

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1810/2022.

Pir Muhammad s/o Noor Muhammad Ex-Technical Head Constable No. 744/SB Special
Branch Khyber Pakhtunkhwa, Peshawar (Appellant)

VERSUS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5984

Dated 14/6/2023

Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa and two 2 others

.....(Respondents)

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Branch Khyber Pakhtunkhwa, Peshawar (Appellant)

VERSUS

Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa and two 2 others

.....(Respondents)

REPLY BY RESPONDENTS.

PRELIMINARY OBJECTIONS:-

- a) That the appellant has no cause of action.
- b) That the appeal is badly barred by law & limitation.
- c) That the appellant has been estopped by his own conduct to file the appeal.
- d) That the appeal is not maintainable in its present form.
- e) That the appellant has not come to the Hon'ble Tribunal with clean hands.
- f) That the appeal is bad for misjoinder and non joinder of necessary parties.

FACTS:-

1. Pertains to Service record of appellant, needs no comments.
2. Pertains to record. Need no comments.
3. Incorrect, the appellant while posted in Special Branch HQrs Peshawar got involved in criminal case bearing FIR No. 427 dated 30.06.2020 u/s 302-34/PPC, Police Station Katlang District Mardan. Therefore, he was placed under suspension on 30.06.2020 (Copy of FIR and Suspension Order are enclosed as Annexures A & B).
4. Incorrect and misleading as the appellant was directly charged in FIR.
5. Correct to the extent that appellant was later acquitted by court of law in case FIR No. 427, however it is pertinent to mention that criminal proceedings and departmental proceedings are two different entities, fate of one does not affect other. Furthermore, offence/charge against the appellant falls in heinous Crimes and amounts to gross misconduct in discipline Force.
6. Incorrect, as already explained above, judicial & departmental proceedings go side by side moreover, according to the circumstances and available record the accused official Pir Muhammad/ Appellant absented from his lawful duty on 26.06.2020 without informing his highups. Moreover, investigation officer of the case stated in

his statement that appellant along with other three accused were present on the spot. (Statement of Investigation Officer is enclosed as Annexure C).

7. Correct.
8. Correct to the extent that for the reason that the appellant's criminal case was subjudice by court, the enquiry officer recommended to keep the enquiry pending till the disposal of the case. However, the competent authority receipt of said findings had ordered to initiate de-novo enquiry on it, wherein he was recommended for major punishment. (Copy of Denovo Enquiry Report is enclosed as Annexure D)
9. Incorrect, as already explained in Para 8.
10. Correct to the extent that reply to the FSN was also not found satisfactory beside being heard in person.
11. Incorrect, proper departmental enquiry was initiated against Ex-Constable Pir Muhammad. In enquiry proceedings it was found that appellant is ill-reputed and involved in heinous crime after which the appellant was issued a Final Show Cause Notice with an opportunity to be heard in person. In reply to Final Show Cause Notice the defaulter Constable failed to submit any cogent reason regarding the allegation leveled against him. After fulfillment of all codal formalities enquiry officer recommended major punishment for appellant. Hence, he was dismissed from service.
12. Correct.
13. Correct to the extent that departmental appeal was rejected being time barred coupled with his actions.
14. Incorreced, appellant has got no cause of action. Therefore, the instant appeal my kindly be dismissed on the following grounds.

GROUNDS:-

- A. Incorrect, the order has been passed by the competent authority according to law/rules and no injustice or illegality has been done with the appellant.
- B. Incorrect, as already explained in Para A.
- C. Incorrect, as already explained in the preceding paras that the appellant was involved in criminal case which is gross misconduct in discipline Force. Furthermore, judicial proceeding & departmental proceeding go side by side.
- D. Incorrect, as already explained in above Para No. C.
- E. Incorrect, as already explained in Para No. 8.
- F. Incorrect, as already explained in above Para-C.
- G. The enquiry officer fulfilled legal requirements of enquiry proceedings.

- H. Incorrect, the impugned order have been passed on the recommendation of enquiry officer wherein charges against the appellant were proved.
- I. Incorrect, all the legal requirements have been fulfilled by the enquiry officer.
- J. Incorrect, the order has been passed according to Police Rules, Law and after fulfilment of all codal formalities.
- K. Incorrect, appellant has already been dealt with according to law, rules and regulations, no injustice has been done to the appellant.
- L. Respondents may also be allowed to raise other grounds at the time of arguments/hearing.

