

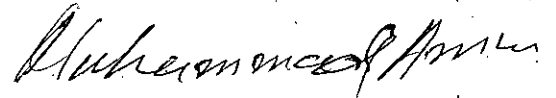
06.11.2017

Appellant with counsel present. Mr. Usman Ghani, District Attorney alongwith Mr. Asghar Ali, Head Constable for the respondents also present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed in connected Service Appeal No. 1080/2013 "titled Mohammad Shuaib-Versus-The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others, we are constrained to accept the present appeals, set-aside the impugned order and reinstate the appellant in service. However, the respondent-department is at liberty to conduct a de-novo inquiry in the mode and manner prescribed by rules against the appellant within a period of three months from the date of receipt of this judgment. In case the de-novo inquiry is conducted the issue of back benefits of intervening period will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

06.11.2017



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

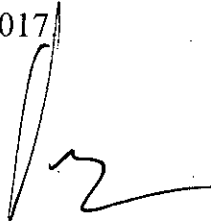


(GUL ZEB KHAN)
MEMBER

17.03.2017


Appellant in person and Addl: AG alongwith Mr. Muhammad Shiraz, H.C and Mr. Asghar Ali, H.C for respondents present. Appellant requested for adjournment. To come up for arguments on 08.06.2017



(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

08.06.2017

Clerk of the counsel for appellant and Mr. Sheraz Khan, HC alongwith Mr. Muhammad Adeel Butt, Additional AG for the ~~respondents~~ respondents present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 03.10.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

03.10.2017

Appellant in person and Asst: AG alongwith Mr. Muhammad Farooq, Inspector (Legal) for respondents present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 06.11.2017 before D.B.



(AHMAD HASSAN)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

28.07.2016

Counsel for the appellant and Mr. Yaqoob Khan, Naib Court alongwith Assistant AG for respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 29.8.16 before D.B alongwith connected appeals.


Member


Member

29.08.2016

Appellant with counsel and Mr. Javed Iqbal, DSP (legal) alongwith Additional AG for respondents present. Due to non-availability of D.B comprising of Mr. Pir Bakhsh Shah, Learned Member (Judicial) and Mr. Abdul Latif, Learned Member (Executive) today the instant appeal be placed before said Bench.

In view of the order dated 15.06.201 office is directed to place the instant service appeal alongwith other identical appeals before the said bench for final hearing for 01.12.2016.


Member


Chairman

01.12.2016

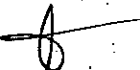
Counsel for the appellant and Mr. Javed Iqbal, Inspector alongwith Mr. Ziaullah, GP for respondents present. The D.B is incomplete due to relinquishment of charge by Judicial Member. To come up for arguments on 17.3.17

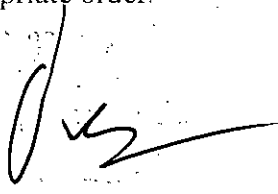

Member

15.6.2016

Counsel for the appellant and Mr. Javed Iqbal, Inspector (Legal), alongwith Assistant AG for respondents present. Learned counsel for the appellant submitted before the court that the present case has been heard and fixed for order by the other bench vide order sheet dated 26.2.2015 however, later on other connected cases were clubbed and the case was fixed for re arguments. Learned counsel for the appellant requested that the case be sent to bench which has already heard the case and fixed it for order.

Perusal of the case file reveals that vide order sheet dated 26.2.2015 the case was heard and fixed for order however, due to consolidation of connected cases, the case was fixed for re-arguments, therefore, it would be appropriate that the case be fixed before bench which has already heard the case and fixed it for order. Case file to sent learned Chairman for making appropriate order.


Member


Member

29.6.2016.

File received and order sheet dated 15.06.2016 perused.

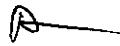
This appeal is entrusted to D.B comprising of Mr. Pir Bakhsh Shah, learned Member (Judicial) and Mr. Abdul Latif, learned Member (Executive) for final hearing and disposal for 28-7-2016


Chairman

02.12.2015

Counsel for the appellant and Mr. Javed Iqbal, Inspector (Legal) alongwith Asst: AG for respondents present. During course of arguments copy of enquiry report was not found on record. Representative of the respondent-department is directed to produce the same on next date. To come up for arguments on

11.2.2016



Member



Member

11.02.2016

Counsel for the appellant and Mr. Muhammad Jan, Government Pleader with Javed Iqbal, DSP for the respondents present. Since the Court time is over, therefore, arguments could not be heard. To come up for arguments on

28.4.16



MEMBER



MEMBER

28.04.2016

Agent of counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) alongwith Mr. Muhammad Jan, GP for respondents present. Due to strike of the Bar learned counsel for the appellant is not available today before the Court, therefore, case is adjourned for arguments to

15.6.16



Member



Member

09.04.2015

Appellant with counsel Addl: A.G for respondents present.
Arguments partly heard.

02.12.2015

It transpired that the inquiry officer in his inquiry report referred Counsel for the appellant and Mr. Javed Iqbal, Inspector to criminal proceedings against the appellant, which are not available on the file. Learned Addl: A.G submitted that on the next date record pertaining to the criminal case will be produced in the light of which decision of the case will be facilitated. Hence to come up for said record. Representative of the Respondent department is directed to

To come up for further arguments on 4.8.2015.

produce the same on next date. To come up for arguments on


MEMBER


MEMBER

4.08.2015

Member Junior to counsel for the appellant and Addl. AG with Mir Faraz Inspector (Legal) for the respondents present. Counsel for the appellant was stated to be busy in hon'ble Darul Qaza. Therefore, case to come up for requisite record and further arguments on 08-10-2015


MEMBER

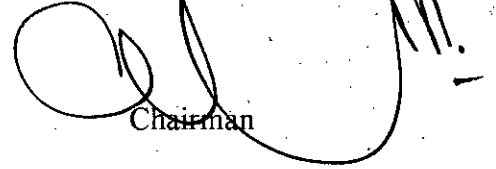

MEMBER

08.10.2015

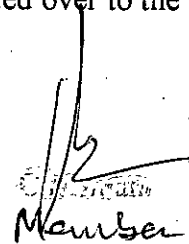
Counsel for the appellant and Mr. Mir Faraz, Inspector: (legal) alongwith Addl: A.G for respondents present. The Bench is incomplete therefore, case is adjourned to 2-12-15 for arguments.


