


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 513/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/03/2023	<p>The appeal of Mr. Fafi Ullah resubmitted today by Mr. Afrasiab Khan Wazir Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Parcha Peshi is given to appellant/counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Rafi Ullah Constable No. 7596 posted of Seraie Naurang PP Manjiwala Bannu Range Lakki Marwat received today i.e. on 07.03.2023 is incomplete on the following score which is returned to the co Counsel for the appellant for completion and resubmission within 15 days.

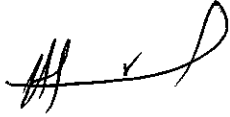
Annexure-C of the appeal is illegible which may be replaced by legible/better one.

No. 906 /S.T.

Dt. 08-03 /2023

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Afrisiab Khan Wazir Adv.  
High Court at Peshawar.

*Sd,*  
Annexure "C" is replaced by legible one copy  
attached. Hence re-submitted  


**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**APPEAL NO. 513 /2023**

**RAFI ULLAH**

**VS**

**FRP & OTHERS**

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**APPELLANT**

**THROUGH:**

**AFRASIAB KHAN WAZIR**

**ADVOCATE HIGH COURT**

**PESHAWAR**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**APPEAL NO. STB/2023**

Mr. Rafi Ullah, Constable No.7596,  
Posted at Seraie Naurang PP Manjiwala, Bannu Range, District Iakki  
Marwat.....**APPELLANT.**

**VERSUS**

- 1- Additional I.G.P/ Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
- 2- Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 3- Superintendent of police, Frontier Reserve Police, District Bannu

.....**RESPONDENTS.**

**APPEAL UNDE SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER DATED 17.07.2018 OF THE RESPONDENTS WHEREBY THE APPELLANT HAS BEEN REINSTATED INTO SERVICE BUT TREATED TOTAL ABSENCE/OUT SERVICE PERIOD WITHOUT PAY AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT BY THE RESPONDENTS WITHIN THE STATUORY PERIOD.**

**PRAYER:**

That on acceptance of this instant service appeal of the appellant the impugned order dated 17.07.2018 may very kindly be set aside and the respondents may further please be directed to treat the total absence/out of service period with pay, with all back benefits. Any other remedy which this August Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

**Brief facts of the Case Are As Given Below:**

- 1- That the appellant is performing his duty in the police department as constable with zeal and zest.
- 2- That the appellant was dismissed service on the basis that he failed to combat terrorist when attacked on their check post, against which the appellant and his colleagues moved to Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.496/2014, which was allowed vide single judgment dated 16.04.2018 in favor of the appellant/colleagues in the following terms as reproduced below; **"As Sequel to the above**

discussion, the appeal is accepted. The impugned order dated 06.01.2014 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. The parties are left to bear their own costs. File be consigned to the record room.

(Copy of Judgment dated is attached as annexure.....A.)

3- That after above judgment the appellant was reinstated into service by giving effect to the spirit of the judgment by the respondents for the purpose of the de-novo inquiry vide order dated 01.06.2018, thus the respondents conducted de-novo enquiry wherein no fault of the appellant is mentioned.

(Copy of Order dated 01.06.2018 and de-novo enquiry is attached as annexure.....B.)

4- That after conducting de novo inquiry the respondents issued impugned 17.07.2018 whereby appellant is reinstated into service but imposed penalty of treating Total absence/out of service period as without pay.

(Copy of the Impugned order dated 17.07.2018 is attached as annexure.....C.)

5- That the same de-to-copy of impugned order mentioned above was also issued to the colleagues of the appellant by the respondents which they challenged in Khyber Pakhtunkhwa Service Tribunal and was allowed in their favor with all back benefits vide judgment dated 26.07.2021.

(Copy of judgment dated 26.07.2021 is attached as annexure.....D.)

6- That the appellant being similarly placed employee feeling aggrieved from the impugned order dated 17.07.2018 preferred departmental appeal which till date not yet answered.

(Copy of the departmental appeal is attached as annexure.....E.)

#### **ON GROUNDS:**

A- That the issuance of impugned order dated 17.07.2018 by the respondents and not granting back benefit i.e treating total absence period with pay is against law, rules and norms of natural justice, hence the impugned order dated 17.07.2018 is liable to be set aside.

B- That the appellant has not been treated in accordance with law and thus respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan, 1973.

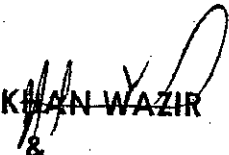
- C-That the respondents acted in arbitrary and malafide manner by treating period of absence as without pay vide order dated 17.07.2018.
- D-That the action of the respondents is sheer autocracy by issuing the impugned order dated 17.07.2018 and is against the norms of natural justice.
- E- That the appellant fault is no where mentioned the de-novo enquiry when the terrorist ambushed the appellant and his colleagues even though he has been penalized, hence the impugned order dated 17.07.2018 is liable to be set aside.
- F- That the absence of the appellant was not due to him but because of the illegal and unlawful suspension & dismissal from service by the respondent.
- G-That the appellant is the similarly placed employee and the same benefits of judgment dated 26.07.2021 passed in favor of his colleagues who had the same issue involved in the same issue, be extended.
- H- That it has been the consistent view of the superior courts if any law/fact is decided by the court then its benefits is extended to those who have are non litigants.
- I- That the action of the respondents is against article 38(e) of the constitution of Islamic Republic of Pakistan, 1973.
- J- That the appellant seeks permission to advance any other ground at the time of regular hearing.

