S.A 969/2013

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 ZEB 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 fr 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 ZEB 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.

(MUHAMMAD AAMIR NAZIR)
MEMBER

(ASHFAQUE TAJ)
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. Kabeerullah 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

09.01.2014 Counsel for the appellant 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. 969/2013.
Mr. Jawad Iqbal.

3. 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

5. 01.11.2013 Counsel for the appellant 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.

5. 01.11.2013 This case be put before the Final Bench I for further proceedings.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 969 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12/06/2013	The appeal of Mr. Javed Iqbal was received on 12-11-2012 which was returned to the counsel for the appellant for completion and resubmission within 15 days. Today he has resubmitted the appeal late by 198 days. The same be entered in the Institution Register and put up to the Worthy Chairman for further order please.
2	15-7-2013.	REGISTRAR This case is entrusted to Primary Bench for preliminary hearing to be put up there on 19-9-2013. CHAIRMAN

The appeal of Mr.Javid Iqbal No.718 Police Line Karak received today i.e. on 12/11/2012 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- Memo of appeal is unsigned which may be got signed.
3- Address of appellant is incomplete which may be completed.
4- 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.
5- 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.
6- 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.
7- Application for coadunations of delay may be supported with an affidavit attested by Oath Commissioner.
8- Annexures of the appeal may be attested.
9- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1288 /S.T,

Dt. 13/11 /2012.

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR.ABDUL HALEEM KHATTAK ADV. PESH.

Sir, Re-Submitted after completion.

K.W.F Provincial
Diary No. 1031
Dated 12/18/13

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 969 /2013

Javid Iqbal No. 718, 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

Ashtab Ali Khattak
Advocate, Peshawar

Dated: _____/ 11/ 2012

BEFORE T

IYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No._____/2013

Javid Iqbal No.718 Police Line Karak .....Appellant.

Versus

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

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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.

Appellant

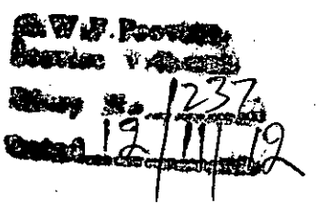
Through Ashraf Ali

Ashraf Ali Khattak,
Advocate, Peshawar.

Dated: 01 / 10 / **2013**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 969 /2013



Versus

Javid Iqbal No. 718, 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

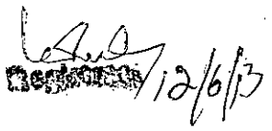
.....Respondents

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

Prayer:

On acceptance of the instant service appeal this Honourabe 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

re-submitted to-day and filed.



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 Station Shah Saleem District 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.

Appellant

Through Ashraf Ali **Khattak,**
Advocate, Peshawar.

Dated: _____/ 11/ 2012

Affidavit.

I **Javid Iqbal No. 718**, 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.

Deponent.

KHALID MAHMOOD ADVOCATE OATH COMMISSIONER PESHAWAR HIGH COURT ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No._____/2012 (7)

Javid Iqbal No. 718, 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).

(8)

4. That the delay in filing appeal was/is not intention but due to above stated reason.

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.

Applicant/Appellant.

Through

Ashraf Ali Khattak,
Advocate, Peshawar.

Dated: _____/ 11/ 2012

Counter Affidavit

I, **Javid Iqbal No. 718**, 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.

Deponent

KHALID MAHMOOD ADVOCATE HIGH COURT
ATTESTED
COMMISSIONER PESHAWAR

Annex A

انسپکٹر جنرل پولیس صوبہ سرحد فارم نمبر ۲۷
گورنمنٹ پرنٹنگ پریس پشاور جاب نمبر 2286/13 فارم سٹور - تعداد 20.06.2011 کتب (فارم سٹور جات) ضمنی فارم (پولیس)

فارم نمبر ۲۴-۵(۱)

