S.A 970/2013

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.

hainnan

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.



21.11.2017

(MUHAMMAD HAMID MUGHAL) MEMBER 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

26.09.2016

30.01.2017

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

ber

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.

(ASHFAQUÈ TAJ) MEMBER

(MUHAMMAD AAMIR NAZIR) MEMBER 11.11.2014

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

Reader

27.02.2015

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

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

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

before D.B. MEMBER

BER

BER

JUB Isob (.09.01,2014

Jisi.

213

4.5 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 2.4.2014.

Chairma

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.

hairn

19.09.2013

Appendito. 970/2013 Michig willows. 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.

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Chairmar

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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.

01.11.2013

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

Form- A FORM OF ORDER SHEET

	Court of	
. • • •	Case No	<u>MO /2013</u>
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. Qismat Ullah was received on 12-11-
 -		2012 which was returned to the counsel for the appellant for
		completion and resúbmission 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		REGISTRAR 7
· .	15-7-2018	This case is entrusted to Primary Bench for preliminary
	÷	This case is entrasted to Thinary beneficit premining
		hearing to be put up there on $19 - 9 - 20/3$
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The appeal of Mr.Qismatullah No**774** 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. 1287/S.T. Dt. 13/11 /2012.

SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

MR.ABDUL HALEEM KHATTAK ADV. PESH.

hi, Re- Submitted appr conflictions

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. <u>مردق 201/10 / 10</u>

Qismat Ullah No. 732, Police line Karak

.....Appellant

Versus

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

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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)		А	9-10
V 4.	Copy of FIR No.539 U/S 155 Police Order 2002 against appellant	21-12-2011	В	11
15.	Copy of Charge Sheet and Statement of allegation	· · · ·	С	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	Н	22-24
11.	Wakalat Nama	· · ·		25

Appellant

Through

Alio Khattak (Ashra) Advocate, Peshawar

Dated: $(\sqrt{2012})$

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.____/2013

Qismat Ullah No.732 Police Line Karak

.....Appellant.

Versus

Application for amendment in the heading of the appeal.

Respectfully Sheweth,

 That appellant has filed the above mentioned service appeal before this Honourable Court, which is fixed for preliminary hearing on 01-11-2013.

2.

3.

1 1

That appellant has erroneously made an error in the heading of the appeal.

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."

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

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

Through

Appellant Jshvo Ashraf Ali Khattak, Advocate, Peshawar.

Dated: _____/ 10/ 2013

4.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 970 /2013

Qismat Ullah No.732, Police line Karak Appellant.

Verses

1. Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar.

2. The Regional Police Officer, Kohat Region Kohat.

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

do-submitted to-CT and filed.

2

Respectfully Sheweth,

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

- 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).

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:-

<u>Grounds:</u>

6.

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

3

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

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was passed in violation of rules.

- Eri

- 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

5

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

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

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

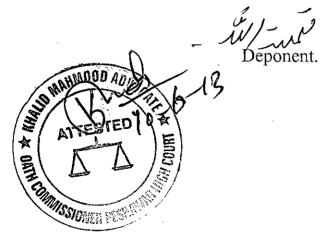
Through

Appellant Raf Alis Khattak. Advocate, Peshawar.

Dated: ____/ 11/2012

Affidavit.

I Qismal UllahND, ⁷³² 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.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.__ /2019

Qismat dllaht732, Police line Karak Appellant.

Verses

Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar and othersRespondents.

Application for condonation of delay if any.

Respectfully Sheweth,

- 1.That appellant has filed the accompanying appealbeforethisHonourableTribunal.
- 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.



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.

