

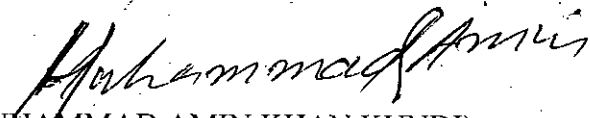
06.11.2017

Appellant with counsel present. Mr. Usman Ghani, District Attorney alongwith Mr. Sheraz, Head Constable for the respondents also present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed in connected Service Appeal No. 676/2014 "titled Rizwan Ullah Khan-Versus-The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others, we are constrained to accept the present appeals, set-aside the impugned order and reinstate the appellants in service. However, the respondent-department is at liberty to conduct a de-novo inquiry against the appellants within a period of three months from the date of receipt of this judgment. In case the de-novo inquiry is conducted the intervening period will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
06.11.2017


(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

17.03.2017


Appellant in person and Addl: AG alongwith Mr. Muhammad Shiraz, H.C and Mr. Asghar Ali, H.C for respondents present. Appellant requested for adjournment. To come up for arguments on 08.06.2017.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

08.06.2017

Clerk of the counsel for appellant and Mr. Sheraz Khan, HC alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 03.10.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

03.10.2017

Appellant in person and Asst: AG alongwith Mr. Muhammad Farooq, Inspector (Legal) for respondents present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 06.11.2017 before D.B.

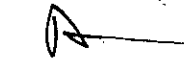

(AHMAD HASSAN)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

28.07.2016

Counsel for the appellant and Mr. Yaqoob Khan, Naib Court alongwith Assistant AG for respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 29.8.16 before D.B alongwith connected appeals.


Member


Member

29.08.2016

Appellant with counsel and Mr. Javed Iqbal, DSP (legal) alongwith Additional AG for respondents present. Due to non-availability of D.B comprising of Mr. Pir Bakhsh Shah, Learned Member (Judicial) and Mr. Abdul Latif, Learned Member (Executive) today the instant appeal be placed before said Bench.

In view of the order dated 15.06.201 office is directed to place the instant service appeal alongwith other identical appeals before the said bench for final hearing for 01.12.2016.


Member


Chairman

01.12.2016

Counsel for the appellant and Mr. Javed Iqbal, Inspector alongwith Mr. Ziaullah, GP for respondents present. The D.B is incomplete due to relinquishment of charge by Judicial Member. To come up for arguments on 17.3.17.


Member

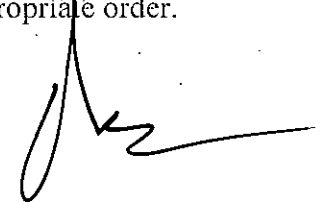
15.6.2016

Counsel for the appellant and Mr. Javed Iqbal, Inspector (Legal) alongwith Assistant AG for respondents present. Learned counsel for the appellant submitted before the court that the present case has been heard and fixed for order by the other bench vide order sheet dated 26.2.2015 however, later on other connected cases were clubbed and the case was fixed for re arguments. Learned counsel for the appellant requested that the case be sent to bench which has already heard the case and fixed it for order.

Perusal of the case file reveals that vide order sheet dated 26.2.2015 the case was heard and fixed for order however, due to consolidation of connected cases, the case was fixed for re-arguments, therefore, it would be appropriate that the case be fixed before bench which has already heard the case and fixed it for order. Case file to sent learned Chairman for making appropriate order.



Member



Member

29.6.2016.

File received and order sheet dated 15.06.2016 perused.

This appeal is entrusted to D.B comprising of Mr. Pir Bakhsh Shah, learned Member (Judicial) and Mr. Abdul Latif, learned Member (Executive) for final hearing and disposal for 28-7-2016



Chairman

28.04.2016

Agent of counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) alongwith Mr. Muhammad Jan, GP for respondents present. Due to strike of the Bar learned counsel for the appellant is not available today before the Court, therefore, case is adjourned for arguments to 15.6.16.

Member

Member

63/48/16

~~Counsel for the appellant and Mr. Javed Iqbal, Inspector (Legal) alongwith Assistant GP for respondents present. Learned counsel for the appellant appeared before the court that the present case has not been heard and fixed for order by the other bench vide order dated 28.04.2015 however, the later on a bench consisting of one Judge and the case was referred to the bench consisting of one Judge and the appellant secured that the case be sent to the bench which is also heard previous and is fixed for order.~~
~~It is also revealed that this case was heard on 28.04.2015. In this case was heard and fixed for order by the other bench on 28.04.2015. In this case, the case was fixed for arguments by the bench consisting of one Judge and the case was heard and fixed for arguments by the bench consisting of one Judge. The case was referred to the bench consisting of one Judge and the appellant secured that the case be sent to the bench which is also heard previous and is fixed for order.~~
~~It is also revealed that this case was heard on 28.04.2015. In this case, the case was fixed for arguments by the bench consisting of one Judge and the case was heard and fixed for arguments by the bench consisting of one Judge. The case was referred to the bench consisting of one Judge and the appellant secured that the case be sent to the bench which is also heard previous and is fixed for order.~~

1/1/16

1/1/16

4.08.2015


Junior to counsel for the appellant and Addl. AG with Javed Iqbal, SI (Legal) for the respondents present. Counsel for the appellant was stated to be busy in hon'ble Darul Qaza. Therefore, case to come up for requisite record and further arguments on 08-10-2015.


