S.A 967/2013

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.967/2013 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 4-6-16 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. 867/2013
Mr. Muhammad Zaib

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

4. 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 for further proceedings.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 967 /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. Muhammad Ishfaq was received on 05-11-2012 which was returned to the counsel for the appellant for completion and resubmission within 15 days. Today he has resubmitted the appeal late by 203 days. The same be entered in the Institution Register and put up to the Worthy Chairman for further order please.
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.Muhammad Ishfaq No.616, Police Line Karak received today i.e. on 05/11/2012 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days:-

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

No. 1935 /S.T,
Dt. 06/11 /2012.

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR.ABDUL HALEEM KHATTAK ADV. PESH.

Sir, Re-submitted after completion.

[redacted] 12/11/13

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 967 /2013

Muhammad Ishfaq No.616, Police line Karak .....Appellant	Versus	Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar and others.....Respondents

INDEX

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

Appellant

Through

Abdul Haleem Khattak
Advocate, Peshawar

Dated: 5 / 10/ 2012

Ashraf Ali Khattak
Advocate, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No._____/2013

Muhammad Ishfaq No.616 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 Khattak,
Advocate, Peshawar.

Dated: ____1____ / 10/ **2013**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 967 /2013

Versus

Muhammad Ishfaq No.616, 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

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

Respectfully Sheweth,

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

1. That in the year 2011, appellant was posted at Police Line, Karak.

2. That on 09-12-2011, appellant was detailed with court duty in connection with famous Uzma Ayub alleged rape case. There was also a procession who chanted slogans in favour of Hakeem Khan ASI (alleged accused) of the cited case.

3. That on the same day brother of Mst: Uzma Ayub, namely Alam Zeb was killed outside the Court Premises and the killers succeeded in making the escape good (Copy of the FIR and Naqsh Moqa are attached as Annexure-A).

4. That later on case FIR No.539 dated 21-12-2011 under section 155 Police Order 2002 P/S Yaqoob Khan Shaheed was registered against appellant and others on charge of displaying cowardice and avoiding arrest of the killers of Alam Zeb(brother of Mst: Uzma Ayub). (Copy of the FIR is attached as Annexure-B).

5. That in addition to registration of case appellant was also served with charge sheet and statement of allegation (Annexure-C) to which he submitted reply (Annexure-D), slipshod inquiry was held (Anxure-E) at the back of the appellant. Neither

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

6. That being aggrieved of the illegal and unlawful penal order, appellant submitted departmental appeal before the respondent No.2 (Annexure-G), who vide order dated 18-07-2012 rejected the same and upheld the order of respondent No.3 (Annexure-H).

7. That appellant, being aggrieved of the acts and actions of Respondents and having no other adequate and efficacious remedy, files this appeal inter-alia on the following grounds:-

Grounds:

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

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

B. That the inquiry officer conducted ex-parte proceedings and no chance of defense was provided to appellant. No one was examined in presence of appellant and no chance of cross examination of witnesses was provided to the appellant. Again inquiry officer has allegedly examine co police officer in support of the charges, who were also facing departmental charge on same set of allegation. The testimony of the co accused officer was not worth credence, therefore, the authority wrongly believed the tainted evidence of the co accused officer.

C. That the inquiry officer has based his opinion on no evidence as nothing was brought on record in support of the charges leveled against appellant. No direct or indirect evidence was available on file, which may connect the appellant with the alleged charges.

D. That appellant was implicated in criminal charge vide FIR No.539/2011 under Article 155 Police Order and was also charged departmentally on the same set of allegation, which amounts to double jeopardy.

E. That under the law as provided under FR-29, the authority will specify the period of stoppage of increment, but in case of appellant the period has not been specified, therefore, the impugned order

was passed in violation of rules.

F. That penalty of stoppage of one annual increment was imposed on appellant without adhering to the legal and procedural formalities including procurement of evidence in support of the charges.

G. That this on the record that appellant was subordinate. Therefore, appellant was wrongly punished for the in action of other police officer.

H. That the departmental proceeding were carried out against the settle principle of disciplinary rules. Therefore, the impugned order is worth set aside.

I. That appellant is a low paid employee, he has highly been discriminated. The recommendations of fact finding inquiry on the basis of which criminal case against the appellant has been registered and subsequent departmental disciplinary action has been initiated has also recommended action against higher Officer including DST-Investigation and DPO, but these recommendation has been ignored in case of high officer and only constables rank have been subjected to departmental proceedings and penal action and that too without any sort of evidence.

J. The whole record of service of appellant was unblemished and appellant was noted for good performance and impugned penalty was based on single intendance of escape of killers after the

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

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

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

محمد اشفاق
Appellant

Through

Abdul Haleem Khattak,
Advocate, Peshawar.