MEMBER

30.01.2014 Appellant in person and Mr. Mir Faraz Khan, Inspector (legal) for respondents with Mr. Usman Ghani, Sr. GP present. Written reply received on behalf of the respondents, copy whereof is handed over to the appellant for rejoinder on 30.4.2014.


Chairman

29.4.2014 Counsel for the appellant and Mr. Mir Faraz, Inspector Legal for respondents with AAG present. Rejoinder received on behalf of the appellant, copy whereof is handed over to the learned AAG for arguments on 29.9.2014.


Member

29.09.2014 Appellant with counsel and Mr. Mir Faraz, Inspector (Legal) on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Arguments could not be heard due to incomplete Bench. To come up for arguments on 10.03.2015.


Member

10.3.2015 Counsel for the appellant and Mr. Ziaullah, GP with Mir Faraz, Inspector (Legal) for the respondents present. It came to know that in cases of similar nature in Service Appeal No. 675/2014, Shaista Khan etc, have been heard and fixed for order on 09.4.2015. Therefore, this case is also adjourned to 09.4.2015 for arguments.


MEMBER


MEMBER

Appeal No. 1081/2013.

Mr. Nagesh Daman.

3

3.10.13

Counsel for the appellant present and heard on preliminary. Contended that the appellant has not been treated in accordance with the law. He further contended that proceedings against the appellant initiated under wrong law. Hence the impugned order is illegal. Points raised need consideration. The appeal is admitted to regular hearing, subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply on 19.12.2013.

*Appellant's Counsel
Process fee & Security
Rs. 184/- Bank Receipt
attached with file*

MEMBER

3.10.13

This appeal is entrusted to Final Bench

for further proceedings.

CHAIRMAN

19-12-13



*Appellant in person and Mr. Mir
Faraz Khan Inspector (Legal) for respondents
present. The worthy chairman is on tour
to Abbottabad. To come up for reply
on 30-1-2014.*

Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1081/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11/07/2013	<p>The appeal of Mr. Nasir Zaman presented today by Mr. Mr. Muhammad Asif Yousafzai Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	16-7-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>3-10-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1081 /2013.

Nasir Zaman . VS Police Deptt:

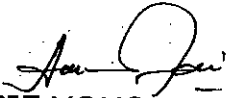
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3-	Statement of allegation	B	6
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APPELLANT

NASIR ZAMAN

THROUGH:


M.ASIF YOUSAFZAI

ADVOCATE.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1081 /2013.

Nasir Zaman Ex-Constable NO.1469

P.S Haved, Bannu.....Appellant.

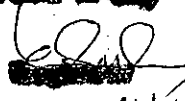
K.P.K. SERVICE TRIBUNAL PESHAWAR
11/7/13

VERSUS

- 1- The provincial Police Officer KPK Peshawar.
- 2- The Regional Police Officer, Bannu Range Bannu.
- 3- The Distt: Police Officer Bannu.

.....Respondents.

**APPEAL UNDER SECTION 4 OF THE
KPK SERVICE TRIBUNALS ACT 1974
AGAINST THE ORDER DATED,
21.5.2013 WHEREBY THE APPELLANT
WAS DISMISSED FROM SERVICE AND
AGAINST THE FINAL REJECTION
ORDER DATED. 19.6.2013 WHEREBY
THE DEPARTMENTAL APPEAL OF THE
APPELLANT WAS REJECTED.**

K.P.K. SERVICE TRIBUNAL PESHAWAR

11/7/13

PRAYER:

That on acceptance of this appeal the order dated. 19.6.2013 and 21.5.2013 may be set-aside and the appellant may be re-instated with all back benefits. Any other remedy which is not specifically prayed for that may also be awarded in favour of appellant.

R.SHEWETH.

- 1) That the appellant joined the police force in the year 2007 and completed various courses successfully and also has good service record. The appellant as per court judgments and definition was a civil servant of the Province of KPK.
- 2) That the appellant was charge sheeted under Police Rules 1975 for not properly performing his duty while on *gasht* with the then SHO Imam Hassan Shaheed on 13.1.2013. The P.I Bannu was also nominated as inquiry officer in the statement of allegations. Copies of the charge sheet and statement of allegations are attached as Annexure – A & B.
- 3) That the appellant filed reply to the charge sheet and denied all the allegations with proofs. Copy of the reply to charge sheet is attached as Annexure – C.
- 4) That then the inquiry was conducted and statements of all the accused constable were recorded but the statements of other officials were not recorded in presence of appellant nor they were put to cross examination. However the inquiry officer held the appellant guilty and recommended for major punishment. Copy of the inquiry report is attached as Annexure – D.
- 5) That then after the inquiry on 21.5.2013 the appellant was dismissed from service. The appellant filed departmental appeal against the penalty order but the same was also rejected by the appellate authority on 12.6.2013. Copies of order, appeal and rejection order are attached as Annexure – E, F&G.
- 6) That now the appellant comes to this august Tribunal on the following grounds amongst the others.

