



12.01.2023

Counsel for the appellant present.

Muhammad Adeel Butt learned Additional Advocate General alongwith Shabeer Khan S.I for respondents present.

Partial arguments in the appeal in hand have been heard by a bench comprising of worthy Chairman and Ms. Fareeha Paul learned Member (Executive), therefore, the same may be fixed before the said bench for arguments on 13.04.2023 before D.B.


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)


6876/2020

29th Nov. 2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. Advocate General for the respondents present.

Partial arguments heard. Respondents are directed to produce on the next date, enquiry report alongwith relevant papers conducted in the matter. To come up for further arguments on 06.01.2023 before this D.B.

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(Fareeha Paul)
Member (E)

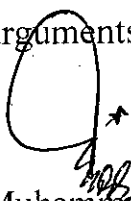

(Kalim Arshad Khan)
Chairman


06.01.2023

Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Suleman, ASI alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

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Partial arguments in the appeal in hand have been heard by a bench comprising of worthy Chairman and Ms. Fareeha Paul learned Member (Executive), therefore, the same may be fixed before the said bench for arguments on 12.01.2023.


(Mian Muhammad)
Member (E)


(Salah-Ud-Din)
Member (J)

28.06.2022

Learned counsel for the appellant present. Mr. Muhammad Ayaz S.I (Legal) alongwith Mr. Riaz Khan Paindakheil, Assistant Advocate General for respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation of the brief of the case. Adjourned. To come up for arguments on 13.09.2022 before the D.B.



(Rozina Rehman)
Member (J)

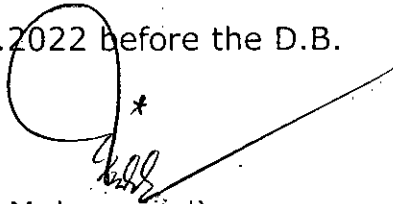


(Salah Ud Din)
Member (J)

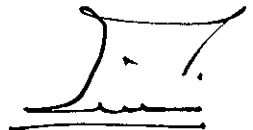
13.09.2022

Learned counsel for the appellant present. Mr. Muhammad Suleman, Head Constable alongwith Mr. Muhammad Riaz Khan Paindakheil, Assistant Advocate General for the respondents present.

Learned counsel for the appellant sought time for preparation of arguments. Adjourned. To come up for arguments on 29.11.2022 before the D.B.



(Mian Muhammad)
Member (Executive)




(Salah-Ud-Din)
Member (Judicial)

[Faint handwritten notes and signatures at the bottom of the page, including a date '28.06.2022' and some illegible text.]

17.09.2021

Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not met preparation for arguments. Adjourned. To come up for arguments before the D.B on 21.12.2021.



(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH UD DIN)
MEMBER (JUDICIAL)

21.12.2021

Clerk of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate along with Mr. Suleman Reader for respondents present.

Clerk of learned counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of lawyers. Adjourned. To come up for arguments before the D.B on 09.03.2022.


(Atiq Ur Rehman Wazir)
Member (E)


Chairman

9-3-22

*Due to retirement of the Hon.ble
Chairman the case is adjourned to
come up for the same as before on
28-6-22*

*Yah
Reader*

1-1 .2020


Due to summer vacation, case is adjourned to
19-3.2021 for the same as before.


Reader

19.03.2021

Mr. Afrasyab Wazir, Advocate, on behalf of learned counsel for appellant and Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Former requests for adjournment due to illness of learned senior counsel today. Adjourned to 02.06.2021 for hearing before D.B.

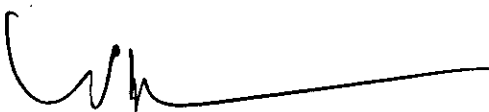

(SALAH-UD-DIN)
MEMBER (JUDICIAL)


CHAIRMAN

02.06.2021

Said
Mr. ~~Sher~~ Khan, Advocate, junior of learned counsel for the appellant present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present.

Junior counsel for the appellant sought adjournment on the ground that learned senior counsel for the appellant is busy before the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments before the D.B on 17.09.2021.


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


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

29.10.2020

Appellant present in person.

Mr. Kabir Ullah Khattak learned Additional Advocate General
alongwith Sohail Aziz H.C for respondents present.

Representative of respondents submitted written
reply/comments. To come up for rejoinder, if any, and
arguments on 01.01.2021 before D.B.



(Rozina Rehman)
Member (J)

11.08.2020

Counsel for the appellant present.

Learned counsel argued that the appellant was proceeded against under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 and was awarded major penalty of dismissal from service by respondent No. 2/Deputy Inspector General of Police, Special Branch, Peshawar. The impugned order dated 27.01.2020 was coram-non-judice because the respondent No. 2 was not the appointing authority of the appellant, ^{Even} otherwise, _L under the provisions of Rule 4 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the respondent No. 1 was competent to have proceeded against the appellant.

In order to resolve the controversy, instant appeal is admitted to regular hearing subject to all justice exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 30.09.2020 before S.B.

Appellant Deposited
Security & Process Fee

26/8/20


Chairman

30.09.2020

Appellant in person and Addl. AG alongwith Saleem Javed, Litigation Officer for the respondents present.

Respondents need time to furnish reply/comments. Adjourned to 29.10.2020 on which date the requisite reply/comments shall positively be furnished


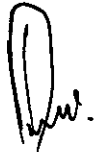

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 6876 /2020

15.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/07/2020	<p>The appeal of Mr. Zahid Ali resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>11/08/2020</u></p> <p> CHAIRMAN</p>

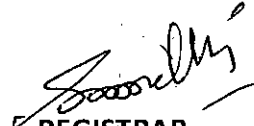
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Peshawar

The appeal of Mr. Zahid Ali Ex- Senior Clerk Special Branch Peshawar received today i.e. on 18.06.2020 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Copies of order and judgment mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 2- Copies of charge sheet, statement of allegations, show cause notice and replies thereto are not attached with the appeal which may be placed on it.
- 3- Annexures of the appeal are illegible which may be replaced by legible/better one.
- 4- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 5- Annexures of the appeal may be attested.

No. 1271 /S.T,

Dt. 19-06 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr.Noor Muhammad Khhtak Adv. Pesh.

Sr.

*All objections have been removed,
hence re-submitted today dated 6/7/2020.*

Mr. Noor Muhammad Khhtak
6/7/2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 6876 /2020

ZAHID ALI

VS

EDUCATION DEPTT:

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6	Show cause notice & reply	G & H	16- 17.
7	Impugned order	I	18.
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APPELLANT

THROUGH:

A
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO _____/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5078

Dated 18/6/2020

Mr. Zahid Ali, Ex-Senior Clerk,
Special Branch, Peshawar.....**APPELLANT**

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa, Peshawar.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT-1974 AGAINST THE IMPUGNED ORDER DATED 27.01.2020 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL WITHIN THE STATUTORY PERIOD OF NINTY DAYS.