MEMBER


MEMBER

08.10.2015

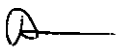
Counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) alongwith Addl: A.G for respondents present. The Bench is incomplete therefore, case is adjourned to 2-12-15 for arguments.


MEMBER

02.12.2015

Counsel for the appellant and Mr. Javed Iqbal, Inspector (Legal) alongwith Asst: AG for respondents present. During course of arguments copy of enquiry report was not found on record. Representative of the respondent-department is directed to produce the same on next date. To come up for arguments on

11.2.16


Member


Member

11.02.2016

Counsel for the appellant and Mr. Muhammad Jan, Government Pleader with Javed Iqbal, DSP for the respondents present. Since the Court time is over, therefore, arguments could not be heard. To come up for arguments on

28.4.16


MEMBER


MEMBER

6 09.02.2015

Counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) on behalf of respondents alongwith Addl: AG present. Written reply submitted. The case is assigned to D.B for rejoinder and final hearing for 26.02.2015.


Chairman

26.2.2015

Counsel for the appellant and Addl. AG with Inspector Javed Iqbal for the respondents present. Arguments heard. To come up for order on 09.4.2015.


MEMBER


MEMBER

09.04.2015

Appellant with counsel Addl: A.G for respondents present. Arguments partly heard.

It transpired that seven officials of police department, the appellants were removed from service on the charge of cowardice in the background of incident martyrdom of SHO Imam Hassan. Since the relevant record has been requisitioned in the connected cases of Muhammad Shoaib and Nasir Zaman of the regular police officials, therefore, these cases also be clubbed with the same. To come up for further arguments alongwith connected appeals on 4.8.2015.


MEMBER


MEMBER

3
14.07.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the original order dated 28.02.2014, he filed departmental appeal on 14.03.2014, which has been rejected on 30.04.2014, hence the present appeal on 13.05.2014. He further contended that the impugned order dated 30.04.2014 has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules 1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments 17.10.2014.

Appellant Deposited
Security & Process Fee
Rs. 180/-
Bank
Receipt is Attached with File.



Member

4
14.07.2014

This case be put before the Final Bench for further proceedings.

Chairman

5
17.10.2014


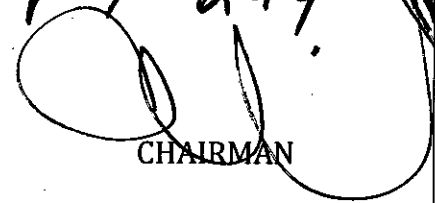
Counsel for the appellant and Mr. Javed Iqbal, Inspector (legal) on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. To come up for written reply/comments alongwith connected appeals on 9.2.2015.

Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 678/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	13/05/2014	<p>The appeal of Mr. Umar Jan Khan presented today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	19-5-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>14-7-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

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

Appeal No. 678 /2014

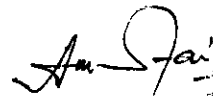
Mr. Umar Jan Khan V/S Elite Force, KPK, Peshawar.


INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of Charge Report	- A -	05
3.	Copy of Statement of Allegations	- B -	06
4.	Reply to Charge Sheet	- C -	07-08
5.	Copy of Inquiry Report	- D -	09-13
6.	Copy of Penalty Order	- E -	14
7.	Copy of Appeal	- F -	15-16
8.	Copy of Rejection Order	-G-	17
9.	Vakalat Nama	-----	18

APPELLANT
Umar Jan Khan

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AND

(TAIMUR ALI KHAN)
Advocate, Peshawar.

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

Appeal No. 678 /2014

Mr. Umar Jan Khan,
Ex-Constable No.2342,
Elite Force, District Bannu.

697
13/5/14

APPELLANT

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant/Inspector General of Police, Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED ~~28.02.2013~~, WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND AGAINST THE FINAL REJECTION ORDER DATED 30.04.2014 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

.....

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED ~~28.02.2013~~, AND 30.04.2014 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

13/5/14

RESPECTFULLY SHEWETH:

1. That the appellant joined the police force in the year 2007 and complete various courses successfully and also has good service record. The appellant as per Court judgments and definition was a civil servant of the province of Khyber Pakhtunkhwa.
2. That the appellant was charge sheeted under Police Rules 1975 for not properly performing his duty while on gasht with the then SHO Imam Hussain Shaheed on 13.1.2013. The P.I. Bannu was also nominated as Inquiry Officer in the statement of allegations. Copies of the charge sheet and Statement of Allegations are attached as Annexure-A and B.
3. That the appellant filed reply to the charge sheet and denied all the allegations with proofs. Cop of the Reply to Charge sheet is attaché as Annexure-C.
4. That then the inquiry was conducted and statement of all the accused constables were recorded but the statement of other officials were not recorded in the presence of appellant nor they were put to cross examination. However, the inquiry officer held the appellant guilty and recommended for major punishment. Copy of the Inquiry Report is attached as Annexure-D.
5. That then after the inquiry on ^{28.2.14} ~~21.5.2013~~ ^{Rai}, the appellant was dismissed from service. The appellant filed departmental appeal against the penalty order but the same was also rejected by the appellate authority on 30.04.2014. Copies of Order, Appeal and Rejection Order are attached as Annexure-E , F and G.
6. That now the appellant comes to this Honourable Tribunal on the following grounds amongst the others.