Dated: 6 / 10/ **2012**

Ashraf Ali Khattak
Advocate, Peshawar

Affidavit.

I, **Muhammad Ishfaq No.616,** 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.

محمد اشفاق
Deponent.

KHALID MAHMOOD ADVOCATE ATTESTED OATH COMMISSIONER PESHAWAR HIGH COURT
6-13

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No._____/2012

(7)

Muhammad Ishfaq No.616,, Police line Karak
.....Appellant.

Verses

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

Application for condonation of delay if any.

Respectfully Sheweth,

1. That appellant has filed the accompanying appeal before this Honourable Tribunal.

2. That the impugned rejection order has allegedly been issued on 18-07-2012, but neither a copy of the same has been endorsed to the appellant nor the fate of the same has been communicated to the appellant.

3. That appellant after getting knowledge applied for copy of the impugned rejection order and the same was granted on 09-10-2012. (Copy of application and attested copy of the impugned order dated 18-07-2012 has already been annexed with memo of appeal).

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

(8)

5. That the law favour adjudication/disposal of cases on merit rather than on technicalities including limitation.

6. That value able rights of the applicant is involved in the case.

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

Applicant/Appellant.

Through

Ashraf Ali Khattak,
Advocate, Peshawar.

Dated: 05 / **10/ 2012**

Counter Affidavit

I, **Muhammad Ishfaq No.616,** 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.

KHALID MAHMOOD ADVOCATE ★ OATH COMMISSIONER PESHAWAR HIGH COURT ★ ATTESTED

Deponent

انسپکٹر جنرل پولیس صوبہ سرحد فارم نمبر ۲۷

گورنمنٹ پرنٹنگ پریس پشاور حاب نمبر 2286/13 فارم سٹور۔ تعداد ایک ہزار رجسٹر 20.06.2011 پی فورم (فارم سٹور جاری) ضمنی فارم (پولیس)

فارم نمبر ۲۴۔ب ۵(۱)

فائل

ابتدائی اطلاعی رپورٹ

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

تھانہ یعقوب خان شہید تخت نصرتی ضلع کرک

نمبر 47 (529) تاریخ و وقت وقوعہ $9\frac{12}{11}$ وقت 14:00 بجے

۱۔	تاریخ و وقت رپورٹ	$\frac{12}{2011}$ 9 وقت 14:30 بجے بذریعہ [illegible] پرچہ $\frac{12}{2011}$ 09 وقت 15:15 بجے
۲۔	نام و سکونت اطلاع دہندہ مستغیث	طفران اللہ ولد محمد ایوب بعمر قریب $\frac{20}{21}$ سال سکنہ سرو تان بانڈہ
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 سٹیشن کورٹ تخت نصرتی زنانہ [illegible] قریب 1 کلومیٹر جانب جنوب از تھانہ
۵۔	نام و سکونت ملزم	(1) ابراہیم (2) حکیم جان پسران جان [illegible] (3) [illegible] عبدالوحید ولد عبداللہ [illegible] سکنہ تخت نصرتی (4) نامعلوم کس ان
۶۔	کاروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	بذریعہ مراسلہ پرچہ کیا جاتا ہے
۷۔	تھانہ سے روانگی کی تاریخ و وقت	بطور سپیشل رپورٹ