فائیل

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

تھانہ یعقوب خان شہید ٹیری ضلع کرک

نمبر (529) 47 تاریخ و وقت وقوعہ 9/12/11 وقت 6:14

۱۔	تاریخ و وقت رپورٹ	9/12/2011 وقت 14-30 بجے مایکیدل کی برجہ 9/12/2011 بوقت 15-15 بجے
۲۔	نام و سکونت اطلاع دہندہ مستغیث	ظفران اللہ ولد محمد ایوب عمر قریب 20/21 سال سکنہ [illegible]
۳۔	مختصر کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو۔	PPC 302/109/148/149 7ATA
۴۔	جائے وقوعہ فاصلہ تھانہ سے اور سمت	بالمقابل سیشن کورٹ گیٹ [illegible] قریب 1 کلومیٹر جانب جنوب از تھانہ
۵۔	نام و سکونت ملزم	(1) ابراہیم (2) حکیم جان پسران جان شاہ [illegible] (3) عبدالوحید ولد عبداللہ [illegible] محمد اسلم [illegible]
۶۔	کاروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	جو رسید کا مراسلہ [illegible] دیا جاتا ہے۔
۷۔	تھانہ سے روانگی کی تاریخ و وقت	بطور سپیشل رپورٹ

ابتدائی اطلاع نیچے درج کرو

ایک تحریری مراسلہ نائب ظفر خان [illegible] ASI بدست [illegible] بدین مضمون ہے کہ درج ذیل ہے [illegible] عالم زیب [illegible] مقتول [illegible] ظفران اللہ ولد محمد ایوب [illegible] سکنہ [illegible] مقتول کی والدہ مسماۃ بلقیس بانو زوجہ محمد ایوب [illegible] ASI حکیم خان [illegible] عالم زیب مقتول [illegible] 988 [illegible] ابراہیم ولد جان شاہ سکنہ [illegible] عبدالوحید ولد عبداللہ [illegible] مقتول عالم زیب [illegible] عبدالوحید نے [illegible] مقتول [illegible] مقتول عالم زیب [illegible] مسماۃ بلقیس بانو نے [illegible] ظفران اللہ [illegible] ایف آئی آر [illegible] 7ATA [illegible] 9/12/11 [illegible] ASI [illegible] FIR [illegible] KBI [illegible] بطور سپیشل رپورٹ [illegible]

9/12/11 [illegible] MHC/PAKS

Attested
[illegible]
POLICE STATION
[illegible] (Karak)
[illegible]
23-1-2012

ASHRAF ALI KHATTAK
ADVOCATE

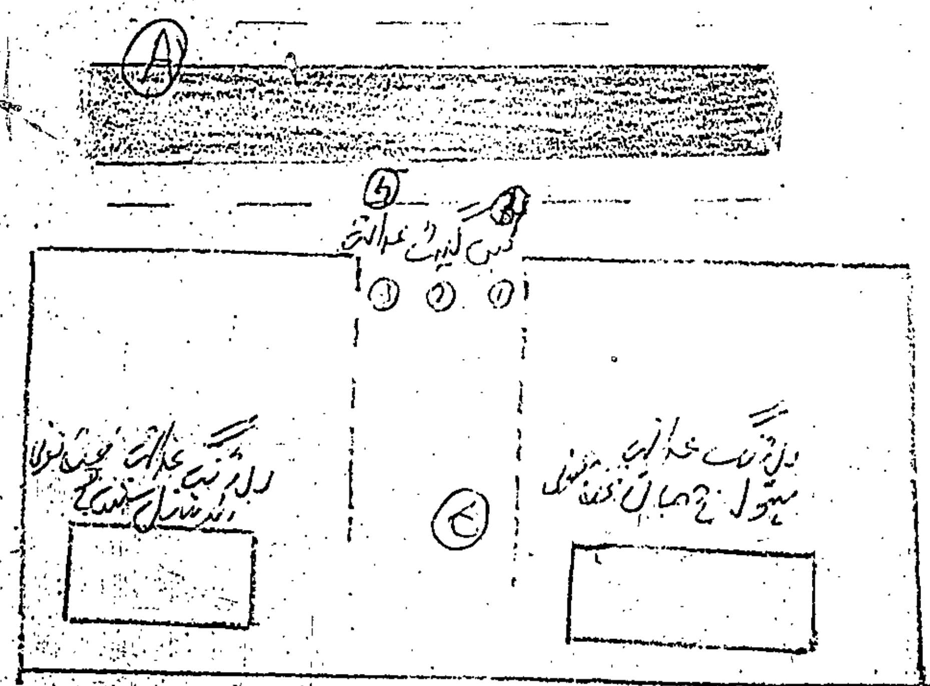
(10)

