Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
		BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL Appeal No. 1251/2016 Jehanzeb Ex-Constable No.72, Police Station Zaida Swabi. Date of Institution ... 09.12.2016 Date of Decision ... 13.12.2018 Jehanzeb Khan and One other ----------**Appellant** 1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar. 2. The Deputy Inspector General of Police, Mardan Region-I, Mardan. 3. The District Police Officer, Swabi. ----------**Respondents** **Mr.Hamid Farooq Durrani.....Chairman** **Mr. Hussain Shah.....Member**
	13.12.2018	JUDGMENT HUSSAIN SHAH, MEMBER: - Appellant, learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney on behalf of the respondents present. 2. This judgment also disposes off the service appeal No. 1250/2016 preferred by Fida Khan, having the same facts and grounds with similar prayer. 3. The appellant was proceeded by serving charge sheet and statement of allegation vide order dated 02.12.2015 which was replied by the appellant. Final Show Cause notice was served after conducting an inquiry where after the competent authority awarded the major penalty of dismissal from service vide order 13.01.2016.

The departmental appeal dated 26.01.2016 was rejected by the appellate authority on 25.04.2016. While review petition dated 03.05.2016 to the respondent No.1 was pending decision the appellant preferred service appeal No. 528/16 before this Tribunal. During the pendency of the service appeal the review petition was partially accepted vide order dated 10.11.2016 and the appellant was re-instated in service, the penalty of dismissal from service was converted to reduction in time scale for Four (04) years to the extent of three (03) stages while in case of the other appellant Fida Khan the penalty of dismissal from service was converted into reduction in time scale for three (03) years to the extent of three (03) stages. The intervening period between the dismissal from service and their respective re-instatement was declared in service without pay. Both the appellants were put under special watch for one (01) year. Subsequent to the decision of the respondent No.1 dated 10.11.2016 their respective service appeal No. 528/2016 and service appeal No.527/2016 were withdrawn, on their application with permission to file fresh appeal, hence the present appeal was preferred with the prayer that the order of respondent No.1 dated 10.11.2016 may be partially set aside to the extent of reduction in time scale and denial of salary and the appellant be re-instated in service with full wages and benefit of service.

4. The learned counsel for the appellant argued that the appellant has not been treated in accordance with the law. He was awarded the penalty without following the proper procedure as the appellant

was not properly associated with the inquiry procedure, he was not given the opportunity to cross examine the witnesses and the opportunity of personal hearing was denied to him.

5. The learned Deputy District Attorney contested the facts and grounds of the appeal as well as the arguments of the learned counsel for the appellant's and argued that the appellant had been treated in accordance with the law and rules. The penalty was imposed after proper departmental procedure in accordance with the rules and fulfillments of all codal formalities. The charges against the appellant's have been proved during the inquiry proceeding and they were given opportunity of defense but they failed to prove themselves innocent. However the respondent No.1 has taken lenient view and re-instated the appellant into service with a modified penalty purely on compassionate grounds. As regarding the pray of the appellant for the pay of the intervening period between their dismissal from service and re-instatement the learned DDA cited the establish principal of "No Work No Pay" hence, appeal of the appellant may be dismissed with costs, being devoid of the merits and without any legal substance.

6. Arguments heard. File perused.

7. The incident occurred on 30.11.2015 is an admitted fact which resulted in to the death of Constable Imtiaz Gul No 250 on the Spot and Constable Guhlam Abbas No 1356 seriously injured. The accused in the Criminal Case took away Official Rifle of 7.62 bore. The appellant failed to place on record any substantive and

self speaking evidence of their innocence contrary to their alleged act of cowardice and failed to respond to the call of duty resulting into the safe escape of the miscreants from the crime scene. The respondent No.1 has already converted the penalty of dismissal from service into the re-instatement with modified penalty.

8. In view of the above discussion this tribunal reaches to the conclusion that the appeal carries no merits hence is dismissed accordingly. Parties are left to bear their own costs. File be consigned to the record room.

(HAMID FAROOQ DURRANI)
MEMBER

(HUSSAIN SHAH)
MEMBER

ANNOUNCED
13.12.2018

Service Appeal No. 1251/2016

07.09.2018 Appellant with counsel and Mr. Riaz Ahmad Paindakhel, Assistant AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 25.10.2018 before D.B.

(Shah Hussain Shah)
Member

(Muhammad Amin Khan Kundi)
Member

25.10.2018 Due to retirement of Hon'ble Chairman, the tribunal is defunct. Therefore, the case is adjourned. To come up for same on 13.12.2018.

READER

13.12.2019 Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Vide separate judgment of today of this tribunal the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room after its completion.

(Hamid Farooq Durrni)
Chairman

(Hussain Shah)
Member

ANNOUNCED
13.12.2018

09.04.2018 Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Due to incomplete Bench, arguments could not be heard. To come up for arguments on 22.05.2018 before the D.B.

(M.Amin Khan Kundi)
Member

22.05.2018 Counsel for the appellant and Addl: AG for the respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 18.07.2018 before D.B.

(Muhammad Amin Khan Kundi)
Member

18.07.2018 Counsel for the appellant present. Mr. Sardar Shoukat Hayat, Addl: AG for al respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.09.2018 before D.B.

(Ahamd Hassan)
Member

(Muhammad Hamid Mughal)
Member

14.03.2017 Clerk to counsel for the appellant and Mr. Fazal Subhan, HC alongwith Addl. AG for respondents present. Written reply submitted. To come up for rejoinder and arguments on 09.06.2017 before D.B.

(AHMAD HASSAN)
MEMER

09.06.2017 Clerk of the counsel for appellant present. Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Clerk of the counsel for appellant submitted rejoinder and requested for adjournment. Adjourned. To come up for arguments on 05.10.2017 before D.B.

(GUL ZEB KHAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

05.10.2017 Counsel for the appellant and Mr. Ziaullah, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 21.12.2017 before D.B.

(MUHAMMAD HAMID MUGHAL)
MEMBER

(AHMAD HASSAN)
MEMBER

21.12.2017 Due to Judicial Officer's Conference today, case is adjourned to 22.02.2018 for the same before the D.B.

Reader

22.02.2018 Due to none availability of D.B the case is adjourned. To come up on 02.04.2018 before D.B

Member

26.12.2016 Learned counsel for the appellant argued that the appellant is serving as constable and vide impugned final order dated 10.11.2016, the punishment awarded to the appellant by the competent authority in the shape of dismissal from service was converted into time scale for 4 years to the extent of three stages and intervening period from dismissal to reinstatement in service was also considered as without pay and as such the present service appeal.

That the impugned order is against facts and law and therefore liable to be set aside.

Appellant Deposited Security & Process Fee

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 31.01.2017 before S.B.

Chairman

31.01.2017 Counsel for the appellant and Mr. Rashid Ali HC, alongwith Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 14.03.2017 before S.B

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1251 /2016

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge or Magistrate
1	2	3
1	20/12/2016	The appeal of Mr. Jehanzeb resubmitted today by Mr. Yasir Saleem Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please. REGISTRAR
2-	21-12-2016	This case is entrusted to S. Bench for preliminary hearing to be put up there on 26-12-2016 MEMBER

The appeal of Mr. Jehanzeb Ex-Constable No. 72 Police Station Zaida Swabi received today i.e. on 09.12.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copies of application and order mentioned in para-12 of the memo appeal are not attached with the appeal which may be placed on it.
2- In the memo of appeal places have been left blank which may be filled up.
3- Annexures of the appeal may be attested.
4- Annexures of the appeal may be flagged.
5- Appeal may be page marked according to the index.
6- Copy of order dated 10.11.2016 is illegible which may be replaced by legible/better one.
7- Five more copies/sets of the appeal along with the annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2074 /S.T,

Dt. 13/12/2016

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Yasir Saleem Adv. Pesh.

It is requested that we have corrected all the errors & omissions as directed.

Yasir Saleem
Adv

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 1251 /2016

Jehanzeb Ex-Constable No.72, Police Station Zaida Swabi.

(Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhuwa, Peshawar and others.

(Respondents)

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S. NO	Description of documents	Annexure	Page No.
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2	Affidavit		6
3	Copy of FIR	A	7
4	Copies of Charge sheet & statement of allegations dated 02.12.2015	B	8-9
5	Copy of the reply to the charge sheet	C	10-12
6	Copies of inquiry report dated 28.12.15 & statements of witnesses	D & E	13-20
7	Copies of final show Cause Notice and reply thereof	F& G	21-22
8	Copy of the dismissal order dated 13.01.2016	H	23
9	Copies of the departmental appeal dated 26.01.2016, rejection order 25.04.2016 and review dated 03.05.2016	I, J & K	24-29
	Copy of service appeal	L	30-36
	Copy of the order dated 10.11.2016	M	37
10	Copy of [redacted] order dated 27-11-16 is attached as Annexure N [redacted]	N [redacted]	38-39
11	Vakalatnama		

Appellant

Through

YASIR SALEEM
Advocate High Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No 1251 /2016

Jehanzeb Ex-Constable No.72, Police Station Zaida Swabi.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhuwa, Peshawar.
2. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. The District Police Officer, Swabi.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated: 10.11.2016, whereby, the departmental appeal of the appellant has been partially accepted and the appellant has been re-instated in service but, the penalty of reduction of time scale for 4 years to the extent of 03 stages has been imposed upon him and also he has been denied the salary for the intervening period.

