


19.10.2022

Appellant present through counsel.

Kabir Ullah Khattak, learned Additional Advocate General alongwith Shah Jehan S.I for respondents present.

Representative of respondents submitted written reply/comments. Copy of the same was handed over to the learned counsel for appellant. To come up for rejoinder, if any, and arguments on 25.11.2022 before D.B.



(Rozina Rehman)
Member (J)

25/11/22

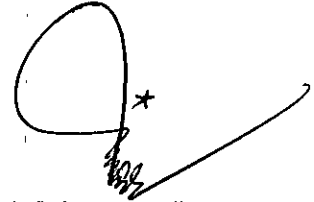
Due to deletion of the case
to come up for the same in 25/11/22



20.07.2022

Learned counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments. To come up for reply/comments before the S.B on 30.08.2022.

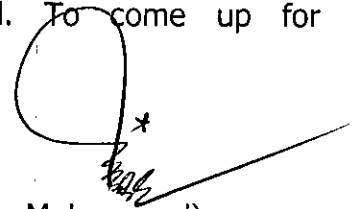


(Mian Muhammad)
Member (E)

30.08.2022

Learned counsel for the appellant present. Mr. Naseer-Ud-Din Shah, Assistant Advocate General alongwith Mr. Shah Jehan, ASI for the respondents present.

Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments on the next date. Adjourned. To come up for reply/comments on 19.10.2022 before S.B.



(Mian Muhammad)
Member (E)


Rs 300/-
Appellant Deposited
Security & Process Fee
- 25/9/22

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1123/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/07/2022	<p>The appeal of Mr. Bahramand Shah presented today by Mr. Saadullah Khan Marwat Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 20.07.2022. Parcha peshi is given to the appellant/counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWARS.A. No. 1123 /2022

Bahramand Shah

versus

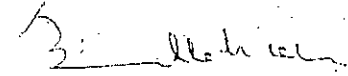
DPO & Others

INDEX

S. No.	Documents	Annex	P. No.
1.	Memo of Appeal		1-5
2.	FIRs dated 23-11-2022 & 24-11-2022	"A"	6-9
3.	FIR No. 780 dated 28-11-2022	"B"	10
4.	Show Cause Notice dated 07-03-2022	"C"	11
5.	Reply to Show Cause Notice, 10-03-2022	"D"	12-13
6.	Reversion order dated 28-04-2022	"E"	14-15
7.	Representation dated 13-05-2022	"F"	16-23
8.	Order dated 06-07-2022	"G"	24

Appellant:

Through


 Saadullah Khan Marwat
 Advocate
 21-A, Nasir Mansion,
 Shoba Bazaar, Peshawar
 Ph: 0300-5872676

Dated 18-07-2022

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. _____/2022

Bahramand Shah
S/O Murad Ali Shah,
Sub-Inspector,
Police Line, Mardan Appellant

VERSUS

1. Regional Police Officer,
Mardan, Region Mardan.
2. Provincial Police Officer,
KP, Peshawar.
3. District Police Officer,
Charsadda Respondents

⊕<=>⊕<=>⊕<=>⊕<=>⊕

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OFFICE ORDER NO. 3299-3501 / ES
DATED 28-04-2022 OF R. NO. 01 WHEREBY MAJOR
PUNISHMENT OF REDUCTION IN RANK I.E. FROM
SUB INSPECTOR TO THE RANK OF ASSISTANT SUB-
INSPECTOR WAS IMPOSED WITH FURTHER
OBSERVATION TO NOT POST APPELLANT AS SHO
AGAIN AND OFFICE ORDER NO. 1484-91/22 DATED
06-07-2022 OF R. NO. 02 WHEREBY PENALTY OF
REDUCTION WAS EFFECTED FOR A PERIOD OF 60
DAYS FOR NO LEGAL REASON.**

⊕<=>⊕<=>⊕<=>⊕<=>⊕

Respectfully Sheweth:

1. That appellant was appointed as Probationer Assistant Sub-Inspector on 22-01-2014 and on successfully completion of probation period, he was confirmed as Assistant Sub-Inspector in the year 2017 from the date of initial recruitment. On satisfactory performances of his official duties, he was promoted to the rank of Officiating Sub-Inspector on 22-01-2019 and was confirmed as Sub-Inspector on 22-01-2022 and since then performed his official duties up to the mark.
2. That on 23-11-2021, FIRs No. 763, 764 and 765 dated 24-11-2021 were registered in the Police Station, Mandani by appellant against Qabza Mafia / Group regarding dispute over land under the mentioned law. (Copies as annex "A")
3. That on 28-11-2021, Murasla was scribed by ASI Amin Khan and the said Murasla was then incorporated into FIR No. 780 u/s 295 A-B PPC for burning the Holy Quran by unknown person(s). The said person was then arrested and was put in custody who later on was identified with the name of Arshullah S/O Pervez R/O Gujrat. But the person pretended to be in-sane (Iewanay) and was not able to disclose the facts of the case. (Copy as annex "B")
4. That on 07-03-2022, appellant was served with Show Cause Notice by R. No. 01 with the allegation that he provoked mob attacked the Police Station Mandani Charsadda and put on torch the Police Stations as well as other Police Establishments of the surroundings and as a result, heavy loss was caused to Govt. and public properties. Poor performance was shown in the matter by him. (Copy as annex "C")
5. That on 10-03-2022, the said Show Cause Notice was replied and denied the allegations with cogent reasons. (Copy as annex "D")
6. That without conducting enquiry into the matter, major penalty of reduction to the rank of ASI from the rank of SI was imposed by R. No. 01 on 28-04-2022, with further observation that he should not be posted as SHO again. (Copy as annex "E")