GROUND:

- A) That the order dated. 19.6.2013 and 21.5.2013 are against the law, rules , norms of justice and material on record. Therefore not tenable.
- B) That no final show cause notice was issued to appellant which is the violation of law and as such the whole action of the respondents became liable to be set-aside.
- C) That no chance of personal hearing was provided to appellant and as such the appellant was condemned unheard which is the violation of principles of Audi Altram Partem.
- D) That none of the other official's statement was recorded in presence of appellant nor were they put to cross examination, which is also the violation of law and rules.
- E) That the appellant never shown any cowardice and fought for long time nor left the premises. That was also reported by the other officials in their diaries. That aspect was not considered by the inquiry officer.
- F) That the appellant was a civil servant of the province and he was to be dealt according to E&D Rules 2011, but in the instant case the appellant was dealt under Police Rules 1975 which is gross illegality.
- G) That the appellant was punished for no fault on his part and the given penalty is also very harsh.
- H) That the appellant has not been treated according to law and rules.
- I) That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT

Nasir Zaman

NASIR ZAMAN

THROUGH:

M. Asif Yousafzai

M.ASIF YOUSAFZAI

ADVOCATE.

5 A

CHARGE SHEET.

WHEREAS I am satisfied that a formal enquiry as contemplated in the NWFP, Police Rules, 1975 is necessary and expedient.

AND WHEREAS, I am of the view that the allegations if established would call for a major penalty as defined in Rules 4(b) of the aforesaid Rule

NOW, THEREFORE, as required in 6-1 (a) of the aforesaid Rule I, ABDUL GHAFUOR KHAN AFRIDI District Police Officer, Bannu, as competent authority, hereby charge them FC Umer Jan 2342/EF, FC Rizwan Ullah 2345/EF, FC Imtiaz 1625/EF, FC Nasib Ullah 4072/EF, FC Fawad 379/EF of Platoon No.55 and FC Nasir Zaman 1469, FC Shoaib 331 DFC for the allegations, attached with this charge sheet.

AND I direct you further under rules 6-1 (b) of the aforesaid Rules to put in written defense within 7 days of the Receipt of this Charge sheet as to whether major OR Minor punishment as defined in Rules 4-1(a)-(b) should not be awarded to you. Also state at the same time whether you desire to be heard in person.

In case, your reply is not received within the prescribed period without sufficient reason, it would be presumed that you have nothing to say in your defence and the undersigned would be at liberty to take ex-parte action straight away against you.


District Police Officer,
Bannu.

11/04/2013

[Handwritten signatures and notes in Urdu]
18-4-2013

ATTESTED


چارج شیٹ انٹرنیٹ الیکشن مجارہ جناب DFO صاحب سے
میاں امین کانسٹیبل ناصر زحان نمبر 1469/FC معینہ قمانہ سرپر حال قمانہ منڈان

الزلمات :- مجبور الزلمات عائد ہیں۔ یہ مورخہ 28/3/13 دورانے ناکہ بندی تھا
شیخ فرید میں SHO صاحب قمانہ یوید احما حسن شہر کسانو موجود تھا
کہ اسے میں ملزم امین شاہ نے SHO پر فائرنگ کی جس جوہ SHO صاحب
ترغی ہوئے جو بعد میں جاں بحق ہوا اور ملزم بعد وقوعہ موقع سے بھاگتا
نکل گیا۔ اور اس نے کوئی کارروائی نہیں کی۔

جناب عالی! عائد کردہ الزامات کے بارے میں نے تفصیلاً ابتدائی مرحلہ
انکو اثری کے دوران اپنا تحریری بیان دیا ہے۔ جو نہایت جامع اور اپنی
دفاع پیدلے کافی سمجھتا ہوں۔ جو حقیقت ہے۔
مزید وضاحت کرنا چاہتا ہوں کہ الیکشن میں فقط ناکہ بندی بلکہ بائیس اور
SHO صاحب نے اپنی رپورٹ میں معمول کا لگشت بیان کیا ہے۔ اور وقوعہ گھر سے باہر
بائیس بیان کیا ہے۔ جو سراسر غلط ہے۔ دراصل یہ نہ ناکہ بندی تھی اور نہ لگشت تھی
بلکہ بعد وقوعہ اگلے روز قمانہ میں ایسی بائیس ہوئی تھی کہ عموماً تو قمانہ میں
آپ کے مرتبہ ہوتی ہے۔ لیکن SHO نے تو اس شخص سے عینہ میں دو مرتبہ وصول شروع
کی۔ ظلم کا ارجحاً ایسا ہوتا ہے۔ کوئی کہتا کہ DFC کو جمع کرنا۔ جوان بالوں سے معلوم
پوریا تھا۔ کہ یہ عموماً کی وصولی تھی کیونکہ اگر چہ ناکہ بندی تھی اور ملزم کی گرفتار
مطلوب تھی تو باقاعدہ نفری کو بیاریات دی جاتی۔ لیکن SHO صاحب نے تو اس انداز
میں اس کے گھر کے اندر داخل ہوا مجمعہ DFC شعیب۔ گویا یہ مکان اسکا اپنا یا گھر
رشتہ دار کا ہے۔ پھر تھی کنٹریبل کے عقب میں داخل ہوئے۔ جو وہی SHO اندر داخل
ہوا۔ ساتھ کوٹھہ سے SHO پر ایک برسٹ فائرنگ ہوئی جو تھی ہو کر گھر ٹراپا
بعد دعما کہ ہوا اور دوسرا دعما کہ ہوا گھر کے صحنے میں دھواں ہی دھواں اٹھا۔ ہمیں لوگ
کوئی حیرت نظر نہیں آ رہی تھی۔ ہم نے اندازے کے مطابق کافی فائرنگ کی جس دھواں شمع
ہدی کو باہر نکالا گیا۔ اور پیمانے سے جا پائیا۔ شام کا اندھیرا تھا گئی کافی دیر بعد فرار
نفری آئی۔ لیکن ملزم۔ بلکہ حالت دعواں پانڈر کی سے فائدہ اٹھا کر نکلے تھے۔
SHO نے نہایت غلط کام کیا ہے۔ SHO کو شہادتے کا درجہ مل گیا۔ لیکن زندہ پولیس
کے لئے کام ڈھونڈ لیا۔ نہ جانے اونٹے اب کیسی کرورت بیٹھے گا۔ ہماری کوئی غلطی