Prayer in Appeal: -

On acceptance of this appeal impugned order dated 10.11.2016, may please be partially set-aside to the extent of reduction of time scale and denial of salaries and the appellant may please be re-instated in service with full back wages and benefits of service.

Respectfully Submitted:

1. That the appellant was initially appointed/ enlisted as Constable in the Police Department in the year1989-90.

2. That ever since his appointment, the appellant had performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance. The appellant was lastly posted at Police station Zaida.

3. That while serving in the said capacity, on 30.11.2015 the appellant along with his fellow Constable/ rider namely Fida Khan was on routine Gusht on Motorcycle in the local limits of Police Station Zaida. An unfortunate occurrence took place, when some unknown terrorists attacked other rider squad by opening indiscriminate firing upon them, in the area of Village Thankhoi, which resulted in the death of one Constable namely Imtiaz and injury to other Constable namely Ghulam Abbas. The appellant and his fellow Constable opened fire on the assailants and also tried hard to chase them, unfortunately they managed to flee away. A case vide FIR No. 89 dated 30.11.2015 U/S 302,324,353,404,34 PPC along with Section 7 of the ATA was also registered against the unknown persons. ***(Copy of the FIR is attached as Annexure A)***

4. That due to the above mentioned incident, later the appellant was proceeded departmentally and departmental proceedings were initiated against him. He was served with a charge sheet and statement of allegations vide order dated 02.12.2015, containing the baseless allegations of cowardice and gross misconduct. ***(Copy Charge Sheet and statement of allegation dated 02.12.2015 is attached as Annexure B)***

5. That the appellant duly replied the charge sheet and refuted the allegations leveled against him. **(Copy of the reply to the charge sheet is attached as Annexure C)**

6. That a partial inquiry was conducted and the inquiry officer submitted his report dated 28.12.2015, wherein quite wrongly he held the appellant guilty of the charges and recommended him for major punishment vide his report dated 28.12.2015. ***(Copies***

of the inquiry report dated 28.12.2015 and statement of the witnesses are attached as Annexure D & E)

7. That thereafter the appellant was served with final show cause notice which he duly replied. ***(Copies of the show cause notice and reply thereof are attached as Annexure F & G)***

8. That the competent authority without considering his defence reply, quite illegally awarded the appellant awarded the major penalty of **Dismissal from Service** vide order dated 13.01.2016. ***(Copy of the order dated 13.01.2016, is attached as Annexure H)***

9. That feeling aggrieved from the dismissal order, the appellant duly submitted his departmental appeal on 26.01.2016 before the respondent No. 2, however it has also been rejected vide order dated 25.04.2016. It is pertinent to mention here that the appellant had also filed an appeal/review petition dated 03.05.2016 to the Respondent No.1. ***(Copies of the departmental appeal and rejection order dated 25.04.2016 and review petition dated 03.05.2016 are attached as Annexure I,J & K).***

10. That the appellant after rejection of his departmental appeal approached this Honorable Tribunal in Service Appeal No.528/2016. ***(Copy of service appeal is attached as Annexure L)***

11. That during the pendency of the service appeal, the review petition of the appellant has been partially accepted vide order dated 10.11.2016 whereby though the appellant has been re-instated in service, however the penalty of dismissal from service has been converted into reduction of time scale for 4 years to the extent of 3 stages, the appellant has also been denied the salaries for the intervening period. ***(Copy of the order dated 10.11.2016 is attached as Annexure M)***

12. That due to the new development/ modification of penalty, the appellant filed application for the withdrawal of his earlier appeal with the permission to file fresh appeal, the application has been accepted vide order dated 23-11-2016 ***(Copy of the order dated 23-11-16 is attached as Annexure N &***

13. That the penalty imposed upon the appellant is illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

GROUNDS SERVICE OF APPEAL:

A. That the appellant has not been treated in accordance with law hence his rights secured and granted under the law are badly violated.

B. That no proper procedure has been followed before awarded the penalty to the appellant, the appellant has not been properly associated with the inquiry proceedings, the statements of the witnesses were never recorded in his presence nor he was given opportunity to cross examine those who may have deposed against him. Moreover the appellant has not been given proper opportunity of being heard. Thus the whole proceedings are thus defective in the eye of law.

C. That the appellant has not been given the opportunity of personal hearing. Thus he has been condemned unheard.

D. That by partially accepting the appeal/review petition dated 03.05.2016 and thereby re-instating the appellant, the respondent himself admitted the innocence of the appellant.

E. That the charges leveled against the appellant were never proved during the inquiry, the inquiry officer gave his findings on mere surmises and conjunctures.

F. That the whole proceedings conducted against the appellant were biased and with malafide intention, there was no evidence against the appellant, but quite illegally the charges were alleged to have been proved.

G. That the appellant had shown extreme bravery while chasing the assailants/ terrorists. In order to facilitate the arrest of the assailants dead or alive firing was also opened at them, which fact has been admitted by the witnesses in their statements before the inquiry officer. But taking the opportunity of village population, the assailants succeeded in decamping from the spot.

H. That the facts relating to the action taken by the appellant in relation to the attack by the terrorists have been verified by the concerned investigating officer.

I. That the people of the locality have also witnessed the efforts made by the appellant for the arrest of the assailants at the

time of occurrence. The version of the appellant has been verified and supported by witnesses of the locality before the inquiry officer and there statements have been recorded at the time of inquiry. Even the injured constable recorded his statement wherein he admitted that the rider squad was firing at the assailants. However the inquiry officer had completely ignored the statements of the eye witnesses and had based his findings on mere surmises and conjunctures.

J. That during the inquiry the statements of the witnesses have not been recorded in presence of the appellant nor he has been given opportunity to cross examine the witnesses, rather the inquiry officer himself cross examined the witnesses and appellant has not been given opportunity to cross examined the witnesses.

K. That the appellant has at credit spotless service career. The penalty impose upon him is harsh and liable to be set-aside.

L. That the appellant was jobless and he was never in a gainful employment during the intervening period i.e, period in between his illegal dismissal from service up to his re-instatement vide order dated 10.11.2016, so he is also entitled for the back benefits of the intervening period.

M. That the appellant seeks permission to relay on additional grounds at time of hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this appeal impugned order dated 10.11.2016, may please be partially set-aside to the extent of reduction of time scale and denial of salaries the appellant may please be re-instated in service with full back wages and benefits of service.

Appellant

Through

YASIR SALEEM
Advocate High Court

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No._____/2016

Jehanzeb Ex-Constable No.72, Police Station Zaida Swabi.

(Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhuwa, Peshawar and others.

(Respondents)

AFFIDAVIT

I, ***Jehanzeb Ex-Constable No.72, Police Station Zaida Swabi***, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal as well as accompanied application for condonation of delay 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.

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR HIGH

Deponent

Annex, A

(7)

(A)

DIA

MO: 0343-9572234 تفتیشی افسر عدد خان انسپکٹر

فارم نمبر ۲۴-۵(۱)

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

ضلع مردان رینجن — C.T.D

تاریخ وقت وقوعہ 30/11/15 وقت 15:30 بجے — 89

تاریخ و وقت رپورٹ	30/11/15 وقت 16:25 بجے — چاکیدگی پرچہ 30/11/15 وقت 18:20 بجے
نام و سکونت اطلاع دہندہ مستغیث	غلام عباس 1356/X ولد محمد قسیم ساکن گلی باغ مردان حال پولیس ملازم تھانہ زیدہ
مختصر کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو۔	404 34.7ATA 302-324-353 PPC
جائے وقوعہ فاصلہ تھانہ سے اور سمت	ڈھنڈ کوٹی بورے الہ نزد مرحان عالمزیب جانب جنوب شرق بذا حلہ تقریباً 5 کلومیٹر از تھانہ زیدہ
نام و سکونت ملزم	
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	برسبیل مراسلہ مقدمہ جرم درج رجسٹر کیا جاتا ہے۔
تھانہ سے روانگی کی تاریخ و وقت	بطور سپیشل رپورٹ