PRAYER:

That on acceptance of this appeal the impugned order dated 27.01.2020 may vey kindly be set aside and the appellant be re-instated into service 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:

- 1- That the appellant was initially appointed as Junior Clerk dated 05.10.1994 and later on promoted to Rank of Senior Clerk in 2009 and since his appointment the appellant performed his duties quiet efficiently up to the entire satisfaction of his superiors.
- 2- That on the appellant an FIR No.436 was lodged dated 24.05.2017 under section 460/452 PPC at PS Mathra Peshawar which was subsequently converted under section 302/457 PPC upon the statement of the mother of the deceased and the appellant was charged for the murder of the deceased hence arrested. Copy of FIR is attached as annexure.....**A.**

Filed to Registrar
2009/10/10
Registrar

- 3- That on dated 28.07.2017 the August High Court Peshawar Allowed the bail petition of the appellant, hence released on the bail and the same order is still kept intact. Copy of Bail Order of the August High Court Peshawar is attached as annexure.....**B.**
- 4- That on the basis of the above mentioned criminal allegations the respondent department passed Order dated 19.01.2018 of dismissal from service of the appellant against which appellant filed departmental appeal followed by Service Appeal No.590/2018 before this august Service Tribunal, Peshawar which was allowed vide Judgment dated 04.10.2019 with the directions to conduct de-novo inquiry in the matter. Copy of the order and Judgment date are attached as annexure**C & D.**
- 5- That after obtaining attested copy of the judgment dated 04.10.2019 the appellant submitted the same before the concerned authority for implementation and the same implemented by the authority by re-instating the appellant into service. That after re-instatement the respondent Department issued charge sheet and statement of allegation to the appellant which was properly replied by the appellant. That then after show cause notice has been served on the appellant which was also replied by the appellant and denied the allegations leveled against him. Copies of the charge sheet, reply, show cause notice and reply are attached as annexure.....**E, F, G & H.**
- 6- That it is pertinent to mention that appellant is under trial in the abovementioned criminal case which is still pending before the trial Court, but inspite of that the respondent No.2 once again issued the impugned order dated 27.01.2020 whereby major penalty of dismissal from service has been imposed on the appellant without waiting till the outcome of trial in the above mentioned criminal case. Copy of the impugned order is attached as annexure.....**I.**
- 7- That the appellant feeling aggrieved from the impugned order dated 27.01.2020 filed departmental appeal before the appellate authority which has not been answered so far. Copy of the departmental appeal is attached as annexure.....**J.**
- 8- That the appellant feeling aggrieved and having no other remedy but to file this appeal on the following grounds amongst others.

GROUND:

- A- That issuing impugned order dated 27.01.2020 by the respondent is against the law, facts, norms of natural justice and material on record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated in accordance with law and rules by the respondent department on the subject noted above and as such violated Article 4 and 25 of the Constitution Of Islamic Republic of Pakistan.
- C- That appellant has be discriminated while issuing the impugned order dated 27.01.2020.
- D- That no regular inquiry has been conducted before issuing the impugned order dated 27.01.2020 which is necessary as per judgment of Apex Court before taking punitive action against the civil servants.
- E- That no chance of personal hearing/defense has been provided to the appellant before issuing the impugned order dated 27.01.2020.
- F- That the appellant is still under trial and cannot be declared guilty by the respondent department unless declared guilty by the court of law and thus issuing the impugned order dated 27.01.2020 liable to be set aside.
- G- That the appellant seeks permission to advance any other ground and proof at the time of hearing.

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

APPELLANT

ZAHID ALI

THROUGH:

NOOR MUHAMMAD KHATTAK

&

MIRZAMAN SAFI

ADVOCATES

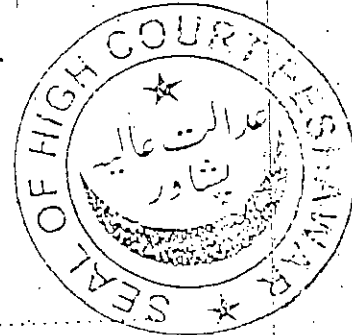
B-5

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT.

Cr.Misc. BA No. 1322-P/2017.

Zahid Ali...vs...The State.



JUDGMENT

Date of hearing.....28.7.2017.....

Petitioner(s) by Mr. Hussain Ali, Advocate.

State by Syed Qaiser Ali Shah, AAG.

Complainant by Sahibzada Riazat Ul Haq, Advocate.

MUHAMMAD AYUB KHAN, J:- Petitioner, Zahid Ali

s/o of Sardar Muhammad, seeks his release on bail in case FIR No. 436 dated 24.5.2017 registered under section 302-457 PPC at P.S Mathra, Peshawar, after being remained unsuccessful to get the same relief from the learned lower court.

2. SHO P.S Mathra, after getting information reached the house of Zahid Ali complainant (now accused-petitioner). He found the dead body of a young boy in the house of petitioner. Petitioner reported that he was asleep alongwith his family members of the house. After hearing some noise he got up. He saw the deceased in his house who had entered the house for theft. The complainant/accused-petitioner raised lalkara and fired at

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Peshawar High C
29 JUL '01

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the deceased who got hit and died. After identification the dead body was identified to be of Shahid son of Yousaf Ali. As per inquest report the dead body was identified by the brother and sister of the deceased. Likewise the dead body was identified again by the brother and sister of the deceased before the Doctor at the time of Postmortem examination. On 27.5.2017, statement of mother of the deceased was recorded under section 164 Cr.PC. She charged the accused-petitioner for the murder of her son.

3 Arguments of the learned counsel for the parties heard and record perused with their assistance.

4 As per the accused-petitioner he acted in the defence of his property. The learned counsel for petitioner referred to section 103 PPC, for convenience same is reproduced below:

"103. When the right of private defence of property extends to causing death.

The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrongdoer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:--

- First. Robbery;
- Secondly. House-breaking by night;
- Thirdly. Mischief by fire committed on any building, tent or vessels, which building, tent or vessel is used as a human

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Peshawar High Court
29 JUNE 2017

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dwelling or as a place for the custody of property;

Fourthly. Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised."

As per ibid section the right of private defence of property extends to causing death in case of house-breaking by night.

5. The occurrence took place at 1.00 am night. Section 105 PPC is in respect of commencing and continuance of the right of private defence of property, according to which " *the right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.*"

6. The occurrence took place in the house of the accused-petitioner and the dead body was found by the police in the house of the petitioner. At present, it seems that the petitioner acted in private defence of property, hence he is entitled to the concession of bail. It will be seen at the trial if he has exceeded this right. Let the prosecution prove so, through cogent evidence.

7. For the reasons given herein above, the instant Cr.Misc. BA No. 1322-P/2017 is accepted and the accused-petitioner is allowed bail provided he furnishes bail bonds

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EXAMINER
Peshwar High Court
20 JUL 2017

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in the sum of Rs. 200,000/- (Rupees two Lac) with two local, reliable and men of means sureties, each in the like amount to the satisfaction of Ilaqa Judicial Magistrate/ MOD.

8. The observations given by this court while deciding bail application, are not to be considered during the trial of the accused, which are tentative in nature and shall not, in any manner, influence the trial Court, which is free to apprise the evidence strictly in accordance with the law and merits of the case.

Sd/- Mubashir Azeem

Announced on;
28th of July, 2017
Zarshad

A. R.
JUDGE



CERTIFIED TO BE TRUE COPY
Exhibitor
Peshawar High Court, Peshawar
Authorized Under Article 17 of
The Gandhara-Shahdai Order 1964
29 JUL 2017

No. 2391
Date of Presentation of Application 28/7/17
No of Pages 27
Copying fee
Urgent Fee
Total 2800
Date of Preparation of Copy 28/7/17
Date Given For Delivery 28/7/17
Date of Delivery of Copy 28/7/17
Received By [Signature]

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[Signature]

ORDER.