ہیں ہے، اصل فتاویٰ جمعاً کر غلط راستہ اختیار کیا گیا ہے۔ جو اس
غلط راستے سے اگلے دن منظم کو فائدہ پہنچے گا۔ یہیں نے چونکہ یہی ہیں
خاصہ کی رپورٹ سے فائدہ ہو رہی ہے۔ محکمہ S.Ho کا عنایت کا کونسا علم

تعمیرات
تعمیرات 1469 قمارہ منڈال

(2) (3) (D)

9

INQUIRY FINDINGS REPORT

This findings report is the result of departmental probe against police officials namely:-

FC Umer Jan No.2342/EF, FC Rizwan Ullah No.2345/EF, FC Imtiaz No.1625/EF, FC Nasib-Ullah No.4072/EF, FC Fawad No.379/EF of Platoon No.55, FC Nasir Zaman No.1469 and FC Shoaib No.331 DFC while posted to PS Haved were found to indulge in misconduct under the following allegations:

- That after conducting preliminary inquiry by DSP/HQrs and SDPO, Rural-I they while posted to PS Haved were found negligence and cowardice.
- That on 13.01.2013, they were deputed for Naka Bandi duty with SI Imam Hassan Shaheed the then SHO PS Haved, 01 accused namely Amin Shah started firing upon SI Imam Hassan Shaheed in the premises of Sheikh Farid Baba. Resultantly, he was sustained injured and after then he got embraced martyrdom.
- The accused decamped from the scene after the commission of offence without any hindrance while they have, became a silent spectators. Thus they have ceased to become good police officials as well as guilty of misconduct.
- That they have ceased to become good police officials by committing the above commission/ omissions.

Charge sheets with summary of allegations to all the aforesaid officials were issued on 11.04.2013 by worthy DPO Bannu and the undersigned was appointed as inquiry officer to hold department proceedings against the accused officials.

Prior to the issuance of above, preliminary inquiry through DSP/HQ and SDPO Rural-I was conducted and the above mentioned officials were held responsible for cowardice and negligence during the encounter with the militant/ PO Amin Shah.

On receipt of the papers from the dealing hands SRC, all the accused officials were summoned and copy of charge sheet with summary of allegations were supplied to them for reply and explanation. Their replies to charges received, placed on file and reproduced below.

1) REPLY OF CONSTABLE UMER JAN NO.2342/EF.

He explained that he had accompanied the SHO Imam Hassan Shaheed for patrolling in area Sheikh Farid. SHO stopped the mobile in front of one house and asked him, Fawad and Rizwan to stand alert with the mobile vehicle while he along with other strength entered the house. After some while, firing and two blasts were made in side the house. Imtiaz constable came out hurriedly and told about the injury of SHO. Shoaib DFC present inside the house called him (Umerjan) to enter the house for shifting injured Imam Hassan outside the house. He went inside the house and firing was made at him but escaped unhurt. He has not witnessed any accused nor identified. He blamed the SHO for getting some illegal gratification from the accused and scribed/ prepared wrong report for his martyrdom.

2) REPLY OF CONSTABLE FAWAD:-

He stated that in fact SHO Imam Hassan had gone to the house of PO Amin Shah for getting illegal monthly gratification and due to non paying the same wrong FIR was made. He with Rizwan and Umer Jan were standing alert with the mobile vehicle while SHO with other police entered the house. After some while firing was heard. SHO Imam Hassan in injured condition was brought and thereafter shifted to hospital. Due to spread of evening darkness, the accused decamped from the spot.

A

(3) 10 (3)

3) REPLY OF CONSTABLE RIZWAN NO.2345/EF.

He explained that mobile vehicle stopped in front of one house. He constables Fawad and Umerjan were asked by SHO Imam to stand alert with vehicle while SHO with other police entered the house. Firing was heard. SHO Imam in injured condition was brought and shifted to hospital. At the spreading of evening darkness, police nafri reached and searched the house but no accused was found. He blamed the SHO for getting illegal gratification from the PO/Amin Shah and prepared wrong statement/ report for his getting package of martyred. He used derogatory words for the SHO Imam Hassan.

4) REPLY OF CONSTABLE NASIB ULLAH NO.4072/EF

He stated that he with SHO Imam, Imtiaz, Nasir, and Shoaib DFC entered the house. Meanwhile burst fire was made from the room, SHO Imam Hassan was hit and injured. Two bombs were blasted. Due to smoke, nothing was visible. After sufficient time, injured SHO was shifted to hospital and passed away. He blamed that the FIR of SHO Imam was wrong and his intention was not to arrest the PO but to receive/ get illegal gratification from the PO Amin Shah.

5) REPLY OF CONSTABLE NASIR ZAMAN NO.1469/FC:

He stated that he with SHO Imam, Imtiaz, Nasir, and Shoaib DFC entered the house. Meanwhile burst fire was made from the room, SHO Imam Hassan was hit and injured. Two bombs were blasted. Due to smoke, nothing was visible. After sufficient time, injured SHO was shifted to hospital and passed away. He blamed that the FIR of SHO Imam was wrong and his intention was not to arrest the PO but to receive/ get illegal gratification from the PO Amin Shah.

