

# INDEX

## KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION NO

APPEAL NO	INSTITUTION	ORIGINAL INSTITUTION	DECISION	PAGES
1810/2022		15.12.2022	23.04.2024	68

### PIR MUHAMMAD VS POLICE DEPARTMENT

Sr.No.	No of Pages	Documents	Page No
<b>Part-A</b>			
1	1 - 7	Judgment	7
2	8 - 12	Order Sheets	5
3	13 - 50	Check list & Memo and ground of appeal	38
4	51 - 51	Wakalatnama	1
5	52 - 54	Notices	3
6	55 - 68	Reply	14
7	-		
8	-		
9	-		
10	-		
11	-		
12	-		
<b>Part-B</b>			
1	-		
2	-		
3	-		
<b>Total Pages in Part-A</b>		<b>68</b>	
<b>Total Pages in Part-B</b>			

Muharrir Compilation

Incharge Judicial Branch

25/6/24

(2)

(R3) (6)

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR, CAMP COURT DERA ISMAIL KHAN.**

Service Appeal No. 1403 /2022

**Noreen Saba** daughter of Abdul Sattar Resident of Tank, Presently working as Sub Divisional Education Officer (Female) in Education Department.

.....Appellant

Khyber Pakhtunkhwa  
Service Tribunal

**VERSUS**

Diary No. 1449

Dated 27-9-2022

1. Government of Khyber Pakhtunkhwa, through Chief Minister, Khyber Pakhtunkhwa, Peshawar.
2. Chief Secretary Khyber Pakhtunkhwa, Peshawar.
3. Secretary Elementary & Secondary Education, KP, Peshawar.
4. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
5. Director EMIS, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
6. Section Officer (Management Cadre) E&SE Department, Khyber Pakhtunkhwa, Peshawar.
7. District Account Officer, Tank.
8. District Account Officer, Hangu.
9. District Education Officer (Female) District Tank.
10. Sonia Nawaz, S.D.E.O (Female) District Tank.

.....Respondents

**SERVICE APPEAL UNDER SECTION 4 OF KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974.**

**PRAYER:-**

ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE OFFICIAL RESPONDENTS MAY KINDLY BE DIRECTED TO CANCEL THE IMPUGNED TRANSFER ORDER BEARING ENDST; NO. SO(MC)E&SED/4-16/POSTING/TRANSFER/MC DATED 27/06/2022 BE DECLARED AS VOID AB-INITIO, WITHOUT LAWFUL AUTHORITY, AGAINST THE NORMS OF NATURAL JUSTICE AND INEFFECTIVE UPON THE RIGHTS OF APPELLANT AND THE TRANSFER OF RESPONDENT NO. 10 TO THE DIRECTOR OF ELEMENTARY EDUCATION KHYBER PAKHTUNKHWA BEARING ENDST; NO. SO(MC)E&SED/4-16/POSTING/TRANSFER/MC DATED 09/06/2022 MAY KINDLY BE UPHOLD AND ORDER BEARING NO. SO(MC)E&SED/4-16/2022/PT/POSTING/

Filed to-day

Registrar

27/9/2022



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

**Service Appeal No. 1810/2022**

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER(E)

Pir Muhammad, Ex-Technical Head Constable No. 744-SB, S/O Noor Muhammad Khan, R/O village Umar Abad, Post Office Kaka Abad, Jangi Tehsil Katlang, District Mardan. ....(Appellant)

Versus

1. Inspector General of Police/Provincial Police Chief, Central Police Office(CPO), Peshawar.
2. Deputy Inspector General of Police, Special Branch Headquarter, Peshawar.
3. Senior Superintendant of Police (Admn) Headquarter Special Branch, Khyber Pakhtunkhwa, Peshawar. ....(Respondents)

Mr. Khiyal Muhammad Mohmand,  
Advocate ... For appellant

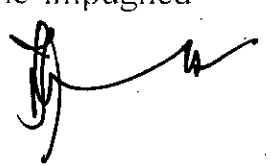
Mr. Asif Masood Ali Shah,  
Deputy District Attorney ... For respondents