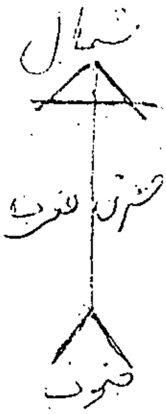
نقشہ موقعہ بلا پیمائش

مقدمہ علت نمبر [illegible] مورخہ [illegible] جرم [illegible] تھانہ پولیس [illegible] 2021

مارکیٹ قاضی حمید

سلسلہ دوکانات





محل وقوعہ: موقعہ ھذا اندر کچہری تحت بالمقابل مارکیٹ قاضی حمید میں جو نمایاں ہو چکا ہے۔ جانب شمال سلسلہ دوکانات، مارکیٹ بنام قاضی حمید تحت واقع ہے۔ جانب جنوب بلڈنگ کچہری تحت [illegible] واقع ہے۔ جانب شرق، غرب چند سڑک تحت [illegible] تا [illegible] سلسلہ [illegible] ہوا ہے

نشانات: مقام نمبر A یہ وہ مقام دکھایا گیا ہے۔ جہاں پر مقتول عالمزیب کو [illegible] قتل کیا گیا

مقام نمبر 1 یہ وہ مقام ہے جہاں پر بوقت وقوعہ [illegible] مشیر [illegible] بدوران وقوعہ بوقت وقوعہ اپنی موجودگی ڈیوٹی پر [illegible] بتلایا ہے [illegible] عدالت کچہری [illegible] ہے۔ موقعہ ھذا چشم دید بتلایا ہے۔ جو [illegible] میں [illegible] بتلایا۔

ASHRAF ALI KHATTAK
ADVOCATE

مقام نمبر 2 یہ وہ مقام نشاندہی کیا گیا جہاں پر کیپٹل انور جمیل شہید ڈیوٹی پر موجود تھے کہ ایک گیا کو تھرا دیونا اور موجودہ جگہ کو چشم دید نشاندہ تا ہے۔

مقام نمبر 3 یہ وہ مقام نشاندہی کیا گیا۔ جہاں پر کیپٹل خالد الحسن شہید ڈیوٹی پر موجود تھے کہ ایک گیا کو کھڑا کیو نا اور موجودہ جگہ کو چشم دید نشاندہ تا ہے۔

مقام نمبر 4 یہ وہ مقام بیان ہوا۔ جہاں پر بلا فرد وقوعہ پوسٹ وقوعہ موجودہ SHO محمد نعمان علی خان کی موجودگی بیان ہوا۔

مقام نمبر 5 یہ وہ مقام بیان ہوا۔ جہاں پر بلا فرد وقوعہ پوسٹ وقوعہ SHO محمد عادل خان مع فورس کی موجودگی بیان ہوا۔

مقام نمبر 6 یہ وہ مقام بیان ہوا جو علاقہ اندر بلا فرد وقوعہ پوسٹ وقوعہ حاجی الحسن SHO مع فورس کی موجودگی بیان ہوا۔