ابتدائی اطلاع نیچے درج کرو

ایک تحریری مراسلہ منجانب مظفر خان ASI بدست محمد [illegible] نام [illegible] موصول ہو کر درج ذیل ہے — آفیسر انچارج تھانہ۔ اطلاع ملی کہ ایمرجنسی روم میں ایک نعش لڑکی کی ہے۔ فوراً ایمرجنسی روم پہنچا۔ ایمرجنسی روم سول ہسپتال تخت نصرتی میں نعش آزادن عالم زیب پڑی پائی۔ جس کے پاس مقتول کا بھائی طفران اللہ ولد محمد ایوب۔ مقتول کی والدہ سماۃ بلقیس جانہ زوجہ محمد ایوب سکنہ سرو تان بانڈہ موجود پائی۔ مقتول کے بھائی طفران اللہ رپورٹ کرتا ہے کہ آج روز [illegible] لئے بھائی [illegible] حکیم خان [illegible] کی تاریخ پیشی عدالت میں تخت نصرتی [illegible] دوزر تھی۔ پیشی کرنے عالم زیب مقتول ہمراہ میرے [illegible] والدہ بلقیس جانہ بھی آئے ہوئے تھے۔ اسی وقت حکیم خان A.S.I کے حق میں ان کے رشتہ دار [illegible] بھی ساتھ تھا۔ جب جلوس ختم ہوا۔ تو میں ہم عالم زیب مقتول، والدہ اکٹھے جب کمیٹی کچہری سے باہر نکلے۔ عالم زیب مقتول موٹر سائیکل پر سوار ہوا۔ لیکن چند قدم آگے جا کر تھانہ سمت سے ایک موٹرکار رجسٹریشن نمبر 988 جس میں حکیم خان، ابراہیم اور [illegible] ولد جان شاہ سکنہ [illegible] عبدالوحید ولد عبداللہ سکنہ تخت نصرتی اور ایک نامعلوم کس ان آئے میرے مقتول عالم زیب پر آتشیں اسلحہ سے فائرنگ شروع کی۔ [illegible] ہتھیار کلاشنکوف تھی۔ [illegible] عبدالوحید نے [illegible] مقتول پر [illegible] ہاتھ ڈالا۔ [illegible] سکنہ [illegible] نے [illegible] فائر کیا اور مقتول عالم زیب سر پر فائر لگا۔ [illegible] فائرنگ سے عالم زیب تک پہنچ کر موقع پر جاں بحق ہوا۔ یہ سارا [illegible] ہے۔ وقوعہ ہذا کو میرے علاوہ والدہ سماۃ بلقیس جانہ نے بچشم خود دیکھا ہے۔ [illegible] ان کے خلاف اپنے بھائی کے قتل کرنے کا دعویدار ہوں۔ یہ بیان [illegible] جو کچھ [illegible] کی وجہ سے ہوا ہے۔ دستخط طفران اللہ۔ [illegible] بلقیس جانہ۔ کاروائی پولیس حسب نقشہ ابتدائی رپورٹ درج بالا [illegible] زبانی [illegible] [illegible] کیا گیا۔ درست [illegible] کر کے [illegible] خود [illegible] تصدیق کی۔ نیز سماۃ بلقیس جانہ والدہ مقتول نے بھی تائید میں نشان انگوٹھا ثبت کیا۔ جس میں [illegible]۔ مقتول کا نقشہ ضروری [illegible] مرتب کر کے [illegible] پوسٹمارٹم رپورٹ [illegible] ڈاکٹری [illegible] [illegible] 7 [illegible] ہمراہ نائب کا 74 ارسال تھانہ ہے [illegible] مقدمہ FIR [illegible] [illegible] ASI مظفر خان [illegible] $\frac{12}{11}$ 09 کاروائی تھانہ [illegible] درج [illegible] پرچہ [illegible] FIR [illegible] KBI [illegible] پرچہ بطور سپیشل رپورٹ [illegible]

$9\frac{12}{11}$ [illegible] MHC/PS YKS

Attested

[illegible]

Yaqoob Khan Shaheed POLICE STATION Takht-e-Nasrati (Karak)

HC: YKS.T.N

23-1-2012

ASHRAF ALI KHATTAK

ADVOCATE

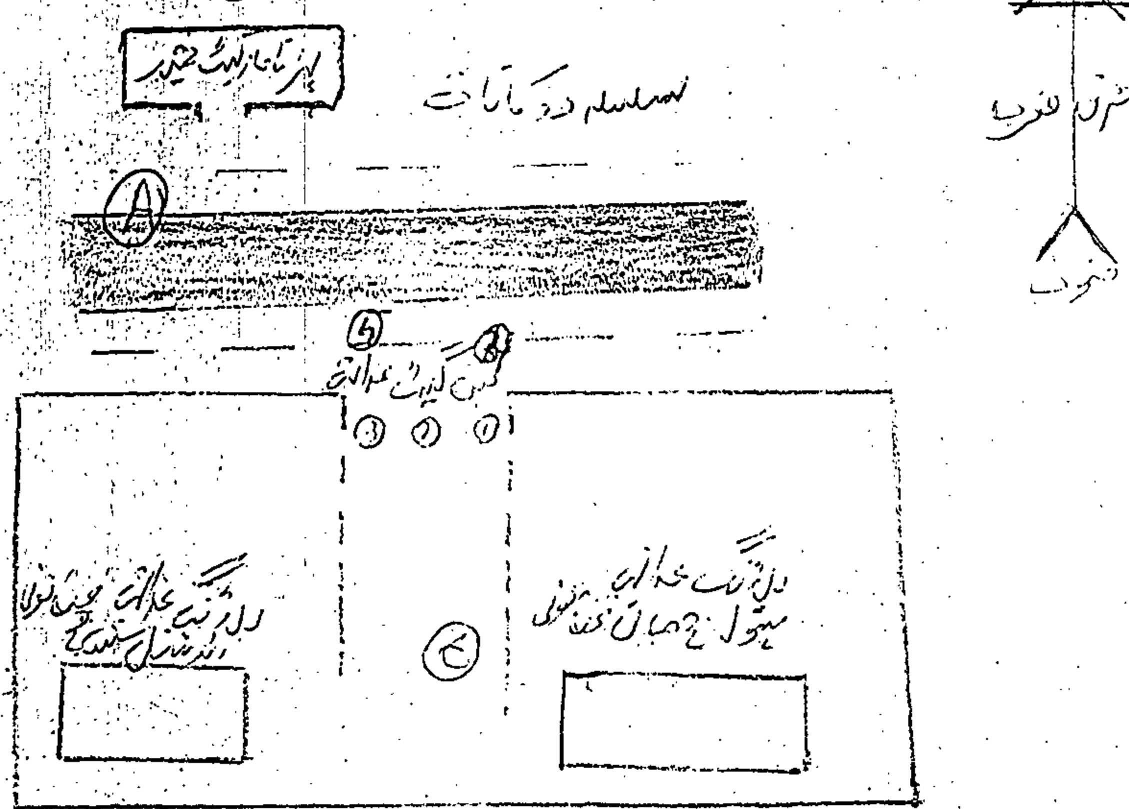
(10)