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

Dated:

APPELLANT  
  
RAFI ULLAH

Through:

  
AFRASIAB KHAN WAZIR  
&  
NAZUREHMAN  
ADVOCATES

**CERTIFICATE:**


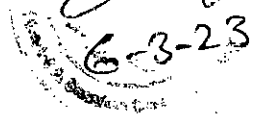
It is certified that no earlier service appeal has been filed by the appellant on the same issue.

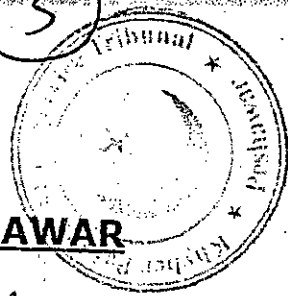
  
DEPONENT

**Affidavit**

I, Rafi Ullah S/O Sanna Ullah R/O Nar Raza Khan Adamzai, Sari Naurang, Lakki Marwat, do hereby solemnly affirm and declare that the content of this appeal is true and correct to the best of my knowledge and belief and nothing has been concealed from this August Court.

  
DEPONENT

  
6-3-23  




**BEFORE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. 496 /2014

Rafi Ullah S/o Sanna Ullah, R/o Nar Raza  
Khan Adamzai, Sirai Naurang, Lakki Marwat,  
Ex.C. No. 6407, P.S. Sirai Naurang,  
Lakki Marwat. ....

Appellant

Versus

1. Additional I.G.P / Commandant, Frontier Reserve Police, KP, Peshawar.
2. Provincial Police Officer, KP, Peshawar
3. Superintendent of Police, FRP, Bannu .....

Respondents

**W.P. Peshawar**  
No. 519  
08/4/2014

⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT,**  
**AGAINST ORDER NO. 1156-57/EC**  
**DATED 10.02.2014 OF R.NO.1 WHEREBY**  
**DEPARTMENTAL APPEAL AGAINST OB NO. 13,**  
**DATED 06.01.2014 DISMISSING APPELLANT**  
**FROM SERVICE, WAS REJECTED FOR NO LEGAL**  
**REASON.**

⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄

Respectfully Sheweth;

1. That appellant was appointed as Constable on 22.12.2010 and since then he was performing his official duties to the best of the ability and to the entire satisfaction of the superiors.

That finally appellant was posted at Police Post, Sur Pul, situated in the suburb of Sirai Naurang. On 04.11.2013, 10/12 miscreants attacked the said post at 23:15 hours and indiscriminate / fierce firing took place between the miscreants and police officials. The miscreants decamp away from the spot by taking advantage of the night and bushes. After combat and checking the place Sher Nawaz, Constable was lying injured in serious condition. He was rushed to hospital for

**Noted today**  
*[Signature]*  
8/4/14

ATTESTED

**ENROLLED**  
Hyder Pathan  
Service Tribunal  
Peshawar



treatment but there he succumbed to the injuries. (Copy of F.I.R as annex "A")


- 3. That on 11.11.2013, appellant was served with Charge Sheet and statement of allegation without assigning any specific reason to him. The charge sheet was replied on 11.11.2013. (Copies as annex "B" & "C")
- 4. That perhaps inquiry in to the matter was initiated by the authority but as is evident from the same, neither any statement of any witness(s) was recorded in presence of appellant nor he was afforded opportunity of cross examination what to speak of providing him opportunity of defence and personal hearing. All such requirements are mandatory in the law.
- 5. That thereafter, appellant was served with final show cause notice which was replied by denying the allegations. (Copies as annex "D" & "E")
- 6. That on 06.01.2014, appellant was dismissed from service. (Copy as annex "F")
- 7. That on 17.01.2014, appellant submitted representation before R. No. 2 which was rejected on 10.02.2014. Copy of the order was dispatched to appellant through postal service which was received by him on 10.04.2014. (Copy as annex "G" & "H")

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

**GROUND S:**

- a. That it was an admitted fact and also confirmed by the Inquiry Officer that on the eventful night, appellant was on duty at the post.
- b. That legal procedure was not adhered to by the respondents as no regular inquiry was ever conducted nor appellant was afforded opportunity of personal hearing, cross examination, being mandatory.
- c. That the enactment under which appellant was dealt with, was never specified in the charge sheet. Formal inquiry was made basis for the proceedings which has no legal value in the eyes of law.
- d. That neither any coverdice was ever shown nor appellant was negligent in performance of his official duties. In combat with 10/12 miscreants, loaded with sophisticated weapons, 2 police officials cannot prevent them from terrorist activities.

