

ORDER
25.07.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 15901/2020 titled "Naeem Khan Versus District Police Officer, Nowshera and three others", the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED
25.07.2022



(KALIM ARSHAD KHAN)
CHAIRMAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

31.05.2022

Junior to counsel for the appellant present.

Asif Masood Ali Shah, learned Deputy District Attorney
alongwith Fayaz HC for respondents present.

File to come up alongwith connected Service Appeal
No.15901/2020 titled "Naeem Khan Vs. Police Department" on
25.07.2022 before D.B.



(Fareeha Paul)
Member(E)



(Rozina Rehman)
Member (J)

Handwritten notes at the bottom of the page, including the date 31-5-2022 and some illegible text.

21.06.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Respondents have not submitted reply/comments. Learned AAG seeks further time to contact the respondents. Learned AAG is required to contact the respondents for submission of reply/comments in office within 10 days, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 08.11.2021 before the D.B.

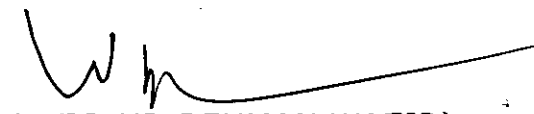

Chairman

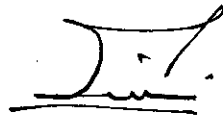
08.11.2021

Clerk of counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Written reply/comments on behalf of respondents have been submitted through office, which is placed on file.

Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned To come up for arguments before the D.B. on 09.02.2022.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

9-2-2022

Due to retirement of the Honorable Chairman the case is adjourned to come up for the same as before on 31-05-2022


Reader.

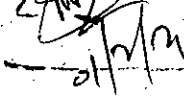
01.02.2021

Counsel for the appellant present.

Learned counsel referred to the impugned order dated 02.10.2020 and contended that the major penalty was awarded to the appellant on the basis of an enquiry/report dated 23.09.2020. He also referred in the context to the enquiry report wherein the contents were almost verbatim to the cases of other co-accused. In his view, the enquiry conducted as such was devoid of substance while no efforts for recording the statement of witnesses, who witnessed the occurrence, were made. The findings contained in the report did not mention the source of collection of information regarding the event. Learned counsel added that the other procedure mandatory for proceedings against the appellant was not adopted as per applicable rules.

In view of the available record and arguments of learned counsel, instant appeal is admitted to regular hearing subject to all just exceptions. Appellant is required to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 28.04.2021 before S.B.

Appellant Deposited
Security & Process Fee


21/2/21



Chairman

28.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 21.06.2021 for the same as before.





Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 15902 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/12/2020	<p>The appeal of Mr. Amir Ali Khan presented today by Mr. Muhammad Arif Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/02/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. _____/2020

Amir Ali Khan Ex-Constable.....Appellant

VERSUS

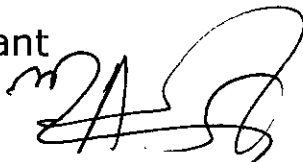
DPO and othersRespondents

I N D E X

S.No.	Description of documents.	Annexure	Dated
1.	Service Appeal <i>with affidavit</i>		<i>1-8</i>
2.	Stay application with affidavit		
3.	Addresses of parties		<i>9</i>
4.	Copy of Mad report No-17	A	<i>10</i>
5.	Copy of Mad Report No-28	B	<i>11</i>
6.	Copies of FIR's	C & D	<i>12-13</i>
7.	Copy of inquiry report dated 10-09-2020	E	<i>14-15</i>
8.	Copy of reply to show cause	F	<i>16-17</i>
9.	Copies of final show cause notice and its reply	G & H	<i>18-20</i>
10.	Copy of order dated 2-10-2020	I	<i>21</i>
11.	Copies of memo of appeal and order dated 20-11-2020	J & K	<i>22-26</i>
12.	Wakalatnama		<i>27</i>

Dated: 09-12-2020

Appellant
Through



Muhammad Arif Jan
Advocate High Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16438

Dated 14/12/2020

Service Appeal No. 15909 2020

Amir Ali Khan Ex-Constable No-1180 District Police
Nowshera presently at S/o Sherbaz R/o Khoyshegi Bala
District, Nowshera.

.....Appellant

VERSUS

- 1) District Police Officer, Nowshera.
- 2) Regional Police Officer, Mardan.
- 3) Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar.
- 4) Assistant Superintendent of Police (Inquiry officer)
circle Cantt, Nowshera.

.....Respondents

Filed to-day
Registrar

**SERVICE APPEAL U/S 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER DATED 02-10-2020 PASSED BY
RESPONDENT NO-1, AGAINST WHICH
THE DEPARTMENTAL APPEAL
PREFERRED AND THE SAME WAS TOO
REJECTED BY THE RESPONDENT NO-2
MAINTAINING THE DISMISSAL ORDER
OF THE APPELLANT.**

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Respectfully Sheweth:-

- 1) That the appellant was appointed as Constable in the Police Department and had served the department with his full devotion & determination with unblemished record of throughout his service.
- 2) That initially vide daily dairy No-17 dated 10-09-2020, the Lady Constable Safia of District Police, Nowshera along with her sister namely Neelam reported the matter to SHO (brief mentioned therein) for implementation of the order/judgment of the Hon'ble Peshawar High Court, Peshawar in addition with her personal security.(Copy of Mad Report dated 10-09-2020 is attached as ANNEX-A).
- 3) That the appellant while posted in Police Station Akbar Pura, Nowshera was allegedly been involved for his negligence and misconduct on account of an scuffle/firing took place between one Nazar Muhammad (Police Constable of Peshawar) with Lady Constable Safia of District Police, Nowshera where resultantly the latter expired and her sister namely Neelam sustained injured.
- 4) That the then SHO falsely reported the matter in shape of Daily Dairy No-28 of the same date to Muhharar of the Police Station (brief mentioned therein) regarding the occurrence took place by way of concealing the real facts just to save his skin and held responsible the innocent lower scale

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Police constables including the appellant for all. (Copy of Mad Report No-28 dated 10-09-2020 is attached as ANNEX-B).

- 5) That resultantly FIR No-278 dated 10-09-2020 was registered against the appellant including some other officials by the then SHO and on the same date another FIR No-276 was also registered regarding the occurrence took place where after the appellant was allowed his post arrest bail on 14-09-2020 by the concerned learned Judicial Magistrate (MOD). (Copies of both FIR's are attached as ANNEX-C & D respectively).
- 6) That respondent No-1 started disciplinary proceedings against the appellant and appointed respondent No-4 as inquiry Officer who without going to the real facts and circumstance of the case submitted his one sided inquiry report in a hasty manner just to show his efficiency to high ups on 23-09-2020. (Copy of inquiry report dated 10-09-2020 is attached as ANNEX-E).
- 7) That the appellant was issued with a show cause notice who submitted his reply on 17-09-2020 by negating the allegations leveled against him and also brought the real facts on the surface. (Copy of reply dated 17-09-2020 is attached as ANNEX-F).
- 8) That final show cause notice was also issued on 23-09-2020 which was too replied by negating the allegations on 28-09-2020. (Copies of final show

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cause notice and reply are attached as ANNEX-G & H respectively).

- 9) That respondent No-1 issued the impugned order of dismissal from service vide letter/order dated 02-10-2020 against the appellant. (Copy of letter/order dated 02-10-2020 is attached as ANNEX-I).
- 10) That the appellant filed departmental appeal against the impugned letter/order dated 12-10-2020 before respondent No-2 which was rejected on 20-11-2020. (Copies of memo of appeal and order dated 20-11-2020 are attached as ANNEX-J & K respectively).
- 11) That appellant now approaches this Hon'ble Tribunal on the following grounds:-

GROUND

- A. Because the act, commission and omission of the respondents by way of depriving the appellant from his vested right of his service and further the orders dated 02-10-2020 and 20-11-2020 passed by respondents No-1 & 2 respectively (hereinafter impugned) are patently illegal, unlawful, without lawful authority, against the law, rules and regulation governing the subject matter, thus the impugned orders are liable to be set-aside and the appellant may kindly be re-instated in his service with all back benefits.

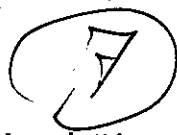
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- B. Because, it is worth mentioning here that, neither the then SHO assigned the duties to appellant along with others officials nor deployed properly despite the facts of early information's and held responsible the appellant being of his subordinate and lower scale employees consequently the impugned order passed which is against the norms of justice.
- C. Because the inquiry officer (Respondent No-4) badly failed to collect/gathered the real facts into the guilt of the appellant. Neither the appellant fled away from the scene of occurrence nor did made any misconduct/negligence but in fact the appellant was present along with the then SHO, it is worth mentioning here that, in fact the SHO fled away by securing himself.
- D. Because no suspension order has been issued against the appellant moreover the respondents also badly failed to considered the written reply of the appellant moreover the respondent No-4 could not bother to record the statements of inhabitants/eye witnesses of the occurrence, hence the whole proceedings initiated against the appellant based on mala-fide which is against the law rules and regulations governing the subject matter.
- E. Because the mala-fide of the respondents in even established from the so called inquiry wherein the then SHO was held responsible for his misconduct

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but he has been sphere without any reason and justification or the reason best known to the respondents.

