

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

6647
Appeal No. _____/2021

Faraz Khan, Ex-Constable Belt No. 1002 of District Orakzai,
Son Of Mir Jan Resident of Faqeer Abad District Kohat.
(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa Civil Secretariat Peshawar & Others.
(Respondents)

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Appellant:

Through


ALI ZAMAN


ABDUL SAMAD DURRANI

& 
SHAHZAD SHAHID BALOCH

Advocates Peshawar

①

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2021

Faraz Khan, Ex-Constable Belt No. 1002 of District Orakzai,
Son Of Mir Jan Resident of Faqeer Abad District Kohat.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. The Provincial Police Officer, Khyber Pakhtunkhwa,
Peshawar.
3. Regional Police Officer Kohat Region Kohat.
4. District Police Officer Orakzai.

(Respondents)

APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE ORDER
DATED 12.02.2021, WHEREBY THE
APPELLANT HAS BEEN AWARDED MAJOR
PUNISHMENT OF, DISMISSAL FROM
SERVICE, AGAINST WHICH
DEPARTMENTAL APPEAL WAS ALSO
REJECTED VIDE ORDER DATED 21.06.2021.

Prayer in Appeal: -

On acceptance of this appeal the impugned
Orders Dated 12.02.2021 & 21.06.2021 may
please be set-aside and the appellant may please
be re-instated in service with full back wages
and benefits of service.

Respectfully Submitted:

*Compendium of the facts from which the present appeal
arises, are as under:-*

1. That the appellant was initially appointed as Sepoy in Levy in the year 2012 at the strength of the former Orakzai Agency and later on was absorbed in the District Police Orakzai in the Year 2018.
2. That ever since his appointment, the appellant was performing his duties as assigned to him with zeal and devotion and there was no complaint whatsoever regarding his performance. It is pertinent to mention here that during his entire service, the performance of the appellant remained commendable.
3. That unfortunately, the appellant was falsely charged in criminal case vide FIR NO. 51 Dated 13.01.2021 U/S 302/34 PPC, P.S MRS, Kohat. (Copy of the FIR is attached as annexure A)
4. That the appellant was falsely implicated in the criminal case, he was arrested while on his back, he was placed under suspension on the ground of being charged in criminal case and issued order of dismissal from service by Respondent No. 4.
5. That departmental proceeding were initiated and inquiry was conducted against the appellant it is pertinent to mention here that no show cause notice was served to appellant and he was totally unaware about the departmental proceeding.
6. That the appellant has filed bail petition and was released on bail by the Peshawar High Court Peshawar Vide Order Dated: 08.03.2021. (Copy of application and order is attached as Annexure "B" & "C")

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7. That the appellant after the released on bail by the August Peshawar High Court Peshawar, on 15.03.2021 went to the office of Respondent No. 4 for resuming his duty wherein, he was informed that he has already been dismissed from service and handed over the impugned order Dated: 12.02.2021 of dismissal from the service. (Copy of Dismissal Order Dated: 12.02.2021 is attached as Annexure D)
8. That the appellant has filed/ submitted departmental appeal against the order Dated: 12.02.2021 which was rejected Vide Order Dated 21.06.2021 without any cogent reason. (Copy of appeal and the rejection order Dated 21.06.2021 are attached as Annexure E & F)
9. That feeling aggrieved and dissatisfied from the impugned Orders which are illegal, unlawful, against law and facts, now the appellant approached to this Hon'ble Tribunal on grounds inter alia:-

Grounds of Appeal:

- A. That the impugned office orders Dated: 12.02.2021 and 21.06.2021 are against the law, facts, circumstances and unconstitutional. Hence liable to be set aside.
- B. That the appellant was dismissed from service without following the due process of law/ rules.
- C. That no show cause notice, charge sheet and statement of allegations were served, hence on this score alone the entire process of the enquiry has become illegal, unlawful and of no legal effect.

D. That without service of show cause notice, charge sheet and statement of allegations, no enquiry can be conducted and the punishment thereof cannot be awarded to any defaulter official.

E. That the appellant was not served appropriately, and neither final show cause notice has been given nor opportunity of personal hearing was given before the competent authority furthermore, the appellant was not cross examined by the inquiry officer and the impugned order was passed in harsh manner and not in accordance with law and rules.

F. That impugned order dated: 12.02.2021 is perused, it reveals that the charge leveled against the appellant is vague, because on one hand it is stated that the appellant remained absent from his duty, but no period has been mentioned that for how long he allegedly remained absent from duty nor it has been mentioned that what mode of service has adopted to inform the appellant, while on the other hand his involvement in murder case was made, but neither show cause notice nor charge sheet or statement of allegations were served upon the appellant and the worthy competent authority awarded maximum punishment of dismissal from service which is obviously repugnant to the decision of the supreme court of Pakistan and as well as the high court.

G. That FIR is not a substantive piece of evidence but mere allegations which are yet to be proved, hence only charge of an official should not be construed that the employee has committed the offence.

H. That the absence of the appellant was neither intentional nor deliberate. On account of the charge in a murder case the investigation agency had arrested the appellant. The appellant being a law abiding citizen surrendered before the law. Hence absence from duty was beyond control of the appellant for which no punishment can be awarded to the appellant.

I. That the impugned office order has been issued on presumption against the appellant as the appellant was not provided fair opportunity for defending himself, which is against the principle of natural justice that no one should be condemned unheard.

J. That the whole departmental proceedings against the appellant were based on personal ill will and with ill intention and harsh illegally major penalty was awarded to the appellant.

K. That it is a settled law that no major penalty can be imposed without holding a regular and detailed inquiry, wherein the delinquent official is to be fully associated with all stages of proceedings and be provided full opportunity to defense but in the instant case the respondents failed to conduct a full fledged inquiry rendering the impugned orders as nullity in the eye of law as per judgments of the superior courts.

L. That after conclusion of trial in case if appellant is discharged honorarily from the court in the above referred murder case, the instant impugned orders have no value, furthermore the appellant is to be presumed as innocent until and unless charges leveled against him are not proved.

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M. That the appellant is looking after his ailing parents besides maintaining his family. The appellant is the only source of income for his family. The penalty is likely to land his family in starvation and sickness of his parents due to budgetary constraints is likely to become chronic and Allah forbid, appellant may sustains irreparable loss.

N. That in case of the appellant legal formalities and principles of natural justice were not followed in its true letter and spirit and thus miscarriage of justice has occasioned to the appellant.

O. That the other grounds will be raised, if any, at the time of arguments, with the permission of this Hon'ble tribunal.

It is, therefore, humbly prayed that the instant appeal of the appellant may graciously be accepted and the impugned office orders dated: 12.02.2021 & 21.06.2021 may also be set aside and the appellant may kindly be reinstated into service with all back benefits.

Any other relief as deemed appropriate in the circumstances of the case not specifically asked for may also be granted to appellant.

Appellant

Through


ALI ZAMAN


ABDUL SAMAD DURRANI

& 
SHAHZAD SHAHID BALOCH

Advocates Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2021

Faraz Khan, Constable Belt #. 1002 Section Mamuzai, Son Of
Mir Jan Resident of Faqeer Abad District Kohat.

