06.03.2015 Counsel for the appellant and Mr. Muzaffar Khan, S.I (legal) on behalf of respondents alongwith Assistant A.G present. Arguments could not be heard due to incomplete bench. To come up for arguments alongwith connected appeals on 3.9.2015.

Member

03.09.2015 Counsel for the appellant and Muzafar Khan, SI (Legal) alongwith Ziaullah, GP for the respondents present. Since court is over, therefore, case to come up for arguments on 21-12-2015.

MEMBER MEMBER

21.12.2015 Counsel for the appellant (Mr. Zia-ur-Rehman Tajik, Advocate) and Mr. Muhammad Jan, GP for respondents present. Arguments heard and record perused. Vide our detailed Judgment of to-day in the connected service appeal No. 756/2013 titled "Shakir Hussain-vs-Deputy Superintendent of Police/Inquiry Officer District Dir Lower, Timergara and others", this appeal is also disposed off as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record.

Announced
21.12.2015

(PIR BAKHSH SHAH)
MEMBER

(ABDUL LATIF)
MEMBER

24.01.2014

Appellant with counsel and Mr. Muhammad Yaqoob, SI (Legal) for respondents with AAG present. Written reply received on behalf of the respondents, copy whereof is handed over to the learned counsel for the appellant for rejoinder on 10.4.2014.

Chairman

10.4.2014

Appellant with counsel and Mr. Sabar Khan, SI (Legal) for respondents with AAG present. Rejoinder received on behalf of the appellant, copy whereof is handed over to the learned AAG for arguments alongwith connected appeals on 8.9.2014.

Chairman

8.9.2014

Appellant with counsel and Mr.Fazal Ghafoor, ASI (legal) on behalf of respondents with Mr.Ziaullah, G.P present. Arguments could not be heard due to incomplete Bench. To come up for arguments alongwith connected appeals on 6.3.2015.

Chairman

Appeal No. 759/2013,
Mr. Noor Hayat.

18.07.2013

Appellant with counsel present and heard on preliminary. Contends that the appellant has not been treated in accordance with the law/rules. The appellant has been proceeded under Police Rule 1975 whereas he was to be proceeded under the Govt of Khyber Pakhtunkhwa Civil Servants Act 1974 and Efficiency and Disciplinary rules, 2011. Moreover the appellant has not been associated with the inquiry procedings and further that he was not provided copy of inquiry repot after dismissal order dated 11.01.2013. The appellant filed departmental appeal which has been replied on 29.03.2013. whereas the instant appeal filed on 25.04.2013 which is within time. Points raised 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, notice be issued to the respondents. Case adjourned to 19.11.2013 for submission of written reply.

Appellant deposited security & process fee Rs 200/- Bank receipt is attached with file

Member.

18.7.2013 This case be put before the Final Bench for further proceedings.

Chairman

19-11-13. Appellant with counsel & Naveed Yaqoob Sr. Legal for respondents present. The Worthy chairman is on tour to Abbottabad. To come up written reply/comment on 24-1-2014.

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 759/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25/04/2013	The appeal of Mr. Noor Hayat presented today by Mr. Zia-ur-Rehman Tajik Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR
2	6-5-2013.	This case is entrusted to Primary Bench for preliminary hearing to be put up there on 20-6-2013. CHAIRMAN
3.	20.6.2013	Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for proceedings as before on 18.7.2013. Reader

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 754 /2013

Noor Hayat.....Appellant

Versus

Deputy Superintendent of Police/ Inquiry Officer District Dir Lower, Timergara and others ..... Respondents

INDEX

S.No.	Description of documents.	Annexure	Pages.
1	Memo of appeal with affidavit.		1-4
2	Copy of charge sheet, statement of allegation and reply	A to C	5-7
3	Copy of finding report, final show cause notice and reply	D,E,F	8-13
4	Copy of dismissal order	G	14
5	Copy of appeal, and order dated 18.02.2013	I & J	15-17
6	[illegible]	[illegible]	[illegible]
7	Wakalatnama.		

Appellant

Through

Zia-ur-Rahman Tajik
LL.M (Constitutional Law)
Advocate High Court.
Off: 26-A Nasir Mansion,
Shoba Bazar, Peshawar.
Cell: 0300-9357932

Dated: 25/04/2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 759 /2013

Noor Hayat,
Ex-Police Constable No.354 District Dir Lower..... Appellant

VERSUS

1) Deputy Superintendent of Police/ Inquiry Officer District Dir Lower, Timergara.
2) District Police Officer, Timergara District Dir Lower.
3) Regional Police Officer, Malakand, Saidu Sharif Swat.
4) Provincial Police Officer, KPK, Peshawar..... Respondents

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF RESPONDENT NO.3 DATED 29.03.2013 WHEREBY APPEAL OF THE APPELLANT WAS DISMISSED AND ORDER OF DISMISSAL OF APPELLANT FROM SERVICE DATED 11.01.2013 BY RESPONDENT NO.2 HAS BEEN MAINTAINED.

Prayer:

On acceptance of this appeal, ~~both~~ impugned order may be ~~set aside~~ Modify and appellant may be re-instated in service with all back benefit.

Respectfully Sheweth;

1) That appellant was appointed as Constable on 08.08.2009 in respondent-department having graduate qualification and served the department for about 04 years.

2) That appellant having a crystal clear service record having no complaint from any quarter and performed duties to the entire satisfaction of highups.

3) That at the time of dismissal from service appellant was posted as Constable at Patrolling Post Osakai/ Aman Police Post District Dir Lower.

4) That on 17.12.2012 appellant has been charged sheeted for negligence in performance of duties during night time of 7/6.12.2012 by respondent No.2 along with statement of allegation which has been properly replied. (Copy of charge sheet, statement of allegation and reply attached as Annexure "A to C").

5) That thereafter inquiry proceeding was started but no personal opportunity of hearing has been provided to the petitioner and also not associated in inquiry proceeding but on 05.01.2013 appellant received a final show cause notice along with finding report from respondent No.2, which was too has been properly replied without providing opportunity of hearing. (Copy of finding report, final show cause notice and reply are attached as Annexure "D, E and F").

6) That on 11.01.2013 appellant has been dismissed from service by respondent No.2. (Copy of dismissal order is attached as Annexure "G").

7) That appellant being aggrieved from his dismissal order filed appeal before respondent No.3 but was dismissed on 29.03.2013. (Copy of appeal and order dated 29.03.2013 are attached as Annexure "I and J").

8) That appellant then filed Mercy Petition before respondent No.4 but till date has not been decided. [redacted]

Now the appellant being aggrieved from the discriminate treatment of the respondents approach this hon'ble Tribunal for redressal of his grievance inter alia on the following grounds:

GROUNDS:

A) That appellant has not been treated in accordance with law and order of dismissal from service is not only illegal, incorrect, irrational but is also not warranted by any provisions of law and norms of justice.

B) That appellant has been condemned unheard neither personal opportunity of hearing has been provided to him nor associated in inquiry proceeding.

C) That order of dismissal from service is not commensurate with the allegation leveled against appellant.

D) That inquiry proceeding has been conducted under Police Rules, 1975 which is completely illegal, void ab-initio and unlawful as per Rule 23 of KPK Govt. Servant (Efficiency and Disciplinary) Rules of 2011 because of having overriding effect).

E) That negligence of the appellant has not been proved through authentic document and reliable evidence.

F) That police post is situated in populated area and the explosive substance has been recovered lying near the bath room which is situated at the back side of police post at a quite considerable distance from police post.

G) That no reasonable justification has been provided by the inquiry officer in the exparte inquiry proceeding for dismissal of the appellant from service and also neither the liability nor negligence has been determined and fixed.

H) That appeal of the appellant has been dismissed by respondent No.3 through a non-speaking order and is totally against section 24-A of General Clauses Act.

I) That appellant has 04 year service having a crystal clear service record and always remained in good books and even no complaint has been filed against him and also no warning, show cause notice or explanation has been sought from him.

J) That any other ground will be adduced at the time of arguments with the kind permission of this hon'ble Tribunal.

It is, therefore, humbly prayed that on acceptance of this appeal, an order may kindly be issued directing the respondent:

i) To reinstate the appellant with all back benefit.

ii) Cancel and set aside order of dismissal from service as illegal, unlawful and of no legal effect.