This order will dispose of departmental proceedings against Sr. Clerk Zahid Ali of this Establishment. The brief facts of the case are that the defaulter official has been involved in a criminal case vide FIR No.436, dated 24-05-2017, n/s -157/302-PPe, Police station Mathura, District Peshawar, wherein he was charged for culpable homicide of one Shahid s/o Yousaf Ali r/o Aslam Dheri Peshawar by using his pistol at his house.

In this regard, proper departmental proceedings were initiated under Khyber Pakhtunkhwa (Efficiency and discipline) Rules 2011 by issuing Charge Sheet and Statement of Allegations against the defaulter Senior Clerk Zahid Ali, Mr. Sarfaraz Ali Shah SP/R & A Special Branch was appointed as Enquiry Officer to probe into the matter.

The Enquiry officer, after conducting detailed enquiry, found the defaulter official guilty of misconduct in his finding/conclusion.

The defaulter official was issued Final Show Cause Notice vide No.8452/TEB dated 20-12-2017, besides heard in person on 10-01-2018 by the undersigned. His reply to Final Show Cause Notice was not satisfactory/convincing, therefore, I, Oazi Jamil-ur-Rehman Dy. Inspector General of Police, Special Branch, KP, Peshawar being the competent authority impose upon him major penalty of 'dismissal' from service under Khyber Pakhtunkhwa (Efficiency and Discipline) Rules 2011

SCT
(Oazi Jamil-ur-Rehman)
Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.

No. 536-35
TEB, Dated Peshawar, the 19 / 01 / 2018.

Copy to all concerned.

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D-10

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 590/2018

Date of Institution ... 27.04.2018

Date of Decision ... 04.10.2019

Zhaid Ali S/O Sardar Muhammad R/O Street no. 14, Mohallah Hazrat Usman,
Sardar Colony, Charsadda, Road Peshawar. ... (Appellant)

VERSUS

The Govt. of Khyber Pakhtunkhwa through Inspector General of Police, Khyber
Pakhtunkhwa, Peshawar and three others. ... (Respondents)

PRESENT:

MR. NOOR MUHAMMAD KHATTAK,
Advocate

--- For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT.

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

ARGUMENTS

02. Learned counsel for the appellant argued that he was appointed as Junior Clerk on 05.10.1994 and got promoted as Senior Clerk in 2009. That while in service FIR no. 436 U/S 460/452 PPC dated 24.05.2017 PS Mathra, Peshawar was lodged against him. Subsequently, on the basis of the statement of the mother of the deceased, it was converted to Section 302/457 PPC. He was granted bail by the Peshawar High Court, Peshawar vide order dated 28.07.2017. On the basis of involvement in criminal case departmental proceedings were initiated against him

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which culminated in his dismissal from service vide impugned order dated 19.01.2018. He filed departmental appeal on 24.01.2018 which was dismissed on 09.04.2018 followed by the present service appeal. Departmental proceedings against the appellant were not conducted in accordance with the spirit of Police Rules 1975. As due process was not followed and opportunity of defense was denied to the appellant, thus he was condemned unheard.

03. Learned counsel for the appellant further pointed out glaring illegality committed by the respondents in the present service appeal. Charge sheet was served under the signatures of SSP, Special Branch, whereas the impugned order was passed by DIG, Special Branch, who was not the competent authority in the case in hand. As such the impugned order was coram-non-judice and void ab-initio. Reliance was placed on case law reported as 2010 SCMR 1554, 2008 SCMR 1406, 2016 SCMR 108, 1997 SCMR 1073, 2007 PLC (C.S) 997, 2005 PLC (C.S) 417, 2019 PLC (C.S) 255, PLJ 2006 SC 921 and PLJ 2008 SC 65.

04. Learned Assistant Advocate General argued that criminal case vide FIR no. 436 U/S 460/452 PPC dated 24.05.2017 PS Mathra, Peshawar was registered against the appellant. That the appellant while present in drawing room of his house called one Shahid, his neighbor and the student of Class 10th and tried to commit unnatural act/sodomy which resulted ⁱⁿ scuffle between the two. In retaliation Shahid died due to firing by the appellant. Departmental proceedings were initiated and after observance of all codal formalities, major penalty was awarded to the appellant.

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CONCLUSION

05. The present case revolves around the murder of one Shahid a student of class 10th and neighbor of the appellant. Purportedly, the appellant called the deceased to his house and tried to commit unnatural act with him which ensued in scuffle between the two. Allegedly, he was killed as a result of firing by the appellant. Initially, vide FIR no. 436 U/S 460/452 PPC dated 24.05.2017 PS Mathra, Peshawar was lodged against the appellant but subsequently on the statement of the mother of the deceased the same was converted into 302/457 PPC. The appellant was released on bail by the Peshawar High Court, Peshawar vide judgment dated 28.07.2017. In the meanwhile disciplinary proceedings were initiated against him and thereafter, major penalty of dismissal from service was awarded to him.

06. During the course of hearing on 13.06.2019 this Tribunal inquired from the respondents whether ministerial staff working under their administrative control would be proceeded under Police Rules 1975 or Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 and whether the Police Department had adopted E&D Rules 2011? In written response through a concise statement, the respondents informed that according to Section-1 of Khyber Pakhtunkhwa Police Rules 1975 these were applicable to Police Officials of and below the rank of DSP i.e from constable to DSP and furthermore special law applies only to Police personnel in uniform. However, Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 were applicable to the government servants of Special Branch and above beside ministerial staff of the Khyber Pakhtunkhwa Police. However, they could not clarify a point that with regard to adoption of E&D Rules 2011 by the Khyber Pakhtunkhwa Police. The major ambiguity that still

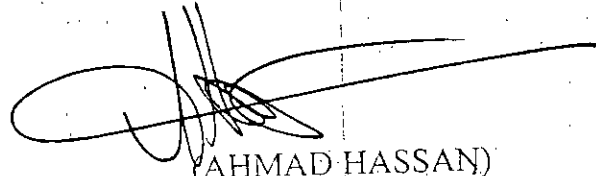
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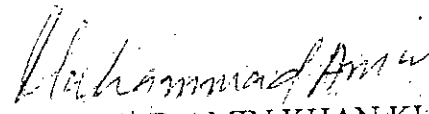
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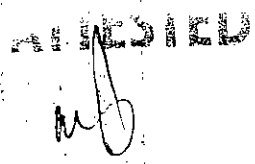
persists in this case is as to who is the appointing/competent authority in the case in hand. In case charge sheet was served by the SSP, Special branch then impugned order should have been passed ^{by him} him. As impugned order was passed by DIG, Special Branch thus it raised apprehensions in our mind whether under the rules, ~~whether~~ he was competent to pass any such order? In case he was not competent to do so then the impugned order was coram-non-judice in the eyes of law. Due to this major flaw we have restrained from analyzing the contents of the inquiry report and was it handled according to the invogue procedure. In order to resolve this controversy it is incumbent upon the respondents to conduct de-novo by taking into consideration our observations.