(Appellant)

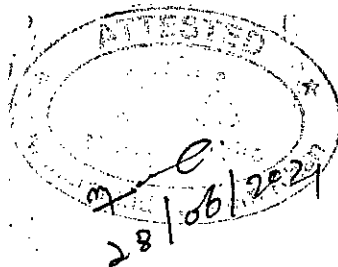
VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa Civil Secretariat Peshawar & Others

(Respondents)

AFFIDAVIT

*I, Faraz Khan, Constable Belt # 1002, Police
Department, do hereby solemnly affirm and declare that the
contents of the above appeal are true and correct to the best of
my knowledge and belief and that nothing has been kept back or
concealed from this Honourable Tribunal.*



DEPONENT

BETTER COPY

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نمیت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

تھانہ: MRS

ضلع: کوہاٹ

علت نمبر: 51

تاریخ: وقت وقوعہ 13/01/2021 وقت 13:30 بجے

1	تاریخ وقت رپورٹ	13/01/2021 وقت 14:45 بجے چاکیگی پرچہ 13/01/2021 وقت 15:40 بجے
2	نام و سکونت اطلاع دہندہ مستفیض	عبدالرحمن ولد عبداللہ خان سکنہ فقیر آباد
3	مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو	302-34 PPC
4	جائے وقوعہ سے فاصلہ تھا اور دست	میں ڈھوڑو روڈ نزد فقیر آباد ویران بنام صلہ 6/7 کلومیٹر جانب جنوب از تھانہ
5	نام و سکونت ملزم	(1) ظلیل (2) فراز پسران امیر جان ساکنان فقیر آباد
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو	برآمدگی مراسلہ پر چرچا جاتا ہے۔
7	تھانہ سے روانگی کی تاریخ و وقت	بطور پیش رپورٹ

ابتدائی اطلاع نیچے درج کرو۔ اس وقت ایک تحریری مراسلہ منجانب محمد خان ASI انچارج چوکی

ملز ایریا بدست غنی الرحمن LHC بطور پیش رپورٹ موصول ہو کر ذیل ہے۔ بخدمت ایفسر انچارج تھانہ MRS میں بسلسلہ رپورٹ KDA ہسپتال میں مصروف تھا کہ وہ فقیر آباد سے اعش ازاں ولی الرحمن ولد عبداللہ خان بمر 35/36 سال سکنہ فقیر آباد بہ امداد اہلیان دہہ ایرجنسی روم KDA ہسپتال لا کر بحق مقتول برادر اش عبدالرحمن بمر 19/20 سال شناختی کارڈ نمبر 3-7252848-21303 موبائل نمبر 03325735034 یوں رپورٹ کرتا ہے کہ امروز میں بوقت 13:20 بجے خانہ خود سے بسلسلہ نجی کام روڈ کی طرف جا رہا تھا دیکھا کہ بمقام بالا پر برادر ام مقتول ولی الرحمن اور مسیمان ظلیل، فراز پسران امیر جان ساکنان دہہ ام آپس میں مشمت و گریبان تھے فوراً میں دوڑتے ہی جو نبی قریب 20 قدم کے فاصلے پر آیا تو اس دوران ہر دو مسیمان ظلیل، فراز نے پستول ہائے سے برادر ام ولی الرحمن پر بارادہ قتل فائرنگ کی جسکی فائرنگ سے برادر ام لگ کر زمین پر گر پڑا اور موقع پر جا بحق ہوا اور ظلیل مذکورہ کی فائرنگ سے برادر اش فراز بھی زخمی ہوا ہے وقوعہ ہذا میرے آنکھوں کا چشم دید ہے۔ وجہ عداوت، ظلیل، فراز کیساتھ برادر ام کے جائیداد کا تنازعہ ہے میں برادر ام مقتول ولی الرحمن کے بذریعہ اسلحہ آتشین سے قتل کرینا برخلاف مسیمان ظلیل، فراز بالا دعویٰ ہوں نشان انگوٹھا عبدالرحمن رپورٹ بالا کی تائید ولد اش عبداللہ خان ولد خیر اللہ خان نے کی نشان انگوٹھا عبداللہ خان کارروائی پولیس حسب گفتہ سائل رپورٹ درج بالا ہو کر پڑھ کر سنایا سمجھایا گیا درست تسلیم کر کے زیر رپورٹ خود نشان انگوٹھا مثبت کیا جبکہ تائید رپورٹ والد اش مقتول رپورٹ کنندہ نے کی جسکی میں تصدیق کرتا ہوں۔ مقتول کے کاغذات مرگ مرتب کر کے بغرض پوسٹ مارٹم زیر حفاظت کنسٹیبل عاقل انور 256 حوالہ ڈاکٹر صاحب ہوئی۔ مضمون رپورٹ سے صورت جرم بالا پائی جا کر مراسلہ بطور پیش رپورٹ بدست غنی الرحمن LHC ارسال تھانہ ہے بعد اندراج مقدمہ کے تفتیش حوالہ KBI شاف کیا جائے۔ رپورٹ ہذا مجروح فراز کے رپورٹ کا کراس ہے۔ وقوعہ کے بابت جملہ حالات، واقعات بذریعہ موبائل فون افسران بالا کے نوٹس میں لائے گئے دستخط انگریزی محمد خان ASI چوکی ملز ایریا 13/01/2021 کارروائی تھانہ آمدہ مراسلہ حرف بحرف درج بالا ہو کر پرچہ بجرانم بالا چاک ہو کر نقل پرچہ و مراسلہ بغرض تفتیش حوالہ KBI شاف کیا جاتا ہے پرچہ بطور پیش رپورٹ گزارش ہے۔

SI-P'S-MRS

13-01-2021

(9) B

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ابتدائی اطلاعی رپورٹ

مجموعہ ضابطہ فوجداری دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

ضلع: کوہاٹ

تھانہ: MRS

تاریخ: وقت وقوع 13/01/2021 وقت 13:30 بجے

علت نمبر: 50

1	تاریخ وقت رپورٹ	13/01/2021 وقت 14:25 بجے چاکیدگی پرچے
2	نام و سکونت اطلاع دہندہ مستثنیٰ	فراز ولد امیر جان بمر 28/29 سال سکند اور کرنی حال فقیر آباد
3	مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو	324 PPC
4	جائے وقوع سے فاصلہ تھانہ اور دست	مین روڈ نزد فقیر آباد ویران باغ صلا 6/7 کلومیٹر چائٹ جنوب از تھانہ
5	نام و سکونت ملزم	ولی الرحمن ولد عبداللہ خان سکند فقیر آباد
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	برسیدگی مراسلہ پر چودیا جاتا ہے۔
7	تھانہ سے روانگی کی تاریخ و وقت	بہ سبیل ڈاگ

ابتدائی اطلاع نیچے درج کرو۔ اس وقت ایک تحریری مراسلہ منجانب محمد خان ASI انچارج چونکہ ملازم

بدرست کنشیل عبدالحق LHC موصول ہو کر ذیل ہے۔ خدمت آفیسر انچارج تھانہ MRS حسب اطلاع کے لیے ہسپتال آیا امیر جنسی روم میں مجروح فراز ولد امیر جان بمر 28/29 سال سکند ضلع اور کرنی حال فقیر آباد ہو ڈاروڈ شاختی کارڈ نمبر 3-3212681-21604 موبائل نمبر 944411-0336 بحالت مجروحیت بقاگی درست ہوش و حواس لے موجود پا کر یوں رپورٹ کرتا ہے کہ امرود میں صبح بغرض شامپ پیچہ تحریر کرنے والد امیر جان کے ساتھ کچھری کوہاٹ گیا تھا واپسی پر بمقام بالا پر ایک سوزوئی۔۔۔ سے اتر کر دیکھا کہ برادر ام خلیل، ولی الرحمن ولد عبداللہ خان سکند دہم ام نے ایس میں تکرار کر رہے تھے اور ولی الرحمن مذکورہ نے پستول نکالا تھا جو ابھی میں نے یہ صورت حال دیکھا تو فوراً ہر دو کے مابین آکر خلاصی کرنے کی کوشش کی تو ولی الرحمن نے مجھ پر پستول۔۔۔ کے فائرنگ کی جس کی فائرنگ سے میں لگ کر شدید زخمی ہوا ہوں وقوع ہذا میرے علاوہ برادر ام خلیل کا چشم دید ہے وجہ عداوت برادر ام خلیل و ولی الرحمن کے مابین جائیداد کا تنازعہ ہے۔ میں اپنے اوپر بارادہ قتل فائرنگ کرنے کا برخلاف ولی الرحمن ولد عبداللہ خان سکند فقیر آباد دعویٰ ہوں نشان انگوٹھا فراز رپورٹ نالا کی تائید مابوں آس عبد الرزاق والد موسیٰ خان سکند محمد زئی حال جنگل خیل نے کی نشان انگوٹھا عبد الرزاق، کارروائی پولیس حسب گفتہ سائل رپورٹ درج بالا ہو کر پڑھ کر سنایا۔۔۔ بھایا گیا درست تسلیم کر کے خود نشان انگوٹھا مثبت کیا جبکہ تائید رپورٹ عبد الرزاق نے کی جس کی میں تصدیق کرتا ہوں۔ مجروح کا نقشہ ضرر مرتب کر کے بغرض علاج معالجہ رائے ڈاکٹری زیر حفاظت کنشیل عاظمہ 256 حوالہ ڈاکٹر صاحب کیا جاتا ہے۔

Amir B^D

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BEFORE THE PESHAWAR HIGH COURT PESHAWAR

C.M.B.A No 63 2021

Faraz Khan Son Of Ameer Jan Resident Of Faqeer Abad District Kohat.....Accuse



VERSUS

1. The State.

2. Abhat Khan son of Abul Karim Khan Resident Of Faqeer Abad District Kohat.....Respondents

CASE FIR NO. 51 DATED 13.01.2021
CHARGE U/S 302/34 PPC
POLICE STATION: MRS, KOHAT.