ضلع کرک

نقشہ موقع واردات

تھانہ ... شہید

مقدمہ علت نمبر ... مورخہ 12/... جرم 302 ... تھانہ ... پولیس ... 2022



محل وقوعہ: موقع ہذا اندر کچہری تخت ... بمقابل مارکیٹ حاجی حمید تخت ... میں ... ہو چکا ہے۔ جانب شمال سلسلہ دوکانات، مارکیٹ ... حاجی حمید تخت واقع ہے۔ جانب جنوب بلڈنگ کچہری تخت ... واقع ہے۔ جانب شرق، غرب ... سڑک تخت ... تا ... [illegible] ہوا ہے۔

مقام نمبر A یہ وہ مقام ہے ... جہاں پر مقتول ... کو قتل کیا گیا۔

مقام نمبر 1 یہ وہ مقام ہے جہاں پر ... 227 ... بروز وقوعہ بوقت وقوعہ اپنی موجودگی ... ظاہر ... ہے ... عدالت کچہری ... ہے۔ موقع ہذا ... دید ... ہے۔ ... بتلا دیا۔

نشانات

ASHRAF ALI KHATTAK
ADVOCATE

مقام نمبر 2۔ یہ وہ مقام نشاندہی کیا گیا جہاں پر کانسٹیبل انور خلیل [illegible]
ڈیوٹی پر موجود میں کھڑے تھا گو عمر اعوان اور وقوعہ
ہوا کو چشم دید نشاندہی کیا ہے۔

مقام نمبر 3۔ یہ وہ مقام نشاندہی کیا گیا۔ جہاں پر کانسٹیبل خالد الرحمن 2942
ڈیوٹی پر موجود میں کھڑے تھا گو عمر اعوان اور وقوعہ
ہوا کو چشم دید نشاندہی کیا ہے۔

مقام نمبر 4۔ یہ وہ مقام بیان ہوا۔ جہاں پر بوقت وقوعہ [illegible] وقوعہ
90 [illegible] محمد عثمان [illegible] ہوا کی موجودگی بیان ہوا۔

مقام نمبر 5۔ یہ وہ مقام بیان ہوا۔ جہاں پر بوقت وقوعہ [illegible] وقوعہ
5440 محمد عثمان [illegible] ہوا کی موجودگی بیان ہوا۔

مقام نمبر 6۔ یہ وہ مقام بیان ہوا۔ ہیڈ کانسٹیبل [illegible] وقوعہ
حاجی الرحمن 3432 میں [illegible] ہوا کا موجودگی بیان ہوا۔

فاصلہ جات۔ مقامات A تا G درمیانی فاصلہ

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	60 قدم
مقام 1 تا 2	1 قدم
مقام 1 تا 3	2 قدم
مقام 1 تا 4	3 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 5	6 قدم
مقام 4 تا 5	2 قدم
مقام 4 تا 6	30 قدم
مقام 3 تا 6	[illegible]

نقشہ موقع [illegible] نمبر 700 [illegible] گواہان چشم دید [illegible] موجود [illegible] مقام [illegible] گواہان [illegible] تیار کیا گیا

21/12/2011

ASHRAF ALI KHATTAK
ADVOCATE

دیکھ جناب DPO صاحب

"B" Annex. B

گورنمنٹ پیرس پشاور حاب نمبر 2286/13 فارم سنونہ تعداد ایک ہزار سنبر 20.06.2011 ... (فارم محمد صاحب) یعنی فارم (پولیس)

