BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR

Appeal No. 217/2016

Date of Institution ... 09.03.2016

Date of Decision ... 13.11.2017

Sabir Khan, Ex- Inspector Circle Office (Inv) Cantt-I Division, Peshawar now Sub Inspector. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department, Civil Secretariat, Peshawar & 4 others. ... (Respondents)

MR. RIZWANULLAH, Advocate ... For appellant

MR. USMAN GHANI, District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD AMIN KHAN KUNDI, ... MEMBER

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The accused was dismissed from service vide order dated 08.06.2015 against which he filed departmental appeal on 23.06.2015. When the

departmental appeal was not decided within the statutory period the appellant filed service appeal before this Tribunal. During pendency of the appeal the departmental appeal was partially accepted on 29.01.2016, communicated to the appellant on 12.02.2016. Through this appellate order, the appeal of the appellant was partially accepted and his penalty of dismissal from service was converted into reversion to the rank of Sub Inspector. The appellant with permission of this court filed fresh appeal on 09.03.2016 wherein he has challenged the appellate order dated 29.01.2016. The charge against the accused is mainly based on the observations of the Worthy Peshawar High Court dated 12.12.2014 during the hearing of a bail application by pointing certain lacunas on the part of the Investigation Officer/Investigation Agency.

ARGUMENTS.

3. The learned counsel for the argued that under Section 19 of the Anti-Terrorism Court Act, 1997, a Joint Investigation Team was constituted and only the appellant was charge sheeted and no proceedings were initiated against the other members of the J.I.T. He next contended that the observations of the Worthy Peshawar High Court were not against the appellant but also against the Investigation Agency (J.I.T). He further argued that on the principles of equal treatment, the appellant has been discriminated against and in this regard he relied upon a judgment reported as 2004-PLC (C.S) 82. He next contended that the report of the enquiry officer was not based on any evidence. No statement of any witness was recorded to substantiate the charges against the appellant. He added that the learned CCPO disagreed with the enquiry report of the enquiry officer to the extent of imposition of minor penalty and that in such situation it

was incumbent upon the CCPO to record proper reasons as reported in 2011 PLC (C.S) 1094. He further relied upon another judgment of this Tribunal in service appeal No. 691/2012 decided on 01.12.2016, entitled *"Majid Khan Vs. Deputy Inspector General of Police, Mardan Regiion-I, Mardan etc."* He next contended that the appellate authority while converting the penalty into reversion was bound to have fixed period of reversion under F.R-29. The learned counsel further argued that the observations of the Worthy Peshawar High Court in a bail is a tentative observation which needed complete enquiry for proof and that the investigation of the case was yet to be completed and no challan was submitted before the Trial Court and hence it could not be said on tentative assessment that the Investigation Officer was responsible for deficiencies pin pointed by the Worthy Peshawar High Court.

4. On the other hand, the learned District Attorney argued that the CCPO was competent to pass the original order. That the charge sheet was based on the observations of the Worthy Peshawar High Court and that the authority and the enquiry officer had no malafide against the appellant. He further argued that there was no need of recording statement of witnesses and only one questionnaire was given to the appellant which was sufficient for the present enquiry.

CONCLUSION.

5. It is strange to observe that the enquiry officer and the then authority have only relied upon the observations/directions of the Worthy Peshawar High Court. They have not bothered to enquire the matter whether the observations made by the Worthy Peshawar High Court (which were tentative in nature) are correct or

not after enquiring into the matter. Had the tentative observation of the Worthy Peshawar High Court been final one then there was no need for sending the copies to the IGP for considering the matter which means that the intention of the Worthy Peshawar High Court was to have a detailed enquiry and then to fix responsibility on the concerned Investigation Officer/Investigation Agency. But the enquiry committee has done nothing except giving the questionnaire to the appellant and in that questionnaire the appellant had refuted all the allegations. It was then incumbent upon the enquiry officer to have followed the directions of the Worthy Peshawar High Court and should have pin pointed the names of the police officials whose statements had not been recorded by the appellant or the Investigation Agency (as the case may be). The appellant had also taken the plea in his reply to the show cause notice and in his reply to the questionnaire that there was no other police official at the spot. He had also explained that the investigation was still in progress and the file was taken at its earlier stage by the Trial Court and then by the Worthy Peshawar High Court and he could not complete the investigation. He also explained that he did make efforts to recover the motorbike and the weapons and that he arrested three accused on the basis of those efforts though no one was named in the FIR. The enquiry committee report is completely silent about this aspect and has only given its findings on the basis of the observations of the Worthy Peshawar High Court. This Tribunal is afraid that the intention of the Worthy Peshawar High Court was not to condemn the alleged delinquent without affording him proper opportunity of hearing. It was also not the intention of the Worthy Peshawar High Court to ignore other aspects as mentioned above. The committee has badly failed to apply its mind to the facts of the allegations and the directions of the Worthy Peshawar High Court has not

been complied with by the enquiry committee. There is also no mention that why only Investigation Officer is charge sheeted.

6. As a result this appeal is accepted, however, the department is at liberty to hold denovo enquiry in accordance with the directions/spirits of the observations of the Worthy Peshawar High Court. If the department so decides, then that enquiry should be concluded within a period of four months from the date of receipt of this judgment. The mere pendency of the denovo enquiry should not be a hurdle in the career progression of the appellant, if any. Parties are left to bear their own costs. File be consigned to the record room.

(NIAZ MUIHAMMAD KHAN)
CHAIRMAN

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
13.11.2017

6. In view of the discussion, this appeal is accepted, the impugned order is set aside and the appellant is reinstated in service. The intervening period should be treated as leave due(if any). Parties are left to bear their own costs. File be consigned to the record room.

Sd/- Niaz Muhammad Khan
Chairman

Sd/- Ahmad Hassan,
Member

ANNO
03.08.

Certified to be ture copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 03-08-17
Number of Words 1600
Copying Fee 10
Urgent
Total 10
Name of Copyist
Date of Completion of Copy 04-08-17
Date of Delivery of Copy 04-08-17

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 691/2012

Date of institution ... 06.04.2015
Date of judgment ... 01.12.2016

Majid Khan (Ex-Constable), S/O Taj Mohammad ,
R/O Mohallah Miangaaan, Azakhel Bala, Tehsil & District Nowshera.
... (Appellant)

VERSUS

1. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
2. The District Police Officer, Nowshera.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER NO. OB-280 DATED 20.02.2015 PASSED BY THE DISTRICT POLICE OFFICER NOWSHERA(RESPONDENT NO.2) AGAINST WHICH DEPARTMENTAL APPEAL WAS FILED ON 25.02.215 BUT THE SAME WAS DISMISSED ON 25.03.2015.

Mr. Rizwanullah, Advocate. .. For appellant.
Mr. Mohammad Adeel Butt, Additional Advocate General .. For respondents.

MR. MUHAMAMD AAMIR NAZIR .. MEMBER (JUDICIAL)
MR. MUHAMMAD AZIM KHAN AFRIDI .. CHAIRMAN

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: Majid Khan, Ex-Constable, hereinafter referred to as appellant, through the instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, has impugned order dated 20.02.2015 vide which the appellant was awarded major punishment of dismissal from service with immediate effect. Against the impugned order, appellant filed a departmental appeal but the same was also turned down by the competent authority vide order dated 25.03.2015.

2. Brief facts of the case giving rise to the instant appeal are that the appellant joined police department on 01.08.2009 and had five years of unblemished service record to his credit. That DSP, Akora Circle District Nowshera submitted a report to the District Police

Officer Nowshera that the appellant alongwith constable Muhammad Arif had stopped two trailers and demanded Rs. 1000/- each as illegal gratification from their drivers namely Rehmat Ullah and Mewa Gul. That on the basis of this report, appellant was served with a charge sheet and statement of allegations. That the appellant submitted detail reply to the charge sheet, however an enquiry committee was constituted. The Inquiry committee without proper probe into the matter, held the appellant guilty and recommended minor punishment of stoppage of increments. However, the competent authority, while ignoring the recommendation of committee, awarded major punishment of dismissal from service to the appellant. That the appellant filed departmental appeal which was also turned down vide impugned order dated 25.03.2015, hence the instant appeal.

3. Learned counsel for the appellant argued before the court that while the appellant was on duty, an altercation took place between the Custom Squad and the drivers of trailers. That upon the request of the Custom Squad, the appellant helped them and directed the drivers to produce necessary papers to the Custom Squad. That the DSP Circle came there and the drivers complaint that appellant had demanded illegal gratification of Rs. 1000/- from them. That the DSP concerned without enquiring into the matter, reported the matter to the DPO and hence, the appellant was charge sheeted. That the enquiry committee neither recorded that statements of DSP who made a complaint against the appellant nor statements of the drivers were record and the appellant was penalized on the basis of heresy evidence. That the enquiry committee recommended minor punishment of stoppage of annual increments, however, the competent authority without giving any specific reason awarded major punishment of dismissal to the appellant which is against the law, hence by accepting the instant appeal the impugned orders be set aside and the appellant be reinstated into service.

4. In rebuttal learned Addl: AG argued that since the appellant was involved in taking illegal gratification and was apprehended on the spot by the DSP concerned therefore, the appellant was rightly awarded major punishment of dismissal from service. That a proper procedure was adopted and after proper enquiry, the appellant was held guilty, hence there is no force in the instant appeal the same be dismissed.

5. We have heard arguments of learned counsel for the appellant and learned Addl: AG for the respondents and have gone through the record available on file.

6. Perusal of the case file reveals that upon the report of the DSP, Akora Circle District Nowshera, the appellant was issued charge sheet alongwith statement of allegations to the effect that he had demanded Rs. 1000/- each from the drivers of trucks namely Rehman Ullah and Mewa Gul as illegal gratification and was caught red-handed on the spot. An enquiry committee was constituted which without recording the statement of the DSP concerned and drivers of the trucks , recommended punishment of stoppage of increments to the appellant. Despite the fact that the enquiry report was not confidence inspiring, the competent authority awarded major punishment of dismissal from service to the appellant and that too without specifying any proper reason which is not sustainable in the eyes of law. It was incumbent upon the competent authority to have recorded specific reason for disagreeing with the recommendation of the enquiry committee. Reliance in this respect was placed on 2011 PLC (C.S) 1094. Hence in these circumstances, we are constrained to set aside the impugned order dated 20.02.2015 and appellate order dated 25.03.2015 and reinstate the appellant into service by converting the major punishment of dismissal from service into minor punishment of stoppage of two increments for two years without cumulative effect. Parties are left to bear their own cost. File be consigned to the record room.

7. This judgment will also dispose of other connected Appeal bearing No. 289/2015 by Mohammad Arif, involving common question of law, in the same manner.

ANNOUNCED
01.12.2016

Sd/- M. Aamir Nazir, Member

Sd/- M. Azim Khan Afridi, Chairman

Certified to be true copy

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

Appeal No. 1499/2011

Date of Institution ... 12.08.2011

Date of Decision ... 03.08.2017

Khyber Pakhtunkhwa Service Tribunal Peshawar

Muhammad Mushtaq son of Abdul Sattar R/O Roda, Tehsil and District, D.I.Khan. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and another. ... (Respondents)

MR. RIZWANULLAH, Advocate --- For appellant.

MR. KABIRULLAH KHATTAK, Asstt. Advocate General ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASSAN ... MEMBER

ATTESTED
EXAMINER
Khyber Pakhtunkhwa Service Tribunal, Peshawar

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was removed from service on 10.02.2011 for his absence from duty. According to appellant he did apply for Extra-ordinary leave without pay for 2 months and 18 days and then proceeded on leave. In the meantime the authority did not sanction the Extra-ordinary leave without pay and proceeded against the appellant under the relevant law in vogue for the time being. The appellant then filed a departmental appeal (the date is not

mentioned). When the same was not responded to he filed the present appeal on 12.08.2011. Alongwith this appeal an application for condonation of delay has also been filed by the appellant.

ARGUMENTS

3. The learned counsel for the appellant argued that under Rule 12 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981, the appellant was entitled to have been granted the leave applied for. That the relevant law inforce for the time being i.e. Khyber Pakhtunkhwa Civil Servants Removal from Service (Special Powers) Ordinance, 2000 required that charge sheet coupled with statement of allegations should have been issued to the appellant which has not been done. In this respect he relied upon a judgment reported as 2009-SCMR-615. He further argued that no chance of personal hearing was provided to the appellant which has by now recognized by all the laws as a fundamental right. In this regard the learned counsel for the appellant relied upon certain judgments reported as 2003-SCMR-1126, 2005-SCMR-678, PLD-2008-Supreme Court-412, 2009-SCMR-161. He further argued that enquiry officer had recommended the imposition of minor penalty and the authority without giving any reason did not agree with the findings of the enquiry officer and instead proceeded further and imposed major penalty of removal from service upon the appellant. In this regard, the learned counsel for the appellant relied upon 2011-PLC(C.S) 1094. Last but not the least he argued that the authority was not competent to issue such order and if an order is passed by the authority who was not competent, then it becomes a void order and no limitation runs in void orders. In this regard he relied upon 2007-SCMR-262, 2007-SCMR-729 and 2014-SCMR-1189.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

4. On the other hand, the learned Asstt. A.G argued that the appeal is time barred. That the departmental appeal bears no date and it cannot be presumed that the departmental appeal was within time. That even if departmental appeal is presumed to be within time, the present appeal before this Tribunal is also time-barred. That show cause notice was issued to the appellant by the competent authority and personal hearing was afforded to him. That the appellant did submit reply to the show cause notice. That the impugned order is in accordance with law.

CONCLUSION.

5. Before adverting to the merits of the case it would be proper to first determine the objection qua the competency of the authority which passed the order. It is now a settled law that *corum non judice* is a fatal flaw germane to the very Constitution of the forum rendering all the proceedings as non est (2017-SCMR-1249). It is held in many judgments of the august Supreme Court of Pakistan including the ones referred to above by the learned counsel for the appellant that any order passed as *corum non judice* is a void order and that no limitation at all runs against a void order. The learned AAG is not able to convince this Tribunal that it was the Secretary of the department who was competent to pass the impugned order as according to the learned counsel for the appellant it was the Deputy Secretary (Administration) who could pass such order being competent authority in view of a notification issued on 16.01.1992 at S.No. 16. No other notification has been shown by the respondents. When the whole proceedings are illegal there is no need to dilate any further upon other proceedings of the case including non service of show cause notice, non service of charge sheet and statement of allegations etc.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

02.06.2017 Clerk of the counsel for appellant and Mr. Kabir Ullah Khattak Assistant AG for the respondent present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 14.09.2017 before D.B.

(Muhammad Amin Khan Kundi)
Member

(Gul Zeb Khan)
Member

14.09.2017 Appellant with counsel and Mr. Usman Ghani, District Attorney alongwith Muhammad Raziq, H.C for the respondents present. Arguments partly heard. During the course of arguments, learned District Attorney seeks adjournment to submit case/enquiry file. To come up for such record and further arguments before this D.B on 13.11.2017.

Member Chairman

13.11.2017 Appellant alongwith counsel and Mr. Usman Ghani, District Attorney alongwith Muhammad Raziq, H.C for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.

Member Chairman

ANNOUNCED
13.11.2017

23.08.2016 Appellant in person and Mr. Hayat Muhammad, HC alongwith Addl. AG for respondents present. Written reply not submitted. Learned AG requested for further adjournment. Last opportunity further extended subject to payment of cost of Rs. 1000/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 3.11.2016 before S.B.

03.11.2016 Clerk to counsel for the appellant and Mr. Hayat Muhammad, Reader alongwith Addl. AG for respondents present. Written reply submitted. Cost of Rs. 1000/- also paid and receipt thereof obtained from the learned counsel for the appellant. The appeal is assigned to D.B for rejoinder and final hearing on 12.01.2017.

Member

12.01.2017 Counsel for the appellant present and Ziaullah GP, for respondents present. Rejoinder is submitted which is placed on file. To come up for arguments on 02.06.2017.

