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

Service Appeal No. 66/2019

Date of Institution ... 09.01.2019

Date of Decision ... 26.07.2021

Imran Khan S/o Mosam Khan
R/o Muslim Bagh, P/O Saria Nourang, Tehsil and District Lakki Marwat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Additional Chief Secretary Department of Home and Trial Affairs, Civil Secretariat, Peshawar and two others.

... (Respondents)

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Mr. MIAN AFRASIAB GUL KAKAKHEL, Advocate --- For appellant.

MR. RIAZ AHMED PAINDAKHEL, Assistant Advocate General --- For respondents.

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MR. ATIQ-UR-REHMAN WAZIR --- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through this single judgment, we intend to dispose of the instant service appeal as well as connected Service Appeal bearing No. 101/2019 titled "Abdul Qayum Khan Versus Government of Khyber Pakhtunkhwa through Additional Chief Secretary Department of Home and Tribal Affairs, Civil Secretariat, Peshawar and two others", as similar questions of law and facts are involved in both the appeals.

2. Precise facts are that the appellants in both the appeals were serving as Constables and were deputed on duty in Police Post *Surkh Pull.* On the night falling between 4/5-11-2013, the Police Post was attacked by terrorists and during the ambush, cross firing took place, resulting in causing death of Constable Sher Nawaz; that the accused decamped from the spot and also took away one official Rifle as well as one Kalashnikov. The incident resulted in initiation of disciplinary action against the appellants

on the ground that they showed cowardice. On conclusion of the inquiry, the penalty of dismissal from service was imposed upon them, however on preferring service appeal before this Tribunal, the appeal was allowed vide judgment dated 16.04.2018 and it was directed that de-novo inquiry be conducted against the appellants within a period of ninety days. On conclusion of de-novo inquiry, the appellants were reinstated into service, however the total/out of service period of the appellants was treated as leave without pay, vide separate orders dated 17.07.2018 passed by the competent Authority. The said orders to the extent of treating the absence period of the appellants as leave without pay were challenged by the appellants through filing of separate departmental appeals but the same were declined by Commandant FRP Khyber Pakhtunkhwa Peshawar vide separate orders dated 26.12.2018. The appellants have now approached this Tribunal through filing of the appeals for redressal of their grievance.

3. Respondents were summoned, who contested the appeals by way of submitting joint reply.

4. Learned counsel for the appellants has contended that the appellants were not found guilty during the de-novo inquiry, therefore, upon their reinstatement into service, they were entitled to all back benefits; that the absence from duty was not due to any fault of the appellants, rather they were initially suspended and dismissed from service during the previous inquiry. He requested that the appeals may be allowed and the appellants may be granted all back benefits.

5. On the other hand, learned Assistant Advocate General for the respondents has contended that the competent Authority has already taken lenient view by reinstating the appellants into service; that it is well settled that when there is no work, there is no pay, therefore, the competent Authority has rightly treated the absence period of the appellants as leave without pay.

6. We have heard the arguments of learned counsel for the appellants as well as learned Assistant Advocate General for the respondents and have perused the record.

7. The only issue, which needs to be resolved is that as to whether the period, during which the appellants did not perform any duty, could legally be considered as leave without pay, when the appellants have not been found guilty during the de-novo inquiry. A perusal of the record would show

that in wake of the unfortunate incident, occurring on the night falling between 4/5-11-2013, disciplinary action was initiated against the appellants, which resulted in their dismissal from service vide order dated 06.01.2014, passed by the competent Authority. The Service Appeal of the appellants was, however accepted by the Service Tribunal vide judgment dated 16.04.2018 and it was ordered that de-novo inquiry may be conducted into the matter. During the de-novo inquiry, the appellants were not found guilty of any charges leveled against them. It is thus clear that the appellants remained absent from duty on account of their suspension and subsequent wrongful dismissal from service as a result of the previous inquiry. The absence of the appellants from duty was not due to any fault of the appellants, therefore, they shall be considered to have remained on duty during the period of their absence on account of their suspension and wrongful dismissal, as the appellants did not remained gainfully employed during the period of their absence.

8. In light of the above discussion, the appeal in hand as well as connected Service Appeal bearing No. 101/2019 are allowed as prayed and the appellants are held entitled to all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
26.07.2021

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

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

ORDER
26.07.2021

Appellant alongwith his counsel Mian Afrasiab Gul Kakakhel, Advocate, present. Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand as well as connected Service Appeal bearing No. 101/2019 are allowed as prayed and the appellants are held entitled to all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
26.07.2021

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

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

30-12-2020 Due to summer vacation, case is adjourned to 17-3-2021 for the same as before.

Reader

17.03.2021 Counsel for the appellant and Addl. AG for the respondents present.

Due to paucity of time, instant matter is adjourned to 18.05.2021 for hearing before the D.B.

(Mian Muhammad)
Member (E)

Chairman

18.5.21 Due to COVID-19, the case is adjourned to 9.7.2021 for the same.

Reader

09.07.2021 Appellant alongwith his counsel Mian Afrasiab Gul Kakakhel, Advocate, present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant as well as learned Additional Advocate General stated that arguments could not be concluded till the closing time, therefore, adjournment may be granted. Adjourned. To come up for arguments before the D.B on 26.07.2021.

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

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

28.10.2020 Proper D.B is on Tour, therefore, the case is adjourned for the same on 30.12.2020 before D.B.

Reader

12.03.2020 Appellant with counsel present. Asst: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 02.04.2020 before D.B.

Member Member

2-4-2020 due to public holiday on account of (COVID 19) the case is adjourned. To come up for same on 29.6.2020.

29.06.2020 Due to COVID-19, the case is adjourned to 25.08.2020 for the same.

Reader

25.08.2020 Due to summer vacation case to come up for the same on 28.10.2020 before D.B.

Reader

29.10.2019 Clerk to counsel for the appellant present. Addl:AG for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the bar. Adjourned. Case to come up for arguments on 02.12.2019 before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

02.12.2019 Junior to counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Junior to counsel for the appellant seeks adjournment that senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 08.01.2020 before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

08.01.2020 Lawyers are on strike as per the decision of Peshawar Bar Association. Adjourn. To come up for further proceedings/arguments on 12.03.2020 before D.B.

Member

Member

20.05.2019 Appellant in person present. Written reply not submitted. Ihsan Ullah SI Legal representative of respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 02.07.2019 before S.B.

Member

02.07.2019 Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith M/S Ihsan Ullah SI legal and Khan Baz Khan Head Constable for the respondents present. Representative of the respondent department seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 28.08.2019 before S.B.

Member

28.08.2019 Counsel for the appellant and Addl. AG alongwith Ihsanullah, ASI for the respondents present.

The representative of the respondents submitted written reply on behalf of the respondents. The appeal is assigned to D.B for arguments on 29.10.2019. The appellant may submit rejoinder, if any, within a fortnight.

Chairman

13.02.2019 Learned counsel for the appellant present. Preliminary arguments heard.

Through the present service appeal the appellant (Constable) has partially made impugned the order dated 17.07.2018 to the extent of treating/counting his absence period/out of service period as without pay. The appellant has also challenged the order dated 26.12.2018 through which his departmental appeal was rejected.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply. To come up for written reply/comments on 01.04.2019 before S.B.

Member

01.04.2019 Appellant in person present. Security and process fee not deposited. Appellant seeks time to submit the same. He is directed to deposit security and process fee within one week, thereafter, notices be issued to the respondents for submission of written reply/comments on 20.05.2019 before S.B.

Appellant Deposited
Security & Process Fee

(Ahmad Hassan)
Member

# Form- A

# FORM OF ORDER SHEET

Court of _____

Case No. 66/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|---|---|---|
| 1 | 2 | 3 |
| 1- | 15/1/2019 | The appeal of Mr. Imran Khan resubmitted today by Mian Afrasiab Gul Kakakhel Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.<br><br>REGISTRAR 15/1/19 |
| 2- | 16-1-19 | This case is entrusted to S. Bench for preliminary hearing to be put up there on 13-2-19.<br><br>CHAIRMAN |

The appeal of Mr. Imran Khan son of Mosam Khan r/o Muslim Bagh Saria Nourang Lakki Marwat received today i.e. on 09.01.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Annexures of the appeal may be attested.
2- Memorandum of appeal may be got signed by the appellant.
3- Copy of rejection order of departmental appeal in respect of appellant mentioned in para-8 of the memo of appeal is not attached with the appeal which may be placed on it.
4- Annexures G, J and L of the appeal are illegible which may be replaced by legible/better one.
5- Address of respondent no. 1 is incorrect which may be corrected.

No. 65 /S.T,

Dt. 9/01 /2019.

9/1/19

**REGISTRAR**
**SERVICE TRIBUNAL**
**KHYBER PAKHTUNKHWA**
**PESHAWAR.**

**Mian Afrasiab Gul Kakakhel Adv. Peshawar.**

Respected Sir,

1) Duly removed.
2) Duly removed.
3). Order passed / mentioned in para-7 has been made after inquiry & all the documents of inquiry are duly attested and annexed.

In respect of para-12 the impugned order is annexed.

4) Better copies annexed.
5) The mentioned addresses are sufficient for the process.

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
## PESHAWAR

In Re: Service Appeal No. 66 /2019

**Imran Khan S/O Mosam Khan**

..... *Appellant*

*Versus*

**Government of Khyber Pakhtunkhwa and others**

..... *Respondents*

**INDEX**




**Mian Afrasiab Gul Kakakhel**
AHC
Advocates & Consultants
12, K-3, Phase-III, Hayatabad, Peshawar
Phone 5817132, 5818446, Mobile: 0333 9215562
Email: afrasyyab.advocate@gmail.com

(1)

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa Service Tribunal
Diary No. 42
Dated 09-01-2019

In Re: Service Appeal No. 66 /2019

**Imran Khan S/O Mosam Khan**
R/O Muslim Bagh, P/O Saria Nourang, Tehsil and District Lakki Marwat.

..... *Appellant*

*Versus*

1. **Government of Khyber Pakhtunkhwa**
   Through Chief Secretary Department of Home and Tribal Affairs,
   Civil Secretariat, Peshawar

2. **Commandant Frontier Reserve Police (FRP),**
   Khyber Pakhtunkhwa, Peshawar.

3. **The Superintendent of Police Frontier Reserve Police (FRP),**
   Bannu, Khyber Pakhtunkhwa.