APPLICATION UNDER SECTION 497 CrPC
FOR THE GRANT OF POST ARREST BAIL
TO THE ACCUSED /PETITIONER IN THE
ABOVE SECTIONS OF LAW TILL THE
FINAL DECISION OF THE CASE.

Respectfully Submitted

- 1. That the captioned case is registered at police station MRS, KOHAT in which the Accused/ Petitioner has been falsely implicated. (Copy of FIR is attached as annexure "A")

ATTESTE
EXAMINER
Peshawar High C

2. That the Accused/Petitioner applied for his post arrest bail before the Learned Additional Sessions Judge-I, Kohat which was turned down on 17.02.2021. Copy of Application and Order is attached as annexure "B" & "C").

Now the accused/petitioner approaches this Hon'ble court for his release on bail inter alia on the following grounds:-

GROUND S:

- A. That the accused/petitioner is totally innocent and has been falsely implicated in the instant case.
- B. That except the bare allegation in the FIR there is no other cogent evidence on record to connect the accused/petitioner with the alleged offence.
- C. That medical evidence is in conformity with medical certificate and site plan.
- D. That on the same day petitioner had also lodge an FIR No. 50 Date 13.01.2021 U/S 324 PPC, Police Station MRs, Kohat for causing injury to him against the complainant party prior to the present FIR and in order to counter blast that case the present case has falsely been registered. Copy of FIR is attached as annexure "D")
- E. That the sections of law leveled against the accused/petitioner is applicable to the facts and circumstances of the case.

ATTESTE
EXAMINER
Peshawar High Co

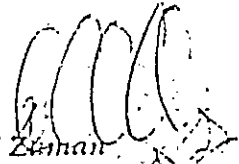
- 19
- F. That the case of accused/ petitioner is one of further inquiry and clearly falls within the ambit of section 497 (2) Cr.P.C.
- G. That the accused/ petitioner is resident of settled area and belong to very respectable family, moreover ready to furnish reliable sureties to the satisfaction of this Hon'ble Court.

It is therefore most humbly prayed that by accepting this application the accused/ petitioner may please be released on bail till the final decision of his case

Dated: 23.02.2021

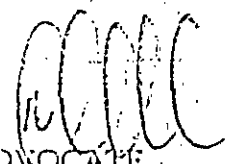
Accused/ Petitioner

Through


Ali Zaman
&
Abdul Samad Durrani
Advocates
High Court, Peshawar

CERTIFICATE:

Certified that as per information of my client no such like Bail Application has earlier been filed before this Hon'ble Court.


ADVOCATE

ATTESTED
EXAMINER
Peshawar High Court

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

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Cr. M. B.A No _____ /2021

ALIZAM KHAN
Advocate High Court
& Federal Shariat
Court

Faraz Khan Son Of Ameer Jan Resident Of Faqeer Abad District
Kohat.....Accused/ Petitioner

VERSUS

1. The State.
2. Abdur Rehman Son Of Abdul llah Khan Resident Of Faqeer Abad
District Kohat..... Respondents

CASE FIR NO. 51 DATED 13.01.2021

CHARGE U/S 302/34 PPC

POLICE STATION : MRS, KOHAT.

APPLICATION UNDER SECTION 497 CrPC
FOR THE GRANT OF POST ARREST BAIL
TO THE ACCUSED /PETITIONER IN THE
ABOVE SECTIONS OF LAW TILL THE
FINAL DECISION OF THE CASE.

Respectfully Sheweth:

1. That the captioned case is registered at police station MRS, KOHAT in which the Accused/ Petitioner has been falsely implicated.
(Copy of FIR is attached as annexure "A")

M

BETTER COPY

2. That the Accused /Petitioner applied for his post arrest bail before the Learned Additional Sessions Judge-I, Kohat which was turned down on 17.02.2021. (Copy of Application and Order is attached as annexure "B" & "C").

Now the accused/ petitioner approaches this Hon'ble court for his release on bail inter alia on the following grounds:-

GROUND S:

- A. That the accused/ petitioner is totally innocent and has been falsely implicated in the instant case.
- B. That except the bare allegation in the FIR there is no other cogent evidence on record to connect the accused/ petitioner with the alleged offence.
- C. That medical evidence is in conflict with ocular evidence and site plan.
- D. That on the same day petitioner had also lodge an FIR No. 50 Dated 13.01.2021 U/S 324 PPC, Police Station MRs, Kohat for causing injury to him against the complainant party prior to the present FIR and in order to counter blast that case the present case has falsely been registered. (Copy of FIR is attached as annexure "D")
- E. That the sections of law leveled against the accused/ petitioner is not applicable to the facts and circumstances of the case.

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- F. That the case of accused/ petitioner is one of further inquiry and clearly falls within the ambit of section 497 (2) Cr.P.C.
- G. That the accused/ petitioner is resident of settled area and belong to very respectable family, moreover ready to furnish reliable sureties to the satisfaction of this Hon'ble Court.

It is therefore most humbly prayed that by accepting this application the accused/ petitioner may please be released on bail till the final decision of his case.

Dated: 23.02.2021

Accused/ Petitioner

Through

Ali Zaman
&
Abdul Samad Durrani
Advocates
High Court, Peshawar

CERTIFICATE:

Certified that as per information of my client no such like Bail Application has earlier been filed before this Hon'ble Court.

ADVOCATE

Annexure "C"

13

IN THE PESHAWAR HIGH COURT
PESHAWAR
Judicial Department

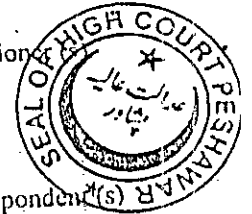
Cr. Misc. BA No. 632-P-2021

Faraz Khan son of Ameer Jan.
r/o Faqeer Abad, District Kohat.

VERSUS

The State etc

Petitioner



Respondent(s)

For Petitioner(s) :-
For State :-
For complainant :-
Date of hearing :-

Mr. Ali Zaman, Advocate.
Mr. Arshad Ahmad, AAG.
None.
08.01.2021

ORDER

ROOH-UL-AMIN KHAN, J.:- Petitioner Faraz Khan,
seeks post arrest bail in case FIR No.51 dated 13.01.2021,
registered under sections 302/34 PPC, at Police Station
MRS, Kohat.

25 According to FIR/report of complainant Abdur
Rehman on 13.01.2021 he came out from his house in
connection with his personal affair. At 1330 hours when he
reached main Dhoda road near Faqir Abad he saw the
petitioner and co-accused Khalil quarreling with his brother
Wali ur Rehman. During altercation the accused opened fire
at Wali ur Rehman with their respective pistols, as a result,
he got hit and died at the spot. Due to firing of
co-accused Khalil, petitioner Faraz also sustained injuries.
A dispute over landed property between the deceased and

Yaqeen Sami

ATTESTED
EXAMINER
Peshawar High Cou

the accused has been advanced as a motive behind the occurrence.