ATTESTED

  
 EXAMINER  
 Khayr Uddin  
 Service Tribunal  
 Peshawar

e. That from the aforesaid stated legal point when appellant was neither associated with inquiry nor the same was conducted as per the mandate of law nor any statement of any one was recorded nor he was given opportunity of cross examination and self defence, so the impugned orders are then based on malafide and are ab-initio void.

It is, therefore, most humbly prayed that on acceptance of appeal, order dated 10.02.2014 of R.No.1 or order dated 06.01.2014 of R.No.3 be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

*[Signature]*

Appellant

Through

*[Signature]*

Saad Ullah Khan Marwat

Dated. 8 .04.2014

*[Signature]*

Arbab Saiful Kamal

Certified to be true copy

*[Signature]*

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*[Signature]*

Miss Rubina Naz  
Advocates.

8



28.12.2017

Appellant in person and Addl: AG alongwith Mr. Safeerullah, S.I and Javed Iqbal, Inspector for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 12.02.2018 before D.B.

*[Signature]*  
Member

12.02.2018

Clerk of the counsel for appellant present. Mr. Muhammad Jan, DDA for the respondent present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for arguments on 16.04.2018 before D.B.

*[Signature]*  
Member

*[Signature]*  
Chairman

Order

16.04.2018

Counsel for the appellant and Mr. Ziaullah, DDA alongwith Mr. Javed Iqbal, Inspector and Mr. Safeerullah, S.I for respondents present. Arguments heard and record perused.

This appeal is also accepted as per detailed judgment of today placed on file in connected service appeal No. 497/2014 titled "Imran Khan-vs- Additional I.G.P/Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa Peshawar and 2 others". Parties are left to bear their own cost. File be consigned to the record room.

Announced:  
16.04.2018

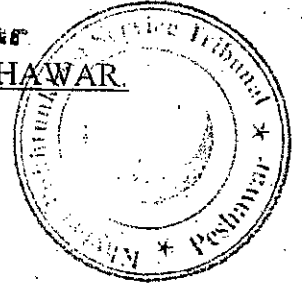
*[Signature]*  
(AHMAD HASSAN)  
Member

*[Signature]*  
(MUHAMMAD AMIN KHAN KUNDI)  
Member

ATTESTED

*[Signature]*  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL 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,  
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER (Executive)

--- 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.

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  
  
MEMBER (Judicial)  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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  
EXAMINER  
Nabeer Paktankhwa  
Service Tribunal  
Peshawar

(11)

5. 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

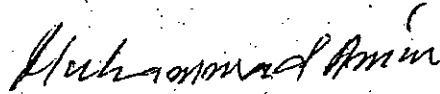
ACCEPTED  
J. K. KHAN  
Member  
Service Tribunal  
Peshawar

malafide 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 08.04.2014 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.



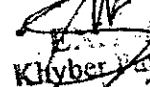
(AHMAD HASSAN)  
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

ANNOUNCED  
16.04.2018

Certified to be true copy



J. A. JINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 09-2-23  
 Number of Page 4  
 Copying Fee 20/-  
 Urgent 20/-  
 Name \_\_\_\_\_  
 Date of 09-2-23  
 Date of Delivery of Copy 09-2-23

ORDER

In pursuance with directions of Inspector General of Police Khyber Pakhtunkhwa, Peshawar issued vide CPO letter No 1605/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

the 1977 ISI Legal, dated Peshawar the 01/1/2018.

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

  
 ATTESTED



عنوان:- ازسرنو انکوائری پر خلاف ایکس کنسٹیبل رافع اللہ 6407 ایف اے بی اے ایل آر ایچ