7. That on 13-05-2022, comprehensive appeal was preferred before R. No. 02 for setting aside the imposed punishment which was rejected on 06-07-2022 and modified the punishment of reduction to the extent of period of 60 days. (Copy as annex "F" & "G")

Hence this appeal, inter alia, on the following grounds:

G R O U N D S:

- a. That since the induction of appellant in services dedicated performances were given to the department without any complaint.
- b. That on 28-11-2021, complainant Sayed Rehman S/O Muhammad Zarin reported the matter to ASI Zyarat Gul Khan that on the said day, he was opening his shop when he saw some papers of the Holy Quran burned down by unknown accused. The said accused was then identified with the name Arshullah. FIR No. 780 u/s 295 A-B PPC was registered regarding in the matter. The said FIR was not registered by appellant in the Police Station but by the said ASI.
- c. That appellant was served with Show Cause Notice regarding the subject matter which was replied in comprehensive manner that people of the area were very angry over the incident. The reply be treated as part and parcel of the appeal.
- d. That R. No. 01 acted as double edge weapon as he himself issued Show Cause Notice to appellant and also imposed major punishment of reduction in rank. He, in his capacity acted as complainant as well as judge in the matter which is beyond the scope of law.
- e. That in the Show Cause Notice, appellant was attributed poor performance in the matter and he himself alone cannot control the angry mob. Unfortunately, at the same time, Local Bodies Election was to go and every candidate was keen to show his efficiency made burning speeches against the accused as well as the police.

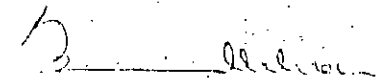
- f. That angry and disparate mob was demanding to hand over the accused, being insane, but to get rid and to save the life of the accused, appellant very tactfully shifted him to District Jail Charsadda.
- g. That though appellant was awarded with major punishment of reduction in service but legal procedure was not adopted for the same as neither any regular enquiry was conducted in the matter nor appellant was afforded opportunity of cross examination what to speak of service of Final Show Cause Notice, being mandatory.
- h. That FIR No. 763, 764 and 765 were not part and parcel of the subject matter but to impose penalty upon appellant at every cost, the same was made part of the case.
- i. That reply to the Show Cause Notice and Departmental Appeal of appellant be treated as integral part of appeal for relief to him.
- j. That intention of R. No. 01 was very much clear for imposing punishment upon appellant as he by-passed R. No. 03 (DPO) for no obvious reason. All the proceedings against appellant were based on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, orders dated 28-04-2022 and 07-06-2022 of the respondents be set aside and the period of 60 days be remitted from the service record of appellant, with such other relief as may be deemed proper and just in circumstances of the case.




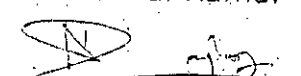
Appellant

Through



Saadullah Khan Marwat


Arbab Saiful Kamal

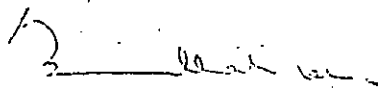

Amjad Nawaz

Advocates

Dated: 18-07-2022

CERTIFICATE:

As per instructions of my client, no such like Service Appeal has earlier been filed by the appellant before this Hon'ble Tribunal.


Advocate

AFFIDAVIT

I, Bahramand Shah Sub Inspector Police Line Mardan (appellant), do hereby solemnly affirm and declare that contents of **Service Appeal** are true and correct to the best of my knowledge and belief


DEPONENT



Phone No: 0937-9230113-114,
Fax No: 0937-9230115
Email: digmardan@gmail.com

GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE
REGIONAL POLICE OFFICER,
MARDAN

No. 1234 /ES, dated, Mardan Region the 07th March, 2022.

SHOW CAUSE NOTICE

Whereas, you (SI Bahramand Shah No.309/MR) while posted as SHO Police Station Mandani Charsadda when the provoked mob attacked the Police Station Mandani, Charsadda in wake-of the FIR No.780, dated 28-11-2021 u/s 295, A,B, PPC, P.S Mandani and put on torch the Police Station Mandani as well as other police establishments in the surroundings. As a result of which heavy losses were incurred to government and public properties. From this, it is apparent that you have shown poor performance while dealing the mob and failed to manage the situation as well as to protect the government and public properties.

WHEREAS, your this act of omission/commission is tantamount to gross misconduct/negligence and punishable under Khyber Pakhtunkhwa Police Rules 1975 as amended 2014.

You are, therefore, being issued this Show Cause Notice under Rule 5 sub rule (3) of Khyber Pakhtunkhwa Police Rules 1975 as amended 2014 for the above stated misconduct. Your response should reach to this office within (7) working days. In case of non submission of reply or it is found unsatisfactory, action shall be taken against you under Rule 5 sub rule (5) of Khyber Pakhtunkhwa Police Rules 1975 as amended 2014 and any of punishment in the ibid rules will be imposed upon you.


REGIONAL POLICE OFFICER,
MARDAN.

SI Bahramand Shah No.309/MR

CC.