- F. Because the appellant is innocent and had served the department with unblemished record throughout of his service and there is/was no any inquiry or complaint pending, hence the impugned order is nothing, but just to deprive the appellant from his service and service benefits etc.
- G. Because the appellant is jobless and the only bread winner of his whole family.
- H. Because the impugned order passed without adopting proper criteria and codal requirements by the respondents which is against the ruling of the Hon'ble Superior Courts of Pakistan and therefore, the same is illegal practice and such practice adversely effects efficiency of incumbents and also reduces their confidence and faith in public, hence the impugned order referred above is liable to be set aside.
- I. Because the impugned order has been passed without applying proper law and rules over the subject.
- J. Because the Respondents erroneously exercised their powers against judicial principle, and have passed the impugned order and opened a new Pandora box in clear violation of Service law, hence, the said impugned order is liable to be set aside, and the appellant may kindly be allowed to



keep and continue his duties by re-instating him with all service benefits.

- K. Because it is highly condemnable that the respondents are adopting the policy of "MIGHT IS RIGHT", which is evident from the impugned order passed against the appellant, thus the act, commission and omission of the respondents is in violation of law and rules, hence invites consideration of this hon'ble Tribunal.
- L. Because only show cause notice has been issued to the appellant moreover no statement of allegation, no charge sheet and even no opportunity of personal hearing etc been provided to the appellant.
- M. That any other ground which has not been specifically mentioned will be agitated at the time of arguments with kind permission of this hon'ble Tribunal.

It is, therefore, humbly prayed that, on acceptance of the instant appeal, this Hon'ble Tribunal may be pleased to;

- i. Declare the impugned order dated 02-10-2020 & 20-11-2020 passed by respondents No-1 & 2 respectively as illegal, unlawful, without lawful authority and void ab-initio and to be set-aside.

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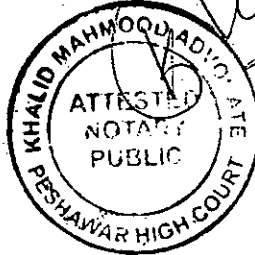
- ii. Direct the respondents to re-instate the appellant into his service with all back benefits.
- iii. Any other relief may also kindly be granted in the circumstances of the appellant's case.

Appellant
Through


Muhammad Arif Jan
Advocate High Court

AFFIDAVIT

I, Amir Ali Khan Ex-Constable No-1180 District Police Nowshera presently at S/o Sherbaz R/o Khoyshegi Bala District, Nowshera (Appellant), do hereby affirm and declare on oath that the contents of accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble court.




Deponent

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. _____/2020

Amir Ali Khan Ex-Constable.....Appellant

VERSUS

DPO and othersRespondents


ADDRESSES OF PARTIES

APPELLANT

Amir Ali Khan Ex-Constable No-1180 District Police
Nowshera presently at S/o Sherbaz R/o Khoyshegi Bala
District, Nowshera.

RESPONDENTS

1. District Police Officer, Nowshera.
2. Regional Police Officer, Mardan.
3. Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar.
4. Assistant Superintendent of Police (Inquiry officer)
circle Cantt, Nowshera.

Appellant
Through 
Muhammad Arif Jan
Advocate High Court

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Amex - A

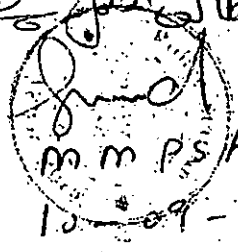
قلعہ کوشہ

کھانا البرپورہ

تعداد 17 روز نامہ 10-09-2020

17 ویں البی عبدالصغیر خان St/15 البرپورہ وقت 12:40 مورخہ 10-09-2020 میں صبح
 پھر اسیان رفتہ گوالہ و دیال پورہ کشت علاقہ سے و ایسی آیا کہ
 میں موجود مسماہ نیلم فریدہ کی ایفقت علی مسماہ منیہ ناز خیر
 فرید اللہ سالک علی شاہ موجود ہے جسے جنٹریا نے عدالت عالیہ لیسٹاور
 حاتی کوڈ ٹی ڈی بیٹس نمبر WP-3271-P عدالت جناب جسٹس
 روح الامین خان پٹنہ نے مناصب موقوفہ کے لئے عین فریدہ کیلئے کم
 مسماہ فریدہ کے برابر ان کے مقدمہ عدالت مورخہ 12-09-2020 جرم 302-324-34
 کھانا البرپورہ میں عرفان استحقاقی کے اور مسماہ نیلم ایسا سافان
 یہاں سے دوسرے مقام پر منتقل کرنا چاہتی ہے اسلی سٹیوڈیٹی کی جاہ کے
 تا فرود اور ایسا سافان یا حفاظت یہاں سے دوسرے جگہ منتقل کریں
 لیسٹ بھگت عدالت حاتی فرید لیسٹاور دفعی مطابق 459 کامران 1784-5/2
 سعید اللہ 2002، عامر 394، وحید 24، عارف 1040 کامران 749 ڈی ایور سٹاٹس
 لسٹواری سرکاری بلکے ایسے پٹرول ڈی ایور و ان مطابق اذان مسماہ نیلم فریدہ
 واقعہ میں علی شاہ بیوی تالیوں

جناب عالی

لعل بطال اصل

 m m P S A P
 10-09-2020

ATTESTED

[Signature]

کاٹوالہ لبر لیورہ

(11)

قلعہ کوٹلی

28 مارچ 2020ء کو

28 ویں ایس ایس ایف کے پورے دورے کے بارے میں ایک رپورٹ جمع کرانے کے لیے

کوٹلی پولیس اسٹیشن کے ایس ایف کے پاس ایک رپورٹ جمع کرانے کے لیے

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خانیہ خاتون

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Amul

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فارم نمبر ۲۳-۱۵

ابتدائی اطلاع ریپورٹ

پولیس رجسٹریشن نمبر ۴۳

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس ریپورٹ شدہ زیر دفعہ ۱۵۳ مجموعہ ضابطہ نو جداری

20	278	تاریخ وقوع	10/10/2020	وقت	13:10
رہن وقت ریپورٹ		مقام وقوع	10/10/2020	وقت	19:00
م و سکونت اطلاع دہندہ		پتہ	0301 3920311		
محرکیت جرم (محرک واقعہ) حال اگر کچھ لیا گیا ہو		118 R			
م و سکونت ملزم		محرکیت جرم	118 R		

روائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرنا اور اس وقت کے حالات اور قریبی رہائشیوں سے دریافت کیا گیا ہے اور اس سے روائی کی تاریخ و وقت

مذاتی اطلاع نیچے درج کروا کر 3 ماہ کے قید کی سزا ہوئی ہے۔ 10/10/2020 سے 10/10/2020 تک پولیس اسٹیشن ملتان میں اطلاع دی گئی۔ ملزم کا نام محمد علی ہے۔ 1789 ہاؤس، 394 بلیک، 276 کالون، 747 عامہ، 1180 نمبر مسلم لیگ کے رہنے والے ہیں۔ ملزم نے اپنے والدین کو اطلاع دینے سے انکار کیا ہے۔ ملزم کے والدین نے اپنے والدین کو اطلاع دینے سے انکار کیا ہے۔ ملزم کے والدین نے اپنے والدین کو اطلاع دینے سے انکار کیا ہے۔

ملزم نے اپنے والدین کو اطلاع دینے سے انکار کیا ہے۔ ملزم کے والدین نے اپنے والدین کو اطلاع دینے سے انکار کیا ہے۔ ملزم کے والدین نے اپنے والدین کو اطلاع دینے سے انکار کیا ہے۔

SHO-PP
10/11/2020

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14

Amir Ali

ENQUIRY REPORT FC AAMIR ALI NO. 1180 PS AKBARPURA.

ALLEGATION:

Whereas, Constable Aamir Ali No. 1180 while posted at PS Akbarpura, now under suspension at police Line, showed negligence as he left SHO PS Akbarpura alone and ran away from the spot during scuffle / firing that took place between Nazar Muhammad (police constable at District Peshawar) and lady Constable Safia No. 2802/EF residents of Ali Shah, District Nowshera. Resultantly, LFC Safia expired and her sister namely Neelam sustained bullet injuries, which amounts to grave misconduct on his part and rendered him liable for Minor/Major punishment under Khyber Pakhtunkhwa Police Rules 1975.