انگریزی آرڈر Legal 6972/SI مورخہ 11-05-2018، 1735/Leagal، مورخہ 22-05-2018 جاریہ جناب CPO/KPK صاحب پشاور، سرورس ہونے پر  
انگریزی آرڈر مورخہ 16-04-2018، انگریزی لیٹر نمبر 861/ST مورخہ 24-04-2018 بارے سرورس ہوں۔ کہ انگریزی آرڈر 6972/SI  
Legal مورخہ 01-06-2018 جاریہ جناب کمانڈینٹ صاحب FRP/KPK پشاور دفتر ہذا موصول ہو کہ جس پر آفس ڈائری نمبر 754  
مورخہ 05-06-2018 درج ہے۔ جس پر جناب افسران بالائے حکم احکام جاری کر کے بحوالہ آرڈر بک نمبر 243 مورخہ 08-06-2018 کے تحت ایکس  
کنسٹیبلان FC/FRP عمران FC، 6577، FC، عبدالقیوم FC، 6532، FC، رافع اللہ 6407 کو بعرض ازسرنو انکوائری بحال کر کے ایکس کنسٹیبل رافع اللہ  
6407/FRP کو چارج شیٹ، سمری اف ایکشن نمبر 13-12-2018 مورخہ 19-06-2018 جاری کیا گیا۔ جاری شدہ چارج شیٹ، سمری اف ایکشن ہذا  
ایکس کنسٹیبل رافع اللہ 6407/FRP نے بذات خود مورخہ 21-06-2018 کو وصول کر کے بقاعدہ مورخہ 25-06-2018 پر تحریری جواب چارج  
شیٹ پیش کیا گیا۔ جواب پیش کرنے پر ایکس کنسٹیبل رافع اللہ 6407/FRP پر باقاعدہ کراس سوالات کئے گئے۔ کراس سوالات، جوابات، ہمدردانہ اور  
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 اس سوالات سے  
جوابات میں بھرتی، ڈیوٹی، سز پل ناکہ بندی پر تعیناتی، مورخہ 04-11-2013 کے شب ناکہ بندی ٹرین پر انچارج اور ساتھی کنسٹیبلان پوسٹ پر ہمدرد  
رہنے اور کنسٹیبل عمران اور کنسٹیبل شیر نواز کے سنٹری ڈیوٹی پر ایک ساتھ مامور ہونے اور انچارج، کنسٹیبل عبدالقیوم کے متعلق اپنے کمرہ میں سوتے اور  
رات گیارہ بجے بے تہاشہ فائرنگ کے آواز سے بیدار ہونے اور اپنا اسلحہ نمونہ لے کر باہر نکلنے پر شبید کنسٹیبل شیر نواز ڈیوٹی حالت میں پڑے رہنے اور فوجی حفاظت  
خود اختیاری کی خاطر جوابی فائرنگ کرنے اور شدید اندھیرے اور پوسٹ کے ارد گرد جھاڑی بوٹیوں اور فصل ہونے کی وجہ سے وحشت گردوں کو معلوم نہ کرنے اور  
رہی کنسٹیبل شیر نواز کو خود اور کنسٹیبل عبدالقیوم کی مدد سے پرائیوٹ گاڑی میں ہسپتال لے جانے کا تحریر کیا ہے۔ اور یہ بھی تحریر کیا ہے۔ کہ کنسٹیبل نے سنٹری اور  
بزدلی کا مظاہرہ نہیں کیا ہے۔ کنسٹیبل عمران اور شیر نواز ڈیوٹی پر تھے۔ اور ہم پوسٹ پر موجود تھے۔ اور سوسے تھے۔ اور جیسی جی فائرنگ کی آواز سن۔ تو فوراً فائرنگ  
شروع کی۔ لیکن شدید اندھیرے اور پوسٹ کے ارد گرد فصل اور جھاڑی بوٹیوں کی وجہ سے وحشت گردوں کا سراغ معلوم نہ کر سکتے۔ رہی کنسٹیبل شیر نواز کے متعلق  
10/50 منٹ زندہ رہنے بارے تحریر کیا ہے۔ کنسٹیبل مذکورہ نے تحریب کاری کے متعلق ایک بہت بڑا چیلنج قرار دینے اور ایسے ہی علاقے میں پوائیس پوسٹ واقع  
ہونے جہاں گناہ اور دوسرے فصل کثرت سے ہوں۔ تحریب کاری کے وقت کافی اسمانی کے ساتھ اپنی مقصد میں کامیاب ہو جانے کے متعلق تحریر کیا ہے۔ ساتھ  
ساتھ یہ بھی تحریر کیا ہے۔ کہ اس بابت فوجداری مقدمہ بھی قائم کیا گیا تھا۔ جس کے نتیجے میں یہ یاخذ کیا گیا تھا۔ کہ یہ ایک تحریب کاری کا نتیجہ تھا۔ اور اسکو فوراً کٹھن  
کرنا مشکل تھا۔ کنسٹیبل مذکورہ نے اپنے جواب کے آخر میں اپنے خلاف چارج شیٹ فائل کرنے اور عدالت کی طرح تمام مراعات کے ساتھ نوکری پر بحال  
کرنے بارے بھی استدعا کی جاتی ہے۔ دوبارہ بیان لینے پر کنسٹیبل رافع اللہ نے باوریافت بیان کیا۔ کہ سن ساکل نے جو جواب چارج شیٹ تحریر کر کے پیش کیا  
ہے۔ وہی میرا بیان ہے۔ اور اپنے خلاف ازسرنو انکوائری پر ہمدردانہ فیصلہ کرنے بارے بھی استدعا کیا ہے۔

ایکس کنسٹیبل رافع اللہ 6407/FRP کے ازسرنو ڈیپارٹمنٹل انکوائری میں مراد علی خان انسپکٹر سرکس آفیسر سرائے نورنگ حال SDPO ہون  
کینٹ، غلام محمد خان SHO تھانہ نورنگ حال SHO تھانہ ڈاؤنوالڈ کی مراد، ریٹائرڈ انچارج ناکہ بندی ٹرینل SI/PC نقیب اللہ ریڈر DSP ایف اے این  
لائن نورنگ ہیڈ کنسٹیبل گل محمد 7057 حال ACDI ایف اے بی اے ایل آر ایچ پولیس لائن نورنگ، کنسٹیبل محمد اسماعیل نمبر 6508/FRP حال پلاٹون نمبر 140 بتجربہ شین DIK  
تھانہ سی، کنسٹیبل حبیب اللہ 630/607 حال ڈسٹرکٹ پولیس لائن کی مراد، پرائیویٹ ٹینسی ڈرائیور اجمل خان ولد گھو خان سکھ نارنگیم خان کی مراد کے  
تفصیلاً تحریری بیانات لئے گئے۔

