mir Chaman Khan SDPO Circle Banda Daud Shah was appointed as an enquiry officer to conduct proper enquiry and to submit findings of enquiry. The enquiry officer recorded the statement of appellant and submitted finding vide his office No. 21 dated 10.01.2013 recommended the appellant for major punishment. The report of enquiry officer was rejected by Respondent No. 03 and a new



officer was rejected by Respondent No. 03 and a new enquiry committee was constituted vide OB No. 105 dated 28.04.2012 under the chairmanship of SP Investigation District Karak (copy enclosed as Annexure "A". The punishment order vide OB No. 465 dated 28.04.2012 was passed on the recommendations of enquiry committee to the effect of taking lenient view in award of punishment and the enquiry committee fulfilled all the codal formalities.

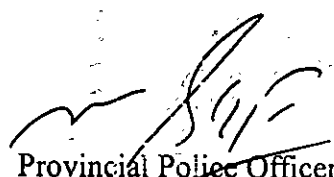
6. Correct to the extent of D/A.
7. Incorrect, need no comments.

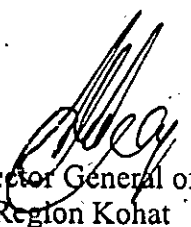
### GROUNDS


- A. Incorrect, the appellant was treated in accordance with law/ rules, proper charge sheet and summary of allegations were served upon the appellant and proper Departmental enquiry was entrusted to a Police officer of the rank of DSP, his finding report to the effect of award of major punishment without recording evidence was refused by the competent Authority i.e Respondent No. 3 being not plausible and Enquiry committee was constituted to ensure detailed probe and to submit proper finding report. Lenient view was taken by Respondent No. 3 while passing impugned order on the recommendations of enquiry committee. Copy enclosed as Annexure "B".
- B. Incorrect, as in the first enquiry no proper enquiry was conducted by initial enquiry officer and statements of concerned Police officers were not recorded due to which finding report submitted by DSP Mir Chaman vide his office No. 21 dated 10.1.2013 was not entertained and proper enquiry committee under the chairman ship of superintendent of Police Investigation Karak was constituted with a view to ensure proper compliance of law/ rules and the committee fulfilled all the requirements of law/ Rules.
- C. Incorrect, the appellant was proved guilty and was right given the punishment.

- D. Incorrect
- E. Incorrect, the impugned order was passed by the competent Authority Respondent No. 3 in exercise of Powers conferred rule 5(5) r/w section 4 a(v) of NWFP and Khyber Pakhtunkhwa Police Rules 1975.
- F. Incorrect,
- G. Incorrect,
- H. Incorrect, already explained vide ground A and B above.
- I. Incorrect, the appellant has properly been dealt with in accordance with rules on the subject and no discrimination whatsoever is exercised in award of minor punishment on detailed recommendations of Enquiry Committee.
- J. Incorrect,

It is therefore submitted that service appeal filed by the appellant may be dismissed being time barred and based on flimsy ground.

  
Provincial Police Officer  
Khyber Pakhtunkhwa Peshawar  
Respondent: No. 1  
2/11/46

  
Deputy Inspector General of Police  
Kohat Region Kohat  
Respondent: No.2

  
District Police Officer Karak  
Respondent No. 3

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 967/2013 titled

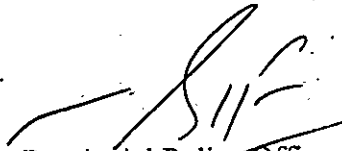
Mohammad Ishfaq, Cont. No. 616 Police Lince Karak (Appellant)


Versus

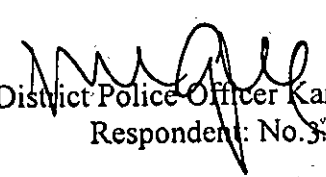
1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
2. Deputy Inspector General of Police, Kohat Region Kohat
3. District Police Officer, Karak..... (Respondents)

Subject: AUTHORITY

We the respondents No. 01 to 03 do hereby authorize Mr. Ghulam Hussain Inspector Legal District Karak to represent us in the above cited service appeal. He is also authorized to submit reply etc on our behalf before Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar and to assist Govt: Pleader/ Addl: Govt: Pleader attached to Service Tribunal till the decision of appeal.

  
Provincial Police Officer  
Khyber Pakhtunkhwa Peshawar  
Respondent: No.1,  
M. A. K.