6) REPLY OF CONSTABLE IMTIAZ ALI NO.1625/EF

He stated that on the day of occurrence, he along with other constables accompanied the late Imam Hassan ex-SHO PS Haved to the house of accused Amin Shah. As they entered into the house, firing was made from the room. Resultantly SHO was hit and fell on the ground. Two blasts were also made. Due to heavy smoke, nothing was visible. At the evening darkness time police nafri came and the injured SHO was shifted to the hospital where he passed away. He blamed SHO and DFC Shoaib for the alleged incident. He was unaware about the area and did not know for what purpose the SHO had gone to the house of accused. However, it was rumored that the SHO had gone to the house for the purpose of getting illegal monthly gratification from the accused. He claimed himself to be innocent in the incident.

7) REPLY OF FC MUHAMMAD SHOAIB NO.331 DFC PS HAVED.

He stated that he along with late Imam Hassan SHO PS Haved and other police party were on patrol duty in area of Sheikh Farid Baba. When they reached to the place of Sheikh Farid Baba, SHO deboarded from the official vehicle and set out on foot to the nearby house. Constable Naseeb Ullah, Imtiaz, Nasir Zaman and he accompanied the SHO. They entered into the house. In the courtyard one person was searched and they were entering into a room, abrupt firing was made from the room. Resultantly SHO was hit and fell on the ground. He and other constables took the position near the corner as well as on the roof of the room. They made firing with the accused for about 15 minutes. After sufficient time, constable Umer Jan was directed to shift the injured SHO to the official vehicle. During this process, Amin Shah threw hand grenades which was blasted. He along with other constables retaliated the accused for sufficient time. At about 8:45 hrs, police nafri with army reached to the spot and started firing. Due to night darkness, the accused had decamped from the spot. He explained that he has performed his duty honestly and actively.

ATTESTED

ORDER:

My this order will dispose of departmental proceedings initiated under Police rules 1975 against FC Umer Jan 2342/EF, FC Rizwan Ullah 2345/EF, FC Imtiaz 1625/EF, FC Nasib Ullah 4072/EF, FC Fawad 379/EF of PI No. 55 and FC Nasir Zaman 1469, FC Shoaib 331/118 BBI DFC PS. Haved on the following allegations.

That after conducting preliminary Enquiry by DSP/HQrs and SDPO, Rural they while posted to PS Haved have been found negligence and cowardice.

That on 13-01-2013, they have been deputed for Naka bandi duty with SI Imam Hassan Shaheed the then SHO PS Haved, 01 accused namely Amin Shah started firing upon SI Imam Hassan Shaheed in the premises of Sheikh Farid Baba. Resultantly, he was sustained injured and after then he got embraced martyrdom.

The accused decamped from the scene after the commission of offence without any hindrance while they have been, become a silent spectator. Thus they have ceased to become good police officials as well as guilty of misconduct.

Proper charge sheet based upon summary of allegations were issued and the enquiry papers were entrusted to Mr Mir Faraz Khan PI Legal, DPO, Office, Bannu for enquiry and report, who (Enquiry Officer) conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended that the allegations leveled against the accused officials are stand established and they are found guilty.

Keeping in view the recommendation of Enquiry officer, ABDUL GHAFUOR KHAN AFRIDI, District police officer, Bannu, being a competent authority, in exercise of the power vested in me under police rules 1975, hereby award them Major Punishment of Dismissal from Service to Constable Muhammad Shoaib No. 331/118 BBI and Constable Nasir Zaman No. 1469 /5868 with immediate effect.

District Police Officer,
Bannu.

OB No. 575
Dated 21-05-2013

No. 6356-64/SRC dated Bannu, the 21-5 /2013.

Copy of above is submitted to :

1. The Provincial Police Office: Khyber Pakhtunkhwa, Peshawar with the request that Commandant Elite Force be directed to award them Major punishment of Dismissal to the accused officials of Elite Force please
2. The Commandant Elite Force Khyber Pakhtunkhwa, Peshawar along with Preliminary Enquiry file /complete departmental enquiry file i.e (pages) with the request that the above mentioned Elite Force Constables, be awarded Major punishment of Dismissal from Service under intimation to all concerned please.
3. The Regional Police Officer, Bannu Region, Bannu for favour of information please.
4. SI/Investigation, Bannu for favour of information and necessary action please.
5. SP/FRP, Bannu Region, Bannu with the direction and necessary action that the pay of the said constable Nasir Zaman No. 1469 /5868 has been drawn from FRP Establishment
6. Pay Officer, SRC and OASI R.I Police Line for necessary action and completion of record.

District Police Officer,
Bannu.

ATTESTED

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**BEFORE THE WORTHY REGIONAL POLICE OFFICER BANNU
REGION, BANNU**

Subject:- Departmental appeal / Representation against the dismissal order OB No.575 dt: 21-05-2013 passed by the District Police Officer Bannu wherein the appellant was dismissed from Service without any legal / valid grounds / justifications.

Respected Sir,

the following few submissions are submitted for sympathy consideration.