Deponent

Dated: ____/ 11/2012

Counter Affidavit

I, Q_{15} and Q_{15} and

2286/1: درم مدر تعداد ای برادر مرزد درو. 2010.00 لی فرو تا دم من تا دم (بلس) البكثر جنرل بإليس سويه مرحد فارم نمبر الم فارم تر ٢٠ ـ ٥ () ابتداني اطلاعي ريورث نا تل ابتدائ اطلاع نببت جرم قابل دست اندازي يوليس ريور فشده زيردف ١٥٢ مجموعه ضابطه فوجدارى ينار تدرك <u>دونو ب یان شهید تن</u> تاريخ ، وقت و توجه الم ج وت مه 14: x 47 529 <u>12.</u> ۲۵ رقبت ۱۵ ر -15-15 الماريخ وذقت ربيرر ال کرد مروحان با زر بام دسکونت اطلاع د منده : 102 302/109/145 محتمر کیفیت جرم (معدد نعه) چال اگر کچھ تر در دن میں **درب از**نی ی دن مدور فرمب <u>ا</u> به کوس ے لو حائ دلوعدفا صله تحانه سے اور م زارس ما ورک رق عددالوفرد ودرعددادد، سود سه المت م ۵ ـ رآبی میاسده پیر منبع زما م کار ان دیشتش سرمت ن کامی اکر اللام درج کرنے میں توقف ہوا ہوتو دہمہ بیان کرو بطو رسبتل زلرر تساند بردانكي كي تاريخ ودنتر خلذرنا ن طين الا 2 4 23 and man and in ت بخدد من شماح بد مبول شركر مجديم ابتدان اطلاح يصحيح درن كرد. م - 1 فسر الحارج تقا بتر اللدج ر، من اير حذبي درم سوال البيئا ال من الفرق المن العش أ زون عالم ويت المرح في ما في مد حضر مع المعامة ساسه مردما ن با كا تليا في الحذران الدريولد بجرد الرب معديول في والدود. مسما ذه دليسيه ما در رقيم عدد لرميس الم المستقرل في جين سيد المعرد إن المند المورث ترما بن التورز تيما فالما المت المومان منهم ىر ل، تىن بىر ه آن آبا دع بستره المثلالين سيس 25 1 2 الدو ال مدرد من - مبشى كارا عا كمتر مه سري والدن المنتجار، من الن ينو ي مف - اس ومت حكم مان اكم ع حق بين ان عرضة وال ولدين جنه يتوار - الأسن مع عالمتريب منتول ، والده اب جم مبلوس بعنى سفا لدهما وز برا ليكل برسيو وسرا - ليكن حين قدم التح جا عر مما ف سمت سي الك الرك د بركد مدين جر 9.88 مودان من من من من منه خال با برا در مذا د دل مسم ولد جان شا ٥ سا يحدر الدونير وللأغ راللدة بتبناك ارم تسا ب1 ہے بیر نے مقبول عالم دیب بے ظهم التملرة وي . النبي الطور مروق ورومها المنال النظر فرا . الوللذا ن مس عن المبر ولو حد الم معذون د بان سوم المثلالد : حتلم البرديم تله وراسم التل في مترل ما ل مر ما الراد مثل م لمترل - شرارخ کی و $\dot{v}\dot{v}$ عالمة بب رَّب مركز فرقم يرجان بخص والماية -ت بريماي مز سواح ... و م ب علدون والدرف الم ماة بالنسم خاذ ع تيم خدد دعلا ب من بعد دم ما با ، کالدف اینے میا ل ترب تناد لوندا و مون مدير من مدارم سوا ، تم جر كو بتوا برك ما من خدم من ميرا بع شد در در دعون الم المان الدين الانتها با بالد المان المراجع وسبكانية الم من المراجع المربور ما و بال مروجي سباء ، بربا با "با ، درست ملم مرم ومرد ورز محدد وبنه الدودونيت ، . بهم حاة دبديها ما ، مرادي مشرك ف دمي ثما يبدي ايت ان در دد ، مرزم دبر) ل مردب تدمی دخدمده موسط از م افراد ى حجر، مين بعشرين ترياسون، مع توله ما تغيث ی جنوالدزو، چکواله کوا 1. 000 بن كرود 13 11 مكاني ما يرا ما در درد ، تدرد ، مذه ما مذهبان منت او ٨ الدر ومراج معقد من all المراجع المركبة وتفلية " رد، الم روف المساحد مع المركزة المرجع المركزة المرجع الما المرجع كم المسروف الملدي وكما كم ب Vortation Prites 2 01 11 2 Curry of ر حرابہ اکا کا جباحت کا جاتی کے A Hest och Lecon Pure Station istali (Rarak YKS. TNM 3-1-20 B

مىلىل نەر بارا «= حرق فرا 3 5 O در من ندائ مربل میتول ج مان دند مربل ارت عرائت موريانوا ل در بع و در در من الد جمر من عمل بل مارا به حاق عمر من س دوما بر حین حق حان من باعا بل مارا به حاق عمر برما حاق عمیر من طرق در بعانت طرف بل الراب در با ت مارا والتع 2. جانب مرق بعثر ج مجد مرجب في نولي تا بريد 2 Jun un for il منا عبم به در دن را دار الم . جرال بر متحق ما مز الم فتآ له (أم منا غبر مد وه منا ع² جمال الم بوت مرد است الرو المرع ح² مرار مدر الرت وتوجد الرود دار دور دار دور الرود جم در البرائي . ٦ در در المري مي كمد البرا ·LU ADVOCA