بیانات:-

تفتیشی آفیسر انسپکٹر مراد علی خان حال SDPO تھانہ کینٹ ہوں اپنے بیان میں یہ وضاحت کی۔ کہ تحریری مراسلہ پر مقدمہ 592

ATTESTED

سورنہ 2013-11-05 PPC 302-324-353/404/7 ATA مورنہ 302-324-353/404/7 تھانہ نورنگ درج رجسٹر ہو کر زیر تفتیش تھا۔ اسی مقدمہ میں تفتیش کی گئی تھی ہے۔ ملازم ٹریس کرنے میں کافی کوشش کی تھی۔ اور کئی مشتبہ افراد کو انٹرویو کیا گیا۔ انٹرویو کرنے پر وقوعہ کے ملازم ٹریس نہ ہو سکے۔ اور ناکہ بندی سُر پل پر بدوران حملہ نامعلوم ملازم نے دوسرے کارکنوں کو انٹرویو کیا۔ بعد چار عدد میگزین لوڈ شدہ 120 عدد کارٹوس جین کر کنسٹیبل شیر نواز کو فائرنگ سے شدید زخمی / شہید کر کے راہ فرار اختیار کی۔ اور تعینات نفری پولیس ناکہ بندی سُر پل لگی مروت کے متعلق بزدلی کرنے عفتل اور کوتاہی کے مرتکب ٹھہرانے بارے اور وقوعہ کا کوئی بھی ملازم ٹریس نہ کرنے پر مقدمہ ہذا میں عدم پتہ چالان دینے 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 سُر پل پر تعینات نفری کے متعلق بزدلی کے مرتکب ہونے بارے تحریر کیا ہے۔

☆ SI/PC نقیب اللہ حال رہنما رڈ نے اپنے تحریری بیان میں یہ وضاحت کیا ہے۔ یعنی کہ ناکہ بندی سُر پل 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 انکو انٹروی میں جو بیان دیا ہے۔ وہی میرا بیان ہے۔ جو حقیقت پر مبنی ہے۔ اور انکو انٹروی کے ریکارڈ پر موجود ہے۔ جو کہ ہمراہ انکو انٹروی لف تحریری بیان میں ریڈر DSP/FRP ہیڈ کنسٹیبل مذکور نے ناکہ بندی سُر پل پر پولیس تعینات نفری کے متعلق تعیناتی کا مکمل تفصیل ہمراہ آرڈر بکس تحریر کیا گیا ہے۔

☆ کنسٹیبل محمد اسماعیل 6508/FRP پلانوں نمبر 140 متعینہ ضلع DIK تھانہ شی نے اپنے آپ کو حسب اجازت انچارج ناکہ بندی سُر پل عام روٹین شہادت 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 سٹرکٹ پولیس لگی مروت نے اپنے آپ کو حسب اجازت انچارج ناکہ بندی شہادت پر رخصت پر مسکن خود جانے اور بدوران شہادت 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 کھڑے ہونے بارے تحریر کیا ہے۔

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

☆ FIR ہذا انٹش موقع، رپورٹ ضمنی حصہ دوئم بیانات اور نقلہ مدت روز نامہ چھ تھانہ نورنگ ہمراہ انکو انٹروی لف قابل ملاحظہ ہے۔ جو کہ تھانہ نورنگ نمبر 23 روز نامہ 25-01-2014 رپورٹ واپسی میں جناب SHO صاحب تھانہ نورنگ نے ناکہ بندیاں چیک کرنے اور ناکہ بندی سُر پل جناب DPO صاحب کے احکامات پر تھانہ نورنگ کلوز کیا گیا ہے۔

ATTESTED

فائرنگ :-

عالیجاہ :- کردہ انکو انٹروی تمام لئے گئے بیانات، FIR ہذا اور رپورٹ حصہ دوئم ضمنی بیانات و دیگر مواد کی روشنی میں سن انکو انٹروی آفیسر یہاں تک پہنچا۔ کہ واقعی سُر پل پولیس پوسٹ پر حملہ دہشت گردانہ تھا۔ چونکہ سُر پل ناکہ بندی بغیر چار دیواری کے وجود نہ کروں اور ایک کچھ چھپر نما سنتری پوسٹ پر مشتمل تھا۔ جو کہ اب غیر آباد اور خستہ حال ہے۔ چار دیواری نہ ہونے اور ناکہ بندی کے اور گرد اس وقت گنے کی فصل اور جھاڑیوں بوٹیوں کی بنا پر ناکہ بندی سُر پل پر دور اور نزدیک سے حملہ آور با آسانی سے حملہ کر سکتا ہے۔ حملہ آوروں نے رات کی تاریکی، ارد گرد زینی 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 ڈیوٹی چیک کرنے میں مصروف تھا۔ جیسی ہی ڈیوٹی چیکنگ روانہ ہوئی۔ ان حالات سے فائدہ اٹھاتے ہوئے حملہ آوروں نے با آسانی سے حملہ کر کے کنسٹیبل شیر نواز اندھا دھند فائرنگ سے شدید