1. That the appellant was enlisted as constable in District Police Bannu on 15-7-2007 and qualified basic training in Training Centre successfully.
2. That he performed official duties at various police station to the best satisfaction of his seniors and nothing adverse was found in his service.
3. That the appellant while posted in Police Station Haved, under the command of then SHO P.S Haved (Imam Hassan) went out for patrolling in the area of Sheikh Farid BaBa. When the Police Party reached to the street through fare, on seeing the Police Party Amin Shah Proclaimed Offender terrorist with other unknown miscreants, suddenly threw a hand garned which blasted and started firing at Police Party resultantly SHO (Imam Hassn) was hit, injured shifted to District Head Quarter hospital while Police Party immediately responded to attack in self defense, and the combat continued with terrorist for sufficient time but unfortunately they succeeded in decamping from the spot.
4. That the allegations leveled in the charges are totally incorrect and based on surmises. The appellant hat not committed any negligence or Cowardice on spot and actively responded to the attack of militants and made firing which is evident from the FIR daily diaries reports Photo copy enclosed.

ATTESTED


5. That the impugned order of District Police Officer Bannu is harsh, against the facts on record and unjustified.

6. The Imam Hassan (Shaheed) in his FIR (dying declaration) has conceded the fact that the P.O and his companion on seeing the police party threw a hand garned and started firing at Police Party and in response the Police party also started firing at them. This alone is sufficient to negate the allegation of negligence and Cowardice.

Prayer:-

Keeping in view the above facts and on acceptance of this petition the Impugned order dt: 21-05-2013 may kindly be setaside and appellant may please be Re-instated in service with all back benefits.

I will Pray for your long life and Prosperity.

Dated: 4 - 6-2013

Your Obediently

Nasir Zaman

Nasir Zaman S/O Shiek Amir Jan
R/O Sokari Hassan Khel Tappi Kala
P.O Bannu
Ex Constabulary No.1469 / 5868
District Police Bannu

ATTESTED

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16

POLICE DEPARTMENT.

BANNU REGION.

ORDER

My this order will dispose off the appeal in respect of Ex: Constable Nasir Zaman No. 1469 of Bannu District Police against the order of Major punishment of dismissal from service, passed by DPO/Bannu vide OB: NO. 575 dated 21.5.2013 for committing of the following omissions:-

- That on 13.1.2013, he along with other Police officials were deputed for Naka bandi duty with SI Imam Hassan shaheed, the then SHO PS: Haved, one accused namely Amin Shah started firing upon SI Imam Hassan shaheed in the premises of Sheikh Farid Baba. Resultantly, he was sustained injuries and after then he got embraced martyrdom. The accused decamped from the scene after the commission of offence without any hindrance, while they including appellant became silent spectators. Thus they including appellant ceased to become good police officials as well as guilty of misconduct.

The appellant was properly proceeded against departmentally. Mr. Mir Faraz Khan Inspector Legal DPO-Office, Bannu was appointed as enquiry officer, who conducted proper departmental proceedings and submitted his findings, wherein, the delinquent Police official was found guilty. After proper departmental proceedings, the delinquent Police official was awarded the aforementioned punishment (dismissal from service) by DPO/Bannu vide OB: No. 575 dated 21.5.2013.

The appellant appeared in orderly room on 18.6.2013 and personally heard. After personal interview, the undersigned can not be persuaded by the appellant about his innocence. Therefore, I Azad Khan Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me under Police Rules, 1975 can not interfere in the order passed by DPO/Bannu vide OB: No. 575 dated 21.5.2013, being one, in consonance with law and hereby file the subject appeal of Ex: Constable Nasir Zaman No. 1469

Order announced.

ATTESTED

(Azad Khan), TST, PSP
Regional Police Officer,
Bannu Region, Bannu.

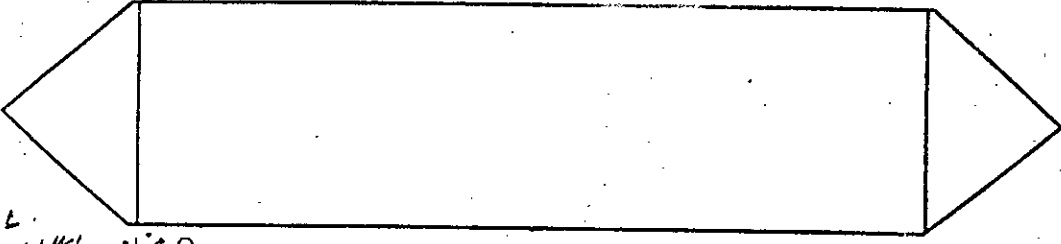
No. 1430 /EC, dated Bannu the 19 / 06 / 2013.

Copy to the District Police Officer, Bannu for information w/r to his office Memo: No. 7157 dated 11.6.2013.. His S: Roll along with departmental proceedings file received with the above quoted reference are sent herewith for record.

(Azad Khan), TST, PSP
Regional Police Officer,
Bannu Region, Bannu

19/6/13

بعدالت سروس ٹریڈ جرنل کیسٹار



2 جناب اسٹریٹ
ناور زمان بنام
محمد علی

ناصر زمان

مورخہ
مقدمہ
دعویٰ سروس ٹریڈ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کیسٹار کیلئے محمد آصف یوسفزئی ایڈووکیٹ

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

المرقوم _____ ماہ _____ 20

کے لئے منظور ہے۔
Accepted by
M. Asif Yousafzai

Nasir Zaman

M. Asif Yousafzai
Advocate High Court Peshawar.
Room No FR-8, Fourth Floor
Plaza Peshawar Saddar.
Cell: 0333-9103240

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1081/2013

Nasir Zaman Ex-Constable No.1469,
Police Station Haved Bannu

(Appellant)

Versus

- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
- 2) Regional Police Officer, Bannu Region, Bannu
- 3) District Police Officer, Bannu
(Respondents)

PARAWISE REPLY BY THE RESPONDENTS

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:

- 1) That the appellant has approached the Honourable Tribunal with unclean hands
- 2) That the appellant is estopped to file the appeal due to his own conduct.
- 3) That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
- 4) That the appellant has concealed the actual facts from the Honourable Tribunal.
- 5) That the appeal of appellant is not maintainable.
- 6) That the appellant has no cause of action.
- 7) That the appeal is time barred.