Appellant

Through

Zia-ur-Rahman Tajik
Advocate High Court

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

KHALID MAHMOOD ADVOCATE ★ OATH COMMISSIONER PESHAWAR HIGH COURT
ATTESTED 25/4/13

Deponent

NIC NO:-15302-3076345-3

21 A 446 P. L. Ijaz Page-5 Annx-A

No. 1396 /EC,
Dated 17/12 /2012.

CHARGE SHEET.

I, **Muhammad Ijaz Abid**, District Police Officer, Dir Lower at Timergara as competent authority, hereby charge you the following Police Officials:-

1. HC Akbar Khan I/C
2. FC Shakir Hussain No.1341
3. FC Noor Hayat No 354
4. FC Inayat Ur Rehman No.1438
5. FC Shake Ullah No.2092
6. Bacha Saeed No.141/SPO
7. Fazal Mohammad No.245/SPO
8. Gul Samraiz No.144/SPO
9. Gulistan No.906/SPO
10. Umer Ali No.968/SPO
11. Hamayun [illegible]6/SPO
12. Ibrahim No.193/SPO
13. Hassan Wali No 847/SPO
14. Mohammad Faraz No.251/SPO

While you posted at Police Post Osakai committed as follows: -

That while, you Posted at Aman Police Post Osaka, found guilty/negligent in the performance of your duties as the miscreant have planted a Pressure Cooker Bomb, near the Aman Police Post Osakai, which shows gross misconduct on your part.

2- By reason of above, you appear to be guilty of mis-conduct and have rendered your-self liable to all or any of the penalties specified in Rule-4 of the Disciplinary Rules, 1975.

3- You are; therefore, require to submit your written reply within 07 days of the receipt of this charge sheet to the enquiry officer.

4- Your written reply, if any, should reach the enquiry officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-part action shall follow against you

5- Intimate to whether you desire to be heard in person or not?

6- A statement of allegation is enclosed.

Attested

Aziz-Ur-Rahman Tajik
Advocate Peshawar

District Police Officer,
Dir Lower at Timergara.
14/12

DISCIPLINARY ACTION. Page-6 Annex-B

I, **Muhammad Ijaz Abid**, District Police Officer, Dir Lower at Timergara as competent authority, as of the opinion that you the following Constables while posted at Aman Police Post Osakai have rendered yourself liable to be proceeded against departmentally as you have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975:-

1. HC Akbar Khan I/C
2. FC Shakir Hassan No.1341
3. FC Noor Hayat No.354
4. FC Inayat Ur Rehman No.1438
5. FC Shakir Ullah No.2092
6. Bacha Saeed No.141/SPO
7. Fazal Mohammad No.245/SPO
8. Gul Rehman No.144/SPO
9. Gulistan No.906/SPO
10. Umer Ali No.968/SPO
11. Humayun No.285/SPO
12. Ibrahim No.193/SPO
13. Hassan Wali No 847/SPO
14. Mohammad Faraz No.251/SPO

STATEMENT OF ALLEGATION.

That while they posted at Aman Police Post Osakai found guilty/negligent in the performance of their duties as the miscreant have planted a pressure Cooker Bomb, near the Aman Police Post Osakai, which shows gross misconduct on their part:-

2- For the purpose of scrutinizing the conduct of said officer with reference to the above allegations **Mr. Gul Noor Khan SDPO Maidan** is appointed as enquiry officer.

3- The enquiry officer shall conducted proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defence and hearing to the accused officer, record its findings and make within twenty five (25) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused officer.

4- The accused officer shall join the proceeding on the date, time and place fixed by the Enquiry officer.

District Police Officer,
Dir Lower at Timergara.

No. 27128-29 /EC, dated 17/12 /2012.

1- **Mr. Gul Noor Khan SDPO Adenzai** (Enquiry Officer) for initiating proceeding against the above named defaulter under Police Rules 1975.

2- Defaulter Constables of Police Lines, Timergara.

Attested

Zia-Ur-Rahman Tolat
Advocate Peshawar

District Police Officer,
Dir Lower at Timergara.

ANNEX-E 18

جناب عالی!

بحوالہ نمبرولہ چارج شیٹ 1396/EC مورخہ 12/012 17 جناب DPO صاحب

دیر لوئیر مصروض ہو۔ بحیثیت رنگروٹ کنٹیبل چوکی اوسکی علاقہ تھانہ اوچ میں تعینات تھا مورخہ 12/012 17 کو چوکی ہذا میں موجود تھا۔ بمطابق ڈیوٹی رجسٹر نمبر اوّل ڈیوٹی لگائی گئی تھی انچارج ہیڈ کنٹیبل اکبر خان SPO حسن دی نمبر 847 کے ساتھ چوکی کے پیرنٹ سائیڈ پر روڈ وغیرہ پر شب اوّل کی ڈیوٹی بطریقہ احسن انجام دی ہے جبکہ چوکی کے بچھلے سائیڈ سیکورٹی کے لیے کنٹیبلان محمد فراز 251/SPO گل رحمان 146/SPO کو مورچہ میں تعینات کیگئے تھے ہم نے ڈیوٹی کے دوران باقاعدہ اپنے اور چوکی ہذا کے رکھوالی بخاطر انتہائی اچھے طریقے سے سرانجام دیتے ہوئے باقاعدہ چوکی کے اردگرد اپنے ڈیوٹی کے دوران ٹارچ استعمال کرتے ہوئے ڈیوٹی سرانجام دی ہے علی الصبح ہمایون SPO کے ذریعے معلوم ہوا کہ رات کو کسی نے بچھلے سائیڈ غسل خانے میں بوری میں مشکوک شے رکھی ہے بعدہ ہم تصدیق ہونے پر BDS سکواڈ کے ذریعے ناکارہ بنادیا گیا۔

میں نے دوران ڈیوٹی چوکی کے پیرنٹ سائیڈ پر کسی شخص کو یا دیگر کوئی غفلت نہیں کی ہے بچھلے سائیڈ غسل خانہ میں مشکوک بوری کی برآمدگی ہم تصدیق ہونے پر بروقت ڈسفوز ہونا پس صرف اللہ تعالیٰ کی مہربانی تھی۔ ورنہ پولیس ایک عظیم سانحہ سے شکار ہوتے چارج شیٹ بلا مزید کاروائی کے فائل کرنے کے احکامات صادر فرماکر دما گو دھونگا

العبد

کنٹیبل نورحیات نمبر 354 چوکی اوسکی حال لائن پولیس لائین

Attested

Rahman

8

Annx - D

جوابدہی رپورٹ

جناب عالی!

بحوالہ آمدہ ڈسپلنری ایکشن نمبری No. 27128-29/EC مورخہ 17/12/12

خدمت ہوں۔ کہ پولیس آفس پوسٹ اوسکی میں دیل پولیس ملازمین
1) اکبر خان 718/HC انچارج، 2) شاکر حسین 1341/FC، 3) نور حیات 354/FC، 4) عنایت الرحمان 1438/FC، 5) شاکر اللہ 2092/FC، 6) باچا سعید 141/SPO، 7) فضل محمد 945/SPO، 8) گل رحمان 144/SPO، 9) سلطان 906/SPO، 10) عمر علی 968/SPO، 11) ہمایون 265/SPO، 12) ابراہیم 193/SPO، 13) حسن ولی 847/SPO، 14) محمد فراز 251/SPO تعینات تھے۔ پولیس ملازمین کی تعیناتی اور موجودگی کے دوران کسی ملزم/ملزمان نامعلوم نے دربسر تھکر بم مورخہ 6/12/12 کے شب چوکی کے متصل شرقی دیوار غسل خانے میں رکھا تھا۔ پولیس ملازمین متعینہ چوکی اوسکی کے غفلت کے بناء پر جناب DPO صاحب نے ان کے خلاف نامزد چارج شیٹس جاری کئے۔ اور محکمانہ انکوائری من گل نور DSP میراں کو مارک کی۔ میں موقع جاکر موقع ملاحظہ کیا۔ اور ملازمان کیٹل حسن ولی 847/SPO، عمر علی 968/SPO، ہمایون 265/SPO، نور حیات 354/FC، محمد فراز 251/SPO، گل رحمان 144/SPO، اکبر خان 718/HC انچارج، شاکر حسین 1341/FC، عنایت الرحمان 1438/FC، فضل محمد 945/SPO، شاکر اللہ 2092/FC، ابراہیم 193/SPO، سلطان 906/SPO، باچا سعید 141/SPO کے بیانات بالترتیب قلمبند کئے۔ جو لف انکوائری ھذا ہے۔