Ling vice in vinin all'him . در المر محروم المن الماك عور ا برنا ورا و وجم دیر تر ان ج وت) عرف من مررمات جال ارت مالا د نوبی ایر فوجود میں کہتے کہ کالا کا کو اور ورو حورا کے حیثہ دہر ستر رہا ہے فنا ما موده ما البرا ما الم المار دوم بوساد و filled in one also in the June of sopo في عمر مرود من سال برا جمال برا مرور بو برور معلى في المرعال من مراحد الى حرج دامى مان مر س) عرض بر ده من مان موا جو المات الدر المفاردة و ما و Janger 23 - 237 = 23 A J 1 8 21 4 10 104 05 2 3 3 2 3 1 2 6 ° 5 (in 1 , 5 - 28

باصويد مرحد فأدم مبرجو

كاوئنز فائتل

<u>.</u>

ربۇر باب مرك ما قى

20.06.201 لدور ومرسول مجمع مادم (بيس) فارم مر ٢٢-٥(١)

ابتداني اطلاعي ربورك ابتدائي اطلاع نسبت جرم فابلن دست انداز كى يوليس ريور ف شده زيرد مستقل مشرع مشابط وجداري

D. 1400 Cues 2011

3-1345 23 27 12 Cost

- JA DPONCE 1202-5-FU-2-1755 CL توليتر () (ما ما

tettette

J.S. C.M Signilically

بالالالا عاريم حذاب والمتعلقة المحالية عي في والمن والعد المحرفة الما حداث مس كرومود

TN 12 TO BI 20

تاريخ دونت ريورث نام وسكونت اطلال دبهنده مستغيث مخصر كيفيت جرم (مددنعد) حال اكر بجها كما مو-مان دي المريح والحالي (د) مالكر من نام دسکونت مکزم`

کاروائی جزئتیش بر متعلق کی تکی اگر اطلاع درج کرنے میں توقف موا موتو دجہ بان کرد

<u>۔</u> روائن کہ نارج دونت

جر سیان ، ۱۱۵ فی کال ، ۱۱۵ طاف رون اور انسل مسل / ۲۰۰۵ لے والر میدم تر سمال ، ٥١١٦ فير كمال ، ٥١١٦ حاى رعن اور لنسب حسب ، ٥٥٠ مي وار مرام علت ٦٦٦ ورم المرجو حسم ٢٥٩ - ٢٥٠ على على العدى من من علت ٦٦٦ وسرن بلا ت لدمت وحصر مليطان جمامير مع ولا حسان ساه ما جام لياسي انسرن بلا ت لدمت وحصر مليطان جمامير مع اور معمد عفل عالي شريل با مان مده سام ونسو ك ترسل مالا حس بالا ك وسال بال حل مرطار مرجع على مان ان لولسان اسران بالا حس بالا ك وسال بال حل مرطار

ما مان بالاس خلاف مندم در . 7 رصيب المرك لعل مرجم الترى لعت ال المكر مسلف كما حال الم - حكم حرصار لعن عامان مر الم

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CHARGE SHEET

I, Sajjad Khan, District Police Officer, Karak as competent authority, hereby charge you Constable Qismat Ullah No. 732 Police Lines Karak as follow:

"You Constable Qismat Ullah No. 732 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."

Aud. C

"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 lluid,

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.

Inlimate whether you desire to be heard in person.

A statement of allegation is enclosed.

District Police Officer, Karak

No. David

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ACTION

I. Sullad Khan, District Police Officer, Karal as competent authority, is io opinion that consuble Qismat ullah No Tag olico Lines Karak has rendered ninsell liable to be proceeded against departmentally on the charges of committing misconduct and negligence in duty

STATEMENT OF ALLEGATION Stephent Bred

Constable Dismat ullal 10733 exhibited cowardice and avoided arrest of accused who committed offence vide FIR No. 529 dated 09,12.2011 uncer section 302 109 148 149 PPC Police Station Yaqoob Khan Shaheud, 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.

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

District Police Officer, Karak.