Date of Institution.....	15.12.2022
Date of Hearing.....	23.04.2024
Date of Decision.....	23.04.2024

**SCANNED**  
**KPST**  
**Peshawar**

**JUDGEMENT**


**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 28.11.2022, whereby appeal of the appellant was dismissed by respondent No. 2, which was filed by the appellant against the order dated 21.09.2020 of respondent No. 3 by virtue of which major punishment of dismissal from service was imposed upon the appellant and on appeal, the same order was maintained by respondent No. 2 for the appellant. It has been prayed that on acceptance of the appeal, the impugned



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order dated 28.11.2022 and order of dismissal from service dated 21.09.2020 might be set aside and the appellant be reinstated in service with all back benefits/consequential relief.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed in the police service Special Branch as a Technical Constable on 04.02.2008. The appellant was charged in a criminal case vide FIR No. 427 dated 30.06.2020 under section 302/324/34-PPC of Police Station Katlang, Mardan and on dismissal of BBA, was sent to jail. He was named and implicated in the FIR on mere suspicion and on the strength of being relative of the accused party. After conclusion of trial, he was acquitted from all the charges by the learned Additional Sessions Judge Mardan vide order dated 07.07.2022. Departmental authorities decided to proceed against the appellant under Police Rules, 1975/amended, 2014. After placing him under suspension, the charge sheet and statement of allegations were issued to the appellant by respondent No. 3. A regular inquiry was ordered and conducted, wherein the inquiry officer recommended that the inquiry be kept pending till the decision of the learned trial court. A denovo inquiry was conducted by the respondents wherein the inquiry officer recommended the appellant for imposition of major penalty. Final show cause notice was also issued by respondent No. 3 which was properly replied by the appellant. Respondent No. 3, on the strength of denovo inquiry report, passed order dated 21.09.2020, whereby major penalty of dismissal from service was awarded to the appellant. Feeling aggrieved, he filed departmental appeal on 10.08.2022 which was



rejected by respondent No. 2 vide order dated 28.11.2022; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders dated 28.11.2022 and 21.09.2020 were coram non judice, illegal, without jurisdiction and lawful authority and against the principles of natural justice, hence liable to be set aside. He further argued that the appellant was implicated in the criminal case on mere suspicion and nothing was proved against him and hence, the learned trial court acquitted him from the charges. He argued that in the first inquiry report, it was recommended that the matter/inquiry should be kept pending till the conclusion of trial but a denovo inquiry was conducted, which was based on malafide intention and without waiting for the result of trial, the respondents dismissed the appellant from service. He further argued that no proper procedure was adopted and the appellant was neither given any opportunity of defence or cross-examination which was in violation of principles enshrined in law that no one should be condemned unheard. He requested that the appeal might be dismissed.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant, while posted in Special Branch Headquarters Peshawar, got involved in a criminal case vide



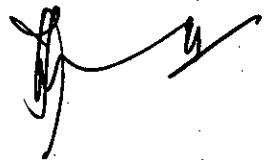
FIR No. 427 dated 30.06.2020 u/s 302/324/34/PPC, Police Station Katlang District Mardan, therefore, he was placed under suspension on 30.06.2020. According to him, although he was later on acquitted by the court of law, however, the criminal proceedings and departmental proceedings were two different entities and the fate of one did not affect the other. Furthermore, he was charged in a heinous criminal case which was a gross misconduct for someone in the disciplined force. He further argued that the appellant absented from his lawful duty on 26.06.2020, the day when the incident took place, without informing his high-ups and the Investigation Officer of the criminal case stated in his statement that the appellant, alongwith other three accused, was present on the spot. Final show cause notice was issued to him and opportunity of personal hearing was also afforded to him but he failed to advance any cogent reason regarding the allegations leveled against him and after fulfillment of all codal formalities major punishment was awarded to him. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was involved in FIR No. 472 dated 30.06.2020 u/s 302/324/34 PPC P.S Katlang, Mardan. After dismissal of his bail before arrest, he was sent behind the bar. His departmental authorities placed him under suspension from the date of registration of FIR i.e 30.06.2020 and initiated departmental proceedings against him by issuing charge sheet and statement of allegations. There was only one allegation against him that he, while posted at SB/HQrs Peshawar got involved in criminal case bearing FIR no. 427 dated 30.6.2020 u/s 302/34-PPC, P.S Katlang, District Mardan. The inquiry officer submitted