1. The District Police Officer, Charsadda
2. The Office Supdt. Region Office.

② 12

BEFORE THE HON'BLE REGIONAL POLICE OFFICER MARDAN, REGION I
MARDAN

Through Proper Channel
Subject Reply to Show Cause Notice vide Endst No. 1829 /ES
Dated 07.03.2022

Respected sir,

I have the honor to refer the subject show cause notice, issued u/r 5(3) KPK police rule 1975, respectfully submit my reply as under:-

- At the very outset, I would like to submit that lack of supervision or command cannot be judged / valued on single instance / case and it requires to be assessed from routine performance / daily working of an officer. With due apology, I beg to refer the famous maxim "That one swallow does not make a summer"
- There is not an iota of evidence, recorded by the committee during facts finding inquiry that the unfortunate mishap occurred due to my failure or lapses in my command hence the alleged charge is not tenable, therefore I am innocent.
- On the fateful day, when the undersigned came to know of the occurrence, the accused/miscreant of case FIR No. 780 of dated 28.11.2021 u/s 295-A, B PPC was immediately secured and shifted to the Police Station and subsequently to the District Jail. Particles of the Holy Book, match box and prayer-rug were also recovered and taken into possession.
- The incidence occurred, at the spur of the moment. The moment the undersigned was informed by the Muharir about the gathering of the people at Mandani Chowk, the undersigned rushed to Mandani Chowk and tried to hold dialogue with the elders for their peaceful dispersal. However, keeping in view the local bodies elections campaign and candidates ousted to show their loyalty to the religion, tried to turn the situation from normal to worst.
- That the people on the spot were persuaded to believe that the accused had been arrested and his case would be submitted before the Court of law and it would be ensured that maximum possible penalty is sought to be inflicted upon him, but the mob was adamant and chanting demand that the accused be handed over to them.
- That some of the miscreants tried to lead the mob to the Police Station to get hold of the accused and kills him on the spot. But they were sternly warned that in case they take the law into their own hand, get the accused from the lock up, it would be a cognizable offence, for which they (elders) would be made responsible.
- That till last, the undersigned tried his level best to persuade the mob not to take law into their hands but they were adamant to get hold of the accused and punish him.
- That it is a universal factor that when a mob is gathered, its mentality changes all together and they are normally inclined to the worst step possible, as every member of such mob feels that he would not be held personally responsible for the arson alone. Though the undersigned warned the elders, leading the procession, that they would be held personally responsible for any untoward incidence.

- That all possible peaceful measures were applied to divert mob from the Police Station and taken possession of the accused but no avail.
- The only remedy available was, to resort to use of force. But keeping in view the condition of the mob, who were highly charged, it was not felt appropriate to use force as it could have led huge losses/ casualties, to the mob.
- That historically speaking, every mob, infuriated on the basis of religious feelings, have never been controlled amicably. In almost all the cases, either the accused has been lured or colossal damage caused to the property.
- That in case the people had got hold of the accused, he would have been killed definitely, which could bring bad name for the country. But through employing skills and tactics, the accused was shifted to District Jail Charsadda and taken out of the access of the mob.
- That the undersigned utilized all means at his disposal to avert any ugly situation but assault on the PS building and damage to the property was beyond control of the undersigned.
- The committee has admitted in their conclusion of the finding report that public were provoked due to emotional speeches of various political elders of the area.
 - o Under the law of torts, the independent negligence of the person is not imputable to another person.
 - o Every person is liable for his individual act and one cannot be made liable / convicted for the act of others, meaning thereby that due to acts of the members of provoked mob, the police officers/employees should not be condemned. (NLR 2003 - Apr Cr: Lah 244)
 - o The principle of natural justices would be violated only when an action is taken against a person without his knowledge. (NLR 214 April QTA) I swear that the alleged occurrence was not expected due to negotiation, nor was in police knowledge/notice to be promptly reacted but happened on the spur of moment. It has been held by Hon'able Court that without knowledge, conviction is illegal and it was set aside (NCR 2004 (Feb P-84 Peshawar).
 - o Since I have joined this force, I performed dedicatedly and to the entire satisfaction of superiors, I always acted beyond the call of duty at the risk of my life, fought against criminals to culminate the menace of crimes from my area, where I remained posted, I have an unblemished service record, which clearly reflects my sincerity & dedication towards my job.

Foregoing in view, it is humbly requested that the a/r Show cause notice may please be filed without further action, to meet the ends of justice.

Personal hearing is also requested to explain the circumstances behind alleged occurrence.

Sincerely yours,



SI Bahramand Shah No.309/MR

10-03-2022

E 124

ORDER.

This order will dispose-off the Show Cause Notice issued vide this office Memo: No. 1829/ES dated 07.03.2022 to Sub Inspector Behramand Shah No. 309/MR of Charsadda District presently Region Office, Mardan on account of that he while posted as SHO Police Station Mandani, Charsadda have shown poor performance while dealing the mob and failed to manage the situation as well as to protect the government and public properties as when the provoked mob attacked the Police Station Mandani, Charsadda in wake of the FIR No. 780 dated 28.11.2021 u/s 295-A&B-PPC Police Station Mandani, Charsadda and put on torch the Police Station Mandani as well as other Police Establishments in the surroundings. As a result of which heavy losses were caused to government and public properties.

In response to the Show Cause Notice, reply was received which was perused and found un-satisfactory. The delinquent Officer was also heard in Orderly Rooms held in this office on 15.03.2022, 30.03.2022, 13.04.2022 and 21.04.2022 but he bitterly failed to justify his innocence.

Facts leading to the issue in question are that Sub Inspector Behramand Shah No. 309/MR used undue extraneous influence for getting posting as SHO Police Station Mandani District Charsadda on 22.11.2021. Right after assuming the charge as SHO, he hurriedly registered 03 FIRs in sequence against the local population of the area in order to help settle a civil property dispute of the person who helped him in getting posted as SHO. He registered 03 FIRs on the very 2nd day of his joining as SHO Mandani.

- (1) FIR No. 763 dated 23.11.2021 U/S 506/447/147/478/149-PPC/7-ATA.
- (2) FIR No. 764 dated 23.11.2021 U/S 506(2)/148/149-PPC.
- (3) FIR No. 765 dated 24.11.2021 U/S 506(02)/447/148/149-PPC.

The FIR No. 763 U/S 7-ATA Police Station Mandani District Charsadda was not even in the knowledge of District Police Officer, Charsadda, and Sub Divisional Police Officer, (SDPO) Tangi. These hasty registration of FIRs resulted in fueling serious unrest in the area against the entire Police.