(AHMAD HASSAN)
MEMBER

(MUHAMMAD AAMIR NAZIR)
MEMBER

14.4.2016 Counsel for the appellant present. Learned counsel for appellant argued that the appellant was serving as Inspector when subjected to enquiry on the strength of the judgment of Hon'ble High Court dated 12.12.2014 and initially dismissed from service vide order dated 08.06.2016 which was assailed in departmental appeal wherein the said penalty was converted into reduction of appellant to lower rank vide impugned order dated 29.01.2016 and hence the instant service appeal on 09.03.2016.

That the enquiry officer has recommended minor penalty. That the period has not been specified in the penalty imposed against the appellant which is in violation of F.R-29.

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 14.06.2016 before S.B.

Chairman

14.06.2016 Appellant with counsel and Mr. Hayat Muhammad, HC alongwith Asstt. AG for the respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 23.08.2016 before S.B.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 217/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10.03.2016	The appeal of Mr. Sabir Khan resubmitted today by Mr. Ijaz Anwar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2	21-03-2016	This case is entrusted to S. Bench for preliminary hearing to be put up thereon 22-3-16. CHAIRMAN
	22.03.2016	None present for appellant. The appeal be relisted for preliminary hearing for 30.3.2016 before S.B. Chairman
	30.03.2016	Counsel for the appellant present. Seeks adjournment. Adjourned for preliminary hearing to 14.4.2016 before S.B. Chairman

The appeal of Mr. Sabir Khan Ex-Inspector Circle office Investigation Cantt-1 Division Peshawar received to-day i.e. on 09.03.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Memorandum of appeal may be got signed by the appellant.
2- Annexures of the appeal may be attested.

No. 403 /S.T,

Dt. 10 / 3 /2016

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ijaz Anwar Adv. Pesh.

Re. Objection

1) Memorandum Appeal may be signed by Appellant.

2) Annexures of the Appeal are Attested.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 217 /2016

Sabir Khan Ex Inspector Circle Office (Inv) Cantt-I Division Peshawar, now Sub Inspector.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary to Government Home and Tribal Affairs Department, Civil Secretariat Peshawar and others.

(Respondents)

INDEX

Appellant

Through

(IJAZ ANWAR)
Advocate, Peshawar
&
(SAJID AMIN)
Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 217/2016

Sabir Khan Ex Inspector Circle Office (Inv) Cantt-I Division Peshawar, now Sub Inspector.

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary to Government Home and Tribal Affairs Department, Civil Secretariat Peshawar.
2. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Additional Inspector General of Police (Investigations) Khyber Pakhtunkhwa, Peshawar.
4. Capital City Police Officer, Peshawar.
5. Senior Superintendent of Police Investigation, Peshawar.

(Respondents)

Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order Endorsement No. 781-89/16 dated 29.01.2016 whereby the departmental appeal of the appellant has been though partially accepted and the appellant has been re-instated into service but the penalty of Reduction in Rank of Sub- Inspector has been imposed upon him.

Prayer in Appeal: -

On acceptance of this appeal the impugned order dated 29.01.2016 to the extent of penalty of Reduction in Rank of Sub Inspector may please be set-aside and the appellant may be re-instated to his original Rank of Inspector *with all back/consequential benefits*.

Respectfully Submitted:

1. That the appellant was appointed /enlisted as Police Constable in police, during the course of his service he got promotion from time to time and got the status of Inspector with his hard work and dedication to his duties. That the appellant has at his credit all the major Police courses.

2. That while serving in the capacity of Circle Offi—cer (Investigation) Cantonment. Division Peshawar, he was served with an explanation letter dated 23.12.2014 calling upon him to reply regarding remarks of the Honourable High Court in showing slackness in investigation. He replied the same and explained his position. ***(Copies of the judgment of the High Court & explanation letter is attached as Annexure A & B)***

3. That the appellant was served with charge sheet and statement of allegation dated 30.1.2015 containing the following false and baseless allegations:-

   "The honorable Peshawar high Court Peshawar has issued a judgment on 12.12.2014 on the bail application of accused Hameed Ullah and Hamid in case Fir No. 563 dated 1.7.2013 u/s 302/353/404/34/7 ATA Police Station Pishtakhara, Peshawar which revealed that he has conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables was martyred. He did not take pain to record the statements of those police officials who were posted in the same area where the incident took place. He did not make any efforts to collect information about the motorbikes used in the commission of offence or for the recovery of the official weapon. He was so careless that you even did not bother to collect record of other cases of accused. Your conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which cannot be countenanced in any manner. Resultantly Honorable Judge released the accused on bail."
   The appellant submitted his reply and refuted the allegations.
   (Copies of the charge sheet and reply are attached as annexure C & D).

4. That thereafter a partial inquiry was conducted and the inquiry committee without properly associating the appellant with the inquiry proceedings conducted inquiry and submitted their findings wherein the committee recommended the appellant for minor punishment vide the inquiry report dated 11.5.2015. (Copies of the inquiry report is attached as annexure E).

5. That a final show cause notice was issued to the appellant dated 21.5.2015, wherein quite illegally minor/ major penalty including that of dismissal from service was proposed to be imposed, the appellant duly replied the show cause notice. ***(Copies of the Final Show cause notice and reply are attached as Annexure F & G)***

6. That without adhering to the defence reply of the appellant or even to the report/ recommendations of the enquiry committee the appellant was awarded from major punishment of dismissal from service vide order dated 8.6.2015. ***(Copy of the dismissal order dated 8.6.2015 is attached as annexure H)***

7. That appellant submitted his departmental appeal dated 23.6.2015, since, it was not responded despite the lapse of statutory period therefore, the appellant was constrained to file his service appeal before this Hon'ble Tribunal. ***(Copy of the departmental appeal is and memo of service appeal are attached as Annexure I & J)***

8. That, while service appeal of the appellant was pending before the honorable Tribunal, the Respondent No. 2, while partially accepting the departmental appeal of the appellant, re-instated him into service and converted the major penalty of dismissal from service into reduction in Rank of Sub-Inspector vide order dated 29.01.2016. The order was however communicated to the appellant on 12.02.2016 ***(Copy of the order dated 29.01.2016 is attached as Annexure K)***

9. That the first appeal of the appellant before this honorable Tribunal has since become infructous due to the new development, therefore the appellant has applied for its withdrawal and is filing the instant appeal.

10. That the appellant prays for the instance appeal inter alia on the following grounds:-

Grounds of Appeal

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

B. That the departmental proceedings were partial mainly influenced by the observation of the Honourable High court, the enquiry committee did not taken pain to enquire the matter in its true perspective, simply referred to the observation of the High Court and allegedly prove the allegations, the appellant has thus not been provided proper opportunity to vindicate himself.

C. That the authority or the enquiry committee did not considered that being a terror case, it is required to be investigated by the Joint Investigation Team, the appellant alone cannot be made liable in for alleged faulty investigation.

D. That the Charge sheet & Final Show cause notice & the penalty order witnessed improvement in the allegations, thus the departmental proceedings are faulty and greatly prejudiced the case of the appellant.

E. That no proper procedure has been followed before awarding the penalty to the appellant, the inquiry officer recommended only imposition of minor penalty, however the competent authority have never issued any order nor have stated any reason for disagreeing with the recommendations of the inquiry officer, thus the penalty imposed is illegal and not tenable under the law.

F. That the appellant has fully explained his position in the departmental proceedings, the nature of the case/ his investigation, however it was never considered by the respondents, thus the appellant was awarded a penalty too harsh, never commensurate with the allegations leveled.

G. That the appellant has not been allowed the opportunity of personal hearing. Thus he has been condemned unheard.

H. That the recommendation of the enquiry officer were not adhered to and thus the order of penalty is violative of law and thus is against the rules, law, arbitrary and is whimsical, similarly the appellant was never given opportunity of hearing as alleged, thus I have been condemned unheard.

I. That while awarding the penalty of reduction to lower rank, no period has be specified for which the penalty could remain imposed thus the penalty so awarded is against the FR-29, which provides for specification of period.

J. That ever since his appointment, the appellant had performed his duties with zeal and devotion and there was no complaint whatsoever regarding his performance.

K. That the charges leveled against the appellant have never been proved during the inquiry albeit he has been awarded the penalty of reduction to lower rank on the bases of unproven charges.

L. That the appellant has at his credit a long and spotless service career the penalty imposed is too harsh and liable to be set aside.

M. That the facts and grounds mentioned in the departmental appeal, replies to the charge sheet and show cause notice may also be read as integral part of the instant appeal.

N. That the appellant seeks the permission of this Honorable Tribunal to rely on additional grounds at the hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the impugned order dated 29.01.2016 to the extent of penalty of Reduction in Rank of Sub Inspector may please be set-aside and the appellant may be re-instated to his original Rank of Inspector with all back/consequential benefits.

Appellant

Through

IJAZ ANWAR
Advocate Peshawar
&

SAJID AMIN
Advocate Peshawar

AFFIDAVIT

I, Sabir Khan Ex Inspector Circle Office (Inv) Cantt-I Division Peshawar (now Sub Inspector), do hereby solemnly affirm and declare that the contents of the above appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent

KHALID MAHMOOD ADVOCATE ATTESTED NOTARY PUBLIC PESHAWAR HIGH COURT

(6) ANNEX, 'A'

BEFORE THE
PESHAWAR HIGH COURT PESHAWAR

Bail Application No. 1818-P of 2014

Hameed Ullah alias Hamid S/o Amirullah
Resident of Bazid Khel, Badhber, Tehsil & District Peshawar
_____ (Accused / Petitioner)

VERSUS

The State
_____ (Respondent)

Case FIR No. 563 | Dated: 01.07.2013
U/S 302/353/404/34 PPC, 7ATA | Police Station: Pishtakhara

APPLICATION FOR THE RELEASE OF ACCUSED / PETITIONER ON BAIL TILL THE FINAL DISPOSAL OF THE CASE.

ATTESTED
EXAMINER
Peshawar High Court
20 DEC 2014

Respectfully Sheweth,

A. That the accused / petitioner has been arrested in the above mentioned case and is behind the bars at Central Jail, Peshawar. (Copy of FIR is attached as Annexure A)

B. That the accused / petitioner moved bail application before the court of special Judge, Anti Terrorism Court-II, Peshawar but the bail application

FILED TODAY
Deputy Registrar
01 NOV 2014

7

of the accused / petitioner was declined vide order dated 31.10.2014. (Copy of bail application and order dated 31.10.2014 is attached as Annexure B)

GROUNDS

A. That the accused / petitioner is innocent and has falsely been implicated in the case.

B. That there is nothing on the record to connect the accused / petitioner with the commission of the offence.

C. That the case against the accused / petitioner is false, concocted and based on malafide.

D. That the accused / petitioner is not directly charged in the FIR.

E. That the accused / petitioner is complainant in case FIR No. 751 through which he received injuries and was admitted at LRH Peshawar, where he was charged in the instant FIR. (Copy of FIR No. 751 is attached as Annexure C)

F. That nothing incriminating has been recovered at the instance of the accused / petitioner.

G. That the case of the accused /petitioner false within the ambits of further inquiry.

H. That the accused / petitioner is no more required for the purpose of investigation.

FILED TODAY
Deputy Registrar
01 NOV 2014

ATTESTED
EXAMINER
Peshawar High Court
20 DEC 2014

8

I. That the accused / petitioner is ready to furnish bail bond with reliable sureties to entire satisfaction of the court.

It is therefore, most humbly prayed that on acceptance of this application the accused / petitioners may kindly be released on bail till the final disposal of the instant case.

Accused / Petitioner

Through

Muhammad Saleem Shakir
Advocate,
High Court Peshawar

Dated: 01.11.2014

NOTE

As per instruction of my client no such like bail petition has earlier been filed before this Honourable Court.

ADVOCATE

FILED TODAY
Deputy Registrar
01 NOV 2014

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR

(Judicial Department)

Cr.Misc.BA nO.1818-P/2014

Date of hearing: 12.12.2014

Petitioners (s) : Hameedullah alias Hamid by Mr. Muhammad Salim Shakir, Advocate.

Respondent(s) : The State by Mr. Muhammad Sajid, Advocate, State counsel.

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- Petitioner Hameed Ullah alias Hamid, seeks bail in case FIR No.563 dated 01.07.2013, registered under sections 302/353/404/34 PPC read with Section 7 Anti Terrorism Act, at Police Station Pishtakhar.

2. Learned counsel for the petitioner and learned State counsel heard. Record perused.

3. It appears from record on 01.07.2013 at 1345 hours, three unknown culprits riding on motorbikes, in order to create terror in the society, opened fire at police officials who were on patrol duty near Abbas Terminal Ring Road, within the limits of Landi Akhun Abad, as a result, Constables

Subhan Ali and Usman Ali got hit and died on the spot; that after shooting the deceased, the culprits also took away along with them the officials rifles of the deceased Constables.

4. Petitioner is not named in the FIR. None has come forward to furnish the ocular account of the incident. The petitioner remained in police custody, but he has not confessed his guilt before any competent court of law nor anything incriminating such as the weapons of offence, motorbike or the rifles of the deceased Constables has been recovered either from his direct or indirect possession. The only piece of evidence which prevailed before the learned lower court for declining him bail was the confessional statement of co-accused Bilal recorded under section 164 Cr.P.C. on 20.09.2014. A look over the same would reveal that co-accused Bilal has not shown himself as an accused/participator of the present incident. According to him he was confined in judicial lockup in some narcotics case at the instance of his father where he met with present petitioner Hamidullah and co-accused Rizwan, who allegedly told him that they want to kill police officials and that later on, he came to know in village about the present incident. The I.O. has not brought anything in black & white to show association of the petitioner with co-accused Bilal in judicial lockup, as alleged by him. Except statement of co-accused Bilal, there is nothing on record, at this stage, to connect the petitioner with the

commission of offence. Rather, on tentative assessment of the record, reasonable grounds exist which requires further probe into the guilt of the petitioner. It is settled law that bail may not be refused merely on the ground that accused for a heinous offence, when otherwise, he is found entitled to the concession of bail because any mistaken relief of bail, can be repaired by convicting the accused, if proved guilty at the trial, but no proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run.

5. For the foregoing reasons, this petition is allowed and accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.3,00,000/- with two sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD, concerned.

6. Before parting with the judgment, this court has taken with great concern the conduct of learned State Counsel, who when confronted with the record of the instant and was asked to point out any evidence/material which could connect the petitioner with the commission of offence, he except reiterating the offence to be heinous in nature and against the society, could not urge more, rather pressed hard for provision of time to consult his seniors in the office. This conduct of the learned State counsel is highly deplorable which shall not be

allowed to prevail in the future. By nominating such like junior advocates with the task of cases high import like terrorisms, murders and attempt to murders etc, also speak volumes about consciousness of the responsible officials of Office of the Advocate-General about their official obligations. Learned Additional Registrar (Judicial) of this court is directed to send copy of this judgment to learned Advocate-General Khyber Pukhtunkhwa, Peshawar, for taking the matter into consideration and curtailing such practice in the future by distribution of cases to the law Officers keeping in view the nature and gravity of offences involved in the cases.

7. Moreso, I would not feel any hesitation to condemn the poor role of the Investigation Agency, particularly, the Investigation Officer of the instant case, keeping in view his poor investigation by roughly dealing with the case of terrorism where two innocent police Constables have been martyred. The I.O. even has not taken pain to record the statements of those police officials who were also posted in the same area of the deceased constables and were on their duty in the area where the incident took place nor have made them

complainants of the case. He has not made any effort to collect information about the motorbikes used in the commission of offence or for the recovery of the official's weapons. He was so careless that he even did not bother to collect record of those cases of accused Bilal and the present petitioner in which they remained in judicial lock up with each other. If such is the conduct of the police in the cases of colleagues of their own Force, what the people of the society would expect from them and how they would consider themselves safe under the shelter of the police. The conduct of the Investigating Agency demonstrated in the instant case is highly dreadful, shocking and unacceptable, which cannot be countenanced in any manner. Copy of this order be placed before Additional Inspector General Police (Investigation) Khyber Pakhtunkhwa for taking the matter into consideration and doing the needful against the delinquent. Any step taken in this regard is expected to be intimated to this court, through the office of the Additional Registrar (Judicial), as early as possible.