زنی ہوا۔ اور کنسٹیبل عمران FRP/6577 اتفاقاً پانچ گیا۔ جو کہ خوف و ہراس کی وجہ سے بے ہوشی حالت میں پایا گیا۔ کنسٹیبل رافع اللہ FRP/6407 نے اپنے جواب میں یہ بھی تحریر کیا ہے۔ کہ وقوعہ رونما ہونے پر من کنسٹیبل نے اپنے کمرے میں خوابیدہ حالت میں فائرنگ کی آواز سنی تھی فوراً اترے اسحو دائرہ ویشن باہر آ کر جوابی فائرنگ شروع کی۔ جوابی فائرنگ شروع ہونے کے دوران تحریب کار اپنے مشن میں لگا رہا۔ مگر فرار ہو گئے۔ کچھ مدت کے بعد حالات سختی سے پر مسلوم ہوا۔ کہ سنتری ڈیوٹی پر مامور کنسٹیبلان میں سے کنسٹیبل شیر نواز کو بغیر اسلحہ دائرہ ویشن کے شدید زخمی حالت میں پایا گیا اور کنسٹیبل عمران FRP/6577 چونکی کے خدو سے عدم پتہ پایا گیا۔ جو کہ بعد میں پولیس پارٹی نے بے ہوشی حالت میں پایا گیا تھا۔ شدید زخمی کنسٹیبل شیر نواز کو زخمی ہونے پر من کنسٹیبل اور میرے ہمراہ عبدالقیوم خان FRP/6532 نے اپنی مدد آپ کے تحت پرائیوٹ عینکی گاڑی میں بروقت علاج معالج کی خاطر فوراً سول اینڈ پولیس ہسپتال سرانے نورنگ کی مروت /DHQ ہسپتال جنوں پہنچایا گیا۔ جو کہ 10/50 منٹ تک بدوران ایمر جنسی علاج معالجہ زندہ رہا۔ علاج معالجہ کے دوران شدید زخمی کنسٹیبل شیر نواز زخموں کی تاب نہ لانے پر شہید ہو گئے۔ مقدمہ ہذا میں اس وقت کے تفتیشی آفسر نے تفتیش مکمل کرنے اور طرمان کے متعلق عدم پتہ کا چالان دینے بارے تحریر کیا ہے۔ FIR ہذا عدم پتہ چالان اور حملے کو تحریب کاروں کا حملہ قرار دینے اور بیانات، رپورٹ طبی حصد و تم بیانات، تاکہ بندی استنتری پوست کے غیر محفوظ نگلی اور پولیس نفری کی کی کو مد نظر رکھتے ہوئے کنسٹیبل رافع اللہ FRP/6407 کے سرورس ٹریبول ارڈر اور افسران بالا کے بتراض از سر نو انکوائری، جوال ارڈر بک نمبر 243 مورخہ 08-06-2018 کے تحت بحالی ارڈر کے پیروی کرتے ہوئے سرورس پر بحال کرنے اور برخواستگی سے ایئر مورخہ 08-06-2018 تک سرورس سے باہر دوران پتہ پر بلا تخواہ کرنے، کسی قسم کی اور منافع نہ دینے کی سفارش کی جاتی ہے۔ مزید حکم افسران بالا کا افضل ہے۔

انکوائری آفسر SI/PC میرا خان  
ایف۔ آر۔ پی، جنوں ریجن جنوں

Approved  
4

ATTESTED

ORDER

ANNEX "C"

17

The order shall dispose of the enquiry proceedings pending against Constable Sher Nawaz No. 6412 FRP as the official was charged for commission of the following misdeeds:-

The complainant was enlisted in Police Department in the year 2010 and afterward during the course of his duties on the night between 4/5-11-2013 the terrorists ambushed police post Surkh Pul and opened indiscriminate firing upon Constable Sher Nawaz No. 6412 Constable Sher Nawaz No. 2577 as a result thereof, Constable Sher Nawaz sustained sever injuries and was admitted in the hospital, where he became senseless. The accused / terrorists also took away Constable No. 26099/229 along with altered magazines containing 30 rounds KK-Rifle and Constable No. 26099/229 along with altered magazines containing 90 rounds of the same bore. The possession of the above noted firearms and case FIR No.592 dated 05-11-2013 u/s Section 302 of PPC, TATA PS Naurang was registered.

The complainant being member of Police Force of the said police post Surkh Pul in spite of the instructions from the superiors regarding vigilance and alert in the discharge of duties during the prevailing law and order situation and wave of terrorism, failed to combat the situation and showed great cowardice.

The complainant's negligent and casual attitude in performance of his duty badly failed to counter the actions of 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.