GROUNDS:

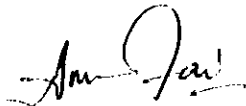
- A) That the order dated 21.5.2013 and 30.4.2014 are against the law, rules, norms of justice and material on record. Therefore, not tenable.
- B) That no final show cause notice was issued to the appellant which is the violation of law and as such the whole action of the respondents became liable to be set aside.
- C) That no chance of personal hearing was provided to the appellant and as such the appellant was condemned unheard which is the violation of Audit Altram Partem.
- D) That none of the other official's statement was recorded in the presence of appellant nor were they put to cross examination, which is also the violation of law and rules.
- E) That the appellant never shown any cowardice and fought for long time nor left the premises. That was also reported by the other officials in their diaries. That aspect was not considered by the inquiry officer.
- F) That then appellant was a civil servant of the province and he was to be dealt according to E&D Rules 2011, but in the instant case the appellant was dealt under Police Rules, 1975 which is gross illegality.
- G) That the appellant was punished for no fault on his part and the given penalty is also very harsh.
- H) That the appellant has not been treated according to law and rules.
- I) That the rejection is not a speaking order and has been passed by incompetent authority despite the fact that the appeal was made to the Commandant Elite Force, K.P.K. but the same was rejected on 30.04.2014 by the Deputy Commandant, Peshawar.

- J) That though the rejection order dated 30.04.2014 is also violation of the 24 Act of the General Clauses as well as Supreme Court's Judgment reported 1981 SCMR Page-2330.
- K) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.


It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

APPELLANT 
Umar Jan Khan

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AND


(TAIMUR ALI KHAN)
Advocate, Peshawar.

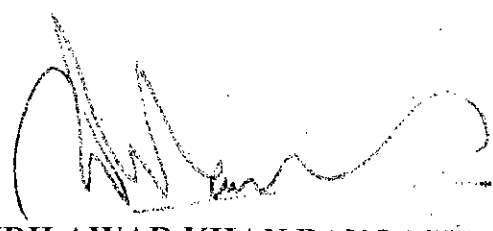
A (5)

CHARGE SHEET

I, Dilawar Khan Bangash, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority hereby charge you Constables Umer Jan No. 2342, Company No. 22 Elite Force as follows;

That on 13.01.2013, You were deputed for Naka Bandi duty with SI Imam Hassan Shaheed the then SHO PS Haved, 01 accused namely Amin Shah started firing upon him in the premises of Sheikh Fareed Baba, Resultantly, He was sustained injured and after then he got embraced martyrdom. The accused decamped from the scene after the commission of offence without any hindrance while they have, become a silent spectator. Thus you have ceased to become good Police officials as well as well as guilty of misconduct.

2. By reason of the above, you appear to be guilty of misconduct under the Police Rules (amended vide NWFP gazette, 27th January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.
3. You are, therefore, directed to submit your defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.
4. Your written defense, if any, should reach the Enquiry Officer within the specified period, failing which, it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.
5. You are directed to intimate whether you desire to be heard in person.
6. A statement of allegation is enclosed.



(DILAWAR KHAN BANGASH)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.

ATTESTED


B (6)

SUMMARY OF ALLEGATIONS

I, Dilawar Khan Bangash, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, am of the opinion that Constables Umer Jan No. 2342, Company No. 22 has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette, 27th January 1976).

SUMMARY OF ALLEGATIONS

That on 13.01.2013, they were deputed for Naka bandi duty with SI Imam Hassan Shaheed the then SHO PS Haved, 01 accused namely Amin Shah started firing upon him in the premises of Sheikh Fared Baba, Resultantly, He was sustained injured and after then he got embraced martyrdom. The accused decamped from the scene after the commission of offence without any hindrance while they have, become a silent spectator. Thus they have ceased to become good Police officials as well as well as guilty of misconduct.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Inspector Shabir Ahmad of Elite Force Bannu is appointed as Enquiry Officer.

3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.

4. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(DILAWAR KHAN BANGASH)

Deputy Commandant,

Elite Force, Khyber Pakhtunkhwa, Peshawar.

No. 10448-53 /EF, dated Peshawar the 12 /08/2013.

Copies to;

1. Office Superintendent, Elite Force Khyber Pakhtunkhwa Peshawar.
2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Inspector Shabir Khan of Elite Force Bannu.
4. SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
5. FC Umer Jan No. 2342, of Elite Force through reader SP/Elite Bannu.