Announced.
12.12.2014

JUDGE

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-Shahadat Order 1984

20 DEC 2014

ANNEX "B"

(14)

CAPITAL CITY POLICE PESHAWAR
SENIOR SUPERINTENDENT OF POLICE (INVESTIGATION)

INSPECTOR SABIR KHAN
Circle Officer (Inv:) Cantt:-I, Division, Peshawar

EXPLANATION.

The Honorable Peshawar High Court, Peshawar has issued a Judgment on 12/12/2014 on the bail application of accused Hameed Ullah @ Hamid in case FIR No.563 dated 01/07/2013 u/s 302/353/404/34 PPC/7ATA Police Station Pishtakhara, Peshawar which revealed that you have conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables have been martyred. You were not taken pain to record the statements of those Police officials who were posted in the same area where the incident took place. You were not made any efforts to collect information about the Motorbikes used in the commission of offence or for the recovery of the official's weapon. You was so careless that you even did not bother to collect record of other cases of accused. Your conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which cannot be countenanced in any manner. Resultantly Honorable Judge High Court released the accused on bail.

You are hereby directed to explain your position within 03-days after the receipt of this explanation, otherwise it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.

No. 7589 /PA,

Dated 23 /12/2014

S.S.P, INVESTIGATION, PESHAWAR.
(signature)

Received.
INSP/ CII/ H Abad.
24/12/14.

(15) ANNEX: C

CHARGE SHEET

1. Whereas I am satisfied that a formal enquiry as contemplated by Police Rules 1975 is necessary & expedients.

2. And whereas, I am of the view the allegations if establishment would call for major/minor penalty, as defined in Rules 3 of the aforesaid Rules.

Now therefore, as required by Police Rules 6 (1) of the said Rules, I **Ijaz Ahmad,** Capital City Police Officer, Peshawar, hereby charge you **Inspector Sabir Khan, Circle Officer (Inv:) Cantt-I, Division** Peshawar under Rule 5 (4) of the Police Rules 1975 on the following allegations:-

The Hon'able Peshawar High Court, Peshawar has issued a Judgment on 12.12.2014 on the bail application of accused Hameed Ullah@ Hamid in Case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34/7 ATA Police station Pishtakhara, Peshawar which revealed that you have conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables were martyred. You did not take pain to record the statements of those Police officials who were posted in the same area where the incident took place. You did not made any efforts to collect information about the Motorbikes used in the commission of offence or for the recovery of the official's weapon. You were so careless that you even did not bother to collect record of other cases of accused. Your conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which can not be countenanced in any manner. Resultantly Hon'able judge of High Court released the accused on bail.

No. 210/ST
Dt. 30/01/2015
Encls: (12)

3. And I hereby direct you further under Rules 6 (I) of the said Rules to put in a written defence within 7 days of the receipt of this Charge Sheet as to why the proposed action should not be taken against you and also stating at the same time whether you desire to be heard in person.

4. And in case your reply is not received within the specific period it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.

CAPITAL CITY POLICE OFFICER,
PESHAWAR

SUMMARY OF ALLEGATIONS

1. **I, Ijaz Ahmad, Capital City Police Officer,** Peshawar as Competent authority, am of the opinion that **Inspector Sabir Khan, Circle Officer (Inv:) Cantt-I, Division,** Peshawar has rendered himself liable to be proceeded against, as he committed the following acts/omission within the meaning of section 03 of the Police Rules 1975.

STATEMENT OF ALLEGATION

The Hon'able Peshawar High Court, Peshawar has issued a Judgment on 12.12.2014 on the bail application of accused Hameed Ullah@ Hamid in Case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34/7 ATA Police station Pishtakhara, Peshawar which revealed that he has conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables was martyred. He did not take pain to record the statements of those Police officials who were posted in the same area where the incident took place. He did not made any efforts to collect information about the Motorbikes used in the commission of offence or for the recovery of the official's weapon. He was so careless that you even did not bother to collect record of other cases of accused. Your conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which can not be countenanced in any manner. Resultantly Hon'able judge High Court released the accused on bail.

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an Enquiry Committee/ Enquiry Officer comprising of the following is/are hereby constituted/nominated:-

i) DSP Inv. Jehanzeb Khan
ii) DSP Inv. Riaz Khan

3. The Enquiry Committee/Enquiry Officer shall in accordance with the provision of the Police Rules (1975) provide reasonable opportunity of hearing to the accused officer/officials and make recommendations as to punish or other appropriate action against the accused official.

CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 01 /E/PA, dated Peshawar the 30/1/2015.

Copy of the above is forwarded to the enquiry Committee/ Enquiry Officer for initiating proceeding against the accused under the Police Rules 1975.

(17) ANNEX-D

جناب عالی!

حوالہ جات 2 تفتیشی ڈائری 30/13 01/E/PA dated 01 موضوع ہیں

کہ سلسلہ تفتیش حوالہ مقدمہ نمبر 563 موضعہ 7/13 01 جرم 302/353/404/34/7ATA

تھانہ لیٹھڑ میں پیش خلاصہ الزامات درج ہیں کہ ۔ دو کنسٹبلان شہید ہو کر

اپنی پولیس آفیسر کا بیان تک قلمبند نہیں کیا گیا ہے

(2) موٹر سائیکل اور شہید کنسٹبلان کے ۔ Switch شدہ موبائل کے لئے کوشش نہیں کی گئی ہے

(3) ملزمان کے لسٹ کوئی اور ریکارڈ موقعہ پر پیش لائے گئے ہیں۔

جناب عالی! الزام ہذا کے بارے موقف یہ ہے کہ اگر موقعہ پر دیکھا جائے تو کنسٹبلان عباس ٹرسٹیل کے پاس تھا کہ اسلحہ کی ایمونیشن نہیں تھے جائے وقوعہ میں کوئی دیگر نفری پولیس اہلکار نہ تھی کیس کے بیانات قلمبند کروا لیتے اور جائے وقوعہ تھانہ لیٹھڑ سے 2 ½ کلومیٹر کے فاصلے پر ہے پھر بھی موقعہ پر موجود ہے کہ متعلقہ پولیس آفیسران کے بیانات موجود ہیں

(2) الزام ہذا کے بارے میں تحریر کرتا ہوں کہ FIR میں محض موٹر سائیکل کا ذکر مراسلہ نگار افسر نے کیا ہے معلوم نہیں کہ اس نے کیس موٹر سائیکل کا ذکر کیا ہے نہ موبائل اینڈ ٹائپ کا ذکر کیا ہے نہ رنگ کا ذکر FIR میں موجود ہے کنسٹبلان شہید ہو کر ان کے پاس موبائل ہے اگر موقعہ پر ان کے کپڑے اتارے ہیں ۔ ورثاء کے بیانات پولیس آفیسران نے موٹر سائیکل تک اور ان کے بیان تک دستیابی اور برآمگی کی سفارش کی ہے ۔ اگر ملزمان کو موٹر شہادت کے طور پر نامزد کرنا مناسب نہیں سمجھا ہے ۔ SHO کے درخواست سے گرفتار ملزمان کے ورثاء تحریری درخواست ارسال کر کے موقعہ پر موجود ہے

قتل مقدمہ زیر تفتیش حالت میں ATC لیٹھڑ نے فوری طور پر ضمانت طلب کر کے ملزمان کے ضمانت کی درخواست مسترد ہو کر ATC کے عدالت عالیہ قتل مقدمہ لیٹھڑ تھانہ واپس ہی نہیں ہوا جبکہ ملزمان گرفتار شدہ سلال، رضوان اور حمید اللہ تھانہ لیٹھڑ کے دیگر ہم جرم قسم کے مقدمات میں گرفتار ہوئے تھے اپنا اپنا ان کے FIR بدیں وصف الف قتل مقدمہ میں کیے گئے ہیں کیونکہ تینوں اشتہار یافتہ عدالت ہائے میں تھے FIR میں ملزمان نامزد نہیں تھے ۔ اور اسی عدم شناخت کی صورت میں کوئی بھی FIR قتل مقدمہ میں ملزمان کو مکمل قرار کرتے وقت ملزم کی ملزمیت ثابت کرنے کے خاطر اکیلے سالقہ سزا یافتہ اور تقدمات FIR الف قتل مقدمہ بطور شہادت کیے جاتے ہیں ذکر شدہ قتل مقدمہ میں ملزمان کو چالان مکمل قرار نہیں کیا گیا ہے میرے خلاف الزام ہو سکتا ہے کہ میں نے صلحنامہ وصول کیا ہے لیکن محسوس کی ہے کہ مقدمہ [illegible]

Nizar

جناب عالی! ملزمان بلال وغیرہ کو گرفتار کر کے تھانہ پولیس تھانہ لیٹھڑ کے حوالے کیے گئے تھے لوقت گرفتاری برآمدگی اگر ملزمان کے گھروں پر چھاپہ زنی ہوتی تو یقیناً برآمدگی یقینی ہوتی۔ جبکہ ملزم محمد زاہد کو بھی ان فرد جبت LRH میں گرفتار کیا گیا تھا۔

اس کے علاوہ دفعہ 302 گردی اقسام کے مقدمات کی انکوائری فرد واحد نہیں کرتا ہے جو انٹرنل انکوائری کمیٹی ٹیم ایک تحریری نوٹیفکیشن کے روشنی میں ہم جنس قسم کے مقدمات کی انکوائری کرتے ہیں۔ مگر میں انکوائری آفیسر صاحبان نے خصوصی رہائی استدعا کرتے کہ یہ مقدمہ سپریشن نیچر کا ہے انکوائری / انٹروگیشن واسطے مختلف پولیس آفیسران صاحبان مقرر کیے جائیں اور جناب SSP صاحب نے میری استدعا کے پیش ایک ٹیم مقرر کر کے ملزمان کو انٹروگیٹ کر گئے ہیں۔ اور جملہ تفتیش کی ہے نوٹیفکیشن نمبر NO-3861-63PA 15-9-14 (2) 3802-12PA 15-9/14 اور آرڈرز 1045-48PA-20 10/14 مطابق دفتر SSP صاحب انکوائری کمیٹی قائم کر کے ملزمان

جس میں میں انکوائری میں کیا ہے صرف کیا ہے۔ ذرت کیا ہے سال ہی میں دفعہ 302 گردی اقسام کی مقدمات مقدمہ نمبر 141/13 جرم 365A تھانہ حیات آباد میں گرفتار شدہ ملزمان چار نفر 25 سال، 25 سال، مقدمہ نمبر 568/13-14 جرم 365A-302/381 PPC تھانہ نرمی میں گرفتار شدہ ملزمان 2 نفر سزائے موت اور ایک نفر عمر قید ہو کر تھانہ لیٹھڑ کے ایک مقدمہ میں جو سال 2016 میں برخلاف ملزم محمد الحق وغیرہ 20 ہو کر 25 سال قید سزا یاب ہو چکے ہیں بعض اوقات بنیادی بے قاعدگیاں مقدمہ کی تباہی کا باعث بنتے ہیں۔ جو ملزمان گرفتاریاں بھی کبھی آشکار برآمدگی، بازیابی کا باعث بنتے ہیں۔

استدعا ہے کہ میرے خلاف جاری کردہ چارج شیٹ کو واپس فرما دیں

العارض

محمد الزمان انسپکٹر سابقہ SHO تھانہ لیٹھڑ حال متعین PTC لنگہ

29/3/2015

(6)

INDEX SHEET ENQUIRY AGAINST INSPECTOR SABIR KHAN.

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4.	Recommendation letter No. 322/PA dated 27.01.2015	01		05
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(7)

DEPARTMENTAL ENQUIRY AGAINST INSPECTOR SABIR KHAN.

ORDER SHEET

DATE	PROCEEDINGS	
24-03-15	Charge Sheet and Summary of allegation recieved for further Proceedings from the office of DSP(IS) Cantt.	
	E.O DSP-Inv-city	E.O DSP-Inv-Rural
25-3-15	The defaulter was called for recording Statement through his cell phone.	
	E.O DSP-Inv-city	E.O DSP-Inv-Rural
30-3-15	The defaulter submit his written statement.	
	E.O DSP-Inv-city	E.O DSP-Inv-Rural
24-4-15	The defaulter was called and cross examined.	
	E.O DSP-Inv-city	E.O DSP-Inv-Rural

11-5-15. Finding submitted.

E.O
DSP-Inv-city

E.O
DSP-Inv-Rural

SUMMARY OF ALLEGATIONS

1. **I, Ijaz Ahmad, Capital City Police Officer,** Peshawar as Competent authority, am of the opinion that **Inspector Sabir Khan, Circle Officer (Inv:) Cantt-I, Division,** Peshawar has rendered himself liable to be proceeded against, as he committed the following acts/omission within the meaning of section 03 of the Police Rules 1975.

STATEMENT OF ALLEGATION

The Hon'able Peshawar High Court, Peshawar has issued a Judgment on 12.12.2014 on the bail application of accused Hameed Ullah@ Hamid in Case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34/7 ATA Police station Pishtakhara, Peshawar which revealed that he has conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables was martyred. He did not take pain to record the statements of those Police officials who were posted in the same area where the incident took place. He did not made any efforts to collect information about the Motorbikes used in the commission of offence or for the recovery of the official's weapon. He was so careless that you even did not bother to collect record of other cases of accused. Your conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which can not be countenanced in any manner. Resultantly Hon'able judge High Court released the accused on bail.

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an Enquiry Committee/ Enquiry Officer comprising of the following is/are hereby constituted/nominated:-

DSP/Inv. Imayat Ullah Shah

i) DSP Inv. Inayatullah Khan → Transferred to CPC.

ii) DSP Inv. Riaz Khan

3. The Enquiry Committee/Enquiry Officer shall in accordance with the provision of the Police Rules (1975) provide reasonable opportunity of hearing to the accused officer/officials and make recommendations as to punish or other appropriate action against the accused official.

CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 01 /E/PA, dated Peshawar the 30/1/2015.

Copy of the above is forwarded to the enquiry Committee/ Enquiry Officer for initiating proceeding against the accused under the Police Rules 1975.

(Encl: 11)

4

9

CHARGE SHEET

1. Whereas I am satisfied that a formal enquiry as contemplated by Police Rules 1975 is necessary & expedients.

2. And whereas, I am of the view the allegations if establishment would call for major/minor penalty, as defined in Rules 3 of the aforesaid Rules.

Now therefore, as required by Police Rules 6 (1) of the said Rules, I **Ijaz Ahmad,** Capital City Police Officer, Peshawar, hereby charge you **Inspector Sabir Khan, Circle Officer (Inv:) Cantt-I, Division** Peshawar under Rule 5 (4) of the Police Rules 1975 on the following allegations:-

Office of the DSP Rural Investigation No. 569/ST Dt. 24/3/15 Peshawar Police Line

The Hon'able Peshawar High Court, Peshawar has issued a Judgment on 12.12.2014 on the bail application of accused Hameed Ullah@ Hamid in Case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34/7 ATA Police station Pishtakhara, Peshawar which revealed that you have conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables were martyred. You did not take pain to record the statements of those Police officials who were posted in the same area where the incident took place. You did not made any efforts to collect information about the Motorbikes used in the commission of offence or for the recovery of the official's weapon. You were so careless that you even did not bother to collect record of other cases of accused. Your conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which can not be countenanced in any manner. Resultantly Hon'able judge of High Court released the accused on bail.

No. 210/ST Dt. 30/01/2015 Encls: (12)

3. And I hereby direct you further under Rules 6 (I) of the said Rules to put in a written defence within 7 days of the receipt of this Charge Sheet as to why the proposed action should not be taken against you and also stating at the same time whether you desire to be heard in person.

4. And in case your reply is not received within the specific period it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.