his report on 27.07.2020 with his recommendations that as the appellant had applied for BBA and the case was fixed for hearing on 25.07.2020 and investigation was also in progress, therefore the inquiry be kept pending till the decision of the learned court. The competent authority, instead of waiting for the outcome of case before the court of Additional Sessions Judge Mardan at Katlang, issued order for denovo inquiry which was accordingly conducted, as a result of which major punishment of dismissal from service was awarded.

7. There is no doubt that the appellant was involved in the inquiry proceedings. He was given an opportunity to present his case before the Inquiry Officer. It was found that the Inquiry Officer recorded the statement of Investigation Officer P.S Katlang District Mardan and it was the same as produced before the learned Additional and Sessions Judge Mardan at Katlang and based on the same evidence, the appellant had been acquitted of all the charges leveled against him vide judgment dated 07.07.2022. How could the Inquiry Officer in the denovo inquiry depend on the report/statement of the Investigation Officer P.S Katlang when the same was rejected by the learned Additional and Sessions Judge Mardan in case of the appellant? There is no second opinion that court proceedings and departmental proceedings can go parallel to each other, but in case of departmental proceedings, the Inquiry Officer based his inquiry report on the report of Investigation Officer, P.S Katlang, which was not accepted by the learned DSJ Mardan. It would have been a prudent approach for the department to wait for the outcome of court case, but it was noted that they acted in a hasty manner and passed the



impugned order on 21.09.2020, much before the court case was decided on 7.7.2022.

8. It has been held by the superior courts that all acquittals are considered honourable and that there can be no acquittals which may be said to be dishonourable. Nomination and involvement of the appellant in the criminal case was the sole ground on which he was dismissed from service. That ground subsequently disappeared when he was acquitted, making him re-emerge as a fit and proper person to continue his service. Reliance is placed on 1998 PLC(CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

9. In view of the above discussion, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 23<sup>th</sup> day of April, 2024.*

  
(FARIEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

\*FazleSubhan P.S\*




SA 1810/2022

23<sup>rd</sup> Apr. 2024 01. Mr. Khiyal Muhammad Mohmand, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

SCANNED  
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Peshawar

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23<sup>rd</sup> day of April, 2024.*

  
(FAREEHA PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*

27.11.2023 1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Learned counsel for the appellant requested for adjournment on the ground that he has not prepared the brief. To come up for arguments on 24.01.2024 before D.B. P.P given to the parties.

SCANNED  
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Peshawar

(Muhammad Akbar Khan)  
Member (E)

(Rashida Bano)  
Member (J)

\*KaleemUllah\*

24.01.2024 Learned counsel for the appellant present. Mr. Muhammad Ayaz, S.I alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Learned counsel for the appellant sought further time for preparation of brief. Adjourned. To come up for arguments on 23.04.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KPST  
Peshawar

(Fareeha Paul)  
Member (E)

(Safah-ud-Din)  
Member (J)

\*Naeem Amin\*

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14.06.2023

Junior to counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Muhammad Ayaz, S.I (Legal) for the respondents present and submitted reply/comments which are placed on file. Copy of the same handed over to junior of learned counsel for the appellant. To come up for rejoinder, if any, and arguments on 06.09.2023 before D.B. Parcha Peshi given to the parties.