ATTESTED



(DILAWAR KHAN BANGASH)

Deputy Commandant,

Elite Force, Khyber Pakhtunkhwa, Peshawar.

بمقام نائیل علی خان 2342 ضلع ہون۔
EF

الزام :- جو ہر الزام عائد ہوا ہے۔ کہ ورخ 13/13 میں نامہ لکھی لو انٹ حدود شیخ فرید بابا پیر
انام سن 110 کی تہانہ ہوئی تاکہ وجود تھا۔ کہ اجاٹک SMO ہر ایک شخص آئین شاہ
نے قاتلانہ فائرنگ کی۔ 3 110 ممبر زخمی لیور ہسپتال میں جان بحق کرے۔ میں
نے لکھی اظہار کرتے ہیں کہ ملزم کو وقوع واردات سے بچ نکلنے دیا۔

حکایت

عائد سندہ الزام مارے 3 آیا حضور میں ہوں۔ کہ ورخ 13/13 ممبر تہانہ لکھی ہے KFC
تہانہ شیخ اور نائیل ناصر کے ہمراہ ہم یا بچ لکھی لکھی کو ساجو لیکر سواری ڈاکٹر سرانی
رود روزہ شیخ فرید بابا پیر۔ پیر روانہ کرے۔ راستہ میں ساجو مہلت سے آتے ہوئے ساجو
کو کھڑا کیا۔ اور اس سے کوئی ساجو تبصرہ کرتے ہوئے نائیل کے ڈرلم کی۔ 3 وہ سواری کوئی ساجو
ہمارے طلب روانہ ہوا۔ جب ڈاکٹر شیخ فرید بابا پیر کے حدود لکھی۔ تو ساجو میں ساجو
کے پاس ڈاکٹر رک گئی۔ 110 اور KFC فرٹ سے آئے۔ ہم لکھی آئے۔ SMO مہلت سے
اور فرور خان۔ حوالا الہ ٹرانزیکٹ کی لکھی۔ کہ آتے ہوئے ڈاکٹر کے پاس وہ ساجو۔ اور خود KFC
کے ہنگام میں دیکھ و لکھی ہمراہ اختیار۔ لکھی الہ اور نائیل تہانہ ناصر خان کے ہمراہ تہانہ 3 شکار لکھی
ان ساجو کے اندر داخل ہوا۔ ساجو آتے ہی سے کھلا تھا۔ ہم نے ساجو لکھی۔ کہ
کوئی دوست یا کوئی عزیز سمجھی ہوگا۔ اور سکو عام بھٹک ضیال لکھی۔ کہ اجاٹک ساجو کے اندر لکھی
ٹرانزیکٹ ہوں۔ ضد طو لکھی دو زور دار دھماکے ہوئے۔ اور ساجو کے اندر دو لکھی اور لکھی لکھی شروع
ہوئے۔ ہم گھبرا گئے۔ کہ یہ کیا ہوا۔ خود لکھی سنجالی۔ اور ساجو لکھی تہانہ لکھی لکھی
کہ آئے میں اختیار نائیل لکھی اور تہانہ لکھی۔ کہ 110 ممبر زخمی ہوئے ہیں۔ اسے لکھی KFC
نے اندر سے آواز میں دیں۔ کہ اندر جاؤ۔ تہانہ 110 ممبر کو باہر لکھی ہیں۔ ساجو کے اندر اور
لکھی ضد فائرنگ ہوئی۔ میں اور اختیار نائیل اندر چلے گئے۔ ساجو حوالا اور ساجو کے
کوئی ضد نظر نہیں آتی تھی۔ فائرنگ سے بچ گئے۔ لکھی ساجو سے لکھی ممبر کو زخمی حالت میں
باہر نکالا۔ اور ہسپتال لے جایا گیا۔ لکھی اور لکھی لکھی 3 تہانہ ساجو اور لکھی لکھی لکھی
لکھی کے باوجود لکھی نہ ملا۔ دو ہفتے دن تہانہ ساجو والوں نے آپس میں یہ بحث مباحثہ شروع
کیا۔ کہ ایک دفعہ تو آئین ساجو نے فابواری (سٹیٹ) آدا کی تھی۔ دوبارہ کیا ضرورت تھی۔ لکھی
110 ممبر کو جانے کی کیا ضرورت تھی۔ یہ KFC کس لئے ہے۔ اسکو لکھی لکھی۔ تو کوئی جواب میں
آپنا۔ کہ KFC قابل اعتماد ہے۔ اس پر کیا اختیار۔ اس بحث مباحثہ سے ہمیں فابواری
اور سٹیٹ لکھی ہے آگامی ہوں ہیں سے اپنے ہم فابواری کے سچائی کا علم دے۔

P. To

ATTESTED

8

جبریل :- دراصل وہی ہے جو ان کے اندر رہتا ہوا تھا۔ لیکن پہلی افسران نے وہاں کے راجے
بمباردہ کرتے ہوئے شہر کے الفاظ کی مشق سے اسے سمجھا دیا۔ یہ کہہ کر لایا۔ اچھی
بات ہے۔ حجے اس سے کوئی فرق نہیں۔ لیکن حقیقت یہ ہے کہ اس کی خاطر بیان
دیا ہوں۔