CAPITAL CITY POLICE OFFICER,
PESHAWAR

NO 292/PA
Dt: 29.1.2015

CAPITAL CITY POLICE PESHAWAR
SENIOR SUPERINTENDENT OF POLICE [INVESTIGATION]

To. **CAPITAL CITY POLICE OFFICER, PESHAWAR**

From **SSP INVESTIGATION PESHAWAR**

No. **322** /PA

Date. **27** January, 2015

582
27.1.15

Subject: **CASE FIR NO.563 DATED 01/07/2014 U/S 302/353/404/34PPC/7ATA POLICE STATION PISHTAKHARA, PESHAWAR**

MEMORANDUM

Kindly refer to your office Dy:No.1390 dated 26/01/2015.

It is submitted that the Honorable Peshawar High Court, Peshawar has issued a Judgment on 12/12/2014 on the bail application of accused Hameed Ullah @ Hamid in the subject case which revealed that Inspector Sabir Khan, Circle Officer (Inv:) Cantt:, Division, Peshawar was conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables were martyred. He was not taken pain to record the statements of those Police officials who were posted in the same area where the incident took place. He was not made any efforts to collect information about the Motor Bikes used in the commission of offence or for the recovery of the official's weapon. He was so careless that he even did not bother to collect record of other cases of accused. His conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which cannot be countenanced in any manner. Resultantly Honorable Judge High Court released the accused on bail (copy enclosed).

The Additional Inspector General of Police Investigation Khyber Pakhtunkhwa, Peshawar has issued direction vide his office Endst: No. 348-51/SP/Legal/Invest: dated 22/01/2015 that the IO should be dealt with departmental proceedings.

It is therefore, requested that departmental proceedings against the above named official may please be initiated please.

Sir. Submitted for Pro Departmental action

29/01

(S.S.P,INVESTIGATION PESHAWAR)
(signature)

No. /PA,

Copy of above is submitted to the Registrar Peshawar High Court, Peshawar for favour information please.

2. The Additional Inspector General of Police Investigation, Khyber Pakhtunkhwa Peshawar for information w/r to his office reference quoted above.

The Additional Inspector General of Police,
Investigation, Khyber Pakhtunkhwa,
Peshawar.

To: The Capital City Police Officer,
Peshawar.

No. 347 /SP/Legal/Invest, Dated Peshawar, the 22/01/2015.

Subject: **CASE FIR NO.563, DATED 01.07.2014 U/Ss 302, 353, 404, 34 PPC, 7ATA PS PISHTAKHARA, DISTRICT PESHAWAR.**

Memo:

Please refer to this office Memo: No.507/DSP-Legal/Inv dated 23.12.2014 on the subject noted above.

In this regard the undersigned has already been directed to initiate departmental proceeding against the I.O concerned but you did not do it and called only explanation from the Inspector/I.O Sabir Khan, it is not enough vide your office Memo; No.7620/PA/ dated 24.12.2014.

It is therefore, directed that the concerned I.O should be dealt with departmental proceedings and also copy to Peshawar High Court Peshawar and this office for onward submission to worthy Inspector General of Police, Khyber Pakhtunkhwa.

Office of the Capital City Police Peshawar
G.Dy. No. 1390
Date 26/1/15

(MOHAMMAD ALI BABAKHEL)
PSP
Additional Inspector General of Police,
Investigation, Khyber Pakhtunkhwa,
Peshawar.

No. 348-51 /SP/Legal/Invest:

Copy of above is forwarded to the: -

1. Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for kind information, please.
2. Additional Registrar (J) Peshawar High Court, Peshawar
3. Senior Superintendent of Police Investigation, Peshawar

C.C.P.O.
ESP/O
SSP/I
SP/Cantt
SP/City
SP/Rural
SP/Sec
SP/HQ
SP/T.O
SP/T.HQ
DSP/L/OS
PO/C.C.
PA/CCP
PA/AIG

(MOHAMMAD ALI BABAKHEL)
PSP
Additional Inspector General of Police,
Investigation, Khyber Pakhtunkhwa,
Peshawar.

7 (12) 12

BEFORE THE
PESHAWAR HIGH COURT PESHAWAR

Bail Application No. 1818-P of 2014

Hameed Ullah alias Hamid S/o Amirullah
Resident of Bazid Khel, Badhber, Tehsil & District Peshawar
_____ (Accused / Petitioner)

VERSUS

The State
_____ (Respondent)

Case FIR No. 563 | Dated: 01.07.2013
U/S 302/353/404/34 PPC, 7ATA | Police Station: Pishtakhara

APPLICATION FOR THE RELEASE OF ACCUSED / PETITIONER ON BAIL TILL THE FINAL DISPOSAL OF THE CASE.

ATTESTED
EXAMINER
Peshawar High Court
20 DEC 2014

Respectfully Sheweth,

A. That the accused / petitioner has been arrested in the above mentioned case and is behind the bars at Central Jail, Peshawar. (Copy of FIR is attached as Annexure A)

B. That the accused / petitioner moved bail application before the court of special Judge, Anti Terrorism Court-II, Peshawar but the bail application

FILED TODAY
Deputy Registrar
01 NOV 2014

of the accused / petitioner was declined vide order dated 31.10.2014. (Copy of bail application and order dated 31.10.2014 is attached as Annexure B)

GROUNDS

A. That the accused / petitioner is innocent and has falsely been implicated in the case.

B. That there is nothing on the record to connect the accused / petitioner with the commission of the offence.

C. That the case against the accused / petitioner is false, concocted and based on malafide.

D. That the accused / petitioner is not directly charged in the FIR.

E. That the accused / petitioner is complainant in case FIR No. 751 through which he received injuries and was admitted at LRH Peshawar, where he was charged in the instant FIR. (Copy of FIR No. 751 is attached as Annexure C)

F. That nothing incriminating has been recovered at the instance of the accused / petitioner.

G. That the case of the accused /petitioner false within the ambits of further inquiry.

H. That the accused / petitioner is no more required for the purpose of investigation.

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01 NOV 2014

ATTESTED

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I. That the accused / petitioner is ready to furnish bail bond with reliable sureties to entire satisfaction of the court.

It is therefore, most humbly prayed that on acceptance of this application the accused / petitioners may kindly be released on bail till the final disposal of the instant case.

Accused / Petitioner

Through

Muhammad Saleem Shakir
Advocate,
High Court Peshawar

Dated: 01.11.2014

NOTE

As per instruction of my client no such like bail petition has earlier been filed before this Honourable Court.

ADVOCATE

FILED TODAY
Deputy Registrar
01 NOV 2014

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR

(Judicial Department)

Cr.Misc.BA nO.1818-P/2014

Date of hearing: *12.12.2014*

Petitioners (s) : Hameedullah alias Hamid by Mr. Muhammad Salim Shakir, Advocate.

Respondent(s) : The State by Mr. Muhammad Sajid, Advocate, State counsel.

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- Petitioner Hameed Ullah alias Hamid, seeks bail in case FIR No.563 dated 01.07.2013, registered under sections 302/353/404/34 PPC read with Section 7 Anti Terrorism Act, at Police Station Pishtakhar.

2. Learned counsel for the petitioner and learned State counsel heard. Record perused.

3. It appears from record on 01.07.2013 at 1345 hours, three unknown culprits riding on motorbikes, in order to create terror in the society, opened fire at police officials who were on patrol duty near Abbas Terminal Ring Road, within the limits of Landi Akhun Abad, as a result, Constables

Subhan Ali and Usman Ali got hit and died on the spot; that after shooting the deceased, the culprits also took away along with them the officials rifles of the deceased Constables.

4. Petitioner is not named in the FIR. None has come forward to furnish the ocular account of the incident. The petitioner remained in police custody, but he has not confessed his guilt before any competent court of law nor anything incriminating such as the weapons of offence, motorbike or the rifles of the deceased Constables has been recovered either from his direct or indirect possession. The only piece of evidence which prevailed before the learned lower court for declining him bail was the confessional statement of co-accused Bilal recorded under section 164 Cr.P.C. on 20.09.2014. A look over the same would reveal that co-accused Bilal has not shown himself as an accused/participator of the present incident. According to him he was confined in judicial lockup in some narcotics case at the instance of his father where he met with present petitioner Hamidullah and co-accused Rizwan, who allegedly told him that they want to kill police officials and that later on, he came to know in village about the present incident. The I.O. has not brought anything in black & white to show association of the petitioner with co-accused Bilal in judicial lockup, as alleged by him. Except statement of co-accused Bilal, there is nothing on record, at this stage, to connect the petitioner with the

commission of offence. Rather, on tentative assessment of the record, reasonable grounds exist which requires further probe into the guilt of the petitioner. It is settled law that bail may not be refused merely on the ground that accused for a heinous offence, when otherwise, he is found entitled to the concession of bail because any mistaken relief of bail, can be repaired by convicting the accused, if proved guilty at the trial, but no proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run.

5. For the foregoing reasons, this petition is allowed and accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.3,00,000/- with two sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD, concerned.

6. Before parting with the judgment, this court has taken with great concern the conduct of learned State Counsel, who when confronted with the record of the instant and was asked to point out any evidence/material which could connect the petitioner with the commission of offence, he except reiterating the offence to be heinous in nature and against the society, could not urge more, rather pressed hard for provision of time to consult his seniors in the office. This conduct of the learned State counsel is highly deplorable which shall not be

allowed to prevail in the future. By nominating such like junior advocates with the task of cases high import like terrorisms, murders and attempt to murders etc, also speak volumes about consciousness of the responsible officials of Office of the Advocate-General about their official obligations. Learned Additional Registrar (Judicial) of this court is directed to send copy of this judgment to learned Advocate-General Khyber Pukhtunkhwa, Peshawar, for taking the matter into consideration and curtailing such practice in the future by distribution of cases to the law Officers keeping in view the nature and gravity of offences involved in the cases.

7. Moreso, I would not feel any hesitation to condemn the poor role of the Investigation Agency, particularly, the Investigation Officer of the instant case, keeping in view his poor investigation by roughly dealing with the case of terrorism where two innocent police Constables have been martyred. The I.O. even has not taken pain to record the statements of those police officials who were also posted in the same area of the deceased constables and were on their duty in the area where the incident took place nor have made them

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(19)

complainants of the case. He has not made any effort to collect information about the motorbikes used in the commission of offence or for the recovery of the officials weapons. He was so careless that he even did not bother to collect record of those cases of accused Bilal and the present petitioner in which they remained in judicial lock up with each other. If such is the conduct of the police in the cases of colleagues of their own Force, what the people of the society would expect from them and how they would consider themselves safe under the shelter of the police. The conduct of the Investigating Agency demonstrated in the instant case is highly dreadful, shocking and unacceptable, which cannot be countenanced in any manner. Copy of this order be placed before Additional Inspector General Police (Investigation) Khyber Pakhtunkhwa for taking the matter into consideration and doing the needful against the delinquent. Any step taken in this regard is expected to be intimated to this court, through the office of the Additional Registrar (Judicial), as early as possible.

Announced.
12.12.2014

JUDGE

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984
20 DEC 2014

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(20)

PECTOR SABIR KHAN
Circle Officer (Inv:) Cantt:-I, Division, Peshawar

EXPLANATION.

The Honorable Peshawar High Court, Peshawar has issued a Judgment on 12/12/2014 on the bail application of accused Hameed Ullah @ Hamid in case FIR No.563 dated 01/07/2013 u/s 302/353/404/34 PPC/7ATA Police Station Pishtakhara, Peshawar which revealed that you have conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables have been martyred. You were not taken pain to record the statements of those Police officials who were posted in the same area where the incident took place. You were not made any efforts to collect information about the Motorbikes used in the commission of offence or for the recovery of the official's weapon. You was so careless that you even did not bother to collect record of other cases of accused. Your conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which cannot be countenanced in any manner. Resultantly Honorable Judge High Court released the accused on bail.

You are hereby directed to explain your position within 03-days after the receipt of this explanation, otherwise it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.

No. 7589 /PA,

Dated 23 /12/2014

S.S.P. INVESTIGATION, PESHAWAR.
(signature)

Received
Qureshi
24/12/14

(21)

جناب عالی!

بحوالہ چارج شیٹ نمبری 01/E/PA dated 30/1/13 جو مرحوم میں

کہ بسلسلہ تفتیش بحوالہ مقدمہ نمبر 563 جرم 302/353/404/34 PPC 7 ATA 01/13 تھانہ لشکر میرے خلاف جو الزامات درج ہیں کہ:- دو کنسٹیبلان شہید ہو کر کسی پولیس آفیسر کا بیان تک قلمبند نہیں کیا گیا ہے

(2) موٹر سائیکل اور شہید کنسٹیبلان کے snatch شدہ رائفل کے لئے کوشش نہیں کی گئی ہے

(3) ملزمان کے نسبت کوئی اور ریکارڈ صفحہ مثل پر نہیں لائے گئے ہیں۔

جناب عالی! الزام نمبر 1 کے بارے خود بیان تحریر ہے کہ اگر صفحہ مثل پر دیکھا جائے تو کنسٹیبلان عباس ٹرینیل کے پاس نا کوئی بندوق برآمد ہوئی تھی جنکے قرب و جوار میں کوئی دیگر نفری پولیس تعینات نہ تھی۔ کیس کے بیانات قلمبند کروانے اطلاع جائے وقوعہ تھانہ لشکر سے 2، 2½ کلومیٹر کے فاصلے پر ہے پھر بھی صفحہ مثل پر موجود ہے کہ متعلقہ پولیس آفیسران کے بیانات موجود ہیں

(2) الزام نمبر 2 کے بارے میں تحریر کرتا ہوں کہ FIR میں محض موٹر سائیکل کا ذکر مراسلہ لگا کر افسر نے کیا ہے۔ معلوم نہیں کہ انہوں نے کیس موٹر سائیکل کا ذکر کیا ہے۔ نہ تو میک اینڈ ماڈل کا ذکر کیا ہے۔ اور نہ رنگ کا ذکر FIR میں موجود ہے۔ کنسٹیبلان شہید ہو کر وان کے رائفل لے جا کر صرف متن انسپکٹر نے نہیں آج اسوقت کے باقی افسران صاحبان ماتحت پولیس افسران نے۔ موٹر سائیکل تک اور ملزمان تک رسائی اور رائفل چھینے ہوئے کی برآمدگی کے لئے شب و روز کوشش کی ہے۔ مگر بلا کسی ٹھوس شہادت کے کسی کو نامزد کرنا مناسب نہیں سمجھا ہے R.O. کے وساطت سے گزٹ انکشاف جرائم میں مشتری کے بروقت تحریری درخواست ارسال کر کے صفحہ مثل پر موجود ہے

(3) مثل مقدمہ زیر تفتیش حالت میں A.T.C لیا اور فوری برائے سماعت طلب کر کے ملزمان کے ضمانت کے درخواست مسترد ہو کر A.T. سے عدالت عالیہ مثل مقدمہ لیکر تھا نہ واپس ہی نہیں ہوا۔ چونکہ ملزمان گرفتار شدہ سلال، رضوان اور حمد اللہ تھانہ لشکر کے دیگر ہم جرم قسم کے مقدمات میں گرفتار ہوئے تھے یقیناً ان کے FIR بدیں وصف لف مثل مقدمہ نہیں کیے گئے ہیں۔ کیونکہ تینوں اشخاص عدالت ہائے میں تھے۔ FIR میں ملزمان نامزد نہیں تھے۔ اور اب عدم سزایابی کی صورت میں کونسے FIR صفحہ مثل پر لائے جاتے ان مکمل مرتب کرتے وقت ملزم کی ملزمیت ثابت کرنے کے خاطر اسکے سابقہ سزایابی اور تعلقات FIR لف مثل مقدمہ بطور شہادت کیے جاتے ہیں ذکر شدہ مثل مقدمہ میں اب تو چارج مکمل مرتب نہیں کیا گیا ہے میرے خلاف جو الزام جو لگائے گئے ہیں گویا صاحبان موصوف نے یوں محسوس کی ہے کہ مقدمہ میں چارج مکمل مرتب کیا گیا ہے