..... *Respondents*

Filedto-day
Registrar
9/1/2019

Re-submitted to -day and filed.
Registrar
15/1/19

*APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 26.12.2018, ONLY TO THE EXTENT OF PRAYER 1, PASSED BY RESPONDENT NO.02, ORDER DATED 17. 07. 2018 PASSED BY RESPONDENT NO.03 VIDE OB NO.302, , WHEREBY DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 26.12.2018 OF THE APPELLANT WAS DISMISSED.*

**Prayer:** It is therefore, respectfully prayed that, on acceptance of this appeal the Honourable Tribunal may kindly direct.

i. The impugned order dated 17.07.2018 passed by Respondent NO.03 only to the extent of relief No.01 may kindly be set aside.

ii. The impugned order dated 26.12.2018, passed by Respondent No.03 Vide OB No.302, by upholding the order dated 17.07.2018 of Respondent No.02, May kindly be set aside.

iii. That all back benefits of total absence /out of service period of the appellant may kindly be granted.

## Respectfully Sheweth,

1. That the Petitioner is a respectable citizen of Pakistan and is entitled to all the rights enshrined in the Constitution. The Appellant was appointed as constable in Frontier Reserve Police (FRP) on 30.05. 2005.

Copy of CNIC at Annexure-A

2. That the Respondents are the administering staff and authority responsible for supervision, operation and management of Frontier Reserve Police (FRP) in the entire Province. The department is also responsible for appointment, promotion transfer and actualization of the Civil servant in the department.

3. That on the night 4/5/ 11-2013 the terrorist ambushed police post Surkh Pull and started indiscriminate firing upon on duty Constables Sher Nawaz No. 6412 and Constable Imran Khan 6577, as a result of which, FC Sher Nawaz was seriously injured while FC Imran Khan became senseless, the militants succeeded also in snatching away Govt Rifle No. 26099229 along with fitted magazine and K. K Rifle No. 44815 along with bandolier consisting of 3 magazines.

Copy of FIR No. 592, dated: 05-11-2013 at Annex-B

4. That Appellant along with other 3 constables and In-Charge of Police Post Surkh Pull, were suspended, for badly failing to combat with the accused and showed great cowardice vide order OB No. 552 dated: 08- 11- 2013, the DPO as competent authority Lakki Marwat charged Constable Imran Khan No. 6577 for misconduct and suggest to be punished under the Police Rule 1975.

5. That formal enquiry was conducted against the appellant and the enquiry officer submitted his finding on 28-11-2013, with the conclusion that all the charges allegations framed on Constable Imran Khan No. 6577 stands proved. The same finding along with enquiry papers was received to the office to proceed further under the rules, the enquiry file/report was forwarded to Addl: IGP/Commandant FRP KPK Peshawar for information and the same departmental enquiry of Constable Imran Khan No. 6577 received back dated: 23. 12. 2013 for awarding Major punishment on the basis of findings of Enquiry officer.

6. That final Show Cause Notice of Major Punishment including dismissal was given to the appellant on 27 -12- 2013 and was asked in show cause Notice to put in his written statement within 7 days, why Major punishment including dismissal could not be imposed upon him and also stating at the same time whether wants to be heard in person or otherwise, the appellant replied to the show cause notice within stipulated time and was also personally heard but explanation to the final show cause notice and personal hearing were found not convincible and satisfactory.

7. That in the light of above the Superintendent of Police Bannu (FRP) punished the appellant by dismissal from service

with immediate effect defined in rule 4-B (ii) KPK Police Rules 1975 on 06- 01- 2014.

Copy of order of SP FRP Bannu dated: 06-01-2014 at Annex-C.

8. That feeling aggrieved from the order dated: 06-01-2014, the appellant filed appeal to Addl: IGP/Commandant Frontier Reserved Police Khyber Pakhtunkhwa, Peshawar, where appeal was rejected on 07-02-2014.

Copy of order dated: 07-02-2014 at Annex-D.

9. That feeling dissatisfied from the order dated: 07-02-2014, the appellant file appeal before this Honourable Tribunal on 08-04-2014, which was decided on 16-04-2018, where by the impugned order dated: 06-01-2014 was set aside and appeal was accepted, however the Respondents department was set at liberty to initiate de-novo enquiry within period of 90 days after the judgment and the issue of back benefits was subjected to the final outcome of the de-novo enquiry.

Copy of order and judgment dated: 16-04-2018 at Annex-E.

10. That a de-novo enquiry was conducted against the appellant, whereby the appellant was charge sheeted. The appellant submitted his reply to the charge sheet and statement of allegation.

Copy of Charge sheet at annexure-F
Copy of statement of allegations at Annexure-G
Copy of appellant's reply at Annexure-H

11. That the enquiry officer submitted final enquiry report before Respondent No.03. Respondent No.03 in the light of

final enquiry report vide order 17.07.2018, confirmed the order dated 16.04.2018 of this Honourable Tribunal by reinstating the appellant, however the back benefits of total absence / out of service period was not granted / extended.

Copy of Final enquiry report at Annexure-I
Copy of order of Superintendent of Police FRP dated: 17-07-2018 at Annex-J.

12. That feeling aggrieved and dissatisfied, appellant impugned the order dated 17.07.2018 of Respondent No.03 only to the extent of relief No.01, before Respondent No.02 by filling departmental appeal, but the same was also dismissed vide order dated 26.12.2018.

Copy of departmental appeal of the appellant at Annexure-K
Copy of the order dated 26.12.2018, passed by Respondent No.03 at Annexure-L

13. That feeling aggrieved and dissatisfied from the orders of Respondent No.02 & Respondent No.03, the appellant having no other efficacious remedy to avail except to approach this Honourable Court, *inter alia*, on the following:

# Grounds:

I. That petitioner is a civil servant belonging to Police department and is aggrieved of the respondent's denial of back benefit during the time of dismissal, despite the fact that appellant has been restored to his previous post on the other hand, the regular police who were also dismissed in the same incident has been restored with all back benefits.

Copy of the order dated 13.07.2018 passed by the District Police Officer Lakki Marwat of Constable Habib Ullah at Annexure-M

II. That appellant has been rendering meritorious services having illustrious career, spreading over many years and have earned respect from his seniors in various moments, similarly the integrity of the appellant has never been called into question by anyone in the entire department.

III. That in the order dated 17-07-2018; Respondent No. 3 confirmed the restoration of appellant along with other colleagues, however the back benefits of total absence has not been extended to the appellant but extended to the regular police, which is sheer violation to rules and against the fundamental right of article 25 of the Constitution of Pakistan.

IV. That the impugned action is violative of law laid down by the apex courts wherein it has been categorically held that denial from the consideration of back benefits amounts to punishment, therefore, refusal of all back benefits shall be based not only on relevant law and rules but also to be based on some tangible material relating to merit and eligibility which could be lawfully taken note of. It is the duty of competent Authority to consider all the material of candidates involved in the incidents while putting them in juxtaposition, to find out the actual facts of the case.

V. That authority is to be exercised according to rational reasons which means that there be finding of primary facts based on good evidence, decisions about facts be made for reasons which serve the purpose of statute in an intelligent and reasonable manner. Actions which do not meet these threshold requirements are considered

arbitrary and mis-use of power. It is further submitted that the object of good governance cannot be achieved without application of mind. Such objectives cannot be achieved by exercising discretionary powers unreasonably, arbitrarily and without application of mind. Rather it can be achieved by following rules of justness, fairness and openness in consonance with command of Constitution.

VI. That the impugned action of the official Respondents is also repugnant to Articles 04, 25, 27 and 38 of the Constitution of the Islamic Republic of Pakistan 1973 as the appellant has been treated discriminately by the official Respondents and similarly appellant has been deprived of his lawful right, hence the impugned action of the Respondents is liable to be interfered with on the basis of law laid down by the Superior courts of Pakistan. Departmental Authorities are bound to decide the grievance of their subordinates with application of independent judicial mind, fairly, justly and with reasons and those reasons must be communicated to the concerned, whereas in the instant matter the official Respondents have acted in sheer violation of natural justice and prescribe law.

VII. That further assistance shall be made at the time of arguments after due permission of the court.

**Prayer:** It is therefore, respectfully prayed that, on acceptance of this appeal the Honourable Tribunal may kindly direct.

i. The impugned order dated 17.07.2018 passed by Respondent No.02 only to the extent of relief No.01 may kindly be set aside.

ii. The impugned order dated 26.12.2018, passed by Respondent No.03 Vide OB No.302, by upholding the

order dated 17.07.2018 of Respondent No.02, May kindly be set aside.

iii. That all back benefits of total absence /out of service period of the appellant may kindly be granted.

iv. Cost

Appellant
Through

**Mian Afrasiab Gul Kakakhel**
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(9)

# BEFORE THE CHAIRMAN SERVICE TRIBUNAL
## PESHAWAR

In Re: Service Appeal No. _____2019

**Imran Khan S/O Mosam Khan**
R/O Muslim Bagh, P/O Saria Nourang, Tehsil and District Lakki Marwat

.....*Petitioner*

*Versus*

1. **Commandant, Frontier Reserve Police (FRP), Peshawar, Khyber Pakhtunkhwa.**
2. **Superintendent of Police, Frontier Reserve Police (FRP), Bannu, Khyber Pakhtunkhwa.**

..... *Respondents*

## Affidavit

I, Imran Khan S/O Mosam Khan, the Appellant do hereby solemnly affirm on oath that contents of this Appeal are true and correct to the best of knowledge and belief and nothing has been concealed intentionally from this honourable Court.

عمران خان بقلم خود

Deponent
CNIC# 11201-8388672-5
Cell # 03202-8192182

ATTAULLAH GULOZAI ADVOCATE NOTARY PUBLIC

8-7-2019

(11) Annex-B

انسپکٹر جنرل پولیس صوبہ سرحد فارم نمبر ۷۳ — گورنمنٹ پریس پشاور چاپ نمبر 9-1-5 فارم — تعداد دو ہزار دو سو — مورخہ 23 مارچ 2006 پی ایف (فارم منظور جابز) منی فارم (پولیس)

فارم نمبر ۲۴-۵(۱)

فائل

# ابتدائی اطلاع رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

تھانہ ALS لوئر دیر ضلع دیر لوئر

نمبر 33 — 592 — تاریخ وقت رپورٹ 05/11/13 وقت 23:45

| | |
|---|---|
| ۱۔ تاریخ و وقت رپورٹ | 05/11/13 وقت 00:40 بجے 23:40 |
| ۲۔ نام و سکونت اطلاع دہندہ مستغیث | نصرت اللہ خان ولد انجان سب انسپکٹر |
| ۳۔ مختصر کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو | 302 PPC 324-353 ATA/404 |
| ۴۔ جائے وقوعہ فاصلہ تھانہ سے اور سمت | چوکی سب انسپکٹر تعینات عمر زئی |
| ۵۔ نام و سکونت ملزم | |
| ۶۔ کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو | مرسلہ کارروائی برائے نمبر مقدمہ |
| ۷۔ تھانہ سے روانگی کی تاریخ و وقت | |