(Muhammad Akbar Khan)  
Member (E)

\*Kamranullah\*

06.09.2023

Appellant in person present. Mr. Muhammad Ayaz, S.I (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

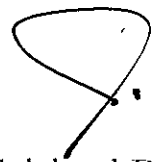
Appellant requested for adjournment on the ground that his counsel is indisposed today. Adjourned. To come up for arguments on 27.11.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KEEST  
Peshawari



(Fareeha Paul)  
Member (E)

\*Naeem Amin\*



(Salah-ud-Din)  
Member (J)

SA 1810/22

04<sup>th</sup> April, 2023

Counsel for the appellant present and requested for time to deposit security. Appellant is allowed to deposit security within 10 days. Thereafter, respondents be served through ordinary mode for submission of reply/comments 23.05.2023 before the S.B. Parcha Peshi given to learned counsel for the appellant.

SCANNED  
FBI ST  
Peshawar

  
(Fareeha Paul)  
Member(E)

Rs-100/-  
Appellant Deposited  
Security & Process Fee  
23<sup>rd</sup> May 2023  
H. 13/4/23

01. Clerk of counsel for the appellant present. Mr. Fazal Shah Mohmand, Addl. A.G alongwith Suleman, H.C for the respondents present.

02. Representative of the respondents has not submitted reply/comments and requested for further time. Granted. To come up for written reply/comments on 14.06.2023 before the S.B. Parcha Peshi given to the parties.

SCANNED  
FBI ST  
Peshawar

  
(FAREEHA PAUL)  
Member (E)

\*Fazle Subhan, P.S\*

13.01.2023

Lawyers are on strike.

The Case is adjourned. To come up for preliminary hearing on 14.02.2023 before S.B.

SCANNED  
KPST  
Peshawar



(Kalim Arshad Khan)  
Chairman

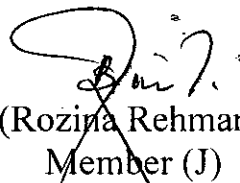
14.02.2023

Counsel for the appellant present.

Preliminary arguments heard. Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments. To come up for written reply/comments on 04.04.2023 before S.B.

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Peshawar



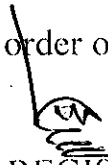

(Rozina Rehman)  
Member (J)

(12)

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 1810/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/12/2022	<p>The appeal of Mr. Pir Muhammad presented today by Mr. Khiyal Muhammad Mohmand Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>19-12-22</u> notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p>  REGISTRAR <i>CB</i>
	19 <sup>th</sup> Dec. 2022	<p>Nemo for the appellant.</p> <p>Notice be issued to the appellant and his counsel for the next date. To come up for preliminary hearing on 13.01.2023 before the S.B.</p> <p style="text-align: right;"> (Fareeha Paut) Member(E)</p>

SCANNED  
KPST  
Peshawar

Counsel for the appellant was informed telephonically on 09/01/2023  
SCANNED  
KPST  
Peshawar

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR  
CHECKLIST

Case Title: D. Y. Muhammad vs I. G. Police & others

S.#	Contents	Yes	No
1.	This appeal has been presented by:	✓	
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?	✓	
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? on		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		
26.	Whether copies of comments/reply/rejoinder submitted? on	✗	✗
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Zaashan Gul Abo

Signature: [Handwritten Signature]

Dated: 15/12/2022

14

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

SCANNED  
KPL  
Peshawar

Service Appeal No. 1810 /2020

Pir Muhammad, Ex. Technical Head Constable No. 744-SB  
..... Appellant

VERSUS

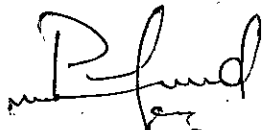
Inspector General of Police and others ..... Respondents

**I N D E X**

S.No	Description of Documents	Annex	Pages
1.	Grounds of Appeal		1-9
2.	Affidavit		10
3.	Copy of the acquittal order	"A"	11-23
4.	Copy of suspension	"B"	24
5.	Copy of charge sheet	"C"	25
6.	Copy of statement of allegations	"D"	26
7.	Copy of inquiry report dated 27.07.2020	"E"	27
8.	Copy of the denovo inquiry	"F"	28-29
9.	Copy of final show caused notice	"G"	30
10.	Copy of Reply	"H"	31-32
11.	Copy of the dismissal order	"I"	33

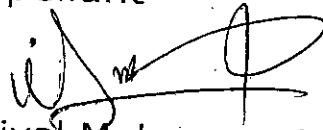


12.	Copy of appeal	"J"	34
13.	Copy of order dated 28.11.2022	"K"	35
14.	Wakalat Nama		36



Appellant

Through



Khiyal Muhammad Mohmand  
Advocate High Court, Peshawar  
&



Zeeshan Gul  
Advocate Peshawar.