When the duty of proper-prober enquiry into allegations leveled against him, he was suspended from service vide mise en force OB No. 13 dated 06-01-2014.

When the complainant from service, he submitted an appeal for re-instatement in service before the Commandant FRP KPK Peshawar, which was examined by the high ups, but the appeal was rejected vide Commandant FRP KPK Peshawar order No. 1606/ Legal dated 10-02-2014.

As the complainant was feeling aggrieved at the outcome of the appeal, he filed service appeal No. 1735 before the honorable service Tribunal KPK Peshawar against the order No. 1606/ Legal dated 06-01-2014 passed by the competent authority.

The complainant has been reinstated 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 10-02-2014 & No.1735/Legal dated 22-05-2018, vide Commandant FRP KPK Peshawar order No. 1606/ Legal dated 01-06-2018.

The copy of decisions of the high ups as per charge sheet No.1208-09 dated 19-06-2018 and service record was properly delivered to him on 21-06-2018 and service record along

ATTACHED

...al connected papers was handed over to Enquiry Officer FRP Bannu Range with  
...nd no further de novo enquiry under relevant Law/Rules.

Assigned official replied to the charge sheet within stipulated period. A discreet enquiry  
...ade and enquiry officer submitted his findings dated 16-07-2018, wherein it was  
...eclared that the Police Post Surkh Pul was surrounded by the bushes and trees, also it have  
...y, which seems unsafe and risky place for duty. Finally E.O suggested / recommended  
...and deem appropriate the above lengthy absence / interviewing period of the defaulter  
...ntality 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,  
...a competent authority has taken a lenient view, agree with the recommendations of the  
...y 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  
16-04-2013 is hereby stand confirmed.

Case No. 302

Date: 17/07/2018

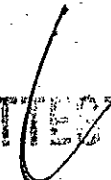
  
Superintendent of Police,  
FRP Bannu Range  
FRP Bannu

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

Deputy Inspector General of Police Internal Accountability, KPK Peshawar w/r to his  
good office Endst No.817/E&I dated 14-06-2018.

Commandant FRP KPK Peshawar w/r to his good office Endst: No.6972/SI Legal dated  
01-05-2018 please.

All confirmed

  
ATTENDED

*Best copy Annexure "C" (17)*

## ORDER

The order shall dispose of the enquiry proceeding pending against constable Rafi ullah No.6407FRP as the official was charged for commission of the following misconduct.

He was enlisted in police department in the year 2010 and afterward during the course of his duties on the night between 4/5-11-2013 the terrorist ambushed police post shakha pull and opened indiscriminate firing upon constable sher nawaz sustained sever injuries and later expired in the hospital, while you became senseless. The accused/terrorist also took govt raifle No. 26099229 along with tittled magazines containing 30 rounds of the same bore in the possession of noted official and case FIR No.592 dated 05.11.2013 u/s 365-404 PPC/7ATA naurang cowardice.

That being negligent and casual attitude in performance of his duty badly failed to cope the terrorist who ambushed the police officials who were on sentry duty, which turned into death of Constable Sher Nawaz No.6412 and great loss caused to the police department.

That after carrying out proper probe/enquiry into allegation 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 reinstatement in service before commandant FRP KPK Peshawar which was examined by the high ups, this appeal was rejected vide commandant FRP KPK Peshawar order Endst no. 57/EC dated 10.02.2014

However he has been reinstated in service by the service Tribunal KPK Peshawar vide judgment dated 16.04.2018 for the purpose of de-novo enquiry proceedings followed by the inspector general of police KPK Peshawar vide his good office letter No.1606/legal dated 22-05.2018 & No.1735/legal dated 22.05.2018 vide commandant FRP KPK Peshawar endst no 697 Legal dated 01.06.2018.

On the directions of the high ups fresh charge sheet No.1208-09 dated 19.06.2018 issued which was properly served upon him on 21.06.2018 and service record along and all connected papers was handed over to enquiry officer FRP 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 conducted and enquiry officer submitted his findings dated 16.07.2018 wherein it was described that the police post surk pul was surrounded by the bushes and trees also it seems unsafe and risky place for duty. Finally E.O suggested/recommended and deems appropriate the

*Below copy*

— (18)

above lengthy absence/ interviewing period of the defaulter and the period may be counted without pay & re-instatement order of the honorable service tribunal may be stand confirmed, if agree.

The record was checked and examined thoroughly. Keeping pin view the undersigned. Being a competent authority has taken a lenient view, agree with the recommendations of the enquiry 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 16.04.2013 is hereby stand confirmed.

CS.No.302.

Dated 17.07.2018

Superintendent of Police FRP

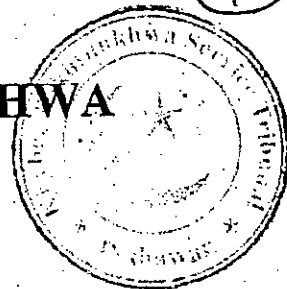
Bannu

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ANNEX D

19

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR



In Re: Service Appeal No. 66 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 42

Dated 09-01-2019

**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*

*Filed to-day*

*Registrar*

*9/1/2019*

*Rec-submitted to the 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.