ابتدائی اطلاع نیچے درج کرو۔ درج رجسٹر کی مراسلہ نمبر [illegible] عدیم محمد خان ولد [illegible] بعہدہ سب انسپکٹر [illegible] زرم خان [illegible] رپورٹ نصرت اللہ خان ولد انجان سب انسپکٹر [illegible] 05/11/13 بوقت 23:40 [illegible] 6577 [illegible] 23:40 [illegible] فائرنگ [illegible] فائرنگ کا تبادلہ جاری رہا۔ بالآخر ملزمان کی مار دھاڑ اور بھاری نفری کا فائدہ اٹھاتے ہوئے راہ فرار اختیار کر گئے [illegible] 6412 [illegible] 260 99229 [illegible] 30 [illegible] 6577 [illegible]

Att
Miran Ali Shah
Advocate
Peshawar
Peshawar High Court

بھی موجود ہے زخمی کانسٹیبل شیر نواز 6412 کو بغرض جسم کے خاطر سرکاری گاڑی
میں سول ہسپتال نوشہرہ بھیجا گیا ۔ اس دوران کارروائی پولیس دوران
گشت مشتبہ وقوعہ کی اطلاع ملنے پر فوری جائے وقوعہ کی طرف روانہ ہوئی گاڑی سرکاری
لیکن اللہ بخش کی زیر حراست ملزمان نے حملہ کر کے موقعہ پر پہنچ کر انچارج
کے ساتھ ہاتھا پائی شروع کر دی مدد کے لئے پکارا گیا تو ملزمان نے دست بدست
مسلح فیری پولیس سے مسلح عسکری 77 کی ملزمان شروع کر دی ۔ ازسرنو بالا
صاحبان بھی موقعہ پر پہنچ گئے تو ملزمان نے ازخود اسلحہ پھینک دیا جس
کلمہ مذکورہ کنندگان ملزمان جن پر کسی قسم کا ظاہری زخم / چوٹ نہیں ہے
سے مسلح حالت میں لیکر اسلحہ ایمونیشن برآمد کیا جس کو فوری طور پر علیحدہ
کے خاطر سرکاری گاڑی میں سول ہسپتال نوشہرہ روانہ کر کے ASI
حوالہ کر دیئے گئے ۔ کو فوری ہسپتال بھیجا اور مقدمہ ضد نامعلوم کنندگان
ملزمان کی ۔ حالت خطرہ سے صورت جرائم 324-353 PPC-7ATA-4/4 کی بنا پر خاکر
قرار مسئلہ دیوٹی لیکر فرض ادائیگی مقدمہ تفتیش ہیڈ کانسٹیبل نرم 72 ارسال تھانہ
ہے ۔ مقدمہ ملزمان کی تلاش میں سول دستخط زنگ زیب عزم محمد تھانہ
نوشہرہ 11/13 ماہ کارروائی تھانہ پس بند گی مراسلہ ہذا تحریر کیا جاتا ہے
تفصیل FIR نقل تفتیش فرد برآمدگی اسلحہ خان جی کیا جاتا ہے
معزز رسیل دیوٹی گزارش ہے

MHC/PS/NJ
05-11-13

(13) Annex - C

KHYBER PAKHTUNKHWA PESHAWAR

## ORDER

On the night between 4/5/ 11-2013 the terrorists ambushed Police Post Surkh Pull and started indiscriminate firing upon on duty Constables Sher Nawaz No.6412 and Constable Imran Khan 6577, as a result of which, FC Sher Nawaz was seriously injured while FC Imran Khan became senseless. FC Sher Nawaz No.6412 succumbed to his injuries in the hospital. The militants succeeded also in snatching away Govt Rifle No.26099229 along with fitted magazine containing 30 rounds and K.K Rifle No.44815 along with bandolier consisting of 03 magazines of 90 rounds from the possession of both the aforesaid mentioned constables. SI/SHO Police Station Naurang reached the spot and register case FIR No.592 dated 05-11-2013 u/s 302/324/393/404 PPC read with 7 ATA police station Naruang District Lakki Marwat against the unknown terrorists. The District Police Officer Lakki Marwat suspended SI/PC Naqib Ullah In-charge Police Post Surkh Pull, Constable Imran Khan No.6577, Ismail No.6508, Abdul Qayyum No.6532 and Constable Rafi Ullah No.6407 for badly failing to combat with the accused and showed great cowardice vide order OB No.552 dated 08/11/2013.

The DPO as competent authority Lakkki Marwat charged Constable Imran No.6577 for the following misconduct.

1. That you being member of Police Force of the said police post Surkh pull in spite of repeated directions from the undersigned regarding vigilance and alert in the discharge of duties in the present prevailing law and order situation and wave of terrorism.

2. That being negligent and casual attitude in performance of your duty badly failed to combat the terrorists who ambushed the Police officials who were on sentary duty, which resulted in the death of Constable Sher Nawaz No.6412 and great loss caused to the Police Department.

That the above negligence in performance of your duty as police Constable speaks of inefficacy and suggest your unbecoming of good police officer and all this amount to gross misconduct on his part and liable to be punished under the Police Rules 1975.

Mr. Syed Liaqat Ali Shah DSP Serai Naruang was appointed as enquiry officer for initiating enquiry proceedings. He conducted the formal enquiry properly and submitted his findings on 28-11-2013 with the conclusion that all the charges /

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

KHYBER PAKHTUNKHWA PESHAWAR

allegations framed on Constable Imran Khan No.6577 stands proved. The same findings along with enquiry papers was received in this office to proceed further under the rules. The same enquiry file was forwarded to Addl: IGP/Commandant FRP K.P.K Peshawar for information and the same departmental enquiry of Constable Imran Khan No.6577 received back vide this office diary No.1826 dated 23-12-2013 for awarding Major punishment on the basis of findings of Enquiry officer.

Final Show Cause Notice of Major Punishment including dismissal was given to Constable Imran Khan No.6577 on 27/12/2013 and similarly the findings of the enquiry officer was also handed over to him. He was asked in the Show Cause Notice to put in his written statement/defense within 07 days of the receipt of Final Show Cause Notice as to why Major Punishment including dismissal could not be imposed upon him and also stating at the same time whether wants to be heard in person or otherwise.

He has replied to the Final Show Cause Notice within stipulated period which was studied and perused at length. He was also personally heard but his explanation to the Final Show Cause Notice and personal hearing was not found convincible and satisfactory. He was actually and physically on duty with the Shaheed Constable Sher Nawaz No.6412 but due to cowardice became senseless and did not make any response.

Constable **Imran Khan No.6577** was recruited/enlisted as constable on 30-05-2005. Therefore, I **Zar Wali Khan SP/FRP Bannu** as competent authority impose upon him the punishment of Dismissal from service with immediate effect defined in rule 4-B (ii) KPK Police Rules 1975 on the basis of proven charges.

Attested

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

OB No. 13

Dated: 06-01-2014

Superintendent of Police
FRP Bannu

Superintendent of Police
FRP/ Bannu

(15) Annex - D

**ORDER.**

This order shall dispose off on the appeal of Ex-Constable Abdul Qayyum No. 6532 of FRP Bannu Range against the order of SP FRP Bannu Range.

Brief facts of the case are that on 4/5 11-2013 the Terrorists ambushed Police Post Surkh Pull , started indiscriminate firing upon on duty Constables Sher Nawaz No. 6412, Imran Khan No. 6577 as a result of which FC Sher Nawaz was seriously injured while FC Imran Khan became senseless. FC Sher Nawaz No. 6412 succumbed to his injuries in the Hospital. The militants succeeded also in snatching away Govt: Rifle No. 26099229 alongwith fitted magazine containing 30 rounds and KK Rifle No. 44815 along with bandolier consisting of 03 magazines of 90 rounds from the possession of both the aforesaid mentioned. SI/SHO Ps: Naurang reached the spot and register case FIR No. 592 dated 05.11.2013 u/s 302/324/393/404 PPC read with 7 ATA Police station Naurang District Lakki against the un-known terrorist. He failed to combat with accused and showed great cowardice .The DPO charged him as under:-

1. That being a member of Police Force, in spite of repeated directions regarding vigilance and alert while discharge of duties in the present prevailing law and order situation and wave of terrorism.
2. That being negligence and casual attitude in performance of duty badly failed to combat the terrorist who ambushed the Police officials who were on sentry duty, which resulted the death of constable Sher Nawaz 6412 and great loss casued to the Police Department.
3. That the above negligence in performance of duty as Police constable speaks of in efficiency seems his un-becoming of a good Police Officer and this amount to gross mis-conduct on part of the above named ex-constable liable to be punished under the Police Rules 1975.

In this connection Mr. Syed Liaqat Ali Shah DSP Serai Naruang was appointed as Enquiry officer. After enquiry he recommend the defaulter ex-constable for Major Punishment He was issued Final Show Cause Notice and also heard in person, but neither explanation nor personal hearing were found convincible and satisfactory, therefore he was dismissed from service under Police Rules 1975 by SP FRP Bannu Range vide his OB No. 13 dated 06.01.2014.

However from the perusal of record and recommendation of Enquiry officer there are no cogent reason to interfere in the order of SP FRP Bannu Range. **Therefore his appeal is rejected.**

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

**Addl: IGP/Commandant**
**Frontier Reserve Police**
**Khyber Pakhtunkhwa Peshawar**

No. 1145-46 /EC dated Peshawar the 10 / 02 /2014.

(16)

Annex - E

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL,PESHAWAR

Appeal No. 497/2014

Date of Institution ... 08.04.2014

Date of Decision ... 16.04.2018

Imran Khan S/o Mosam Khan, R/o Muhslim Bagh, Sirai Naurang, Lakki Marwat, Ex.C. no. 6577, P.S. Sirai Naurang, Lakki Marwat. ... (Appellant)

VERSUS

1. Additional I.G.P/Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa Peshawar and 2 others. ... (Respondents)

---

MR. ARBAB SAIFUL KAMAL, Advocate --- For appellant.

MR. ZIAULLAH, Deputy District Attorney --- For respondents

MR. AHMAD HASSAN, --- MEMBER(Executive)

MR. MUHAMMAD AMIN KHAN KUNDI --- MEMBER(Judicial)

## JUDGMENT

AHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 495/2014 titled Abdul Qayyum, no. 496/2014 titled Rafi Ullah and no. 549/2014 titled Habibullah as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

Attested by

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

## FACTS

3. The brief facts are that the appellant while posted at police post Sur Pul, some miscreants attacked the post on 04.11.2013 at 23:15hrs and started indiscriminate firing. As a result of firing constable Sher Nawaz got injured but subsequently succumbed to injuries and died. That disciplinary proceedings were initiated against

ATTESTED

him for showing "cowardice" and upon conclusion major penalty of dismissal from service was imposed on him vide impugned order dated 06.01.2014. He filed departmental appeal 15.01.2014 which was rejected on 10.02.2014, hence the instant service appeal.