جناب عالی! ملزمان بلال، رضوان کو گرفتار کرکے مقامی پولیس تھانہ لیشمہ کے حوالے کیے گئے تھے۔ بوقت گرفتاری بروقت اگر ملزمان کے گھروں پر چھاپہ زنی ہوتی۔ تو یقیناً برآمدگی یقینی ہوتی۔ جبکہ ملزم حمید اللہ کو بحالت فرو حبیث LRH میں گرفتار کیا گیا تھا۔

اس کے علاوہ دہشت گردی ازقسم کے مقدمات کی تفتیش فرد واحد نہیں کرتا ہے جو انٹ انوسٹی گیشن ٹیم ایک تحریری نوٹیفکیشن کے روشنی میں ہم جوں قسم کے مقدمات کی تفتیش کرتے ہیں۔ مگر متن انسپکٹر نے افسران بالا صاحبان سے خصوصی زبانی استدعا کرکے۔ کہ یہ مقدمہ سپرلیشن نیچر کا ہے تفتیش / انٹاروگیشن واسطے معاونین پولیس افسران صاحبان مقرر کیے جائیں لہذا جناب SSP صاحب نے میری استدعا کے پیش ایک ٹیم مقرر کرکے ملزمان کو انٹاروگیٹ کر گئے ہیں۔ اور جملہ تفتیش کی ہے نوٹیفکیشن نمبری 3802-12PA-15 9/14 (2) NO-3861-63PA 15-9-14 اور آرڈر نمبر 6045-48PA-20 10/14 جاری کردہ SSP صاحب انوسٹی گیشن قابل ملاحظہ ہیں

محض میں اکیلا تفتیش نہیں کیا ہے جو کیا ہے۔ درست کیا ہے حال ہی میں دہشت گردی ازقسم کی مقدمات مقدمہ نمبر 181/13 جرم 365A تھانہ حیات آباد میں گرفتار شدہ ملزمان چار نفر 25/25 سال رہن مقدمہ نمبر 568/13-14 جرم 365A-302/381PPC تھانہ نمبری میں گرفتار شدہ ملزمان 2 نفر سزائے موت اور ایک نفر عمر قید جبکہ تھانہ لیشمہ کے ایک مقدمہ میں جو سال 2016 میں برخلاف ملزم نجم الحق درج ہو کر 25 سال قید سزا یاب ہو چکے ہیں بعض اوقات بنیادی بے قاعدگیاں مقدمہ کی تباہی کا باعث بنتے ہیں۔ جو ملزمان گرفتاریاں بھی کبھی کبھار برآمدگی، بازیابی کا باعث بنتے ہیں۔

اللہ تعالیٰ میرے خلاف جاری کردہ چارج شیٹ کو داخل دفتر فرماویں

العارض

صابر خان انسپکٹر سابقہ ایس ایچ او تھانہ لیشمہ حال متعین P.T. لکھنگو

29/3/2015

سوال نمبر 1/13 ۔ سائل کورٹ نے تمہارے تفتیش مقدمہ نمبر 563 صفحہ
مجرم PP 134/406 TATA 302/353 تھانہ لشکر کے متعلق یہ احکامات
آرڈر شیٹ میں جاری کیے ہیں کہ:

(1) کہ تم تفتیشی آفیسر نے مقدمہ ارقم دہشت گردی میں کمزور تفتیش
کیا ہے جس میں دو مقصوم کنٹینڈن قتل ہوئے (1)

(2) تم تفتیشی آفیسر کوئی برآمدگی کے بغیر ان پولیس آفیسرز کے بیانات
قلمبند نہیں کیے جہاں پر کنٹینڈن تھیسنات تھے اور جہاں پر
یہ واقع رونما ہوا۔

(3) تم نے موٹر سائیکل کے متعلق کسی قسم کی انفارمیشن حاصل نہیں کی
جس کے ذریعے یہ واقع رونما ہوا ہے۔ اور اصلحہ برآمدگی کے لیے
کوئی کوشش نہیں کی ہے۔

(4) تم نے انتہائی لاپرواہی سے تفتیش کی۔ کہ مقدمات میں ملوث
ملزمان کے دیگر مقدمات میں ملوث ہونے کا کوئی ریکارڈ نظر عام
نہیں لایا۔

(5) تمہارا یہ رویہ بابت تفتیش بہت ناقابل برداشت اور باعث
صدمہ ہے۔ جو کسی بھی طریقے سے معافی کے قابل نہیں۔ اس
لئے عدالت عالیہ لشکر ہائی کورٹ نے برخاستگی مخلصی دی ہے

جناب عالی!

بحوالہ مقدمہ نمبر 563 جرم 7ATA-302-353 404-34 PPC تھانہ لشکر مورخہ 1.7.13

خدمت میں عرض کرنا ہے کہ میرے خلاف جو الزامات نوٹ کیے گئے ہیں اس بارے میں بالترتیب عرض رساں ہوں

(1) کہ تم تفتیشی آفیسر نے مقدمہ از قسم دہشت گردی میں کمزور تفتیش کی ہے جس میں دو کنسٹیبلز قتل ہوئے ہیں۔

جناب عالی! نوعیت جرم کے حوالے سے میں انفرادی طور پر تفتیش کا مجاز نہیں۔ بلکہ ایک نوٹیفکیشن کے روشنی میں یہ تفتیش عمل میں لایا گیا ہے۔ جس میں کسی قسم کی کمزوری نہیں کی ہے۔

(2) کہ تم تفتیشی آفیسر نے کوئی پیروی کیے بغیر ان پولیس آفیسرز کے بیانات قلمبند نہیں کیے ہیں جہاں پر کنسٹیبلز تعینات تھے اور جہاں پر یہ واقعہ رونما ہوا

جناب عالی! اگر مثل مقدمہ کا ملاحظہ کیا جائے تو یہ امر سمجھ میں آجائیگا کہ برلب رنگ نزد عباس ٹرمینل ناکہ بندی پر موجود کنسٹیبلز کو شہید کیے گئے ہیں ان کے اس پاس کوئی دوسرا پولیس جوان موجود نہ تھے جنکے بیانات قلمبند کر لیے جاتے۔ علاوہ ازیں تھانہ لشکر کے متعلقہ پولیس جوانوں کے بیانات قلمبند کیے گئے ہیں جو جرم عمل پر موجود تھے۔

(3) کہ تم نے موٹر سائیکل کے متعلق کسی قسم کی انفارمیشن حاصل نہیں کی جسکے ذریعے یہ واقعہ رونما ہوا ہے اور اسکی برآمدگی کے لیے کوشش نہیں کی ہے

اس ضمن میں عرض ہوں، کہ جیسا عدالت عالیہ پشاور ہائی کورٹ نے اس کیس کو ایک سنگین مقدمہ تحریر کیا ہے۔ یقیناً یہ ایک سنگین نوعیت جرم

قاصد تھا۔ وقوعہ کی اطلاع پا کر محکمہ پولیس پر ایک چھوٹا افسر
موقع پر آ پہنچا۔ اور اس سے قبل اور بعد وہ موٹر سائیکل تک اور ملزمان
تک رسائی کیلئے بار بار کوشش کی گئی۔ چنانچہ نتیجہ میں ملزمان بلال
اور رضوان اللہ گرفتار ہوئے جنہوں نے حمید اللہ ولد نامعلوم کا ذکر کیا
ملزمان کو جا کر عدالت کیے۔ ملزم بلال نے عدالت کے روبرو اقبال
جرم بھی ریکارڈ کروایا۔

جناب عالی! رپورٹ کنندہ/مراسلہ کنندہ پولیس افسر نے FIR میں محض
موٹر سائیکل کا ذکر کیا ہے۔ جبکہ اینڈ ٹائپ، رجسٹریشن نمبر کا
ذکر FIR میں موجود نہیں تھا۔ تاہم موٹر سائیکل کی برآمدگی
کیلئے بھی کوشش بے انتہا کی گئی ہے۔ بذریعہ وائرلس بھی اطلاع دی
گئی ہے۔ اس کے علاوہ مستعمل اکثر بلاں کے چھینے ہوئے دائنلز کیلئے
روز اول سے برآمدگی کوشش کی گئی جضمہ قتل برموجود ہے۔ حتیٰ کہ گرد
انکشاف جرائم میں مشہری کیلئے بھی تحریر کیا گیا ہے۔

(۲) مقدمہ صدر میں کسی ملزم کی نامزدگی نہیں تھی۔ روز وقوعہ کے بعد کئی
ماہ بعد ملزمان کو گرفتار کیے گئے ہیں جبکہ ملزم حمید اللہ کے
ولدیت کو بھی مقامی پولیس معلوم کر کے جبکی گرفتاری کی کوشش جاری
تھی۔ کہ وہ ایک مقامی لڑائی میں زخمی ہو کر حسن مخالف گروپ کے
خلاف تھانہ لشکرہ میں مقدمہ بجرم 324/34 PPC درج کر کے جیسے کہ حالت
مجروحیت عمام RH گرفتار کیا گیا ہے جو ریکارڈ پر موجود ہے۔

جناب عالی! میں نے جو تفتیش ہم دیگر ہمراہیان زیر نگرانی کی ہے درست طور پر کی ہے
اس بارے میں میرا مفصل تحریری بیان قابل ملاحظہ ہے گزارش ہے کہ مجھے معاف فرمایا جائے

24/9/2015 صابر خان ایس ایچ او

34
21

(4)

From : The Deputy Superintendent of Police,
Investigation Rural Division.

To : The Capital City Police Officer
Peshawar.

No. 569 /ST, dated Peshawar to the 11/05 /2015.

Subject: **DEPARTEMENTAL ENQUIRY AGAINST INSPECTOR SABIR KHAN.**
Memo:

Kindly refer to your office Endst: No. 01/E/PA, dated 30.01.2015.

ALLEGATIONS

The Hon'able Peshawar High Court, Peshawar has issued a judgment on 12.12.2014 on the bail application of accused Hameed Ullah @ Hamid in case FIR No. 563 dated 01.07.2013 u/s 302/353/404/34/7ATA Police Station Pishtakhara, Peshawar which revealed that he has conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables were martyred. He did not take pain to record the statements of those Police official who were posted in the same area where the incident took place. He did not made any efforts to collect information about the motorbikes used in the commission of offence or for the recovery of the officia''s weapon. He was so careless that you did not bother to collect record of other cases of accused. Your conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which cant not be countenanced in any manner. Resultantly Hon'able Judge High Court released the accused on bail.

PROCEEDINGS

For the purpose to scrutinize the conduct of Inspector Sabir Khan was called, heard in person and recorded his statement, also cross examined.

STATEMENT OF INSPECTOR SABIR KHAN.

He stated in his statement that:-

1. The Constables were on duty at Abbas Terminal, other Police officials were also posted in the nearest area. Statement of concerned officials is present on case file.
2. The reporting officer unable to mention make and type of motorcycle in his initial report. Drastic efforts has been made for the recovery of snatched rifles, it has been advertised accordingly.
3. The case file has been submitted to ATC court in connection of bail application of accused, which was rejected and sent to Hon,able High Court Peshawar, which is yet not returned. The accused Bilal, Rizwan and Hameed Ullah are involved/arrested in such like case, their copies of FIR were not annexed with the instant case file because these cases files are in the court and the above mentioned accused are not directly charged in the cases. After conclusion of cases their copies will annexed with case files. The instant case is still under investigation and complete challan yet not submitted the quarter concerned.

The accused Bilal and Rizwan were arrested and hand over to the local Police. If the accused were handed over to the local Police well in time, then the recovery would possible. The accused Hameed Ullah was arrested in injured condition at LRH.

Moreover, the investigation of such like cases are conducted through Joint Investigation team and a team has already constituted vide notification No. 3812-15/PA, dated 15.09.2014, No. 3861-63/PA, dated 15.09.2014 and order No. 6045-48/PA dated 20.10.2014 issue from the office of SSP Investigation, Peshawar. I has not investigated the case lonely.

He further stated that in case FIR No. 1061/2013 u/s 365-A Police Station Hayat Abad the arrested accused convicted for 25/25 years, in case FIR No. 568/13 u/s 365-A/302/381-A Police Station West Cantt convicted for life imprisonment. Some time initial irregularities destroy the case.

CONCLUSION.

After thoroughly examination of case file and circumstances, the inquiry team came to the conclusion that being an investigation officer of the instant case he committed the following blunders:-

1. He unable to record the statements of other staff deputed with the martyred Police officers namely Anwar Ali No. 490/SPO, Aftab Gul No. 1070/SPO and Zahoor Hussain no. 475/SPO because they were deputed for the said naka bandi with the martyred constables.
2. He unable to bother the record of cases FIR No. 563 dated 1.7.2013 u/s 302 PPC, FIR No. 162 dated 15.02.2013 u/s 302 PPC and FIR No. 471 dated 7.6.2011 u/s 302 PPC Police Station Pishtakhara, being the accused, confessed before the Police and court in case FIR No. 563 dated 01.07.2013 u/s 302/353/404/34 PPC 7ATA of Pishtakhara, as the Hon'able Justice of Peshawar High Court observed in his judgment.

RECOMMENDATIONS

Keeping in view the above circumstances and his negligence it is therefore recommended that he may be awarded minor punishment.

(Inayat Ullah Shah)
Deputy Superintendent of Police,
Investigation, Rural Division.

(Riaz Ahmad)
Deputy Superintendent of Police,
Investigation, City Division

ل پولیس صوبہ سرحد فارم نمبر ۲۳ — گزٹ پولیس پشاور جلد نمبر 2286/13 فارم سائز تعداد ایک ہزار ہفتہ مورخہ 20.06.2011 پی فور (فارم سائز جلد) ضمنی فارم (پولیس

رفائیل

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 Sp/Cant تھانہ در	نمبر حلقہ 8 سال 563
تاریخ 01/07/2013 وقت 6:15	
تاریخ و وقت رپورٹ	01/07/2013 وقت 6:45 بجے شام
نام و سکونت اطلاع دہندہ مستغیث	افتخار خان ASI تھانہ اللہ خیلہ
مختصر کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو۔	PPC 302-353-404-7ATA-34
جائے وقوعہ فاصلہ تھانہ سے اور سمت	رنگ روڈ عباس ٹریفک
نام و سکونت ملزم	
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	بروئے مراسلہ مقدمہ درج رجسٹر کیا گیا
تھانہ سے روانگی کی تاریخ و وقت	بطور سپیشل رپورٹ

ابتدائی اطلاع نیچے درج کرو۔

[illegible] تھانہ اللہ خیلہ سے بذریعہ ٹیلیفون ایک 5842 سپیشل موصول ہو کر درج ذیل ہے۔ بخدمت [illegible] 2 [illegible] 3236 [illegible] میں موجود تھا۔ اطلاع ملی کہ رنگ روڈ لنڈی اخون احمد میں [illegible] 5842 EXM اور [illegible] 835 SHO [illegible] کنسٹیبلان [illegible] کنسٹیبلان موقع پر گئے [illegible] 4628589 3*7511 [illegible] 30 [illegible] 30 [illegible] SHO صاحب [illegible] 5842 [illegible] ASI [illegible] ASI

Sikandar (Sold...

SIPS/PR

01-07-2015

دستخط _____

عہدہ _____

نیچے اطلاع دہندہ کا دستخط ہوگا یا اس کی مہر یا نشان لگایا جائے گا۔ اور افسر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الف یا ب سرخ روشنائی سے بالمقابل نام مشتبہ علی الترتیب واسطے باشندگان ملاقہ غیر یا وسط ایشیاء یا افغانستان جہاں موزوں ہوں، لکھنا چاہئے۔

ANNEX. "E"

(19)

From : The Deputy Superintendent of Police,
Investigation Rural Division.

To : The Capital City Police Officer
Peshawar.

No. 569 /ST, dated Peshawar to the 11/05 /2015.

Subject: **DEPARTEMENTAL ENQUIRY AGAINST INSPECTOR SABIR KHAN.**

Memo:

Kindly refer to your office Endst: No. 01/E/PA, dated 30.01.2015.