07. In view of the foregoing, the appeal is accepted, impugned order 19.01.2018 and 09.04.2018 are set aside and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry strictly in accordance with the law and rules within a period of ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to the 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
04.10.2019



CHARGE SHEET

E - (14)

I. Qazi Jamil ur Rehman, DIG Special Branch, Khyber Pakhtunkhwa Peshawar, as a competent authority, under Rule 5(b) of Khyber Pakhtunkhwa, (Efficiency & Disciplinary) Rules, hereby charge you Senior Clerk Zahid Ali as follows:-

- 2) That you have been found involved in Case FIR No.436, dated 24.05.2017, U/s 457/302 PPC, PS/Mathra Peshawar.
- 3) Your this act amounts to gross misconduct and this speaks highly adverse on your part warranting stern disciplinary action against you under Khyber Pakhtunkhwa Government Civil Servants (Efficiency and Discipline) Rules, 2011.
- 4) By reasons of above, you appear to be guilty of misconduct under Rule 4 of Khyber Pakhtunkhwa Govt. Servants Efficiency and Disciplinary Rules, 2011 and it has rendered you liable to all or any of the penalties specified in the Rules ibid.
- 5) You are, therefore required to submit your written defense within **Seven days** of the receipt of this charge sheet to the Enquiry Committee/Enquiry Officer as the case may be.
- 6) Your written defense, if any, should reach the Enquiry Officer / Enquiry committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case an ex-parte action shall follow against you.
- 7) Intimate whether you desire to be heard in person.
- 8) A statement of allegations is enclosed.

DIG (HQ)

Competent/Appointing Authority

J. Ali
(Qazi Jamil ur Rehman)
Dy: Inspector General of Police
Special Branch Khyber Pakhtunkhwa,
Peshawar. *h* 24/11

ATTESTED

MA

DISCIPLINARY ACTION.

15

I. Qazi Jamil ur Rehman, DIG Special Branch, Khyber Pakhtunkhwa Peshawar, am of the opinion that Sr. Clerk Zahid Ali of this Unit has rendered himself liable to be proceeded against departmentally, as he has committed the following acts / omissions within the meaning of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

- 2) He has been found involved in Case FIR No.436, dated 24.05.2017, U/s 457/302 PPC, PS/Mathra Peshawar.
- 3) His this act amounts to gross misconduct and this speaks highly adverse on his part warranting stern disciplinary action against him under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.
- 4) For the purpose of enquiry against the said accused with the reference to the above allegation, an enquiry Committee consisting of Mr. Irshad Khan, SP/Security, Special Branch & Mr. Fazal Hanif DSP/Alien, Special Branch is constituted to conduct Denovo departmental enquiry in the light of CPO letter No.3426-29/CPO/IAB, dated 14-11-2019 on the direction of KP Service Tribunal Peshawar in Service Appeal No.590/2018 titled Zahid Ali versus IGP & others.
- 5) The Enquiry Committee shall, in accordance with the provisions of the said Rules, provide reasonable opportunity of hearing to the accused, record and submit its findings and recommendations within 30 days of the receipt of this order.
- 6) The defaulter official shall be present during the proceedings.

(Qazi Jamil ur Rehman)
Dy: Inspector General of Police
Special Branch Khyber Pakhtunkhwa,
Peshawar.

No. 9453-55 /EB: dated Peshawar the, 22/11/2019.
Copy to:-

1. Mr. Irshad Khan, SP/Security/SB with the direction to initiate departmental proceedings against the accused under the Rules and submit his findings in shortest possible time.
2. Mr. Fazal Hanif DSP/Alien/SB.
- ✓ 3. Senior Clerk Zahid Ali. with the direction to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer for the purpose of enquiry proceedings.

ATTESTED

ms

To,

2019
- 15
F-15
The Worthy Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.

Subject: REPLY TO THE CHARGE SHEET ISSUED BY YOUR GOOD
SELF TO THE UNDERSIGNED ON 22.11.2019

Respected Sir,

In compliance with the Charge sheet received to me on 22.11.2019 vide No.9453-55/EB, dated 22.11.2019.

It is submitted that I am a low paid Govt: Servant and have no male member in my house except my 7-daughters all is minor and school going.

The charge regarding committing of murder is not correct. In fact I was sleeping in my house notice unusual movement at the main gate, I voiced the movement when in the meanwhile. In myself defence also made firing to know the matter, I called for SHO of the Police Station Mathra for help.

He reached the spot found dead body of one Shahid, later on I was charged for the same due suspicion as the occurrence was of midnight.

Sir, I am innocent and have no concern with the same. It is further added that I am the father of 7 daughters and belong to a respectable family.

It is therefore, I may very kindly be exonerated from the charges leveled against me.

Obediently Your's

Zahid Ali

(Zahid Ali)

Senior Clerk, Special Branch
Peshawar

ATTESTED
me

FINAL SHOW CAUSE NOTICE.

G-16

I, Qazi Jamil-ur-Rehman, DIG/Special Branch KP, Peshawar being competent authority under Rule 5(b) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, issue this final show cause notice to you Senior Clerk Zahid Ali on the following grounds:-


"That you while posted at SB/HQrs Peshawar were charged for committing murder vide case FIR No.436, dated 24.05.2017, u/s 457/302-PPc, Police station Mathra, District Peshawar".

After going through the findings of the de-novo proceedings, Enquiry Officer, the material available on record and other connected papers, I am satisfied that you have committed the misconduct being defined under Rule 2(l) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011. As a result thereof, I Qazi Jameel-ur-Rehman DIG/Special Branch Khyber Pakhtunkhwa Peshawar as competent authority have tentatively decided to impose major punishment upon you under Rule 4 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011.

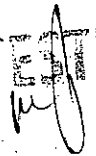
You are therefore, directed through this Final Show Cause to reply **within 07 days** as to why the aforesaid penalty should not be imposed upon you.

In case your reply is not received within stipulated period, it shall be presumed that you have no defense to put. In that case an ex-parte action shall be taken against you.

Also state as to whether you desire to be heard in person.


(QAZI JAMIL-UR-REHMAN)PSP
Dy: Inspector General of Police,
Special Branch KP, Peshawar.

No. 10191 /EB, Dated Peshawar, the 24 / 12 / 2019.

ATTESTED


To,

The Worthy Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.

Subject: REPLY TO THE FINAL SHOW CAUSE NOTICE ISSUED BY YOUR
GOODSELF TO THE UNDERSIGNED ON 24-12-2019

Respected Sir,

In compliance with the Final Show Cause Notice received on 24-12-19
vide No: 10191/EB, dated 24-12-2019, I am submitting the following few lines for
your honour's consideration.

1. That I am a low paid employee and have no male member in my family
except having seven minor daughters who are school going.
2. That the charge of committing murder is baseless and malafide. Actually on
that very night I was sleeping and suddenly I heard some noise near the
main entrance gate of my house and at that time firing also started. So, in
self-defense, I also made firing to get knowledge of this rapid firing and also
called the SHO of PS Mathra for help.
3. That the SHO reached to the spot and found a dead body of one Shahid in
my house and I was charged for the same on suspicion as the occurrence
was of midnight.
4. That I am innocent and have no concern with the same and I am father of
seven daughters and belong to a respectable family.

It is, therefore, most humbly requested that I may very kindly be
exonerated from the charges leveled against me and I may also called for personal
hearing please.