## ARGUMENTS

4. Learned counsel for the appellant argued that while posted at police post Sur Pul, some miscreants attacked the post on 04.11.2013 at 23:15hrs and started indiscriminate firing. As a result of this firing Sher Nawaz got injured but succumbed to injuries and died. That disciplinary proceedings were initiated against him for showing "cowardice" and upon conclusion major penalty of dismissal from service was imposed on him vide impugned order dated 06.01.2014. He further argued that enquiry proceedings were not conducted in the mode and manner prescribed in the Police Rules 1975. Though statements of some officials were recorded during the enquiry proceedings but they were not witness of the incident. The appellant was the only eye witness of the incident. In the absence of any solid evidence regarding cowardice showed by him, the findings of the enquiry officer carry no weight. He was injured and taken to hospital but the statement of doctor was not recorded by the enquiry officer. Copy of enquiry was not annexed with the final show cause notice served on the appellant, which is a serious deficiency and is a sufficient ground to vitiate the entire enquiry proceedings. One Naqibullah involved in this case was awarded major penalty of compulsory retirement, while other accused Ismail was reinstated in service while Shuhada package was granted to constable Sher Nawaz. Reliance was placed on 2000 SCMR 669 and 2002 SCMR 433.

ATTESTED

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

On the other hand learned argued that the appellant showed cowardice, fled away from the police post and took shelter in the house of Nisar Khan. The miscreants took away rifles of both the officials as such charge of showing cowardice during the encounter with the terrorists stood proved. Enquiry proceedings were conducted in accordance with the procedure laid down in the Police Rules 1975.

CONCLUSION

6. Scrutiny of enquiry report revealed that the enquiry officer recorded statement of Murad Ali Khan, Inspector Investigation, Ghulam Muhammad, SHO and Mira Khan, ASI and Gul Muhammad, Reader. One thing is clear beyond doubt that in this case the appellant was the only eye witness of the incident, so in the absence of any other eye witness what would be the evidentiary value of the statements of Police Officials recorded by the enquiry officer?. Moreover, no documentary evidence is available on record to substantiate whether these statements were recorded in front of the appellant and he was afforded an opportunity of cross examination. Though show cause notice was served on the appellant but the copy of enquiry report was not supplied to him which is a serious irregularity and is sufficient to vitiate the entire enquiry proceedings in the light of numerous judgments of the superior courts. Similarly the respondents have charged the appellant that after occurrence of incident he took shelter in the house of Nisar Khan but statement of Nisar Khan was not recorded. As confirmed by the respondents that the appellant was injured and taken to hospital but statements of doctors was not recorded are creates doubts about the fairness of the enquiry proceedings. So far as imposition of major penalty of compulsory retirement and exoneration of Naqibullah and Muhammad Ismail is a sufficient to proof of the

Mian Afrasiab Gul
Advocate
Kakakhel
HIGH COURT PESHAWAR

ATTESTED

malfide and discriminatory attitude of the respondents. As such Article-25 of the Constitution of Islamic Republic of Pakistan 1973 was violated.

7. As a sequel to the above discussion, the appeal is accepted. The impugned order dated 08.01.2014 is set aside. The department is at liberty to conduct de-novo enquiry within a period of 90 days after receipt of this judgment. The issue of back benefits shall be subject to the final outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

Announced
16-04-2018

Sd/- Ahmad Hassan
Member

Sd/- M. Amin Khan Kundi
Member

Certified to be ture copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attested
by
Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

Date of Presentation of Application 02-05-18
Number of Words 2000
Copying Fee 12.00
Urgent 2.00
Total 14.00
Name of Copyist
Date of Completion of Copy 02-05-18
Date of Delivery of Copy 02-05-18

(20) Annex- F

## CHARGE SHEET

WHEREAS I am satisfied that a formal inquiry as contemplated in the Khyber Pakhtunkhwa, discpRules, 1975 is necessary and expedient.

AND WHEREAS, I am of the view that the allegations if established would call for a major penalty as defined in Rules 4-1 (b) of the aforesaid Rule

NOW, THEREFORE, as required in 6-1 (a) of the aforesaid Rule I, **Nisar Mohammad Khan** Superintendent of Police FRP, Bannu as competent authority, hereby charge you Constable **Imran Khan No.6577**/FRP Bannu for the allegations, attached with this charge sheet.

AND I direct you further under rules 6-1 (b) of the aforesaid Rules to put in written defense within 07 days of the Receipt of this Charge Sheet as to whether major or Minor punishment as defined in Rules 4-1(b) should not be awarded to you. Also state at the same time whether you desire to be heard in person or not.

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

Attested

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

Superintendent of Police
RP, Bannu
Superintendent Of Police
FRP Bannu

(21) Annex- G

# SUMMARY OF ALLEGATIONS

You Constable Imran Khan No.6577/FRP were found to indulge in misconduct under the following allegations.

1. That he was enlisted in Police Department in the year 2005 and afterward during the course of his duties on the night between 4/5-11-2013 the terrorists ambushed police post Surkh Pull and opened indiscriminate firing upon Constable Sher Nawaz No. 6412 Constable Imran Khan No. 6577, as a result thereof, Constable Sher Nawaz sustained sever injuries and later expired in the hospital, while you became senseless The accused / terrorists also took away Govt: Rifle No 26099229 along with fitted magizines containing 30 rounds KK-Rifle No.44815 along with bandolier containing 03 magizines loaded 90 rounds of the same bore from the possession of the above noted officials and case FIR No.592 dated 05-11-2013 u/s 302-3241-353-404 PPC/7-ATA PS Naurang was registered.
2. That you being member of Police Force of the said police post Surkh Pul inspite of repeated directions from the superiors regarding vigilance and alert in the discharge of duties in the present prevailing law and order situation and wave of terrorism, failed to combat the above noted situation and showed great cowardice.
3. That being negligent and casual attitude in performance of your duty badly failed to combat the terrorists who ambushed the police officials who were on sentary duty, which resulted in the death of Constable Sher Nawaz NO.6412 and great loss caused to the Police Department.
4. That the above negligence in the performance of your duty as Police Constable speaks of in-efficency and suggest your unbecoming of good Police Office and all this amounts to gross mis-conduct on your part.
5. That you have been re-instated in service by the Service Tribunal KPK, Peshawar vide judgement dated 16-04-2018 for the purpose of de-novo enquiry proceedings followed by Inspector General of Police KPK Peshawar vide his good office letter No.1606/Legal dated 11-05-2018 & No 1735/Legal dated 22-05-2018.

The Undersigned is appointed to hold departmental proceedings vide CPO Peshawar Endst: No 817/E-1 dated 14-06-2018 and submit after observing legal formalities. The Enquiry Officer shall, in accordance, provide reasonable opportunity of hearing to the accused, record its findings and make within (15) days of the receipt of this order, recommendation as to punishments or other appropriate action against the accused.

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

No 1210-11 Dated 19 / 06.2018.

Superintendent of Police
FRP, Bannu

Copy to:

1) The inquiry officer for initiating proceedings against the accused within stipulated period
2) The concerned Constable with the directions to appear before the inquiry officer on the date time and place fixed by the inquiry officer.

Superintendent of Police
FRP, Bannu

Superintendent of Police
FRP, Bannu

Annex - H

(22)

To,

Superintendent of Police
FRP Bannu.

Subject: **CHARGE SHEET/STATEMENT OF ALLEGATION.**

Respected Sir,

Reference charge sheet number 1210-11 dated 19-06-2018 on the subject.

Reply is as under:

1. That I joined the police department in the year 2005 and remained posted at various posts.
   I performed my duties with great devotion and zeal to the entire satisfaction of my seniors.
2. That I was posted at Police Post "Surkh Pull" in the month of October 2013 and performing my duties till now to the best of my abilities.
3. That at the night of 04-11-2013, I was on sentry duty along with "Late" Constable Sher Nawaz, when at about 11.00 pm a Dumper vehicle appeared on the spot, and icame out from "Sentry Post" so as to check the vehicle leaving my rifle with my colleague Sentry "Late" Sher Nawaz constable who was also on duty with me.
4. That as soon as, I stepped up to check the vehicle, suddenly at the spur of moment 10/12 terrorists attacked over the post packet with indiscriminated firing. The attack was so quick and organized that I could not enter the "Sentry Post" but turned however at that movement, I became senseless which was quite natural. I had no power to regain my senses as helpless to save myself. When I opened my eyes, I noticed that I was lying there in Civil hospital Serai Naurang. So what happened next I am totally unaware and having no further knowledge.
5. That I have neither failed to combat the terrorist nor have over looked directives of the seniors or was negligent of the

Attested
Mian Afrasiab Gul
Advocate
Kakakhel
HIGH COURT PESHAWAR

situation but the terrorist attack was so organized and harsh that the police party was so organized and harsh that the police party was left with no chance/ even to have our position.

6. That terrorism has became an open challenge and spreading like a wild fire though out the country, causing human and property losses at the high level but ways could not be sought out to keep pause upon this front.
7. That the police post-packet established at "Surkh Pull" is away from the High Way and situated in an area which is covered with Sugar cane and other crops and as such the terrorists could not be seen at night time unless they reach the target and that is why they succeeded to achieve their goals and escaped.
8. That a criminal case to this effect has also been registered at PS. S Naurang where in it is coming to the surface of investigation, that it was a terrorist attack like other terrorist activities which cannot be controlled being organized and planned crime with high skill with a view to prevail upon the Govt. keeping in view the prevailing situation of terrorist activities and day to day causalities, Similarly it is further submitted before one. Muhammad Ismail No. 6508 was reinstated in service while shuhada package was granted to constable Sher Nawaz Martyred.

it is requested that charge sheet in hand bedroped and I shell be exonerated here the same.