/EC (enquiry) dated

1. 34 Copy to:-

The enquiry Officer for initiating proceeding against the accused under the Provision of Police rules 1975

Constable Ghani Rehman No.274 Police Lines Karak

ASHBAFALI ۱DNOG

Aux D 136213 المراجارج من الم 275 مراح 12 مراح فراج فرون مرد مراج الويت التي 08:30 ع مراد مر الاسلى جل الاسلى حل من قلوى جلس مسلدى 2 مار مس) فدالعد ملى لما لا المحمد من حلوس فى ستد كار جسور فافى كسان ف لقد من لعد مد جلس بازار فى العرف بو يرج محيث لفر تحيل في ساعن مراس دمرادا . عن ساكور سنا استر في في ات جست مر عطوس مراب الموزير مشرف مرا. جب آسي علوس فقم سير في توامد العرطوس از روت العن تا سواحلها في دهم ب ت عن من الفر لظالت رس pso جماد ان ما الفري ما الدي على من كول در لفانى من ميره حروصادب مسى ما على من . تعريباً "د: ١١. جريد منها سن ج ما عب تعد لول لفرض عُسك من جار ما في الحو مله لف جلوس تركون مو الصوف لمي - حرك ما حد الا مسين ج ماد خروا فراغل ما بالمر فوق ف DSP جماعت تحد الخديج على كم علوس تسجيري ي الدرون ورفال وروى كوس وركم بدرس وم عداد ماد سرمادی مون عرض حرب منتخبری محد تعرف می معرفی مراح ، اسی است مس میں میں ور المران کو با م محد مسر میں شرق میں کا اندر لرس تحمیری دسر لعبرہ میں کا الحلی معدد تکر لفری سیسی ک نسیجہ می سے اندر آئے ۔ اور کا خلاصاف کو دیتا یا ، مرحلوں فریب سے ضکم موری -جرائم، جماد نالخص مشك كم سوت ت بدور الما تر مادن الم رور الما معادب ومدولها توسينا موالها - مع مرز ساميد المراضي - مراحا من بالمري طرف من حارماً فالر منى - 25 ٩ حاص مدار كذر المرائيل مر ورك ستحص عسل سور و فراقها - حسب ساليد و مراحد ما دور الد ور ساندین می و و بر وور رای : off ale - 2 براستوار - جانبا وسوار کیجیدی سے با فرنس مراس سے اس و فرنگ نے وراہے ما ما عامی ما عماد متر محک -کویا ہے کولس فی استر عالم 20 حماص مسالقہ ہم تمنز میں ی سے اندر آخر ر جاس کا جلی طرطن کی سیکر رقی کو کیئے سوئے - وارمان تماریخ بیشی گزرے کے لور ماحفا کی کرک جبل سیائے -اوالیہ کا مراح حماد الوسٹی کست ماحق در چیچ در چیچ در ماحا کی کر میں کا کا کر بیجو بید ہے جد م -2-2-2 1 2000 وعطل لسيل حسب المتنز و73 مسعنه، لولس لدين ر SHEAFAL KHATTAK

FINDING

Before unfolding our opinion, it is deemed appropriate to reproduce the brief facts forming the background of present departmental proceedings initiated against *Qismatullich* constable No.732 (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 NoteS3, 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. Site 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 , lease 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

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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 mctorcycle 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 -novo enquiry vide order bearing No.105/EC, dated 07.02.2012.

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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 bafore the high court and Police highups. 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 Madistrate has also refused arant 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 on , was arrested on the same day. Investigation team comprising senior officers made observations and

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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 iKhan 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 doub' riminal 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, e, :• Karak

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Sub-Divisional Police Officer, Headquarter, Karak

Inspector Legal, Karak

ASHRAF ALYKHAI TAK פיע

ORDER

This order is passed on the departmental proceeding initiated against Constable Qismatullah No. 732 then posted Police Station Shah Salim . Succinct facts leading to the instance departmental proceedings against him are as follows:-

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That on 09.12.2012 the inhabitants of village Takht-e-Nastrati had arranged protest procession in favour of Hakeem Silica ASI arrested in Uzma Ayub rape and abduction case FIR No. 363/2010 Police Station Yagoob 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 Qismatullation 732.

Charge sheet based on allegations of displaying cowardice on the occasion of inurder occurrence vide FIR No. 529 referred above and also avoiding follow up of accused involved in the above occurrence was issued to Constable Qismatulle No. 732.

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 Construble Qismatullah No. 732 He is reinstated in service from the date of suspension.

O.B.No. Dated ____ _/2012

District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK /EC, dated Carak the 30

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

District Police Officel, Karak ASH KHATTAK ADVOCATF

/2012.