3. Complainant Abdur Rehman despite service is not in attendance. Being bail application cannot be kept pending for an indefinite period on the sole ground to procure attendance of the complainant, who otherwise has been duly served, hence, after hearing learned counsel for the petitioner and learned AAG for the State, this petition is being decided on merits on the available record.

4. It appears from the record that about the same occurrence another FIR bearing 50 of even date under sections 324 PPC. has been registered in the same Police Station on the report of Faraz (petitioner) wherein he has charged Wali ur Rehman (deceased of instant case) as accused for an attempt at his life and causing him firearm injuries. If both the FIRs are taken in juxtaposition, time, date and place of occurrence, motives as well as parties are same. In this view of the matter, there are two versions about the same incident. No doubt in the instant case one person has lost his life while in FIR No.50, petitioner has sustained injuries, but in cases of cross versions, prime consideration is that who was the aggressor and who was aggressed upon and not the injuries caused to one side only or that the loss damage caused to one party is greater than caused to the other, as such consideration is only a relevant factor and does not have overriding effect. Who has acted

ATTESTED
EXAMINER
Peshawar High Court

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in self defence and who has attacked, is a matter of further inquiry which is yet to be determined during trial after recording evidence, which makes the case of the petitioners arguable for the purpose of bail in view principle laid down by the Hon'ble Supreme Court in cases titled, "Muhammad Shahzad Siddique Vs the State and another" (PLD 2009 Supreme Court 58), Abdul Hameed Vs Zahid Hussain alias Papu Chaman Patiwala and others" (2011 SCMR 606) "Hamza Ali Hamza and others Vs the State" (2010 SCMR 1219).

5. Accordingly, this petition is accepted. Petitioner is allowed bail. He shall be released on bail provided he furnishes bail bonds in the sum of rupees two lacs with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOJ concerned.

Announced:

08.03.2021

N. Saeed, A. J. 13

24006	08/03/2021
67	08/03/2021
24	08/03/2021
Preparation of copy	08/03/2021
Delivered copy	08/03/2021
ed to	10/3/21

Senior Puisne Judge

SB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge

Handwritten signature and a stamp dated 09 MAR 2021.

ALIZAMAN
Advocate High Court
& Federal Shariat
Court

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IN THE PESHAWAR HIGH COURT,

PESHAWAR,

[Judicial Department].

Cr.Misc.BA No. 632-P 2021

Faraz Khan son of Ameer Jan,

r/o Faqeer Abad, District Kohat.

Petitioner (s)

VERSUS

The State etc

Respondent (s)

For Petitioner (s) :-

Mr. Ali Zaman, Advocate.

For State :-

Mr. Arshad Ahmad AAG.

For Complainant :-

None

Date of hearing :-

08.03.2021

ORDER

ROOH-UL-AMIN KHAN, J:- Petitioner Faraz Khan, seeks post arrest bail in case FIR No.51 dated 13.01.2021, registered under sections 302/34 PPC, at Police Station MRS, Kohat.


2. According to FIR' report of complainant Abdur Rehman on 13.01.2021 he came out from his house in connection with his personal affair At 1330 hours when he reached main Dhoda Road near Faqeer Abad he saw the petitioner and co accused Khalil quarreling with his brother Wali Ur Rehman. During altercation the accused opened fire at Wali Ur Rehman with their respective pistols, as a result, he got hit and died at the spot. Due to firing of co accused Khalil petitioner Faraz also sustained injuries. Dispute over landed property between the deceased and the accused has been advanced as a motive behind the occurrence.



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3. complainant Abdur Rehman despite service is not in attendance. Being bail application can not be kept pending for an indefinite period on the sole ground to procure attendance of the complainant, who other wise has been duly served, hence, after hearing learned Counsel for the petitioner and Learned AAG for the State, this petition is being decided on merits on the available record.

4. it appears from the record that about the same occurrence another FIR bearing 50 of even date under section 324 PPC has been registered in the same police station on the report of Faraz (Petitioner) wherein he has charged Wali Ur Rehman (deceased of instant case) as accused for an attempt at his life and causing him fire arm injuries. If both the FIRs are taken in juxtaposition, time, date and place of occurrence, motive as well as parties are same. In this view of the matter, there are two versions about the same incident. No doubt in the instant case one person has lost his life while in FIR No. 50 petitioner has sustained injuries, but in cases of cross versions, prime consideration is that who was the aggressor and who was aggressed upon and not the injuries caused to one side only or that the last damage caused to one party is greater than caused to the other, as such consideration is only a relevant fact and does not have overriding effect. Who has acted in self defence and who has attacked, is a matter of further inquiry which is yet to be determined during trial after recording evidence, which makes the case of the petitioner arguable for the purpose of bail in view principle laid down by the Hon'ble Supreme Court in cases titled, "**Muhammad Shahzad Siddique Vs The State and Another**" (PLD 2009 SC 58), "**Abdul Hameed Vs Zahid Hussain alias Papu Chaman Patiwala and Others**" (2011 SCMR 606) "**Hamza Ali Hamza and Others Vs The State**" (2010 SCMR 1219).


ALLAHABAD
Advocates Court
& Federal Court
Court

BETTER COPY

5. accordingly, this petition is accepted. Petitioner is allowed bail. He shall be released on bail provided he furnishes bail bonds in the sum of Rupees two Lacs with two local, reliable and resourceful sureties each in the like amount to the satisfaction of Learned Illaqa Judicial Magistrate/ MOD concerned.

Announced

08.03.2021

Senior Puisne Judge



Annexure "D"

16

OFFICE OF THE DISTRICT POLICE
OFFICER ORAKZAI

OFFICE ORDER:-

The order will dispose off the departmental enquiry conducted against Constable Faraz Khan s/o Mir Jan Belt # 1002 Section Mamuzai under the Khyber Pakhtunkhwa, Police Rules, (Amended 2014) 1975.

Constable Faraz Khan s/o Mir Jan was absent from his lawful duty as well as charged/involved in case FIR No. 51 dated 13.01.2021 U/S 302/324 PPC PS MRS District Kohat.

He was suspended vide order OB No. 247 dated 09.02.2021 and SP Investigation was nominated as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer vide his finding and found him guilty of the charges leveled against him, and recommend him for major punishment.

These act of the accused official earned bad name to a discipline force on one hand and involved himself in criminal act.

In view of the above and available record, i reached to the conclusion that the accused official was involved in criminal act.. Therefore, these charges leveled against accused Constable Faraz Khan s/o Mir Jan have been established beyond any shadow of doubt. Therefore, in exercise of powers conferred upon me under the rules ibid, a major punishment of "dismissed from service" is imposed on accused Constable Faraz Khan s/o Mir Jan with immediate effect. Kit etc issued to the Constable be collected.

Announced 274
Dated 12/2/2021

DISTRICT POLICE OFFICER, ORAKZAI

No. 604 /EC/OASI Dated 12/02/2021.

Copy of above to the:-

1. The Regional Police Officer, Kohat.
2. SP Investigation
3. SDPo Upper for collection of items and clearance.
4. Pay Officer/SRC/OHC/Reader for necessary action.

DISTRICT POLICE OFFICER, ORAKZAI

Handwritten signature and date: 13/02/2021

OASI

Handwritten notes in Urdu: فرار خان کے بارے میں تمام جانچ کر ڈس میس کیا گیا اور اس کی نوکری ختم کر دی گئی۔ 13/02/2021

21604-3212681-3



15/03/2021

Answer 'E' (17)

THE HONORABLE DEPUTY INSPECTOR GENERAL OF POLICE
KOHAT REGION KOHAT

DEPARTMENTAL APPEAL UNDER RULE 11 OF THE POLICE
RULES 1975 (AMENDED 2014) AGAINST THE ORDER OF
THE WORTHY DISTRICT POLICE OFFICER ORAKZAI DATED
12-02-2021 RECEIVED ON 15-03-2021 VIDE WHICH
THE APPELLANT WAS DISMISSED FROM SERVICE
WITHOUT ANY LAWFUL JUSTIFICATION.