On 28.11.2021 an incident of desecration of pages of Holy Quran took place and FIR No. 780 dated 28.11.2021 U/S 295-A&B-PPC was registered in Police Station Mandani. As already the entire area was having serious sentiments against the Police, therefore, the public which included the relatives of the nominated accused of 03 FIRs, surrounded the Police Station. SHO Behramand Shah No. 309/MR even at that time did not tackle the situation wisely for cooling down the tempers of the public at large, resultantly the mob attacked the Police Station and burnt it down. Due to the already simmering anti Police sentiments, the mob thereafter attacked 07 Police Chowkies one by one and burnt them down.

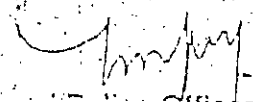
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Sub Inspector Behramand Shah No. 309/MR was called in Orderly Room. He could not justify the hasty registration of FIRs against locals of the area. The occurrence as mentioned in the FIR registered U/S 7-ATA was an old one. Upon checking the file, it was found that the Officer prepared a fake back dated enquiry report to show that the enquiry was going on even before his joining as SHO Police Station Mandani. In this regard the previous SHO Mandani Johar Shed Khan and ASI Alamgir whose names were on the enquiry report were called who categorically denied that neither any enquiry was held and no enquiry report was prepared by them.

These circumstances show severe misconduct by Sub Inspector Behramand Shah No. 309/MR. He misused his official position in order to favor one party and registered 03 FIRs in undue haste, without telling his superiors. This resulted in serious unrest in the area. When the desecration incident occurred, the crowd which was already against the Police, attacked and burnt the Police Station and 07 Police Chowkies of the area. Even on the day of the event, he mishandled the mob and instead of calming things down, his attitude fuelled further unrest. Later on when he realized that his hasty registration of FIRs had lead to this situation, he got prepared fake enquiry report trying to give an impression that the FIR U/S 7-ATA was registered on an old enquiry report, which proved fake.

Keeping in view the above, I, Yaseen Farooq, PSP Regional Police Officer, Mardan, being the competent authority, therefore, find Sub Inspector Behramand Shah No. 309/MR guilty of serious charges of misconduct, hereby award major punishment of reduction in rank i.e from Sub Inspector to his substantive rank of Assistant Sub Inspector with immediate effect with the observation that he should not be posted as SHO again.

Order Announced.


Regional Police Officer,
Mardan.

No. 3244-3501/CS, Dated Mardan the 20 / 11 / 2000.

Copy forwarded for information and necessary action to the:-

1. District Police Officer, Charsadda.
2. Superintendent E-III CPO/Peshawar.
3. District Accounts Officer, Charsadda.

(*****)

15
Before the Hon'able Inspector General of Police Khyber
Pakhtunkhwa, Peshawar.

Through: Proper Channel

Subject: Departmental Appeal u/r 11(2) KPK Police rules 1975(amended 2014), against the impugned order, Passed by worthy DIG Mardan region bearing Endst: No.3299-3301/ES dated 28.04.2022.

Respected Sir,

Having felt aggrieved of the order passed by the worthy Regional Police Officer, Mardan vide Endst. No. 3299-3301/ES, dated 28.2.2022, the appellant respectfully prefers this appeal against the impugned order on the following grounds, amongst others (Impugned order is attached as annexure "A")

PRELIMINARIES:

1. The appellant has been awarded major penalty without proper inquiry/disciplinary proceedings, on a simple show cause notice which is being condemned by superior courts and is not permissible as per series of judgments.
2. The inquiry proceedings have not been conducted as per law, within the meaning of police rules 1975, observing by superior court as legally defective which was held by superior court, relevant observation is as under:

"Sketchy inquiry is not sufficient to prove any charge against civil servant- no witness was examined in inquiry proceedings - appellant was found guilty without any substantive evidence - impugned order was set-aside".

3. Referring the Hon'able Supreme Court Judgments (i) 2002 SCMR 857, relevant para whereof is reproduced, as under.-

"Negligence in duty on the part of accused officer for reversion in rank, awarded to civil servant by competent authority was converted to minor penalty due to reason that no malice was reportedly involved as reduction in rank was based on non-existing ground"

(ii) 2005 PLC(CS)1559: Fault of appellant at the most could be turned as negligence(the appellant though does not accede/admit) for which a minor penalty would suffice.....Appellant had approximately 8/9 years with clean record of service as low paid subordinate which also deserves due consideration before imposition of major penalty under given circumstances.

(iii) 2005 PLC(CS)1527: No witness was examined in presence of appellant and he was also deprived of the right of cross examination hence appellant was reinstated and considered to be entitled to full back benefits.

4. The Superior Courts have strongly condemned the short cut/sketchy proceedings without recording evidence in disciplinary proceedings. Reliance is placed on reported judgments, depicting as under:-

- PLJ 2005(CS) page 113
- 2005 PLS (CS) page 1384
- 2004(SCMR) page 1662
- 2005 PLS(SC) page 1544
- 2005 PLC (CS) page 1505
- 2004 SCMR page 630
- 2004 SCMR page 116

5. The allegations of having registered false cases against the opponents of the person, instrumental in posting of the undersigned, is baseless, concocted and with no material evidentiary support. Being SHO, I was obliged under the law to register case against anyone at the instance of the Complainant, when a cognizable offence takes place. In the three cases mentioned in the impugned order, were actually registered by the Complainants, these have been investigated, the accused found guilty and the cases were put in the Court by District Prosecution, accused are facing trials.