Your's Faithfully

Imran Khan No. 6577NB
Surkh Pull.
Presently FRP Qilla Naurang

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

(24)

Annex - I

# فائنل رپورٹ

**عنوان:۔** ازسرنو انکوائری برخلاف ایکس کنسٹیبل عمران 6577 ایف آر پی بنوں رینج بنوں

انگریزی ارڈر 6972/SI Legal مورخہ 01-06-2018 بجاریہ جناب کمانڈینٹ صاحب FRP/KPK پشاور، انگریزی لیٹر نمبر 1606 SI Legal مورخہ 11-05-2018، 1735/Leagal مورخہ 22-05-2018 بجاریہ جناب CPO/KPK صاحب پشاور، سروس ٹریبونل انگریزی ارڈر مورخہ 16-04-2018، انگریزی لیٹر نمبر 861/ST مورخہ 24-04-2018 بارے معروض ہوں۔ کہ انگریزی ارڈر 6572/SI Legal مورخہ 01-06-2018 بجاریہ جناب کمانڈینٹ صاحب FRP/KPK پشاور دفتر ہذا موصول ہوکر جس پر آفس ڈائری نمبر 754 مورخہ 05-06-2018 درج ہے۔ جس پر جناب افسران بالا نے حکم احکام جاری کرکے بحوالہ ارڈر بک نمبر 243 مورخہ 08-06-2018 کے تحت ایکس کنسٹیبلان FC/FRP عمران 6577، FC عبدالقیوم 6532، FC رافع اللہ 6407 کو بعرض ازسرنو انکوائری بحال کرکے ایکس کنسٹیبل عمران 6577 کو چارج شیٹ، سمری اف ایلگیشن نمبر 1210-11 مورخہ 19-06-2018 جاری کیا گیا۔ جاری شدہ چارج شیٹ، سمری اف ایلگیشن ہذا ایکس کنسٹیبل عمران 6577 نے بذات خود مورخہ 21-06-2018 وصول کرکے بقاعدہ مورخہ 25-06-2018 پر تحریری جواب چارج شیٹ اور ہمراہ فوٹو کاپی ایمرجنسی علاج معالجہ سول اینڈ پولیس ہسپتال سرائے نورنگ کے کاغذات پیش کئے۔ ہمراہ انکوائری لف قابل ملاحظہ ہے۔ جواب پیش کرنے پر ایکس کنسٹیبل عمران 6577 پر باقاعدہ کراس سوالات کئے گئے۔ کراس سوالات، جوابات ہمراہ انکوائری لف ہے۔ ایکس کنسٹیبل مذکورہ کے پیش کردہ تحریری جواب کا متن یوں ہے۔ یعنی کہ ایکس کنسٹیبل مذکورہ نے اپنے تحریری جواب میں اور کراس سوالات کے جوابات میں بھرتی، ڈیوٹی، سرپل ناکہ بندی پر تعیناتی، مورخہ 04-11-2013 کے شب ناکہ بندی سرپل پر شہید کنسٹیبل شیر نواز کے ہمراہ ڈیوٹی سرانجام دینے، بدوران ڈیوٹی ڈمپر گاڑی چیک کرنے اور اپنا رائفل اپنے ساتھ سنتری ڈیوٹی پر مامور کنسٹیبل شیر نواز کو حوالہ کرکے بعد از گاڑی چیک کرنے 10/12 تحریب کاروں کا اسلحہ اٹھیس سے پوسٹ/ناکہ بندی پر تیزی اور انتہائی منظمی سے بے تحاشہ فائرنگ شروع کرنے اور اپنے اپ کے متعلق تھوڑی دور زمینوں میں بیہوشی کی وجہ گر جانے اور ہوش آنے کی صورت میں اپنے اپ کو سول ہسپتال نورنگ میں پانے کے متعلق تحریر کیا ہے۔ کنسٹیبل مذکورہ نے یہ بھی تحریر کیا ہے۔ کہ من کنسٹیبل نے اپنے سنیئر افسران بالا کے ہدایات کی خلاف ورزی نہیں کی ہے۔ چونکہ تحریب کاروں کا اٹیک سخت اور منظم تھا۔ اور سنبھلنے کا موقع نہ ملا۔ اور ساتھ ساتھ تحریب کاروں کے حملے متعلق پولیس پوسٹ/ناکہ بندی سرپل پر کئے اور دیدہ فسلوں کی کثرت سے بدوران حملہ فائدہ اٹھانے اور مقصد میں کامیاب ہوجانے بارے اور اٹیک کو تحریب کاری کا نتیجہ قرار دینے بارے تحریر کیا ہے۔ تحریری جواب کے آخر میں تمام مراعات کے ساتھ نوکری پر بحال کرنے بارے بھی استدعا کیا ہے۔

☆ دوبارہ بیان لینے پر کنسٹیبل مذکورہ نے بادریافت بیان کیا۔ کہ من کنسٹیبل نے پہلے بھی انکوائری کے متعلق تفصیلاً جواب/بیان دے چکا ہے۔ وہی میرا بیان ہے۔ جو حقیقت پر مبنی ہے۔ بیان ہمراہ لف قابل ملاحظہ ہے۔

☆ ایکس کنسٹیبل عمران 6577/FRP کے ازسرنو ڈیپارٹمینٹل انکوائری میں مراد علی خان انسپکٹر سرکل آفیسر سرائے نورنگ حال SDPO بنوں کینٹ، غلام محمد خان SHO تھانہ نورنگ حال SHO تھانہ ڈاڈیوالہ لکی مروت، ریٹائرڈ انچارج ناکہ بندی سرپل SI/PC نقیب اللہ، ریڈر DSP ایف آر پی لائن نورنگ ہیڈ کنسٹیبل گل محمد 7057 حال ACDI ایف آر پی لائن نورنگ، کنسٹیبل محمد اسماعیل نمبر 6508/FRP حال پلاٹون نمبر 140 متعینہ ضلع DIK تھانہ نورنگ، کنسٹیبل خبیب اللہ 630/607 حال ڈسٹرکٹ پولیس لائن لکی مروت، نثار خان ولد میاں خان سکنہ نارسلطان محمود لکی مروت کے تفصیلاً تحریری بیانات لئے گئے۔

**بیانات:۔**

☆ تفتیشی آفیسر انسپکٹر مراد علی خان حال SDPO تھانہ کینٹ بنوں اپنے بیان میں یہ وضاحت کی۔ کہ تحریری مراسلہ پر مقدمہ 592 مورخہ 05-11-2013 جرم ATA PPC 302-324-353/404/7 تھانہ نورنگ درج رجسٹر ہوکر زیر تفتیش تھا۔ اسی مقدمہ میں تفتیش کی تکمیل کیا ہے۔ ملزمان ٹریس کرنے میں کافی کوشش کی تھی۔ اور کئی مشتبہ افراد کو انٹارو گیٹ کئے گئے تھے۔ انٹارو گیٹ کرنے پر وقوعہ کے ملزمان ٹریس نہ ہوسکے۔ اور ناکہ بندی سرپل پر بدوران حملہ نامعلوم ملزمان نے دوسرکاری کلاشنکوف بمعہ چار عدد میگزین لوڈ شدہ 120 عدد کارتوس چھین کر کنسٹیبل شیر نواز کو فائرنگ سے

Mian Afrasiab Gul Advocate
Kakakhel
HIGH COURT PESHAWAR

بارے اور وقوعہ کا کوئی بھی ملزم ٹریس نہ کرنے پر مقدمہ ہذا میں عدم پتہ چالان دیئے جانے بارے تحریر کیا ہے۔

☆ سابقہ SHO تھانہ نورنگ غلام محمد خان حال SHO تھانہ ڈاڈیوالہ نے اپنے بیان میں تحریر کیا ہے۔ کہ میرا وہی بیان ہے۔ جو قبل ازیں مورخہ 20-11-2013 کو تحریری طور پر پیش چکا ہوں۔ جو کہ مورخہ 20-11-2013 پر پیش کردہ بیان میں SHO غلام محمد خان مقدمہ ہذا تھانہ نورنگ میں درج رجسٹر کرنے اور ناکہ بندی سُرپل پر تعینات نفری کے متعلق بزدلی کے مرتکب ہونے بارے تحریر کیا ہے۔

☆ SI/PC نقیب اللہ حال ریٹائرڈ نے اپنے تحریری بیان میں یہ وضاحت کیا ہے۔ یعنی کہ ناکہ بندی سُرپل پر اپنے ساتھ پولیس تعینات نفری اور اپنی تعیناتی کے متعلق اور کنسٹیبلان کے ڈیوٹی کے متعلق اور شدید زخمی کنسٹیبل شیر نواز جو کہ بعد از زخمی ہونے شہادت نصیب ہوئی۔ اور کنسٹیبل عمران 6577/FRP جو کہ بے ہوشی حالت میں پایا گیا تھا۔ شدید زخمی کنسٹیبل اور بے ہوش کنسٹیبل مذکورین کے علاج معالجہ کے متعلق اور وقوعہ ہذا کے متعلق تھانہ نورنگ میں مقدمہ درج رجسٹر کرنے بارے تحریر کیا ہے۔

☆ ریڈر DSP/FRP ہیڈ کنسٹیبل گل محمد 7057 حال ACDI لائن ایف آر پی نورنگ نے اپنے تحریری بیان میں تحریر کیا ہے۔ کہ میں نے انکوائری میں جو بیان دیا ہے۔ وہی میرا بیان ہے۔ جو حقیقت پر مبنی ہے۔ اور انکوائری کے ریکارڈ پر موجود ہے۔ جو کہ ہمراہ انکوائری لف تحریری بیان میں ریڈر DSP/FRP ہیڈ کنسٹیبل مذکور نے ناکہ بندی سُرپل پر پولیس تعینات نفری کے متعلق تعیناتی کا مکمل تفصیل ہمراہ ارڈر بکس تحریر کیا گیا ہے۔

☆ کنسٹیبل محمد اسماعیل 6508/FRP پلاٹون نمبر 140 متعینہ ضلع DIK تھانہ سٹی نے اپنے اپ کو حسب اجازت انچارج ناکہ بندی سُرپل عام روٹین شاباشی پر مورخہ 02-11-2013 سے تین دن مسکن خود جانے اور وقوعہ کے متعلق کسی قسم علم نہ رکھنے بارے تحریر کیا ہے۔

☆ کنسٹیبل حبیب اللہ 630/607 ڈسٹرکٹ پولیس لکی مروت نے اپنے اپ کو حسب اجازت انچارج ناکہ بندی شاباشی رخصت پر مسکن خود جانے اور بدوران شاباشی رخصت وقوعہ رونما ہونے سے باخبر ہونے پر تقریباً رات 1:30 بجے اپنے بھائیوں کی مدد سے اپنے پولیس نفری کی مدد کیلئے ناکہ بندی پر پہنچنے اور ڈیوٹی پر کھڑا ہونے بارے تحریر کیا ہے۔

☆ ناکہ بندی سُرپل کے نزدیک رہائشی باشندہ پرائیویٹ ٹیکسی ڈرائیور اجمل نے اپنے بیان میں وقوعہ ہذا میں شدید زخمی کنسٹیبل شیر نواز کو بغرض علاج معالجہ سول ہسپتال نورنگ /DHQ ہسپتال بنوں ایمرجنسی صورت میں لے جانے کے متعلق تحریر کیا گیا۔

☆ نثار خان ولد میاں خان سکنہ نارسلطان محمود نے اپنے بیان میں تحریر کیا ہے۔ کہ من مسمی کا وہی بیان ہے۔ جو میں نے پہلے کئی بار پولیس آفسران کو دیا ہے۔ جو کہ رپورٹ دوئم حصہ ضیمنی میں CO نورنگ مورخہ 05-11-2013 پر حصہ دوئم صفحہ نمبر 05 پر سیریل نمبر 11 پر تفصیلاً تحریری شکل میں تحریر کیا گیا ہے۔