PROCEEDINGS:

The delinquent police official was heard in person by the undersigned. He submitted his statement of defence which is just a pack of lies. (Statement attached).

FINDINGS:

The truth of the matter is: On the fateful day (10th Sep), SHO Abdul Baseer called PP Wapda Colony I/C ASI Abdul Latif to reach Ali Shah for the implementation of an order of High Court. ASI Latif reached the spot and to his surprise, accused party and its other family members including women were already present there. The accused party led by Nazar Muhammad accompanied with other relatives warned ASI Latif to stay out of this as it is their private matter and they have plans to take LFC Safia to task, else get ready for dire consequences. ASI Latif stepped back and told SHO on phone about nefarious designs of the accused party. At this point, SHO was at fault as he shouldn't have reached the spot alongwith Safia and Neelam at the first place, keeping in mind the state of aggression of the accused party. However, SHO reached the spot without any extra force. A Mazda (to transport luggage) and HIACE (seating Safia and Neelam) entered the spot along with SHO. The following constables and PASI accompanied SHO on the spot: Tariq 459, Saeed Ullah 2002, Kamran 1789, Amir 384, Naeem 276, Kamran 749, Arnir 1180, PASI Safi Ullah, ASI Latif. SHO Abdul Baseer along with this limited strength of personnel entered the narrow street, locating house of the accused party as well as that of LFC Safia and Neelam. Ladies from the accused party started heated argumentation with LFC Safia and Neelam, sitting in the HIACE. Meanwhile, the accused party led by Nazar Muhammad and his brother and their other relatives including women started chanting slogans to kill Safia and even all police officers present there. They had weapon (Pistol and AK-47) in hands and women had daggers, knives and wooden sticks. On this call, all afore-mentioned PASI fled the scene and took refuge in nearby houses


ATTESTED
ATTESTED

[Signature]

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Whereas, SHO was left alone and he hid himself between HIACE and Mazda Truck. In the course of events, the accused party surrounded the HIACE in which Safia and Neelam were seated. LFC Safia tried to get hold of her weapon from her purse and seeing this, accused party opened a burst of Kalashnikov. Neelam got bullets on her feet. Both sisters got injured. Meanwhile, SHO asked Neelam (from behind the windows of HIACE) to take his pistol and fire at the accused party. In the blink of an eye, the accused party fled the scene leaving behind both sisters in injured condition. SHO didn't put in an iota of effort to apprehend the accused party, rather waited for 8-10 minutes behind the vehicle, then shifted the injured to another vehicle and then ran after the accused, did some aerial firing, on doors and houses in the path way (just to register his response).

The undersigned has gathered information from eye witnesses of the spot as well as from Neelam (Safia's sister). In the opinion of the undersigned, the delinquent police official is found guilty of misconduct and cowardice. He withdrew himself from the duty assigned to him without permission. He fled the scene as the situation was getting out of control and didn't fire on the accused party in return. He does not deserve to be part of police service any more. Hence, he may be dismissed from service.


Assistant Superintendent of Police,
Circle Cantt Nowshera.

No. 36 / St
Dated 23/09/2020.


ATTESTED

Annex - F

بیان ازان عامر علی 1180 متینہ چوکی واپڈا ناؤن علاقہ تھانہ اکبر پورہ حال معطل شدہ پولیس لائن نوشرہ

جناب عالی!

بجوالہ چارج شیٹ نمبری 132/PA بتاریخ 10-09-2020 مشمولہ بمعہ (1) FIR 276 بتاریخ 10-09-2020 جرم 148-149-302 نمبر (2) مقدمہ 278 بتاریخ 10-09-2020 جرم 118-B پولیس ایکٹ 2017 تھانہ اکبر پورہ بمعہ دیگر دستاویزات مشمولہ معروض خدمت ہوں کہ مورخہ 10-09-2020 کو میں چوکی میں موجود تھا کہ عبدالصیر خان SHO صاحب تھانہ اکبر پورہ نے بذریعہ ٹیلی فون موبائل سیٹ پر انچارج چوکی عبدالطیف ASI کو اطلاع دی کہ آپ بمعہ نفری پولیس 15/20 منٹ دیر علی شاہ پہنچے۔ ASI صاحب نے مجھے اور کانسٹیبل نعیم 276 کو تیار کر کے بمعہ مسلح کلاشنکوف لوڈ کر کے اپنے ہمراہ بسواری گاڑی سرکاری روانہ کیے۔ جب دیر علی شاہ پہنچے تو SHC صاحب یا دیگر نفری پولیس بتائے گئے جگہ پر موجود نہ تھے۔ ہماری موجودگی میں انچارج ASI صاحب بذریعہ موبائل فون SHO صاحب کو پہنچنے کے بارے میں آگاہ کیا۔ اسی دوران کامران کانسٹیبل 749 حسب طلبی انچارج ASI صاحب بھی آ پہنچا۔ کہ اسی دوران نزدیکی مکان سے 4 جوان العمر افراد نکل آئے اور ہمارے انچارج صاحب سے دریافت کی کہ خیر ہے کس سلسلے میں آئے ہوں۔ ASI صاحب نے اسے بتلایا کہ SHO صاحب خود موقع پر تشریف لارہے ہیں اور خود بتلائے گا کچھ دیر بعد SHO صاحب تھانہ اکبر پورہ بمعہ دیگر نفری پولیس، فلائنگ کوچ میں دو مستورات بھی سی دوران نزدیکی مکان سے چند مستورات اور ایک شخص بھی نکلے اور ساتھ 4 جوان بھی نکلے جو اسلحہ آتشین تھے۔ فلائنگ کوچ جس میں 2 مستورات بیٹھے سوار تھے کو گیر لیا اور مستورات آپس میں لڑ پڑے۔ SHO صاحب یہ تمام حال کو دیکھ رہا تھا میں SHO کے اگلے حکم کا منتظر تھا کہ اس دوران موجود اشخاص جو اسلحہ آتشین تھے پانچوں دھند فارنگ شروع کی۔ SHO صاحب خاموشی سے یہ منظر دیکھ رہا تھا جو میں نے اپنی دفاع اور حق حفاظت خود کاری کلاشنکوف سے ملزمان پر جوابی فارنگ کی۔ نتیجے کے طور پر فلائنگ کوچ میں موجود 2 مستورات ملزمان کی زخمی ہوئی اور جملہ ملزمان بھاگنے میں کامیاب ہوئے۔ زخمی مستورات کو انچارج ASI عبدالطیف خان نے بہ 749 کانسٹیبل بعرض علاج معالجہ ہسپتال لے گئے۔ SHO صاحب بمعہ نفری پولیس کے ملزمان کی خانہ تلاشی میں لائی جا کر ملزمان کے مکان رہائشی سے ایک ضرب کلاشنکوف برآمد کیا جس کے بعد SHO صاحب پولیس تھانہ اکبر پورہ واپس آیا۔ مجھے ہر کاری کلاشنکوف جمع کر کے محرر افسر علی اور مدد محرر اکرام کو خصوصی طور پر اکہ میں نے ہر کاری اسلحہ سے موقع پر ملزمان پر حسب قاعدہ قانوناً فارنگ کی ہے تاکہ آپ دونوں کے علم

ATTESTED



(18)

Amir 'h'

FINAL SHOW CAUSE NOTICE

Whereas, you Constable Aamir Ali No.1180, while posted at PS, Akbarpura, charged in case FIR No. 278 dated 10.09.2020 u/s 118 (B) Police Act 2017 PS Akbarpura, as you displayed cowardice by leaving SHO PS Akbarpura alone and ran away from the spot during scuffle / firing that took place between Nazar Muhammad (police constable at District Peshawar) and lady Constable Safia No. 2802/EF residents of Ali Shah, District Nowshera. Resultantly, LFC Safia expired and her sister namely Neelam sustained bullet injuries.


On account of which you were suspended, closed to Police Lines Nowshera, and proceeded against departmentally through Mr. Bilal Ahmad, ASP Cantt Nowshera who after fulfillment of legal formalities submitted his report to undersigned, wherein the allegations leveled against you have been proved and you were recommended for awarding major punishment.

Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence, I, Capt: (R) Najmul Husnain Liaquat, PSP District Police Officer, Nowshera, in exercise of the powers vested in me under Rules 5(3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you to Show Cause finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach this office within **07 days** of the receipt of this notice, failing which, it will be presumed that you have no defense to offer.

You are at liberty to appear for personal hearing before the undersigned.


District Police Officer,
Nowshera

No. 193 /PA
Dated 23/09/2020.

ATTEST



had daggers, knives and wooden sticks. On this call, all along constables and PASI fled the scene and took refuge in fields.