عالمی 10 بہت اہم تھا۔ نہ جہاں رہی اور نہ ہی تاکہ پہری ہوں تو۔ بلکہ یہ ایک
لغویاتی فریب کی شکل تھی۔ یہ کہہ کر ایک لڑکے نے کہا۔ وہاں سے ہمیں
لا علم رکھ کر EF سہجہ آدرجی کلف EF لہری استعمال تھی۔ صبراً کوئی تصور
نہیں۔ اس کو لہری نہیں ہے۔ اس سے ان کے اندر لوہے کی ڈھلوانی نہیں ہوا تھا۔
کہہ رہے تھے باہر گھومنا تھا۔ اس سے کہہ دیتا ہوں۔ یہ صبراً جہاں سے بنیاد الزام پر نہیں
مردوں کے ہر درجہ داخل دستہ فرمایا جاوے۔ یہاں لہری صرف تھی دنا جا رہا ہوں۔ طلب فرمایا جاوے
ماتہ لہری ہوتی۔

انٹیل مشینیں
2347
EF
منہ ہوتی

ENQUIRY REPORT

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During the encounter with militant Amin Shah, Imam Hassan Khan SHO PS Haved was injured and later on succumbed to the injuries. Case FIR No. 9, dated 13-01-2012 u/s 324-353-7ATA PS Haved has been registered in this regard. Police party present with him failed to encounter or to arrest the accused. Constable Umer Jan No. 2342 Platoon No. 89 was also present with SHO on the spot. Constable Umer Jan No. 2342 was charge sheeted with the allegations that "the accused decamped from the scene after the commission of the offence without any hindrance while they have become silent spectators. Thus they have ceased to become good police officials as well as guilty of misconduct". I was appointed as enquiry officer.

During the enquiry I recorded the statement of the following Police officers/ officials

1. Inspector Murad Ali Khan, Investigation officer.
2. Umer Khitab ASHO PS Haved.
3. Constable Hayat Ullah No. 636 PS Haved.
4. Constable Hamid No. 1808 PS Haved (Pickup driver).
5. Constable Naseebullah No. 4072 Elite Force
6. Constable Rizwanullah No. 2345 Elite Force
7. Constable Fawad No. 379 Elite Force Bannu
8. Constable Imtiaz Ali No. 1625 Elite Force Bannu
9. Asmat Ullah Reader to DSP Elite Force Bannu.
10. Constable Umer Jan No. 2342 Elite Force (accused official).

BRIEF OF THE STATEMENTS

1. **Murad Ali Khan** Inspector stated that he has investigated the case FIR No. 13, dated 13-01-2013 u/s 324-353-7ATA PPC PS Haved. He has prepared site plan on the pointation of ASHO and police officials present with SHO on the spot. He has also recorded the statements of the police officials.

- He has recorded the statements of all police officials on the spot.
- The incident has occurred outside the house of Amin Shah as pointed by police officials.
- He has prepared site plan on the pointation of police officials present with Imam Hassan Khan SHO.
- If the statements of the accused police officials are produced in the court during the trial it will damage the case.

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- During the investigation he did not find any proof that Imam Hassan Khan SHO had gone to the house of Amin Shah for receiving "MONTHLY".
- Imam Hassan Khan was morally sound.

2. **Umer Khitab** ASHO PS Haved stated that he got information through wireless in police station. He along with police party reached to the spot where DPO and other police nafri had been reached already. They took the injured SHO to hospital and combed the area for arresting the accused but in vain.

- They reached to the spot after 50 minutes of the incident.
- Imam Hassan, the injured SHO was taken to the hospital in APC.

3. **Constable Hayat Ullah** stated that he along with other police officials went out in police pickup with SHO. They arrested a man namely Hazrat Umer riding by Motor bike in the way. They went towards the house of Amin Shah. When they reached there, SHO directed him to remain with Hazrat Umer, the arrested man and he along with other police officials went towards the house of Amin Shah. After a short while they heard firing, later on they were informed that SHO has been injured.

- SHO was accompanied by all police officials except him.
- SHO had gone to the house of Amin Shah for his arrest and not for receiving "MONTHLY".
- SHO remained injured on the spot for long time that shows their inefficiency.
- Imam Hassan SHO was morally sound.

4. **Hamid Khan No. 1808** stated that he was pickup driver and went out with SHO along with police party. In the way they arrested one man riding by motorbike. When they reached to Sheikh Farid Baba, SHO directed Hayat Ullah to remain with the arrested man. When SHO along with police party went, after short while they heard firing. Constable came and told them that the SHO has been injured. He informed all concerned about the incident. Police nafri came for their assistance with APC. SHO was taken to the hospital in APC.

- I have no knowledge that the SHO was in link with the household of accused Amin Shah.