مر مناخر بی ال مرجم الف لیو کی طور من تواعی مرجم الحریکی ال مرجم ال مرساطت بنية المصري يولب آفاسها م المراح من الم الم المراجعة المرجمة المرجمة المرجمة المرجمة الم Aug Gr المرور 11 ومرابع المريط المريس الحارج المريس المرابع المرابع المرابع المريس ا «ماشیل، دیگرافزی بر میں مرکاری کا دی میں نو جود دیا ای مور ر منا مشرر : بورس رک مسروں کے مامیت اسر استریز بورس رک مسروں کے مستق الور میں مردیہی کمنے مامیت جاسَر الازالية وأنت توبي مس شروع مرد الور برامن لو بركر مسالم المحاط عوالت مح الدر فراف المحد تحرف اور ما سے ما مر کر کا اواز کا کورافیاج نے ہے۔ وتعسب إلى تحكم دما الورسليم محكم عالم رمع كالرب للل الورايان اورايان اوراي اج مى رسرقيا دين الرمان في لقاب كرف المس المرمان كالمولى من مراس من المراب المراب المرابع به حل جان تو گران رونه کرد اور در در کا حفاظهره مرب حادی بنا 4= اور تهديسال نجاج من كامل الورد ورس جوارد . ٤ = اور والصاحب في والمرزد را مرم مرم و الاسال كاري مسالاد وركيس علم سطرر ميرمندي . وهذا ومس مناء

مندم وجوبات برمزور فرا على على المرزمين في الم عالى على مرموز و (فرون ما زن ج امر مرون وافعات خروى سران در دع رفائل المرار بدر المرار م الزمات ك منا سر ولى ذار دن علاف قانون مع المول بي الرمان ى مسكوم ايد في او دلم ك ن معدف فر ورارى مفرم معكرم هع - ریمرا میرن سنم دی تری از مان کا تقاضی کا . در مازمان از مون میں کا ورا ب ہوتے ، میں جبہ کے اور قا بھروا در ای کے مطالبہ سے كاسول سيا ميس - = " " المرابط كا من الفر (كادو من من المراسية في مزير (كار برك كرم م مكرون كارواني كريدكم كابدان مع المفرر الف قاع كما م تحسبنا استدا عسيه موزاج بالا اس مرمونظ رغنكر تم مسرحته كي مو كالمح مادون وتروانك -ASHRAF AN KHATTAK porwarde . in the port of the state

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POLICE DEPTT:

<u>ORDER</u>

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

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

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

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

The appellant were heard in Orderly Room heid 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



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 WITIAZ SHAH) PSP,QPM Dy: Inspector General of Police Kohat Region, Kohat.

No. 65161 IEC de 18/1/12

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

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

EB ISRC / OASI F. Forn laction

A Hested.

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

White Concerne Sis 0-23 a del for for opics pin - to the را المر و (الا We when a which and the Ersin OZFIP.F. -107.65 03 10 - JOW 732 PM IN deð -J. hi <u><u></u></u> 03-10-12 Allowed. As Ner rules 9 District Pulice Officer Barek

Here in in the Sppo vir in invõ دعوكي باعث تحريرا نكه مقدمه مندرجة عنوان بالامين اپني طرف ہے داسطے بيردي دجواب، جي وکل کاردائي متحکقس کر ج آن مقام _____ كيلي مريش من هذا المريس مقررکر سے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ، وگا۔ نیز وکیل صاحب کوراضی نامه کرنے دنقر رثالت ہ فیصلہ برحلف دیتے جواب دہی اورا قبال دعوی اور بصورت ذکری کرنے اجراءاور صولی چیک در و پیدار عرضی دعوی اور درخواست ہر شم کی تقید یق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم ہیروی یا ڈگری یکطرفہ یا پیل کی برامدگی ادرمنسوخی نیز دائر کرنے اپیل نگرانی دنظر ثانی و پیروی کرنے کا اختیار ہوگا۔از بصورت ضرورت مقد مہذکور کے کل ماجز دی کاروائی کے داسطےاور دکیل یا مختار قانونی کواپنے ہمراہ پااپنے بجائے تقرر کا اختیار ہوگا۔ادرصاحب مقرر شدہ کوبھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گےادراس کا ساختہ پر داخته منظور قبول ہوگا۔ دوران مقدمہ میں جوخر چہ دہر جانہ التوائے مقدمہ کے سبب سے دہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہویا حدے باہر ہوتو دکیل صاحب پابند ہوں گے۔ کہ پیردی 🛪 مذکور کریں۔لہذاد کالت نامہ کھندیا کہ سندر ہے۔ ,20 کے لئے منظور ہے۔ بمقام Addit Sa Addition Addition

an the state and a state

Service Appeal No. 970/2013 titled

Qismat Ullah Constable No. 732 of Police Lince Karak..(Appellant)

Versus

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

Subject: <u>PARAWISE COMMENTS /REPLY TO APPEAL BY</u> <u>RESPONDENTS</u>

Respectfully Sheweth:-

1.