ATTESTED

Yours obediently.

[Zahid Ali]
Senior Clerk

ORDER

I - (18)

This order will dispose of denovo departmental proceedings against defaulter Senior Clerk Zahid Ali of this establishment. Facts forming the background of the denovo departmental proceedings are as under:-

That Senior Clerk Zahid Ali (hereinafter only referred as accused) was involved in a criminal case vide FIR No. 436 dated 24.05.2017 u/s 457/302 PPC, PS Mathra, District Peshawar wherein he was charged for culpable homicide/ murder of one Shahid s/o Yousaf Ali r/o Aslam Dheri, Peshawar by using his Pistol at his abode:

Proper departmental proceedings were initiated against the accused after his suspension under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 and was found to be guilty of misconduct by the enquiry officer hence dismissed from service vide this office Order No. 530-35/EB dated 19.01.2018. He after exhausting departmental remedies, filed Service Appeal No. 590/2018 which was accepted by the Hon'ble Khyber Pakhtunkhwa Service Tribunal vide Order dated 04.10.2019 wherein impugned Orders dated 19.01.2018 and 09.04.2018 were set-aside and he was reinstated in service and the case was remitted to respondent department for denovo enquiry proceedings strictly in accordance with the law and rules within a period of 90 days from the date of receipt of this judgment.

On receipt of the judgment, accused was reinstated in service vide Order No. 9007-12/EB dated 05.11.2019 for the purpose of denovo enquiry and Enquiry Committee comprising SP Security Irshad Khan and DSP Alien Fazal Hanif was also constituted for scrutinizing his conduct with reference to the charge leveled against him.

Proper Charge Sheet and statement of allegations were served upon the accused. The Enquiry Committee, after conducting detailed enquiry, once again found the accused guilty of misconduct in their finding/ conclusion. Hence final show cause notice was issued to him vide letter No. 10191/EB dated 24.12.2019 wherein he submitted reply on 30.12.2019. He was summoned for personal hearing on 17.01.2020 and was heard in person. His reply to final show cause notice was not satisfactory/ convincing, therefore, I, Qazi Jamil-ur-Rehman Deputy Inspector General of Police, Special Branch, KP, Peshawar being competent authority impose upon him major penalty of dismissal from service under Khyber Pakhtunkhwa Government servants (Efficiency and Discipline) Rules 2011.

J. Jamil-ur-Rehman

(Qazi Jamil-ur-Rehman)
Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar

ATTACHED

540-41

No. EB dated, the Peshawar

27 / 01 / 2020

Copies of the above are forwarded to the:-

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to his letter No. 1801/ST dated 17.10.2019.
2. DIG Internal Accountability Branch Khyber Pakhtunkhwa Peshawar with reference to their letters No. 3597 & 3683/CPO/IAB dated 10.12.2019 & dated 24.12.2019.

The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

J-19

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 27.01.2020 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT.

Respected Sir,

- 1) That appellant was appointed as Junior Clerk on 05.10.1994 and was promoted to the rank of Senior Clerk in the year, 2009.
- 2) That on 24.05.2017, the appellant himself lodged FIR for the murder of Shahid Ali, which trial is still awaiting FOR till date.
- 3) That on the aforesaid FIR, the appellant was served with show cause notice on the allegation of involvement in criminal case which was replied and denied the entire allegations leveled against the appellant.
- 4) That later on the appellant was dismissed from service vide order dated 19.01.2018. That Feeling aggrieved the appellant was preferred Departmental appeal before your good self and then after filed service appeal No.590/2018 before the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar. That the aforementioned service appeal was accepted by the august Service Tribunal vide judgment dated 04.10.2019 by set aside the dismissal order dated 19.01.2018 and re-instated the appellant into service.
- 5) That the concerned authority was further directed by the august Service Tribunal to conduct de-novo inquiry in the matter in accordance with law and rules.
- 6) That after obtaining attested copy of the judgment dated 04.10.2019 the appellant submitted the same before the concerned authority.
- 7) That in implementation of the judgment passed by the august Service Tribunal the concerned authority issued charge sheet and statement of allegations to the appellant. That in response to the charge sheet and statement of allegations submitted detail reply and denied all the allegations leveled against the appellant.
- 8) That later on show cause notice was also served on the appellant which was also replied by the appellant and denied the allegations leveled against him.

That it is pertinent to mention here that the appellant is under trial in the above mentioned criminal case which is still pending before the trial court, but inspite of that the concerned authority once again issued the

7041/ES
19/02/20

19/02/20
23

NOTED
me

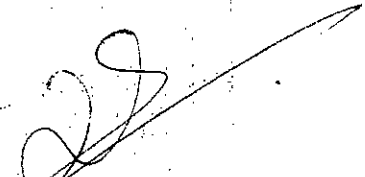
impugned order dated 27.01.2020 whereby major penalty of dismissal from service has been imposed on the appellánt.

20

- 10) That appellánt feeling aggrieved from the impugned order dated 27.01.2020 preferred the present Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned order dated 27.01.2020 may very kindly be set aside the appellánt may be re-instated into service with all back benefits.

Dated: 19.02.2020


ZAHID ALI, Ex-Senior Clerk
Special Branch, Peshawar

ATTESTED



VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Zaid Ali

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Pakistani Deptt:

(RESPONDENT)
(DEFENDANT)

I/We *Zaid Ali*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, 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. ____/____/2020

[Signature]

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

MIR ZAMAN SAFI

&

[Signature]
AFRAS TAB KHAN WAZIR
ADVOCATES

OFFICE:
Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6876/2020.

Zahid Ali, Ex-Senior Clerk Special Branch, Peshawar..... (Appellant)

Versus

Government of Khyber Pakhtunkhwa, through

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar.

.....(Respondents)

S.No	Description of Documents	Annexure	Page No.
1.	Service Appeal		1-3
2.	Authority letter		4
3.	Affidavit		5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6876/2020.

Zahid Ali, Ex-Senior Clerk Special Branch, Peshawar..... (Appellant)

Versus

- 1. Inspector General of Police, Khyber Pakhtunkhwa.
- 2. Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar.
.....(Respondents)

PARAWISE COMMENTS BY RESPONDENTS.

Respectfully Sheweth:

Preliminary Objections

- a) The appeal has not been based on facts.
- b) The appeal is not maintainable in the present form.
- c) The appeal is bad for mis-joinder and non-joinder of necessary parties.
- d) The Appellant is estopped to file the appeal.
- e) The Appellant has got no cause of action to file the appeal.
- f) The Appellant has not come to the Hon'ble Service Tribunal with clean hands.