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5. **Constable Naseebullah No. 4072** stated that he along with other police officials went out along with SHO from Police Station. SHO went towards Sheikh Farid Baba and on the way he arrested one man riding on motorbike. Then they went to Sheikh Farid Baba where SHO entered to one house. He also entered with him. SHO went towards one room, as he reached suddenly someone fired on SHO and SHO was injured. He remained present at the spot and other police party came for their help and SHO was taken to hospital for treatment. He was unaware about raid. Later on he got information that SHO had gone to the house of Amin Shah for receiving "MONTHLY".

- They were unaware about the raid.
- SHO had gone to the house of Amin Shah for receiving "MONTHLY".

6. **Constable Rizwanullah No. 2345** stated that he along with other police officials went out along with SHO from Police Station. SHO went towards Sheikh Farid Baba and on the way he arrested one man riding on motorbike. Then they went to Sheikh Farid Baba where SHO entered to one house. After short while he heard firing and came to know that SHO has been injured. He remained present at the spot and other police party came for their help and SHO was taken to hospital for treatment. He was unaware about raid. Later on he got information that SHO had gone to the house of Amin Shah for receiving "MONTHLY".

- They were unaware about the raid.
- SHO had gone to the house of Amin Shah for receiving "MONTHLY".

7. **Constable Fawad No. 379** stated that he along with other police officials went out along with SHO from Police Station. SHO went towards Sheikh Farid Baba and on the way he arrested one man riding on motorbike. Then they went to Sheikh Farid Baba where SHO entered to one house. After short while he heard firing and came to know that SHO has been injured. He remained present at the spot and other police party came for their help and SHO was taken to hospital for treatment. He was unaware about raid. Later on he got information that SHO had gone to the house of Amin Shah for receiving "MONTHLY".

- They were unaware about the raid.
- SHO had gone to the house of Amin Shah for receiving "MONTHLY".

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8. **Constable Imtiaz Ali No. 1625** stated that he along with other police officials went out along with SHO from Police Station. SHO went towards Sheikh Farid Baba and on the way he arrested one man riding on motorbike. Then they went to Sheikh Farid Baba where SHO entered to one house. After short while he heard firing and came to know that SHO has been injured. He remained present at the spot and other police party came for help and SHO was taken to hospital for treatment. He was unaware about raid. Later on he got information that SHO had gone to the house of Amin Shah for receiving "MONTHLY".

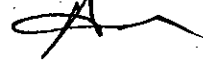
- They were unaware about the raid.
- SHO had gone to the house of Amin Shah for receiving "MONTHLY".

9. **Asmat Ullah** reader to DSP Elite Force Bannu stated that he informed both Shoaib No. 331 and Nasir Zaman No. 1467 time and again by their mobile numbers to come for their statement in the enquiries of Elite constables but they refused and said that they have been dismissed from their service and have no work with police.

10. **Constable Umer Jan No. 2342** stated that he along with other police officials went out along with SHO from Police Station. SHO went towards Sheikh Farid Baba and on the way he arrested one man riding on motorbike. Then they went to Sheikh Farid Baba where SHO entered to one house. After short while he heard firing and came to know that SHO has been injured. He remained present at the spot other police party came for help and SHO was taken to hospital for treatment. He was unaware about raid. Later on he got information that SHO had gone to the house of Amin Shah for receiving "MONTHLY".

- They were unaware about the raid.
- SHO had gone to the house of Amin Shah for receiving "MONTHLY".

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CONCLUSION

I have gone through all the statements recorded in the process of enquiry and also police file of the case. This shows that as Constable Imtiaz Ali No. 1625, platoon No. 82 Elite Force Bannu reached to the spot, SHO was injured but he remained silent and unmoved. He neither encountered the accused nor showed any resistance even he failed to take injured SHO in pickup and bring him to hospital for treatment. Constable Imtiaz Ali No. 1625 has recorded his statement to the investigation officer according to Site plan and FIR that the incident occurred outside the house but in the enquiry statement he stated that incident occurred inside the house. His statement is helpful for the accused and harmful for the case. He also stated that the SHO had gone to the house of Amin Shah for receiving "MONTHLY".

His following actions recommend him for penalty.

1. His cowardice at the spot.
2. Blaming the martyred SHO for corruption.
3. His statement in the enquiry against FIR and the statement recorded in the case.

RECOMMENDATIONS

Constable Umér Jan No. 2342, platoon No. 89 is recommended for major punishment i.e. **DISMISSAL FROM SERVICE.**

Deputy Superintendent of Police
Elite Force Bannu

ATTESTED





Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar



Dated 28/02/2014

No. 2680-87/EF

ORDER

Constable Umer Jan No. 2342, Platoon No. 89 of Elite Force Khyber Pakhtunkhwa was found guilty of gross misconduct on the following grounds.