انچارج اکبر خان 718/HC نے اپنے بیان میں تحریر کیا کہ میں نے ڈیوٹی مرحبہ کے متعلق سٹانی گارد اوّل حسن ولی 847/SPO دوئم عمر علی 968/SPO سوئم ہمایون 265/SPO، جبکہ چوبیس گھنٹہ اوّل نور حیات 354/FC، محمد فراز 251/SPO، گل رحمان 144/SPO جبکہ چوبیس گھنٹہ دوئم شاکر حسین 1341/FC، عنایت الرحمان 1438/FC، فضل محمد 945/SPO کی ڈیوٹیاں لگائی گئی تھی۔ اور میں بخشت انچارج نگرانی کی ڈیوٹی 24:00 بجے تک انجام دے کر پھر چارپائی پر سو گیا۔ صبح کیٹل ہمایون 265/SPO کے اطلاع پر چوکی کے معائنہ جاکر دیکھا۔ تو قریبی مورچہ میں بم پڑا تھا۔ SHO عبدالرحمان خان کو اطلاع دے کر وہ آکر بعد میں BDS آرمی انجینئران آکر بم کو ناکارہ کیا۔

کیٹل حسن ولی 847/SPO نے تحریر کیا۔ کہ میرا فرنٹ سائیڈ روڈ پر 18:00 تا 22:00 سٹانی اوّل ڈیوٹی تھی۔ ڈیوٹی انجام دینے کے بعد سوکر صبح گل رحمان 144/SPO کے [illegible] مورچہ میں بم رکھا تھا۔ بعد میں BDS انجینئران نے [illegible]

Attested
SDPO Takht Bhai
03-01-01

Attested
Zia-Ur-Rahman Tajik
Advocate Peshawar

کنٹیبل عمر علی 968/SPO نے تحریر کیا کہ میں سٹاف گارد فرنٹیئر دیوٹی 22:00 بجے
ڈیوٹی انجام دینے کے بعد حاضری خود پر سو گیا تھا۔ میں نے اپنے ڈیوٹی کے دوران کسی
کو چوکی کی طرف آتا ہوا نہیں دیکھا ہے صبح فجر کے وقت کنٹیبل ہمایون 265/SPO کے آواز کر
بیدار ہو کر ڈر کے مارے سڑک پر آیا۔ کنٹیبل ہمایون 265/SPO نے چوکی کے ساتھ رکھی ہو
بم اٹھا کر قریبی کھیت میں بنی ہوئی پرانا مورچہ میں بم رکھ دیا۔ بعد میں BDs والوں
نے ناکارہ کیا۔

کنٹیبل ہمایون 265/SPO نے اپنے بیان میں واضح کیا۔ کہ میں 02:00 بجے تا 06:00 بجے تک سٹاف گارد
پر موجود تھا۔ فجر کے آذان کے وقت فضل محمد 945/SPO کو کہا۔ کہ پیشاب کیلئے جاتا ہوں۔ آپ
نگرانی کرے۔ جب چوکی کے عقب جا کر ٹارچ کے ذریعے غسل خانہ کے دیوار کے ساتھ لوری
بند چیز پڑا تھا۔ جس کی اطلاع انچارج اکبر خان 718/HC کو دے کر اسی کے کہنے پر وہ چیز وہاں
سے اٹھا کر دور پرانا مورچہ میں رکھ دیا۔ ساتھ ہی انچارج نے کہا۔ کہ امران کو بم کے موجودگی
مورچہ میں بتلائی تھی کہ غسل خانے کے دیوار کے ساتھ۔ بعد میں BDs اہلکاران نے بم
ناکارہ کیا۔

کنٹیبل نور حیات 354/FC نے تحریر کیا۔ کہ میرا 18:00 بجے تا 24:00 بجے چوبیس گھنٹے ڈیوٹی تھی اپنے
ڈیوٹی انجام دینے کے بعد سو گیا تھا۔ صبح کنٹیبل ہمایون 265/SPO کی آواز پر اٹھا کہ عقب چوکی میں
بم پڑا ہے۔ جو کنٹیبل ہمایون 265/SPO نے وہاں سے اٹھا کر دور پرانا مورچہ لے جا کر رکھ دیا۔
بعد میں B.D.S والوں نے ناکارہ کیا۔

کنٹیبل محمد فراز 251/SPO نے تحریر کیا کہ میرا اور گل رحمان 144/SPO کا 18:00 بجے تا 24:00 بجے چوکی کے
اوپر مورچہ میں ڈیوٹی تھی۔ اپنے ڈیوٹی کے دوران کسی مشتبہ شخص کو چوکی کی طرف آتا ہوا
نہیں دیکھا ہے۔ ڈیوٹی سے فارغ ہونے کے بعد سو کر صبح کسی کا آواز سن کر کہ کسی نے غسل خانہ
کے قریب کوئی چیز رکھا ہے۔ نیند سے بیدار ہو کر جا کر دیکھا۔ کہ لوری میں بند کوئی چیز پڑا تھا۔
جو کنٹیبل ہمایون 265/SPO نے انچارج اکبر خان 718/HC کے کہنے پر چوکی سے دور لے جا کر پرانا مورچہ میں
رکھا۔ انچارج نے واضح کیا۔ کہ امران کو یہ نہ کہوں۔ کہ بم غسل خانہ میں پڑا تھا۔ بلکہ یہ
کہو کہ مورچہ میں پڑا تھا۔ بعد میں BDs والوں نے ناکارہ کیا۔

کنٹیبل گل رحمان 144/SPO نے اپنے بیان میں واضح کیا۔ کہ میرا اور کنٹیبل محمد فراز 251/SPO کا چوکی کے اوپر
فرنٹ مورچہ میں 18:00 بجے تا 24:00 بجے تک ڈیوٹی تھی۔ ڈیوٹی سے فارغ ہونے کے بعد سو گئے
تھے۔ صبح کنٹیبل ہمایون 265/SPO کے آواز پر معلوم ہوا کہ چوکی کے متصل کوئی چیز پڑا ہے۔ جو بعد میں
انچارج کے کہنے پر کنٹیبل ہمایون 265/SPO نے دور پرانا مورچہ میں رکھ دیا۔ اور انچارج اکبر خان 718/HC
نے مشورہ کر کے کہا۔ کہ یہ امران کو بم کی موجودگی مورچہ میں بتلایا کرے۔ جو بعد میں

Zia-Ur-Rahman Tajik
Advocate Peshawar

کنیل شاکر حسن 1341/Fc نے تحریر کیا۔ کہ شب وقوعہ میرا 24:00 بجے تا 06:00 بجے
ڈیوٹی تھی۔ کنیل ہمایوں 265/Spo نے آواز دی۔ کہ آپ میں کسی نے غسل خانے میں
ہیں رکھا ہے۔ اس آواز پر تمام کنیلان بیدار ہو کر موقع آئے۔ افسر کے کہنے پر کنیل
نے بارود کو ہم وہاں سے اٹھا کر دور مورچہ میں رکھ دیا۔ افسر نے یہ بھی کہا کہ ہم کی موجودگی مورچہ
بتلایا کرے۔ بعد میں BDs اہلکاران نے ہم ناکارہ کیا۔

کنیل عنایت الرحمان 1438/Fc نے تحریر کیا۔ کہ شب وقوعہ میرا 24:00 بجے تا 06:00 بجے مورچہ میں
ڈیوٹی تھی۔ صبح آذان کے وقت فضل محمد 945/Spo نے آواز دی۔ کہ غسل خانے میں کوئی چیز پڑا ہے۔
آپ کا تو نہیں۔ میں نیچے اتر گیا۔ افسر خان اکبر 718/Hc کے کہنے پر ہمایوں 265/Spo نے ہم غسل
چیز اٹھا کر دور مورچہ میں رکھا۔ افسر نے یہ بھی کہا۔ کہ ہم کی موجودگی مورچہ میں بتلایا کرے
بعد میں BDs اہلکاران نے ہم کو ناکارہ کیا۔