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

Preliminary objections

- 1. That the appellant has got no cause of action to file appeal
- 2. The appellant is estoped by his own conduct to file the present appeal.

3. The appeal is badly time bared.

- 4. The appeal is liable to be rejected on the ground of non joinder & mis-joinder of necessary parties.
- 5. The appellant has not come to court with clean hands.
- 6. The appeal is not maintainable in its present form.

FACTS

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

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,

<u>GROUNDS</u>

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- 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".
- В.

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,

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.

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.

I.

E.

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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. 01

Deputy Inspector Géne ral of Police Kohat Region Kohat Respondent: No.2

District Police Office Respondent: No. 03

Service Appeal No. 970/2013 titled

الم المتحر ال

Qismat Ullah Constable No. 732 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: <u>AUTHORITY</u>

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 Convert of Bolio

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

District Police Offi r Kar Respondent: No.03

Service Appeal No. 970/2013 titled

Qismat Ullah Constable No. 732 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: AF

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<u>AFFIDAVIT</u>

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

Mag

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

District Police Of Respondent No. 08

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ORDER

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3.

Charge sheet and statement of allegations based on displaying cowardice and avoiding arrest of accused ibrahim Shahwho 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.

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

(07) days positively.

0.B. No. 105 IEC, Dated <u>パアー の)</u> /2012

N: 1620-22/EC N: 212/12

District Police Officer, Karak

ORDER

This order is passed on the departmental proceeding initiated against Constable Oismat Ullah No. 732 then posted as Gunner with DSP Takht-e-Nastrati . Succinct facts leading to the instance departmental proceedings against him are as follows:-

That on 09.12.2012 the inhabitants of vilage 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 Qismat Ullah No. 732.

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 Qismat Ullah No. 732.

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 Qismat Ullah No. 732. He is reinstated in service from the date of suspension.

O.B.No. Daled _ 28-14___12012

District Police Officer, Karak

District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK No. 50/8 /EC, dated Karak the 35/4 /2012.

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

EINDING

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:-

Annex: B

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 Ulleh 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

The press and media highlighted the rape case of Mst: Uzma Ayub. Therefore the Honourable Chief 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 Uliah 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 forde-novo enquiry vide order bearing No.105/E'C, 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 premate 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 Investigation Wing CPO, Peshawar. Investigation team headed by Deputy Inspector General of Police, Investigation-II, Khyber Pakhfunkhwa Peshawar conducted investigation in the case and also publitted various progress reports before the high court and Police highups. 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

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 faci∋ case exists against the accused officer. This is also on the record that the killers of the Alamz€b 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 isucceeded 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 avoided follow up of the accused as no one was arrested on the same day 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, Headquerter, Karak

Inspector Llegal, Karak

Service Appeal No. 970/2013 titled

Qismat Ullah Constable No. 732 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: <u>PARAWISE COMMENTS /REPLY TO APPEAL BY</u> <u>RESPONDENTS</u>

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.

The appeal is liable to be rejected on the ground of non joinder & mis-joinder of necessary parties.

The appellant has not come to court with clean hands.

6. The appeal is not maintainable in its present form.

<u>FACTS</u>

4.

5.

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,

<u>GROUNDS</u>

A. Incorrect, the appellant was treated in accordance with law/ reles, 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".

Β.

Correct, as in the first inquiry nc 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,

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,

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Incorrect, already explained vide ground A and B above. 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.01

Deputy Inspector General of Police

Kohat Region Kohat Respondent: No.2

District Police Offic Respondent: No.03

Service Appeal No. 970/2013 titled Qismat Ullah Constable No. 732 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: <u>AUTHORITY</u>

יאט

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 Pakitunkhwa Peshawar Respondent: No.01

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

District P olice Off Karak Respondent No.03

. No. 970/2013 titled

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 970/2013 titled

Qismat Ullah Constable No. 732 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 Po Respondenti/No. 03.