ابتدائی اطلاع نیچے درج کرو۔ بوقت صبح ایک تحریری مراسلہ منجانب جناب
ایڈیشنل کنٹرولر رمضان 339 موصول ہوکر درج ہے۔ بخدمت SHO صاحب تھانہ C.T.D مردان مجروح
غلام عباس 1356/X ولد محمد قسیم قوم افغان عمر قریب 36/35 سال ساکن گلی باغ مردان حال
پولیس ملازم تھانہ زیدہ بحالت مجروحیت و نعش مقتول کنسٹیبل امتیاز 250/FC بسواری گاڑی
سرکاری ہسپتال BMC لائی جاکر مجروح 2 کنسٹیبل غلام عباس جو کہ درست ہوش و حواس میں ہے
موجود ہیں CMO صاحب رپورٹ کرنا چاہیں امروز میں حسب کنسٹیبل امتیاز 250/FC بامعہ بسواری موٹر
سائیکل سرکاری علیحدہ اور کنسٹیبلان جہانزیب 72/FC خدا 1100/FC بامعہ بسواری موٹر سائیکل
سرکاری رائونڈ گشت علاقہ پر موجود تھے۔ جب ڈھنڈ کوٹی بورے ونڈ لارے پر والیں آتے
ہوئے کنسٹیبلان جہانزیب نمبر 72/FC خدا نمبر 1100/FC موٹر سائیکل پر ہم سے آگے جبکہ ہم ایک
پیچھے جا رہے تھے۔ جب نزد مرحان عالمزیب پہنچے تو اچانک دو جوان العمر کسان ہم موکل
نامعلوم منظر ہم پر دہشت گردی کے غرض سے اندھا دھند فائرنگ شروع کر دیئے جن سے
فائرنگ سے میں دائیں پاؤں پر لگ کر زخمی ہوا۔ جبکہ میرا ہمراہ امتیاز 250/FC ملازمان
کی فائرنگ سے لگ کر موقع پر جاں بحق ہوا جبکہ دیگر ہمراہیان ملازمان کے فائرنگ سے بال بال
بچ گئے ہم بغرض حفاظت خود اختیاری کے فائرنگ سے ملازمان پر جوابی فائرنگ کی
ملازمان نے جائے وقوعہ سے شہید کنسٹیبل امتیاز 250/FC کے سرکاری کلاشنکوف نمبر 56-1-111778 کی
لوڈ شدہ جس میں 30 عدد کارتوس بھی سمیت لے گئے۔ وقوعہ ہذا کے علاوہ ہمراہیان ام کا چشمہ
ہے: ملازمان سے موٹر سائیکل بلا نمبر برنگ سرخ 70cc دوران جوابی فائرنگ جو قبضہ پر رہ چکا ہے
میں مجروحیت خود، ہمراہی کنسٹیبل امتیاز 250/FC کی قتل کرنے اور اسلحہ ہمراہیان ام کو برابر

مقبول امتیاز کا بذریعہ صورت حال، نقشہ ضرر، مجروح عدنان کا
میڈیکل لیگل رپورٹ، علاج معالجہ، رائے ڈاکٹری زیر حفاظت کیمل
حوالہ ڈاکٹر مہیا کیا گیا۔ مضمون رپورٹ سے صورت جرم بالا پائی جا کر
لیٹر سپیشل رپورٹ بدست کیپٹن رمضان 339 ارسال تھانہ
دستخط انگریزی حضرت جیا انچارج BMC شبا منصور مورخہ 30/11/2015
کا روائی تھانہ پس آمدہ مراسلہ حرف بحرف درج رجسٹر روزنامچہ پرچہ جرم
فوق مندرجہ نمبر FIR (1) بعد مراسلہ برائے تفتیش حوالہ انچارج
تفتیش کئے جاتے ہیں۔ پرچہ لیٹر سپیشل رپورٹ گزارش ہے

SI PS CTD
30-11-2015

دستخط

عہدہ

اطلاع کے نیچے اطلاع دہندہ کا دستخط ہوگا یا اس کی مہر یا نشان لگایا جائے گا۔ اگر اس تحریر کنندہ ابتداءً اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الف یا سرخ روشنائی سے بالا
ایک ملزم یا مشتبہ علی الترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیاء یا افغانستان جہاں سوزوں ہوں، لکھنا چاہئے۔

Annexure B

CHARGE SHEET

Whereas I am satisfied that formal enquiry as contemplated by Khyber Pakhtunkhwa Police Rules 1975 is necessary and expedient.

And whereas I am of the view that the allegations if established would call for Major/Minor penalty as defined in Rules 4(b) a & b of the aforesaid Rules.

Now therefore as required by Rules 6(1) of the aforesaid Rules I **Javed Iqbal PSP,** District Police Officer, Swabi charge you Constable jehanzeb No.72 on the basis of statement of allegations attached to this charge sheet.

In case your reply is not received within seven days without sufficient cause it will be presumed that you have no defence to offer and exparte action will be taken against you.

Certified to be true copy

District Police Officer,
Swabi.

ATTESTED

District Police Officer, Swabi

Date of Presentation of Application: 29/4/16
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(9)

SUMMARY OF ALLEGATIONS

It is alleged that on 30.11.2015, two rider squads were on routine gasht in the area of village Thand Koi, PS Zaida. At 15:30 hours, when they reached Poory Lar near the house of Alamzaib, 02 motorcyclists opened indiscriminate fire upon them. As a result constables Imtiaz Gul No.250 was hit and died on the spot, while Ghulam Abbas No.1356/Ex hit and seriously injured. While escaping the accused also took away official rifle 7.62 bore from the deceased constable. Constable Jehanzeb No.72, who was riding on the second motorcycle and was present on the spot, showed extreme cowardice in the entire episode, which resulted in safe escape of the accused from the crime scene, which is highly against the discipline and amounts to gross mis-conduct, hence statement of allegation.

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Mr. Arab Nawaz Khan, DSP, Swabi is appointed to conduct proper departmental enquiry against him.

District Police Officer.
Swabi.

No. 178 /CC/PA,
Dated 02/12/2015

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District Police Officer, Swabi

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ANNEXURE "E"

(18)

بیانِ ازاں کنسٹیبل جہانزیب نمبر 72 حال پولیس لائن صدر

بطرف بیان کیا کہ سائل کے خلاف چار 2 شیٹ میں عائد الزامات
بابت بزدلی / غفلت برتنے پر قصور وار پورٹ شدہ، بحوالہ مقدمہ نمبر 89 / 30.11.15 سا
جو الزام ہے وہ بے بنیاد اور من گھڑت ہے۔ سائل دوران 2 زیل معروف خدمت
کے سائل تھانہ ریکہ میں بطور انڈر ڈیوٹی پر تعینات تھا کہ مدعیہ 30.11.15
اپنے نامزد شوہر کے ہمراہ رونما ہوا۔ جس میں سائل نے اپنی صلاحیت کے بھرپور
فرض پورا کیا۔ مگر اس کے باوجود سائل کے خلاف تھانہ ڈکوائری شروع کی گئی
چونکہ سائل بطور کنسٹیبل پولیس ڈیپارٹمنٹ میں تقریباً 27 سال ملازمت
کر رہا ہے اور جو تھی اس ڈیپارٹمنٹ میں صدق دل سے ملازمت کی
چونکہ سائل کے خلاف جو Cowardice کے الزامات ڈکوائری میں
Summary of Allegations میں لگائے گئے ہیں۔ وہ بالکل بے بنیاد و خلاف واقعہ
لگائے گئے ہیں۔ اگر اس کیس کے FIR کے متن کو دیکھیں۔ تو اس کے
میں مشتبہ غلام عباس ولد 1356 ہو ولتا ہے کہ سارے پولیس کے میرے خلاف
خود اختیاری میں ملزمان پر فائرنگ کر رہے تھے ساتھ ہی اگر اس کیس
تفتیش اور حالات کو دیکھیں۔ تو سائل نے بھی ساتھی خوب ملزمان / دہشت
کا پیچھا کیا ہے۔ اور اپنی صلاحیت خوب استعمال کیا ہوا ہے۔ اور موقع
کے پر سائل کی جگہ سے 7.62 بور کے 6 خول اور ساتھی کنسٹیبل خدا
کی جگہ سے 10 خول برآمد ہوئے ہیں۔ جو کہ سائل / پائلٹ کی کارکردگی تھا
ساتھ ساتھ اس کیس میں تفتیش بھی جاری ہے اور تفتیش کے دوران ایسی کوئی
موجود نہیں۔ جس سے سائل کی غفلت / Cowardice اس کیس یا کسی اور کیس
میں ظاہر ہو۔ ساتھ ساتھ اس کیس میں سائل اپنے ساتھی خدا خان کے پیچھے پوزیشن
دھوکہ بیٹھا ہوا تھا۔ اور دوران فائرنگ خدا خان کنسٹیبل بھی دہشت گردوں
فائرنگ سے بچ گیا تھا۔ اگر ہم / سائل نے ڈر کے مارے مقابلہ کیا ہوتا۔ تو
ملزمان کا پیچھا نہ کرتے۔ بلکہ بھاگ جاتے۔ اور اسی بارہ میں تفتیشی افسر کو خوب معلوم
مشتبہ کنسٹیبل اور شوکت امتیاز کنسٹیبل ہم سے پیچھے تھے۔ جونہی ہم پر فائرنگ شروع ہوئی
تو ہم نے پوری قوت اور جانفشانی کیساتھ دہشتگردوں کا مقابلہ کیا۔

Certified

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DSP Hqrs
20/12/15

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District Police

(11)

دہشت گردی کا تعاقب کیا۔ سائل سائل دہشت گردی کا سامنا
کیا۔ شخصیت جو کہ ہمارے پیچھے تھا اور اُن سے دہشت گردی
کلاشنکوف لیا ہوا ہے، اُس وقت موٹر سائیکل چلا رہا تھا اور اُن
ساتھی اشیاز اُسکے پیچھے بیٹھا ہوا تھا۔ اور پیچھے سے دہشت گردوں
اُن پر فائرنگ کیا ہوا ہے۔ اِس وجہ سے سائل کو دہشت گردوں
کے دیگر ساتھیوں کے بارے میں معلومات نہ ہو سکی۔ سائل سائل جب کوئی
کسی پر جان سے مارنے کیلئے فائرنگ کرتا ہے، تو اُس کا جواب
کیمرے سے باہر ہے۔ سائل سائل کلاشنکوف جو کہ دہشت گردوں
مقتول اشیاز کیپٹل سے لے گئے ہیں اُس وقت شخصیت کیپٹل فلاں
پورے ہوش و حواس میں تھا اور سائل سائل اُسکے ساتھ کلاشنکوف
تھا تو اُن کے ساتھی سے کلاشنکوف لے جانا کیمرے سے باہر ہے۔
اور اِس بابت انکوائری میں کچھ پیچیدگیاں پیدا ہوئی ہیں
لیکن کیس سائل اور کیس سائل کے ساتھی نے انتہائی جانفشانی
پولیس رولز کے مطابق دہشت گردوں کا تعاقب کیا ہے
اور اِسی بابت جائے وقوعہ پر موجود پبلک بھی گواہ
ہیں۔ اگر کیس سائل کی جو ساتھی کی جو سی تعاقب