OBJECTIONS ON FACTS:

- 1) Pertains to record, hence no comments.
- 2) Pertains to record, however The appellant with other colleague while on patrolling badly failed to caught hold or causing injuries to the proclaimed offender Amin Shah and his companions despite the facts that their commander (late Imam Hassan SHO) was martyred by the said miscreants. Cowardice, negligence and inefficiency on the part of appellant and his colleagues have been proved from the statements of witnesses and their frivolous reply and statements.
- 3) Incorrect. The reply of appellant was without proof and contradictory to the statement u/s 161 CrPC recorded by the investigating officer in a criminal case vide FIR No.09 dated 13.01.2013 u/s 302,324,34 PPC/7ATA PS Haved. (Copy of the statement u/s 161 CrPC is annexed as annexure "A".
- 4) Incorrect. Statements of material official witnesses were recorded in the presence of all accused official and they were given chance of cross

examination. Each statements of witness carries the signature of appellant and others.


- 5) Pertains to record, hence no comments.
- 6) The appellant has wrongly challenged the convincing and valid legal orders of the respondents.


OBJECTIONS ON GROUNDS:

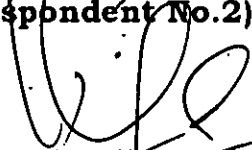
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- B) Incorrect. All codel formalities were fulfilled.
- C) Incorrect. All the opportunities of explanation and hearing were provided to appellant. The dismissal order was announced in his presence.
- D) Incorrect. All the material witnesses were examined in presence of appellant as evident from the statement which was signed by the appellant. An opportunity of cross examination was provided but he failed.
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- F) Incorrect. No illegality has been done by the respondents. The appellant has been dealt in accordance with existing law/ rules i.e. Police Rules 1975.
- G) Incorrect. The appellant was given punishment after proper thorough departmental probe on the charges of cowardice, negligence and inefficiency during official duty.
- H) Incorrect. The appellant and other were dealt departmentally in accordance with law/ rules by the respondents with out any malafidy or discriminative intention.
- I) The respondents seek permission to advance or add any grounds or proofs during hearing of the appeal.

PRAYER:

In view of the above stated facts, it is humbly prayed that the appeal of appellant being devoid of legal force, may kindly be dismissed with costs.


**District Police Officer,
Bannu
(Respondent No.3)**


**Regional Police Officer,
Bannu Region, Bannu
(Respondent No.2)**


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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1081/2013

Nasir Zaman Ex-Constable No.1469,
Police Station Haved Bannu -

(Appellant)


Versus

- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
 - 2) Regional Police Officer, Bannu Region, Bannu
 - 3) District Police Officer, Bannu
- (Respondents)

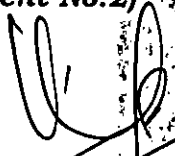
AUTHORITY LETTER.

Mr. Mir Faraz Khan Inspector Legal Bannu is hereby authorized to appear before The Service Tribunal Khyber Pakhtunkhwa Peshawar on behalf of the undersigned in the above cited case.

He is authorized to submit and sign all documents pertaining to the present appeal


**Regional Police Officer,
Bannu Region, Bannu
(Respondent No.2)**


**District Police Officer,
Bannu
(Respondent No.3)**


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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1081/2013

Nasir Zaman Ex-Constable No.1469,
Police Station Haved Bannu

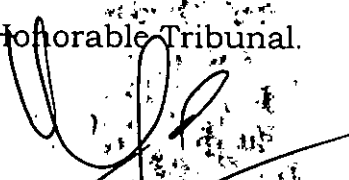
(Appellant)

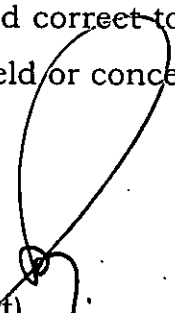
Versus


- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
 - 2) Regional Police Officer, Bannu Region, Bannu
 - 3) District Police Officer, Bannu
- (Respondents)

COUNTER AFFIDAVIT

We, the respondents do hereby solemnly affirm and declare that the contents of the attached para wise comments are true and correct to the best of our knowledge and belief and nothing has been withheld or concealed from this Honorable Tribunal.


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


(Deponent)
Regional Police Officer
Bannu Region, Bannu
(Respondent No.2)


(Deponent)
District Police Officer,
Bannu
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1081/2013

Nasir Zaman Ex-Constable No.1469,
Police Station Haved Bannu

(Appellant)

Versus

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- 2) Regional Police Officer, Bannu Region, Bannu
- 3) District Police Officer, Bannu
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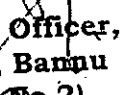
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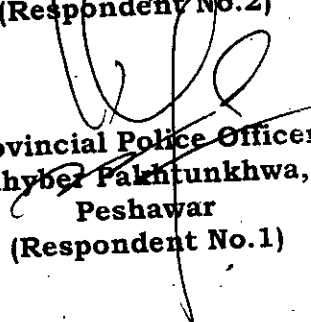
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- H) Incorrect. The appellant and other were dealt departmentally in accordance with law/ rules by the respondents with out any malafidy or discriminative intention.
- I) The respondents seek permission to advance or add any grounds or proofs during hearing of the appeal.

PRAYER:

In view of the above stated facts, it is humbly prayed that the appeal of appellants being devoid of legal force, may kindly be dismissed with costs.