فاصلہ جات۔ مقامات = مقام A تا 1 تا 6 درمیان فاصلہ

مقام A تا 1	30 قدم
مقام A تا 2	29 قدم
مقام A تا 3	28 قدم
مقام A تا 4	26 قدم
مقام A تا 5	9 قدم
مقام A تا 6	[illegible] قدم
مقام 1 تا 2	1 قدم
مقام 1 تا 3	2 قدم
مقام 1 تا 4	5 قدم
مقام 1 تا 5	6 قدم
مقام 1 تا 6	30 قدم
مقام 2 تا 3	1 قدم
مقام 2 تا 4	6 قدم
مقام 2 تا 5	4 قدم
مقام 2 تا 6	30 قدم
مقام 3 تا 4	6 قدم
مقام 3 تا 5	5 قدم
مقام 4 تا 5	7 قدم

نوٹ: کیپٹل انور جمیل شہید پولیس [illegible] گواہان چشم دید بیان کئے، موجودہ مقام دیگر [illegible] گواہان [illegible] نقشہ موقع [illegible] گزارش ہے

21/12/2011

ASHRAF ALI KHATTAK
ADVOCATE

دیکھا جناب DPO صاحب

A [illegible] "B"

گورنمنٹ پریس پشاور حاجب نمبر 2286/13 فارم سوز تعداد ایک ہزار بکس مورخہ 20.06.2011 / پی اور (فارم سرعان) (پولیس)

فارم نمبر ۲۴-۵ (۱)

کاؤنٹر فائیل

(21)

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

یعقوب خان شہید — کرک

ضلع: 9/12/2011 وقت 1400 بجے

تھانہ: 537

تاریخ: 21/12/2011 [illegible] 1345 [illegible]

نمبر: 7

۱۔	تاریخ ووقت رپورٹ	ہمایوں خان DPO کرک
۲۔	نام وسکونت اطلاع دہندہ مستغیث	[illegible] پولیس آرڈر 2002
۳۔	مختصر کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو۔	بالمقابل [illegible]
۴۔	جائے وقوعہ فاصلہ تھانہ سے اور سمت	(1) [illegible] (2) 110کر محمد سلیمان (3) 110کر محمد کمال (4) 110کر حاجی رحمن لسٹ نمبر 700
۵۔	نام وسکونت ملزم	چٹھی نمبر 12684/ [illegible] 21/12/2011
۶۔	کاروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	[illegible]
۷۔	تھانہ سے روانگی کی تاریخ ووقت	[illegible]

[illegible] DPO [illegible] خلاصہ ذیل ہے کہ DPO کے 12684 چٹھی جناب [illegible] لسٹ نمبر 700 بحوالہ مقدمہ محمد سلیمان، 110کر محمد کمال، 110کر حاجی رحمن اور [illegible] یعقوب خان شہید بحق [illegible] میں علت 529 مورخہ 9/12/2011 بجرم 302-109/148-149 ت پ تھانہ یعقوب خان شہید [illegible] ملزمان محمد ابراہیم ولد جہان شاہ سکنہ جملہ [illegible] افسران بالا نے بوقت [illegible] ملزمان [illegible] شاہ سلیم وغیرہ کی گرفتاری میں [illegible] اور قصداً غفلت [illegible] کرکے جملہ ملزمان پولیس افسران بالا [illegible] بالا کے خلاف مقدمہ درج رجسٹر [illegible] بغرض تفتیش [illegible] ملزمان بالا کے خلاف [illegible] حکم [illegible] کیا جاتا ہے۔ [illegible] گزارش ہے
KB

[illegible]

SHO 19 TN 12 9/12/2011

ASHRAF ALI KHATTAK
ADVOCATE

No 12775 dated 26/12/2011

83

Annex "C"

12

CHARGE SHEET

I, Sajjad Khan, District Police Officer, Karak as competent authority, hereby charge you Constable Javed Iqbal No 718 Police Lines, Karak as follow.

"You Constable Javed Iqbal No. 718 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.

District Police Officer, Karak

ASHRAF ALI KHATTAK
ADVOCATE

(13)

No. /EC
Dated /2011

DISCIPLINARY ACTION

I, Sajjad Khan, District Police Officer, Karak as competent authority, is the opinion that Constable Javed Iqbal No 748 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 Javed Iqbal No748 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

Annex ش

بیان از ان پیش جان سید اقبال 713 تھانہ شاہ سلیم حال پولیس لائن

(14)

جناب عالی!