ALLEGATIONS

The Hon'able Peshawar High Court, Peshawar has issued a judgment on 12.12.2014 on the bail application of accused Hameed Ullah @ Hamid in case FIR No. 563 dated 01.07.2013 u/s 302/353/404/34/7ATA Police Station Pishtakhara, Peshawar which revealed that he has conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables were martyred. He did not take pain to record the statements of those Police official who were posted in the same area where the incident took place. He did not made any efforts to collect information about the motorbikes used in the commission of offence or for the recovery of the official's weapon. He was so careless that you did not bother to collect record of other cases of accused. Your conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which cant not be countenanced in any manner. Resultantly Hon'able Judge High Court released the accused on bail.

PROCEEDINGS

For the purpose to scrutinize the conduct of Inspector Sabir Khan was called, heard in person and recorded his statement, also cross examined.

STATEMENT OF INSPECTOR SABIR KHAN.

He stated in his statement that:-

1. The Constables were on duty at Abbas Terminal, other Police officials were also posted in the nearest area. Statement of concerned officials is present on case file.
2. The reporting officer unable to mention make and type of motorcycle in his initial report Drastic efforts has been made for the recovery of snatched rifles, it has been advertised accordingly.
3. The case file has been submitted to ATC court in connection of bail application of accused which was rejected and sent to Hon,able High Court Peshawar, which is yet not returned The accused Bilal, Rizwan and Hameed Ullah are involved/arrested in such like case, th copies of FIR were not annexed with the instant case file because these cases files are the court and the above mentioned accused are not directly charged in the cases. Af conclusion of cases their copies will annexed with case files. The instant case is still un investigation and complete challan yet not submitted the quarter concerned.

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Moreover, the investigation of such like cases are conducted through Joint Investigation team and a team has already constituted vide notification No. 3812-15/PA, dated 15.09.2014, No. 3861-63/PA, dated 15.09.2014 and order No. 6045-48/PA dated 20.10.2014 issue from the office of SSP Investigation, Peshawar. I has not investigated the case lonely.

He further stated that in case FIR No. 1061/2013 u/s 365-A Police Station Hayat Abad the arrested accused convicted for 25/25 years, in case FIR No. 568/13 u/s 365-A/302/381-A Police Station West Cantt convicted for life imprisonment. Some time initial irregularities destroy the case.

CONCLUSION.

After thoroughly examination of case file and circumstances, the inquiry team came to the conclusion that being an investigation officer of the instant case he committed the following blunders:-

1. He unable to record the statements of other staff deputed with the martyred Police officers namely Anwar Ali No. 490/SPO, Aftab Gul No. 1070/SPO and Zahoor Hussain no. 475/SPO because they were deputed for the said naka bandi with the martyred constables.
2. He unable to bother the record of cases FIR No. 563 dated 1.7.2013 u/s 302 PPC, FIR No. 162 dated 15.02.2013 u/s 302 PPC and FIR No. 471 dated 7.6.2011 u/s 302 PPC Police Station Pishtakhara, being the accused, confessed before the Police and court in case FIR No. 563 dated 01.07.2013 u/s 302/353/404/34 PPC 7ATA of Pishtakhara, as the Hon'able Justice of Peshawar High Court observed in his judgment.

RECOMMENDATIONS

Keeping in view the above circumstances and his negligence it is therefore recommended that he may be awarded minor punishment.

(Inayat Ullah Shah)
Deputy Superintendent of Police,
Investigation, Rural Division.

(Riaz Ahmad)
Deputy Superintendent of Police,
Investigation, City Division

ANNEX-"F"

(21)

FINAL SHOW CAUSE NOTICE

I **Ijaz Ahmad, Capital City Police Officer, Peshawar** as Competent Authority under P.R 1975, do hereby serve you **Inspector Sabir Khan**, Circle Officer (Inv) Cantt-I Division as follow:-

2. (i) The Consequent upon the completion of inquiry conducted against you by **Mr. Riaz Ahmad, DSP-inv: City Division & Mr. Inayat Ullah Shah, DSP-Inv: Rural Division** for which you were given opportunity of hearing.
(ii) On going through the findings and recommendation of the inquiry officers, the material on record and other connected papers including your defense before the said officers.

I am satisfied that you have committed the following acts/omission:-

i) He did not record the statements of other staff in case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34/7 ATA Police station Pishtakhara deputed with the martyred Police officers namely Anwar Ali No. 490/SPO, Aftab Gul No. 1070/SPO and Zahoor Hussain No. 475/SPO of PS Pishtakhara because they were deputed for the Abbas Terminal Naka Bandi PS Pishtakhara with the martyred constables.

ii) He did not bother the record of cases FIR No. 563 dated 1.7.2013 u/s 302 PPC, FIR No. 162 dated 15.2.2013 u/s 302 PPC and FIR No. 471 dated 7.6.2011 u/s 302 PPC Police Station Pishtakhara, being the accused, confessed before the Police and court in case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34 PPC 7 ATA of Pishtakhara, as the Hon'able justice of Peshawar High Court observed in his judgment.

iii) You were held responsible for poor investigation in the above FIR.

3. As a result there of I, as Competent Authority decided to impose upon you major/minor penalty including dismissal from service under the said Rules.

4. You are, therefore, require to Show Cause as to why the aforesaid penalty should not be imposed upon you.

5. If no reply to this notice received within 7-days of its delivery, it shall be resumed that you have no defense to put in and in that case an ex-part action shall be taken against you.

6. You are at liberty to be heard in person, if so wished.

7. Copy of the findings of the inquiry officers is enclosed.

CAPITAL CITY POLICE OFFICER,
PESHAWAR.

No. 2737 /PA dated 21.5. /15

ANNEX "G"

(29)

جناب عالی!

بحوالہ جناب کمپلیٹ فائل شوکاز نوٹس نمبری 2737/PA dated 21/5/15

مندرجہ ذیل خدمت میں۔

سائل ہائے اور تحریری طور پر بار بار عرض کر چکا ہوں کہ مقدمہ علت 563 مورخہ 13/7 جرم 302/353/404 PPC/7ATA/34 تھانہ لشکر کی تفتیش قانونی طور پر میں نے اکیلا نہیں کی ہے۔ جبکہ سزا مجھے مل رہا ہے۔ انکوائری آفیسر صاحبان کے علاوہ اس وقت کے دیگر بالا افسران صاحبان نے بار بار مثل مقدمہ کا بغور مطالعہ کر کے ہدایات جاری کیے جنکی روشنی میں ایک JIT نے تفتیش کی ہے۔

جناب عالی! یہ کہنا میرا مقصود ہے کہ کنٹینڈرز جو شہید ہوئے ہیں ان کے علاوہ ہاکر فندی لوائنٹ پر کوئی پولیس اہلکار ان موجود ہی نہ تھے تو کیس کے بیانات قلمبند کر لیے جاتے۔ البتہ تھانہ لشکر کے متعلقہ سٹاف کے بیانات ضرور قلمبند کیے ہیں

اسی عدم تبادل سوال 2 امر یہ ہے کہ کسی شخص کی ملزمیت ثابت کرنے کے طور طریقے سائنسی سزا یابیوں کو بطور وجہ ثبوت شامل مثل مقدمہ اس وقت کیے جاتے ہیں جب مقدمہ میں جان مکمل مرتب کیا جاتا ہے اس سلسلہ میں بار بار رو رہا ہوں کہ زیر تفتیش مثل جو عدالت ATC پشاور کو بھیجی گئی میں موجود تھا۔ اور اسی عدالت سے عدالت عالیہ پشاور

23

تھانہ بیجھوا دیا گیا ہے ریکارڈ پر موجود ہے۔ ملزم حمید اللہ
دعویٰ مقدمہ ہونے کے حیثیت سے مجالت مجرو صیتا گرفتار کیا
گیا تھا۔ دیگر ملزمان نے اسکا نام بیان کیا تھا۔ ولدیت
تھانہ پولیس سے معلوم کرکے ملزم حمید اللہ کے گرفتاری کے لئے
ان کے خلاف دعویداری کی گئی تھی۔

مقدمہ نمبر 563 مورخہ 7/13 جرم 7ATA تھانہ لیتمرہ
302/353/404/34
میں گرفتار شدہ ملزمان کے گرفتاری متعلق افسران بالا حضرات
کو مطلع کیا ہے اور ہر ایک ملزم کی انکوائری کیشن کے لئے J.I.T.
کے اندر سپیشل انوسٹی گیشن ٹیم تحریری طور پر ترتیب دیا گیا ہے
محض تن از کرکے خلاف ایک بے بنیاد الزامات لگا کر جا
[illegible] ٹھہرایا جاتا ہے۔ بالکل بے گناہ ہوں اللہ سے کرتا
[illegible] کر مجھے دعا کی جائے

العارض
صابر خان انسپکٹر انوسٹی گیشن ونگلئی

28/5/14

ANNEX "H"

(24)

ORDER.

Inspector Sabir Khan, Circle Officer (Inv) Cantt-I Division, was issued Charge Sheet and summary of allegations containing the following allegations:-

The Hon'able Peshawar High Court, Peshawar has issued a Judgment on 12.12.2014 on the bail application of accused Hameed Ullah@ Hamid in Case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34/7 ATA Police station Pishtakhara, Peshawar which revealed that he has conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables were martyred. He did not take pain to record the statements of those Police officials who were posted in the same area where the incident took place. He did not made any efforts to collect information about the Motorbikes used in the commission of offence or for the recovery of the official's weapon. He was so careless that even did not bother to collect record of other cases of accused. His conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which can not be countenanced in any manner. Resultantly Hon'able judge High Court released the accused on bail.

Mr. Riaz Ahmad, DSP-inv: City Division & Mr. Inayat Ullah Shah, DSP-Inv: Rural Division now SP/PBI-HQ: was constituted for proper departmental enquiry into allegations. They in their finding recommended that:-

i) He was unable to record the statements of other staff deputed with the martyred Police officials namely Anwar Ali No. 490/SPO, Aftab Gul No. 1070/SPO and Zahoor Hussain No. 475/SPO, because they were deputed for the Abbas Terminal Naka Bandi PS Pishtakhara with the martyred constables.

ii) He did not bother to collect record of cases FIR No. 563 dated 1.7.2013, u/s 302 PPC, FIR No. 162 dated 15.2.2013 u/s 302 PPC and FIR No. 471 dated 7.6.2011 u/s 302 PPC Police Station Pishtakhara, being the accused, confessed before the Police and court in case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34 PPC 7 ATA of Pishtakhara, as the Hon'able justice of Peshawar High Court observed in his judgment. They in their findings found him guilty. On receipt of the

findings of the enquiry committee he was issued Final Show Cause Notice to which he replied. His reply was thoroughly examined. Besides, he was also heard in person on 5.6.2015, but failed to advance any primafacie reason in his support. Moreover, the accused officer has ill reputation, he is corrupt, known to be corrupt, he has intentionally carried out defective/faulty investigation and spoiled a genuine case in which the actual/real killers of Police constables were given relief and helped them who were bailed out by the Hon'ble court. The charge has been established, therefore, the undersigned does not agree with the recommendations of Enquiry Committee regarding award of minor punishment. He is awarded major punishment of **dismissal** from service.

CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 2896-2906/PA dated Peshawar the 8/6/2015.

Copies to the:-

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar w/r to Addl: IGP-Inv: Endst: No. No. 348-51/SP-Legal/ Invest:, dated 22.1.2015.
2. Addl: Inspector General of Police, Investigation, Khyber Pakhtunkhwa, Peshawar w/r his office letter No. 347/SP-Legal/ Invest:, dated 22.1.2015.
3. SSP-Ops: Peshawar.
4. SSP-Inv: Peshawar.
5. DSP-Legal, CCP, Peshawar.
6. AS/PO/EC-I-II/I-C Computer Cell
7. FMC encl: (25)

ANNEXL "I"

25

Before the Hon'ble Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar

Subject: Departmental Appeal u/r 11 of Police (E&D) rule 1975, against the impugned order, Passed by W/CCPO vide Endost No. 2896-2906/PA dated 08.06.2015

Sir,

The appellant respectfully prefers this appeal against the impugned order of w/ CCPO, inter-alia on the following grounds, amongst others.

PRELIMINARIES:

1. The inquiry proceedings have not been conducted in accordance with the prevailed rules, contained **u/r 6 of E& D rules 1975**, as I have not been associated with the inquiry proceedings for clarification of the observations, passed by the Hon'able Peshawar High Court. The inquiry committee except Court observations, did not examine or consult any other oral or other documentary evidence, on record of criminal case.
2. As per provision **u/r 16.25 police rules 1934**, a Police Officer called upon to answer a charge of misconduct must be given [illegible] reasonable opportunity of proving his innocence. It was a blind case and the appellant minutely investigating it and traced out not only the culprits but arrested them.
3. The investigation of the criminal case bearing FIR No. 563 dated 01.07.2013 u/s 302 / 353/404 PPC and 7 ATA PS Pishtakhara has not been completed and in such situation if any lacuna or deficiencies are left, the same can be cured at this stage, legally no hindrance/ obstruction exists.
4. It is worth mentioning that there is no bar or end under the law for investigation and can continue even after execution of sentence. (2007 PCrLJ P-139 and PLD 2009 Lah P 585), therefore further investigation can be conducted in the aforestated case.
5. Even for the sake of arguments, if the findings of the inquiry committee are admitted for a while (Which are strongly denied), the punishment awarded to appellant is very harsh, arbitrary and contrary to the settled

principle and law on the subject. Provision of rule 16.2 PR 1934 are referred wherein dismissal shall be awarded only for the gravest acts of misconduct or continued misconduct proving incorrigibility and complete unfitness for police service however regard shall be had to the length of service, the appellant is having 19/20 years of longstanding service on his strength.

6. The aforestated case was a blind one, charged or identified no one but the appellant very tactfully traced out the culprits and brought material evidence on the file which is not possible in such like cases. Through honest and integrated investigation, the appellant interrogated accused Bilal who made confession before court of competent jurisdiction whereas accused Riswan also confessed his guilt before the appellant / IO but when produced to Court of competent Jurisdiction, he declined. However, both the accused made pointation of the alleged fateful occurrence and as such their places were cited in the cite plan.

7. So far the observation of information regarding motorcycle, used by the culprits, allegedly used by them, it is regretted with apology that in the murassila, sent by ASI Iftikhar did not contain make, colour or other particulars therefore, it was not possible to proceed in the alleged matter. Moreover, accused namely Bilal and Rizwan were granted less custody of 02 days, in which they were thoroughly interrogated but except confession and pointation of the place of occurrence no other revelation could be brought / made available. Accused Hamid in serious injured condition, was arrested but he due to fire shot injuries in abdomen, could not be properly interrogated. In this regard; health condition and custody request is fully and well indicated from Zamima B (Jail authority report), injury sheet and request of the appellant as I.O which justifies the investigation, conducted by appellant (relevant documents enclosed).

8. The Court observation for non-recording statements of constables, on duty which Shaheed constables, at the time of occurrence were not present on duty point, therefore did not witness the occurrence and in such circumstance, their statements cannot stand helpful to the prosecution case and as per law it does not matter. Moreover, those

witnesses not present on spot, are not required to be examined, they being not eye witnesses

9. The veracity of the so called disciplinary proceedings/ impugned order can be judged from the fact that the contents of charge sheet and those of final show cause notice are different to the extent on one count, there are no where mention bad reputation or corruption of the appellant even in the final show cause notice but the impugned order carries the corruption charge, these versions strongly contradict the status/ integrity of the impugned order.

ON FACTS:

1. The Hon'able Peshawar High Court during arguments on bail application of accused Hameed Ullah in case FIR No. 563 dated 01.07.2013 u/s 302,353 404PPC/7 ATA observed the investigation of the case as substandard and without efforts of the appellant, therefore on these observation vide order dated 30th Feb 2015 the appellant was proceeded with departmentally under the Police (E& D) Rules 1975.
2. The inquiry committee recommended appellant for negligent investigation, to be awarded minor punishment but the competent authority over looked the recommendation and awarded major punishment of dismissal vide order dated 08.06.2015. the authority without giving heed to the findings, replies to charge sheet and show cause notice, issued the impugned order to the utter shock and dismay of appellant, major penalty was awarded.
3. Worth mentioning that the charge sheet and summary of allegation issued by competent authority do not include the act of corruption, neither in the final show cause notice but in the impugned order dated 08 06 2015, ill reputation corruption / known to be corrupt has been incorporated which is quite against norms law & Justice as well the inquiry proceedings, therefore, worth of consideration.
4. The inquiry committee did not follow the procedure, laid down u/s 6 of the act 1975 and the committee submitted finding, did not base on any cogent reason, without consulting the investigation record of the case but simply referring court observation and recommended minor penalty.