فارم نمبر ۲۴-۵(۱)

(11)

انسپکٹر جنرل پولیس صوبہ سرحد فارم نمبر ۳

کاؤنٹر فائیل

ابتدائی اطلاع رپورٹ

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

لیویز جان شہید

کرک

ضلع: 1400 وقت 9/12/2011

تھانہ: 529

تاریخ: 2:1410 ... 1345 ... 21/12/2011

نمبر: 7

۱	تاریخ و وقت رپورٹ	منجانب DPO کرک
۲	نام و سکونت اطلاع دہندہ مستغیث	... ڈی پی او ...
۳	مختصر کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو۔	بالمقابل ...
۴	جائے وقوعہ فاصلہ تھانہ سے اور سمت	... محمد سلیمان ... ASI محمد کمال ... ASI حاجی رحمن ... کنسٹیبل ... نمبر 700 ... 126 84/20 ...
۵	نام و سکونت ملزم	
۶	کاروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	... ڈاک
۷	تھانہ سے روانگی کی تاریخ و وقت	جناب ... انگریزی ...

منجانب DPO صاحب ... اطلاع ... نیچے درج کر کے ... خلاصہ ذیل ہے کہ DPO کرک ...
12684 ... جناب ... محمد سلیمان ASI، محمد کمال ASI، حاجی رحمن اور کنسٹیبل ... نمبر 700 نے بحوالہ مقدمہ
علت 529 مورخہ 9/12/2011 بجرم 302-109/148-149 ت پ ... یعقوب خان ... لیویز ... میں
ملزمان محمد ابراہیم ولد ... شاہ ... بوقت ... بالا نے ... افسران ... لہذا ...
... شاہ ... وغیرہ کی گرفتاری میں ... اور قصداً غفلت ... ظاہر
... ملزمان ... افسران بالا کی ... بالا ... جاکر ... کر
ملزمان بالا کے خلاف مقدمہ درج رجسٹر ... ہے ... بغرض ... حوالہ
... کیا جاتا ہے۔ حکم ... کاروائی ... ہے۔ ... گذارش ہے

[illegible]

SHO 9/12/2011

ASHRAF ALI KHATTAK
ADVOCATE

No. 12769 /PC
Dated 26/12 /2011

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Annex C 5 21

CHARGE SHEET

I, Sajjad Khan, District Police Officer, Karak as competent authority, hereby charge you Constable Muhammad Ishfaq No. 616 Police Lines Karak as follow:

(12)

"You Constable Muhammad Ishfaq No. 616 exhibited cowardice and avoided arrest of accused who committed offence vide FIR No. 529 dated 09.12.2011 under section 302, 109, 148, 149 PPC Police Station Yaqoob Khan Shaheed, despite the fact that you were present on the spot."

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

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

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

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

4 Intimate whether you desire to be heard in person.

5 A statement of allegation is enclosed.

ASHRAF ALI KHATTAK
ADVOCATE

District Police Officer, Karak

No. /EC
Dated /2011

(13)

DISCIPLINARY ACTION

I, Sajjad Khan, District Police Officer, Karak as competent authority, is the opinion that Constable Mohammad Ishfaq No.446 Police Lines Karak has rendered himself liable to be proceeded against departmentally on the charges of committing misconduct and negligence in duty.

STATEMENT OF ALLEGATION

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

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

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

3. The accused official shall join the proceeding on the date, time and place fixed by the enquiry committee.

District Police Officer, Karak.

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

Copy to:-

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

ASHRAF ALI KHATTAK
ADVOCATE

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Annex D

جناب عالی!

بحوالہ چارج شیٹ نمبری 1276 مورخہ 12/11 کو معروض خدمت ہوں کہ مورخہ 12/11 کو بوقت قریب

11:30 بجے DSP صاحب کے ہمراہ بسلسلہ جلوس ڈیوٹی جو کہ پیپلز پارٹی کے بارے میں منعقد کی گئی تھی۔

ڈوگر انکلیو میں جلوس کے شرکاء جمع ہو کر کافی کسان نے تقریریں کی بعد میں جلوس بازار تخت نصرتی سے

ہوتے ہوئے تخت نصرتی تحصیل کے سامنے پُرامن دھرنا دیا جس کے ساتھ انتظامیہ تخت نصرتی نے

بات چیت کی جلوس پُرامن طور پر منتشر ہوا۔

جب کہ جلوس ختم ہوا تو ایک اور جلوس بازار تخت نصرتی آ رہا تھا جو حلیم خان ASI کے حق میں