  
Deputy Inspector General of Police  
Kohat Region Kohat  
Respondent: No.2

  
District Police Officer Karak  
Respondent: No.3

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

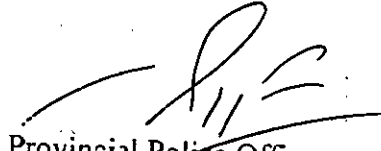
Service Appeal No. 967/2013 titled  
Mohammad Ishaq Cont. No. 66 Police Lince Karak (Appellant)


Versus

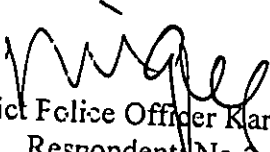
1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
2. Deputy Inspector General of Police, Kohat Region Kohat
3. District Police Officer, Karak ..... (Respondents)

Subject: AFFIDAVIT

We the respondents No. 01 to 03 do hereby solemnly affirm and declare that the contents of reply to appeal are true and correct to the best of our knowledge and belief. Nothing has been concealed from this honourable tribunal.

  
Provincial Police Officer  
Khyber Pakhtunkhwa Peshawar  
Respondent: No. 1

  
Deputy Inspector General of Police  
Kohat Region Kohat  
Respondent: No. 2

  
District Police Officer Karak  
Respondent: No. 3

ORDER

Charge sheet and statement of allegations based on displaying cowardice and avoiding arrest of accused Ibrahim Shah who allegedly committed murder of Alamzeb brother of Mst. Uzma Ayub (abduction and rape victim) in their presence, was issued to the Police officers cited in the appended list. SDPO Banda Daud Shah was appointed as Enquiry Officer to scrutinize the conduct of the delinquent Police Officers with reference to the charges leveled against them. Enquiry officer submitted finding report and recommended that the accused officers were guilty of the charges. The enquiry officer did not bring any evidence on file in support of his finding report.

The undersigned is of the opinion that imposing penalty on accused officers on the basis of hollow and stereo type finding report of the enquiry officer will amount to futile exercise. Therefore enquiry committee comprising the following officers is constituted for conducting de-novo enquiry proceedings in accordance with the rules and regulations

1. Superintendent of Police, Investigation Wing, Karak.
2. Deputy Superintendent of Police, Headquarter, Karak.
3. Inspector Legal, Karak.

The committee shall submit finding report within seven (07) days positively.

  
District Police Officer, Karak.

O.P. No. 105 /EC,

Dated 27-02 2012

FINDING

Annex - B

Before unfolding our opinion, it is deemed appropriate to reproduce the brief facts forming the background of present departmental proceedings initiated against Javed Iqbal constable No.718 (hereinafter referred to as accused officer), which are as follows:-

On 25.09.2010, Mst: Balqisam Jana wife of Muhammad Ayub resident of village Marwatan Banda, Tehsil Takht-e-Nasrati preferred an application before the Court of Additional Session Judge, Takht-e-Nasrati within the meaning of 22-A Cr. P.C with prayer of registration of case on charges of abduction of her daughter namely Mst: Uzma Ayub. She initially charged Gul Marjan, Sardar Ali Khan sons of Ghazi Marjan, Nazar Ali son of Maluk Jan and Muhammad Karim son of Faiz Ullah for the abduction of her daughter. Complainant contended that a month prior to submission of the petition, Police conducted raid on her house and made recovery of arms & ammunitions from her house. Later on the above named accused committed trespass into their house and forcibly abducted Mst: Uzma Ayub her daughter. The application was accepted and accordingly case vide FIR No.363, dated 09.10.2010 under section 496-A PPC Police station Yaqoob Khan Shaheed was registered.

Later on, Mst: Balqisam Jana submitted petition before the Honourable Chief Justice Peshawar High Court Peshawar contending therein that her daughter was abducted and the Police failed to recover her daughter despite lapse of 02-months. She also leveled allegations against Pir Mohsin Shah Inspector, Amir Khan SI and Hakeem Khan ASI. The Honourable Court examined the applicant, the petition was converted into writ petition 370/2010 and the court issued order for the recovery of alleged abductee.

Mst: Uzma Ayub abductee appeared before the Judicial Magistrate on 19.09.2011 and her statement was recorded, wherein she stated that she managed her release from the clutches of accused and charged 13-accused including 03-Police officers named above for her abduction and rape. She was also pregnant of five months and now she has delivered a female child.

The press and media highlighted the rape case of Mst: Uzma Ayub. Therefore the Honourable Chief Minister, Khyber Pakhtunkhwa constituted high level committee headed by Secretary Home for enquiry in the case. The committee made certain recommendations including handing over investigation of the case to the officer not below the rank of Superintendent of Police. The investigation in the case was

entrusted to Senior Superintendent of Police, Investigation Wing Kohat by Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar vide order bearing Endst: No.2179-82/C.Cell dated 12.11.2011.