☆ FIR ہذا نقشہ موقع، رپورٹ ضیمنی حصہ دوئم بیانات اور نقلمدات روزنامچہ تھانہ نورنگ ہمراہ انکوائری لف قابل ملاحظہ ہے۔ جو کہ تھانہ نورنگ مد نمبر 23 روزنامچہ 25-01-2014 رپوٹ واپسی میں جناب SHO صاحب تھانہ نورنگ نے ناکہ بندیاں چیک کرنے اور ناکہ بندی سُرپل جناب DPO صاحب کے احکامات پر تھانہ نورنگ کلوز کیا گیا ہے۔

**فائنڈنگ:۔**

**عالیجاہ:۔** کردہ انکوائری، تمام لئے گئے بیانات، FIR ہذا اور رپورٹ حصہ دوئم ضیمنی بیانات و دیگر مواد کی روشنی میں من انکوائری آفیسر یہاں تک پہنچا۔ کہ واقعی سُرپل پولیس پوسٹ پر حملہ دہشت گردانہ تھا۔ چونکہ سُرپل ناکہ بندی بغیر چاردیواری کے دو عدد کمروں اور ایک کچہ چھپر نما سنتری پوسٹ پر مشتمل تھا۔ جو کہ اب غیر آباد اور خستہ حال ہے۔ چاردیواری نہ ہونے اور ناکہ بندی کے اردگرد اس وقت گنے کی فصل اور جھاڑیوں بوٹیوں کی بناء پر ناکہ بندی سُرپل پر دور اور نزدیک سے حملہ آور با آسانی سے حملہ کرسکتا ہے۔ حملہ آوروں نے رات کی تاریکی، اردگرد زمینی فصلوں، جھاڑیوں بوٹیوں اور ڈیوٹی پر ہر دو مامور کنسٹیبلان عمران 6577/FRP، شیر نواز جو کہ سنتری ڈیوٹی سرانجام دینے کے دوران کنسٹیبل عمران 6577/FRP ڈمپر گاڑی چیک کرنے میں مصروف تھا۔ جیسی ہی ڈمپر گاڑی بعد از چیکنگ روانہ ہوئی۔ ان حالات سے فائدہ اُٹھاتے ہوئے حملہ آوروں نے با آسانی سے حملہ کر کے کنسٹیبل شیر نواز اندھا دھند فائرنگ سے شدید زخمی ہوا۔ اور کنسٹیبل عمران 6577/FRP اتفاقاً بچ گیا۔ جو کہ خوف و ہراس کی وجہ سے بے ہوشی حالت میں پایا گیا۔ شدید زخمی کنسٹیبل شیر نواز کو ناکہ بندی پر تعینات نفری نے اپنی مدد اپ کے تحت پرائیوٹ ٹیکسی گاڑی میں بروقت علاج معالجہ کی خاطر فوراً [illegible]

Attested
Afrasiab Gul
Advocate
High Court Peshawar

ہسپتال بنوں پہنچایا گیا۔ جو کہ 10/50 منٹ تک بدوران ایمرجنسی علاج معالجہ زندہ رہا۔ علاج معالجہ کے دوران شدید زخمی کنسٹیبل شیر نواز زخموں کی تا
لانے پر شہید ہو گئے۔ اور کنسٹیبل عمران 6577/FRP ایمرجنسی علاج معالجہ کرنے کے بعد سول اینڈ پولیس ہسپتال میں ہوش پر آیا۔ مقدمہ ہذا میں اسی وقت
کے تفتیشی آفیسر نے تفتیش مکمل کرنے اور ملزمان کے متعلق عدم پتہ کا چالان دینے بارے تحریر کیا ہے۔ FIR ہذا، عدم پتہ چالان اور حملے کو تخریب کاروں کا حملہ قرار
دینے اور بیانات، رپورٹ صیغی حصہ دوئم بیانات، ناکہ بندی / سنتری پوسٹ کے غیر محفوظگی اور پولیس نفری کی کمی کو مدنظر رکھتے ہوئے کنسٹیبل عمران
6577/FRP کے سروس ٹریبونل ارڈر اور افسران بالا کے بغرض از سر نو انکوائری بحوالہ ارڈر بک نمبر 243 مورخہ 08-06-2018 کے تحت بحالی ارڈر کے
پیروی کرتے ہوئے سروس پر بحال کرنے اور برخاستگی سے لیکر مورخہ 08-06-2018 تک سروس سے باہر دورانیہ پر بلا تنخواہ کرنے کسی قسم کی اور منافع نہ
دینے کی سفارش کی جاتی ہے۔ مزید حکم افسران بالا کا افضل ہے۔

انکوائری آفیسر SI/PC میر اخان
ایف۔ آر۔ پی، بنوں رینج بنوں

Approved.

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

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(27) Annex #J

BETTER COPY

**ORDER**

This order shall dispose of the enquiry proceeding pending against constable Imran Khan No: 6577/FRP as the official was charged for commission of the following miss conduct.

That he was enlisted in police department in the year 2005 and afterward during the course of his duties on the night between 4/5-11-2013 the terrorist ambushed police post surkh pull and open indiscriminate firing upon constable Sher Nawaz No: 6412 constable Imran Khan No:6577 as a result thereof, constable Sher Nawaz sustained severe injures and later expire in the hospital. While you become senseless. The accused/terrorist also took away Govt Rifle No: 26099229 along with fitted magazines containing 30 rounds KK Rifle No:44815 along with bandolier containing 03 magazines loaded 90 rounds of the same bore from the possession of the above noted official and case FIR No:592 dated 05-11-2013 u/s 302-324-353-404 PPC/7ATA PS Naurang was registered.

That he being member of the Police Force of the said police post Surkh Pul in spite of repeated direction from superiors regarding vigilance and alert in the discharged of duties in the present prevailing law and order situation and wave of terrorism, failed to combat the above noted situation and showed great cowardice.

That being negligent and casual attitude in performance of his duty badly failed to combat the terrorists who ambushed the police official who were on sentary duty, which resulted in the death of Constable Sher Nawaz No. 6412 and great loss caused to the police department.

That after carry out proper probe/enquiry into allegations leveled against him; he was dismissed from service vide this office OB No. 13 dated: 06-01-2014.

After dismissal from service he submitted an appeal for re-instatement in service before the worthy/commandant FRP KPK Peshawar, which was examined by the high ups; consequently his appeal was rejected vide commandant FRP KPK Peshawar order Endst: No. 1154-55/EC dated: 10-02-2014.

However, he was feeling aggrieved at the outcome of the appeal, he filed service appeal No. 497/2014 before the Honorable service Tribunal KPK Peshawar against the dismissal order No. 13 dated: 06-01-2014 passed by the competent authority.

That he has been re-instated in service by the service Tribunal KPK Peshawar vide judgment dated: 16-04-2018 for the purpose of de-novo enquiry proceedings followed by Inspector General of Police KPK Peshawar vide his good office letter No. 1606/Legal dated: 11-05-2018 & No. 1735 Legal dated: 22-05-2018, vide Commandant FRP KPK Peshawar Endst: 6972/SI Legal dated: 01-06-2018.

On the directions of the high upsa fresh charge sheet No. 1210-11 dated: 19-06-2018 was issued, which was properly delivered upon him on 21-06-2018 and service record along with all

(27) Annex- J

ORDER

This order shall dispose of the enquiry proceedings pending against Constable Imran No.6577/FRP as the official was charged for commission of the following miss-conduct.

That he was enlisted in Police Department in the year 2005 and afterward during the course of his duties on the night between 4/5-11-2013 the terrorists ambushed police post Surkh Pull and opened indiscriminate firing upon Constable Sher Nawaz No. 6412 Constable Imran Khan No. 6577, as a result thereof, Constable Sher Nawaz sustained sever injuries and later expired in the hospital, while you became senseless. The accused / terrorists also took away Govt: Rifle No.26099229 along with fitted magizines containing 30 rounds KK-Rifle No.44315 along with bandolier containing 03 magizines loaded 90 rounds of the same bore from the possession of the above noted officials and case FIR No.592 dated 05-11-2013 u/s 302-324-353-404 PPC/ 7ATA PS Naurang was registered.

That he being member of Police Force of the said police post Surkh Pul inspite of repeated directions from the superiors regarding vigilance and alert in the discharge of duties in the present prevailing law and order situation and wave of terrorism, failed to combat the above noted situation and showed great cowardice.

That being negligent and casual attitude in performance of his duty badly failed to combat the terrorists who ambushed the police officials who were on sentary duty, which resulted in the death of Constable Sher Nawaz NO.6412 and great loss caused to the Police Department.

That after carry out proper probe/enquiry into allegations leveled against him; he was dismissed from service vide thise office OB No 13 dated 06-01-2014.

After dismissal from service he submitted an appeal for re-instatment in service before the Worthy/Commandant FRP KPK Peshawar, wich was examined by the high ups, consequently his appeal was rejected vide Commandant FRP KPK Peshawar order Endst: No.1154-55/EC dated 10-02-2014.

However he was feeling aggrieved at the outcome of the appeal, he filed service appeal No.497/2014 before the Honorable service Tribunal KPK Peshawar against the dismissal order No.13 dated 06-01-2014 passed by the competent authority.

That he has been re-instated in service by the Service Tribunal KPK Peshawar vide judgement dated 16-04-2018 for the purpose of de-novo enquiry proceedings followed by Inspector General of Police KPK Peshawar vide his good office letter No.1606/Legal dated 11-05-2018 & No.1735/Legal dated 22-05-2018, vide Commandant FRP KPK Peshawar Endst:6972/SI Legal dated 01-06-2018

On the directions of the high upsa fresh charge sheet No.1210-11 dated 19-06-2018 was issued, which was properly delivered upon him on 21-06-2018 and service record along

Attested by
Miran Afsar Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

**BETTER COPY**

connected papers was handed over to Enquiry Officer FRP Bannu Range with directions to conduct de-novo enquiry under relevant Law/Rules.

Accused official replied to the charge sheet within stipulated period. A discreet enquiry was made and enquiry officer submitted his findings dated: 16-07-2018, wherein it was described that the Police Post Surkh Pul was surrounded by the bushes and trees, also it have no boundary wall, seems unsafe and risky place for duty. Finally E. O suggested /recommended that if deem appropriate the above lengthy absence/ interviewing period of the defaulter official may be counted/treated without pay, & re-instatement order of the Honourable Service Tribunal may be stand confirmed, if agree.

The record was checked and examined thoroughly. Keeping in view the undersigned, being a competent authority has taken a lenient view, agree with the recommendations of the inquiry officer and pass order forthwith below mentioned i.e.