میں ہوگا۔ جس کے بعد مجھے (۱) کانٹینبل عامر علی 1180 (۲) طارق 459 (۳) سعید اللہ 2002 (۴) کامران 1789 (۵) عامر 894 (۶) نعیم خان 276 تمام کو زیر حراست محرر افسر علی بمعہ گارڈ نفری پولیس لائن نوشہرہ لے جا کر وہاں کوآٹر گارڈ میں بند کیا۔ دوسرے دن مورخہ 11-09-2020 کو انوسٹی گیشن انچارج نیاز محمد خان بمعہ گارڈ نفری پولیس لائن آ کر ہم سب کو کوآٹر گارڈ سے نکال کر تمام ملازمان کو تھکڑی لگائی جا کر ضلع کچہری نوشہرہ لیجا کر مجاز عدالت کے خدمت میں پیش کیا تب مجھے معلوا ہوا کہ SHO صاحب نے ہمارے خلاف دفعہ B-118 پولیس ایکٹ 2017 کے تحت مجھے ملازم ٹھہرایا ہے جس کے بعد جوڈیشل حوالات نوشہرہ لے گئے۔ حسب ہدایت جیل حکام انچارج نے ہمیں سنٹرل جیل مردان بھیج دیا۔

جہاں تک جرم بالا کا تعلق ہے میں نے دفعہ بالا کی کوئی خلاف ورزی نہیں کی ہے جس کا منہ بولتا ثبوت یہ ہے کہ میں نے ملازمان پر اسلحہ سرکاری سے فائرنگ کی ہے SHO صاحب اپنی بچاؤ کی خاطر مجھے بے گناہ پھنسا یا ہے۔ یہاں پر یہ عمل قابل ذکر ہے کہ معلومات پر یہ بھی پایا گیا کہ مقدمہ بالا میں اپنا بیان زیر دفعہ 161 ضف SHO صاحب کو نہیں دیا بلکہ خود اس نے اپنی طرف سے لکھا ہے۔ اللہ گواہ ہے کہ مجھ سے کوئی بیان قلمبند نہیں کیا گیا ہے مجھ پر بے گناہ اور بے بنیاد الزام لگایا گیا ہے میں نے کسی غفلت یا بزدلی کا مظاہرہ نہیں کیا ہے اور نہ SHO صاحب کو اکیلا چھوڑا ہے۔ بلکہ ہم تمام ملازمین آخر وقت تک SHO صاحب کے ہمراہ موجود تھے یہی میرا بیان ہے جو درست اور حقیقت پر مبنی ہے اور انصاف کا خواہش گار ہوں۔

ATTESTED



POLICE DEPARTMENT

DISTRICT NOWSHERA

ORDER

This order will dispose of the departmental enquiry initiated under Khyber Pakhtunkhwa Police Rules-1975, against Constable Amir Ali No. 1180 that he while posted at Police Station Akbarpura, charged in case FIR No.278 dated 10.09.2020 u / s 118 (B) Police Act 2017 PS Akbarpura, as he displayed cowardice by leaving SHO PS Akbarpura alone and ran away from the spot during scuffle / firing that took place between Nazar Muhammad (Police Constable at District Peshawar) and lady Constable Safia No. 2802 /EF residents of Ali Shah, District Nowshera. Resultantly, LFC Safia expired and her sister namely Neelam sustained bullet injuries.

On account of which, he was placed under suspension, closed to Police Lines and proceeded against departmentally through Mr. Bilal Ahmad, ASP Cantt Nowshera, who after fulfillment of legal formalities submitted his report to undersigned vide his office Endst. No. 36 /St. dated 23.09.2020, wherein the allegations leveled against him were proved and was recommended for major punishment of dismissal.

He was served with Final Show Cause Notice, to which, he submitted his reply, perused by the undersigned and found unsatisfactory.

He was heard in orderly room on 29.09.2020, wherein he failed to satisfy the undersigned, therefore, he is hereby awarded major punishment of dismissal from service with immediate effect, in exercise of powers vested in me under Khyber Pakhtunkhwa Police Rules-1975.

OB No. 883

Dated 02/10 /2020

No. 7667-66 /PA, dated Nowshera, the 2/10 /2020.

Copy for information and necessary action to the:

1. Pay Officer.
2. Establishment Clerk.
3. OHC.
4. FMC with its enclosures (14 pages).
5. I/C Cloth Godown.
6. Official concerned.


District Police Officer,
Nowshera

ATTESTED

(22)

Amir - J

بخدمت جناب ڈپٹی انسپکٹر جنرل صاحب آف پولیس مردان
ریجن ضلع مردان

اپیل برخلاف OB NO. 883 مورخہ 02-10-2020 جاری کردہ DPO صاحب نوشہرہ

جسکی رو سے من سائل کو سروس سے Dismiss کیا گیا۔

جناب عالی! سائل حسب ذیل عرض کرتا ہے:-

۱- یہ کہ سائل مورخہ 31-12-2011 کو پولیس فورس میں بحیثیت کنسٹیبل بھرتی ہوا اور اپنے فرائض منصبی نہایت خوش اسلوبی سے سرانجام دیتا رہا۔

۲- یہ کہ بروئے حکم عدالت عالیہ پشاور ہائی کورٹ، سائل بمعہ دیگر پولیس ہمراہیوں بحکم ایس۔ ایچ۔ اور صاحب زیر نگرانی عبداللطیف ASI انچارج چوکی واپڈ اٹاؤن حکم و فیصلہ بحوالہ رٹ پٹیشن نمبری WP. NO. 3271 P/2020 کو نافذ کرنے کی عرض سے مورخہ 10-09-2020 کو میں چوکی میں موجود تھا کہ بذریعہ ٹیلی فون SHO عبدالصیر خان صاحب تھانہ اکبر پورہ نے انچارج چوکی ASI عبداللطیف کو اطلاع دی کہ آپ بمعہ نفری پولیس 15/20 منٹ میں دیر علی شاہ پہنچے۔

۳- یہ کہ ASI صاحب نے من سائل اور کانسٹیبل نعیم 276 کو تیار کر کے بمعہ مسلح کلاشنکوف لوڈ کر کے اپنے ہمراہ سرکاری سواری گاڑی پر روانہ کیا۔

۴- یہ کہ جب ہم دیر علی شاہ پہنچے تو SHO صاحب یادگیر نفری پولیس بتائے گئے جگہ پر موجود نہ تھے۔ ہماری موجودگی میں انچارج ASI صاحب نے بذریعہ موبائل فون SHO صاحب کو پہنچے کے بارے میں آگاہ کیا اور اسی دوران کانسٹیبل کامران 749 حسب طلبی انچارج ASI صاحب بھی آپہنچا۔

۵- یہ کہ اسی دوران نزدیکی مکان سے 04 جوان العمر افراد نکل آئے اور ہمارے انچارج صاحب سے دریافت کیا کہ خیر ہے کس سلسلے میں آئے ہیں۔ جو کہ ASI صاحب نے کہا کہ SHO صاحب خود تشریف لارہے ہیں آپ کو خود بتلا دے گا۔ کچھ دیر بعد SHO صاحب تھانہ اکبر پورہ بمعہ دیگر نفری پولیس، فلائنگ کوچ میں دو مستورات بھی آئے اسی دوران نزدیکی مکان سے چند مستورات اور ایک شخص بھے نکلے اور ساتھ 04 جوان بھی نکلے جو مسلح بہ اسلحہ آتشیں تھیں۔ اور یکدم فلائنگ کوچ جس میں 02 مستورات بیٹھی سوار تھی کو گیر لیا۔ اور مستورات آپس میں لڑ پڑی۔ SHO صاحب یہ تمام تر صورت حال دیکھ رہا تھا۔ میں SHO صاحب کے اگلے حکم کا منتظر تھا کہ اس دوران موجود اشخاص جو مسلح بہ اسلحہ آتشیں تھے پانچوں نے اندھا دھند فائرنگ شروع کی۔ SHO صاحب خاموشی سے یہ منظر دیکھ رہے تھا جو میں نے اپنی دفاع اور حق حفاظت خود اختیاری سرکاری کلاشنکوف سے ملزمان پر جوابی فائرنگ کی۔