GROUNDS OF APPEAL:

The impugned order of W/ Capital Police Officer KPK, is assailable on the following grounds.

1. The inquiry proceedings have not been conducted as per provision, contained in Police Rule 1975.
2. The Hon'able Court as per observation, reflecting in the bail order of accused Hameed Ullah that statements of police constables on duty with Shaheed constables have not been recorded by the appellant as investigating officer which is explained to the effect that the said police constables were not present on the fateful time of occurrence, therefore, their statements could not bring any development or benefit to the prosecution case if their statement are / were recorded. They have not witnessed the occurrence, therefore, as per law, their statements were not required to be recorded. It is worth mentioning that accused Hameed Ullah was arrested from hospital in serious condition who was also declared as unfit by medical authorities, therefore he could not be properly interrogated in the case to bring and collect incriminating materials from him. This agony was natural and cannot be attracted rather placed on the appellant's part.
3. There is no strong iota of evidence that the investigation record is faulty but in fact it was a blind/ untraced case and the appellant made honest efforts, unearthed the culprits and upto great extent, the case was made successful One of the accused has made judicial confession while pointation was also brought from 02 accused in the place of occurrence.
4. The Learned Peshawar High Court while disposing bail application, allowed accused Rizwan Ullah to bail on 12th Dec 2014 whereas the learned Special Anti-Terrorism Court Peshawar did not extend bail concession to the remaining 02 accused, observing the case as prima-facie against them (copy attached).
5. It is worth mentioning that as per provincial notification No.SO.Pros/HD/8-2/2012 dated 20th Feb 2012 r/w section 19 of ATA 1997, JIT was constituted, comprising the appellant, Inspector Kamal Khan, DCP and SI Hameed Ullah while another special investigation team, comprising 05 officers including the appellant was constituted to investigate the case but for alleged faulty investigation, the appellant was only made accountable which is against the norms of law and justice hence, the impugned order is unwarranted rather unjustified, therefore the impugned order is worth of consideration.

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6. The appellant has spotless service record of the 19 years and throughout his carrier he has been awarded, commended and given best postings / blessings. Even the recent past PER 2014, the reporting officer has valued the appellant as knowing his job well and performed honestly (copy attached).
7. The impugned order has caused disparity, mental agony and irreparable loss not only to the appellant but also to the entire family.
8. The appellant, since joined this august force, has performed honestly, integratedly and to the entire satisfaction of superiors; It is worth mentioning that KP Anit Corruption Authorities, in view of honest performance, had requisitioned the appellant services and on their request, he was transferred vide notification No. 1154-59-E/II dated 28.05.2015 but he was not relieved by Police Authorities (copy enclosed). Moreover, no departmental inquiry was reported, as reflected in letter No. 0797-98/EC-1 dated 26.09.2014, inferring clean service of appellant (Copy enclosed).

PRAYER

In light of above, it is humbly prayed that by accepting this appeal, the impugned order dated 08.06.2015 may very kindly be set aside and orders to reinstate the appellant may kindly be passed. **It is further requested that the undersigned be personally heard to explain the circumstances / clarification of the case / Court observations.**

Sincerely yours
Inspect Sabir Khan (Appellant)
Ex Circle Officer (Inv) Cant 1 Division)
23/6/15.

 (30) Annex J

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No._____/2015

Sabir Khan Ex Inspector Circle Office (Inv) Cantt-I Division Peshawar.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Secretary to Govt Home and Tribal Affairs Department, Civil Secretariat Peshawar.
2. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Additional Inspector General of Police (Investigations) Khyber Pakhtunkhwa, Peshawar.
4. Capital City Police Officer, Peshawar.
5. Senior Superintendent of Police Investigation, Peshawar.

(Respondents)

Appeal under section 4 of the Khyber Pakhunkhwa Service Tribunal Act, 1974 against the order Endorsement No. 2896-2906/ PA dated 8.06.2015 whereby the appellant is awarded major penalty of Dismissal from Service the departmental appeal dated 23.06.2015 filed there against has not been replied.

Prayer in Appeal: -

On acceptance of this appeal the impugned order dated 8.6.2015 may please be set-aside and the appellant may be re-instated in service *with all back benefits of service*.

Respectfully Submitted:

1. That the appellant was appointed /enlisted as Police Constable in police, during the course of his service he got promotion from time to time and raise to the status of Inspector with his hard work and dedication to his duties. That the appellant has at his credit all the major Police courses.

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2. That while serving in the capacity Circle Officer (Investigation) Cantt : I Division Peshawar, he was served with an explanation letter dated 23.12.2014 calling upon him to reply regarding remarks of the Honourable High Court in showing slackness in investigation. He replied the same and explained his position. (Copies of the judgment of the High Court & explanation letter is attached as Annexure A & B)

3. That the appellant was served with charge sheet and statement of allegation dated 30.1.2015 containing the following false and baseless allegations:-

   "The honorable Peshawar high Court Peshawar has issued a judgment on 12.12.2014 on the bail application of accused Hameed Ullah and Hamid in case Fir No. 563 dated 1.7.2013 u/s 302/353/404/34/7 ATA Police Station Pishtakhara, Peshawar which revealed that he has conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables was martyred. He did not take pain to record the statements of those police officials who were posted in the same area where the incident took place. He did not made any efforts to collect information about the motorbikes used in the commission of offence or for the recovery of the officials weapon. He was so careless that you even did not bother to collect record of other cases of accused. Your conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which cannot be countenanced in any manner. Resultantly Honorable Judge released the accused on bail."

   The appellant submitted his reply and refuted the allegations. (Copies of the charge sheet and reply are attached as annexure C & D).

4. That a partial inquiry was conducted and the inquiry committee without properly associating the appellant with the inquiry proceedings conducted inquiry and submitted their findings wherein the committee recommended the appellant for minor punishment vide the inquiry report dated 11.5.2015. (Copies of the inquiry report is attached as annexure E).

5. That a final show cause notice was issued to the appellant dated 21.5.2015, wherein quite illegally minor/ major penalty including that of dismissal from service was proposed to be imposed, the appellant duly replied the show cause notice. (Copies of the Final Show cause notice and reply are attached as Annexure F & G)

Attested

(32)

6. That without adhering to the defence reply of the appellant or even to the report/ recommendations of the enquiry committee the appellant was awarded from major punishment of dismissal from service vide order dated 8.6.2015. (Copy of the dismissal order dated 8.6.2015 is attached as annexure H)

7. That appellant submitted his departmental appeal dated 23.6.2015 however it not responded despite the lapse of statutory period hence this appeal. (Copy of the departmental appeal is attached as Annexure I)

8. That the appellant prays for the acceptance of the instance appeal inter alia on the following grounds:-

Grounds of Appeal

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

B. That the departmental proceedings were partial mainly influenced by the observation of the Honourable High court, the enquiry committee did not taken pain to enquire the matter in its true perspective, simply referred to the observation of the High Court and allegedly prove the allegations, the appellant has thus not been provided proper opportunity to vindicate himself.

C. That the authority or the enquiry committee did not considered that being a terror case, it is required to be investigated by the Joint Investigation Team, the appellant alone cannot be made liable in for alleged faulty investigation.

D. That the Charge sheet & Final Show cause notice & the order of dismissal from service witnessed improvement in the allegations, thus the departmental proceedings are faulty and greatly prejudiced the case of the appellant.

E. That no proper procedure has been followed before awarding the penalty to the appellant, the inquiry officer recommended only imposition of minor penalty, however the competent authority have never issued any order nor have stated any reason for disagreeing with the recommendations of the inquiry

officer, thus the penalty imposed is illegal and not tenable under the law.

F. That the appellant has fully explained his position in the departmental proceedings, the nature of the case/ his investigation, however it was never considered by the respondents, thus the appellant was awarded a penalty too harsh, never commensurate with the allegations leveled.

G. That the appellant has not been allowed the opportunity of personal hearing. Thus he has been condemned unheard.

H. That the reason of disagreement with the enquiry committee given in the dismissal order is not the requirement of law, the proceedings are thus defective and the order of dismissal is not sustainable.

I. That the recommendation of the enquiry officer were not adhered to and thus the order of dismissal is violative of law and thus is against the rules, law, arbitrary and is whimsical, similarly the appellant was never given opportunity of hearing as alleged, thus I have been condemned unheard.

J. That ever since his appointment, the appellant had performed his duties with zeal and devotion and there was no complaint whatsoever regarding his performance.

K. That the charges leveled against the appellant has never been proved during the inquiry albeit he has been dismissed form service on the bases of unproven charges.

L. That the appellant has at his credit a long and spotless service career the penalty imposed is too harsh and liable to be set aside.

M. That the facts and grounds mentioned in the departmental appeal, replies to the charge sheet and show cause notice may also be read as integral part of the instant appeal.

(34)

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

O. That the appellant seeks the permission of this Honorable Tribunal to rely on additional grounds at the hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the dismissal from service order dated 8.6.2015 may please be set-aside and the appellant be **re-instated in service *with all back benefits of service*.**

Appellant

Through

IJAZ ANWAR
Advocate Peshawar
&
SAJID AMIN
Advocate Peshawar

AFFIDAVIT

I, Sabir Khan Ex Inspector Circle Office (Inv) Cantt-I Division Peshawar, do hereby solemnly affirm and declare that the contents of the above appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent

(35) ANNEX. IC

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. S/ 780 /16, Dated Peshawar the 29/01/2016.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-a of Khyber Pakhtunkhwa Police Rule-1975 submitted by **Ex- Inspector Sabir Khan**. The appellant was awarded punishment of Dismissal from service on the charges of poor investigation pointed out by the Honourable Peshawar High Court on the bail application of accused Hameedullah in FIR No. 563/2013 of PS Pishtakhara by the CCPO, Peshawar vide order endst: No. 2896-2906/PA, dated 08.06.2015.

The Appeal Board meeting was held on 28.10.2015 and 13.01.2016, wherein the appellant appeared and heard in person twicely on above mentioned dates. The appellant has not come with clean hands. In the light of findings of the enquiry officer and observations of Honourable Judge of High Court his punishment of dismissal from service is recommended to be converted into reduction in rank.

Keeping in view the above the board decided that Ex-Inspector Sabir Khan is hereby re-instated into service from the date of dismissal from service and the punishment of dismissal from service converted into redcuction in rank of Sub-Inspector.

Sd/-
NASIR KHAN DURRANI
Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

No S/781-89/16,

Copy of the above is forwarded to the:

1. Capital City Police Officer, Peshawar.
2. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
3. PRO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Establishment CPO.
7. Office Supdt: E-II & SE-III, CPO, Peshawar.
8. Central Registry Cell (CRC) CPO.

EC-I
For further n/action

(MASOOD SALEEM)
DIG/Trg:
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

29/1

OFFICE OF THE CAPITAL CITY POLICE OFFICER, PESHAWAR.

No. 1564-69/EC-I, dated Peshawar the 10 / 2 /2016.

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

1. SSP/Operations & Investigation, Peshawar.
2. Pay Officer, EC-II, AS & Computer Cell.

FOR CAPITAL CITY POLICE OFFICER,
PESHAWAR.

9/2

P-16

POWER OF ATTORNEY

In the Court of KPK Service Tribunal Peshawar

Sabir Khan } For Plaintiff / Appellant / Petitioner / Complainant

VERSUS

Govt of KPK and others } Defendant / Respondent / Accused

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

Fixed for_____

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

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

Sajid Amin Adeel my true and lawful attorney, for me in my same and on my behalf to appear at _____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, Compromises 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_____

SAJID AMIN Adeel

Ijaz Anwar

Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3 &4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0333-9107225

IMMEDIATE

GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION DEPARTMENT
(Regulation Wing)

No. SOR-VI/E&AD/1-4/ 2008/Vol-VII
Dated Peshawar, the, 11th September, 2009

To

1. The Additional Chief Secretary, Govt of NWFP P&D Department.
2. The Additional Chief Secretary (FATA), Peshawar.
3. The Additional Chief Secretary Home Department.
4. The Senior Member, Board of Revenue, NWFP.
5. All Administrative Secretaries to Government of NWFP.
6. The Secretary to Governor, NWFP.
7. The Principal Secretary to Chief Minister, NWFP.
8. All Divisional Commissioners in NWFP.
9. All DCOs in NWFP/Political Agent in FATA.

Subject: POSTING/TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

Dear Sir,

I am directed to refer to the subject and to convey that the competent authority has been pleased to amend Para-IV of the existing, posting/ transfer policy of the Provincial Government circulated vide letter No.SOR-VI(E&AD)/Misc/Updation/09 dated 13 January, 2009 as under.

Para IV: **Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive /hard areas shall be reduced to two (02) years for settled areas, 01 ½ years for unattractive areas and one year for hard areas.**

AE
Pl circulate

Office of ... Peshawar
No. 11137
Dt. 18-09-09

2. The above amendment is hereby circulated for information/compliance.

3. Nonetheless the status quo of posting/transfer in FATA will be maintained.

Yours faithfully,

(KALEEM ULLAH)
Section Officer (Reg-VI)

Copy forwarded to:-

1. All Additional Secretaries/Deputy Secretaries in Establishment & Administration Department.
2. Director Secretariat Staff Training Institute Peshawar.
3. All Section Officers/Estate Officer, Resource Officer/Librarian in Establishment Department.
4. Private Secretary to Chief Secretary NWFP, Peshawar.
5. Private Secretary to Secretary Establishment Department.
6. Assistant Secretary, Benevolent Fund Cell/ACSO, Establishment.

SECTION OFFICER (REG-VI)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.217/2016.

Sabir Khan Ex- Inspector Investigation Cantt-I Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police Investigation, Peshawar.
3. Capital City Police Officer, Peshawar
4. Senior Superintendent of Police, Investigation, Peshawar.....Respondents.

Reply on behalf of Respondents No. 1, 2, 3 &4.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
3. That the appellant has not come to this Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That this Hon'ble Tribunal has no jurisdiction to entertain the appeal.

FACTS:-

1) Para No.1 pertains to record hence needs no comments.
2) Para No. 2 is correct to the extent that the Peshawar High Court Peshawar issued a judgment on 12.12.2014 on bail application of accused Hamid Ullah and Hamid in case FIR No.563 dated 01.07.2013 u/s 302/353/404/34/7ATA PS Pishtakhara Peshawar which revealed that the appellant had conducted poor investigation. In this regard he was served with an explanation.
3) Para No.3 is correct to the extent that the appellant was issued charge sheet and summary of allegations containing allegations regarding the judgment of Peshawar High Court, wherein he conducted poor investigation incase FIR No563 dated 01.07.2013 u/s 302/353/404/34/7ATA PS Pishtakhara Peshawar. The appellant conducted poor investigation in the case of terrorism where two police constables were martyred. He did not take pain to record the statements of those police officials who were posted in the same area where the incident took place. In this regard he was proceeded departmentally. The appellant also submitted his reply but his reply was found unsatisfactory.
4) Para No.4 is incorrect. In fact proper departmental enquiry was conducted against him. The allegations leveled against him were stand proved.

5) Para No.5 is correct to the extent that the charges leveled against him were stand proved, hence he was issued FSCN which he received and also replied but his reply was found unsatisfactory and he was awarded major punishment of dismissal from service vide office order No. 2896-2906/PA dated 08.06.2015. However later on he was re-instated into service and his major punishment of dismissal was converted into reduction in rank of Sub-inspector.
6) Para No.6 is already explained above in detail.
7) Para No.7 is correct to the extent that the appellant filed a departmental appeal which after thorough probe was partially accepted and the appellant was re-instated into service; however his major punishment of dismissal was converted into reduction to rank of Sub-inspector and was properly communicated to him in time.
8) As above.
9) Para pertains to court. Hence needs no comments.
10) That appeal of appellant being devoid of merits may kindly be dismissed.