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(12)

نے مقابلہ میں میرے ساتھی کے جسم میں بھی نا معلوم سے گولی - یعنی ہم بال بال
بچ گئے ہیں - اسکا یہ مطلب ہے کہ دہشت گردوں نے اپنی کارروائی
میں دکھائے ہے - اس طرح اگر ہم نے دہشت گردوں کا مقابلہ کیا - اور اپنا
تحفظ اسکا کروائی دکھائی اور دہشت گرد بھاگنے پر مجبور ہو گئے - تو اسکے
یہ مطلب بھی ہے کہ اگر دہشت گرد مارے نہ گئے - تو ہم نے مار کھائی
مرڈیو ہوئے ہیں کے - اور اوپر الزام اور بھی لگایا گیا -

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چونکہ معاملہ میں تفتیش جاری ہے - ساتھ ساتھ دہشت گردوں کی موجودگی
تھی - اور ساتھ ساتھ یہ تصدیق ہوئی کہ دہشت گرد بچ نکلے - یعنی شاید
پتہ ہے کہ ہم پر یا وجود خرفے کی ادائیگی ہے - ڈرائیور کا وجہ تھا
جو کہ سراسر غلط اور بے بنیاد ہے 27 سالہ سروس میں شامل
ملزمہ کے خلاف Adverse Remarks موجود نہیں -

DSP/Swabi
28/12/11

لہٰذا اندریں بالا حقائق کی روشنی میں شامل کے خلاف انکوائری
بلا مزید کارروائی فائل کرنے کی استدعا ہے

ATTESTED
District Police Officer, Swabi.

کیپٹن جہانزیب 72 پولیس لائن صوابی

سوال: آپ کے اور دوسرے رائیڈر کے مابین کتنا فاصلہ تھا؟
جواب: تقریباً 30 فٹ

سوال: آپ کے پیچھے رائیڈر پر فائرنگ ہوئی ہے اور سرکاری اسلحہ ملزمان اپنے ساتھ لے جانے میں کامیاب ہوئے
کیا علم ہوا کہ اسلحہ دوسرے رائیڈر کے ساتھ پیش آیا؟
جواب: تقریباً 2 منٹ بعد

کیپٹن جہانزیب 72

ATTESTED

ANNEX-D

(13)

DY: No. 1448 /SB.
DATED: 28 /12 / 15.

SUBJECT: **DEPARTMENTAL ENQUIRY AGAINST CONSTABLE JAHANZAIB NO 72 CONDUCTED BY MR. IZHAR SHAH KHAN.**

It is submitted that a departmental enquiry against the above named constable was entrusted to the undersigned vide Endst:No.178/CC/PA, dated 02.12.2015 on the following allegations:-

ALLEGATIONS.

It is alleged that on 30.11.2015, two rider squads were on routine gasht in the area of village Thand Koi, PS Zaida. At 15:30 hours, when they reached poory Lar near the house of Alamzaib, 02 motorcyclists opened indiscriminate fire upon them. As a result constables Imtiaz Gul No 250 was hit and died on the spot, while Ghulam Abbas No 1356/Ex hit and seriously injured. While escaping the accused also took away official rifle 7.62 bore from the deceased constable. Constable Jehanzeb No 72, who was riding on the second motorcycle and was present on the spot, showed extreme cowardice in the entire episode, which resulted in safe escape of the accused from the crime scene, which is highly against the discipline and amounts to gross mis-conduct, hence statement of allegation.

PROCEEDING:-

During the course of enquiry the delinquent Police official was called for recording statement and provision of relevant record.

01. **STATEMENT OF CONSTABLE JEHANZEB NO 72 PS ZAIDA.**

He stated in his statement that on the day of occurrence he along with his fellow fought with bravery and compelled the miscreants to escape. He further added that he along with his fellow were on forward rider and approximately distance of 30ft. while reaching to spot the miscreants opened fire on them hitting sweater of his rider and there after he along with his fellow followed the miscreants to long distance, but not succeeded and he further stated that after a long struggle for chasing they came to know that miscreants hit the second rider squad and take away their Kalashnikov.

Further he was cross questioned and he showed the distance between both rider squad at about 30ft and showed that about 8/9 minutes after occurrence he came to know about the incident with second rider squad.

02. **STATEMENT OF INJURED CONSTABLE GHULAM ABBAS No.1365/EX PS ZAIDA.**

He stated in his statement that spot facts he already interned in FIR, which are true and he further added that he made his level best efforts for chasing terrorists but due to injures he didn't succeeded. while he heard fire sound from other rider squad while chasing.

03. **STATEMENT OF SI QAMAR ZAMAN KHAN SHO PS ZAIDA.**

He stated in his statement that on 30.11.2015 he along with DSP Circle Swabi were present on spot vide Case FIR No. 88 dated 30.11.2015 u/s 302/34-7ATA PS CTD Mardan, wherein Doctor Yaqoob was shot by miscreants. At that time constable Jehanzeb rider squad informed him that unknown miscreant's opened fire on them resultantly constable Imtiaz no.250 was shot killed on the spot while constable/Ex Ghulam Abbas got injured. On that information he directed constable Jehanzeb to follow the

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miscreants and shoot them if possible and he was ordered to follow the police party approached, but when he along with police party rushed towards the spot immediately the miscreants were gone in hiding due to their extreme cowardice and negligence. He further stated that miscreants escaped were not possible if the defaulters timely followed the culprits and properly guide police party.

To ascertain facts of the spot statements of the eye witnesses were taken but nothing was found that showed his bravery and efforts against terrorists. (Statements enclosed)

FINDINGS OF THE ENQUIRY:

After viewing the spot facts and ground realities the undersigned reached to following points.

- Four riders 02 on each equipped with SMGs formation was that defaulter at advance rider with a distance of about 20/25 ft but he (the defaulter) not heard the incident wherein 01 Jawan lost his life while the other got serious injuries.
- The defaulter didn't guide the approaching police party exactly where the miscreants hides because he didn't follow them in open fields in day light.
- After approaching other police parties to spot the defaulters came to know about taking Kalashnikov from Shaheed Jawan and occurrence.

On the above points the undersigned stands him guilty and recommends him for "**MAJOR PUNISHMENT**" and to be set as a sample for entire police force, if agreed

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District Police Officer, Swabi

(IZHAR SHAH KHAN)
Sub-Divisional Police Officer,
Swabi.

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ANNEXURE E

بیان از ان غلام عباس نمبر 1356/Ex تھانہ زیدہ

(15)

میں نے بدریافت بیان کیا کہ مورخہ 20/11/2015 روز وقوعہ جو کچھ پیش آیا جس کا ذکر FIR میں موجود ہے حقیقت پر مبنی ہے۔ اور مزید یہ کہ میں پاؤں پر زخمی ہونے کے باوجود دہشت گردوں کا تعاقب کرنے کی کوشش کی اور صحیح طور فائر بھی کیے لیکن زخمی ہونے کی وجہ سے وہ تیز نہیں بھاگ سکتا تھا۔ اس وجہ سے ان کا مکمل حاصل نہیں ہوا۔ یہی حقیقت ہے۔

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DSP/Swabi
20/12/15

Gulam Sharif

غلام عباس نمبر 1356 تھانہ زیدہ

سوال: وقت وقوعہ جب آگلہ رائفلز سکواڈ پر فائر ہوئی تو آگلہ رائفلز سکواڈ اپنے سے کتنے فاصلے پر تھا؟

ج: 20/25 فٹ

سوال: وقت وقوعہ آگلہ رائفلز سکواڈ دہشت گردوں کی تعاقب کر رہا تھا یا اس پر فائرنگ کر رہا تھا؟

ج: جہاں آگلہ سکواڈ سائیڈ سے فائر کر رہا تھا۔

ATTESTED
District Police Officer, Swabi

Gulam Sharif

غلام عباس تھانہ زیدہ
1356-Ex

Mobile: 0343-9572 994

ATTESTED

(16)

تھانہ زیدہ

مقامی عدالت

بیان از ان دفاعی محرر تھانہ زیدہ

نے بدرمانہ بیان کیا کہ میں عشاء محرر تھانہ ہذا تعینات ہوں مورخہ 30/11/15 کو وقوعہ مدعہ 12 بجے رات کو 30/11/15 تھانہ زیدہ کے حوالات میں موجود تھا مدعی 22 مدعہ 250 فوجداری مجاریہ 1336 کو مسمی دلبر ولد غریب قوم قصاب وغیرہ کے خلاف درج رجسٹر ہوئی موصوف سائلین کے بیانات کے بعد زیر دفعات مناسب ہوئی تھی علاوہ ازیں جرم ارشد و تصور کو وقوعہ کے بارے بدرمانہ بھی ہوئی تھی۔ مثل مدعہ اور نقل مقدمہ ہذا بیان ہے

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MHC PS Zeda
21-12-15

H Rastul
DSP/Swabi
28/12/15

ATTESTED
District Police Officer, Swabi.