PRAYER:-

Keeping in view of above stated Facts, it is therefore humbly prayed that Service Appeal is devoid of merits and based on wrong grounds may 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)



Senior Superintendent of Police, Admin,
Special Branch, Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 3)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1810/2022.

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Branch Khyber Pakhtunkhwa, Peshawar (Appellant)

VERSUS

Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa and two 2 others


.....(Respondents)

AUTHORITY LETTER

Javed Iqbal DSP 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)



Senior Superintendent of Police, Admin,
Special Branch, Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 3)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
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Branch Khyber Pakhtunkhwa, Peshawar (Appellant)

VERSUS

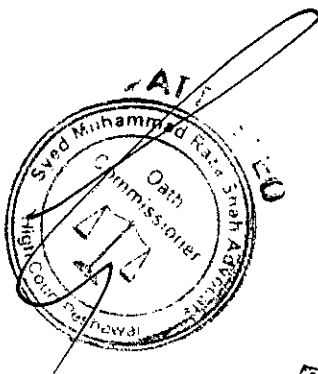
Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa and two 2 others

.....(Respondents)

AFFIDAVIT

I, Javed Iqbal DSP Special Branch Peshawar, representative for Respondent No. 01 to 03 do hereby solemnly affirm and declare that the contents of the accompanying comments submitted by us are true and correct to the best of our knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

It is further stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor their defense is struck off.



[Signature]
Deponent
CNIC No. 17301-1444400-5
Cell # 03459128346

14 JUN 2023

(A)
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18101-1169604-1

درعی روح اللہ 1-1-16103-0341001-1
mob: 0315-6536585

قلم نمبر 105-23
مقدمہ نمبر 16101-563-02-7

تاشیڈی 16101-1317350-5
0348-2071293

ایجنسی پولیس KPK قلم نمبر 9-1-16101-3158231-7
قابل

ابتدائی اطلاع رپورٹ

ابتدائی اطلاع نسبت قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 152 مجموعہ ضابطہ قوجدازی

کاٹنگ محل جردان
03 دہ 427 تاریخ وقت و قوس 30⁰⁶ وقت 05:40

تاریخ وقت رپورٹ 30 ⁰⁶ وقت 06:00 بجے	جاگدگی بر حسب 30 ⁰⁶ وقت 30
نام و سکونت اطلاع دہندہ مستفید	
شخصی کارڈ نمبر اسپتال نمبر روح اللہ ولد سردار ازخان بچہ 27 سالہ سکندہ عمر آباد	
مقرر کیفیت جرم (معدومہ) حال اگر کچھ کیا گیا ہو۔	PPC 302-324-34
جائے وقوعہ قاصد قمانہ سے اور دست	واقعہ شہرے غارہ شیرو
نام و سکونت مزم 1 عبد اللہ 2) فکر خان 3) اختران	بستراں بمراخان 4) بیرو محمد وارث
شخصی کارڈ نمبر اسپتال نمبر ساکنان بمراخان کاٹنگ	
کارروائی جو تفتیش کے حلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وجہ بیان کرو	برسیدگی حراسہ مقدمہ قائم کیا جاتا ہے
قمانہ سے روانگی کی تاریخ وقت	بطور سپیشل رپورٹ