GROUNDS:.

A) Incorrect. The appellant was treated as per law and rules. No right of appellant has been infringed.
B) Incorrect. In fact proper departmental enquiry was conducted against him wherein the allegations leveled against him were stand proved. He was given full opportunity to defend himself.
C) Incorrect. The appellant conducted poor investigation and showed slackness.
D) Incorrect. All the allegations leveled in charge sheet, FSCN, and dismissal order are true and were stand proved.
E) Incorrect. The appellant was recommended for minor punishment but the competent authority is not bound to the recommendations of E.O. as the charges leveled against him were stand proved hence he was rightly awarded major punishment of dismissal from service.
F) Incorrect. In fact the appellant failed to satisfy the E.O regarding the charges leveled against him.
G) Incorrect. The appellant was given full opportunity to defend himself.
H) Incorrect. The punishment order is in accordance with law/rules.
I) Incorrect. The punishment awarded is lawful and in accordance with law/rules.
J) Incorrect. The appellant was found negligent in conducting investigation.
K) Incorrect. The charges leveled against him were stand proved.
L) Incorrect. The punishment order is lawful. The appellant does not deserve any leniency.
M) That appeal of appellant being devoid of merits may kindly be dismissed.

N) That respondents also seek permission of this Honorable Service Tribunal to raise additional grounds at the time of arguments.

PRAYERS:-

It is therefore most humbly prayed that in light of above facts, submissions the appeal of the appellant being devoid of merits, legal footing may be dismissed.

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Addl: Inspector General of
Police, Investigation,
Peshawar.

Capital City Police Officer,
Peshawar.

Senior Superintendent of Police,
Investigation, Peshawar.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.217/2016.

Sabir Khan Ex- Inspector Investigation Cantt-I Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police Investigation, Peshawar.
3. Capital City Police Officer, Peshawar
4. Senior Superintendent of Police, Investigation, Peshawar.....Respondents.

AFFIDAVIT

We respondents No. 1 ,2 ,3 & 4 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Addl: Inspector General of
Police, Investigation,
Peshawar.

Capital City Police Officer,
Peshawar.

Senior Superintendent of Police,
Investigation, Peshawar.

ANNEX-"F"

(27)

FINAL SHOW CAUSE NOTICE

I Ijaz Ahmad, Capital City Police Officer, Peshawar as Competent Authority under P.R 1975, do hereby serve you Inspector Sabir Khan, Circle Officer (Inv) Cantt-I Division as follow:-

2. (i) The Consequent upon the completion of inquiry conducted against you by **Mr. Riaz Ahmad, DSP-inv: City Division & Mr. Inayat Ullah Shah, DSP-Inv: Rural Division** for which you were given opportunity of hearing.
(ii) On going through the findings and recommendation of the inquiry officers, the material on record and other connected papers including your defense before the said officers.

I am satisfied that you have committed the following acts/omission:-

i) He did not record the statements of other staff in case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34/7 ATA Police station Pishtakhara deputed with the martyred Police officers namely Anwar Ali No. 490/SPO, Aftab Gul No. 1070/SPO and Zahoor Hussain No. 475/SPO of PS Pishtakhara because they were deputed for the Abbas Terminal Naka Bandi PS Pishtakhara with the martyred constables.

ii) He did not bother the record of cases FIR No. 563 dated 1.7.2013 u/s 302 PPC, FIR No. 162 dated 15.2.2013 u/s 302 PPC and FIR No. 471 dated 7.6.2011 u/s 302 PPC Police Station Pishtakhara, being the accused, confessed before the Police and court in case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34 PPC 7 ATA of Pishtakhara, as the Hon'able justice of Peshawar High Court observed in his judgment.

iii) You were held responsible for poor investigation in the above FIR.

3. As a result there of I, as Competent Authority decided to impose upon you major/minor penalty including dismissal from service under the said Rules.

4. You are, therefore, require to Show Cause as to why the aforesaid penalty should not be imposed upon you.

5. If no reply to this notice received within 7-days of its delivery, it shall be resumed that you have no defense to put in and in that case an ex-part action shall be taken against you.

6. You are at liberty to be heard in person, if so wished.

7. Copy of the findings of the inquiry officers is enclosed.

CAPITAL CITY POLICE OFFICER,
PESHAWAR.

No. 2737 /PA dated 21.5. /15

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The Deputy Superintendent of Police,
Investigation Rural Division.

The Capital City Police Officer
Peshawar.

No. 569 /ST, dated Peshawar to the 11/05/2015.

Subject: **DEPARTEMENTAL ENQUIRY AGAINST INSPECTOR SABIR KHAN.**

Memo:

Kindly refer to your office Endst: No. 01/E/PA, dated 30.01.2015.

ALLEGATIONS

The Hon'able Peshawar High Court, Peshawar has issued a judgment on 12.12.2014 on the bail application of accused Hameed Ullah @ Hamid in case FIR No. 563 dated 01.07.2013 u/s 302/353/404/34/7ATA Police Station Pishtakhara, Peshawar which revealed that he has conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables were martyred. He did not take pain to record the statements of those Police official who were posted in the same area where the incident took place. He did not made any efforts to collect information about the motorbikes used in the commission of offence or for the recovery of the official's weapon. He was so careless that you did not bother to collect record of other cases of accused. Your conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which cant not be countenanced in any manner. Resultantly Hon'able Judge High Court released the accused on bail.

PROCEEDINGS

For the purpose to scrutinize the conduct of Inspector Sabir Khan was called, heard in person and recorded his statement, also cross examined.

STATEMENT OF INSPECTOR SABIR KHAN.

He stated in his statement that:-

1. The Constables were on duty at Abbas Terminal, other Police officials were also posted in the nearest area. Statement of concerned officials is present on case file.
2. The reporting officer unable to mention make and type of motorcycle in his initial report. Drastic efforts has been made for the recovery of snatched rifles, it has been advertised accordingly.
3. The case file has been submitted to ATC court in connection of bail application of accused which was rejected and sent to Hon,able High Court Peshawar, which is yet not returned. The accused Bilal, Rizwan and Hameed Ullah are involved/arrested in such like case, the copies of FIR were not annexed with the instant case file because these cases files are the court and the above mentioned accused are not directly charged in the cases. At conclusion of cases their copies will annexed with case files. The instant case is still under investigation and complete challan yet not submitted the quarter concerned.

The accused Bilal and Rizwan were arrested and hand over to the local Police. If the accused were handed over to the local Police well in time, then the recovery would possible. The accused Hameed Ullah was arrested in injured condition at LRH.

Moreover, the investigation of such like cases are conducted through Joint Investigation team and a team has already constituted vide notification No. 3812-15/PA, dated 15.09.2014, No. 3861-63/PA, dated 15.09.2014 and order No. 6045-48/PA dated 20.10.2014 issue from the office of SSP Investigation, Peshawar. I has not investigated the case lonely.

He further stated that in case FIR No. 1061/2013 u/s 365-A Police Station Hayat Abad the arrested accused convicted for 25/25 years, in case FIR No. 568/13 u/s 365-A/302/381-A Police Station West Cantt convicted for life imprisonment. Some time initial irregularities destroy the case.

CONCLUSION.

After thoroughly examination of case file and circumstances, the inquiry team came to the conclusion that being an investigation officer of the instant case he committed the following blunders:-

1. He unable to record the statements of other staff deputed with the martyred Police officers namely Anwar Ali No. 490/SPO, Aftab Gul No. 1070/SPO and Zahoor Hussain no. 475/SPO because they were deputed for the said naka bandi with the martyred constables.
2. He unable to bother the record of cases FIR No. 563 dated 1.7.2013 u/s 302 PPC, FIR No. 162 dated 15.02.2013 u/s 302 PPC and FIR No. 471 dated 7.6.2011 u/s 302 PPC Police Station Pishtakhara, being the accused, confessed before the Police and court in case FIR No. 563 dated 01.07.2013 u/s 302/353/404/34 PPC 7ATA of Pishtakhara, as the Hon'able Justice of Peshawar High Court observed in his judgment.

RECOMMENDATIONS

Keeping in view the above circumstances and his negligence it is therefore recommended that he may be awarded minor punishment.

(Inayat Ullah Shah)
Deputy Superintendent of Police,
Investigation, Rural Division.

(Riaz Ahmad)
Deputy Superintendent of Police,
Investigation, City Division

ANNEXV. "H"

(24)

ORDER.

Inspector Sabir Khan, Circle Officer (Inv) Cantt-I Division, was issued Charge Sheet and summary of allegations containing the following allegations:-

The Hon'able Peshawar High Court, Peshawar has issued a Judgment on 12.12.2014 on the bail application of accused Hameed Ullah@ Hamid in Case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34/7 ATA Police station Pishtakhara, Peshawar which revealed that he has conducted poor investigation by roughly with the case of terrorism where two innocent Police Constables were martyred. He did not take pain to record the statements of those Police officials who were posted in the same area where the incident took place. He did not made any efforts to collect information about the Motorbikes used in the commission of offence or for the recovery of the official's weapon. He was so careless that even did not bother to collect record of other cases of accused. His conduct demonstrated in the instant case is highly dreadful, shocking and unacceptable which can not be countenanced in any manner. Resultantly Hon'able judge High Court released the accused on bail.

Mr. Riaz Ahmad, DSP-inv: City Division & Mr. Inayat Ullah Shah, DSP-Inv: Rural Division now SP/PBI-HQ: was constituted for proper departmental enquiry into allegations. They in their finding recommended that:-

i) He was unable to record the statements of other staff deputed with the martyred Police officials namely Anwar Ali No. 490/SPO, Aftab Gul No. 1070/SPO and Zahoor Hussain No. 475/SPO, because they were deputed for the Abbas Terminal Naka Bandi PS Pishtakhara with the martyred constables.

ii) He did not bother to collect record of cases FIR No. 563 dated 1.7.2013, u/s 302 PPC, FIR No. 162 dated 15.2.2013 u/s 302 PPC and FIR No. 471 dated 7.6.2011 u/s 302 PPC Police Station Pishtakhara, being the accused, confessed before the Police and court in case FIR No. 563 dated 1.7.2013 u/s 302/353/404/34 PPC 7 ATA of Pishtakhara, as the Hon'able justice of Peshawar High Court observed in his judgment. They in their findings found him guilty. On receipt of the

findings of the enquiry committee he was issued Final Show Cause Notice to which he replied. His reply was thoroughly examined. Besides, he was also heard in person on 5.6.2015, but failed to advance any primafacie reason in his support. Moreover, the accused officer has ill reputation, he is corrupt, known to be corrupt, he has intentionally carried out defective/faulty investigation and spoiled a genuine case in which the actual/real killers of Police constables were given relief and helped them who were bailed out by the Hon'ble court. The charge has been established, therefore, the undersigned does not agree with the recommendations of Enquiry Committee regarding award of minor punishment. He is awarded major punishment of **dismissal** from service.

CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 2896-2906/PA dated Peshawar the 8/6/2015.

Copies to the:-

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar w/r to Addl: IGP-Inv: Endst: No. No. 348-51/SP-Legal/ Invest:, dated 22.1.2015.
2. Addl: Inspector General of Police, Investigation, Khyber Pakhtunkhwa, Peshawar w/r his office letter No. 347/SP-Legal/ Invest:, dated 22.1.2015.
3. SSP-Ops: Peshawar.
4. SSP-Inv: Peshawar.
5. DSP-Legal, CCP, Peshawar.
6. AS/PO/EC-I-II/I-C Computer Cell
7. FMC encl: (25)

(35) ANNEX. I

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. S/ 780 /16, Dated Peshawar the 29/01/2016.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-a of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex- Inspector Sabir Khan. The appellant was awarded punishment of Dismissal from service on the charges of poor investigation pointed out by the Honourable Peshawar High Court on the bail application of accused Hameedullah in FIR No. 563/2013 of PS Pishtakhara by the CCPO, Peshawar vide order endst: No. 2896-2906/PA. dated 08.06.2015.

The Appeal Board meeting was held on 28.10.2015 and 13.01.2016. wherein the appellant appeared and heard in person twicely on above mentioned dates. The appellant has not come with clean hands. In the light of findings of the enquiry officer and observations of Honourable Judge of High Court his punishment of dismissal from service is recommended to be converted into reduction in rank.

Keeping in view the above the board decided that Ex-Inspector Sabir Khan is hereby re-instated into service from the date of dismissal from service and the punishment of dismissal from service converted into reduction in rank of Sub-Inspector.

Sd/-
NASIR KHAN DURRANI
Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

No. S/ 781-89/16.

Copy of the above is forwarded to the:

1. Capital City Police Officer, Peshawar.
2. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
3. PRO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Establishment CPO.
7. Office Supdt: E-II & SE-III, CPO, Peshawar.
8. Central Registry Cell (CRC) CPO.

EC-I
For Pthus n/action

29/1

(MASOOD SALEEM)
DIG/Trg:
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

c.c/o

OFFICE OF THE CAPITAL CITY POLICE OFFICER, PESHAWAR.

No. 1564-69/EC-I, dated Peshawar the 0 / 2 /2016.

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

1. SSP/Operations & Investigation, Peshawar.
2. Pay Officer, EC-II, AS & Computer Cell.

FOR CAPITAL CITY POLICE OFFICER,
PESHAWAR.

9/2

P-16

dated 09-02-2016 EC-I

Before the Honorable chairman KPK Service Tribunal Peshawar.

Sabir Khan VS Police

03.11.17.

Application for the Collection of cost

Respectfully Sheweth

1) That the above titled case is fixed for today 3-11-16

2) That this Honorable Court fined the opposite party and a cost of 500/- was imposed on them.

3) That the cost should be collected on behalf of the appellant.

It is therefore prayed that on acceptance of this application Order for the collection of cost.

Appellant
Through Saleem Khan advocate

3-11-16

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No.2017/2016

Sabir Khan Ex-inspector Investigation Cantt Peshawar.
(Appellant)

VERSUS

Provincial police officer Khyber Pakhtunkhwa Peshawar and others.
(Respondents)

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully submitted:

The appellant submit his rejoinder as under:

Preliminary Objections:

1. Contents incorrect. The appeal is filed well in accordance in the prescribed rule and procedure, hence maintainable in his present form, within time.

2. Contents incorrect and misleading. All necessary parties are included in the instant appeal..

3. Content incorrect and misleading. The appellant came to this honorable tribunal with clean hands.

4. Contract misconceived and incorrect. That no rule of estoppel applies to the present appeal .

5. Contents incorrect and misleading. The appellant has at its disposal all the facts which are relevant and true before this honorable court.

6. Contents incorrect. This honorable tribunal has exclusive jurisdiction to entertain this appeal.

Facts of the Case:

1. Hence no comments by the respondents, however para 1 of the appeal is correct. .

2. Part of the para 2 of the appeal is admitted to the some extent which pertains to record hence the remaining para 2 of the appeal is correct.

3. Hence para 3 is admitted to some extent therefore no need to reply while the rest of the para 3 of the appeal is correct.

4. Contents incorrect and misleading. para 4 of the appeal is correct.

5. Hence contents of the para 5 of the appeal is admitted as correct regarding issuing final show cause notice needs no reply and the other part is incorrect, misleading therefore the remaining para of the appeal is correct .

6. Para 6 of the appeal is correct.

7. The para which is admitted by the respondent needs no reply however in the remaining para relied upon the para 7 of the appeal.

8. Para 8 of the appeal is correct.

9. Para 9 of the appeal is correct.

Grounds of Appeal:

The Grounds of appeal taken in the memo of appeal are legal will be substantiated at the hearing of this appeal. Besides the appellant has not been treated in accordance with law.

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

Appellant

Through

IJAZ ANWAR
Advocate Peshawar

And

SALEEM ABDULLAH
Advocates Peshawar

AFFIDAVIT

I do hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent

KHALID MAHMOOD ADVOCATE PESHAWAR HIGH COURT PUBLIC NOTARY

2-1-17