ATTESTED

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- ۶- یہ کہ فائرنگ کے نتیجے میں فلائنگ کوچ میں موجود 02 مستورات ملزمان کی فائرنگ سے زخمی ہوئے اور جملہ ملزمان بھاگنے میں کامیاب ہوئے۔ زخمی مستورات کو انچارج چوکی ASI عبداللطیف خان نے بہ امداد کامران 749 کا نشیبل بغرنج علاج معالجہ ہسپتال منتقل کیا۔
- ۷- یہ کہ SHO صاحب بمعہ نفری پولیس کے ملزمان کی خانہ تلاشی حسب قاعدہ عمل میں لائی جا کر ملزمان کے مکان رہائشی سے ایک ضرب کلاشنکوف برآمد کیا جس کے بعد SHO صاحب بمعہ جملہ نفری پولیس تھانہ اکبر پورہ واپس آیا۔
- ۸- یہ کہ اس کے بعد میں نے سرکاری کلاشنکوف جمع کر کے محرر افسر علی اوزمد محرر اکرام کو خصوصی طور پر تاکید کے ساتھ بتلایا کہ میں نے سرکاری اسلحہ سے موقع پر ملزمان پر حسب قاعدہ قانوناً فائرنگ کی ہے تاکہ آپ دونوں کے علم میں ہوگا۔ جس کے بعد مجھے (1) کانیشیل عامر علی 1180 (2) طارق 459 (3) سعید اللہ 2002 (4) کامران 1789 (5) عامر 894 (6) نعیم خان 276 تمام کوزیر حراست محرر افسر علی بمعہ گارڈ نفری پولیس لائن نوشہرہ لے جا کر وہاں کوائر گارڈ میں بند کیا۔
- ۹- یہ کہ دوسرے دن مورخہ 11-09-2020 کو انوشی گیشن انچارج نیاز محمد خان بمعہ گارڈ نفری پولیس لائن آ کر ہم سب کو کوائر گارڈ سے نکال کر تمام ملزمان کو تھکڑی لگائی جا کر ضلع کچہری نوشہرہ لے جا کر مجاز عدالت کی خدمت میں پیش کیا۔ تب مجھے (سائل) کو معلوم ہوا کہ SHO صاحب نے ہمارے خلاف دفعہ B-118 پولیس ایکٹ 2017 کے تحت مجھے ملزم ٹہرایا ہے۔ جس کے بعد ہمیں جوڈیشل حوالات نوشہرہ لے گئے۔ اور حسب ہدایت جیل حکام انچارج نے ہمیں سنٹرل جیل مردان بھیج دیا۔
- ۱۰- یہ کہ وقوعہ بالا بہت مشتہر ہوئی جس پر مورخہ 10-09-2020 کو چارج شیٹ سے نوازا گیا جس میں سائل کے خلاف Negligence کا الزام عائد کیا۔ مورخہ 15-09-2020 کو چارج شیٹ کا جواب دے کر الزامات سے انکار کیا۔
- ۱۱- یہ کہ محکمہ نے قانون کے مطابق کارروائی نہیں کی اور فوری طور پر قانونی کارروائی کو مختصر کرتے ہوئے مورخہ 23-09-2020 کو فائنل شوکاژ نوٹس دیا گیا جس کا جواب دے کر الزامات سے صریحاً انکار کیا۔
- ۱۲- یہ کہ قانونی تقاضوں کو بالائے طاق رکھتے ہوئے DPO نوشہرہ نے سائل کو مورخہ 02-10-2020 کو سرورس سے Dismiss کیا جو کہ ذیل وجوہات کی بناء پر قابل استرداد ہے۔

وجوہات:-

- i- یہ کہ پولیس پارٹی کا سرغنہ ایس۔ ایچ۔ اور عبدالنصیر خان تھا اور اسے چاہئے تھا کہ حالات واقعات کو مد نظر رکھتے ہوئے کارروائی کرتے، لیکن موصوف نے کوئی حفاظتی تدابیر اختیار نہ کی ہے، جو وقوعہ بالا کی صورت میں رونما ہوا۔
- کہ FIR 276 میں مستعد مسماہ نیلم فرید نے پولیس پارٹی مورل الزام نہیں ٹھہرایا کہ وہ غفلت کا مظاہرہ کرتے ہوئے جائے وقوعہ سے بھاگ نکلے تھے۔

ATTESTED
Q

(25) Amir (K)

ORDER.

This order will dispose-off the departmental appeal preferred by **Ex-Constable Amir Ali No. 1180** of Nowshera District Police against the order of District Police Officer, Nowshera, whereby he was awarded major punishment of dismissal from service vide OB: No. 883 dated 02.10.2020. The appellant was proceeded against departmentally on the allegations that he while posted at Police Station Akbarpura, District Nowshera was charged in case FIR No. 278 dated 10.09.2020 u/s 118(B) Police Act, 2017 Police Station Akbarpura, displaying cowardice by leaving SHO Police Station Akbarpura, alone and running away from the spot during firing, resulting in the murder of Lady Constable Safia No. 2802/EF and bullet injury to her sister namely Neelam residents of Ali Shah, District Nowshera.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Assistant Superintendent of Police Cantt, Nowshera was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities, submitted his findings stating therein that the allegations leveled against him had been proved. He recommended the delinquent Officer for major punishment of dismissal from service.

He was issued Final Show Cause Notice to which his reply was received and found unsatisfactory. He was also provided opportunity of self defense by summoning him in the Orderly Room by the District Police Officer, Nowshera on 29.09.2020, but he failed to advance any cogent reason in his defense. Hence, he was awarded major punishment of dismissal from Service vide OB: No. 883 dated 02.10.2020.

Feeling aggrieved from the order of District Police Officer, Nowshera, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 17.11.2020.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations leveled against the appellant have been proved beyond any shadow of doubt. Owing to the cowardice and negligent attitude of the appellant, accused succeeded in murdering the Lady Constable Safia No. 2802/EF and causing bullet injury to her sister namely Neelam as they had been left at the mercy of the accused who faced no resistance, whatsoever, to deter them from the commission of their intended

ATTESTED

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designs. The retention of the appellant in the Police Force with such an attitude will lead to the repetition of such like incidents to the general public as well. Moreover, this type of conduct is also bound to affect the discipline and conduct of other members of the force. Besides, during the course of personal hearing, he could not present any cogent justification to warrant interference in the order passed by the competent authority.

Keeping in view the above, I, **Sher Akbar, PSP S.St Regional Police Officer, Mardan**, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being devoid of merit.

Order Announced.


Regional Police Officer,
Mardan.

No. 7210 /ES, Dated Mardan the 20-11- /2020.

Copy forwarded to District Police Officer, Nowshera for information and necessary w/r to his office Memo: No. 2840/PA dated 26.10.2020. His service record is returned herewith.

(*****)


ATTEST

27

WAKALATNAMA

IN The KP Service Tribunal, Peshawar

Amir Ali

(Petitioner)
(Plaintiff)
(Applicant)
(Complainant)
(Decree Holder)

VERSUS

Dfo Zoller

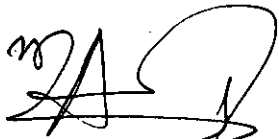
(Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

Case _____

I/We, Amir Ali do hereby appoint and constitute **Muhammad Arif Jan Advocate** High Court, Peshawar, to appear. Plead, act, compromise, withdraw or refer to arbitration to me/ us as my/ our Counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.

Attested & Accepted

CLIENT/S



Muhammad Arif Jan
Advocate, High Court, Peshawar.
Office No. 6, 1st Floor
Pabbi Medical Centre, G.T. Road
Peshawar.
Mobile: 0333-2212213

Amir

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

Service Appeal No., 15902/2020

Amir Ali Khan Ex-Constable No. 1180 s/o Sherbaz Khan District Police Nowshera
presently at Kheshgi Bala District Nowshera.

.....Appellant

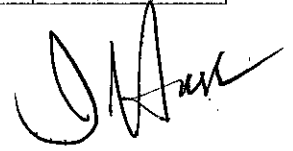
V E R S U S

The District Police Officer, Nowshera and others.

.....Respondents

I N D E X

S.No.	Description of documents	Annexure	Pages
1.	Reply of Respondents	-	1-3
2.	Affidavit	-	04
4.	Copy of court order in W.P 3271/2020	A	05-06
5.	Copy of FIR	B	07
6.	Copy of enquiry report	C	08-09
7.	Copy of charge sheet and statement of allegation.	D	10-11
8.	Copy of Final Show Cause Notice	E	12
9.	Copy of punishment order	F	13
10.	Copy of order of appellate authority	G	14-15
11.	Copy of enquiry report and order against the SHO Akbarpura	H&I	16-18



**Inspector Legal,
Nowshera**

①

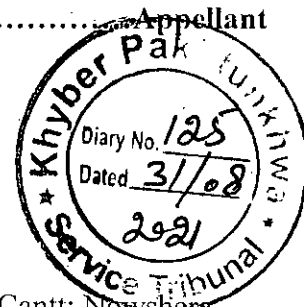
**BEFORE THE HONOURABLE, KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 15902/2020

Amir Ali Khan Ex-Constable No. 1180 s/o.-Sherbaz Khan District Police Nowshera
presently at Kheshgi Bala District Nowshera.

V E R S U S

1. The District Police Officer, Nowshera.
2. The Regional Police Officer, Mardan.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
4. Assistant Superintendent of Police (Inquiry Officer) Circle Cantt: Nowshera.