نعرے لگا رہے تھے۔ DSP صاحب نے تمام نفری SHO صاحب کے حوالے کر کے جلوس ڈیوٹی پر لگائی جس ہمراہ

DSP صاحب کچہری چلے گئے۔ تقریباً 11:30 بجے ایڈیشنل سیشن جج صاحب تخت نصرتی بغرض میٹنگ کرک جا رہا تھا۔

چونکہ نفری جلوس ڈیوٹی میں مصروف تھی۔ اس وجہ DSP صاحب نے خود سیشن جج صاحب کو ڈوگر انکلیو

تک باحفاظت ڈیوٹی کیا۔

DSP صاحب کو اطلاع ملی۔ کہ جلوس کچہری کے اندر داخل کرنے کی کوشش کر رہے ہیں اس وجہ DSP

صاحب ہمراہ ہم گنرز کچہری کے اندر آئے۔ اسی اثناء میں حلیم خان ASI وغیرہ ملزمان کو کورٹ

پولیس نے کچہری کے اندر لائے۔ تھوڑی دیر بعد حاجی الرحمن SHO مع دیگر نفری کچہری کے اندر آئے اور

DSP صاحب کو بتایا کہ جلوس خیریت سے ختم ہوئی۔

چونکہ جج صاحبان میٹنگ گئے ہوئے تھے اور ان کی آمد کا انتظار کر رہا۔ DSP صاحب وکلاء روم میں

بیٹھا ہوا تھا ہم گنرز ساتھ برآمدہ پر کھڑے تھے کہ تقریباً 12:30 بجے اچانک باہر کی طرف سے فائرنگ کی آواز سنائی گئی

DSP صاحب گیا تو گیٹ سے باہر نکل کر ایک شخص قتل شدہ پڑا تھا۔ اور ایک موٹر کار اور ایک

موٹر سائیکل پولیس موقع پر موجود تھے۔

SHO صاحب کو اطلاع۔ جانبازان اور عدالت سے نکل کر اپنے اپنے موبائل کے ذریعے

ملزمان کا تعاقب شروع کی۔

کورٹ پولیس کی استدعا پر DSP صاحب کے ہمراہ گنرز نے کچہری کے اندر آ کر زیر حراست پولیس

ملزمان کی سیکورٹی پر کھڑے ہوئے۔ ملزمان کی تاریخ پیشی گزرنے کے بعد باحفاظت کر کے جیل

پہنچائے۔ واپسی پر DPO صاحب۔ SP انوسٹی گیشن صاحب موقع پر موجود تھے DSP صاحب

ان کے ساتھ ملے اور ہم ساتھ کھڑے تھے۔

منجانب کنسٹیبل محمد اشتیاق بیلٹ نمبر ... تعینات پولیس لائن کرک

3-1-2012

ASHRAF ALI KHATTAK
ADVOCATE

اشتیاق

FINDING

Before unfolding our opinion, it is deemed appropriate to reproduce the brief facts forming the background of present departmental proceedings initiated against Mohammad Ishfaq constable No.616 (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 KHAN
ADVOCATE

(19) Annex F

ORDER

This order is passed on the departmental proceeding initiated against Constable Mohammad Ishfaq No. 616 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 Mohammad Ishfaq No. 616.

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

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

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

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

District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

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

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

District Police Officer, Karak

ASHRAF ALI KHATTAK
ADVOCATE

بحضور جناب ڈپٹی انسپکٹر جنرل آف پولیس کوہاٹ ریجن کوہاٹ (20)

بذریعہ: ڈسٹرکٹ پولیس آفیسر صاحب ضلع کرک

عنوان: عرضداشت برخلاف آرڈر بک نمبر 165

مورخہ 28-04-2012 جاریہ جناب DPO صاحب کرک۔

Annex: G

×———×———×

جناب عالی! سائل ذیل عرض رساں ہے

حقائق:

1. یہ کہ مورخہ [illegible] کو سائل ہیڈ کانسٹیبل محمد نعیم انچارج گارد "ہرا" مع باتیل، دیگر نفری پولیس سرکاری گاڑی میں موجود تھا اسی روز گرفتار شدہ پولیس آفسران کے حق اور گیس فراہمی کے بابت جلوس اہلیان لنگڑہ تخت نصرتی 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 اللہ) 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 کر دیا۔

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 بناء پر

P.T.O

ASHRAF ALI KHATTAK
ADVOCATE

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

وجوہات =

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

ب = یہ کہ ~~[illegible]~~ اپیلانٹ ماتحت سپاہی کی طرح ہیڈکوارٹر میں افسران کی نگرانی ڈیوٹی سر انجام دے رہا تھا۔ لہذا اپیلانٹ کو ان ہی الزامات کی بنیاد پر محکمانہ 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 ہو گئے۔ میں کچہری کے اندر تھا۔ لہذا بزدلی کے ظاہر ہونے کا سوال پیدا نہیں ہوتا۔