He along with other constables of Elite Force on 13.01.2013, were deputed for Naka Landi duty with SI Imam Hassan Shaheed, the then SHO PS Haved district Bannu. Of PO namely Amin Shah started firing upon him (SHO) in the area of Skiekh Fareed Baba. Resultantly, he was sustained injured and after that he got embraced martyrdom. The accused constable decamped from the scene after occurrence of the offence without any hindrance as they became a silent spectator. Thus they have ceased to become good Police officials as well as guilty of misconduct. Proper departmental enquiry was conducted against him by the DPO/Bannu office and DPO/Bannu has dismissed him from service vide his office order No 6356-64/SRC dated:21.05.2013.

Being a member of Elite Force Khyber Pakhtunkhwa, a proper departmental enquiry was initiated against him and Mr. Shabir Ahmad Acting DSP Elite Force Bannu was appointed as enquiry officer. After the completion of enquiry process the Enquiry Officer found him guilty of the charges leveled against him and recommended him for major punishment. Consequently, A Final Show Cause Notice was also issued to him by the undersigned, but reply was found unsatisfactory. He was also heard in person in orderly room on 27/02/2014 but he failed to satisfy the undersigned.

I, Sajid Khan Mohmand, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, agreed with the decision of DPO/Bannu as well as recommendation of Acting DSP Elite Force Bannu and impose major penalty of dismissal from service upon him, with immediate effect.

(SAJID KHAN MOHMAND)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

ATTESTED

DY. COMMANDANT,
Elite Force
Khyber Pakhtunkhwa Peshawar.

Copy of the above is forwarded to the:-

1. Acting Deputy Superintendent of Police, Elite Force, Bannu.
2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
4. Incharge Kot /OASI, Elite Force Khyber Pakhtunkhwa Peshawar.
5. SRC/FMC, Elite Force Khyber Pakhtunkhwa Peshawar.
6. FC Umer Jan No. 2342 of Elite Force through reader DSP Elite Bannu.

بھخور جناب والا شان کمانڈنٹ صاحب ایلیٹ فورس صوبہ خیبر پختونخواہ پشاور

اپیل: کا اہدم فرمانے حکم جناب ڈپٹی کمانڈنٹ صاحب ایلیٹ فورس اور بحال فرمانے ملازمت سائل جو حقیقت پر مبنی آپ بیتی کو مسترد

کر کے ایک فرضی جگ بیتی کو عملی جامہ پہنا کر بحوالہ آرڈر بک نمبر 87/EF - 2680 سائل کو ملازمت سے

28.2.2014

ڈیس کیا ہے۔

جناب عالی!

سائل آجناب کے حضور عاجزانہ / منو دبانہ اپیل پیش کرتا ہے کہ

(1) سائل مورخہ 15.07.2007 کو بھرتی ہو کر ریکروٹ کورس کے علاوہ ایلیٹ کورس مکمل کیا اور صوبائی سطح پر مختلف اضلاع میں ایمر جنسی ڈیوٹیاں دیں۔ سال 2013 میں ضلع بنوں کے تھانہ ہوید میں تعینات تھا۔

(2) مورخہ 13-01-2013 SHO تھانہ ہوید نے ہم 5 کانسٹیبلان E.F کے اپنے ساتھ مقصد بتائے بغیر سرکاری گاڑی میں روانہ کئے۔ تھانہ سے 3/4 کلومیٹر کے فاصلہ پر جا کر وہاں ایک بند مقام کے ساتھ رک گئے۔ SHO نے ہمیں گاڑی کے پاس رہنے کا کہا اور خود ہمراہ DFC تھانہ ہوید اور ایک کانسٹیبل کے اس مکان یا بیٹھک کے اندر نہایت خوشگوار موڈ میں داخل ہوا۔ لیکن چند ہی لمحے بعد اس مکان کے اندر ایک بڑسٹ فائر ہوئی۔ ہم گھبرا کر الارٹ ہوئے کہ اس اثناء میں DFC اور اس کانسٹیبل نے ہمیں آوازیں دیں کہ اندر آؤ تاکہ SHO صاحب کو نکال لیں۔ جونہی ہم مکان کے گیٹ پر پہنچے۔ تو اندر مکان میں یکے بعد دیگر دو گرنیڈ کے دھماکے ہوئے۔ جو مکان کے اندر گرد و غبار اور دھواں اٹھا۔ ہمیں کوئی شخص دکھائی نہیں دیتا تھا۔ ہم میں سے ہر ایک نے اپنے اپنے اندازے کے مطابق مکان کے کھوٹ جات کی طرف فائرنگ شروع کیں۔ گرد و غبار کے ختم ہونے پر SHO کو زخمی حالت میں باہر نکالا۔ اتنے میں گمک نفری بھی پہنچ آئی اور SHO صاحب کو زخمی حالت میں ہسپتال پہنچایا گیا۔ رات کے اندھیرے کی وجہ سے ملزمان بارے کوئی سراغ نہ ملا۔ وہ مکان کے دیوار پھانڈ کر نکل چکے تھے۔

(3) زخمی SHO امام حسن نے ہسپتال میں FIR درج کرتے وقت بیان کیا کہ وہ معمول کے گشت پر تھا۔ جب بوقت 17:00 بجے کچھ راستہ شیخ فرید بابا پہنچا تو وہاں پر پہلے سے موجود ملزمان آئین شاہ وغیرہ نے اُن پر فائرنگ شروع کیں۔