جناب DPO صاحب حوالہ چارج شیٹ نمبری 12775/EC مورخہ 26-12-2011 جاریہ جناب DPO صاحب

گزارش معروض خدمت ہوں کہ میں حلفاً بیان کرتا ہوں کہ میں جناب
SHO صاحب کے ساتھ سرکاری گاڑی میں دیگر نفری تھانہ سوار ہو کر
بعد فیض اسپیشل ڈیوٹی تھانہ تخت نصرتی جا کر زیر قیادت جناب DSP صاحب
گئے سے متعلق لوگوں نے جلوس نکالا تھا اور جلوس اڈہ ہوا غرض کی طرف
جا رہا تھا اور جلوس کے ساتھ میں، SHO صاحب و دیگر نفری پولیس زیر قیادت
جناب DSP صاحب SHO صاحب تخت نصرتی حاجی عبدالرحمن جلوس کے ساتھ شامل ہو
کر جا رہے تھے بعد میں جلوس نے بارا تحصیل تخت نصرتی کی طرف آ کر جو جلسہ
کی شکل اختیار کر کے مقررین عدلیہ نے تقاریر کرتے جو بعد میں جلوس (جلسہ)
منتشر ہوا۔ اس دوران دوبارہ لوگ حکیم خان کے بارے میں جلوس کی شکل
میں سڑک پر نکل کر نعرہ بازی بذریعہ مائیک لگاتے رہے تھے۔ زیر قیادت DSP
صاحب نفری پولیس جلوس کے ساتھ تحصیل کچہری کی طرف روانہ ہوئے۔ جب
جلوس نزد دکانات و بلڈنگ پہنچا تو اسی مقام پر کافی دیر تک نائیک جلسہ
اور مقررین نے یکے بعد دیگرے بذریعہ مائیک تقاریر کئے۔ بعد میں جلوس
واپس بازار کی طرف روانہ ہو کر میں مع دیگر نفری پولیس ہمراہ جلوس اڈہ
ہوا غرض پہنچے جلوس والوں نے لوئیر اڈہ میں بھی تقاریر کئے اس دوران
جانب کرک ملزمان حکیم خان وغیرہ زیر حراست پولیس کو معلوم ہوا لے کر جلوس
والوں نے دیکھتے ہی شور شروع کی۔ اور جلوس کا رُخ عدالت تخت نصرتی
کی طرف کر کے روانہ ہوئے اور ملزمان زیر حراست پولیس پارٹی عدالت میں
داخل ہوئے اس دوران لوگ کافی دیر تک عدالت کے مین گیٹ کے سامنے اور
اردگرد موجود تھے اور حکیم خان کے رہائی کے نعرے لگا رہے تھے تو اور میں جلسہ
گئے۔ اور جناب DSP صاحب نے حکم دیا کہ کچہری کے گیٹ بند کر کے پولیس
پارٹی اندر داخل ہو جائیں۔ کافی وقت گزرنے کے بعد فائرنگ کی آواز سن
کر میں اور دیگر نفری پولیس گیٹ کچہری کی طرف روانہ ہو کر گیٹ سے باہر
دیکھا تو ایک شخص مع موٹر سائیکل موٹر کار کے آگے قتل شدہ پڑا تھا پولیس
پارٹی نے عدالت کے ملحقہ دکانات وغیرہ میں ملزمان کی تلاش کی
مگر کوئی سراغ نہ ملا۔ SHO صاحب تخت نصرتی، وانبار ہو بائیکل، کو بڑا
مدیابیل ملزمان کی تلاش میں جانب غرب سڑک پر چلے گئے اور جناب
DSP صاحب کے حکم پر ہمراہ جناب DSP صاحب تخت نصرتی SHO
صاحب تھانہ شاہ سلیم، دیگر نفری بسواری پک اپ سرکاری ہمراہ ملزمان
سب جیل کرک آیا ملزمان حکیم خان وغیرہ کو درست طور پر حوالات
سب جیل کرک میں بند کر دیئے گئے۔ بس یہی میرا اس قدر بیان ہے۔

03459805036

ASHRAF ALI KHATTAK ADVOCATE

FINDING

Annx 'E' (15)

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 718 (hereinafter referred to 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 committed 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 KHATTAK
ADVOCATE

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.