6. The allegations, that people of the area turned averse to the Police on account of alleged registration of cases, is also based on surmises and conjectures and no material evidence could be brought on file. The actual situation is that the people came to know about the desecration of the Holy Quran and the local Mulvis, like in any other area, with a view to establish their writ over their followers, instigated the locals and the infuriated people took the law into their own hands, and torched the Police Station and other Police buildings, for which a case has been registered.

7. The appellant is the brother of shaheed inspector Ajmeer shah who, in the line of his duty embraced Shahadat / Martyrdom in year 2011 blast for the cause and writ of police force. In case, if any action is taken against appellant, it shall cause irreparable loss to the sacrifices, given by shaheed brother.

8. The Constitutional Courts are unanimous in their findings that quantum of punishment as per law must be appropriate, compatible and reasonable qua act or omission, allegedly committed by civil servant. Reliance can be placed on the case reported in judgment 1988 PLC (CS) page 179, therefore the punishment awarded to appellant is very harsh, unreasonable and against the natural justice.

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5. The allegations of having registered false cases against the opponents of the person, instrumental in posting of the undersigned, is baseless, concocted and with no material evidentiary support. Being SHO, I was obliged under the law to register case against anyone at the instance of the Complainant, when a cognizable offence takes place. In the three cases mentioned in the impugned order, were actually registered by the Complainants, these have been investigated, the accused found guilty and the cases were put in the Court by District Prosecution, accused are facing trials.

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9. The appellant has been treated discriminately, involving infringement of rights, therefore, the awarded punishment in principle violates Pakistan Constitution 1973 and prevailed laws.
10. Final show cause notice as per rule 16.25(ix) Police Rules 1934 in cases of major penalty is mandatory but the same has not been issued to appellant and the impugned order on this score is without lawful authority/jurisdiction, thus is liable to be set aside.

ON FACTS:

- i. Short facts are that on 28.11.2021 during posting of appellant as SHO PS Mandani District Charsada, some miscreants instigated the local Police of Mandani and led them to attack on PS and PPs on desecration of pages of Holy Quran. The occurrence took place at the spur of moment. Keeping in view the sentimental element of the people towards religious issue, the event so fierce and quick that hardly any time to enter into negotiation with the elders could be found. The undersigned, at his own level tried his level best to control the situation but, like other similar situations in the country, it was out of control. Resultantly damages were caused to PS/PPs buildings/other losses by aggressive mob. The appellant was blamed for no justified reason rather substantiating grounds as control of annoyed mob was not under the power of PS strength.
- ii. After the incidence, it was properly investigated, the accused arrested and all legal measures, as per requirement of law taken at the time.
- iii. That the situation could be easily averted but with a heavy loss to precious human lives of police as well public, being the best judge on the spot, the only remedial way was to open fire on the mob, which the undersigned did not felt appropriate at the relevant point of time in the larger interest of public safety and keeping in view the reputation of the force.
- iv. Despite performing his duties within the four walls of the law and regulations, the appellant was issued showcause notice to which an explanatory/plausible reply was given but was not considered (copy of show cause notice annexed as "B").
- v. The appellant properly answered the show cause notice which is self explanatory and worth of reliance but the contention of the undersigned was given no weightage and without giving any plausible reason to the contrary, discarded it on material point (reply is enclosed as annexure "C")
- vi. The proceedings are one sided and as per law / rules, the appellant was not associated with, to express his view point, regarding the alleged charge and he was awarded major penalty of reduction in rankvide impugned order under subject.

9. The appellant has been treated discriminately, involving infringement of rights, therefore, the awarded punishment in principle violates Pakistan Constitution 1973 and prevailed laws.
10. Final show cause notice as per rule 16.25(ix) Police Rules 1934 in cases of major penalty is mandatory but the same has not been issued to appellant and the impugned order on this score is without lawful authority/jurisdiction, thus is liable to be set aside.

ON FACTS:

- Short facts are that on 28.11.2021 during posting of appellant as SHO PS Mandani District Charsada, some miscreants instigated the local Police of Mandani and led them to attack on PS and PPs on desecration of pages of Holy Quran. The occurrence took place at the spur of moment. Keeping in view the sentimental element of the people towards religious issue, the event so fierce and quick that hardly any time to enter into negotiation with the elders could be found. The undersigned, at his own level tried his level best to control the situation but like other similar situations in the country, it was out of control. Resultantly damages were caused to PS/PPs buildings/other losses by aggressive mob. The appellant was blamed for no justified reason rather substantiating grounds as control of annoyed mob was not under the power of PS strength.
- ii. After the incidence, it was properly investigated, the accused arrested and all legal measures, as per requirement of law taken at the time.
 - iii. That the situation could be easily averted but with a heavy loss to precious human lives of police as well public, being the best judge on the spot, the only remedial way was to open fire on the mob, which the undersigned did not felt appropriate at the relevant point of time in the larger interest of public safety and keeping in view the reputation of the force.
 - iv. Despite performing his duties within the four walls of the law and regulations, the appellant was issued showcause notice to which an explanatory/plausible reply was given but was not considered (copy of show cause notice annexed as "B").
 - v. The appellant properly answered the show cause notice which is self explanatory and worth of reliance but the contention of the undersigned was given no weightage and without giving any plausible reason to the contrary, discarded it on material point. (reply is enclosed as annexure "C")
 - vi. The proceedings are one sided and as per law / rules, the appellant was not associated with, to express his view point, regarding the alleged charge and he was awarded major penalty of reduction in rank vide impugned order under subject.

GROUNDS OF APPEAL:

The impugned order of worthy DIG Mardan is assailable on the following grounds.