سراج خان از خان دست کیشل ابتدائی اطلاع پنج درج کرو۔ لوقت صدر ایک تحریر پڑھا اور
 کاٹنگ جب اطلاع اسپتال حضرت اللہ 1911 وصول ہو کر ذیل سے بخود 115 سالہ
 عمر آباد، بشمول واپس اور انش نوری محمد وکیل کریم نے نفس مقتول نور اللہ بچہ 27 سالہ
 لیس کر کے روح اللہ رپورٹ کرتا ہے کہ آج میں ماہوں نور محمد لیساری ہوشیار پور ہسپتال
 ذرا اللہ سردار اپنے ہوشیار پور ہسپتال پر خود سے نکلے میں اور واپس 11 بازار کاٹنگ
 عم اسکے پیچھے جب خانے وقوعہ لوقت وقوعہ پہنچے تو وہاں ہر ایک سے مسلمانہ نور اللہ
 قتل ہوا اور اس کے ساتھ ساتھ اراضی پر تیار ہے میں اپنے آپ ماہوں نور محمد سردار اور
 بقصد ہی انہوں نے ہم پر اپنے اپنے اسلحہ سے ہار اڑھہ قتل فائرنگ شروع کی جس کے
 نتوے نور اللہ آگ کر خان بحق ہوا ہم بال بال آج گئے واقعہ ہذا ہم دونوں کا چہرہ
 زمان کے ساتھ راستہ اراضی پر تیار ہے میں اپنے آپ ماہوں نور محمد سردار اور
 رہا ارادہ قتل فائرنگ کرنے اور سردار کے قتل کرنے کا خلاف فائرنگ کسان
 دست کیشل رپورٹ کا روائی پولیس حسب گفتہ سائل رپورٹ درج بالا ہو کر ہسپتال
 ست تسلیم کر کے زائر رپورٹ خود دست خط جبکہ تاشیڈی کنڈہ نے تاشیڈی دست
 نتوے کے کارڈزات دست تیار کر کے بعض پر شمارم رپورٹ زیر حقائق کیشل
 کہ ڈاکٹر صاحب کی حضور رپورٹ سے صورت جسم مالا کا پارٹی ہاگ سردار
 نیل رپورٹ دست کیشل حضرت اللہ 1911 ارسال قمانہ سے تفتیش کے واسطے
 (ب) خان از خان کاٹنگ فرخ 30⁰⁶ کارروائی قمانہ لیس آدہ ارسال صرف
 یہ بچہ آدہ ہر تیب ہوا نتوے FIR ہے آدہ ارسال تفتیش کے واسطے تاشیڈی
 تے سے افسران مالا صاحبان کو بطور سپیشل رپورٹ اطلاع دی جا رہی ہے

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ORDER


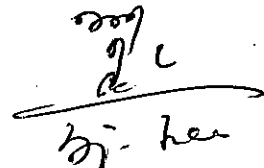
Being involved in criminal offence and charged in Case FIR No. 427 dated 30.06.2020 U/S 302/324/34 PPC PS Katlang District Mardan, Technical Constable Pir Muhammad No. 744/SB of this establishment is hereby placed under suspension with immediate effect.

Departmental proceedings under Khyber Pakhtunkhwa Police Rules 1975 (Amended 2014) are also initiated against him.


(MUHAMMAD IRSHAD KHAN)
Senior Superintendent of Police Admn;
Special Branch, Khyber Pakhtunkhwa,
Peshawar.

No. 5266-68 /EB; dated Peshawar the, 30 / 6 /2020. 9

- Copy to the:-
1. Director Technical/SB.
 2. LO/SB.
 3. EA & SRC.

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جناب عالی!

حقیقی انگریزی بگری 08/20 dt Pesh 119/INT, پشاور سپرینٹنڈنٹ پولیس پشاور
برایع پشاور کا تعلق قعدہ نمبر 427 خورد 6/20 30.77 302-324 تھانہ کانسٹیبل
34/15AA سے ہے۔

FIR کا متن حسب ذیل ہے۔

دن حدی قعدہ ریح اللہ نے لعش مقول برادر خود نور اللہ بھر 39 سال بمقام کچھنی ہسپتال
انڈیا میں سرنام خان ASI کو پیش کر کے یوں روپوش کی کہ آج میں ہم ماہوں ام نور محمد سیوری
مورٹسائیٹل فور جہ مقول نور اللہ برادر ام اپنے مورٹسائیٹل پر گور خود سے نکلی۔ پشاور
ماہوں ام بازار کانسٹیبل جہ برادر ام مقول نور اللہ عدینہ بیکریٹ قعدہ واقع گندڑ
جاری ہے۔ برادر ام مقول ہم سے کچھ فاصلہ پر آئے جبکہ ہم اسات پہلے جاری تھے۔
جب جائ وقوع بالا لہے تو فیاں پر پہلے سے مسلمان عبداللہ حکم خان، افتخار لہرز
عمر خان اور پندر محمد ولد نور محمد سائمان عمر آباد مسلح بہ اسلحہ آئشن ہو رہے تھے۔ ہمیں
دیکھے ہی انہوں نے ہم پر اپنے اسلحوں سے بہ ارادہ قتل فائرنگ شروع کی۔
فیل فائرنگ سے مقول نور اللہ بھر جانا بکھا ہوا جہ ہم بال بال بچ گئے۔ واقعہ پڑا
م دو نوں کا ہتھیار ہے۔ دم عمار ملزمان مسافر واسطہ رافعی پر تیار ہے۔ اس
نے اپنے آپ ماہوں اس نور محمد پر بہ ارادہ قتل فائرنگ کیا برادر اس مقول
نور اللہ سے قتل کا برخلاف ملزمان بالا وغیرہ کی