- The total absence/out of service period of the above named official are treated/counted without pay.
- The reinstatement order of above named official passed by the Honourable service Tribunal Khyber Pakhtunkhwa Peshawar issued vide judgment dated: 16-04-2018 is hereby stand confirmed

OB No. **302**

Dated: 17/07/2018

No. 1438-34: dated: 17-07-2018

Superintendent of Police

FRP Bannu.

Copy of above is submitted for favor of information to the :

1. Deputy Inspector General of Police Internal Accountability, KPK Peshawar w/r to his good office Endst: No. 817/E&I dated: 14-06-2018.
2. Commandant FRP KPK Peshawar w/r to his good office Endst: 6972/SI Legal dated: 01-06-2018, please.
3. All concerned

with all connected papers was handed over to Enquiry Officer FRP Bannu Range with directions to conduct de-novo enquiry under relevant Law/Rules.

Accused official replied to the charge sheet within stipulated period. A discreet enquiry was made and enquiry officer submitted his findings dated 16-07-2018, wherein it was described that the Police Post Surkh Pul was surrounded by the bushes and trees, also it have no bondry wall, seems unsafe and risky place for duty. Finally E.O suggested / recommended that if deem appropriate the above lengthy absence / interviewing period of the defaulter official may be counted / treated without pay, & re-instatement order of the Honorable Service Tribunal may be stand confirmed, if agree.

The record was checked and examined thoroughly. Keeping in view the undersigned, being a competent authority has taken a lenient view, agree with the recommendations of the inquiry officer and pass order forthwith below mentioned i.e.

- **The total absence / out of service period of the above named official are treated / counted without pay.**
- **The reinstatement order of above named official passed by the Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar issued vide judgment dated 16-04-2018 is hereby stand confirmed.**

OB No. 302

Dated: 17 /07/2018

No: 1438-34 : dt: 17-7-18

**Superintendent of Police,**
**FRP, Bannu**

Superintendent of Police
FRP/ Bannu

Copy of above is submitted for favor of information to the:

1. Deputy Inspector General of Police Internal Accountability, KPK Peshawar w/r to his good office.Endst: No.817/E&I dated 14-06-2018.
2. Commandant FRP KPK Peshawar w/r to his good office Endst: No.6972/SI Legal dated 01-06-2018, please.
3. All concerned.

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

(29)

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. 1606 /Legal dated Peshawar, the 11 / 05 /2018.

To: - The Commandant,
FRP,Khyber Pakhtunkhwa
Peshawar.

Subject:- SERVICE APPEAL NO. 497/2014 TITLED IMRAN KHAN V/S POLICE.

Memo:-

Please refer to your office memo No. 6272/SI-Legal dated 04.05.2018, on the subject noted above.

Competent authority has directed that the judgment may be implemented and original enquiry file along with judgment of the Service Tribunal may be submitted before the Deputy Inspector General of Police E&I CPO, Peshawar for de-novo enquiry proceedings.

AIG/Legal,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

No. 1607 /Legal

Copy of the above is forwarded for information to the Deputy Inspector General of Police, E & I Khyber Pakhtunkhwa CPO, Peshawar.

AIG/Legal,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

Attested

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

(30)

**ORDER**

In pursuance with directions of Inspector General of Police Khyber Pakhtunkhwa, Peshawar issued vide CPO letter No. 1606/Legal dated 11.05.2018, & No. 1735/Legal, dated 22.05.2018, the decision of Khyber Pakhtunkhwa, Service Tribunal, Peshawar dated 16.04.2018, in Service Appeals No. 495, 496 & 497/2014 is hereby implemented. Ex-constables Imran Khan No. 6577, Abdul Qayyum No. 6532 & Rafi Ullah No. 6407 of FRP/Bannu, Range are hereby reinstated in service subject to denovo enquiry.

**COMMANDANT**
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar

No. 1972 /SI Legal, dated Peshawar the 01 / 06 /2018.

Copy of above is forwarded for information and necessary action to the SP FRP Bannu Range, Bannu.

Attested

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

(31) Annex-K

**BEFORE THE WORTHY COMMANDANT FRP KPK PESHAWER**

**SUBJECT: Appeal . against the order of SP/FRP Bannu vide OB No.302**

**Dated 17-07-2018 where in the total absence /out of service period of the appellants have been treated as leave without pay:**

Respected sir,

The petitioner humbly submits as follow:-

1. That I joined the police department in the year 2005 and remained posted at various posts.
2. That the appellants while posted at PP Surkh Pull Naurang, the terrorists ambushed police post and opened in discriminate firing upon constable Sher Nawaz No.6412 , Constable Imran Khan No.6577, as a result thereof constable Sher Nawaz sustained severe injuries and later on expired in hospital , while constable Imran Khan No. 6577 become senseless resulting in the registration of case FIR No.592 dated 05-11-2013 U/S 302-324-353-404 PPC - 7ATA PS Naurang.That being member of police force , the appellants failed to combat terrorists attack and showed cowardice in spite of the repeated direction by the high UPs regarding vigilance and alertness in the discharge of official duty.
3. That after caring out proper inquiry into the allegation, the punishment of Dismissal was imposed upon the appellants.

Attested by
Mian Afrasiab Gul
Advocate
Kakakhel
HIGH COURT PESHAWAR

4. Having aggrieved of the said order, the appellants filed on appeal for re-instatement to service before the commandant FRP KPK Peshawar which was examined by the high Ups and consequently rejected by the commandant FRP KPK Peshawar.
5. That the appellants preferred on appeal in the service tribunal KPK Peshawar against the dismissal order No.13 dated 06-01-2014 passed by the competent authority.
6. That honorable service tribunal Peshawar issued ordered vide judgment dated 16-04-2018, re-instated them into service and ordered to conduct De-novo enquiry against them.
7. That fresh Charge sheet based upon statement of allegations were served upon them and all the connected papers were handed over the inquiry officer FRP Bannu range with the directions to conduct De-novo inquiry in to the matter. Who (Enquiry officer) probed into the matter and submitted his finding report wherein recommended the intervening period to be treated as leave without pay with any cogent reason and stood conformed the re-instatement order.
8. That DPO Lakki Marwat re-instated constable Habib Ullah No.630/607 with all back benefits vide OB No.369 dated 13-07-2018 upon the same allegations (Photo copies enclosed).
9. That AIG establishment re-instated EX-Constable Muhammad Ismail No.6508 /FRP with all bag benefits vide No.2235 / EV dated 02-05-2014 (Photo copies enclosed).

Attested by

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

10. Similarly in charge PP-Surkh Pull namely Naqib Ullah SI / PC compulsory retired in the same allegation.

11. That martyred constable Sher Nawaz 6412 / FRP has got shuhada package (Photo copies enclosed).

12. That in view of the above facts & circumstances , It is humbly prayed the intervening period / out of service period of the appellants may be ordered on full pay and re-instatement order be treated with all back benefits as ordered by the DPO Lakki Marwat in case of constable Habib Ullah Mentioned meet the ends of justice please.

Dated: /11/2018

LHC Imran Khan No.7390 old No.6577 FRP Bannu range Bannu.

Attested

Mian Asfandiyab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

Annex L (34) BETTER COPY

**ORDER**

This order will dispose of the departmental appeal preferred by Constable Imran Khan No. 7390 of FRP Bannu Range, against the order of SP FRP Bannu Range, Bannu vide OB No. 302, dated: 17-07-2018, wherein the reinstatement order of the appellant was stand confirmed, while the Intervening period was treated as without pay. The applicant was proceeded against on the allegations that on the right between 4/5.11.2013 the terrorists had been ambushed on Police Post Surkh Pull and opened unprovoked firing as a result, constable Sher Nawaz No. 6412, sustained severe injuries and later expired in the hospital, while the applicant became senseless. The accused/terrorists also took away Govt. rifles No. 26099229, also with fitted magazines containing 30 rounds and KK Rifle No. 448015 and bandolier containing 03 magazines loaded 90 rounds of the same bore from the possession of the above noted official and in this regard a criminal case vide FIR No. 592, dated: 05-11-2013 u/s 302/324/353/404 PPC/7 ATA at Police Naurang was registered.

That he being member of police force and posted at the said police post despite of repeated directions from the superiors regarding vigilance and alert in the discharge of duties in the present prevailing law & order situation and wave of terrorism, failed to contest the above noted situation, but showed extreme cowardice act.

That being negligent and causal attitude in performance of his duty badly failed to combat the terrorists, who ambushed the police officials, while he was on sentary duty and resultantly the late constable Sher Nawaz No. 6412 was martyred which is a great loss caused for the police department.

That after carry out proper probe /enquiry into the allegations leveled against him, he was dismissed from service vide officer OB No. 13, dated: 06-01-2014.

After dismissal from service the applicant submitted an appeal for reinstatement in service before the worthy commandant FRP, KP, Peshawar which was rejected vide this office order Endst. No. 115455/EC, dated: 10-02-2014.

However, feeling aggrieved at the outcome of the appeal, he filed Service Appeal NO. 497/2014, before the Honorable Service Tribunal, KPK, Peshawar against the dismissal order vide OB No. 13, dated: 06-01-2014 passed by the competent authority.

Subsequently he has been re-instated in service by the Service Tribunal KPK, Peshawar vide Judgment dated: 16-04-2018 for the purpose of de-novo enquiry followed by PPO KPK, Peshawar vide his good office letter No. 1606/Legal, dated 11-05-2018 & No. 1735/Legal 22-05-2018, vide Commandant FRP KPK, Peshawar office Endst: No. 6972/SI Legal, dated: 01-08-2018.

(34) Annex-L

**ORDER**

This order will dispose of the departmental appeal preferred by constable Imran Khan No. 7390 of FRP Bannu Range, against the order of SP FRP Bannu Range, Bannu vide OB No. 302, dated 17.07.2018, wherein the reinstatement order of the appellant was stand confirmed, while the intervening period was treated as without pay. The applicant was proceeded against on the allegations that on the night between 4/5.11.2013 the terrorists had been ambushed on Police Post Surkh Pull and opened unprovoked firing as a result, constable Sher Nawaz No. 6412, sustained sever injuries and later expired in the hospital, while the applicant became senseless. The accused/terrorists also took away Govt; rifles No. 26099229, alongwith fitted magazines containing 30 rounds and KK Rifle No. 448015 and bandolier containing 03 magazines loaded 90 rounds of the same bore from the possession of the above noted official and in this regard a criminal case vide FIR No. 592, dated 05.11.2013 U/S 302/324/353/404 PPC/7ATA at Police Naurang was registered.

That he being member of Police force and posted at the said police post despite of repeated directions from the superiors regarding vigilance and alert in the discharge of duties in the present prevailing law & order situation and wave of terrorism, failed to contest the above noted situation, but showed extreme cowardice act.