FACTS

1. Incorrect, on 24.05.2017, Appellant while posted as Senior Clerk in Special Branch Police, invited Shahid a student of 10th class his neighbor to his drawing room for subjecting him (the student) to unnatural lust. According to the investigation report of criminal case FIR No. 340 dated 25.05.2017 under section 302/457 PPC Police Station Mathra District Peshawar, Shahid attended the appellant in pursuance of his call. Appellant induced Shahid for committing sodomy on him (Shahid). The immoral and unnatural offer of appellant outraged and infuriated the Shahid and he allegedly strike appellant on his face. Appellant in order to conceal and cover his misdeed, committed Qatl-i- amd of Shahid by way of making pistol firing on him. He with a view to saving his skin from the charge of Qatl-i- amd lodged false report before Police stating therein that Shahid committed lurking house trespass by night therefore he (appellant) while exercising right of self-defense killed him. Admittedly the criminal case was still pending adjudication before Trial Court but the gruesome murder of young student and concocting and fabricating false story of leveling charges of lurking house trespass by night against innocent victim was amounting to commission of gross misconduct and violation of human rights as well. Therefore Appellant was proceeded departmentally which culminated in passing his dismissal from service Order dated 19.01.2018 but the Service Appeal No. 590/2018 of Appellant was accepted vide Order dated 04.10.2019 with the direction to department for clarification of procedural and legal objections and providing fair opportunity of defense to appellant by conducting de-novo proceedings however the same also met with the same fate vide Order dated 27.01.2020.

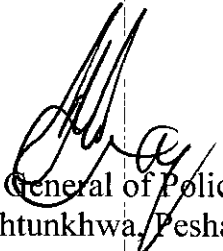
2. Incorrect, appellant had lodged false report. He manipulated a concocted story of charges of lurking house trespass by night against an innocent student with ulterior motive of defending the murder charge and concealing his immoral activity.
3. Incorrect, grant of bail to appellant in criminal case is no ground for defense of departmental charge. Separate criteria for proving the criminal and departmental charge has been provided. Proof of criminal charge requires, strong, cogent, material and confidence inspiring evidence while acts and omissions on the part of civil servant renders him for departmental proceeding on charge of commission of misconduct.
4. Incorrect, Appellant was correctly dismissed from service, he allegedly persuaded a student for commission unnatural offence and on refusal he killed the student and gave colour of trespass to the murder occurrence. He has admitted the commission of offence and has also produced unlicensed pistol before Police, which was taken into possession as weapon of offence. Resultantly, Appellant filed Service Appeal and the same was allowed vide Judgment dated 04.10.2019 wherein department was directed to conduct de-novo proceedings into the matter. De-novo proceedings conducted and the Appellant was once again found guilty hence dismissed from service vide order dated 27.01.2020.
5. Correct to the extent that the appellant was reinstated in service on the direction of Hon'ble Tribunal for de-novo Enquiry proceedings on the ambiguity/flaw that earlier/previous Dismissal Order dated 19.01.2018 was passed by DIG Special Branch while charge sheet was served by SSP Special Branch. This time proper de-novo proceedings were conducted by the Enquiry Committee constituted by the competent authority and the Committee unanimously found the Appellant of committing grave misconduct by killing an innocent young student of 10th class as the chap refused to comply his sexual desire of sodomy/ unnatural act and again he was dismissed from service vide impugned Order dated 27.01.2020.
6. Incorrect criminal and departmental proceedings can run parallel and repeatedly as per dictums of Hon'ble Supreme Court enunciated in reported Judgments "that disciplinary proceedings and criminal proceedings are quite distinct from each other having altogether different characteristics and there is nothing common between the adjudicative forums by whom separate prescribed procedure and mechanism is followed for adjudication and both the forums have their own domain of jurisdiction— Decision of one forum would have no bearing on the decision of other forum in any manner whatsoever and it would be a misconceived notion to consider the acquittal in criminal trial as an embargo against disciplinary proceedings".
7. Pertains to record hence no comments.
8. Incorrect, the appeal of Appellant on the given grounds is not sustainable.


GROUND

- A. Incorrect, proper procedure was adopted during de-novo departmental proceedings enunciated in Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Charge sheet was issued to Appellant and regular enquiry was conducted and the Enquiry Committee found the Appellant guilty of the charges.
- B. Incorrect, the impugned Orders are just, legal and passed in accordance with law and Rules governing the subject matters as Enquiry Committee examined the mother of the deceased and other Police officers for ascertaining the actual facts and no violation whatsoever of the Constitution done by the Respondents Department.
- C. Incorrect, the findings of Enquiry Committee in de-novo departmental proceedings are in detail and the Committee relied on oral and documentary evidence collected during course of enquiry proceedings. Besides no discrimination has been done by the Enquiry Committee during enquiry against the Appellant.
- D. Incorrect, proper de-novo proceedings were done against the Appellant by the Enquiry Committee and he was found guilty and legal Order dated 27.01.2020 was passed by the competent authority.
- E. Incorrect, proper opportunity of defense was provided to Appellant in the de-novo proceedings but he failed to defend the charge.
- F. Incorrect, the principle of law contended by Appellant govern the circumstantial evidence but not departmental proceedings. Criminal and departmental charge is distinct in nature and opinion of one forum is not binding on the other forum and both proceedings can run parallel to each other.
- G. The Respondents may also be allowed to raise other grounds during hearing of the case.

Prayer

Keeping in view the above stated facts, it is humbly prayed that on acceptance of above submissions, the appeal of the Appellant may very kindly be dismissed with costs please.


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.
(Respondent No.2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6876/2020.

Zahid Ali, Ex-Senior Clerk Special Branch, Peshawar..... (Appellant)

Versus

Government of Khyber Pakhtunkhwa, through

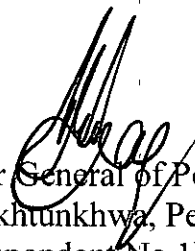
- 1. Inspector General of Police, Khyber Pakhtunkhwa.
- 2. Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar.

.....(Respondents)

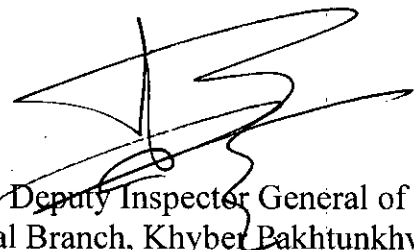
AFFIDAVIT

We the deponents do hereby declare that the contents of the written reply are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Tribunal.

Deponents



Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)



Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.
(Respondent No.2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6876/2020.

Zahid Ali, Ex-Senior Clerk Special Branch, Peshawar..... (Appellant)

Versus

Government of Khyber Pakhtunkhwa, through

- 1. Inspector General of Police, Khyber Pakhtunkhwa.
- 2. Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar.

.....(Respondents)

AUTHORITY LETTER

Muhammad Asif DSP Legal, Special Branch, Khyber Pakhtunkhwa Peshawar is hereby authorized to appear on behalf of the Respondents before the Hon'ble Service Tribunal Peshawar. He is authorized to submit all required documents and replies etc pertaining to the appeal through the Government Pleader.

Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)

Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.
(Respondent No.2)



FOR PUBLICATION IN THE KHYBER PAKHTUNKHWA
POLICE GAZETTE PART-II ORDERS BY THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA PESHAWAR

Op. No. 2377
31-8-2017
16180

ADDENDUM

Dated: 29/8/2017

No. 4740-4850/E-V, DISCIPLINARY ACTION. Powers of disciplinary action against Ministerial Staff were delegated to RPOs / DPOs within the meaning of Article 31 of Police Order 2002 (Now incorporated in Section 44(4) of Khyber Pakhtunkhwa Police Act, 2017) vide this office Notification No. 8511/E-V, dated 28-12-2015. Police Policy Board approved delegation of the powers of disciplinary action against the Ministerial Staff to Addl: IGsP / DIsG, head of unit of Police and SSsP / Dy: Commandants of the unit of Police in line with the notification ibid. Therefore an addendum is issued in continuation of notification ibid and powers of disciplinary actions against the Ministerial Staff are also delegated to the authorities of units of Police as per detailed below:-

DESIGNATION	ACTION IS TO BE TAKEN AGAINST THE MINISTERIAL STAFF
Addl: IGsP / DIsG, head of unit of Police	Office Supdt: (BPS-17), Stenographers (BPS-16) Assistant Grade Clerks (BPS-16), Steno Typist (BPS-14) and Senior Clerks (BPS-14)
SSsP/DY: Commandants	Junior Clerks: (BPS-14) and Naib: Qasid/Class-IV (BPS-1 to 4)

Muhammad Ashraf Noor
(Muhammad Ashraf Noor) PSP

Addl: IGP/HQrs:
For Inspector General of Police:
Khyber Pakhtunkhwa,
Peshawar.