ATTESTED

(17)

بیان از فضل شریف ولد سردار خان ساکنہ لفنڈ کوٹ (موقع گواہ)

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میں بذریعہ بیان کرتا ہوں کہ وہ اپنے گھر کی طرف سے اپنا کام کر رہا تھا کہ دوران فائرنگ کی آواز سنائی دی اور مزید دیکھا کہ اگلے موٹر سائیکل پر فائرنگ ہوئی۔ اور اگلے موٹر سائیکل سواروں نے بھی دہشت گردوں کا تعاقب کرتے ہوئے تھوڑا دور نکل گئے تھے۔ میں وہ ساتھ ہی گھر کے ساتھ فائرنگ کی وجہ سے چھپا ہوا تھا بعد کا مجھے اسے معلوم نہ ہو سکا۔ بس اتنا دیکھا کہ سفید چادر پہنے ہوئے شخص کے پیچھے پولیس والے بھاگ رہے تھے۔

یہی بیان حقیقت ہے۔

فضل شریف

فضل شریف ولد سردار خان ساکنہ لفنڈ کوٹ

Attested
DSP/Swabi
20/12/11

سوال:- آپ کی عمر کتنی ہے؟

جواب:- 60/67 سال

سوال:- کیا آپ نے اس دہشت گرد سفید چادر پہنے ہوئے شخص کے پیچھے پولیس والے بھاگ رہے تھے؟

جواب:- جی ہاں اس کے پیچھے بھاگ رہے تھے۔

سوال:- کیا آپ نے کوئی پولیس والا پچھلے موٹر سائیکل کی جانب آتے ہوئے دیکھا جب فائرنگ شروع ہوئی؟

جواب:- جی ہاں بعد میں آگئے جہاں پر دوسرے پولیس والے لوگ جمع تھے۔

فضل شریف

فضل شریف ولد سردار خان ساکنہ لفنڈ کوٹ
CNIC: 16202-1054679-1
Mob: 0343-0933427

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District Police Officer, Swabi.

(موقع گواہ)

(18)

بیان از محمد فاضل ولد محمد خالد سکنہ ٹنڈو کول

نے بذریعہ مترجم بیان کیا کہ وہ اپنے کھیتوں میں فصل دیکھنے گیا تھا کہ اس دوران فائرنگ کی آواز سنائی دی۔ پھر دیکھا کہ ایک پولیس والے نے اُسکا پیچھا کیا لیکن دہشت گرد فرار ہوئے۔ بعد میں علاقے کے لوگ موقع پر پہنچ گئے۔ یہی بیان ہے جو کہ درست ہے۔

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DSP Sukkur
28/12/1

محمد فاضل ولد محمد خالد سکنہ ٹنڈو کول

سوال:- آپ کا اور پولیس موبائیکل کا فاصلہ کتنا تھا؟

ج:- 50 میٹر یا اس سے تھوڑا زیادہ۔

سوال:- ایک پولیس والے جو فائر کرتا ہوا دہشت گردوں کا پیچھا کر رہا تھا، کیا وہ پچھلے موبائیکل کی طرف گیا جہاں ایک جوان شہید اور ایک زخمی تھا یا وہ پیچھا کرتے ہوئے دور نکل گیا تھا؟

ج:- پولیس مقابلہ دہشت گردوں کا پیچھا کر رہا تھا۔ وہ دوسرے ساتھی جو شہید ہوا اور دوسرا زخمی ہوا تھا کی طرف نہیں گیا۔

Attested
Police Officer Sukkur

محمد فاضل ولد محمد خالد سکنہ ٹنڈو کول

NIC: 42000-5755762-3

Mob: 0345-9501869

ATTESTED

(موقعے کے گواہ)

بیان از عمر رشید ولد جمشید خان سکنہ کھنڈ کوٹ

(19)

میں بذریعہ تحریر 30/11/2015 کو ہم اپنے کھیتوں میں گندم کا بیج کر رہے تھے۔ مرحومین
اتنا فائرنگ کی آواز سنائی دی۔ فائرنگ کی وجہ سے ہم سائیڈ
پر ہو گئے۔ ہم نے دیکھا کہ پچھلے موٹر سائیکل سوار پر فائرنگ ہوئی۔
اسی دوران یعنی فائرنگ کے دوران آگے موٹر سائیکل سواروں سے ایک موٹر سائیکل سوار فائرنگ
کرتا ہوا پچھلے موٹر سائیکل تک آ گیا۔
بعدہ علاقے کے دوسرے لوگ بھی وقوعہ پر پہنچے۔ اور پولیس بھی موقع پر پہنچ گئی
یہی حقیقت ہے۔ جو میں نے بیان کیا۔

Attested
DSP/Sadar
20/12/15

عمر رشید

عمر رشید ولد جمشید خان سکنہ کھنڈ کوٹ

سوال:- فائرنگ کرتا ہوا پولیس جوان اگر آپکے سامنے آ جاتے تو آپ اسکو پہچان لوگے؟
جواب:- جی اتنا فاصلہ کافی تھا پہچان بنا سکتا۔
سوال:- آپ پر سارا واقعہ اپنی آنکھوں سے دیکھ رہے تھے۔ تو یہ بھی دیکھا ہوگا کہ دہشتگرد فرار ہو رہے تھے
تو پولیس جو آگے موٹر سائیکل پر سوار تھی نے اسکا پیچھا کیا کہ نہیں؟
جواب:- پیچھا کرتے ہوئے نہیں دیکھا۔

ATTESTED
PI
District Police Officer, Karak

عمر رشید

عمر رشید ولد جمشید خان سکنہ کھنڈ کوٹ۔
CNIC 16202-8636321-5
Mob: 0313 9018256

ATTESTED

(20)

بیان از ان قمر زمان خان SHO زیدہ

نے بذریعہ بیان کیا کہ مورخہ 30-11-2015 کو میں DSP صاحب سرکل صوابی
عرب نواز خان کے ساتھ بحوالہ مقدمہ 88 مورخہ 30-11-2015 جرم 302/34 PPC 7ATA
تھانہ CTD مردان موقع واردات پر موجود تھے جس میں ڈاکٹر محمد یعقوب
قتل ہو چکا تھا اور CTD پولیس کے آمد کے انتظار میں تھے کہ اس دوران
جہانزیب 72 رائیڈر سکواڈ جو کہ علاقہ میں گشت پر تھے بذریعہ موبائل فون اطلاع دی کہ
ہم پر بمقام آراضیات ٹھنڈ کوئی نامعلوم دہشتگردوں نے فائرنگ کر کے جنکی
فائرنگ سے کیپٹن امتیاز 250 تک شہید ہو چکا ہے جبکہ عباس خان EX آرمی
زخمی ہے اطلاع پر فوری طور پر ہمراہ DSP صاحب و دیگر نفری پولیس کے روانہ ہو
کر جائے حادثہ پر کیپٹن جہانزیب 72 کے ساتھ رابطہ میں تھا اور یہ بات بار
بار دہراتا رہا کہ مذکورہ دہشتگردوں کا پیچھا جاری رکھو اور فائرنگ کرتے رہو اور
ان کو مارو۔ ہم تھوڑی دیر میں آپ تک پہنچ جائیں گے حوصلہ رکھو اور اپنے
ساتھیوں کو حوصلہ دو۔ جب ہم موقع پر پہنچ گئے تو مذکورہ دہشتگرد فرار ہو چکے تھے
مذکورہ شہداء جہانزیب 72، فدا خان 1100 نے نہ ہماری اور دوسری نفری
پولیس کی درست رہنمائی کی اور نہ ہی دہشتگردوں کا صحیح پیچھا کیا ہے
نہایت بزدلی کے مرتکب ہیں کیونکہ دہشتگردوں نے ہمارے اور کھلے
علاقہ میں ان کی غفلت سے فرار ہوئے۔ یہی میرا بیان ہے جو کہ درست ہے

Qamar
SHO/Zaida
21-12-15

ATTESTED
DPO
District Police Officer, Swabi

Attested
DSP/Swabi
28/12/15

Certified to be True Copy

ATTESTED

1

ANNEX. "F"

(21)

FINAL SHOW CAUSE NOTICE

It is alleged that on 30.11.2015, two rider squads were on routine gasht in the area of village Thand Koi, PS Zaida. At about 15:30 hours, when they reached Poory Lar near the house of Alamzaib, 02 motorcyclists opened indiscriminate fire upon them. As a result constable Imtiaz Gul No.250 was hit and died on the spot, while Ghulam Abbas No.1356/Ex hit and seriously injured. While escaping the accused also took away official rifle 7.62 bore from the deceased constable. You Constable Jehanzeb No.72, while riding on the second motorcycle and were present on the spot, showed extreme cowardice in the entire episode, which resulted in safe escape of the accused from crime scene, which is highly against the discipline and amounts to gross mis-conduct.

In this connection you were charge sheeted and served with summary of allegation and **DSP, Swabi** was appointed to conduct proper departmental enquiry. The enquiry officer held enquiry and submitted his findings, wherein, he held you Constable Jehanzeb No.72 guilty for the miss-conduct.

Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence I **Javed Iqbal PSP,** District Police Officer, Swabi in exercise of power vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you to show cause finally as to why the proposed punishment should not be awarded to you.