Respected Sir,

With great respect and veneration, the appellant may be allowed to submit the following for your kind and sympathetic consideration;

Facts of the Case:

1. That appellant was enrolled as Sepoy in Levy in the year 2012 at the strength of the former Orakzai Agency.
2. That since his enrollment the appellant worked efficiently and whole heartedly.
3. That in the year 2018 the appellant with his colleagues was absorbed in the Distt. Police Orakzai.
4. That the appellant continued his meritorious services in the Police Deptt. as well and never provided opportunity to his worthy Senior Police Officers to lodge complaint against the appellant.
5. That on account of efficiency and good reputation of the appellant, his seniors reposed unflinching confidence in the appellant.

6. That unfortunately, the appellant was falsely charged in Case FIR No.51 dt:13-01-2021 U/Ss 302/32 PPC P.S MRS, Kohat.

7. That the appellant was arrested in the case while on his back order of his dismissal of the appellant from service was issued by the competent authority. (Copy of the order is enclosed.)

8. That vide order dt:08-03-2021 the appellant was released on bail.

(Copy of the bail order is enclosed).

9. That on 11-03-2021 the appellant came out of the jail.

10. That on 15-03-2021 upon his first instance when the appellant went to the office of the Distt: Police Officer Orakzai for resuming his duty, he was informed that he has already been dismissed from service and handed over the impugned order of the punishment to the appellant.

11. That the impugned order of dismissal from service has aggrieved the appellant, therefore following are some of the grounds of appeal which may be graciously considered sympathetically.

Grounds of Appeal:

A. That the impugned order of dismissal of the appellant from service is not in accordance with law / rules and evidence on record. Hence it is liable to be set aside.

B. That without following the due process of law/rules, the appellant was dismissed from service.

C. That upon the appellant no Show Cause Notice, Charge Sheet and Statement of allegations were served. Hence the entire process of the enquiry against the appellant has become illegal and of no legal effect.

D. That without service of the Show Cause Notice, Charge Sheet and Statement of allegations no enquiry can be conducted and the punishment thereof cannot be awarded to the defaulter official.

E. That the entire enquiry proceedings were conducted at the back of the appellant while he was in jail.

F. That the appellant could be informed about the enquiry even in jail and the Show Cause Notice, Charge Sheet and Statement of allegations could be served in jail but the same were not served upon the appellant and thus the appellant was deprived from his defence which is his inherent right under the law.

G. That in view of the enclosed decisions vide 1987 PLC and 1988 PLC, no enquiry can be conducted without Show Cause Notice, Charge Sheet and Statement of allegations.

In case of the appellant no Show Cause Notice, Charge Sheet and Statement of allegations were served, hence the punishment awarded to the appellant has lost its legal validity and at the same time the impugned order amounts to violation of the orders of the Higher Courts.

H. That the alleged enquiry against the appellant is neither regular enquiry nor ex-parte enquiry hence no punishment can be awarded under such an undetermined enquiry.

I. That, even, in view of the decision of the Honourable Supreme Court of Pakistan 2007 and the Honourable Peshawar High Court Peshawar vide judgment in the year 2019, have held that mere registration of FIR against a Civil Servant will not make him guilty. Deptt: is required to suspend such officer and after decision by the trial court fate of the official be determined. Hence the impugned order can be legally termed as a legally defective order which has got no sanctity of law and deserves to be set aside.

90

- J. That Under Article 10-A of the Constitution of Pakistan, fair, transparent and independent trial /enquiry is the fundamental right of the appellant but such a fundamental right of the appellant has been denied during the alleged inquiry against the appellant, which has made the Impugned order highly questionable.
- K. That if the impugned order is perused, it will reveal that the charge leveled against the appellant is vague, because at the one place it is stated that the appellant remained absent from his duty, but no period has been mentioned that for how long he allegedly remained absent from duty, while on the other reference his involvement in murder case was made, but neither show cause notice nor charge sheet or statement of allegation were served upon the appellant and the Worthy Competent Authority awarded maximum punishment dismissal from service which is obviously repugnant to the decision of the Supreme Court of Pakistan and as well as the High Court of Khyber Pakhtunkhwa. (Copies of the both the judgments are enclosed)
- L. That FIR is not a substantive piece of evidence. Hence only charge of an official should not be construed that the employee has committed the offence. Legally speaking in such a case, the authority is required to wait for the outcome/result of the case but in case of the appellant the authority awarded him maximum punishment expeditiously for the reasons best known to the authority.
- M. That it is well established principle of law/ justice that punishment cannot be awarded on presumption, conjectures and speculation. The authority concerned is required to state clearly about the fault, omission, offence or misconduct of the defaulter.

(91)

In this case, the authority could not pin point that how many days the appellant remained absent from duty. The authority only leveled general allegation of absence but period of absence was not mentioned. Hence on the basis of such a vague charge such punishment cannot be awarded.

N. That the appellant was permitted twelve days casual leave, at the sixth day of his casual leave, the appellant was charged in a murder case while in a cross case the appellant had also sustained fire arm injury.

The appellant was arrested on 12-01-2021 while on 11-03-2021 he came out of jail on bail and when went to the DPO Office Orakzai for resuming his duty on 15-3-2021, he was informed that he has been dismissed from service and received the order on the same date.

In view of the above, the appeal moved by the appellant is within the period of limitation.

O. That the absence of the appellant was neither intentional nor deliberate. On account of the charge in a murder case the investigation agency had to arrest the appellant. The appellant being a law abiding citizen surrendered before the law. Hence absence from duty was beyond control of the appellant for which no punishment can be awarded to the appellant.

P. That in case if the appellant is convicted from the court in the above referred murder case he can be dismissed from service but before conclusion of the trial, the appellant under the law is to be presumed as innocent hence, no misconduct has been proved and authority may wait for the final conclusion of the criminal case against the appellant.

99

Q. That the appellant is looking after his ailing parents besides maintaining his family. The appellant is the only source of income for his family. The punishment is likely to land his family in starvation and the sickness of his parents due to the budgetary constraints is likely to become chronic and Allah forbid the appellant may sustain irreparable loss.

R. That in case of the appellant legal formalities and principles of natural justice were not followed in letter as spirit and thus miscarriage of justice has occasioned to the appellant.

S. That if deemed proper the appellant may kindly be heard in person.

Prayer:

In view of the above legal and factual facts, it has been established beyond any shadow of doubt that the punishment of dismissal from service awarded to the appellant vide impugned order dt:12-02-2021 by the worthy Distt: Police Officer Orakzai being not in accordance with law and justice and not sustainable in the eyes of law may very kindly be set aside and the appellant may be reinstated in service from the date of punishment with all back benefits. The appellant will pray for your long life and prosperity for this act of kindness.

Yours Obediently,



FARAZ KHAN

(Ex-Constable No.1002)

S/o Mir Jan

R/o Caste Mamuzai Tappa Mir

Kalam Khel Post Officer, Ghiljo

Tehsil Upper District Orakzai

Cell No. 0336-9647520.

Dated: 18-03-2021.

18-4-

18-5

18-6

17-6 (Expiry)

POLICE DEPTT:

ALL INFORMATION
ADVISED BY COURT
IN THE DISTRICT COURT
KOHAT

15
Annexure "R"

93

KOHAT REGION


ORDER.

This order will dispose of a departmental appeal moved by Ex-Constable Faraz Khan No. 1002 of district Orakzai against the punishment order, passed by DPO Orakzai vide OB No. 274, dated 12.02.2021 whereby he was awarded major punishment of **dismissal from service** on the allegations of his involvement in criminal case vide FIR No. 51, dated 13.01.2021 u/s 302, 34 PPC PS MRS, Kohat.

Comments as well as relevant record were requisitioned from DPO Orakzai and perused. The appellant was also heard in person in O.R. held in this office on 16.06.2021. During hearing the appellant did not advance any plausible explanation in his defense to prove his innocence.