Noted

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attested
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کاروائی لفیشن :-

دن جن اسلحہ جوئے جار لعشہ جوئے ویت ما۔ جوئے واردات سے از جہ مقول
قعدہ فون بند رہا روئی بکھا کر بروئے فرد صف پولیس کی۔ اور اسی طرح آپ
عدد گولی سکے برآمد کرے بر بروئے فرد صف پولیس کی اور تین عدد خول کارٹوس
38 بور مارن جلدہ ہم مورٹسائیٹل مقول برادر سے بروئے فرد قبو پولیس کی

P.T.E

(ii) پارچہات قمیض شلوار برنگ سفید خون لود اڑان قصول لورائہ فرسڈن ڈالڈا صاحب بروڈ فورڈ جیم پولیس آئی

(iii) جان وقوع پٹرول پیپ میں CTV کیمو لفب شدن کا یارڈ ڈسک برآمدت بروڈ فورڈ جیم پولیس آئی جو یارڈ ڈسک چیک کرن پر ناقابل استمال یا باقیات

(iv) عدوان خانہ تلالشی ملنم اغتیار کے قوتھ خوشیاں سے اکتوبر پتول 30 یور بلائڈ برآمدت جسا کے میں سے تاوان چلیدن بارود کی جو آریں تھی قندہ خدا میں لہور اہر قتل بروڈ فورڈ جیم پولیس میں کرت بندہ پارسل سنگی

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9/10/2011

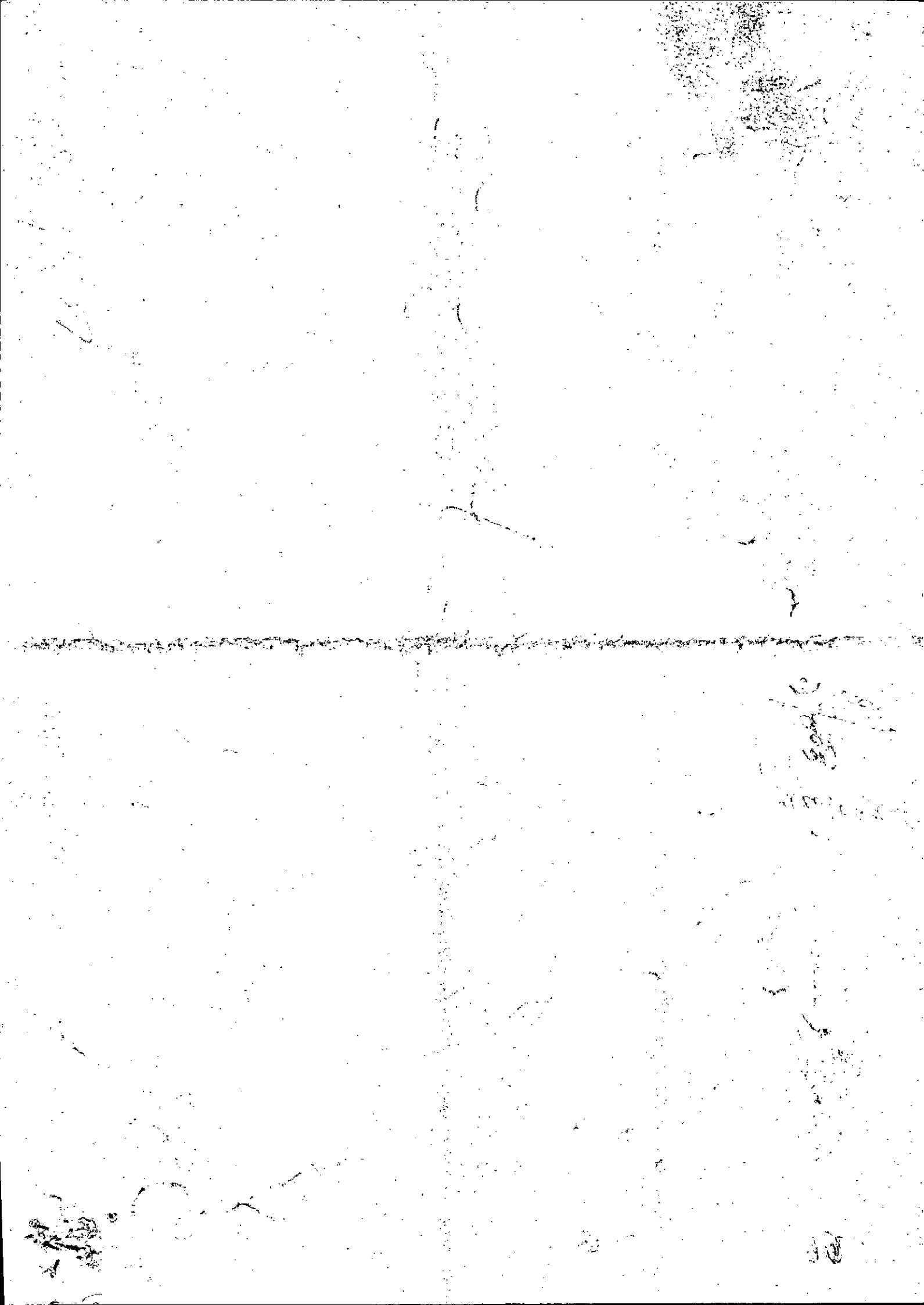
(v) گویاں خوات کے بیانات نے دیکھے۔ ملنم اغتیار اور پیر محمد عبداللہ اور علی خان نے عدالت آف کانسٹیب سے عبور یا ضمانت کرت جو قندہ تالیخ پر مشورہ پتول سب ضابطہ گرفتار کے دیکھے۔