- a. The impugned order is based on surmises and conjectures and no material evidence, incriminating the undersigned could be brought on record to bring home charge against him.
- b. The inquiry proceedings have not been conducted as per provision, contained under Rule 5/6 of police rules 1975 as the worthy authority had to order and conduct detailed departmental inquiry through inquiry officer.
- c. There is not an iota of evidence, connecting the appellant prima-facie with the alleged act of misconduct hence cannot be adjudged / assessed from leveling the alleged charge as per show cause notice, issued to appellant because no evidence has been recorded.
- d. The alleged charge against the appellant is unjustifiable as no direct evidence for his involvement in the act of misconduct is available, thus was required to be considered under the law of justice, recorded evidence and factuality on the principles as under:-
 - I. The principle of natural justices would be violated only when an action is taken against a person without his knowledge/malice (NLR 214 April QTA). As per record, there is nothing that the appellant has committed any omission willfully or deliberately.
 - II. The impugned order dated 28.04,2022 has been passed in slipshodmanner, total disregard of the available record, the law and rules on the subject, the norms of justice and fair play. Principle of justice would be violated only when action is taken against a person without his knowledge/intention, reported in superior court judgment NLR, page 214, April Quetta.
- e. The impugned order is unjust, unlawful and without authority / jurisdiction hence coram non judice and void abeneticio.
- f. The appellant has spotless service record of 8/9 years as SHO/ASI and throughout his carrier he has been awarded, commended and blessings with good ACRs.
- g. That the appellant has performed his duty sincerely, honestly and efficiently and awarding him major penalty in reduction in rank will not badly tarnish his reputation in family, society and service but also demoralize his colleagues.
- h. The appellant belongs to middle class family, the service, is his only source of earning and the awarded penalty of reduction in rank, shall be huge loss to him,

22

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- a. The impugned order is based on surmises and conjectures and no material evidence, incriminating the undersigned could be brought on record to bring home charge against him.
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- h. The appellant belongs to middle class family, the service is his only source of earning and the awarded penalty of reduction in rank, shall be huge loss to him,

his career as well family repute, for no good reasons, hence requires sympathetic consideration.

PRAYER

Above in view, it is humbly prayed that by accepting this appeal, the impugned order dated 28.04.2022 may very kindly be set aside, restored to original rank to meet the ends of justice.

Obediently yours

Ex- SI Beharmond Shah
NO: 309/MR
(Appellant)

Note: copy of this appeal is being submitted directly in CPO, in advance.

13/05/2022



G 224
OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

ORDER

This order is hereby passed to dispose of Departmental Appeal under Rule 11 of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by ASI Behramand Shah No. 309/MR (the then SI).

The petitioner was awarded punishment of reduction in rank i.e from Sub-Inspector to substantive rank of Assistant Sub-Inspector with the observation that he should not be posted as SHO again by RPO, Mardan vide order Endst: No. 3299-3301/ES, dated 28.04.2022 while posted as SHO PS Mandani, Charsadda had shown poor performance while dealing the mob and failed to manage the situation as well as to protect the government and public properties as when the provoked mob attacked the PS Mandani, Charsadda in wake of the FIR No. 780, dated 28.11.2021 u/s 295-A&B-PPC PS Mandani, Charsadda and put on torch the PS Mandani as well as other Police Establishment in the surroundings. As a result of which heavy losses were caused to government and public properties. He used undue extraneous influence for getting posting as SHO PS Mandani, Charsadda on 22.11.2021. Right after assuming the charge as SHO, he hurriedly registered 03 FIRs in sequences against the local population of the area in order to help settle a civil property dispute of the person who helped him in getting posted as SHO. He registered following 03 FIRs on the very 02nd day of his joining as SHO Mandani:-

- (i) FIR No. 763, dated 23.11.2021 u/s 506/447/147/478/149-PPC/7-ATA
- (ii) FIR No. 764, dated 23.11.2021 u/s 506(02)/148/149-PPC
- (iii) FIR No. 764, dated 24.11.2021 u/s 506(02)/447/148/149-PPC

The FIR No. 763 u/s 7-ATA PS Mandani, Charsadda was not even in the knowledge of DPO Charsadda and SDPO Tangi. These hasty registration of FIRs resulted in fueling serious unrest in the area against the entire Police.

On 28.11.2021, an incident of desecration of pages of Holy Quran took place and FIR No. 780, dated 28.11.2021 u/s 295-A&B-PPC was registered in PS Mandani. As already the entire area was having serious sentiments against the Police, therefore, the public which included the relatives of the nominated accused of 03 FIRs, surrounded the PS. The appellant even at that time did not tackle the situation wisely for cooling down the tempers of the public at large, resultantly the mob attacked the PS and burnt it down. Due to the already simmering anti Police sentiments, the mob thereafter attacked 07 Police Chowkies one by one and burnt them down. Later on when he realized that his hasty registration of FIRs had lead to this situation, he got prepared fake enquiry report trying to give an impression that the FIR u/s 7-ATA was registered on an old enquiry report, which proved fake.

Meeting of the Appellate Board was held on 29.06.2022, wherein the petitioner was present and heard in detail.

As per FR 29, any punishment of reduction shall state the period for which it shall be effective. As the penalty imposed does not specify the period, therefore, the Appellate Board decided that the punishment be effective for a period of 60 days.

Sd/-

SABIR AHMED, PSP

Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. SI/1484-91/22, dated Peshawar, the 6/7/2022.

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan.
2. District Police Officer, Mardan.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-III, CPO Peshawar.
7. Office Supdt: CP Branch, CPO Peshawar.
8. Officer concerned.