Above in view, the undersigned reached to the conclusion that the allegations leveled against the appellant are fully proved. The appellant was not supposed to indulge himself in such like criminal activities which can tarnish the image of Police. Therefore, in exercise of the powers conferred upon the undersigned under Rules 11-A, his appeal being devoid of merits is **hereby rejected**.

Order Announced
16.06.2021




(MOHAMMAD ZAFAR ALI) PSP
Region Police Officer,
Kohat Region.

No. 9479 /EC, dated Kohat the 21-06- /2021.


Copy to. District Police Officer, Orakzai for information and necessary action w/r to his office Memo: No. 1052/EC, dated 19.04.2021. His Service Book & Enquiry File is returned herewith.


(MOHAMMAD ZAFAR ALI) PSP
Region Police Officer,
Kohat Region.

91

قیمت 50 روپے	87609	  
ایڈوکیٹ: 		
بار کونسل/ ایسوسی ایشن نمبر: 8c-10-7765		پشاور بار ایسوسی ایشن، خیبر پختونخواہ
رابطہ نمبر: 0333-9322971		

بعدالت جناب: Before The KP Service Tribunal Pesh

Appellant (Faxaz Khan) Ex-Constable  بنام Government of KP through Chief Secretary & others	دعوی: Service Appeal علت نمبر: مورثہ: جرم: تھانہ:
--	---

بامث تحریر آگے

بلوچ ایڈووکیٹس
 گل خان و لا ورجن

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کاروائی متعلقہ
 آن مقام علی زمان عبدالصمد درانی نے بلوچ ایڈووکیٹس کے ذریعے بلوچ ایڈووکیٹس
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زیریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل گمرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لے جانے کے لئے اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور ان کا ساختہ پر داخستہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کر لیں۔ لہذا کالٹ نامہ لکھ دیا تاکہ سندر ہے

المقوم: Abdul Samad
 مقام: Abdul Samad
 Accepted

نوٹ: اس وکالت نامہ کی فونو کالی ناقابل قبول ہوگی۔

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 6647/2021

Faraz khan

.....Appellant

VERSUS

Govt of khyber Pakhtunkhwa
Through Chief Secretary & Others

.....Respondents

INDEX

S.No	Description of documents	Annexure	Pages
01	Parawise comments	-	1-3
02	Affidavit	-	04
03	Copy of FIR No 51/2021 u/ss 302, 34 PPC PS MRS.	A	05-06
04	Copy of Dismissal Order passed by respondent No. 4	B	07
05	Copy of rejection order passed by respondent No. 3	C	08
06	Copy of charge sheet alongwith statement of allegations	D	09-10
07	Copy of DD No. 4 dated 12.01.2021 registered in PS Mamozai , district Orakzai	E	11


Deponent

P-10

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

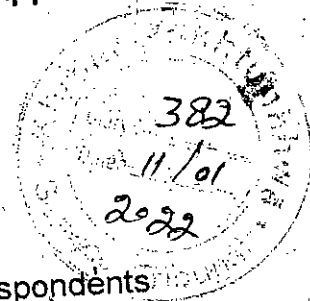
Service Appeal No. 6647/2021
Faraz Khan

..... Appellant

VERSUS

Govt of Khyber Pakhtunkhwa,
Through Chief Secretary & others

..... Respondents



PARAWISE COMMENTS BY RESPONDENTS.

Respectfully Sheweth:-
Preliminary Objections:-

- i. That the appellant has got no cause of action.
- ii. The appellant has got no locus standi to file the instant appeal.
- iii. That the appeal is bad for misjoinder and nonjoinder of necessary parties.
- iv. That the appellant is estopped to file the instant appeal for his own act.
- v. That the appeal is bad in eyes of law and not maintainable.
- vi. That the appellant has not approached the honorable Tribunal with clean hands.

Facts:-

1. Pertains to record. Appellant being ex-levy was absorbed in Khyber Pakhtunkhwa Police under the rules.
2. Irrelevant, pertains to record of ex-Commandant Levy Orakzai.
3. On 13.01.2020, one Abdur Rehman s/o Abdullah lodged a report wherein he charged the appellant and his brother named Khalil for the murder of his brother named Wali ur Rehman. A case vide FIR No. 51 dated 13.01.2021 u/ss 302, 34 PPC Police station MRS Kohat was registered. Motive for the offence was disclosed as dispute over property between the deceased, appellant and his co-accused (brother of appellant). Hence, the appellant and his brother (co-accused) were directly charged for the commission of a heinous crime. Copy of FIR is **annexure A**.
4. As replied above, the appellant alongwith his co-accused brother were directly charged for the commission of offence. Hence, besides a criminal act, the appellant being member of a disciplined department has also committed a gross professional misconduct, cause embarrassment and damaged image of disciplined department.

5. As replied above, the appellant has committed gross professional misconduct besides the criminal act. Therefore, departmental proceedings were initiated against the appellant by respondent No. 4 under the relevant rules.
6. Pertains to criminal case and court orders. However, it is submitted that release of appellant on bail does not amount to his acquittal as it is a tentative assessment. Further added that trial in criminal case against the appellant is yet to be conducted.
7. The appellant was proceeded with departmentally according to the relevant rules, the charge leveled against him was proved, hence the proceedings culminated into his dismissal from service which was a speaking order passed by respondent No. 4. Copy is **annexure B**.
8. The departmental appeal of the appellant was processed by respondent No. 3, the appellant was heard in person in orderly room held on 16.06.2021, but the appellant failed to submit any plausible explanation to his act. Thus the departmental appeal being devoid of merit was rightly rejected by respondent No. 3 vide order dated 16.06.2021. Copy is **annexure C**.
9. The appellant is estopped to file the instant appeal for his own act.

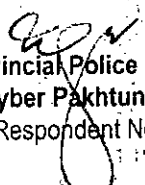
Grounds:-


- A. Incorrect, the impugned orders passed by respondents No. 3 & 4 are legal, speaking and in accordance with law / rules.
- B. Incorrect, all codal formalities were fulfilled during the course of departmental proceedings.
- C. Incorrect, charge sheet with statement of allegation was issued to the appellant. Copies are **annexure D**.
- D. Incorrect, inquiry was initiated after issuance of charge sheet with statement of allegation under Khyber Pakhtunkhwa Rules 1975.
- E. Incorrect, the codal formalities were fulfilled by respondent No. 4.
- F. The appellant was posted at Barmela Post, district Orakzai. On 12.01.2021 during checking it was reported by SI Afsar Khan that the appellant has left his place of posting without any permission. Hence, a report vide daily diary No. 4 dated 12.01.2021 was registered in Police Post Mamozai, district Orakzai. On 13.01.2021, the incident took place in jurisdiction of Police station MRS district Kohat and the appellant absconded / absented himself from duty; subsequently arrested. Copy of Daily Diary is **annexure E**.
- G. Incorrect, as replied above, the appellant alongwith his co-accused brother has been charged directly for the commission of offence. It is broad day incident and motive is also disclosed, therefore, the instant FIR is a substantive piece of incident.
- H. Reply is submitted in para No. F.


- I. Incorrect, as replied above the appellant alongwith his co-accused for the commission of offence and the appellant was proceeded for departmentally for his own act which has been established during the course of inquiry.
- J. Incorrect, the appellant is charged for murder of one Wali ur Rehman by complainant vide FIR No. mentioned above.
- K. Incorrect, a regular inquiry was conducted against the appellant under the relevant rules.
- L. The appellant is yet to be tried in criminal case by the competent court of law. However, the appellant is held guilty of the charge during a departmental inquiry conducted against him. It is added that criminal and departmental proceedings are distinct in nature and order of one authority is not binding on other authority.
- M. Irrelevant.
- N. Legal formality were fulfilled by respondent No. 4.
- O. The respondents may also be allowed to advance other grounds during the course of arguments.

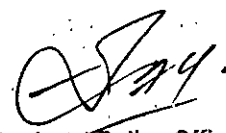
Prayer:-

In view of the above, it is prayed that the appeal devoid of merits may graciously be dismissed with costs.