کنیل فضل محمد 945/Spo نے اپنے بیان میں واضح کیا کہ شب وقوعہ میرا 24:00 بجے تا 06:00 بجے مورچہ پر
ڈیوٹی تھی۔ کسی کو چوکی کی طرف آتا ہوا نہیں دیکھا ہے۔ فجر کے وقت ہمایوں 265/Spo نے مجھے کہا۔
کہ تم رکھوالی کرو۔ وہ پیشاب کیلئے جاتا ہے۔ کنیل ہمایوں 265/Spo واپس آکر کہا کہ غسل خانہ
میں کوئی شے بوری بند پڑا ہے۔ میرے کہنے پر اس نے افسر اور دیگر نفری کو اطلاع دی۔
پر افسر کے کہنے پر ہمایوں 265/Spo نے ہم غسل خانے سے اٹھا کر دور مورچہ میں رکھ دیا۔ جسے
بعد میں BDs اہلکاران نے ہم کو ناکارہ کیا۔

کنیل شاکر اللہ 2092/Fc نے تحریر کیا کہ میں مورخہ 6 12/12 سے 2 یوم شب باشی پر حسب الحکم افسر
اکبر خان 718/Hc گھر خود گیا تھا۔ مورخہ 7 12/12 پر افسر نے فون کر کے بتلایا۔ کہ آپ کا تبادلہ لولاب لائن
ہو چکا ہے۔ فوری طور پر چوکی آجائے۔ بوقت شام وہلہ چوکی آکر معلوم ہوا کہ کسی نے چوکی کو ہم
رکھا تھا۔ کنیلان کے بستری گاڑی میں ڈال دی تھی۔ افسران کے حکم پر دیگر ساتھیوں کے ہمراہ
پولیس لائن حاضر آیا تھا۔

کنیل ابراہیم 193/Spo نے تحریر کیا۔ کہ مورخہ 5 12/12 پر 2 یوم شب باشی حوالدار اکبر خان 718/Hc کے ہمراہ
گھر خود گیا تھا۔ مورخہ 7 12/12 پر واپس چوکی آکر دیکھا۔ کہ تمام ساتھیوں بستری لپیٹے تھے۔ بشمول
SDPO-II پر معلوم ہوا۔ کہ کسی نے چوکی کو ہم رکھی تھی۔ افسران کے حکم پر دیگر ساتھیوں کے ہمراہ لولاب لائن
میں حاضری کی ہے۔

کنیل گلستان 906/Spo نے تحریر کیا۔ کہ مورخہ 6 12/12 پر حسب الحکم افسر 2 یوم شب باشی پر رحمن
میں گھر خود گیا تھا۔ مورخہ 7 12/12 پر کنیل حسن ولی 847/Spo نے اطلاع دی۔ کہ جملہ نفری پولیس لائن
کلوز ہو چکے ہیں۔ سیدھا پولیس لائن آجائے۔ بعد میں معلوم ہوا۔ کہ کسی نے چوکی
کو IED رکھی تھی۔

Attested

Zia-Ur-Rahman Tajik
Advocate Peshawar

نیل جاجہ سعید 141/SPO نے عرض کیا کہ میں بیماری کی وجہ سے اسٹران بالا کے موقع پر ڈیوٹی کیلئے چوکی آکر روڈ پر جیکنگ کیلئے کھڑا ہوا۔ اسی دوران پولیس اسٹران آمر اکبر خان 718/HC نے اس کو میرا موبائل لے جا کر کوئی شے اٹھا کر BDS انکیاران نے ناکارہ کر دیا تھا۔ جبکہ رات کی ڈیوٹی بھی برحساب تھی اور رات گزار کے گھر فوجا یا۔

انکوائری ھذا میں ما سوائے اکبر خان 718/HC، عنایت الرحمان 1438/Fc، گلستان 906/SPO کے بقایا تمام ملازمین کی چارج شیٹس موصول ہو کر لف انکوائری کی ہے۔

SHO عبدالرحمان، فسر زہار زیب MASI تھانہ آوچ کے بیانات قلمبند کر کے لف انکوائری ہے۔ اسی طرح وقوعہ ھذا کا نقل FIR بھی شامل انکوائری ہے۔

انکوائری سے میں اس نتیجہ پر پہنچا کہ ملازمین بالا میں شاکر اللہ 2092/Fc، ابراھیم 193/SPO، گلستان 906/SPO، ماما سعید 141/SPO شب باسی پر بیان کئے۔ جن کے مطابق روزنامچہ کوئی روانگی نہیں ہے۔ اخراج اکبر خان 718/HC کے بقول کنیل حسن ولی 847/SPO، عمر علی 968/SPO، ھمایون 265/SPO کی سٹانی گارد ڈیوٹی جبکہ حوالدار اول نورحیات 354/Fc، محمد فراز 251/SPO، گل رحمان 144/SPO جبکہ حوالدار دوئم شاکر حسین 1341/Fc، عنایت الرحمان 1438/Fc، فضل محمد 945/SPO کی ڈیوٹی لگائی گئی تھی۔ بوقت قریب 06:00 بجہ کنیل ھمایون 265/SPO کی اطلاع پر تمام ملازمین نیند سے بیدار ہو کر اخراج اکبر خان 718/HC کے کہنے پر کنیل ھمایون 265/SPO نے بم غسل خانے سے اٹھا کر دور مورچہ میں رکھنے سے ان کو علم تھا کہ بم بلاسٹ میں ہوتا ہے۔ کنیلان کے بیانات کے مطابق کہ بم چوکی کے عقب دیوار کے ساتھ متصل غسل خانہ میں رکھا ہوا اور اخراج اکبر خان 718/HC کا کنیلان کو کہنا کہ بجائے دیوار کے بم کی موجودگی مورچہ میں بیان کرنا اپنے غفلت پر مزید پردہ ڈالنا تھا۔

ملازمین اکبر خان 718/HC، حسن ولی 847/SPO، عمر علی 968/SPO، ھمایون 265/SPO، نورحیات 354/Fc، محمد فراز 251/SPO، گل رحمان 144/SPO، شاکر حسین 1341/Fc، عنایت الرحمان 1438/Fc، فضل محمد 945/SPO، جو کہ چوکی میں ڈیوٹی پر موجود تھے۔ وہ اپنے آپ ڈیوٹیوں میں غفلت لاپرواہی کے مرتکب ہو چکے ہیں۔ ان کو موجود کنیلان شاکر اللہ 2092/Fc، ابراھیم 193/SPO، گلستان 906/SPO، ماما سعید 141/SPO شب باسی پر (Major punishment) دینے اور الزام سے بری ذمہ قرار دینے کی سفارش کیجاتی ہے۔ فائنڈنگ رپورٹ گزارش ہے۔

SDPO. Mardan 03.01.13

Issue final Show Cause Notice with copy of findings of E.O to showing Proposed punishment.

Constt. Akbar Khan – 718 (HC) Constt. Hassan Wali SPO Sh. Noor Mir – 968 SPO, Humayun 265 SPO, Noor Hayat No. 354, Muhammad – 251 SPO, Zahid Rehman 144 SPO, Shakir Hussain No. 1341, Inayat Rehman No. 1438 and Fazal Malik 945 SPO for Proposed punishment of dismissal from service.

Attested

Annx – E

12

FINAL SHOW CAUSE NOTICE.

WHEREAS AS YOU the following officials:-

1- HC Akbar Khan I/C No.718 2- FC Shakil Hassan No.1341 3- FC Noor Hayat No.354
4- FC Inayat Ur Rehman No.1438 5- SPO Muhammad Faraz No.251. 6- SPO Fazal Mohd: No.945
7- SPO Gul Rehman No.144 8- SPO Hassan Wali No.847 9- SPO Umer Ali No.968
10- SPO Hamayun Khan No.265

While posted at Aman Police Post Osakai found guilty/negligent in the performance of their duties as the miscreant have planted a Pressure Cooker Bomb, near the Aman Police Post Osakai, but non of you aware about the incident, which shows gross mis-conduct on your part.

AND WHERE AS, a proper departmental was conducted against you and the charge leveled against you was established without any shadow of doubt and you are to be awarded major punishment including dismissal from service.

NOW THEREFORE, as required by the NWFP Police Rules, 1975

I, **Mohammad Ijaz Abid**, District Police Officer, Dir Lower call upon to show cause as to why you should not be awarded major punishment as defined under rule-4(b) of the said rules.

Your explanation should reach the undersigned within **07-Days** of the receipt of this notice.

You should state in writing as to whether you wish to be heard in person or otherwise?

In case, your written explanation is not received within the specified period, it would be presumed that you have no defense to offer and in that case Ex-part action will be taken against you.

District Police Officer,
Dir Lower at Timergara.

No. 455-65 /E,
Dated 4/1 /2013.