(DR. ZAHID ULLAH) PSP

AIG/Establishment,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

یعد الت جتای سروس ٹریڈ مارک صورت پیکر سید لیتا اور

مخواب ایڈوائس

مختار لکھی

جو قدر کاہ

دعویٰ ایک

باعتبار سروس ٹریڈ مارک

مقررہ مندرجہ عننوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام لیتا اور
 کیلئے استعدا ادا کیا جانے سے پہلے ایڈوائس ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب
 موصوف کو مقدمہ کی شکل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کہنے والی تاریخ و تقریر ثالث و ایضاً برعکاف
 میں جواب دہی اور اقبال دعویٰ اور لکھنؤ ڈگری کرنے اجراء اور دہلی چیک و ریپورٹ اور دعویٰ اور درخواست
 ہر قسم کی تقدیر ان انداز میں پر دستخط کر لیا گیا اختیار ہوگا نیز مقدمہ عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
 اور مستحق فیصلہ دہی کرنے اپیل نمکدان رہنمائی و پیروی کرنے کا اختیار ہوگا اور لکھنؤ ڈگری و تقریر مقدمہ منگوانے
 کے لئے یا جزیعی کاروائی کے واسطے اجراء وکیل یا مختار قانونی کو اپنے کرایہ یا اپنی بجائے لکھنؤ ڈگری کا اختیار ہوگا
 اور اس میں مقدمہ مندرجہ کو بھی وہی جملہ مندرجہ بالا اختیارات حاصل ہوں گے اور اس کا سامنے پیروا اختیار منظور
 قبول ہوگا اور دوران مقدمہ میں جو فریبہ و ہرجا نہ التوا مقدمہ کے سامنے ہوگا اس کے مستحق وکیل صاحب
 موصوف ہوں گے نیز لکھنؤ ڈگری کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام روزم
 میر ہو یا عدت باہر ہو تو وکیل صاحب یا بند نہ ہوں گے کہ پیروی مندرجہ کو کریں
 لہذا نکالت نامہ دیکھ دیا کہ سند ہے۔

المرقوم ۲۲-۵۷-۱۸

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التعبید

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 اور باب نیفا نکمال
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 سیدہ الشامیہ خان صاحبہ
 ایڈوائس

(B)

Balramad Shah

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 احمد نواز
 ایڈوائس

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

S.B

No.

1123

APPEAL No..... of 20

22

Bahramand Shah

Appellant/Petitioner

Versus

RPO Mardan

RESPONDENT(S)

Resp NO 1 Regional Police officer

Notice to Appellant/Petitioner

Mardan Region

Mardan

Take notice that your appeal has been fixed for Preliminary hearing, replication/affidavit/counter affidavit/record/arguments/order before this Tribunal on at

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Reply
Copy of appeal
is attached

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

“A”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

Resp
No.

S.B

APPEAL No.....1123..... of 20 22

Bahramand Shah

Appellant/Petitioner

Versus

RPO Mardan

RESPONDENT(S)

Notice to Appellant/Petitioner

Resp: NO 3

District Police officer
Charsadda

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 30-8-22 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Reply
Copy of appeal
is attached

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

S.B

APPEAL No. 1123 of 20 22

Bahramand Shah

Appellant/Petitioner

Versus

RPO Maxdan

RESPONDENT(S)

Notice to Appellant/Petitioner

Resp No 2

Provincial Police Office
KP Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 30-8-22 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Reply
Copy of Appeal
is attached

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

2-8-022

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 1123/2022

Behramand Shah s/o Murad Ali Shah, Sub-Inspector, Police Line, Mardan

.....Appellant

V E R S U S

Regional Police Officer, Mardan & others

.....Respondents

INDEX

S.No	Documents	Annexure	pages
1	Reply	---	1-3
2	Copy of Show Cause Notice	A	4
3	Affidavit	-	5
4	Authority letter	-	6

RESPONDENTS

Through


**Shah Jehan, ASI
Charsadda**



**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR**

Service Appeal No. 1123/2022

Behramand Shah s/o Murad Ali Shah, Sub-Inspector, Police Line, Mardan

.....Appellant

V E R S U S

Regional Police Officer, Mardan & others

.....Respondents

REPLY/PARAWISE COMMENTS BY RESPONDENTS.

Respectfully Sheweth:

Preliminary Objections:

1. That appellant has not approached to this Hon'ble tribunal with clean hands.
2. That the appellant has suppressed actual facts/factual position from this Hon'ble tribunal.
3. That the appeal of appellant is not based on facts.
4. That the appeal of appellant is bad for non-joinder and misjoinder of necessary parties.
5. That the appellant is estopped by his own conduct to file the present appeal.

REPLY ON FACTS:

1. Para pertains to initial appointment as well as subsequent promotion of the appellant to next rank, hence, needs no comments.
2. When information relating to the commission of a cognizable offence is provided/given to the Incharge Police Station, he is bound to register F.I.R.
3. That the incident of burning of the Holy Quran lead to attack on Police Station Mandani, where appellant was posted as SHO, and putting it as well as other Police establishment on the surroundings, to the torch by the provoked mob, which reflects poor performance of the appellant in dealing with the mob and failure to control the situation as well as to protect the government properties.
4. Para correct to the extent that on 07.03.2022 appellant was served with a Show Cause Notice on the allegations that the provoked mob attacked Police Station Mandani and put it to the torch as well as other Police establishment of the surroundings

which resulted in heavy loss to the government. Performance of the appellant in controlling the situation was very poor.

5. Para correct to the extent that appellant submitted his reply to the Show Cause Notice, however the same was found unsatisfactory.
6. Incorrect. All the circumstances and events that lead to the burning of Police Station Mandani as well as other Police establishments by the provoked mob, were barefaced therefore, appellant was awarded major punishment of reduction in rank i.e from Sub-Inspector to Assistant Sub-Inspector.
7. Para correct to the extent that against the punishment order, passed by Respondent No.1, appellant moved departmental appeal before Respondent No.2 whereupon his punishment was modified by the respondent No.2, on the grounds that penalty imposed does not specify period, therefore, the penalty imposed by the respondent No.1, will be effective for a period of 60 days.
8. That appeal of appellant is liable to be dismissed on the following grounds amongst the others.