Charge sheet and statement of allegations based on displaying cowardice and avoiding arrest of accused brahim Shah who allegedly committed murder of Alamzeb brother of Mst. Uzma Ayub (abduction and rape victim, in their presence, was issued to the Police officers cited in the appended list. SDPO Banca Daud Shah was appointed as Enquiry Officer to scrutinize the conduct of the delinquant 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

ORDER

Annexare "A"

The undersigned is of the opinion that imposing penalty on a caused officers on the basis of nollow 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.

Superintendent cf Police, Investigation Wing, Karak.
Deputy Superintendent of Police, Headquarter, Karak.
Inspector Legal, Farak.

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

ON NO 15 5 150, Daved 27-02 12012

District Pol ce Officer, Karak

EINDING

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

Annex: B

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 willing the meaning of 22-A Cr. P.C with prayer of registration of case on charges of abduction of he 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, Mist: Baigisam 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

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The press and media highlighted the rape case of Mst: Uzma Therefore the Honourable Chief Minister, Khyber Ayub. Pakhturkhwa 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

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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.

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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.

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Investigation in the murder case of Alamzeb was innolented to investigation Wing CPO, Peshawar. Investigation team headed by Deputy Inspector General of Police, Investigation-II, Khyber Pakhiunkhwa Peshawar conducted investigation in the case and also submitted various progress reports before the high court and Police highups. The investigation team also made recommendation for registration of ease 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 slation Yaqoob Khan Shar eed 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 Mugistrate 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 Alamzeo 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 tothargic conduct of the Police officers present on duty brought bad name for the area 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 Atamzeb and the killers made good their escare despite the fact they were not armed with lethal weapons. The accured officer and others also avoided follow up of the accused as no one was crreated on the same day avoided follow up of the accused as no one was crreated on the same day 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 Folice 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 regligence 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 cur 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 recommand leniency in award of penalty to the accused officer.

Super intendent of Police, Investigation: Wing, Karak

Sub-Divisional Police Officer, Headquarter, Karak

inspector Llegal, Karak

ORDER

This order is passed on the departmental proceeding initiated against Constable Oismat Ullah No. 732 then posted as Gunner with DSP Takht-e-Nastrati . Succinct facts leading to the instance departmental proceedings against him are as follows:-

That on 09.12.2012 the inhabitants of village Takht-e-Nastrati had arranged protest procession in favour of Hakeem Shah ASI arrested in Uzma Ayub rape and abduction case FIR No. 363/2010 Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati). The strength of Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati) and Shah Salim under the direct supervision of Muhammad Subhan the then SDPO Takht-e-Nastrati (now compulsory retired) was detailed for security duty at the premises of Takht-e-Nastrati Court. However, Alam Zeb brother of Uzma Ayub was killed vide FIR No. 529, dated 09.12.2011 under section 302,109,148,149 PPC Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati) in the premises of Court. The killer also succeeded in making good their escape from the scene of occurrence despite the fact Police strength was present on the spot. Departmental action was initiated against the strength on duty at the premises of Court including Constable Qismat Ullah No. 732.

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 Qismat Ullah No 732.

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 Qismat Ullah No. 732. He is reinstated in service from the date of suspension.

O.B.No. <u>465</u> Dated <u>29/4</u>/2012

District Police Officer, Karak

District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK No. 50/8 /EC, dated Karak the 35/4 /2012.

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

قطعات ۲۵ مرد 12 فراغات مردان طرون 7

Service Appeal No. 970/2013 titled

Qismat Ullah Constable No. 732 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 Showeth:-

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 appullant 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.

<u>FACTS</u>

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,

<u>GROUNDS</u>

- 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".
- Β.

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 3.
- D. Incorrect,

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,

E.

G. Incorrect,

H. Incorrect, already explained vide ground A and B above.

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.

I.

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. 01

al of Police Deputy Inspector Gene Kohat Region Kohat

Respondent: No.2

District Police Offic Kalak Respondent: No.03

Service Appeal No. 970/2013 titled

Qismat Ullah Constable No. 732 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: <u>AUTHORITY</u>

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 Kohat Region Kohat fal of Police Respondent: No.2

District Police Offi Ka Respondent No.03

-1 No. 970/2013 titled

Dalice Lince Karak. (Appellant)

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Service Appeal No. 970/2013 titled

Qismat Ullah Constable No. 732 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: <u>AFFIDAVIT</u>

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 2 Respondent: No. 01

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

District Police Off Respondent No. 03.