Endst: No. & date even.

Copy forwarded to the: -

- All Addl: Inspectors General of Police of Khyber Pakhtunkhwa,
- All RPOs of Khyber Pakhtunkhwa.
- Capital City Police Officer, Peshawar.
- All DIsG of Khyber Pakhtunkhwa.
- Commandants, FRP and PTC, Hangu.
- All DPOs of Khyber Pakhtunkhwa.
- All AIsG of Khyber Pakhtunkhwa.
- Director I.T, Khyber Pakhtunkhwa Peshawar.
- Director FSL, Khyber Pakhtunkhwa Peshawar.
- Commandant CPC-University Campus, Peshawar.
- Deputy Director Audit, CPO Peshawar.

DIG/SB	<input checked="" type="checkbox"/>
SSP/Admn/P	<input checked="" type="checkbox"/>
SP/S	<input type="checkbox"/>
SP/Int;	<input type="checkbox"/>
SP/Survey	<input type="checkbox"/>
SP/INS-Disk	<input type="checkbox"/>
SP/JIT	<input type="checkbox"/>
SP/EAA	<input type="checkbox"/>
SP/Hrs;	<input type="checkbox"/>
AIG/BSU	<input type="checkbox"/>
Dir/Tech;	<input type="checkbox"/>
Dir/Canine	<input type="checkbox"/>
RI/Acct/ISA	<input checked="" type="checkbox"/>

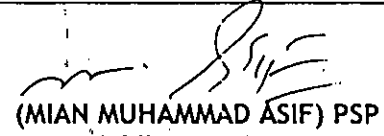


FOR PUBLICATION IN THE KHYBER PAKHTUNKHWA,
POLICE GAZETTE PART-II ORDERS OF THE INSPECTOR
GENERAL OF POLICE, KHYBER
PAKHTUNKHWA, PESHAWAR.

NOTIFICATION

No 8511 /E-V, DISCIPLINARY ACTION:- The Competent Authority while exercising powers conferred on him under article 31 of Police Order 2002, has accorded approval for delegating powers of disciplinary action against Ministerial Staff to RPO/DPO as detail mentioned below.

S NO	DESIGNATION	ACTION IS TO BE TAKEN AGAINST
1.	Regional Police Officers.	Office Supdts: (BS-17), Stenographers (BS16), Asstt: Grade Clerks (BS-16) and Steno Typists (BS-14)
2.	District Police Officers.	Senior Clerks (BS-14), Junior Clerk (BS-11) and NQ/Class-IV (BS 1-4).


(MIAN MUHAMMAD ASIF) PSP

Addl: IGP, Hqrs:
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No 8512-8615 /E-V DT 28-12-2015

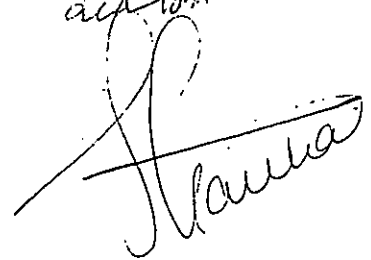
Copy of above is forwarded for information and necessary action to the :-

1. All Additional Inspectors General of Police in Khyber Pakhtunkhwa.
2. All RPOs in Khyber Pakhtunkhwa.
3. Capital City Police Officer, Peshawar.
4. All DisG in Khyber Pakhtunkhwa.
5. Commandants, FRP and PTC, Hangu.
6. All DPOs in Khyber Pakhtunkhwa.
7. All AlsG in Khyber Pakhtunkhwa.
8. Director, IT, Khyber Pakhtunkhwa, Peshawar
9. Director, FSL, Khyber Pakhtunkhwa, Peshawar.
10. Commandant, CPC University Campus, Peshawar.
11. Deputy Director Audit, CPO, Peshawar.
12. Registrar, CPO, Peshawar.
13. Budget Officer, CPO, Peshawar.
14. All Office Supdts: in CPO, Peshawar.
15. Incharge Central Registry, CPO, Peshawar.


SSP/A

EC

for info and necessary
action



Asstt. IGP FB
29/12/15

P. N. K.

12-12-2019

Subject; Denovo Departmental Inquiry against Senior Clerk Zahid Ali

Brief Facts:-

That on 24.05.2017 at midnight, Zahid Ali Senior Clerk r/o Rehan Town Aslam Dheri called SI Malang Jan SHO PS Mathra and reported that he along with other family members was sleeping in his house, woke up on hearing some noise and saw that an unknown person had trespassed into his house for committing theft. On his shouting, the suspect tried to escape. The accused further stated that he opened firing upon the suspect on self-defence, due to which he was hit and expired on the spot. Later on identified as Shahid S/O Yousaf Ali R/O Aslam Dherai. SHO took into his possession one pistol 9 mm recovered from Zahid Ali and on his report drafted murasla, hence a case vide FIR No; 436 dated 24.05.2017 U/S 460 PPC, PS Mathra was registered. After registration of the FIR, the case was sent to investigation staff for further probe. SI Imtiaz Khan OII prepared site plan, recorded the statements of eye witnesses as well as statement of Mst; Bakht Taja mother of the deceased U/S 164 CrPC. Arrested the accused. The section of law was altered from 460 PPC to 302/457 PPC/ 15 AA. Later on, the accused Zahid Ali was released on bail by the honourable Peshawar High Court Peshawar.

Initially departmental inquiry was conducted by Mr. Sarfaraz Ali Shah the then SP R&A Special Branch by declaring the accused as guilty in the said murder case and the accused official was dismissed. The said order was challenged by the accused official in court. The court of honourable service tribunal Peshawar set aside the said order on the ground that the charge sheet was issued to the accused official by the SSP Admin, while his termination order passed by the W/DIG Special Branch and ordered for De-novo inquiry against the accused official.

In pursuance to the court decisions dated 04.10.2019, the competent authority has reinstated the accused official vide no.9007-12/EB dated 05.11.2019 and served him with the charge sheet vide No.9453-55/EB, dated 22.11.2019 wherein enquiry committee of the undersigned were nominated for conducting the De-novo departmental inquiry against the accused.

Allegations as per Statement of Allegation against Senior Clerk Zahid Ali

“That the accused has been involved in case FIR No. 436 dated 24.5.2017, U/s 457/302 PPC, PS Mathra Peshawar”.