Enclosed herewith please find Final Show Cause Notice (in-duplicate) are sent to **Line Officer,** for necessary delivered upon the above name officials of Police Lines Timergara.

One copy of the Final Show Cause Notice may be delivered upon them and their signature taken as a token of its receipt be returned for further necessary action.

Attested

Zia-Ur-Rahman Tajik
Advocate Peshawar

P-3 Annx-F

جناب عالی!

بحوالہ مسمولہ فائنل شوکاز نوٹس نمبر 455-65 مورخہ 04-01-013

معروض خدمت ہوں کہ بحیثیت ریگولر کنٹیبل چوکی اوسکی علاقہ تھانہ اوچ میں تعینات تھا۔ مورخہ 07-12-12 کو چوکی ھذا میں موجود تھا بمطابق ڈیوٹی پر حسب اول ڈیوٹی لگائی گئی تھی انچارج ہیڈ کنٹیبل اکبر خان نمبر 718، SPO حسن ری 847 کے ساتھ چوکی کے فرنٹ سائیڈ روڈ و نمبر 2 پر شیئر اول HC کی ڈیوٹی بطریقہ احسن انجام دی ہے جبکہ چوکی کے پچھلے سائیڈ سیکورٹی کے لیے کنٹیبل محمد فراز 251/SPO گل زمان 166/SPO مورچہ میں تعینات کئے گئے تھے ہم نے ڈیوٹی کے دوران باقاعدہ اپنے اور چوکی ہذا کے رکھوالی کیخا طر انتہائی اچھے طریقے سے انجام دیتے ہوئے باقاعدہ چوکی کے اردگرد اپنے ڈیوٹی کے دوران ٹارچ استعمال کرتے ہوئے ڈیوٹی سرانجام دی ہے۔ علی الصبح ہمایون SPO/265 کے ذریعے معلوم ہوا کہ رات کو کسی نے پچھلے سائیڈ غسل خانہ میں لوری میں مشکوک شے دیکھی ہے۔ بعدہ ہم نے تصدیق ہونے پر BDS سکواڈ کے ذریعے ناکارہ بنا دیا گیا۔ میں نے دوران ڈیوٹی چوکی کے فرنٹ سائیڈ پر کسی شخص کو یا اردگرد کوئی غفلت نہیں کی پچھلے سائیڈ غسل خانہ میں مشکوک لوری کی برآمدگی ہم تصدیق ہونے پر بروقت وصفوز ہونا بس صرف اللہ تعالیٰ کی مہربانی تھی۔ ورنہ پولیس ایک عظیم سانحہ سے شکار ہوتے۔ فائنل شوکاز نوٹس بلا مزید کاروائی کے فائنل کرنے کے احکامات صادر فرما کر دعاگو رہوں گا۔

Attested

Zia-Ur-Rahman Tajik
Advocate Peshawar

العبد

کنٹیبل نور حیات نمبر 354 چوکی اوسکی حال لائن نمبر 5

Annx-G 14

ORDER.

This is a proper departmental order against the following officials on the charge that they while posted at Aman Police Post Osakai, found guilty/negligent in the performance of their duties on the night of 13and14/12/2012, as the miscreants planted a Pressure Cooker bomb near the Aman Police Post Osakai, but they were unaware about the incident: -

1- HC Akbar Khan I/C No.718
2- FC Inayat Ur Rehman No.1438
3- SPO Fazal Mohammad No.948
4- SPO Umer Ali No.968
5- SPO Hassan Wali No.847
6- FC Shakir Hassan No.1341
7- FC Noor Hayat No.354
8- SPO Gul Rehman No.144
9- SPO Hamayun Khan No.265
10- SPO Muhammad Faraz No.251.
11- FC Shakir Ullah No.2092
12- SPO Bacha Saeed No.141
13- SPO Gulistan No.906
14- SPO Ibrahim No.193

They were served Charge Sheet with couple of Statements of Allegation and Mr. Gul Noor Khan SDPO Maidan was appointed as enquiry officer to conduct proper departmental enquiry against them and submit his finding. The enquiry officer conducted proper departmental enquiry, checked the site, recorded the statements of all concerned including defaulter officials. The enquiry officer in his finding established the charges leveled against the official at Serial No. 1 to 10 above and recommended them for major punishment, while the officials at Serial Nos.11, 12, 13 and 14 i.e Constables Shakir Ullah No.2092, SPO Bacha Saeed No.141, SPO Gulistan No.906 and SPO Ibrahim No.193 were exonerated from the charge as they were on shah bashi. They were served Final Show Cause Notice, with a copy of findings of enquiry officer as well as an opportunity of personal hearing but they failed to produce any cogent reason in their defense therefore, the officials at S/Nos. 1 to 10 are here-by Dismissed from service with immediate effect. The officials mentioned at S/No. 11, 12, 13 and 14 above are exonerated from the charge and they are re-instated into service with immediate effect. The period of suspension is treated as duty.

OB No. 57
Dated 11- 01- /2013.

District Police Officer,
Dir Lower at Timergara.
9.1.13

Attested

Advocate Peshawar

P-15 Annex-4

To : **The Deputy Inspector General of Police, Malakand Region-III, Saidu Sharif Swat.**

Subject:- **APPEAL.**

Respected Sir,

The following are submitted for your kind and sympathetic consideration.

1. That I joined Police Department as Constable on 08-08-2009 and presently was posted in patrolling Post Osakai when on 07-12-2012 an IED was found in vicinity of post. .

2. That on the night of occurrence I performed my duty in " Churpara: from 06:00 P.M to 12:00 PM and after duty I went to bed when at 06:00 am, SPO Hamayun awoke me and asked that if I had put something in washroom. I told that I have put nothing. He also asked the other personnels but all them should ignorance.

3. That the incharge HC Akbar Khan informed the SHO who alongwith BDS followed by Army Contingent arrived and destroyed the IED .

4. That I alongwith other colleques were closed to Police Line and after inquiry I have been dismissed form service vide OB 57 dated11-01-2013.

GROUNDS

The Impugned order is assailed on the following ground.

A. That on the night of occurrence I had performed duty with incharge Akbar Khan and Constable SPO Hassan Wali while Constable /SPO Gul Rehman and Muhammad Faraz were performing duty in upper trench.

B. That at 12:00 hrs before going to bed, HC Akbar Khan had gone to washroom for urination but noticed nothing.

C. That it has not been established from inquiry that the IED was put by someone in washroom during my duty hours.

D. That it is yet to be established that who placed the IED and how was placed.

Attested

Zia-Ur-Rahman Tajik
Advocate Peshawar

D. That it is yet to be established that who placed the IED and how was placed.

E. That the order of dismissal is too harsh and is against the facts and natural justic.

F. That no chance of personal hearing has been afforded to me and in haphazard manner I have been dismissed form service without cogent reasons. .

G. That I have always perform my duty honestly and efficiently and my service record is stainless.

H. That I belong to a poor family and have got no other source of income except this employment .

PRAYER !

In light of above it is humbly prayed that the impugned order may kindly be re-instated in to service. I will remain oblige .

Yours Obediently

Ex-Constable Noor Hayat
No. 354 Dir Lower.

Attested

Zia-Ur-Rahman Taj
Advocate Peshawar

P-17 Annx-J

From : The Regional Police Officer,
Malakand, at Saidu Sharif, Swat.

To : The District Police Officer, Dir Lower.

No. 1732 /E, dated Saidu Sharif, the 29/3 /2013.

Subject: **APPEAL**

Memorandum:

Reference your office Memo: No. 1858/EC, dated 01/02/2013.

Application of Ex-Constable Noor Hayat No. 354 (~~Special Police Force~~) Full const of your District for reinstatement in service has been examined and filed by the worthy Regional Police Chief.

The applicant may be informed accordingly.

Office Supdt:
For: **Regional Police Officer,**
Malakand, at Saidu Sharif Swat
Naqi

OB/EC

District Police Officer,
Dir Lower at Timergara.
1/4

Attested

Zia-Ur-Rahman Tajik
Advocate Peshawar

OB. No. 481
01/04/013

P-18 Annex-K

From: The District Police Officer,
Dir Lower at Timergara.

To: The Regional Police Officer,
Malakand at Saidu Sharif Swat.

No. 6228 /EB dated Timergara the 1/4 /2013.

Subject: **MERCY PETITION**

Memo:

Kindly refer to your office Endst: No.1346/E dated 11.03.2013.