Your reply should reach to the office of the undersigned within seven days of the receipt of this notice failing which it will be presumed that you have no explanation to offer.

You are also at liberty to appear for personal hearing before the undersigned.

ATTESTED

District Police Officer, Swabi

District Police Officer,
Swabi.

Certified to be true Copy.

ATTESTED

ANNEX. G

(22)

بیان بحفاظت دفعہ 72 پولیس سوال

میں حسن خان دفعہ 72 جال پولیس سٹیشن
صفحہ بیان کرتا ہوں کہ میں نے پہلے اس سلسلہ میں
شوکاز نوٹس چارج شیٹ کے ساتھ جو جواب
کیفیت بیان دیا ہے۔ وہ میرا بیان ہے
مندرجہ کے سٹ محفاظ رہونگا صفائی دیجاوے

دفعہ 72

Certified to be true Copy.

ATTESTED
District Police Officer, Swabi.

ATTESTED

ANNEX H

(25)

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI

ORDER

It is alleged that on 30.11.2015, two rider squads were on routine gasht in the area of village Thand Koi, PS Zaida. At about 15:30 hours, when they reached Poory Lar near the house of Alamzaib, 02 motorcyclists opened indiscriminate fire upon them. As a result constable Imtiaz Gul No.250 was hit and died on the spot, while Ghulam Abbas No.1356/Ex hit and seriously injured. While escaping the accused also took away official rifle 7.62 bore from the deceased constable. Constable Jehanzeb No.72, while riding on the second motorcycle and was present on the spot, showed extreme cowardice in the entire episode, which resulted in safe escape of the accused from crime scene, which is highly against the discipline and amounts to gross mis-conduct.

Therefore, he was served with Charge Sheet and Summary of allegations. DSP, Swabi was appointed as Enquiry Officer. The Officer conducted proper departmental enquiry, collected evidence and recorded statements of all concerned. He submitted his findings wherein he found Constable Jehanzeb No.72, guilty for the mis-conduct and recommended him for major punishment. The undersigned perused the enquiry papers, findings and by agreeing with the Enquiry Officer issued him Final Show Cause Notice. His reply to the Final Show Cause Notice was received, perused and he was heard in orderly room, but was found un-satisfactory.

Therefore, I, **Javed Iqbal, PSP**, District Police Officer, Swabi, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 1975, hereby award Constable Jehanzeb No.72 Major Punishment of dismissal from service, with immediate effect.

O.B No. 74

Dated 13-1 /2016

(JAVED IQBAL) PSP
District Police Officer, Swabi.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.
No. 185-89 /PA, dated Swabi, the 13/01 /2016.

Copies to the: -

1. DSP, H.Qrs, Swabi.
2. Pay Officer.
3. Establishment Clerk.
4. Fauji Missal Clerk.
5. Official concerned.

ATTESTED
District Police Officer, Swabi.

Certified to be true Copy.

Date of Presentation of Application: 29/4/16
Copying Fee: Nil
Total Pages: 17
Name of Copyist: Ashwad HC
Date of Completion of Copy: 29/4/16
Date of Delivery: 29/4/16

ATTESTED

(1) Connect's file

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE, MARDAN REGION, MARDAN.

(24) ANNEXURE I

Subject: **DEPARTMENT APPEAL AGAINST THE ORDER VIDE O.B NO.54 DATED 13/01/2016 WHEREBY THE DISTRICT POLICE OFFICER, SWABI, AWARDED MAJOR PUNISHMENT OF DISMISSAL FRAM SERVICE TO THE APPELLANT JAHANZAIB NO.72.**

Respected sir,

The appellant most humbly submits as under;

FACTS.

1. That the appellant was enrolled in police department as a constable in the year 2012 and since then was performing his official duties to the best of his abilities and to the satisfaction of the high-ups.
2. That an 30-11-2015 an unfortunate incident of terrorist attack on a police party look place in the in the area of village Thankoi,falling within the jurisdiction of police station Zaida, when two unknown terrorists attacked the police party as a result whereof one constable namely Imtiaz Gul No.250 was hit and died an the spot while another constable namely Ghulam Abbas sustained injuries.
3. That the appellant was proceeded against departmentally on the basis of allegations that the appellant had showed cowardice at the time of the said terrorist attack. Resultantly the appellant was dismissed from service. Hence the present appeal.

GROUNDS FOR APPEAL.

1. That the impugned order is against the law, facts and material available on record as well as natural justice and as such not tenable in the eyes of law.
2. That the inquiry officer has not taken into consideration the material facts and as such recommended the appellant for major punishment Similarly the District Police Officer, Swabi, has also ignored the the material facts of the case and awarded major punishment of dismissal form service to the appellant.
3. That the appellant has shown extreme gallantry at the time of occurrence in chasing the assailants. In order to facilitate the arrest the assailants dead or alive, firing was also opened at them. But taking opportunity of the village population the assailants succeeded in decamping form the spot. Furthermore the appellant while apprehending the loss and injuries to the innocent people of the locality could not continue with firing at the assailants.

4. That the facts relating to the action taken by the appellant in retaliation of the attack by the terrorists have been verified by the concerned investigating officer, which are available on case file.

5. That the people of locality have witnessed efforts made by the appellant for the arrest of the assailants at the time of occurrence. The version of the appellant has been authenticated during the inquiry as some persons from the locality were summoned by the inquiry officer and there statements were recorded wherein the said persons supported the version advance by the appellant as well as the injured constable namely Ghulam Abbas.

In the light of above it is, therefore, humble requested that the impugned order may kindly be set aside and appellant maybe re-instated into service with all back benefits.

Appellant

JAHANZAIB,
Ex Constable No.72

No. 773/ES,
dt: 26-1-16

Legal
Ex Comments
DPO Swat
27/1

607
27.1.16

ANNEX. J

(26)

ORDER.

This order will dispose-off the appeal preferred by **Ex-Constable Jehanzeb No. 72** of Swabi District Police against the order of District Police Officer, Swabi wherein he was awarded Major punishment of Dismissal from service vide OB: No. 74 dated 13.01.2016.

Brief facts of the case are that, on 30.11.2015, two rider squads were on routine gasht in the area of village Thand Koi, Police Station Zaida, at about 15:30 hours, when they reached Poory Lar near the house of Alamzeb, 02 Motorcyclist opened indiscriminate fire upon them. As a result Constable Imtiaz Gul No. 250 was hit and died on the spot, while Ghulam Abbas No. 1356/Ex hit and seriously injured. While escaping the accused also took away official rifle 7.62 bore from the deceased constable. The appellant namely Ex-Constable Jehanzeb No. 72 while riding on the second motorcycle and was present on the spot showed extreme cowardice in the entire episode, which resulted in safe escape of the accused from crime scene, which is highly against the discipline and amounts to gross misconduct. Therefore he was served with charge sheet and summary of allegations and Deputy Superintendent of Police, Swabi was appointed as enquiry Officer. The Officer conducted proper departmental enquiry collected the evidence and recorded statements of all concerned. He submitted his findings wherein he found the appellant guilty of misconduct and recommended him for Major punishment. The District Police Officer, Swabi perused the enquiry papers, findings and by agreeing with the enquiry Officers, issued him Final Show Cause Notice. His reply to the Final Show Cause Notice was received, perused and he was heard in orderly room, but was found unsatisfactory, therefore he was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on **20.04.2016**, but he failed to justify his innocence and could not produce any cogent reason about his innocence. Therefore, I **Muhammad Tahir** Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

ORDER ANNOUNCED.

(Muhammad Tahir) PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan

No. 3355 /ES, Dated Mardan the 25-4- /2016.

Copy to District Police Officer, Swabi for information and necessary action w/r to his office Memo: No. 95/Insp: Legal dated 08.04.2016. His service record is returned herewith for record in your office.

(******)

ATTESTED

(27) Annexure K.

To

The Provincial Police Officer,
Government of KPK. Peshawar.

Subject: - **Appeal against the orders dated 13/1/16 passed by DPO Swai vide which the appellant was awarded major punishment, dismissal from the service and order No. 3355 dated 25/4/16 passed by DIG Police, Mardan Region-I, vide which the appeal of the appellant was rejected.**

Prayer: - On acceptance of this appeal, the above orders passed by DPO Swabi and DIG Mardan Region-I may kindly be set-aside and the appellant may be re-instated in service.

.....

Respected Sir,

It is submitted as under: -

1. That the appellant was serving as constable in Police Department and was posted at PS. Zaida, District Swabi.

2. That some false and baseless allegations were leveled against the appellant that he did not chase the terrorists and also did not fire at terrorists.

3 That an enquiry was conducted against the appellant, in which the appellant was held guilty and the enquiry officer submitted his report against the appellant.

4. That in the light of the report of the enquiry officer, the appellant was dismissed from service vide DPO Swabi order referred to above.

ATTESTED

5. That feeling aggrieved from the above order, the appellant preferred an appeal before the DIG Mardan Range-1, but the said appeal was rejected vide order mentioned above.

7. That now the appellant prefers this appeal before your honour on the following grounds inter-alia: -

GROUNDS.

A. That both the above orders passed by DPO Swabi and DIG Mardan Range-1 are against justice and facts on record.

B. That no weight was given to the statements given in favour of the appellant by the enquiry officer.

C. That the statements of injured constable Ghulam Abbas reveals the appellant and his companion made firing on the terrorists and also chased them and making good their escape.