All the three Police officers charged in the abduction and rape case of Mst. Uzma Ayub were arrested on 03.12.2011. The Judicial Magistrate granted five days physical custody in respect of all the three Police officers and they were produced before the court on 09.12.2011 by Kohat Police.

On 09.12.2011, well wishers of Hakeem Shah ASI (charged and arrested in abduction / rape case of Mst. Uzma Ayub) scheduled a protest procession. Therefore the entire Police strength of Sub-division Takht-e-Nasrati including strength of Police stations Yaqoob Khan Shaheed, Shah Salim, Cobra mobile, Janbaz mobile under the command of SDPO, Takht-e-Nasrati were detailed for security duty at the occasion of procession.

At 1400 hours, Alamzeb brother of Mst. Uzma Ayub (abduction and rape victim) came out of the court premises and accused first hit his motorcycle by motorcar followed by pistol firing on him, resultantly he lost life. Zafran Ullah brother of Alamzeb charge Ibrahim Shah and Waheed Ullah brother and friend of Hakeem Shah ASI respectively by name and also charge three unknown accused for the murder of Alamzeb. Hakeem Shah ASI was also charged for abetting the offence. Mst. Balqisam Jana was cited as eyewitness of the occurrence. Police registered proper case FIR No.529 dated 09.12.2011 under section 302,146,149,109 PPC Police station Yaqoob Khan Shaheed. The accused succeeded in making good their escape.

The honourable High Court Peshawar took adverse notice of the occurrence and Suo-Moto action was taken vide Writ Petition No.3419/2011. The Honourable Court issued direction for conduct of judicial enquiry as well as enquiry through high ranking Police officers.

Accused officer along with other Police officers were charge sheeted on the score of allegations that they displayed cowardice, avoided duty and abandoned follow up of accused who committed murder of Alamzeb despite the fact that they were present on the spot of occurrence and thus malafidely supported the escape of accused.

Enquiry to scrutinize the conduct of accused officers was entrusted to SDPO, Banda David Shah and he submitted finding report but your good office constituted enquiry committee comprising us for de-novo enquiry vide order bearing No. 105/EC, dated 07.02.2012.

We examined the relevant record. Accused officer has admitted in his statement submitted in response to the charge sheet that on the day of occurrence of the murder of Alamzeb, he was on duty in the premises of court. However, he contended that he was inside the court area and the occurrence took place outside the court on the road. He admitted hearing the reports of fire shots made by the accused while committing the murder of Alamzeb.

Investigation in the murder case of Alamzeb was transferred to Investigation Wing CPO, Peshawar. Investigation team headed by Deputy Inspector General of Police, Investigation-II, Khyber Pakhtunkhwa Peshawar conducted investigation in the case and also submitted various progress reports before the high court and Police high-ups. The investigation team also made recommendation for registration of case against accused officer and others on charges of displaying carelessness and negligence in duty vide report received for compliance vide No.502/CR/Inv dated 17.12.2011 and 15/CRC/Inv: dated 03.01.2012. Copies are placed on file. In compliance with the above reports, case vides FIR No. 5 dated 21.12.2011 under section 155 Police Order 2002 Police station Yaqub Khan Shaheed was registered against accused officer and others.

Accused officer was arrested in the case and he is still behind the bar in judicial lockup Sub-Jail Karak. The Court of Judicial Magistrate has also refused grant of bail to accused officer, meaning thereby that a prima facie case exists against the accused officer. This is also on the record that the killers of the Alamzeb were only armed with pistol and heavy strength of Police including accused officer was present on the spot. Furthermore, the entire strength was detailed for provision of security cover on the occasion of procession but the strength failed to perform their duty diligently as the ugly occurrence of the murder of Alamzeb took place at the same spot. The killers of Alamzeb also succeeded in making good their escape after the commission of offence. The lethargic conduct of the Police officers present on duty brought bad name for the Peshawar Police.

As per the record and statement of accused officer, that he was present on the spot of the occurrence of murder of Alamzeb and the killers made good their escape despite the fact they were not armed with lethal weapons. The accused officer and others also avoided following up of the accused as no one was arrested on the same day. Investigation team comprising senior officers made observations and



recommendations that the accused officer and others had played cowardice and negligence in duty and according criminal case on charges of displaying cowardice was registered against accused officer and others FIR No.539 under article 155 Police Order Police station Yaqoob Khan Shaheed. Judicial Magistrate also refused grant of bail to the accused officer and others in case FIR No.539 referred above. All this proves the commission of misconduct and negligence in duty on the part of accused officer and others. No doubt criminal action has been taken against the accused officer and others on charges of displaying cowardice and avoiding duty but presently there is no cavil with the preposition that criminal charge and departmental charge can go side by side and both are distinct in nature. The finding of one forum is not binding on the other forum as separate mechanism is adopted for arriving at the correct conclusion.