(vi) ملنم پیر محمد سیشن راج پشاور میں لعیات کا۔ جو مورخ 26/6/2011 سے بدستور غیر حاضر چلا آ رہا ہے۔

(vii) روز وقوع پر علقا عبداللہ، افتخار، پیر محمد علی خان وقوع واردات پر موجود تے۔

(viii) ملنم علی خان کے عدالت علاقہ قلمبرٹ سے 2/2/2011 کو حاصل کر کے عدوان تلالشی پتول 30 یور اور ملنم پیر محمد سے پتول 30 اور علی خان سے بھی وقوع واردات سے 4/2/2011 پشاور چھوڑ گئے جسکی رپورٹ تاحال جوہول میں ہوئی ہے۔ (ix) ملنم اور گویاں اور پتول کے بیانات قلمبرٹ کے دیکھے تھے۔

(x) وجہ عداوت نسبت قصول نے شب وقوع ایک رپورٹ روزنامہ صبح کر رہا تھا جسکا اعلیٰ مسائل کا رولائی سنگی اور علاوہ ازیں عدلیاں نے 2005 میں صف نے حت ملنم خلاف ایک اشتقاقہ عدالت میں درج کر کے جو مسائل کا رولائی سنگی



(3)

(xi) ملزمان کو لغرض Confessional Statement زبردفع 164 / 364 صاف عداوت میں پیش کرنا مگر حلفاً عدالت میں اپنے بیانات سے خوف ہو کر داخل جیل ہونے کے دہشے۔

(xii) قوم میں برخلاف حلفاً بہ (سب سے زیادہ) گواہوں کا ان کا عمل زبردفع 173 / 364 دیا گیا ہے۔ تفتیش سے ملزمان کو سزا دیا جائے گا۔

ریورٹ و سب ہو کر گواہی ہے۔

INSP/OII - PS-1274.
14 / 09 / 2020

Attested
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Legend Section

Subject: ENQUIRY AGAINST TECHNICAL CONSTABLE PIR MUHAMMAD BELT NO.744.

Brief Facts:

Technical Constable Pir Muhammad Belt No. 744, while posted in Technical Section, Special Branch has involved in case FIR No. 427, dated 30-06-2020 u/s 302/324/34-PPC, PS Katlang, District Mardan. In this regard he was charge sheeted and departmental enquiry against him was conducted by SP Mardan Region, Special Branch vide No. 74/PA, dated 27-07-2020 in order to dig out the facts. The said enquiry has been initiated once again for denovo enquiry and the undersigned is nominated as an Enquiry Officer.

Proceedings:

During the course of enquiry the statements of the following persons were recorded, their short summaries are as under:-

a. Const Pir Muhammad B. No. 744 (accused official). (F/A)

The accused official stated in his statement signed on 17-09-2020, that his first statement should be considered as his statement.