**District Police Officer,
Bannu
(Respondent No.3)**


**Regional Police Officer,
Bannu Region, Bannu
(Respondent No.2)**


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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1081/2013

Nasir Zaman Ex-Constable No.1469,
Police Station Haved Bannu

(Appellant)


Versus


- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
- 2) Regional Police Officer, Bannu Region, Bannu
- 3) District Police Officer, Bannu
(Respondents)

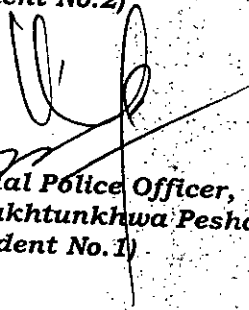
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He is authorized to submit and sign all documents pertaining to the present appeal.


Regional Police Officer,
Bannu Region, Bannu
(Respondent No.2)


District Police Officer,
Bannu
(Respondent No.3)


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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1081/2013

Nasir Zaman Ex-Constable No.1469,
Police Station Haved Bannu

(Appellant)

Versus

- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
- 2) Regional Police Officer, Bannu Region, Bannu
- 3) District Police Officer, Bannu
(Respondents).

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

(Deponent)
Regional Police Officer
Bannu Region, Bannu
(Respondent No.2)

(Deponent)
District Police Officer,
Bannu
(Respondent No.3)

- 4) Incorrect. Statements of material official witnesses were recorded in the presence of all accused official and they were given chance of cross

الفہرہ مختصہ صحیفہ

14

1

بیان از روئے کمانیل ناصر زمان ۱۹۶۹ء کو ہے یہ ہے۔
 پوربند بیان ہے کہ کہ سینگ راجہ جس کے ^{AFC} نام کے ساتھ کہ لکھتے ہیں کہ -
 ۱۶۰۰ء کو کچھ دستہ چھوڑ کر سینگ نے پورا پورا -
 انیسویں صدی کے لفظی مائیں سے ڈھپ - آتہر تہی دیگا کہ ساغر دستہ میں
 تین گھنٹہ کے مصلوہ ہم ملا سٹیٹ میں، چھوڑ کر تہی - ہم چھوڑ کر آتہر تہی
 ۱۹۰۰ء کے بعد اسے لایس وایس کے پائی ڈھپ کے مصلوہ کے ساتھ کی طرف سے وہ تہی
 کہ میں آتا ہوں اس میں ہر شے کے ساتھ کہ ہے یہ راجہ کے ساتھ کہ لایس وایس پائی
 پر بہت تہی مائیں کے شروع کرنے کے ساتھ ہی دیکھ کر وہی پتیلیں -
 ۱۶۰۰ء کے ساتھ کہ -
 پوربند کے ساتھ کہ لایس وایس کے ساتھ کہ لایس وایس کے ساتھ کہ لایس وایس کے ساتھ کہ
 مائیں کے ساتھ کہ لایس وایس کے ساتھ کہ لایس وایس کے ساتھ کہ لایس وایس کے ساتھ کہ
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 اس کے ساتھ کہ لایس وایس کے ساتھ کہ لایس وایس کے ساتھ کہ لایس وایس کے ساتھ کہ
 ۱۶۰۰ء کے ساتھ کہ لایس وایس کے ساتھ کہ لایس وایس کے ساتھ کہ لایس وایس کے ساتھ کہ
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۱۵/۱۱/۱۳

**BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. __1081/2013

Mr. Nasir Zaman V/S PPO, KPK & Others.
.....

REJOINDER ON BEHALF OF APPELLANT

.....
RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-7) All objections raised by the respondents are incorrect. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Admitted correct by the respondents, so no comments. Moreover, the Para-1 of the appeal is self explanatory.
- 2 Incorrect. The appellant was charge sheeted due to not properly performing his duty.
- 3 Incorrect. The appellant himself denied all allegations with proofs.
- 4 Incorrect. The appellant was not treated in accordance with law during the enquiry proceedings.
- 5 Admitted correct by the respondents, so no comments. Moreover, the Para-1 of the appeal is self explanatory.
- 6 Legal.

GROUND:

- A) Incorrect, while Para-A of appeal is correct.
- B) Incorrect. All actions by the respondents were against the law and rules.
- C) Incorrect. As explained in Para-B above.
- D) Incorrect, while the contents of Para-D of appeal are correct.
- E) Incorrect. The appellant has not been dealt in accordance with law and rules.
- F) Incorrect. The contents of Para-F of the Ground of Appeal are correct. Moreover, the appellant was a civil servant of the province and he was to be dealt according to E&D Rules, 2011.
- G) Incorrect, while Para-G of Appeal is correct.
- H) Incorrect, while Para-E of Appeal is correct.
- I) Incorrect, while Para-I of Appeal is correct.
- J) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

Nasir Zaman

APPELLANT
Nasir Zaman

Through:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



Asif

**BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. __1081/2013

Mr. Nasir Zaman V/S PPO, KPK & Others.

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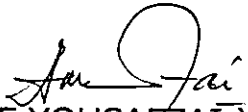
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- J) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT
Nasir Zaman

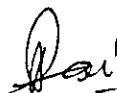
Through:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.





**BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. __1081/2013

Mr. Nasir Zaman V/S PPO, KPK & Others.
.....

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

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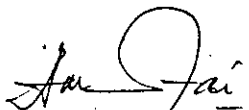
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- F) Incorrect. The contents of Para-F of the Ground of Appeal are correct. Moreover, the appellant was a civil servant of the province and he was to be dealt according to E&D Rules, 2011.
- G) Incorrect, while Para-G of Appeal is correct.
- H) Incorrect, while Para-E of Appeal is correct.
- I) Incorrect, while Para-I of Appeal is correct.
- J) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT
Nasir Zaman

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