D. That Fazle Sharaf and Muhammad Fazil were examined by the enquiry officer as eye witnesses to the occurrence who deposed in their statements that the terrorists were chased by the appellant and his companion constable and they also made firing at the terrorists and put their lives in danger. Moreover empty shells were also recovered from the spot of the appellant, and taken into possession, which is evident from the site plan.

ATTESTED

E. That the appellant performed his duty efficiently and there is no fault on the part of appellant.

F. That the appellant showed extreme gallantry at the time of occurrence in chasing and making firing at the terrorists.

G. That the appellant has 28 years spotless service into his credit.

H. That the punishment awarded to the appellant is harsh one and liable to be set-aside.

It is, therefore, requested that on acceptance of this appeal, the appellant may kindly be re-instated in service with all back benefits.

Dated: - 3/5/16.

Appellant

Jehanzeb,
Ex-constable No. 72,
District Swabi.
Mobile No. 03145517307.

ATTESTED

(39) ANNEX "L"

BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2016

Jehanzeb Khan Ex-Constable No.72, Police Station Zaida Swabi

(Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar an others

(Respondents)

INDEX

Appellant

Through

Dated:-

Ijaz Anwar

&

Sajid Amin
Advocates, Peshawar

ATTESTED

(31)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No._____/2016

Jehanzeb Ex-Constable No.72, Police Station Zaida, District Swabi.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhuwa, Peshawar.
2. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. The District Police Officer, Swabi.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated: 13.01.2016, whereby the appellant has been awarded the major Punishment of DISMISSAL FROM SERVICE against which the departmental appeal dated:26.01.2016 has also been rejected vide order dated: 25.04.2016.

Prayer in Appeal: -

On acceptance of this appeal impugned orders dated 13.01.2016 and 25.04.2016, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.

(32)

Respectfully Submitted:

1. That the appellant was enlisted as Constable in the Police Department in the year 1989-90.

2. That ever since his appointment, the appellant had performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance. The appellant was lastly posted at Police Station Zaida District Swabi.

3. That while serving in the said capacity, on 30.11.2015 the appellant along with his fellow Constable/ rider namely Fida Khan was on routine Gusht on Motorcycle in the local limits of Police Station Zaida. An unfortunate occurrence took place, when some unknown terrorists attacked another rider squad by opening indiscriminate firing upon them, in the area of Village Thankhoi, which resulted in the death of one Constable namely Imtiaz and injury to other Constable namely Ghulam Abbas. The appellant and his fellow Constable opened fire on the assailants and also tried hard to chase them, unfortunately they managed to flee away. A case vide FIR No. 89 dated 30.11.2015 U/S 302,324,353,404,34 PPC along with Section 7 of the ATA was also registered against the unknown persons. ***(Copy of the FIR is attached as Annexure A)***

4. That due to the above mentioned incident, later the appellant was proceeded departmentally and departmental proceedings were initiated against him. He was served with a charge sheet and statement of allegations vide order dated 02.12.2015, containing the baseless allegations of cowardice and gross misconduct. ***(Copy Charge Sheet and statement of allegations dated 02.12.2015 is attached as Annexure B)***

5. That the appellant duly replied the charge sheet and refuted the allegations leveled against him. **(Copy of the reply to the charge sheet is attached as Annexure C)**

6. That a partial inquiry was conducted and the inquiry officer submitted his report dated 28.12.2015, wherein quite wrongly he held the appellant guilty of the charges and recommended him for major punishment vide his report dated 28.12.2015. ***(Copies of the inquiry report dated 28.12.2015 and statement of the witnesses are attached as Annexure D & E)***

ATTESTED

7. That thereafter the appellant was served with final show cause notice which he duly replied. ***(Copies of the show cause notice and reply thereof are attached as Annexure F & G)***

8. That the competent authority without considering his defence reply, quite illegally awarded the appellant awarded the major penalty of **Dismissal from Service** vide order dated 13.01.2016. ***(Copy of the order dated 13.01.2016, is attached as Annexure H)***

9. That feeling aggrieved from the dismissal order, the appellant duly submitted his departmental appeal on 26.01.2016 before the respondent No. 2, however it has also been rejected vide order dated 25.04.2016. ***(Copies of the departmental appeal and rejection order dated 25.04.2016, are attached as Annexure I & J).***

10. That the penalty imposed upon the appellant is illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

GROUNDS SERVICE OF APPEAL:

A. That the appellant has not been treated in accordance with law hence his rights secured and granted under the law are badly violated.

B. That no proper procedure has been followed before awarded the penalty to the appellant, the appellant has not been properly associated with the inquiry proceedings, the statements of the witnesses were never recorded in his presence nor he was given opportunity to cross examine those who may have deposed against him. Moreover the appellant has not been given proper opportunity of being heard. Thus the whole proceedings are thus defective in the eye of law.

C. That the appellant has not been given the opportunity of personal hearing. Thus he has been condemned unheard.

D. That the charges leveled against the appellant were never proved during the inquiry, the inquiry officer gave his findings on mere surmises and conjunctures.

ATTESTED

E. That the whole proceedings conducted against the appellant were biased and with malafide intention, there was no evidence against the appellant, but quite illegally the charges were alleged to have been proved.

F. That the appellant had shown extreme bravery while chasing the assailants/ terrorists. In order to make sure the arrest of the assailants dead or alive firing was also opened at them, which fact has been admitted by the witnesses in their statements before the inquiry officer. But taking the opportunity of village population, the assailants succeeded in decamping from the spot.

G. That the facts relating to the action taken by the appellant, in relation to the attack by the terrorists have been verified by the concerned investigating officer.

H. That the people of the locality have also witnessed the efforts made by the appellant for the arrest of the assailants at the time of occurrence. The version of the appellant has been verified and supported by witnesses of the locality before the inquiry officer and there statements have been recorded at the time of inquiry. Even the injured constable recorded his statement wherein he admitted that the rider squad was firing at the assailants. However the inquiry officer had completely ignored the statements of the eye witnesses and had based his findings on mere surmises and conjunctures.

I. That during the inquiry the statements of the witnesses have not been recorded in presence of the appellant nor he has been given opportunity to cross examine the witnesses, rather the inquiry officer himself cross examined the witnesses and appellant has not been given opportunity to cross examined the witnesses.

J. That the appellant has at credit 27 years of spotless service career. The penalty impose upon him is too harsh and liable to be set-aside.

K. That the appellant is jobless since his illegal dismissal from service.

ATTESTED

35

L. That the appellant seeks permission to relay on additional grounds at time of hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this appeal impugned orders dated 13.01.2016 and 25.04.2016, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.

Appellant

Through

IJAZ ANWAR
Advocate Peshawar
&

SAJID AMIN
Advocate Peshawar

ATTESTED

36

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No._____/2016

Jehanzeb Ex-Constable No.72, Police Station Zaida Sw

(Appell

VERSUS

The Provincial Police Officer, Khyber Pakhtunkh
Peshawar and others.

(Responden

AFFIDAVIT

I, ***Jehanzeb Ex-Constable No.72, Police Station Zaida Swabi***, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal as well as accompanied application for condonation of delay 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

ATTESTED

(37) Annexure M

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 7072 /16, dated Peshawar the 10/11/2016.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by **Ex-Constable Jehan Zeb No. 72.** The appellant was dismissed from service by DPO/Swabi vide OB No. 74, dated 13.01.2016 on the allegation that on [illegible].11.2015, two riders squads were on routine gasht in the area of village Thand Koi Police Station [illegible]nda, at about 15:30 hours, when they reached Pooray Lar near the house of Alam Zeb, 02 motorcyclist [illegible]med indiscriminate fire upon them. As a result Constable Imtiaz Gul No. 250 was hit and died on [illegible] while Ghulam Abbas No. 1356 hit and seriously injured. While escaping the accused also took [illegible] official rifle 7.62 bore from the deceased Constable. The above named ex-official while riding on [illegible] motorcycle and was present on the spot showed extreme cowardice in the entire episode, which [illegible]lted in safe escape of the accused from crime scene.

His appeal was filed by RPO/Mardan vide order Endst: No. 3355/ES, dated 25.04.2016.

Meeting of Appellate Board was held on 22.09.2016 wherein appellant was heard in [illegible]son. During hearing petitioner contended that he did not display cowardice and also retaliated the [illegible] of the criminals and made all efforts for chasing the criminals. Petitioner has served the [illegible]partment for long period of about 29 years.

Therefore, the Board decided that Ex-Constable Jehan Zeb No. 72 is hereby re-instated in [illegible]vice and the penalty of dismissal from service is converted into time scale for 04 years to the extent [illegible] 03 stag[illegible]. The intervening period be considered as period in service but not on duty and he will not [illegible] entitled [illegible] salary of the intervening period. He will remain under special watch for one year.

This order is issued with the approval by the Competent Authority.

(NAJEEB-UR-REHMAN BUGVI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. S/ 7073-79 /16,

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan.
2. District Police Officer, Swabi.
3. PPO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-IV CPO Peshawar.
7. Central Registry Cell, CPO.

ATTESTED

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Annexure "N"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 527/2016

Fida Khan Ex-Constable No.1100, Police Station Zaida Swabi.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhuwa, Peshawar.
2. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. The District Police Officer, Swabi.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated: 13.01.2016, whereby the appellant has been awarded the major Punishment of dismissal from service against which the departmental appeal dated:26.01.2016 has also been rejected vide order dated: 25.04.2016.