Provincial Police Officer,
Khyber Pakhtunkhwa,
(Respondent No. 2)


District Police Officer,
Orakzai
(Respondent No. 4)


Govt of Khyber Pakhtunkhwa,
Through Chief Secretary,
(Respondent No. 1)
Home Secretary,
Khyber Pakhtunkhwa


Regional Police Officer,
Kohat
(Respondent No. 3)
Kohat Region

P-0

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

Service Appeal No. 6647/2021
Faraz Khan

..... Appellant

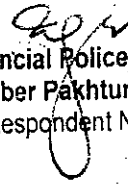
VERSUS


Govt of Khyber Pakhtunkhwa,
Through Chief Secretary & others


..... Respondents

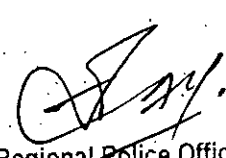
COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa,
(Respondent No. 2)


Govt of Khyber Pakhtunkhwa,
Through Chief Secretary,
(Respondent No. 1)


District Police Officer,
Orakzai
(Respondent No. 4)


Regional Police Officer,
Kohat
(Respondent No. 3)
Regional Police Officer
Kohat Region Kohat

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر نوٹہ 154 مجموعہ ضابطہ فوجداری

ضلع: کوہاٹ

تھانہ: MRS

تاریخ: وقت وقوع 13/01/2021 وقت 13:30 بجے

علت نمبر: 51

1	تاریخ وقت رپورٹ	13/01/2021 وقت 14:45 بجے چاکی کی پرچہ 13/01/2021 وقت 15:40 بجے
2	نام سکونت اطلاع دہندہ مستفیث	عبدالرحمن ولد عبداللہ خان سکندر قیصر آباد
3	مختصر کیفیت جرم (موردہ) حال اگر کچھ لکھا گیا ہو	302-34 PPC
4	جائے وقوع سے فاصلہ قعات اور سمت	میں ڈھورہ روڈ نزد قیصر آباد پلاٹ نمبر 6/7 کلومیٹر چائے جنوب از قعات
5	نام سکونت ملزم	(اظہار) فرزند پسران امیر جان ساکنان قیصر آباد
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو یا تو وجہ بیان کرے	برآمدگی مراسلہ پر چرچا جاتا ہے۔
7	تھانہ سے روانگی کی تاریخ و وقت	پلورا کوٹشل رپورٹ

ابتدائی اطلاع نیچے درج کرو۔ اس وقت ایک تحریری مراسلہ مخائب محمد خان ASI انچارج چوکی ملز ایریا بدست غنی الرحمن HC بطور آئیٹل رپورٹ موصول ہو کر ذیل ہے۔ بخدمت ایس آر انچارج تھانہ MRS میں بسلسلہ رپورٹ KDA ہسپتال میں مصروف تھا کہ وہ قیصر آباد سے نیشنل اڈاں ولی الرحمن ولد عبداللہ خان پھر 35/36 سال سکندر قیصر آباد بہ امداد ایمان وہہ ایمر جنسی روم KDA ہسپتال لاکر بیچ منتقل برادر اش عبدالرحمن پھر 19/20 سال شناختی کارڈ نمبر 3-7252848-21303 سوہاگل نمبر 03325735034 یوں رپورٹ کرتا ہے کہ اس روز میں بوقت 13:20 بجے خانہ خود سے بسلسلہ نیچے کام روڈ کی طرف جا رہا تھا دیکھا کہ بمقام بالا پر برادر ام منتقل ولی الرحمن اور مسیان ظیل فرزند پسران امیر جان ساکنان دہم آم آہل میں مشیت و گریبان تھے فوراً میں دوڑتے ہی جونہی قریب 20 قدم کے فاصلے پر آیا تو اس دوران ہر دو مسیان ظیل فرزند نے پستول ہائے سے برادر ام ولی الرحمن پر ہارادہ قتل فائرنگ کی جسکی فائرنگ سے برادر ام لگ کر زمین پر گر پڑا اور موقع پر جا بچن ہوا اور ظیل مذکورہ کی فائرنگ سے برادر اش فرزند بھی زخمی ہوا ہے وقوعہ ہذا میرے آنکھوں کا چشم دید ہے۔ وجہ عداوت ظیل فرزند کہتا ہے کہ برادر ام منتقل ولی الرحمن کے بذریعہ اسلحہ آئین سے قتل کرینکا برخلاف مسیان ظیل فرزند بالا و عویدار ہوں نشان انگوٹھا عبدالرحمن رپورٹ بالا کی تائید ولد اش عبداللہ خان ولد خیر اللہ خان نے کی نشان انگوٹھا عبداللہ خان کاروائی پولیس حسب گفتہ مسائل رپورٹ درج بالا ہو کر پڑھ کر سنایا سمجھایا گیا درست تسلیم کر کے زیر رپورٹ خود نشان انگوٹھا ثبت کیا جبکہ تائید رپورٹ والد اش منتقل رپورٹ کنندہ نے کی جسکی میں تصدیق کرتا ہوں۔ منتقل کے کاغذات مرگ مرتب کر کے بغرض پویشارٹم زیر حفاظت کنسٹیبل عاطف انور 256 حوالہ ڈاکٹر صاحب ہوئی۔ مضمون رپورٹ سے صورت جرم بالا پائی جا کر مراسلہ بطور آئیٹل رپورٹ بدست غنی الرحمن LHC ارسال تھانہ ہے بعد اندراج مقدمہ کے تفتیش حوالہ KBI سٹاف کیا جائے۔ رپورٹ ہذا مجروح فرزند کے رپورٹ کا کراس ہے۔ وقوعہ کے بابت جملہ حالات واقعات بذریعہ موبائل فون انفران بالا کے نوٹس میں لائے گئے دستخط انگریزی محمد خان ASI چوکی ملز ایریا 13/01/2021 کاروائی تھانہ آمد مراسلہ حرف بحرف درج بالا ہو کر پرچہ بجا نام بالا چاک ہو کر نوٹس پرچہ مراسلہ بغرض تفتیش حوالہ KBI سٹاف کیا جاتا ہے، پرچہ بطور آئیٹل رپورٹ گزارش ہے۔

SI-PS-MRS
13-01-2021

BA632-2021 Faraz khan VS State 20 pages



P ①
Annexure "B"
OFFICE OF THE DISTRICT POLICE
OFFICER ORAKZAI

OFFICE ORDER:-

The order will dispose off the departmental enquiry conducted against Constable Faraz Khan s/o Mir Jan Belt # 1002 Section Mamuzai under the Khyber Pakhtunkhwa, Police Rules, (Amended 2014) 1975.

Constable Faraz Khan s/o Mir Jan was absent from his lawful duty as well as charged/involved in case FIR No. 51 dated 13.01.2021 U/S 302/324 PPC PS MRS District Kohat.

He was suspended vide order OB No. 247 dated 09.02.2021 and SP Investigation was nominated as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer vide his finding and found him guilty of the charges leveled against him, and recommend him for major punishment.

These act of the accused official earned bad name to a discipline force on one hand and involved himself in criminal act.

In view of the above and available record, i reached to the conclusion that the accused official was involved in criminal act. Therefore, these charges leveled against accused Constable Faraz Khan s/o Mir Jan have been established beyond any shadow of doubt. Therefore, in exercise of powers conferred upon me under the rules ibid, a major punishment of "dismissed from service" is imposed on accused Constable Faraz Khan s/o Mir Jan with immediate effect. Kit etc issued to the Constable be collected.

Announced 274

Dated 12/2/2021

DISTRICT POLICE OFFICER, ORAKZAI

No. 604 JEC/OASI Dated 12/02/2021.

Copy of above to the:-

1. The Regional Police Officer, Kohat.
2. SP Investigation
3. SDPO Upper for collection of items and clearance.
4. Pay Officer/SRC/OHC/Reader for necessary action.

DISTRICT POLICE OFFICER, ORAKZAI

ORDER.