Dated: 15.12.2022

khiyalmohd.adv@gmail.com

16  
①

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

Service Appeal No. 1810 /2022

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 2320

Dated 15-12-2022

Pir Muhammad,

Ex. Technical Head Constable No. 744-SB

S/o Noor Muhammad Khan

R/o Village Umar Abad, P.O Kaka Abad, Jangi Tehsil  
Katlang, District Mardan, Khyber Pakhtunkhwa.

..... Appellant

**VERSUS**

1. Inspector General of Police / Provincial Police Chief,  
Central Police office (CPO), Khyber Road,  
Peshawar.
2. Deputy Inspector General (DIG), Special Branch,  
Headquarter, Peshawar
3. Senior Superintendant of Police (SSP), Admin  
Headquarter Special Branch, Khyber Pakhtunkhwa  
Peshawar

Filed to-day

Registrar

15/12/2022

..... Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT,  
1974 AGAINST THE IMPUGNED ORDER NO.  
16472-79/EB DATED 28.11.2022, WHEREBY  
APPEAL OF THE APPELLANT WAS DISMISSED  
BY RESPONDENT NO. 2, WHICH WAS FILED  
BY THE APPELLANT AGAINST THE ORDER OB  
NO. 7451-52/EB DATED 21.09.2020 OF  
RESPONDENT NO. 3 BY VIRTUE OF WHICH  
THE MAJOR PUNISHMENT OF DISMISSAL  
FROM SERVICE WAS IMPOSED UPON THE  
APPELLANT AND ON APPEAL, THE SAME  
ORDER WAS MAINTAINED BY RESPONDENT  
NO. 2 FOR THE APPELLANT.**

**Prayer in Appeal:**

**On acceptance of this Appeal, the impugned Order No. 16472-79/EB Dated 28.11.2022 and Order of dismissal from service OB No. 7451-52/EB dated 21.09.2020 may kindly be set aside and the appellant may please be reinstated in service with all back benefits/ consequently relief.**

Respectfully Sheweth:

1. That the appellant was inducted and appointed  
in the police service Special Branch as a  
Technical Constable on 04.02.2008.
2. That the appellant served with zealous and  
having unblemished record of service and served  
according to the satisfaction of high ups.
3. That 2 years ago the appellant was charged on  
malafide intention and ulterior motive in  
connection with FIR No. 427 dated 30.06.2020  
under Section 302/324/34 PPC of Police Station  
Katlang, Mardan and on dismissal of BBA, he  
was jailed.
4. That the appellant was named and implicated in  
the FIR on mere suspicion and on the strength of  
being relative of the accused party.
5. That now the appellant after conclusion of trial  
acquitted from the all charge by the Learned  
Additional Session Judge Mardan at Katlang vide  
order dated 07.07.2022. (Copy of the acquittal  
order is **Ann-A**).

6. That despite the fact there was no iota evidence in possession of the departmental authorities but still the departmental authorities decided to proceed against the appellant under Police Rules 1975/ Amended, 2014.
7. That after suspension the charge sheet and statement of allegations were also issued to appellant by respondent No. 3. (Copies of suspension, charge sheet and statement of allegations are **Ann-B, C & D**).
8. That a regular inquiry has been ordered and conducted; wherein the inquiry officer recommended that the appellant inquiry shall be kept pending till the decision of the Learned Trial Court. (Copy of inquiry report dated 27.07.2020 is **Ann-E**).
9. That it is worth to mention that a denovo inquiry was also conducted by the respondents with malafide intention and ulterior motive, wherein the inquiry officer recommended the appellant for imposition of major penal punishment. (Copy of the denovo inquiry is **Ann-F**).

10. That the final show caused notice was also issued by respondent No. 3 which was replied properly. (Copies of final show caused notice and reply are **Ann-G & H**).