.....Respondents

REPLY ON BEHALF OF RESPONDENTS

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action and locus standi to file the appeal.
2. That the appeal is badly barred by law and limitation.
3. That the appellant has been estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Honourable Tribunal with clean hands.
6. That the appeal is bad for mis-joinder and non-joinder of necessary parties.

On Facts

1. Para to the extent of appointment of appellant as Constable is correct while regarding rest of the para it is stated that each and every Police Officers/Officials is under obligation to perform duty with full devotion.
2. Correct to the extent that vide daily diary No. 17 dated 10-09-2020, lady Constable Safia Naz (Late) alongwith her sister Nelam approached SHO Police Station, Akbarpura, for provision of security/protection in light of order of the Honourable Peshawar High Court, Peshawar in writ petition No. 3271-P/2020, so that she may shift her house hold items from her house to another place. (Copy of court order is annexed as annexure "A").
3. Incorrect. Appellant while posted at Police Station, Akbarpura, showed negligence as he left SHO Police Station, Akbarpura alone and ran away from the spot during scuffle/firing that took place between Nazar Muhammad and lady Constable Safia Naz. Resultantly, lady Constable Safia Naz expired while her sister Nelam sustained injuries.
4. Incorrect. As on the fateful day the then SHO Police Station, Akbarpura, in order to provide security to lady Constable Safia Naz and her sister during shifting of house hold items, accompanied them alongwith other Police party including appellant.

However, as the accused party opened fire on the aforementioned lady constable and her sister, Police Officials including appellant by displaying cowardice fled away from the spot and left the SHO all alone. To this effect a report was entered vide daily diary No. 28 dated 10-09-2020 Police Station, Akbarpura by the then SHO Inspector Abdul Baseer.

5. Correct to the extent that an FIR 278 dated 10-09-2020 u/s 118-B Police Act, 2017 was registered against those officials, including appellant who displayed cowardice by running away from the spot at a very critical movement, which resulted in the death of lady constable Safia Naz. (Copy of FIR is annexure "B").
6. Incorrect. In order to probe into the matter enquiry was entrusted to ASP Nowshera Cantt: who after going through all evidence and collecting information as well as fulfilling all codal formalities held the appellant responsible of cowardice and recommended him for dismissal from service. (Enquiry report is annexed as annexure "C").
7. Correct to the extent that appellant was issued charge sheet with statement of allegation on 10-09-2020 to which he submitted his reply but was found unsatisfactory. (Copy of charge sheet and statement of allegation is annexed as annexure "D").
8. Correct to the extent that on 23-09-2020, appellant was issued final show cause notice to which he submitted his reply but the same was found unsatisfactory. (Copy of Final Show Cause Notice is annexed as annexure "E").
9. Correct to the extent that respondent No. 01 vide order dated 02-10-2020, dismissed appellant from service on cogent grounds after observing all codal formalities under the rules. (Copy of order is annexed as annexure "F").
10. Correct to the extent that appellant filed departmental appeal before the appellate authority but the same was also rejected vide No. 7210/ES, dated 20-11-2020, being devoid of merit. (Copy of order is annexed as annexure "G").
11. That the appeal of the appellant is liable to be dismissed on the following grounds:

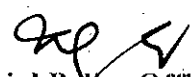
GROUNDS

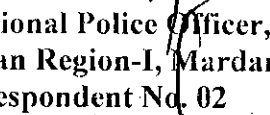
- A. Incorrect. Appellant has not be deprived any of his rights. Moreover, orders passed by the respondents No. 01 & 02 on 02-10-2020 and 20-11-2020 respectively are in accordance with law and rules, hence, liable to be maintained.
- B. Incorrect. Appellant was well aware of this fact that security had been sought by lady constable Safia Naz and he alongwith other Police Officials had been deployed for the said purpose, but as the accused party opened fire on her and her sister, appellant fled away from the spot leaving the then SHO alone.
- C. Incorrect. As explained in the preceding paras enquiry was entrusted to the then ASP Nowshera Cantt: who after going through all evidence and collecting

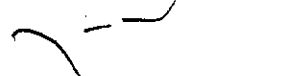
information as well as fulfilling all codal formalities held the appellant responsible of cowardice and recommended him for dismissal from service.

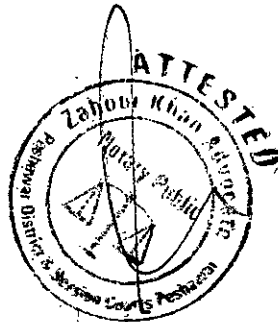
- D. Para already explained hence; needs no comments.
- E. Incorrect. Proper enquiry against the then SHO Police Station, Akbarpura was conducted through Noor Jamal Khan the then Superintendent of Police, Investigation, Nowshera. On the recommendation of the enquiry officer, the then SHO was awarded major punishment of reduction in pay by 02 stage for a period of 02 years. (Copy of enquiry is annexure "G" and copy of order is annexure "H").
- F. Incorrect. Service record of the appellant is tainted with bad entries.
- G. Para not related hence; needs no comments.
- H. Incorrect. The orders of respondents are based on facts, justice and in accordance with law/rules.
- I. Para already explained, hence, needs no comments.
- J. Incorrect. Appellant has been dealt in accordance with facts findings of charges and rules.
- K. Para already explained, hence, needs no comments.
- L. Incorrect. Charge sheet and statement of allegation had been issued to the appellant which is evident from annexure "F" of the appeal wherein reply to the charge sheet has been annexed by the appellant. Similarly, before issuing of major punishment, Final Show Cause Notice was also issued to the appellant.
- M. The respondents also seek permission of this Honourable Tribunal to advance additional grounds at the time of arguments.


It is, therefore, most humbly prayed that on acceptance of above submissions the appeal of the appellant may very kindly be dismissed with cost, please.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
Respondent No. 03


Regional Police Officer,
Mardan Region-I, Mardan.
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No.01




Assistant Superintendent of Police,
Nowshera Cantt:
Respondent No. 04

(4)

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

Service Appeal No. 15902/2020

Amir Ali Khan Ex-Constable No. 1180 s/o Sherbaz Khan District Police Nowshera
presently at Kheshgi Bala District Nowshera.

.....Appellant

V E R S U S


1. The District Police Officer, Nowshera.
2. The Regional Police Officer, Mardan.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
4. Assistant Superintendent of Police (Inquiry Officer) Circle Cantt: Nowshera.


.....Respondents


AFFIDAVIT

We the respondents No. 1,2,3&4 do hereby solemnly affirm and declare on Oath
that the contents of reply to the appeal are true and correct to the best of our knowledge
and belief and nothing has been concealed from the Honourable tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
Respondent No. 03


Regional Police Officer,
Mardan Region-I, Mardan.
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No.01


Assistant Superintendent of Police,
Nowshera Cantt:
Respondent No. 04

5

Annex - A

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

WP No.3271-P/2020

Mst. Neelam Fareed wife of Liaqat Ali,
r/o Ali Shah District Nowshera.

Petitioner (s)

VERSUS

The State etc

Respondent (s)

For Petitioner :- Mr. Noman ul Haq Kakakhel, Advocate
For State :- Mr. Muhammad Riaz Khan, AAG.
Date of hearing: 09.09.2020

JUDGMENT

ROOH-UL-AMIN KHAN, J:-By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Mst. Neelam Fareed, the petitioner, seeks issuance of a writ to the effect the District Police Officer, Nowshera and SHO Police Station Akbarpura (respondents No.2 and 3 respective), may be directed to provide her security for the purpose of shifting her house hold articles from her house situated in village Ali Shah Tehsil and District Nowshera.

2. In essence grievance of the petitioner is that her brothers are charged in case FIR No.112 dated 11.04.2020, registered under sections 302/324/34 PPC, at Police Station Akbar Pura, Nowshera, therefore, she apprehends her humiliation and risk to her life at the hands of the opposite party. She has abandoned residence from her village and

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has shifted to some other place. In support of her version she has annexed copy of the cited FIR along with petition.

2. The worthy AAG when confronted with the grievance of the petitioner, he sought time to consult the SHO Police Station Akbarpura. After a while, he came to the rostrum and stated that if the petitioner visited Police Station Akbarpur, her grievance shall be redressed by the SHO of the said Police Station.

3. In view of the above, the petitioner is directed to visit Police Station Akbarpura tomorrow at 1.00 a.m. where the SHO shall provide her fully security for the purpose of shifting her house hold articles from the house situated in Mohallah Afghan village Ali Shah District Nowshera. This petition is disposed of accordingly.