ASHRAF ALI KHATTAK
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

ASHRAF ALI KHATTAK
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 prepcsition 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

(19)

Ann 'F'

ORDER

This order is passed on the departmental proceeding initiated against Constable Javed Iqbal No. 718 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 Javed Iqbal No. 718

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 Javed Iqbal No. 718.

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 Javed Iqbal No. 718. He is reinstated in service from the date of suspension.

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

ASHRAF ALI KHATTAK
ADVOCATE

District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

No. 5019 /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

(20)

بحضور جناب ڈپٹی انسپکٹر جنرل آف پولیس کوہاٹ ریجن کوہاٹ

بوساطت :- ڈسٹرکٹ پولیس آفیسر صاحب ضلع کرک

عنوان :- عرضداشت برخلاف آرڈر بک نمبر 165 مورخہ 28/4/2012 جاریہ جناب DPO صاحب کرک.

Annex "G"

—x—x—x—

جناب عالی!

سائل ذیل عرض رساں ہے

حقائق :-

1. یہ کہ مورخہ 12/2/2012 کو سائل بحیثیت ہیڈ کانسٹیبل محمد نعیم انچارج گارد ہمراہ صد بائیل، دیگر نفری پولیس سرکاری گاڑی میں موجود تھا اسی روز گرفتار شدہ پولیس افسران کے حق اور گیس فراہمی کے بابت جلوس [illegible] نفری میں شروع ہوا۔ اور پر امن طور پر ختم ہوا۔

2 = یہ کہ سائل احاطہ عدالت کے اندر ڈیوٹی پر موجود تھے اور باہر سے فائرنگ کی آواز سنی۔ اور انچارج نے ہمیں فوراً اپنے عقب آنے کا حکم دیا۔ اور معلوم ہوا کہ عالمزیب (عظیمی [illegible]) کا بھائی کسی نے قتل کیا ہے۔ اور انچارج اور انچارج کی زیر قیادت ملزم / ملزمان کی تعاقب کرنے لگے۔ مگر ملزمان کا کوئی سراغ نہ مل سکا۔

3 = جناب ڈسٹرکٹ پولیس آفیسر کرک نے سائل کو چارج شیٹ بوجہ ملزمان کو گرفتار نہ کرنے اور بزدلی کا مظاہرہ کرنے جاری کیا۔

4 = اور یہ کہ سائل نے چارج شیٹ کا مکمل اور درست جواب دیا۔

5 = اور یہ کہ DPO صاحب نے بحوالہ آرڈر بک نمبر مذکورہ بالا سائل کا ایک سالانہ انکریمنٹ مکمل طور پر بند کیا۔ لہذا اس بنا پر

P.T.O

SHRAF ALI KHATTAK
ADVOCATE

(21)

مندرجہ وجوہات پر مذکورہ آرڈر کے خلاف نظر ثانی درخواست پیش کی جاتی ہے۔

وجوہات =

ا = یہ کہ مذکورہ آرڈر خلاف قانون ہے اور خلاف واقعات ہے۔

ب = یہ کہ اپیلانٹ ماتحت سپاہی کے طور پر [illegible] کی نگرانی ڈیوٹی سرانجام دے رہا تھا۔ لہذا اپیلانٹ کو ان ہی الزامات کی بنیاد پر سزا دینا خلاف قانون ہے۔ کیونکہ ان ہی الزامات کی بنیاد پر اپیلانٹ اور دیگر کیا ان کے خلاف فوجداری مقدمہ بھی درج ہے۔