Charge sheet and statement of allegations based on splaying cowardice and avoiding arrest of accused brahim Shah who allegedly committed murder of Alamzeb brother of Mst. Uzma Ayub (abduction and rape victim; in their presence, was issued to the Police officers cited in the appended list. SDPO 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 tinding report

Annexare. "A "

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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 enquiry committee comprising the following officers is constituted for enquiry proceedings in accordance with the rules and regulations.

Superintendent of Police, Investigation Wing, Karak.
Deputy Superintendent of Police, Headquarter, Karak
Inspector Legal, Harak.

(07) days positively.

District Police

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EINDING

Before unfolding our opinion, it is deemed appropriate to reproduce the brief fact; forming the background of present departmental processings, initiated against Javed Iqbal constable No.7:8 (hereinafter referred to accused officer), which are as follows:-

Annex: B

On 25.09.2010, Mst: Balgisam 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 he daughter namely Mst: Uzma Ayub. She initially charged Gul Marjan, Sarda: 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 09.10.201C 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 hat repase from the clutches of accused and charged 13-accused including Co-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 Folice 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 Mist: 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 Uliah brother of Alamzeb charge Ibrahim Shah and Waheed Ullah brother and friend of Hakeem Shah ASI respectively by name and also charge three unknown accused for the murder of Alamzeb. Hakeem Shah ASI was also charged for abetting the offence. Mst: Balqisam Jana was cited as eyewitness of the occurrence. Police registered proper case FIR No.529 dated 09.12.2011 under section 302,146,149,109 PPC Police station Yaqoob Khan Shaheed The accused succeeded in making good their escape.

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

charge sheeted the score of allegations that they displayed cowardice, avoided duty and bandoned follow up of accused who committed murder of Alamzeb despite the fact that they were present on the spot of occurrence and thus malafidely sucported 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. 110 5 57

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, the contended that he was inside the court area and the occurrence tool, place outside the court; on the road. He are inited hearing the reports of fire shots made by the accused while ocmuniting the murder of Alamzeb.

Investigation in the murder case of Alamzeb was trunsferred 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 highups. The investigation team also made recommendation for registration of nase ogainst accused officer and others on charges of displaying nase ogainst accused officer and others on charges of displaying nase ogainst accused officer and others on charges of displaying nase ogainst accused officer and 16/CRC/Inv: dated 03.01.2012. No.500/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 video 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 the book back of the Police officers present on duty brought bad name for the Karak Police.

It is proved from the report 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 not armed with lethal weapons. The accused officer and others also avoided follow up of the accused as no one wite arrested on the same day the term 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 distinc: 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.

Super ntendent of Police, Invustigation: Wing, Karak

Sub-Divisional Police Officer, Headquarter, Karak

inspector Legal, Karak

ORDER

This order is passed on the departmental proceeding initiated against Constable Qismat Ullah No. 732 then posted as Gunner with DSP Takht-e-Nastrati . Succinct facts leading to the instance departmental proceedings against him are as follows:-

That on 09.12.2012 the inhabitants of village Takht-e-Nastrati had arranged protest procession in favour of Hakeem Shah ASI arrested in Uzma Ayub rape and abduction case FIR No. 363/2010 Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati). The strength of Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati) and Shah Salim under the direct supervision of Muhammad Subhan the then SDPO Takht-e-Nastrati (now compulsory retired) was detailed for security duty at the premises of Takht-e-Nastrati Court. However, Alam Zeb brother of Uzma Ayub was killed vide FIR No. 529, dated 09.12.2011 under section 302,109,148,149 PPC Police Station Yaqoob Khan Shaheed(Takht-e-Nastrati) in the premises of Court. The killer also succeeded in making good their escape from the scene of occurrence despite the fact Police strength was present on the spot. Departmental action was initiated against the strength on duty at the premises of Court including Constable Qismat Ullah No. 732.

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 Qismat Ullah No. 732.

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 Qismat Ullah No. 732. He is reinstated in service from the date of suspension.

Dated <u>29/4</u>12012 O.B.No. 46

District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK No. 53/8 /EC, dated Karak the 35/9 /2012.

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

قطات کانی رو 12 نی میں مردن طرق

District Police Officer, Karak

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRICUNAL PESHAWAR

APPEAL NO.____/2013

QISMAT ULLAH

The Alexandre

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. Incorrectⁱand not replied accordingly hence denied.
- 6. Admitted correct. Hence need no comments.
- 7. Para 7 of the reply is incorrect hence denied.

GROUNDS:

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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