د = یہ کہ اپیلانٹ کا سابقہ ریکارڈ صاف اور شفاف ہے۔ جبکہ انکوائری کمیٹی نے یکطرفہ کارروائی کر کے کامیاب ہے۔ بغیر رائے قائم کی ہے۔

لہذا استدعا ہے کہ مندرجہ بالا امور کو مدنظر رکھ کر حکم متذکرہ کے منسوخی کا حکم صادر فرما کر مشکور فرماویں۔

ASHRAF ALI KHATTAK
ADVOCATE

Sig. Forwarded
Lo. Kk

سائل محمد ارشاد [illegible] سابقہ پولیس لائن کرک۔
محمد [illegible]

Annex H

POLICE DEPTT:

(22)

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: Shakil 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

ISHRAQ 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

dt 25/7/12

ASHRAF ALI KHATTAK
ADVOCATE

جناب عالی!

گزارش ہے کہ سائل کا ایک ایکسیڈنٹ ہو چکا ہے۔

[illegible] درخواست [illegible] خدمت ہوں [illegible] سائل کو [illegible]

[illegible] کے کاغذات کا [illegible]

حکم صادر فرمایا جائے۔

عین نوازش ہو گی۔

03 10/12

العارض

کنسٹیبل محمد اشفاق نمبر 619 پولیس لائن کرک

Sir

Forwarded for [illegible]

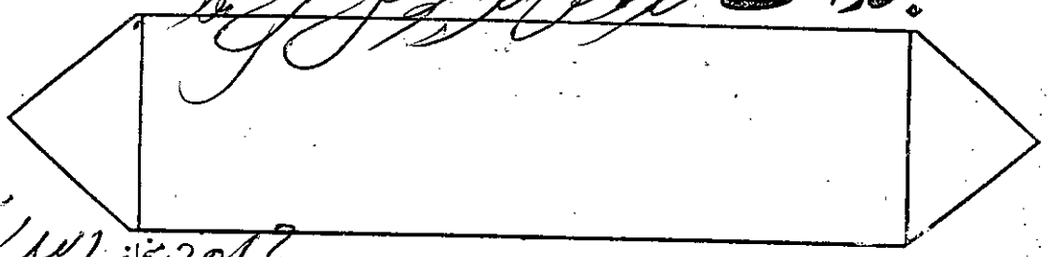
03-10-12

ASHRAF ALI KHATTAK
ADVOCATE

Allowed.
As per rules.

District Police Officer
Karak

بعدالت



مورخہ ــــــــــ
مقدمہ ــــــــــ
دعویٰ ــــــــــ
جرم ــــــــــ

بنام

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کارروائی متعلقہ آن مقام ــــــــــ کیلئے ــــــــــ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی 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 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہرجانہ 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۔

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 965/2013 titled

Ghani-ur-Rehman Constable No. 274 s/o Police Lines Karak (Appellant)

Versus

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

Subject: PARAWISE COMMENTS /REPLY TO APPEAL BY RESPONDENTS

Respectfully Sheweth:-

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

Preliminary objections

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

FACTS

1. Correct according to record, need no comments.
2. Correct, need no comments.
3. Correct, need no comments.
4. Correct, need no comments.
5. Correct, proper charge sheet and summary of allegations were served upon the appellant and DSP Mir Chaman Khan SDPO Circle Banda Daud Shah was appointed as an enquiry officer to conduct proper enquiry and to submit findings of enquiry. The enquiry officer recorded the statement of appellant and submitted finding vide his office No. 21 dated 10.01.2012 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/EC dated 07.02.2012 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 inquiry committee fulfilled all the codal formalities.

6. Correct to the extent o D/A.

7. Incorrect, need no comments.

GROUNDS

A. Incorrect, the appellant was treated in accordance with law/ rules, proper charge sheet and summary of allegations were served upon the appellant and proper Departmental enquiry was entrusted to a Police officer of the rank of DSP, his finding report to the effect of award of major punishment without recording evidence was refused by the competent Authority i.e Respondent No. 3 being not plausible and Enquiry committee was constituted to ensure detailed probe and to submit proper finding report. Lenient view was taken by Respondent No. 3 while passing impugned order on the recommendations of enquiry committee. Copy enclosed as Annexure "B".