Announced:

09.09.2020

M. Saqaf Afzal PS

Roohul Sam
JUDGE

R. Saqaf
JUDGE

Or of Hon'ble Mr. Justice Rooh ul Amin Khan, and
Hon'ble Mr. Justice Muhammad Nasir, Mehfooz

ENQUIRY REPORT FC AAMIR ALI NO. 1180 PS AKBARPURA.**ALLEGATION:**

Whereas, Constable Aamir Ali No. 1180 while posted at PS Akbarpura, now under suspension at police Line, showed negligence as he left SHO PS Akbarpura alone and ran away from the spot during scuffle / firing that took place between Nazar Muhammad (police constable at District Peshawar) and lady Constable Safia No. 2802/EF residents of Ali Shah, District Nowshera. Resultantly, LFC Safia expired and her sister namely Neelam sustained bullet injuries, which amounts to grave misconduct on his part and rendered him liable for Minor/Major punishment under Khyber Pakhtunkhwa Police Rules 1975.

PROCEEDINGS:

The delinquent police official was heard in person by the undersigned. He submitted his statement of defence which is just a pack of lies. (Statement attached).

FINDINGS:

The truth of the matter is: On the fateful day (10th Sep), SHO Abdul Baseer called PP Wapda Colony I/C ASI Abdul Latif to reach Ali Shah for the implementation of an order of High Court. ASI Latif reached the spot and to his surprise, accused party and its other family members including women were already present there. The accused party led by Nazar Muhammad accompanied with other relatives warned ASI Latif to stay out of this as it is their private matter and they have plans to take LFC Safia to task, else get ready for dire consequences. ASI Latif stepped back and told SHO on phone about nefarious designs of the accused party. At this point, SHO was at fault as he shouldn't have reached the spot alongwith Safia and Neelam at the first place, keeping in mind the state of aggression of the accused party. However, SHO reached the spot without any extra force. A Mazda (to transport luggage) and HIACE (seating Safia and Neelam) entered the spot along with SHO.

The following constables and PASI accompanied SHO on the spot: Tariq 459, Saeed Ullah 2002, Kamran 1789, Amir 384, Naeem 276, Kamran 749, Amir 1180, PASI Safi Ullah, ASI Latif. SHO Abdul Baseer along with this limited strength of personnel entered the narrow street, locating house of the accused party as well as that of LFC Safia and Neelam. Ladies from the accused party started heated argumentation with LFC Safia and Neelam, sitting in the HIACE. Meanwhile, the accused party led by Nazar Muhammad and his brother and their other relatives including women started chanting slogans to kill Safia and even all police officers present there. They had weapon (Pistol and AK-47) in hands and women had daggers, knives and wooden sticks. On this call, all afore-mentioned constables and PASI fled the scene and took refuge in nearby houses and in the fields.

Whereas, SHO was left alone and he hid himself between HIACE and Mazda Truck. In the course of events, the accused party surrounded the HIACE in which Safia and Neelam were seated. LFC Safia tried to get hold of her weapon from her purse and seeing this, accused party opened a burst of Kalashnikov. Neelam got bullets on her feet. Both sisters got injured. Meanwhile, SHO asked Neelam (from behind the windows of HIACE) to take his pistol and fire at the accused party. In the blink of an eye, the accused party fled the scene leaving behind both sisters in injured condition. SHO didn't put in an iota of effort to apprehend the accused party, rather waited for 8-10 minutes behind the vehicle, then shifted the injured to another vehicle and then ran after the accused, did some aerial firing, on doors and houses in the path way (just to register his response).

The undersigned has gathered information from eye witnesses of the spot as well as from Neelam (Safia's sister). In the opinion of the undersigned, the delinquent police official is found guilty of misconduct and cowardice. He withdrew himself from the duty assigned to him without permission. He fled the scene as the situation was getting out of control and didn't fire on the accused party in return. He doesn't deserve to be part of police service any more. Hence, he may be dismissed from service.


Assistant Superintendent of Police,
Circle Cantt Nowshera.

No. 36 / St
Dated 23/09/2020.

(10) Annex - D

CHARGE SHEET

1. I, Capt: (R) Najmul Hasnain Liaquat, PSP District Police Officer, Nowshera, as competent authority, hereby charge Aamir Ali No.1180 as per Statement of Allegations enclosed.

2. By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.

3. You are, therefore, required to submit your written defense within 07 days of the receipt of this Charge Sheet to the Enquiry Officer, as the case may be.

4. Your written defense, 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-parte action shall follow against you.

5. Intimate whether you desire to be heard in person.


District Police Officer,
Nowshera

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DISCIPLINARY ACTION

I, Capt: (R) Najmul Hasnain Liaquat, PSP, District Police Officer, Nowshera as competent authority am of the opinion that Aamir Ali No.1180 has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning of Police Rules, 1975.


STATEMENT OF ALLEGATIONS

Whereas, Aamir Ali No.1180 while posted at PS, Akbarpura, now under suspension at Police Lines, showed negligence as he left SHO PS Akbarpura alone and ran away from the spot during scuffle / firing that took place between Nazar Muhammad (police constable at District Peshawar) and lady Constable Safia No. 2802/EF residents of Ali Shah, District Nowshera. Resultantly, LFC Safia expired and her sister namely Neelam sustained bullet injuries, which amounts to grave misconduct on his part and rendered him liable for punishment under Khyber Pakhtunkhwa Police Rules, 1975.

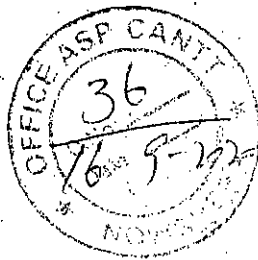
For the purpose of scrutinizing the conduct of the said accused official with reference to above allegations, ASP Cantt is hereby nominated as Enquiry Officer.

The Enquiry Officer shall in accordance with the provision of Police Rules, 1975, provide reasonable opportunity of hearing to the defaulter official, record his findings and make immediate recommendations as to punish or other appropriate action against the defaulter official.

Aamir Ali No.1180 is directed to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer.


District Police Officer,
Nowshera

No. 132 /PA,
Dated 10/09 /2020.



12 Annex-E

FINAL SHOW CAUSE NOTICE

Whereas, you Constable Aamir Ali No.1180, while posted at P Akbarpura, charged in case FIR No. 278 dated 10.09.2020 u / s 118 (B) Police Act 2017 P Akbarpura, as you displayed cowardice by leaving SHO PS Akbarpura alone and ran away from the spot during scuffle / firing that took place between Nazar Muhammad (police constable at District Peshawar) and lady Constable Safia No. 2802/EF residents of Ali Shah, Dist Nowshera. Resultantly, LFC Safia expired and her sister namely Neelam sustained but injuries.

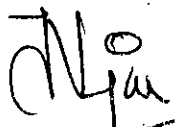
On account of which you were suspended, closed to Police Liaison Nowshera, and proceeded against departmentally through Mr. Bilal Ahmad, ASP, District Nowshera who after fulfillment of legal formalities submitted his report to undersigned, where the allegations leveled against you have been proved and you were recommended awarding major punishment.

Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.


Hence, I, Capt. (R) Najmul Husnain Liauqat, PSP District Police Officer Nowshera, in exercise of the powers vested in me under Rules 5(3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you to Show Cause finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach this office within **07 days** of the receipt of this notice, failing which, it will be presumed that you have no defense to offer.

You are at liberty to appear for personal hearing before the undersigned.


District Police Officer
Nowshera

No. 193 /PA,
Dated 23/09/2020.


24/09/2020

present there. They had weapons (pistol and AK-47) in hands and we had daggers, knives and wooden sticks. On this call, all constables and PASI fled the scene and took refuge in nearby houses and in the fields.

1103

(13) Annex - F

POLICE DEPARTMENT

DISTRICT NOWSHERA

ORDER


This order will dispose of the departmental enquiry initiated under Khyber Pakhtunkhwa Police Rules-1975, against Constable Amir Ali No. 1180 that he while posted at Police Station Akbarpura, charged in case FIR No.278 dated 10.09.2020 u / s 118 (B) Police Act 2017 PS Akbarpura, as he displayed cowardice by leaving SHO PS Akbarpura alone and ran away from the spot during scuffle / firing that took place between Nazar Muhammad (Police Constable at District Peshawar) and lady Constable Safia No. 2802 /EF residents of Ali Shah, District Nowshera. Resultantly, LFC Safia expired and her sister namely Neelam sustained bullet injuries.

On account of which, he was placed under suspension, closed to Police Lines and proceeded against departmentally through Mr. Bilal Ahmad, ASP Cantt Nowshera, who after fulfillment of legal formalities submitted his report to undersigned vide his office Endst. No. 36 /St. dated 23.09.2020, wherein the allegations leveled against him were proved and was recommended for major punishment of dismissal.

He was served with Final Show Cause Notice, to which, he submitted his reply, perused by the undersigned and found unsatisfactory.