Comments on the application of Ex. Constable Akbar Khan No. 718, Shakir Hussain No. 1341 and Inayat Ur Rahman No. 1438 are submitted as under, please

Ex-Constables Akbar Khan No.718, Shakir Hussain No.1341 and Inayat ur Rehman No.1438, while posted in Aman Police Post Osakai found guilty/negligent in the performance of their duty on the night of 13and 14.12.2012 as the miscreant planted a pressure cooker bomb near the Aman Police Post Osakai, but they were unaware about the incident. They were served charge sheets with couple of statement of allegation and Mr. Gul Noor Khan SDPO/Maidan was appointed as enquiry officer to conduct proper departmental enquiry against them and submit their finding. The enquiry officer conducted proper departmental enquiry, checked the site recorded the statements of all concerned including defaulter official. The enquiry officer in his finding established the charge leveled against the official and recommended them for major punishment. They were served final show cause notice, with an opportunity of personal hearing but they failed to produce any cogent reasons in their defense.

Therefore, they were dismissed from service vide this office OB No. 57 dated 11.01.2013. Their appeals for reinstatement into service has already been filed by the worthy Regional Police Officer, Malakand at Saidu Sharif Swat vide Memo: No.820/E dated 18.02.2013, 755/E, 778/E, dated 14.02.2013.

Attested

Zia-Ur-Rahman Tajik
Advocate Peshawar

District Police Officer,
Dir Lower at Timergara.
1/4

WAKALATNAMA

IN THE COURT OF Service Tribunal Peshawar

In Re Noor Hayat

Accused / Petitioner / Plaintiff

VERSUS

Deputy Superintendent of Police etc

Respondent / Defendant / Complainant

FIR_____Charge U/S_____P.S _____Dated_____

KNOW ALL to whom these presents shall come that it be undersigned appoint ***ZIAUR REHMAN TAJIK Advocate High Court Peshawar*** in the above mentioned case, to do all the following acts, deeds and things or any of them, that is to say:

1. To act and plead in the above mentioned case in this court or any other court in which the same may be tried or beard in the first instance or in appeal or review or execution or in any other stage of its progress until its final decision.
2. To sign, verify and present pleadings, appeals, cross – objections, petitions for execution, review, revision, withdrawal, compromise or other Petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of said case in all its stages.
3. To withdraw or compromise in the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
4. To receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said case.
5. To engage any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I herby agree to ratify whatever the Advocate or his substitute shall do in the promises.

AND I hereby agree not to hold the Advocate or its substitute responsible for the result of the said case in consequence of his absence from the court when the said case is called up for hearing.

AND I herby that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid,. He shall be entitled to withdraw form the prosecution of the said case until the same is paid.

IN WITNESS WHEREOF I hereunto set my hand to these presents the contents of which have been explained to and understood by me, this_____day of _____2011.

نورحیات

Signature / Thumb Impression
of Party / Parties

Attested

Accepted By

Ziaur Rehman Tajik

ZIAUR REHMAN TAJIK Advocate
LLM Constitutional Law Peshawar
Peshawar High Court Peshawar
Cell No. 03009357932

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWR.

APPEAL NO. 759/2013.

Noor Hayat Ex-Police Constable No. 354 Dir Lower..... Appellant.

Versus

1. Deputy Superintendent of Police / Inquiry Officer Dir Lower.
2. District Police Officer Dir Lower at Timergara
3. Regional Police Officer, Malakand at Swat.
4. Provincial Police Officer, K.P.K Peshawar..... Respondents

Subject: **PARA WISE COMMENTS/ REPLY ON BEHALF OF RESPONDENTS.**

PRELIMINARY OBJECTIONS:-

1. That the appellant has got no locus standi and cause of action to file the instant appeal.
2. That the appeal is badly time barred.
3. That the appellant is estopped to sue due to his own conduct.
4. That the appeal is not maintainable in its present form.
5. That the appellant suppressed the material facts from this honourable tribunal.
6. That this honourable tribunal has got no jurisdiction to entertain the present appeal.

ON FACTS:

1. Pertains to record.
2. Incorrect. His record is not stainless and has been punished for absence from duty from time to time. (Record of previous punishment is attached).
3. Correct.
4. Correct to the extent that the appellant was served with charge sheet coupled with statement of allegation relating to his negligence in duty.

5. Incorrect. The appellant remain associated with inquiry during entire proceeding. After completion of inquiry, he was served with final show cause notice wherein option was given to the appellant of being heard personally or to make reply in written.

6. Correct and needs no comments.

7. Correct and needs no comments.

8. Pertains to record.

GROUNDS:-

(A) Incorrect. The appellant has been treated in accordance with law/ rules and the order of dismissal is legal and based on justice.

(B) Incorrect. The appellant remained associated with inquiry proceeding. He was given option through final show cause notice that whether to be heard personally or to reply through written statement and the appellant opted for written reply.

(C) Incorrect. The order of dismissal commensurate with allegation of gross negligence in accordance with law and rules. He was on watch duty when unknown terrorist put an IED in the wash room under his nose. This speaks a lot about his negligence in duty.

(D) Incorrect. The entire proceeding has been conducted according to the prevailing law.

(E) Incorrect. The negligence of appellant has been proved through cogent evidence.

(F) Incorrect. No population is available near Police Post Osakai and is situated lone on road side. The IED was recovered from wash room situated quite near at a distance ¾ steps from Police Post building.

(G) Incorrect. The inquiry officer conducted the inquiry based upon justification.

(H) Incorrect. The impugned order is a valid and well speaking order.

(I) As replayed in para 02 of facts.

(J) That any other grounds will be agitated at the time of arguments with the permission of the tribunal.

PRAYER :-

In light of above facts and circumstances it prayed that the appeal being baseless may kindly be dismissed with cost, please.

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar

Regional Police Officer,
Malakand at Saidu Sharif, Swat

Regional Police Officer,
Malakand, at Saidu Sharif Swat.

District Police Officer,
Dir Lower at Timergara

District Police Officer,
Dir Lower at Timergara

Dy: Superintendent of Police /Inquiry Officer ,
Dir Lower at Timergara

SDPO Kohistan at
Sheringal Dir Upper

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 759/2013

Noor Hayat Ex-Police Constable No. 354 Dir Lower.....Appellant

VERSUS

1) Dy: Superintendent of Police / Enquiry Officer District Dir Lower Timergara.
2) District Police Officer Dir Lower.
3) Regional Police Officer Malakand at Swat.
4) Provincial Police Officer Khyber Pakhtunkhwa, Peshawar. .....RESPONDENTS

POWER OF ATTORNEY

We the following respondents do hereby authorize Mr. Muzafar Khan SI Legal Timergara Dir Lower to appear on our behalf before the Honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar in connection with above Service appeal.

He is also authorized to submit all documents required by the Tribunal in the above appeal.

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

Regional Police Officer,
Malakand, at Saidu Sharif Swat.

District Police Officer,
Dir Lower at Timergara.

District Police Officer
Dir Lower at Timergara

Dy: Superintendent of Police/Enquiry Officer
Dir Lower at Timergara.

SDPO Kohistan at
Sheringal Dir Upper

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 759/2013

Noor Hayat Ex-Police Constable No. 354 Dir Lower.....Appellant

VERSUS

1) Dy: Superintendent of Police / Enquiry Officer District Dir Lower Timergara.
2) District Police Officer Dir Lower.
3) Regional Police Officer Malakand at Swat.
4) Provincial Police Officer Khyber Pakhtunkhwa, Peshawar. .....RESPONDENTS

AFFIDAVIT

We the undersigned do hereby solemnly affirm and declare on oath that the contents of Para-wise comments are true and correct to the best of our knowledge and belief and nothing has been suppressed or concealed from this honorable tribunal .

DEPONENTS

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar._____

Regional Police Officer,
Malakand at Saidu Sharif, Swat._____

Regional Police Officer,
Malakand, at Saidu Sharif Swat.

District Police Officer,
Dir Lower at Timergara.

District Police Officer
Dir Lower at Timergara

Dy: Superintendent of Police/Enquiry Officer
Dir Lower at Timergara._____

SDPO Kohistan at
Sheringal Dir Upper

ضلع ٹیرا بونیئر

نقلہ 4 روزنامچہ 15/11

حاضری ALO مورخہ 15/11 وقت 8.15 اس وقت کنسٹیبل نور حیات 354 غیر حاضر شدہ کو المد 88 روزنامچہ 15/11 4 بجے حاضر آکر بیان کیا جیکہ بوجہ بیماری غیر حاضر ہو چکا ہوں اب حاضر آیا ہوں میرا حاضری کیا جائے۔ محفوظ رکھنے کی پیش مذکورہ کی حاضری درج روزنامچہ کیگئی

جناب عالی!