GROUND:

- A. That each and every Police officer/official is required to perform his duty with dedication and upto the entire satisfaction of his high ups.
- B. Incorrect. It is immaterial that who chalked/registered the FIR, the matter was that after registration of FIR in such a sensitive issue, appellant badly failed to control the situation which resulted in heavy loss to government property.
- C. Para correct to the extent that appellant submitted reply to the Show Cause Notice but the same was found "unsatisfactory, hence, appellant was awarded major punishment of reduction in rank i.e from Sub-Inspector to Assistant Sub-Inspector.
- D. Incorrect. The authority is competent to award punishment, provides reasonable opportunity of showing cause to the defaulter official/officer and after receipt of explanation of defaulter officer/official the authority shall determine that whether the charge has been proved or not. In case the charge is proved the authority shall award one or more of major or minor punishment as deemed necessary.
- E. Incorrect. A sorry excuse has been made by the appellant which is not appealable to a prudent mind.
- F. Incorrect. Poor performance and mismanagement of the situation by the appellant, provoked the mob and they (mob) attacked

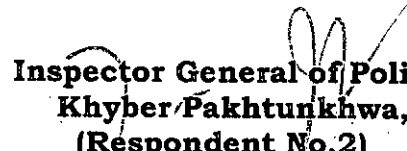
Mandani Police Station as well as other police establishment and set fire to these places.

- G. Incorrect. Appellant was issued show cause notice. **(Copy of show cause notice is annexed as A)**. He was also awarded opportunity of personal hearing through Orderly room.
- H. Incorrect. Right after assuming the charge as SHO, appellant hurriedly registered 03 FIRs against the local population of the area in order to help settle a Civil property dispute of the person who helped him in getting posted as SHO. On 28.11.2021 an incident of desecration of pages of Holy Qur'an took place and an FIR No. 780 dated 28.11.2021 u/s 265-A&B PPC Police Station Mandani was registered. As the entire area was having serious sentiment against the Police, therefore, the public including the relatives of the nominated accused of these 03 FIRs surrounding the Police Station Mandani attacked it and burnt it down.
- I. Para not related.
- J. Incorrect. There were obvious reasons for awarding punishment to the appellant respondent No.1, which have been explained in the preceding paras.
- K. That the respondents seek permission of this Hon'ble Tribunal for further additional grounds at the time of arguments.

Prayer:

Keeping in view the facts above, it is therefore humbly prayed that the appeal of appellant being without merit and substance, may kindly be dismissed with cost.


**Regional Police Officer,
 Mardan, Region, Mardan
 (Respondent No.1)**


**Inspector General of Police,
 Khyber Pakhtunkhwa,
 (Respondent No.2)**


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

4

Annexure - A

Phone No: 0937-9230113-114.
Fax No: 0937-9230115
Email: digmardan@gmail.com



GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE
REGIONAL POLICE OFFICER,
MARDAN

No. 1329 /ES, dated, Mardan Region the 07th March, 2022

SHOW CAUSE NOTICE

Whereas, you (SI Bahramand Shah No.309/MR) while posted as SHO Police Station Mandani Charsadda when the provoked mob attacked the Police Station Mandani. Charsadda in wake of the FIR No.780, dated 28-11-2021 u/s 295, A,B, PPC, P.S Mandani and put on torch the Police Station Mandani as well as other police establishments in the surroundings. As a result of which heavy losses were incurred to government and public properties. From this, it is apparent that you have shown poor performance while dealing the mob and failed to manage the situation as well as to protect the government and public properties.

WHEREAS, your this act of omission/commission is tantamount to gross misconduct/negligence and punishable under Khyber Pakhtunkhwa Police Rules 1975 as amended 2014.

You are, therefore, being issued this Show Cause Notice under Rule 5 sub rule (3) of Khyber Pakhtunkhwa Police Rules 1975 as amended 2014 for the above stated misconduct. Your response should reach to this office within (7) working days. In case of non submission of reply or it is found unsatisfactory, action shall be taken against you under Rule 5 sub rule (5) of Khyber Pakhtunkhwa Police Rules 1975 as amended 2014 and any of punishment in the ibid rules will be imposed upon you.

REGIONAL POLICE OFFICER,
MARDAN.

SI Bahramand Shah No.309/MR

CC.

1. The District Police Officer, Charsadda
2. The Office Supdt. Region Office.

Attested

By: Superintendent
of Police, Legat
Charsadda

6

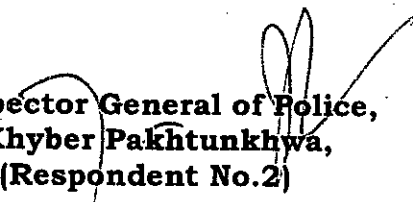


GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DISTRICT POLICE OFFICER CHARSAKDA
PHONE# 091/9220400 FAX# 091-9220401
EMAIL: charsaddadpo@yahoo.com

Authority Letter in Service Appeal No.1123/2022 -Title SI Behramand Shah.

Mr. Shah Jehan, Assistant Sub-Inspector Legal, is hereby authorized to appear before the Khyber Pakhtunkhwa Service Tribunal, Peshawar in the above captioned Service Appeal on behalf of answering respondents. He is also authorized to submit all required documents and replies etc as representative of the answering respondents through the Additional Advocate General, Khyber Pakhtunkhwa Peshawar.


**Regional Police Officer,
Mardan, Region, Mardan
(Respondent No.1)**


**Inspector General of Police,
Khyber Pakhtunkhwa,
(Respondent No.2)**


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