ج = یہ کہ اپیلانٹ نے مع دیگر نفری ملزمان کا تعاقب کیا۔ مگر ملزمان فرار ہونے میں کامیاب ہوئے۔ یہی [illegible] کے اندر تھا۔ لہذا بدنیتی کے ظاہر ہونے کا سوال پیدا نہیں ہوتا۔

د = یہ کہ اپیلانٹ کا سابقہ ریکارڈ صاف اور شفاف ہے۔ [illegible] نے یکطرفہ کارروائی کر کے کسی کا بیان ہے۔ بغیر رائے قائم کی ہے۔

لہذا استدعا ہے کہ مندرجہ بالا امور کو مدنظر رکھ کر حکم معترضہ کو منسوخ کا حکم صادر فرما کر مشکور فرماویں۔

ASHRAF ALI KHATTAK

ADVOCATE

سائل [illegible] 718 کانسٹیبل پولیس لائن کرک۔

Sir, Forwarded

Lo. [illegible]

Annex "H" (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 Ishtaq 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 23.04.2012.

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

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

The appellants stated that 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

SHAH ALI KHATTAK
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

(MOHAMMAD IMTIAZ SHAH)
PSP,QPM
Dy: Inspector General of Police
Kohat Region, Kohat.

No. 6516 /EC dt. 18/7/12

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

(MOHAMMAD IMTIAZ SHAH)
PSP,QPM
Dy: Inspector General of Police
Kohat Region, Kohat.

Attested.

Dy. Supdt. of Police
Karak
09/10/2012.

OB/SRC/OASI/PO
For n/action

ODN 795
dt 25/7/12

19/7/2012

ASHRAF ALI KHATTAK
ADVOCATE

(24)

جناب عالی

گذارش ہے کہ بحوالہ آرڈر انگریزی عشری 6514/EC مورخہ 18-07-2012

دفتر جناب DIG کوہاٹ پر سائل کی درخواست

بابت سزا معاف کرنے ایک سال انکریمنٹ روکنے

عمل میں لائی گئی جناب DIG کوہاٹ نے حائل

کرنے کے حکم فرمایا ہے -

لہذا درخواست مصروف خدمت ہے

کہ سائل کو آرڈر کاپی جناب DIG کوہاٹ

روبرو رحم درخواست دینے کی بابت

مناسب حکم صادر فرمایا جائے

العارض

ہیڈ کانسٹیبل 778 تعینات چوکی

ضلع کرک

Forwarded

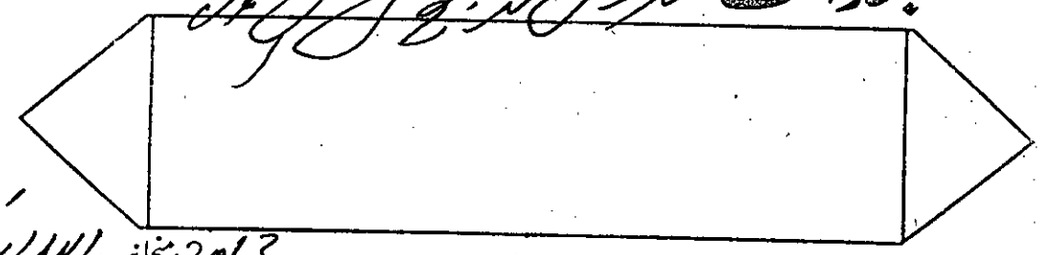
Allowed
As per rules

District Police Officer
Karak

ASHRAF ALI KHATTAK
ADVOCATE

Inspector Legal
Karak

بعدالت سروس ٹریبونل لاہور



منجانب 2013ء

بنام

مورخہ ــــــــــ

مقدمہ ــــــــــ

دعویٰ ــــــــــ

جرم ــــــــــ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام ــــــــــ کیلئے ــــــــــ مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث ہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک وروپیہ ارعرضی دعوی اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی 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 بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جوخرچہ دہرجانہ التوائے مقدمہ کے سبب سے وہوگا۔ 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 لکھدیا کہ سند رہے۔