نقل بمطابق اصل ہے

M.M.L-Tgarra

5/10/11

Sir

Forwarded

LO-Tgarra

6/10/11

جناب عالی!

ایک یوم غیر حاضری بن تنخواہ سزا تجویز کی جاتی ہے

ASP/HQrs

6-10-11

Approved

SDPO

OB 1390

11/10/11

ایک سو ترپن

تعلیم 53 روزنامچہ 18/11/09

فلور ڈیوٹی

نمبر 53 حاضری صبیا Alpha مورخہ 18/11/09 وقت 19:25 بجے اس وقت
سیکیورٹی فورسز حیات 354 عہدیدار حاضر شدہ کو السرعہ 484 روزنامچہ
16/11/09 حاضر کر دیا گیا تھا تاکہ بوقت ضرورت کام عہدیدار حاضر ہو جائیں،
اب حاضر نہ ہوئیں۔ عہدیدار حاضری کیجاویں۔ اشتہار گشت
کی حاضری درج روزنامچہ ہذا کر کے تعلیمات بغرض مناسب حکم افسران
بالا دستور سیل ہوگئی۔ حضا بحالی

تعلیم علاقہ افسر:
m-m-l
T-Sarg
18/11/09

حضا بحالی۔

مذکورہ سیکیورٹی فورسز 16/11/09 سے 18/11/09 تک
عہدیدار حاضر رہے۔ تعلیمات بغرض مناسب کاروائی
ارسال خدمت ہے۔

T-Jamsa
19/11/09

Approved.

DPE IDIR

(2)
دوسرے عہدیدار حاضری بلا تنخواہ رخصت ہوئے۔
ٹیلیفونی اطلاع کیجائی۔

21-11-09

183
10/2/10

سیشن شیٹ نمبر ۵۵ نفری ۹۹ روزنامچہ 15/11/09

۹۹ حاضری MLHC مورخہ 15/11/09 وقت 1140 اس وقت ریکروٹ
فورصیات 356 علیز حاضر سکہ بجز الرحمٰن 47 روزنامچہ 11/11/09 حاضر اکریسانی
طبیعت بوجہ ضروری کام غیر حاضر ہو چکا ہوں۔ اب حاضر آیا ہوں۔ میرا حاضری کیا دیں
التشان انتظ لین مذکورہ کی حاضری ۷ روزنامچہ ہو کر تعلقات بوقت مناسب فیکے افسران
بالا فرسل ہوگی۔ خاکسار

نقل عطابق اصل

m.m.l
T. Bari
15/11/09

خیالات

ریکروٹ فورصات 356 مورخہ 11/11 تا 15/11 تک حاضر ہے
غیر حاضر ہوئی ہے۔ 4/6 یوم بلا منظوری حاضر ہوا

Approved.

DPO/DIR (L)

DB No 719
26-1-10

Hqrs
17-11-09

آنریبل ڈائریکٹر صاحب کی خدمت میں

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWR.

APPEAL NO. 756/2013.

Shakir Hussain Ex-Police Constable No. 1341 Dir Lower..... Appellant.

Versus

1. Deputy Superintendent of Police / Inquiry Officer Dir Lower.
2. District Police Officer Dir Lower at Timergara
3. Regional Police Officer, Malakand at Swat.
4. Provincial Police Officer, K.P.K

Peshawar..... Respondents

Subject: **PARA WISE COMMENTS/ REPLY ON BEHALF OF RESPONDENTS.**

PRELIMINARY OBJECTIONS:-

1. That the appellant has got no locus standi and cause of action to file the instant appeal.
2. That the appeal is badly time barred.
3. That the appellant is estopped to sue due to his own conduct.
4. That the appeal is not maintainable in its present form.
5. That the appellant suppressed the material facts from this honourable tribunal.
6. That this honourable tribunal has got no jurisdiction to entertain the present appeal.

ON FACTS:

1. Pertains to record.
2. Incorrect. His record is not stainless and has been punished for absence from duty from time to time. (Record of previous punishment is attached).
3. Correct.
4. Correct to the extent that the appellant was served with charge sheet coupled with statement of allegation relating to his negligence in duty.

5. Incorrect. The appellant remain associated with inquiry during entire proceeding. After completion of inquiry, he was served with final show cause notice wherein option was given to the appellant of being heard personally or to make reply in written.

6. Correct and needs no comments.

7. Correct and needs no comments.

8. Pertains to record.

GROUNDS:-

(A) Incorrect. The appellant has been treated in accordance with law/ rules and the order of dismissal is legal and based on justice.

(B) Incorrect. The appellant remained associated with inquiry proceeding. He was given option through final show cause notice that whether to be heard personally or to reply through written statement and the appellant opted for written reply.

(C) Incorrect. The order of dismissal commensurate with allegation of gross negligence in accordance with law and rules. He was on watch duty when unknown terrorist put an IED in the wash room under his nose. This speaks a lot about his negligence in duty.

(D) Incorrect. The entire proceeding has been conducted according to the prevailing law.

(E) Incorrect. The negligence of appellant has been proved through cogent evidence.

(F) Incorrect. No population is available near Police Post Osakai and is situated lone on road side. The IED was recovered from wash room situated quite near at a distance ¾ steps from Police Post building.

(G) Incorrect. The inquiry officer conducted the inquiry based upon justification.

(H) Incorrect. The impugned order is a valid and well speaking order.

(I) As replayed in para 02 of facts.

(J) That any other grounds will be agitated at the time of arguments with the permission of the tribunal.

PRAYER :-

In light of above facts and circumstances it prayed that the appeal being baseless may kindly be dismissed with cost, please.

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar

Regional Police Officer,
Malakand at Saidu Sharif, Swat

Regional Police Officer,
Malakand, at Saidu Sharif Swat.

District Police Officer,
Dir Lower at Timergara

District Police Officer
Dir Lower at Timergara

Dy: Superintendent of Police /Inquiry Officer ,
Dir Lower at Timergara

SDPO Kohistan at
Sheringal Dir Upper

نقل حاضری 25 روزنامچہ 24/9/09

حاضری 25 حاضری 14 موقع 24/9/09 وقت 16.40 بجے موقعہ
کنٹیل شاہ حسن 1341 عہدہ حاضر شدہ کو اطلاع دی روزنامچہ
24/9/09 حاضر آکر بیانی تھانہ کوٹ کمبر بیوپاری
میرا حاضر ہوا ہوں۔ رپ حاضر آکر میرا حاضری کیا اور
اطلاع دی پس مذکورہ کنٹیل کا حاضری 24/9/09 کے روزنامچہ
کی نقل ہے لہذا مناسب کاروائی واسطے ارسال خدمت ہے

جناب عالی!
نقل مطابق اصل ہے
M.M.Q.T Jamra
24-9-09

OB No 1485
Dt 21/9/09
جناب عالی

مذکورہ کنٹیل عہدہ کو حضور میں حاضر کیا گیا۔ اور
مذکورہ دیہہ دانستہ طور پر عہدہ حاضر ہو کر
حوالہ 24/9/09 سے 22/9/09 تک عہدہ حاضر رہا ہے
تعلیمات بغرض مناسب کاروائی ارسال خدمت ہے

Lo. T. Jamra
25/9/09

جناب عالی:
(2)
دو یوم عہدہ حاضری لیٹر مذکورہ کو عطا
میں شمار کرنے کی منظوری چاہتا ہوں

Approved and pay released

Sd/-

1341

دل نرمہ

نقل 35 روزنامچہ 22/6/11

35 حاضری ASHO حسب 22/6/11 وقت 15:00 بجے اس
سٹیبل شاہد حسن 1341/FC غیر حاضر شدہ۔ بحوالہ
3P روزنامچہ 20/6/11 سے حاضر آیا۔ الوسلام اردو
میں مذکورہ کی حاضری دفعہ روزنامچہ کی گئی۔

جناب عالی!
نقل مطابق اصل ہے۔
Javed
m.m.ps. T Garh.
22.6.2011

جناب عالی!
نقل مذکورہ ذیل دفعہ
غیر حاضری کے بارے میں
ہے تحریر میں شامل کی جائے
Kaseem Khan
SHO-ps. T
23.6.011

جناب عالی!
(2)
کنسٹیبل شاکر حسین 1341/FC مورخہ 20/6/011
تا 22/6/011 بتک مسمل (2) دو یوم غیر حاضر
رہا آیا۔ غیر حاضری بدا شتوارہ میں شمار
کرنے کی سفارش کی جاتی ہے۔

Approved.