This order will dispose of a departmental appeal moved by Ex-Constable Faraz Khan No. 1002 of district Orakzai against the punishment order, passed by DPO Orakzai vide OB No. 274, dated 12.02.2021 whereby he was awarded major punishment of **dismissal from service** on the allegations of his involvement in criminal case vide FIR No. 51, dated 13.01.2021 u/s 302, 34 PPC PS MRS, Kohat.

Comments as well as relevant record were requisitioned from DPO Orakzai and perused. The appellant was also heard in person in O.R held in this office on 16.06.2021. During hearing the appellant did not advance any plausible explanation in his defense to prove his innocence.

Above in view, the undersigned reached to the conclusion that the allegations leveled against the appellant are fully proved. The appellant was not supposed to indulge himself in such like criminal activities which can tarnish the image of Police. Therefore, in exercise of the powers conferred upon the undersigned under Rules 11-A, his appeal being devoid of merits is hereby rejected.

Order Announced
16.06.2021

Mohammad Zafar Ali
(MOHAMMAD ZAFAR ALI) PSP
Region Police Officer,
Kohat Region.

No. 9479 /EC, dated Kohat the 21-06- /2021.

Copy to District Police Officer, Orakzai for information and necessary action w/r to his office Memo: No. 1052/EC, dated 19.04.2021. His Service Book & Enquiry File is returned herewith.

Mohammad Zafar Ali
(MOHAMMAD ZAFAR ALI) PSP
Region Police Officer,
Kohat Region.

EC

[Signature]
24/6/21
DPO

①

[Handwritten marks]

No 313/4 IEC

Dated 1/12 /2021

P-9
Annexure
"D"

CHARGE SHEET

I, Mr. Nisar Ahmad Khan, District Police Officer, Orakzai as a competent authority, hereby charge you Constable Faraz Khan s/o Mir Jan Belt # 1002 of Mamuzai tribe as follow:-

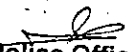
"As per report you were found/involved in FIR No. 51 dated 13.01.2021 U/S 302/34 PPC PS MRS Kohat. This is quite adverse on your part and shows your negligence, carelessness and indiscipline attitude in the discharge of your official obligations. This act on your part is against service discipline and amounts to gross misconduct."

1. By the reason of your commission/omission, constitute miss-conduct under Police disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department, you have rendered your-self liable to all or any of the penalties specified in Police Rule-1975 ibid.

2 You are, therefore, required to submit your written defense within 07-days of the receipt of this charge sheet to the enquiry Officer Mr. Ali Hassan SP Investigation is hereby appointed for the purpose of conducting enquiry.

Your written defense if any should reach to the Enquiry Officer within a stipulated period, failing which shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

3. Intimate whether you desire to be heard in person.
4. A statement of allegation is enclosed.


District Police Officer, Orakzai

P-100

DISCIPLINARY ACTION

I, Mr. Nisar Ahmad Khan, District Police Officer, Orakzai as a competent authority, is of the opinion that **Constable Faraz s/o Mir Jan Belt# 1002 of Mamuzai tribe** has rendered himself liable to be proceeded against on committing the following act/commission within the meaning of Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt: of Khyber Pakhtunkhwa, Police Department.

STATEMENT OF ALLEGATIONS

"As per report he was found/involved in FIR No. 51 dated 13.01.2021 U/S 302/34 PPC PS MRS Kohat. This is quite adverse on his part and shows his negligence, carelessness and indiscipline attitude in the discharge of his official obligations. This act on his part is against service discipline and amounts to gross misconduct."

1. The enquiry Officers **Mr. Ali Hassan SP Investigation** in accordance with provision of the Police Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt: of Khyber Pakhtunkhwa, Police Department may provide reasonable opportunity of hearing to the accused official, record his finding and make within 10-days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.
2. The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.


District Police Officer, Orakzai

No. 3/3 A / Enquiry, dated 1/12/2021

Copy to:-

1. The enquiry Officers for initiating proceeding against the accused under the Provision of the Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt: of Khyber Pakhtunkhwa, Police Department.
2. Constable Qayum s/o Mir Dal Khan Belt # 420 of Suni St;uri Khel

جوئی مامورین

Annexure (18)
"E"

منجھ اور میری

نقلہ 4 روزنامہ 12/01/2021

واپسی افسر خان کا مورخہ 12/01/2021 وقت 12:00 بجے میں مع پھر انہاں
واپس آیا دوران گشت جب پرمیلیم پوسٹ چیکنگ کے لئے گیا تو معلوم
ہوا کہ کنسٹیبل فراز خان والد مسر خان بغیر اجازت خانہ خود چلا گیا
ہے رپورٹ غیر حاضری درج روزنامہ کجانی ہے رپورٹ درج روزنامہ
ہو کر نقلہ علیحدہ فرتب کر کے بغرض مناسب کارروائی کر کے افسران
بالا کی خدمت میں ارسال ہوگی

حنا خان

نقل بظاہر اہل ہے

Sir

Forwarded

M Khan

MM PP Muzam
12-01-2021

صفا علی

مذکورہ کنسٹیبل خلیفہ صاحب

قلوئی کارروائی ارسال خدمت ہے

Incharge PP Muzam

12-01-2021

SDPO UPPER
14/01/2021

SP. Ins. Jm
Inquiry and
report
21-1-21

O-B 182
date 21/01/2021

1002

Belt Muzam

فراز خان
FC

302 دفتر وارڈ

کوئیٹن میں

محکمہ اڈرز عدل 250 Fc مورخہ 22/21 جناب DSP صاحب
سلسلہ انکوائری مادہ 100 انکوائری شروع کرنے

(1) کسٹل فرار خان ولد امیر جان کے خلاف اسرار خان سی
نے ریورٹ دو روزہ تاریخ جوئی ماہ مورخہ 4 مورخہ 12/21
جوئی تھی۔

(2) ASI گل امیر ولد حاجی غرت خان قوم رہیسہ خیل سمنہ ماہور
کیا خبری بیان دے کہ بیان دیے ہیں یا کہ میں شہادت
دیے ہیں یا برعکس یہ انکوائری سیشن 2 صاحب کے ساتھ
میرا شہادت مقابلہ شہادت و اسی جو معلوم ہے کہ
اسرار خان نے جیلنگ کرتے ہیں آئے اور فرار خان
کو غیر حاضر کیا ہے۔ بیان خبری انکوائری ہے

(3) 2/21 فرار خان سے آ رہا ہے کہ میں نے مورخہ 12/21
کو فرار خان سے غیر حاضر کیا ہے

(4) 2/21 مورخہ مورخہ کے بیان سے کہ اسرار خان نے جیل
لوٹنے کو جیلنگ کرتے و اسی جو فرار خان کو غیر حاضر
کرتے لیکن علیہ مرتبہ کرتے انکوائری با صاحبان کو
آرہا ہے

(5) فرار خان ولد امیر جان سلسلہ قوم بومادی حال فقیر آباد تویان
مورخہ عدت 51 مورخہ 13/21 ص 302-34 PPC (م)
MRC

میں درخواستی کو جیل میں جیل DSP صاحب کے ماتریق
مادہ آئی ہے اور اس کے شہادت میں کسٹل فرار خان
کو لیا رہا ہے مطابق Major Punishment کی سزا
شہادت میں جاتی ہے

S.P. INVESTIGATION
DISTRICT ORAKZAI

3-2-2021

B#1002
Service
Discontinued
8/2/21

Before the khyber pakhtunkhwa service
tribunal peshawar

Faraz Ichan VERSUS GOVT OF KPK

Application for an adjournment;

Respectfully sheweth;

- 1) That the above mentioned case is pending adjudication before this honorable court, which is fixed for today, i.e., 13/03/2023/.
- 2) That the learned counsel for petitioner went to Swat to perform the funeral prayer of his friend's mother at 2:00 pm.
- 3) That there is no legal bar on the acceptance of this application rather the law and Justice demand the same.

It is, therefore, most humbly prayed that on acceptance of this application may kindly be an adjourn for today

Dated 13/03/2023/

Applicant/Petitioner

through

Faraz Ichan
Junior Counsel