(4) لیکن وقوعہ کے دوسرے دن تھانہ ہوید سٹاف والوں نے آپس میں باتیں کرتے ہوئے SHO صاحب کے غلط کام بارے تنقید شروع کیں۔ جس کا ذکر ہم نے اپنے سابقہ بیانات میں کیا ہے۔

(5) ہمارے خلاف محکمانہ انکوائری شروع ہوئی۔ ضلعی افسران نے باہمی مشورہ سے ہمارے لئے ناکہ بندی کا لفظ چن کر الزام عائد کیا کہ بدوران ناکہ بندی ہمراہ SHO صاحب ہم E.F جوانوں نے بزدلی کا مظاہرہ کیا ہے اور خاموشی اختیار کر کے ملزمان کے ساتھ کوئی مقابلہ نہیں کیا ہے۔ کیونکہ ان کو معلوم تھا کہ گشت E.F کے سٹینڈنگ آرڈر میں نہیں۔ میں نے حقیقت پر مبنی جواب دیا

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ہے جو انکو آڑی فائل پر موجود ہے۔

(6) دوبارہ انکو آڑی کے لئے شبیر احمد خان DSP/E.F بنوں انکو آڑی افسر مقرر ہوا۔ لیکن وہ خود کرپشن کے سلسلہ میں زیر انکو آڑی تھا۔ اس نے انکو آڑی بنوں آفس کے میر فرازا P.I کو حوالہ کی۔ جس نے اپنے دفتر کے بند کمرے میں اپنے تجربہ کے مطابق انکو آڑی رپورٹ تیار کی۔

(7) مجھے فائل شو کاز نوٹس جناب ڈپٹی کمانڈنٹ صاحب نے ایشو کیا۔ جس کا میں نے تفصیلاً جواب پیش کیا۔

(بیان کی فوٹو کاپی لف ہمراہ قابل ملاحظہ ہے۔)

(8) لیکن جناب ڈپٹی کمانڈنٹ صاحب نے حقیقت کو مسترد کر کے فرضی اور من گھڑت الزام کو حقیقت تسلیم کرتے ہوئے مسائل کو ملازمت سے ڈسمس کیا ہے۔

عالیجاہ!

میں نے بزدلی نہیں کی ہے۔ میں نے 85 کارٹوس فائر کئے ہیں لیکن مکان نے اندرونی نقشہ سے ہم لاعلم رہے۔ SHO

صاحب نے گشت بتایا ہے اور الزام ناکہ بندی میں بزدلی عائد ہے۔ نہ گشت تھا اور نہ ہی ناکہ بندی۔ سٹینڈنگ آرڈر کی خلاف ورزی

کی طرف کسی بھی آفسر نے توجہ نہیں دی ہے۔ سٹینڈنگ آرڈر نمبر 2 کے ضمن 14 میں گشت ممنوع اور ناکہ بندی بارے R.P.O یا D.P.O

صاحبان کا حکم ضروری ہے اور مقام ناکہ بندی کا تعین اور E.F کی نفری کی تعداد 10 نفر سے کم نہ ہوگی۔ ضلعی سطح پر E.F کی بدنامی کی

کوشش کی گئی ہے۔ میرے ساتھ ظلم ہوا ہے۔

لہذا استدعا کرتا ہوں کہ مسائل کی ملازمت بحال فرمائی جاوے۔ ماتحت پروری ہوگی۔

الارض

Ex کانسٹیبل عمر جان خان نمبر 2342 ضلع بنوں

موبائل نمبر 03339733144 ۱۸-۰۵-۲۰۱۸

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Office of the Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar

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No. 5237-41/EF

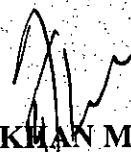
Dated 30/04/2014.

- To :
1. Mr. Rizwan Ullah s/o Mir Zaban Khan
 2. Mr. Imtiaz Ali s/o Izzat Khan
 3. Mr. Naseeb Ullah s/o Hanif Ullah Khan
 4. Mr. Fawad Khan s/o Ghulam Daud Khan
 5. Mr. Umer Jan s/o Noor Ali Khan

Subject: **APPEAL FOR RE-INSTATEMENT IN SERVICE**

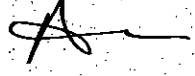
Memo:

Your appeals for re-instatement in service have not been accepted and filed by the competent authority.


(SAJID KHAN MOHMAND)
Deputy Commandant
Elite Force, Khyber Pakhtunkhwa Peshawar

29-4-14

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VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal, Peshawar

Umair Jan Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Dep H. (Respondent)
(Defendant)

I/We Umair Jan Khan Taimur Ali Khan

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate, Peshawar,** adv
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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our
case at any stage of the proceedings, if his any fee left unpaid or is
outstanding against me/us.

Dated _____/20

[Signature]
(CLIENT)

ACCEPTED

[Signature]
M. ASIF YOUSAFZAI
Advocate

[Signature]
Taimur Ali Khan
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor;
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240