Prayer in Appeal: -

On acceptance of this appeal impugned orders dated 13.01.2016 and 25.04.2016, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.

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Appeal No. 527/2016
Fida Khan vs Govt

23.11.2016

Counsel for the appellant present and submitted application for early hearing of the appeal. Appeal be requisitioned for today. Learned counsel for the appellant submitted before the court that since the penalty of the appellant has been converted from dismissal from service to reduction of time scale, therefore, the appellant be allowed to withdraw the instant appeal so that he could challenge the fresh order. Request accepted. The appeal in hand is hereby dismissed as withdrawn. The appellant is at liberty to challenge the fresh order as per law. File be consigned to the record room.

ANNOUNCED
23.11.2016

(ABDUL LATIF) (M. AMIR NAZIR)
MEMBER Member Member

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 02-12-16
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Date of Delivery of Copy 14-12-16

POWER OF ATTORNEY

In the Court of Khyber Pakhtunkhwa Khidma Service Tribunal Peshawar

Jahanzaib }For
}Plaintiff
}Appellant
}Petitioner
}Complainant

VERSUS

P.P.O and others. }**Defendant**
}Respondent
}Accused
}

Appeal/Revision/Suit/Application/Petition/Case No._____of_____
Fixed for_____

I/W, the undersigned, do hereby nominate and appoint

YASIR SALEEM ADVOCATE, my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromise or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employee any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at_____
the_____day to_____the year_____
Executant/Executants_____
Accepted subject to the terms regarding fee_____

YASIR SALEEM
Advocate High Courts
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3- 4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0331-8892589

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1251/2016.

Jehanzeb Khan Constable..... **Appellant**

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
   & Others.....**Respondents.**

WRITTEN REPLY ON BEHALF OF RESPONDENTS.

1. Preliminary Objections.

1. That the appellant has got no Cause of action and locus standi to filé the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come to the Tribunal with clean hands.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant concealed the material facts from this Hon'ble Tribunal.
8. That the appellant has been estopped by his own conduct to file the appeal.

2. REPLY ON FACTS.

1. Para No. 01 of appeal pertains to record, hence need no comments.
2. Para No. 02 of appeal pertains to record, hence need no comments.
3. Para No. 03 of appeal is correct to the extent of registration of FIR No. 89/2015, however appellant and his fellow constable showed extreme cowardice in the incident which results in the safe escaped of accused from the spot.
4. Para No. 04 of appeal is correct to the extent of departmental proceedings against appellant on account of his cowardice in the incident reported in the above FIR.
5. Para No. 05 of appeal is correct to the extent of reply of appellant, however the reply of appellant was not satisfactory nor convincing.
6. Para No. 06 of appeal is incorrect. Proper departmental enquiry in accordance with rules was conducted during which appellant was found guilty and recommended for major punishment.
7. Para No. 07 of appeal is correct to the extent of service of Final Show Cause Notice, the reply of which was found unsatisfactory , however, keeping in view the principle of natural justice, appellant was provided opportunity of personal hearing and heard in Orderly Room, but he could not prove himself innocent, therefore dismissed from service vide order dated 13.01.2016.
8. Para No. 08 of appeal is incorrect. Reply already given vide para above.

9. Para No. 09 of appeal is correct to the extent of rejection of departmental appeal and filling of review petition before the respondent No. 01, however, the review petition was properly entertained and partially allowed by converting order of dismissal into reduction in pay, keeping in view his long service.

10. Para No. 10 of appeal relates to Tribunal, hence need no comments.

11. Para No. 11 of appeal is correct to the extent of partial acceptance of review petition vide order dated 10.11.2016, however the charges against appellant has already been proved in departmental proceedings, therefore the respondent No. 01 modified the major penalty of dismissal into reduction in pay i.e. time scale for 04 years upto 03 stages, while the intervening period was considered as period in service but not on duty, hence not entitled for salary on the principle of "No work no pay".

12. Para No. 12 of appeal relates to Tribunal, hence need no comments.

13. That the respondent No. 01 by taking lenient view, keeping in view long service of appellant partially accepted the review petition by converting major penalty of dismissal into reduction in pay vide order dated 10.11.2016 which is speaking order, hence the instant appeal may be rejected.

GROUNDS.

A. Incorrect. Appellant has been treated in accordance with law & rules.

B. Incorrect. After proper departmental enquiry in accordance with rules, appellant was awarded punishment. Moreover, all codal formalities were fulfilled before awarding punishment to appellant.

C. Incorrect. Reply already given vide para above.

D. Incorrect. The charges against appellant has already been proved during enquiry proceedings, however respondent No. 01 partially allowed the review petition of appellant and modified the punishment of dismissal from service into major penalty of reduction in pay.

E. Incorrect. The charges against appellant have already been proved during enquiry.

F. Incorrect. Reply already given vide paras above.

G. Incorrect. The appellant and his colleague shown extreme cowardice in the incident.

H. Incorrect. The appellant has shown cowardice due to which the terrorist decamped from the spot.

I. Incorrect. The charges against appellant has been proved during enquiry on the basis of which he was awarded major punishment which was later on modified by the respondent No. 01, however he was not totally exonerated from the charges.

J. Incorrect. Proper opportunity of personal hearing and defence has been provided to appellant during enquiry proceedings but he could not prove himself innocent.

K. Incorrect. The respondent No. 01 has already taken a lenient view and partially accepted the review petition of appellant vide order dated 10.11.2016 which is quite legal and in accordance with rules.

L. Incorrect. The appellant has not performed any duty for the department, hence not entitled for any salary on the principle of "No work no pay".

M. The respondents also seek permission to rely on additional gounds at the time of hearing of appeal.

It is therefore prayed that the appeal of appellant may kindly be dismissed with cost being devoid of merits and without any legal substance.

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

Deputy Inspector General of Police,
Mardan Region-I Mardan.
(Respondent No. 2)

District Police Officer, Swabi.
(Respondent No. 3)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1251/2016.

Jehanzeb Khan Constable..... **Appellant**

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
   & Others.....**Respondents**.

AFFIDAVIT:-

We the respondent No. 1 to 3 do hereby solemnly affirm and declare on oath that the contents of the written reply are correct/true to the best of our knowledge / belief and nothing has been concealed from the honorable Tribunal.

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

Deputy Inspector General of Police,
Mardan Region-I Mardan.
(Respondent No. 2)

District Police Officer, Swabi.
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 1251/2016

JehanZeb Khan Ex- Constable 72 Police Station Zaida Swabi
.....*(Appellant)*

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa & Others
.....Respondents

REJOINDER TO THE PARA WISE REPLY ON BEHALF OF THE APPELLANT

Respectfully submitted:

The appellant submits his rejoinder as under:

ON PRELIMINARY OBJECTIONS:

1. Contents incorrect and misleading, the appellant has illegally been awarded the penalty of reduction of time scale for three years, hence he has got the necessary cause of action and locus standi to file the instant appeal.
2. Contents incorrect and misleading, all the parties necessary for the disposal of the appeal are arrayed in the instant appeal.
3. Contents incorrect and misleading, the instant appeal is filed well within the prescribed period of limitation.
4. Contents incorrect and misleading, the appellant has come to the tribunal with clean hands.
5. Contents incorrect and misleading, the appellant is an aggrieved civil servant, and moreover the matter relates to its term and condition of his service hence only this honorable tribunal has got jurisdiction to entertain and adjudicate the instant appeal.
6. Contents incorrect and misleading, the appeal being filed well in accordance with the prescribed rule and procedure hence maintainable in its present form and also in the present circumstances of the case.
7. Contents incorrect and misleading, all facts necessary for the disposal of appeal are brought before this honorable court and nothing has been concealed.

8. Contents incorrect and misleading, no rules of estopple is applicable to the instant case.

ON FACTS

1. Contents need no reply, however contents of Para-1 of the appeal are true and correct.
2. Contents need no reply, however contents of Para-2 of the appeal are true and correct.
3. No comments to the extent of admission, rest of the para is incorrect and misleading. Contents of para No. 3 of the appeal are true and correct.
4. No comments to the extent of admission, however rest of the para is incorrect and misleading, the allegations are baseless. Contents of para No. 4 of the appeal are true and correct.
5. No comments to the extent of admission, rest of the para is incorrect and misleading. Contents of para No. 5 of the appeal are true and correct.
6. Contents of Para-6 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
7. No comments to the extent of admission, rest of the para is incorrect and misleading. Contents of para No. 7 of the appeal are true and correct.
8. Contents need no reply, however contents of Para-8 of the appeal are true and correct.
9. No comments to the extent of admission, rest of the para is incorrect and misleading. Contents of para No. 9 of the appeal are true and correct.
10. No Comments.
11. No comments to the extent of admission, rest of the para is incorrect and misleading. Contents of para No. 11 of the appeal are true and correct.
12. No Comments.
13. Contents of Para-13 of the appeal are correct; the reply submitted to the Para is incorrect and misleading.

GROUNDS

The Grounds (A to M) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

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

Appellant

Through

YASIR SALEEM
Advocate High Court.

AFFIDAVIT

I do, hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct and nothing has been kept back or concealed from this Honorable Tribunal.

.Deponent

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR HIGH COURT