1. In the first statement accused official said that other three accused are his blood relatives. The complainants and my blood relatives have land issue.
3. He elaborated in his statement that he has no link with the said incident and is innocent.
4. He also stated that he is aware of Rules and Laws and could not take such kind of step.
5. And requested at the end to file the enquiry against him.

b. Investigation Officer, PS Katlang, District Mardan. (F/B)

In the statement of the IO stated that:

1. In the incident area, he recovered one bullet and three empty shells including motorcycle of the victim.
2. That during house search of accused Iftikhar, one 30 bore pistol was recovered. The barrel of the pistol smelled like it was recently used, and took into position.
3. That Constable Pir Muhammad No. 744 was absent from 26-06-2020 in the Special Branch.

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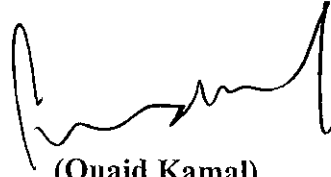
4. At the time of occurrence all accused presence were reported at the crime scene.
5. During interrogation three 30 bore pistols were recovered from accused Pir Muhammad, Abdullah and Mukaram. Recovered empty shells were dispatched to FSL, Peshawar for forensic opinion which is still awaited.
6. Investigation officer elaborated in the last line of his statement that all accused are involved in the case.

Conclusion:

Keeping in view of the above circumstances and available record in hand, I Enquiry Officer reached to the conclusion that the accused official Pir Muhammad No. 744 was absent from his lawful duty on 26-06-2020 without informing his immediate officer. Similarly, Investigation Officer stated in his statement that Pir Muhammad along with other three accused, were present on the spot. The Investigation Officer in the last line of his statement declared that the accused is involved in the case. The statement of the accused official Pir Muhammad could not satisfy the undersigned.

Recommendation:

Therefore, the accused official (Constable Pir Muhammad No. 744) is hereby recommended for major punishment, if agreed please.



(Quaid Kamal)
SP/Peshawar Region,
Special Branch, Hqrs: Peshawar.

Attended
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ORDER

This order is passed to dispose of departmental proceedings initiated under Khyber Pakhtunkhwa Police Rules 1975 (Amended 2014) against Technical Constable Pir Muhammad No. 744/SB. Facts forming the background of the departmental proceedings are as under:-


Technical Constable Pir Muhammad No. 744/SB (hereinafter referred to as an accused officer) while posted to SB/HQr Peshawar got involved in criminal case bearing FIR No. 427 dated 30.06.2020 u/s 302/324/34 PPC PS Katlang District Mardan.

Charge sheet and statement of allegations based on said charges were issued to the accused officer vide this office Endst: No. 5270-71 dated 30.06.2020. Sajad Khan SP/ SB Mardan was nominated as Enquiry Officer to scrutinize the conduct of accused officer with reference to the charges leveled against him. The Enquiry Officer after conduct of Enquiry, in his findings reached to the conclusion that due to insufficient evidence the enquiry proceedings may be kept pending till decision of the trial court in the criminal case. However the undersigned being the competent authority did not agree with the findings and directed denovo proceeding in the matter wherein Enquiry Officer Quaid Kamal SP Peshawar Region Special Branch, Peshawar was appointed. The Enquiry Officer after conduct of denovo enquiry, in his findings reached to the conclusion that the accused officer is found guilty of commission of misconduct.

After going through the findings of the Enquiry Officer, the material available on record and connected papers, I am satisfied that the accused Officer committed misconduct within the meaning of ibid Rules.

Before imposing major punishment, he was issued Final Show Cause Notice and heard in person by the undersigned that why the aforesaid penalty should not be imposed upon him. His reply to the Final Show Cause Notice is not satisfactory as it is proved beyond shadow of doubt during enquiry proceedings that accused officer is indeed involved in the case.

As a result thereof, I Muhammad Irshad Khan, Senior Superintendent of Police Admn, Special Branch, Khyber Pakhtunkhwa, Peshawar being a competent authority under ibid Rules hereby imposed upon him Major Penalty of dismissal from service with an immediate effect.


(MUHAMMAD IRSHAD KHAN)
Senior Superintendent of Police Admn;
Special Branch, Khyber Pakhtunkhwa,
Peshawar.

No. 7451-52/ EB , dated Peshawar the, 21 / 09 /2020.

Copy to all concerned for information and necessary action.

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