As a sequel to our above discussion, we are safe to hold that the charges are proved against the accused officer, however, he was constable and he was performing duty under the command and supervision of his senior officers, therefore we recommend leniency in award of penalty to the accused officer.

Superintendent of Police,  
Investigation Wing,  
Karak

Sub-Divisional Police Officer,  
Headquarter, Karak

Inspector Legal, Karak

ORDER

This order is passed on the departmental proceeding initiated against Constable Muhammad Ishfaq No. 616 then posted as Gunner with DSP Takht-e-Nastrati. Succinct facts leading to the instance departmental proceedings against him are as follows:-

That on 09.12.2012 the inhabitants of village Takht-e-Nastrati had arranged protest procession in favour of Hakeem Shah ASI arrested in Uzma Ayub rape and abduction case FIR No. 363/2010 Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati). The strength of Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati) and Shah Salim under the direct supervision of Muhammad Subhan the then SDPO Takht-e-Nastrati (now compulsory retired) was detailed for security duty at the premises of Takht-e-Nastrati Court. However, Alam Zeb brother of Uzma Ayub was killed vide FIR No. 529, dated 09.12.2011 under section 302,109,148,149 PPC Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati) in the premises of Court. The killer also succeeded in making good their escape from the scene of occurrence despite the fact Police strength was present on the spot. Departmental action was initiated against the strength on duty at the premises of Court including Constable Muhammad Ishfaq No. 616.

Charge sheet based on allegations of displaying cowardice on the occasion of murder occurrence vide FIR No. 529 referred above and also avoiding follow up of accused involved in the above occurrence was issued to Constable Muhammad Ishfaq No. 616.

SDPO Banda Daud Shah was appointed as enquiry Officer vide this Office Endst: No. 11330-32/EC (Enquiry) dated 09.12.2011 to scrutinize the conduct of the accused with reference to the charges leveled against him. He submitted stereotype finding report. Therefore, another enquiry committee headed by Superintendent of Police, Investigation Wing Karak was constituted for conducting proper enquiry vide order bearing OB No. 105/EC, dated 07.02.2012. The enquiry committee has submitted detailed report and has recommended award of minor punishment to the accused Official because he was performing duty on the spot of occurrence under the command of other senior Officers.

Keeping in view the recommendation of enquiry committee and subordinating role of accused Official, penalty of stoppage of one annual increment with accumulative effect imposed on Constable Muhammad Ishfaq No. 616. He is reinstated in service from the date of suspension.

O.B.No. 465  
Dated 28/4 /2012

  
District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

No. 5024 /EC, dated Karak the 30/4 /2012.

Copy of above is submitted to the Deputy Inspector General of Police, Kohat Region, Kohat for favour of information.

  
District Police Officer, Karak

Handwritten notes in Urdu: "کتاب = 15" and "30/4/12" with other markings.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 965 /2013

GHANI UR REHMAN

VS

POLICE DEPARTMENT

REJOINDER ON BEHALF OF THE APPELLANT IN RESPONSE TO THE REPLY SUBMITTED BY THE  
RESPONDENTS

R/SHEWETH:

PRILIMINARY OBJECTIONS:

(1 TO 6):

All the preliminary objections raised by the respondents are incorrect and baseless and not in accordance with law and rules rather than respondents are stopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

1. Admitted correct. Hence need no comments.
2. Admitted correct. Hence need no comments.
3. admitted correct. Hence need no comments.
4. Admitted correct. Hence need no comments.
5. Incorrect and not replied accordingly hence denied.
6. Admitted correct. Hence need no comments.
7. Para 7 of the reply is incorrect hence denied.

GROUNDS:


All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless hence denied. That the impugned order dated 30.4.2012 is against the law, facts and norms of natural justice. That no proper inquiry was conducted in the matter . That the appellant had not been treated according to law and had been condemned un-heard.

It is therefore, most humbly prayed that on acceptance of this rejoinder the appeal the appellant may accepted in favor of the appellant.

Dated: 15.3.2016.

APPELLANT

THROUGH:

  
UZMA SYED

ADVOCATE

2016ء منجانب  
محمد معزز بنام ریٹس

موری  
مقدمہ  
دعوی  
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام سنیاء کیلئے فیملی بینڈ جو جی بی و سوسٹی  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی کیلئے واپس آکر دعویٰ اور درخواست ہر قسم کی تصدیق  
زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے سے یا اپنے بجائے  
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے  
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے  
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں  
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

47ma Sajid  
Sajid

الرقوم کا ماہ 3 2014

العبد گواہ العبد

مقام پیٹور کے لئے منظور ہے۔