He was heard in orderly room on 29.09.2020, wherein he failed to satisfy the undersigned, therefore, he is hereby awarded major punishment of dismissal from service with immediate effect, in exercise of powers vested in me under Khyber Pakhtunkhwa Police Rules-1975.

OB No. 883
Dated 02/10 /2020


District Police Officer,
Nowshera

No. 2661-66 /PA, dated Nowshera, the 2/10 /2020.
Copy for information and necessary action to the:

1. Pay Officer.
2. Establishment Clerk.
3. OHC.
4. FMC with its enclosures (14 pages).
5. I/C Cloth Godown.
6. Official concerned.

1180
NSR

(14) Annex-G

ORDER.

This order will dispose-off the departmental appeal preferred by Ex-Constable Amir Ali No. 1180 of Nowshera District Police against the order of District Police Officer, Nowshera, whereby he was awarded major punishment of dismissal from service vide OB: No. 883 dated 02.10.2020. The appellant was proceeded against departmentally on the allegations that he while posted at Police Station Akbarpura, District Nowshera was charged in case FIR No. 278 dated 10.09.2020 u/s 18(B) Police Act, 2017 Police Station Akbarpura, displaying cowardice by leaving SHO, Police Station Akbarpura, alone and running away from the spot during firing, resulting in the murder of Lady Constable Safia No. 2802/EF and bullet injury to her sister namely Neelam residents of Ali Shah, District Nowshera.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Assistant Superintendent of Police Cantt, Nowshera was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities, submitted his findings stating therein that the allegations leveled against him had been proved. He recommended the delinquent Officer for major punishment of dismissal from service.

He was issued Final Show Cause Notice to which his reply was received and found unsatisfactory. He was also provided opportunity of self defense by summoning him in the Orderly Room by the District Police Officer, Nowshera on 29.09.2020, but he failed to advance any cogent reason in his defense. Hence, he was awarded major punishment of dismissal from Service vide OB: No. 883 dated 02.10.2020.

Feeling aggrieved from the order of District Police Officer, Nowshera, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 17.11.2020.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations leveled against the appellant have been proved beyond any shadow of doubt. Owing to the cowardice and negligent attitude of the appellant, accused succeeded in murdering the Lady Constable Safia No. 2802/EF and causing bullet injury to her sister namely Neelam as they had been left at the mercy of the accused who faced no resistance, whatsoever, to deter them from the commission of their intended

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designs. The retention of the appellant in the Police Force with such an attitude will lead to the repetition of such like incidents to the general public as well. Moreover, this type of conduct is also bound to affect the discipline and conduct of other members of the force. Besides, during the course of personal hearing, he could not present any cogent justification to warrant interference in the order passed by the competent authority.

Keeping in view the above, I, Sher Akbar, PSP S.St Regional Police Officer, Mardan, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being devoid of merit.

Order Announced.

[Signature]
Regional Police Officer,
Mardan.

No. 7210 /ES, Dated Mardan the 20-11- /2020.

Copy forwarded to District Police Officer, Nowshera for information and necessary w/r to his office Memo: No. 2840/PA dated 26.10.2020. His service record is returned herewith.

(*****)

EC/FME
For record
[Handwritten signature]

DPO/NSR
23/11/2020

No. 1606/PA
dt 23/11/2020

16

Annex - H

No. 4412 /PA

Dt: 29/10/2020

DEPARTMENTAL ENQUIRY AGAINST INSPECTOR ABDUL BASEER
THE THEN SHO POLICE STATION AKBARPURA.

Brief of Allegations: -

Inspector Abdul Baseer while posted as SHO P.S Akbarura, now under suspension at Police Lines, failed to handle the situation by not taking the requisite measures during scuffle/firing that took place between Nazar Muhamamd (police constable at District Peshawar) and lady Constable Safia No. 2802/EF residents of Ali Shah, District Nowshera. Resultantly, LFC Safia expired and her sister namely Neelam sustained bullet injuries. Besides, he was also directed by SDPO Pabbi to include the name of PASI Abdul Latif as accused in case FIR No. 278 dated 10.09.2020 u/s 118-B Police Act 2017 lodged against police officials, as he was also found negligent towards his duties but he turned a deaf ear to the same, which amounts to grave misconduct on his part and rendered him liable for punishment under Khyber Pakhtunkhwa Police Rules, 1975.

Proceedings: -

Charge Sheet and Summary of allegations were issued to and served upon the delinquent officer and the undersigned was tasked to act as fact finder.

Inspector Abdul Baseer was summoned, heard in person and his statement was recorded. He stated that he has executed the court order as well as timely informed his highups from the situation. He did not admit the allegations and claimed himself to be innocent.

Similarly statement of injured Neelam Farid (complainant in case FIR No. 276 dated 10.09.2020 u/s 302/324/148/149 PPC Police Station Akbarpura) was also recorded. In her written statement she held responsible police party for the incident. According to her statement, she was shouting and asking help from SHO and police party but no one turned up except two police officers who helped her while taking to the hospital.

Statement of Mustamir Khan, Mazda driver was also recorded wherein he stated that as he alongwith other labours escaped from the spot similarly police party also made their escape good.

Head Constable Afsar Ali No. 1065, Muharrir Police Station Akbarpura was also summoned who stated that on the directions of the Honourable Court, SHO/Inspector Abdul Baseer, alongwith police strength of P.S Akbarpura departed in order to shift house hold articles of Neelam Farid from her house to some other place. Later on PASI Abdul Latif telephonically informed that a scuffle/firing took place and resultantly Lady Constable Safia and her sister Neelam Farid have received bullet injures who were taken to Pabbi Hospital for treatment. In this connection a case vide FIR No. 276 dated 10.09.2020 u/s 302/324/148/149 PPC P.S Akbarpura was registered on the

report of Neelam Farid. Also a Murassila written by SHO Abdul Baseer was received from Pabbi Hospital and a case vide FIR No. 228 dated 10.09.2020 u/s 118-B was registered against the delinquent police officials.

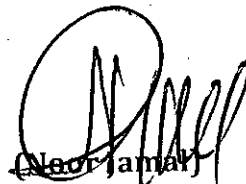
Similarly drivers constable Adnan No. 1317 and constable Shah Hussain No. 512 of P.S Akbarpura submitted their written statements wherein they supported the version of SHO.

Other police officials also submitted their written statements wherein they showed themselves as innocents and held the SHO responsible for the incident.

Finding/Recommendations: -

After illuminating all aspects of the matter, perusal of FIRs, Daily Diaries, statements of all concerned, the enquiry officer has arrived at the conclusion that the SHO failed to make a proper planning while handling the situation. Such failure of the SHO not only resulted in the death of Lady Constable Safia No. 2802 of Elite Force and injuries of her sister Neelam Farid but also reflects his poor professional skills.

Therefore, SHO/Inspector Abdul Baseer is recommended for major punishment.



(Neer Jamal)
Superintendent of Police,
Investigation, Nowshera.

W/DPO Nowshera

ORDER

This order will dispose of the departmental enquiry initiated under Khyber Pakhtunkhwa Police Rules-1975, against Inspector Abdul Baseer, under the allegations that he while posted as SHO PS Akbarpura, failed to handle the situation by not taking the requisite measures during scuffle / firing that took place between Nazar Muhammad and lady Constable Safia No. 2802 / EF residents of Ali Shah, District Nowshera. Resultantly, LFC Safia expired and her sister namely Neelam sustained bullet injuries. Besides, he was also directed by SDPO Pabbi to charge PASI Abdul Latif in case FIR No.278 dated 10.09.2020 u / s 118 (B) Police Act 2017 lodged against police official, as he was also found negligent towards his duties but he turned a deaf ear to the same.

On account of which, he was suspended, closed to Police Lines and proceeded against departmentally through Mr. Noor Jamal Khan, SP Investigation Nowshera, who after fulfillment of legal formalities submitted his report to undersigned vide his office Memo. No. 4412/PA dated 29.10.2020, wherein the allegations leveled against him have been proved and was recommended for awarding major punishment.

He was served with Final Show Cause Notice, to which, he submitted his reply which was perused by the undersigned and found unsatisfactory.

He was heard in orderly room by the undersigned wherein he failed to produce any cogent reason in his defense, therefore, he is hereby awarded major punishment of reduction in pay by 02 stages for a period of 02 years and reinstated in service from the date of suspension, in exercise of powers vested in me under Khyber Pakhtunkhwa Police Rules-1975.

OB No. 1081

Dated 12/11 /2020


District Police Officer,
Nowshera

No. 3054-58 /PA, dated Nowshera, the 12/11 /2020.

Copy for information and necessary action to the:

1. Regional Police Officer, Mardan.
2. Pay Officer.
3. Establishment Clerk.
4. FMC with enquiry papers (46 pages):
5. Official concerned.