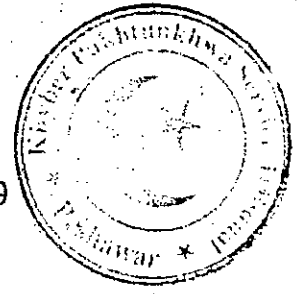
ATTESTED

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

*[Signature]*  
Registrar



**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 Tribal Affairs, Civil Secretariat, Peshawar and two others.

... (Respondents)

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

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL  
PESHAWAR  
ATTESTED

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

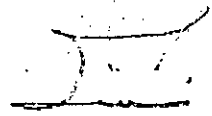
ATTESTER  
JINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

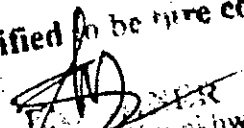
that in wake of the unfortunate incident, occurring on the night falling between 4/5-11-2013, disciplinary action was initiated against the appellants, which resulted in their dismissal from service vide order dated 06.01.2014, passed by the competent Authority. The Service Appeal of the appellants was, 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

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

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

Certified to be true copy  
  
Khair-ud-Din  
Service Tribunal,  
Peshawar

Date of Presentation of Application 07-2-23  
Number of Words Page 4  
Copying Fee 20/-  
Urgent ✓  
Total 20/-  
Name of \_\_\_\_\_  
Date of Completion 09-2-23  
Date of Delivery of Copy 09-2-23

بخدمت جناب عزت مآب SP صاحب محکمہ پولیس، خیبر پختونخوا، بنوں

تروپر اپر چینل

عنوان: درخواست برائے خطائیگی سابقہ بقایا جات (بیک بیلینٹس)

جناب عالی!

گزارش بحضور انور ہے کہ سائل مورخہ 22.12.2010 محکمہ ایف آر پی بنوں ریجن میں بھرتی ہوا۔ سائل نے چار سال ملازمت بڑی جانفشانی اور بھرپور انداز سے سرانجام دی تھی۔ بڑی ذمہ داری سے اپنی ملازمت کر رہا تھا۔ پھر بد قسمتی سے سائل مع چند ساتھیوں کے بحوالہ OB No. 13 تاریخ 06.01.2014 کو ایک دہشت گردانہ حملہ کی بنا پر محکمہ سے برخاست ہوا۔ پھر مورخہ 17.07.2018 کو بحوالہ OB No. 302 بعدالت جناب سروس ٹریبونل کے فیصلہ کی روشنی میں محکمہ نے بعد De-novo انکوٹری کے بحال کیا۔ De-Novo انکوٹری میں سائل پر کوئی التزام ثابت

عرض ہے کہ سائل کے باقی تمام ساتھی سپاہیوں کو ہر قسم کے تمام مراعات مع پوری کی پوری تنخواہوں (back benefits) کے ہر قسم کے الاؤنسز مل چکے ہیں۔ صرف سائل واحد بندہ ہے کہ جس کو کسی قسم کے back benefits وغیرہ نہیں ملے ہیں۔ یہ تنخواہیں نہ ملنے کی وجہ سے سائل کو بہت سی مالی مشکلات کا سامنا ہورہا ہے۔ سائل ایک بے روزگار ہے۔ ہارے والدین اور چھوٹے بچے ہیں۔ ان وجوہات کی بنا پر سائل نے بہت سے قرضے لیے ہیں۔ بہت مشکل میں ہے۔

لہذا آپ صاحبان سے بذریعہ درخواست التماس ہے کہ سائل کی ان مجبوریوں کو مد نظر رکھتے ہوئے گزارش ہے کہ سائل کو دوسرے ساتھیوں کی طرح تمام bank benefits و مراعات دیئے جانے کے احکامات صادر فرمائیں۔ سائل ساری عمر دعا گو اور مشکور رہے گا۔ آپنی بڑی نوازش ہوگی۔

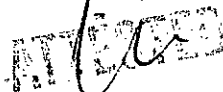
العارض

مورخہ: 18-10-2022



سائل: کنشیل رفیع اللہ 7596

متعینہ حال سراسے نورنگ PP منجیوالہ ضلع لکی مروت بنوں ریجن



24

**VAKALATNAMA**

**BEFORE THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD**

\_\_\_\_\_ OF 2023

Rafiqullah

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Govt of KP & others

(RESPONDENT)  
(DEFENDANT)

I/We Rafiqullah

Do hereby appoint and constitute, **Afrasiab Khan Wazir, Advocate High Court, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. \_\_\_\_/\_\_\_\_/2023

[Signature]  
CLIENT(S)

[Signature]  
**ACCEPTED**  
**AFRASIAB KHAN WAZIR**  
**ADVOCATE HIGH COURT**  
**PESHAWAR**

**Office:**  
Room No.6 Ground Floor, Afridi Tower,  
Government College Chowk, Peshawar.  
Cell No.0312-9888752