المرقوم ــــــــــ ماہ ــــــــــ 20ء

العبد ــــــــــ گواہ العبد ــــــــــ

بمقام ــــــــــ کے لئے منظور ہے۔

Attested
Ms Eu
and Accepted

GS&PD.KP-1333/2-RST-20,000 Forms-21.03.2011/P4(Z)/F=PHC Jobs/Form A&B Ser. Tribunal

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

FST

No. 969

Appeal No. ..... *of 20* 13

Javid Iqbal ..... *Appellant/Petitioner*

Versus

PPO ..... *Respondent*

Respondent No. 2

Notice to: — Regional Police Officer Kohat Region Kohat

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 27/6/13 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 29

Day of 4 **20** 13

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

No. 1527 DPO

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. 50 Ps.

Received a registered* addressed to _____

Date-Stamp

*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Initials of Receiving Officer

If insured. *Insured for Rs. (in figures)* _____ *(in words)* _____

Insurance fee Rs. ___ *Ps.* ___ *(in words)* _____ *Weight* *Kilo* / *Grams*

Name and address of sender Kohat

No. 1528 RPO

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. 50 Ps.

Received a registered* addressed to _____

26.7.22 *Date-Stamp*

*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Initials of Receiving Officer

If insured. *Insured for Rs. (in figures)* _____ *(in words)* _____

Insurance fee Rs. ___ *Ps.* ___ *(in words)* _____ *Weight* *Kilo* / *Grams*

Name and address of sender Kohat

GS&PD.KP-1333/2-RST-20,000 Forms-21.03.2011/P4(Z)/F=PHC Jobs/Form A&B Ser. Tribunal

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

No.

Appeal No.....467..... of 2013

.....Javid Iqbal.....*Appellant/Petitioner*

Versus

.....DPO.....*Respondent*

Respondent No.....

Notice to: — District Police Officer Kohat

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal, *on.....at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this.....25.....

Day of.....11.....20 13

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note:
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 969/2013 titled

Javid Iqbal Constable No. 718 of 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 and 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

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,

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. Correct, as in the first inquiry 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, need no comments as already explained vide ground A and B.

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. 01

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

District Police Officer Karak
Respondent: No. 03

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 969/2013 titled

Javid Iqbal Constable No. 718 of 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.01

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

District Police Officer Karak
Respondent: No.03

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 969/2013 titled

Javid Iqbal Constable No. 718 of 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.01

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

District Police Officer Karak
Respondent: No.03

Annexure "A" 2

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.B. No. 165 /EC,
Dated 27-03-2012

22/E

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 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 committed 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

titled

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.

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.629 dated 21.12.2011 under section 155 Police Order 2002 Police station Yakoob 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

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. Al 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 Javed Iqbal No. 718 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 Javed Iqbal No. 718

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 Javed Iqbal No. 718.

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 Javed Iqbal No. 718. 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. 5019 /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

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 969/2013 titled

Javid Iqbal Constable No. 718 of 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 and 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

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,

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. Correct, as in the first inquiry 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, need no comments as already explained vide ground A and B.

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. 01

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

District Police Officer Karak
Respondent: No. 03

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 969/2013 titled

Javid Iqbal Constable No. 718 of 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.01

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

District Police Officer Karak
Respondent: No.03

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 969/2013 titled

Javid Iqbal Constable No. 718 of 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.01

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

District Police Officer Karak
Respondent: No.03

Annexure "A" 2

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 pos...

District Police Officer, Karak

O.B. No. 105 /EC,

Dated 07-02 /2012

22/Ec

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 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 committed 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

titled

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 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/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

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 Javed Iqbal No. 718 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 Javed Iqbal No. 718

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 Javed Iqbal No. 718.,

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 Javed Iqbal No. 718. 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. 5019 /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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRICUNAL PESHAWAR

APPEAL NO. 969 /2013

JAVID IQBAL 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

THORUGH:

UZMA SYED

ADVOCATE