Proceedings:-

Reply to the charge sheet was submitted by the accused official, which was not satisfactory. During the course of inquiry Mst; Bakhtaj Bibi and the following officials/officers concerned were summoned, recorded their statements & gone through the relevant record and placed their statements on file for reference. 7

- i. Mst; Bakhtaj bibi w/o Yousaf Ali and mother of the deceased attached as F/A.
- ii. SI Malang Jan the then SHO PS Mathra attached as F/B
- iii. SI Imtiaz Khan the then incharge Investigation PS Mathra. As F/C
- iv. SI Farhad Hussain the then O-II PS Mathra. As F/D
- v. Accused Zahid Ali the then Senior Clerk attached as F/E

1. Statement of Mst; Bakhtaj bibi the mother of deceased

Mst; Bakhtaj w/o of Yousaf Ali (mother of deceased Shahid) stated in her statement that her son namely Shahid of 17 year old was sleeping in his Drawing/guest room. At mid-night between 23 & 24.5.2017 at 00:15 am the door of drawing room was knocked when Shahid opened the door, Zahid Ali alongwith 03 unknown persons were present; Zahid Ali along with others took her son for a distance wherein the Zahid Ali R/O Tehsil Tangi District Charsadda at present residing in Aslam Dheri Pajagi Road Peshawar opened fire on her son in an open plot, he was hit and became injured. After firing Zahid Ali dragged him to his house and on his call the local Police arrived and took the injured to Police Station, she further added that SI Malang Jan the then SHO PS Mathra did not carry the injured for medico legal treatment to Hospital and till morning he was kept lying in Police Station, while after the death of her son the dead body was sent for Post mortem and handed her over after post mortem. She added that in the instant case SI Malang Jan has played a negative role against her favour.

2. Statement of SI Malang Jan Khan the then SHO PS Mathra

Malang Jan SI, who was posted as SHO PS Mathra stated that on the day of occurrence Senior Clerk Zahid Ali contacted him on phone at about 2400 hrs and asked him to reach his house because he had shot an unknown person who trespassed in his house. When he reached the spot and saw a body which was lying uphill in the stairs inside the house. He checked the body and found him dead, while on the spot he contacted his Circle DSP and informed him about the situation. He recorded the report of the said Senior Clerk and drafted murasla on the spot and the dead body was dispatched to mortuary for post mortem.

3. Statement of SI Imtiaz Khan the then incharge Investigation PS Mathra

Imtiaz Khan SI, stated that he was posted as O-II PS Mathra received murasla from SI Malang Jan acting SHO PS Mathra wherein FIR No.436 dated 24.5.2017 u/s 460 PPC was registered on the report of Zahid Ali Senior Clerk Special Branch. On perusal of the case file he came to know that the complainant/accused Zahid Ali was sleeping in his house and heard some noise and saw that an unknown person trying to escape from his house, he opened fire in self-defence through his 9mm pistol (without licence) which was recovered by SI Malang Jan from Zahid Ali. He further investigated that the deceased Shahid was a neighbour of the accused Zahid Ali, and dressed in a white vest, Shalwar and barefooted as well as without arms was killed. He further added that he gone through section 100 PPC to check whether act of the accused falls in the domain of 100 PPC or otherwise, but his act was not covered by section 100 PPC therefore, he altered the section of law from 460 PPC to 302, 457 PPCs & 15 AA and arrested him. He also recorded statements of the mother of deceased u/s 164 Crpc before the competent court. He further opined that deceased Shahid was not went for any theft but for some other purpose and during investigation he checked the CDR but no result found in this regard. Later on he was transferred from PS Mathra and further investigation made by SI Farhad Hussain.

4. Statement of SI Farhad Hussain the then O-II PS Mathra

Farhad Hussain SI, while posted O-II PS Mathra, at present CTD Peshawar, stated that he had made full efforts in case and interrogated Fatima daughter of the accused but no connection regarding their relationship found. He further stated that the deceased Shahid was entered the house illegally but his purpose of entrance the house not cleared to why he entered the house.

During cross examination he admitted that the deceased Shahid ^{had} was entered the house illegally and was killed inside the house.

5. Statement of the accused Zahid Ali Senior Clerk Special Branch

Zahid Ali Senior Clerk Special Branch, stated that on 24.5.2017 he along with his family members was sleeping in his house, heard some suspicious voices, he woke up and found that an unknown person was trying to escape, he shout him but no response received so he opened fire through his 9mm pistol in self-defence. As a result an unknown person was shot dead. After identification it found that the deceased was Shahid s/o Yousaf Ali r/o village Aslam Dherai. He further stated that he had no enmity with Shahid.

Finding:-

I have gone through the case file as well as aforesaid statements and found that:-

1. On 24.5.2017 midnight the deceased Shahid was not entered the house for any theft but entered the house for other illegal activity, as the deceased Shahid had no weapon on the spot neither any objectionable material was found with him. The deceased Shahid went the said house without Shirt and footwear. He dressed only a vest and Shalwar and found killed on the stairs uphill position which did not falls in the right of self-defence to exercise in that situation.
2. According to post mortem report an entry wound on chest and exit wound on back found on the deceased body but according to the statement of the accused official, the deceased Shahid was trying to escape, so he opened fire and hit him on back side, so there is contradiction in the post-mortem report and the statement of accused.
3. According to the statement of the accused Zahid Ali that he has no concern (friendship/enmity) with Shahid but the investigation officer specified their friendship as well as their enmity in case Dairy No.6, wherein they have close relation since long.
4. In the light of PM report, site plan and recovery from the spot the allegations levelled by the mother of the deceased that her son was killed at an open plot and then dragged to his house is not correct but the incident has taken place inside the house of accused.

Recommendation:-

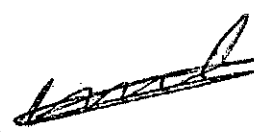
In view of the above circumstances the following is recommended if approved:-

1. That the accused official Zahid Ali Senior Clerk of Special Branch is found to be guilty in the said murder case, but it is worth to mention that the murder was occurred inside the house premises.

Submitted for your kind perusal and further orders please.


Fazal Hanif
DSP Alien Special Branch

18/12/19


Muhammad Irshad
SP Security Special Branch;

W/DIG SB

NOTIFICATION.

Dated Peshawar, the 5-10 /1994.

NO. 21021 /E-III, APPOINTMENT/POSTING:-Mr. Zahid Ali S/O Sardar Mohammad of District Dharsadda is appointed as Junior Clerk(BPS-5) purely on temporary basis in the N.W.F.P., Police with effect from the date he actually reports for duty to his place of posting subject to medical fitness and verification of Character and antecedents etc.

On appointment he is posted to Malakand Range Swat.

The conditions of his services will be as under:-

1. His services are liable to be terminated within 14 days notice without assigning any reason.
2. He will neither be confirmed as Junior Clerk nor considered for promotion as Offg: Senior Clerk until and unless he passes type test/departments training etc during the period of his service as Junior Clerk, failing which his services will be dispensed with.

Sikandar Muhammad Zai

(SIKANDAR MUHAMMADZAI)
DY:INSPECTOR GENERAL OF POLICE,
HEADQUARTER N.W.F.P., PESHAWAR.

NO. 21022-24 /E-III, Dated Peshawar, the 5-10 /1994.

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

1. Dy:Inspector General of Police, Malakand Range, Swat.
2. Asstt:Secret CPO, Peshawar.
3. Mr. Zahid Ali S/O Sardar Mohammad District Charsadda.

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