SDPO = 965
5-7-011

11 000 M. garh

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 756/2013

Shakir Hussain Ex-Police Constable No.1341 Dir Lower.....Appellant

VERSUS

1) Dy: Superintendent of Police / Enquiry Officer District Dir Lower Timergara.
2) District Police Officer Dir Lower.
3) Regional Police Officer Malakand at Swat.
4) Provincial Police Officer Khyber Pakhtunkhwa, Peshawar. .....RESPONDENTS

AFFIDAVIT

We the undersigned do hereby solemnly affirm and declare on oath that the contents of Para-wise comments are true and correct to the best of our knowledge and belief and nothing has been suppressed or concealed from this honorable tribunal .

DEPONENTS

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

Regional Police Officer,
Malakand, at Saidu Sharif Swat

District Police Officer,
Dir Lower at Timergara.

District Police Officer
Dir Lower at Timergara

Dy: Superintendent of Police/Enquiry Officer
Dir Lower at Timergara.

SDPO Kohistan at
Sheringal Dir Upper

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 756/2013

Shakir Hussain Ex-Police Constable No.1341 Dir Lower.....Appellant

VERSUS

1) Dy: Superintendent of Police / Enquiry Officer District Dir Lower Timergara.
2) District Police Officer Dir Lower.
3) Regional Police Officer Malakand at Swat.
4) Provincial Police Officer Khyber Pakhtunkhwa, Peshawar. .....RESPONDENTS

POWER OF ATTORNEY

We the following respondents do hereby authorize Mr. Muzafar Khan SI Legal Timergara Dir Lower to appear on our behalf before the Honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar in connection with above Service appeal.

He is also authorized to submit all documents required by the Tribunal in the above appeal.

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

Regional Police Officer,
Malakand, at Saidu Sharif Swat.

District Police Officer,
Dir Lower at Timergara.

District Police Officer
Dir Lower at Timergara

Dy: Superintendent of Police/Enquiry Officer
Dir Lower at Timergara.

SDPO Kohistan at
Sheringal Dir Upper

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Noor Hayat versus DPO etc

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth,

Rejoinder as to preliminary objections:

1. That all the preliminary objection are illegal, incorrect, baseless, appellant has a cause of action, locus standi to file the instant appeal which is maintainable and the court has jurisdiction and the appellant has not been stopped by his conduct or law form filling instant appeal.

Rejoinder as to objection of Facts:

1) Para No.1 of written reply needs no comments.
2) Para No.2 of written reply is incorrect and misleading.
3) Para No.3 of written reply needs no comments.
4) Para No.4 of written reply is incorrect to the extent of negligence in performance of duties and appellant efficiently perform his duties.
5) Para No.5 of written reply is incorrect and no personal opportunity of hearing had been given to the appellant nor associated in inquiry proceeding.
6) Para No. 6 to 8 of written reply needs no comments.

Rejoinder as to objection on Grounds:

A and B:- Written Reply to Ground No. A and B is incorrect and misleading and not a single document in respect of associating appellant in inquiry proceeding had been

attached with written reply to show association and participation of appellant in inquiry proceeding.

C and D:- Written Reply to Grounds No. C and D are misleading, incorrect and dismissal from service order is harsh and is not commensurate with the allegation leveled against appellant and in instant case rule 23 of KPK Government servant (End D) Rules of 2011 are applicable.

E,F and G:- Written Reply to Grounds No. E, F and G are incorrect baseless, misleading and completely denied.

H and I:- Written Reply to Grounds No. H and I are misleading based on concealment of facts and law and that of appeal is correct.

J:- Written Reply to ground No. J needs no comments.

It is, therefore, respectfully prayed that on acceptance of instant rejoinder Appeal of Appellant may be accepted with special Exemplary cost and with all back benefits.

Appellant

Through

ZIA-UR-REHMAN TAJIK
Advocate High Court Peshawar.

Affidavit:

It is verified on oath that contents of instant rejoinder are correct and true and nothing has been concealed or misstated from this Hon'ble Tribunal .

ATTESTED

OATH COMMISSIONER PESHAWAR HIGH COURT

Deponent

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Noor Hayat versus DPO etc

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth,

Rejoinder as to preliminary objections:

1. That all the preliminary objection are illegal, incorrect, baseless, appellant has a cause of action, locus standi to file the instant appeal which is maintainable and the court has jurisdiction and the appellant has not been stopped by his conduct or law form filling instant appeal.

Rejoinder as to objection of Facts:

1) Para No.1 of written reply needs no comments.
2) Para No.2 of written reply is incorrect and misleading.
3) Para No.3 of written reply needs no comments.
4) Para No.4 of written reply is incorrect to the extent of negligence in performance of duties and appellant efficiently perform his duties.
5) Para No.5 of written reply is incorrect and no personal opportunity of hearing had been given to the appellant nor associated in inquiry proceeding.
6) Para No. 6 to 8 of written reply needs no comments.

Rejoinder as to objection on Grounds:

A and B:- Written Reply to Ground No. A and B is incorrect and misleading and not a single document in respect of associating appellant in inquiry proceeding had been

attached with written reply to show association and participation of appellant in inquiry proceeding.

C and D:- Written Reply to Grounds No. C and D are misleading, incorrect and dismissal from service order is harsh and is not commensurate with the allegation leveled against appellant and in instant case rule 23 of KPK Government servant (End D) Rules of 2011 are applicable.

E,F and G:- Written Reply to Grounds No. E, F and G are incorrect baseless, misleading and completely denied.

H and I:- Written Reply to Grounds No. H and I are misleading based on concealment of facts and law and that of appeal is correct.

J:- Written Reply to ground No. J needs no comments.

It is, therefore, respectfully prayed that on acceptance of instant rejoinder Appeal of Appellant may be accepted with special Exemplary cost and with all back benefits.

Appellant

Through

ZIA-UR-REHMAN TAJIK
Advocate High Court Peshawar.

Affidavit:

It is verified on oath that contents of instant rejoinder are correct and true and nothing has been concealed or misstated from this Hon'ble Tribunal.

11-14

ATTESTED

Deponent

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Noor Hayat versus DPO etc

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth,

Rejoinder as to preliminary objections:

1. That all the preliminary objection are illegal, incorrect, baseless, appellant has a cause of action, locus standi to file the instant appeal which is maintainable and the court has jurisdiction and the appellant has not been stopped by his conduct or law form filling instant appeal.

Rejoinder as to objection of Facts:

1) Para No.1 of written reply needs no comments.
2) Para No.2 of written reply is incorrect and misleading.
3) Para No.3 of written reply needs no comments.
4) Para No.4 of written reply is incorrect to the extent of negligence in performance of duties and appellant efficiently perform his duties.
5) Para No.5 of written reply is incorrect and no personal opportunity of hearing had been given to the appellant nor associated in inquiry proceeding.
6) Para No. 6 to 8 of written reply needs no comments.

Rejoinder as to objection on Grounds:

A and B:- Written Reply to Ground No. A and B is incorrect and misleading and not a single document in respect of associating appellant in inquiry proceeding had been

attached with written reply to show association and participation of appellant in inquiry proceeding.

C and D:- Written Reply to Grounds No. C and D are misleading, incorrect and dismissal from service order is harsh and is not commensurate with the allegation leveled against appellant and in instant case rule 23 of KPK Government servant (End D) Rules of 2011 are applicable.

E,F and G:- Written Reply to Grounds No. E, F and G are incorrect baseless, misleading and completely denied.

H and I:- Written Reply to Grounds No. H and I are misleading based on concealment of facts and law and that of appeal is correct.

J:- Written Reply to ground No. J needs no comments.

It is, therefore, respectfully prayed that on acceptance of instant rejoinder Appeal of Appellant may be accepted with special Exemplary cost and with all back benefits.

Appellant

Through

ZIA-UR-REHMAN TAJIK
Advocate High Court Peshawar.

Affidavit:

It is verified on oath that contents of instant rejoinder are correct and true and nothing has been concealed or misstated from this Hon'ble Tribunal .

20-11-14

ATTESTED

Deponent