B. Incorrect, as in the first enquiry no proper enquiry was conducted by initial enquiry officer and statements of concerned Police officers were not recorded due to which finding report submitted by DSP Mir Chaman vide his office No. 21 dated 10.1.2013 was not entertained and proper enquiry committee under the chairman ship of superintendent of Police Investigation Karak was constituted with a view to ensure proper compliance of law/ rules and the committee fulfilled all the requirements.

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, need no comments.

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

Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
Respondent: No. 1

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

District Police Officer Karak
Respondent: No. 3

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 965/2013 titled

Ghani-ur-Rehman Constable No. 274 s/o Police Lines 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 LETTER**

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

Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
Respondent: No. 1

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

District Police Officer Karak
Respondent: No. 3

...2013 titled ...lice Lines Karak (...

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 965/2013 titled

Ghani-ur-Rehman Constable No. 274 s/o Police Lines Karak (Appellant)

Versus

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

Subject: **AFFIDAVIT**

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

Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
Respondent: No. 1

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

District Police Officer, Karak
Respondent: No. 3

ORDER

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

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

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

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

District Police Officer, Karak

O.B. No. /EC,
Dated / /2012

FINDING

Annex: B

Before unfolding our opinion, it is deemed appropriate to reproduce the brief facts forming the background of present departmental proceedings initiated against Javed Iqbal constable No.718 (hereinafter referred to 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

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. Dalqisam 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 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. Then 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 Ghani ur Rehman No. 274 then posted with Cobra Mobil. Succinct facts leading to the instance departmental proceedings against him are as follows:-

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

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

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

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

No. 465
28/4 /2012

District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

5028 /EC, dated Karak the 30/4 /2012.

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

District Police Officer, Karak

وظائف 2015

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 965/2013 titled

Ghani-ur-Rehman Constable No. 274 s/o Police Lines Karak (Appellant)

Versus

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

Subject: PARAWISE COMMENTS /REPLY TO APPEAL BY RESPONDENTS

Respectfully Sheweth:-

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

Preliminary objections

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

FACTS

1. Correct according to record, need no comments.
2. Correct, need no comments.
3. Correct, need no comments.
4. Correct, need no comments.
5. Correct, proper charge sheet and summary of allegations were served upon the appellant and DSP Mir Chaman Khan SDPO Circle Banda Daud Shah was appointed as an enquiry officer to conduct proper enquiry and to submit findings of enquiry. The enquiry officer recorded the statement of appellant and submitted finding vide his office No. 21 dated 10.01.2012 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/EC dated 07.02.2012 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 inquiry committee fulfilled all the codal formalities.

6. Correct to the extent o D/A.

7. Incorrect, need no comments.

GROUNDS

A. Incorrect, the appellant was treated in accordance with law/ rules, proper charge sheet and summary of allegations were served upon the appellant and proper Departmental enquiry was entrusted to a Police officer of the rank of DSP, his finding report to the effect of award of major punishment without recording evidence was refused by the competent Authority i.e Respondent No. 3 being not plausible and Enquiry committee was constituted to ensure detailed probe and to submit proper finding report. Lenient view was taken by Respondent No. 3 while passing impugned order on the recommendations of enquiry committee. Copy enclosed as Annexure "B".

B. Incorrect, as in the first enquiry no proper enquiry was conducted by initial enquiry officer and statements of concerned Police officers were not recorded due to which finding report submitted by DSP Mir Chaman vide his office No. 21 dated 10.1.2013 was not entertained and proper enquiry committee under the chairman ship of superintendent of Police Investigation Karak was constituted with a view to ensure proper compliance of law/ rules and the committee fulfilled all the requirements.

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, need no comments.

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

Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
Respondent: No.1

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

District Police Officer Karak
Respondent: No.3

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 965/2013 titled

Ghani-ur-Rehman Constable No. 274 s/o Police Lines 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 LETTER**

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

Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
Respondent: No. 1

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

District Police Officer Karak
Respondent: No. 3

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 965/2013 titled

Ghani-ur-Rehman Constable No. 274 s/o Police Lines Karak (Appellant)

Versus

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

Subject: **AFFIDAVIT**

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

Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
Respondent: No. 1

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

District Police Officer Karak
Respondent: No. 3

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. 105 /EC,
Dated 07-03 /2012

...ellant)

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

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. 529 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 so no one was arrested on the same day. A 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 Ghani ur Rehman No. 274 then posted with Cobra Mobil. Succinct facts leading to the instance departmental proceedings against him are as follows:-

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

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

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

Keeping in view the recommendation of enquiry committee and subordinating role of accused Official, penalty of stoppage of one annual increment with accumulative effect imposed on Constable Ghani ur Rehman No. 274. 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. 5028 /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. 967 /2013

M. ISHFAQ 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