That being negligent and causal attitude in performance of his duty badly failed to combat the terrorists, who ambushed the police officials, while he were on Sentary duty and resultantly the late constable Sher Nawaz No. 6412, was martyred which is a great loss caused for the police department.

That after carry out proper probe/enquiry into the allegations levelled against him, he was dismissed from service vide office OB No. 13, dated 06.01.2014.

After dismissal from service the applicant submitted an appeal for re-instatement in service before the worthy commandant FRP, KP, Peshawar which was rejected vide this office order Endst. No 1154-55/EC, dated 10.02.2014.

However, feeling aggrieved at the out come of the appeal, he filed Service Appeal No. 497/2014, before the Honorable Service Tribunal, KPK, Peshawar against the dismissal order vide OB No. 13, dated 06.01.2014 passed by the competent authority.

Subsequently he has been re-instated in service by the Service Tribunal KPK, Peshawar vide judgment dated 10.04.2018 for the purpose of de-novo enquiry followed by PPO KPK, Peshawar vide his good office letter No. 1608/Legal, dated 11.05.2018 & No. 1735/Legal 27.05.2018, vide commandant FRP KPK, Peshawar office Endst; NO. 6972/SI Legal, dated 01.08.2018.

For the purpose of denovo enquiry a fresh Charge Sheet No. 1210-11, dated 19.06.2018 was issued, which was properly delivered upon him on 21.06.2018, and Enquiry Officer was nominated to conduct de-novo enquiry under relevant law/rules.

Accused official replied to the Charge Sheet within stipulated period. A discreet enquiry was made and Enquiry Officer submitted his findings dated 16.07.2018,

Attested

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

For the purpose of de-novo enquiry a fresh charge sheet No. 1210-11 dated: 19-06-2018 was issued, which was properly delivered upon him on 21-06-2018, and Enquiry Officer was nominated to conduct de-novo enquiry under relevant law/rules.

Accused official replied to the charge sheet within stipulated period. A discreet enquiry was made and Enquiry officer endorsed findings dated: 15-07-2018 wherein it was described that the Police Post Surkh Pull was surrounded by the bushes and trees, also it have no boundary wall, seems unsafe and risky place for duty. Finally Enquiry Officer suggested/recommended that if deemed appropriated the above lengthy absence/interviewing period of the defaulter official is counted/treated without pay and the re-instatement order of the Honourable Service Tribunal KPK, Peshawar may be stand confirmed, if agree.

The record was checked and examined thoroughly; keeping in view the competent authority has taken a lenient view, agree with the recommendations of the Enquiry Officer and passed the order as below mentioned.

1. The total absence/out of service period of the said official has been treated/counted as without pay.
2. The re-instatement orders of the said constable passed by the Honorable Service Tribunal KPK, Peshawar issued judgment dated: 16-04-2018has been stand confirmed vide office OB No. 302, dated: 17-07-2018.

Feeling aggrieved against the impugned order of SP FRP Bannu Range, Bannu, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 20-12-2018.

Keeping in view the above, the applicant had been given the benefit of reinstatement in service, and the appeal cannot be entertained being devoid of substance.

Based on the findings narrated above, I sajid Ali PSP Commandant FRP Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found no substance in the appeal, therefore, the same is rejected and filed being time barred and meritless.

Order Announced

38

**BETTER COPY**

Commandant

Frontier Reserve Police

Khyber Pakhunkhwa, Peshawar

No. 4038-39 /EC, dated: Peshawar the 26/ 12/2018

Copy of above is forwarded for information and necessary action to the:

1. SP FRP Bannu Range, Bannu. His service record along with D file sent herewith.
2. Ex-constable Imran Khan 7390 S/O Mosam Khan, Police Station Serai Naurang, Village Bagh District Lakki Marwat.

therein it was described that the Police Post Surkh Pull was surrounded by the bushes and tress, also it have no boundary wall, seems unsafe and risky place for duty. Finally Enquiry Officer suggested/recommended that if deemed appropriate the above lengthy absence/interviewing period of the defaulter official is counted/treated without pay and the re-instatement order of the Honorable Service Tribunal KPK, Peshawar may be stand confirmed, if agree.

The record was checked and examined thoroughly. Keeping in view the competent authority has taken a lenient view, agree with the recommendations of the Enquiry Officer and passed the order as below mentioned.

1. The total absence/out of service period of the said official has been treated/counted as without pay.
2. The re-instatement orders of the said constable passed by the Honorable Service Tribunal KPK, Peshawar issued vide judgment dated 16.04.2018 has been stand confirmed vide office OB No. 302, dated 17.07.2018.

Feeling aggrieved against the impugned order of SP FRP Bannu Range, Bannu, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 20.12.2018.

Keeping in view the above, the appellant had been given the benefit of reinstatement in service, and the appeal cannot be entertained being devoid of substance.

Based on the findings narrated above, I, Sajid Ali PSP Commandant FRP Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found no substance in the appeal, therefore, the same is rejected and filed being time barred and meritless.

Order Announced.

Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No. 14038-39 /EC, dated Peshawar the 26 / 12 /2018.

Copy of above is forwarded for information and necessary action to the:-

1. SP FRP Bannu Range, Bannu. His service record alongwith D file sent herewith.
2. Ex-constable Imran Khan No. 7390 S/O Mosam Khan, Police Station Serai Naurang, Village Muslim Bagh, District Lakki Marwat.

Attested

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

(36) Annex-M



**ORDER.**

My this order will dispose off the departmental enquiry initiated against **Constable Habib Ullah No. 630/607 while posted at Surkh Pull was found to indulge in** the following allegations:-

1. That he while posted at NB Surkh Pull, on the night between 4/5-11-2013 the terrorists ambushed Police Post Surkh Pull and opened indiscriminate firing upon Constable Sher Nawaz No.6412 Constable Imran Khan 6577 as a result thereof, Constable Sher Nawaz sustained severe injuries and later expired in the Hospital, while Constable Imran Khan No.6577 become senseless. The accused/terrorists also took away Govt: Rifle No. 26099229 alongwith fitted magazine containing 30 rounds and KK Rile No. 44815 alongwith bandolier containing three (3) magazines loaded 90 rounds of the same bore from the possession of the above noted officials and case FIR No.592 dated 05.11.2013 u/s 302/324/353/404 PPC/7-ATA PS Naurang was registered.

2. That he being member of Police force of the said Police Post Surkh Pull in spite of repeated directions from the undersigned regarding vigilance and alert in the discharge of duties in the present prevailing law & order situation and wave of terrorism. Failed to combat the above noted situation and showed great cowardice.

3. That being negligent and casual attitude in performance of his duty badly failed to combat the terrorists who ambushed the Police official who were on Sentary duty, which resulted in the death of constable Sher Nawaz No.6412 and great loss caused to the Police Department.

4. That the above negligence in the performance of his duty as Police Constable speaks of in-efficiency and suggest his unbecoming of good Police Officer and all this amount to gross misconduct on his part and liable to be punished under the Rules-1975.

He was served with charge sheet alongwith summary of allegations and Mr. Syed Liaqat Ali Shah DSP/Naurang was appointed as Enquiry Officer. The Enquiry Officer after conducting proper departmental enquiry into the matter and submitted his finding report wherein the charges stand proved against him and recommended him for major punishment. He was served with final Show Cause Notice, his reply to the final Show Cause Notice was pursued and also found unsatisfactory and awarded him major punishment of dismissal from service vide this office OB No.75 dated 13.02.2014. He preferred an appeal to Worthy RPO, Bannu for setting aside the order of District Police Officer, Lakki Marwat but was turned downed. He preferred an appeal to Honorable Service Tribunal, KPK, Peshawar for his re-instatement into service. The Honorable Service Tribunal KPK, Peshawar re-instated him into service vide his Judgment order No. 973/ST dated 08.05.2018 with the directions that the issue of back benefits shell be subject to the final outcome of the denovo enquiry. In the compliance of the order of W/PPO KKP Peshawar Denove enquiry was initiated against him vide CPO, Peshawar letter No.803/E&I dated 31.05.2018. The enquiry papers were entrusted to Mr. Touheed Khan SP Inv: Lakki Marwat for Denove enquiry and report. The SP Inv: Lakki Marwat conducted Denove Enquiry and submitted his finding report wherein the charges stand not proved against him and also recommended him for re-instatement into service with all back benefits.

Attested by

Mian Afsar Habib Gul
Advocate
Peshawar
HIGH COURT

Therefore, **I Asif Gohar, District Police Officer, Lakki Marwat** exercise of the power vested in me under Police Rules-1975. by keeping into consideration his long service I take a lenient view, the enquiry papers are hereby filed without any further action and re-instated him into service with all back benefits with effect from 13.02.2014 to 08.05.2018.

OB No. 369

Dated: 13 / 7 /2018.

**District Police Officer,**
**Lakki Marwat**

No. 9066-70/ Dated Lakki Marwat the 17-07. /2018.

Copy of above is submitted for favour of information to:-

1. The Regional Police Officer, Bannu Region, Bannu w/r to his Endst: No. 2601/EC dated 10.05.2018.
2. HC, EC, PO and OHC for information & necessary action.

Attested by

Mian Afrasiab Gul
Kakakhel Advocate
HIGH COURT PESHAWAR

38

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
## PESHAWAR

In Re: Service Appeal No. _____/2019

## MEMO OF ADDRESSES

**APPELLANT:**

**Imran Khan S/O Mosam Khan**
R/O Muslim Bagh, P/O Saria Nourang, Tehsil and District Lakki Marwat.

..... *Appellant*

*Versus*

**RESPONDENTS**

1. **Government of Khyber Pakhtunkhwa**
   Through Chief Secretary Department of Home and Tribal Affairs,
   Civil Secretariat, Peshawar

2. **Commandant Frontier Reserve Police (FRP),**
   Khyber Pakhtunkhwa, Peshawar.

3. **The Superintendent of Police Frontier Reserve Police (FRP),**
   Bannu, Khyber Pakhtunkhwa.

..... *Respondents*

Advocate

قیمت 50 روپے

0620

ایڈوکیٹ: میاں افراسیاب گل ایڈوکیٹ

بار کونسل/ایسوسی ایشن نمبر: BC-09-1599

رابطہ نمبر: 0333-9215502

# پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سروس ٹریبونل خیبر پختونخواہ

منجانب: Appellant

ثمر عمران

بنام

گورنمنٹ وغیرہ

دعویٰ:

علت نمبر:

مورخہ

جرم:

تھانہ

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام ہشت نگر کیلئے میاں افراسیاب گل ایڈوکیٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم:

العبد

گواہ شد

العبد

مقام ہشت نگر کے لیے منظور ہے۔

دستخط: عمران خان

عمران خان نمبردار

CNIC# 11201-8388672-5

Accepted

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