11. That respondent No. 3 on the strength of denovo inquiry report passed order OB No. 7451-52/EB dated 21.09.2020, whereby major penalty of dismissal from service was awarded to the appellant. (Copy of the dismissal order is **Ann-I**).

12. That feeling dissatisfied with the dismissal from service order, the appellant filed departmental appeal on dated 10.08.2022 before the respondent No. 2. (Copy of grounds of appeal is **Ann-J**).

13. That respondent No. 2 vide Order No. 16472-79 dated 28.11.2022 rejected the appeal of the appellant. (Copy of order dated 28.11.2022 is **Ann-K**).

14. That feeling aggrieved of impugned order dated 28.11.2022 of respondent No. 2 and dismissal from service order OB No. 7451-52/EB dated 21.09.2020, the appellant is constraint to

21 (6)

file the instant appeal on the following grounds  
inter alia:

**GROUND:**

A. That the impugned appellate Order No. 16472-79 dated 28.11.2022 of respondent No. 2 by virtue of which the department appeal / presentation of appellant was rejected and order OB No. 7451-52/EB dated 21.09.2020 of respondent No. 3 whereby the appellant was dismissed from service by imposing major penalty of dismissal from service are coram non judice, illegal, without jurisdiction and lawful authority, against the principles of natural justice, without any rhymes and reasons, hence liable to set aside.

B. That impugned order are illegal and unjust and in violation of rules and law applicable to the matter.

C. That the appellant rendered unblemished services in the police force without any criminal history and without any involvement in any kind of illegal activities but still awarded major penalty of dismissal from service.

D. That the appellant has been implicated on mere suspicion, whereas the Learned Trial Court acquitted the appellant and nothing has been proved by the prosecution in Trial Court.

E. That in first inquiry report it was recommended that the matter/inquiry shall be kept till the conclusion of trial but later on a denovo inquiry was conducted, which is based on malafide intention and without waiting for the result of the criminal trial / decision, the respondents illegally and through an unlawful order dismissed the appellant from service and also rejected his appeal in violation of the law and rules applicable to the matter.

F. That admittedly there is no conviction recorded till date against the appellant in any case.

G. That the inquiry officer in denovo inquiry by examining the witnesses of the criminal case has in fact pre-empted in the power of the learned trial court due to which great miscarriage of justice has been caused to the case of appellant.

H. That there is no truth in the allegations mentioned in the impugned orders.



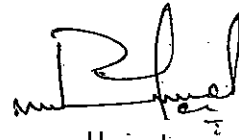
- I. That in denovo inquiry no proper procedure has been adopted and the appellant neither given any opportunity of defence or cross-examination of witnesses was afforded to the appellant which is in violation of principle enshrined in law that no one should be condemned unheard (audi alterem partem).
  
- J. That the respondents issued the impugned order in a slip shot and arbitrary manner.
  
- K. That the order of dismissal from service and appellant order is against the principle of natural justice, equity and fair play and is a colourful exercise of powers by respondents/department.
  
- L. That any other grounds would be adduced by the appellant during arguments on the instant appeal with permission of this Hon'ble Tribunal.

**It is, therefore,** most humbly prayed that on acceptance of this appeal the impugned Order of respondent No. 3 dated 21.09.2020 and Order of respondent no. 2 dated 28.11.2022 may kindly be set aside and the appellant may please be

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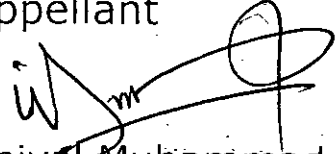
reinstated in the service with all back benefits/  
consequentially relief.

**Any other relief** not specifically asked for,  
may also be granted.

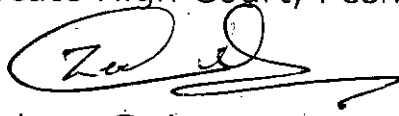


Appellant

Through



Khyal Muhammad Mohmand  
Advocate High Court, Peshawar  
&



Zeeshan Gul  
Advocate Peshawar.

Dated: 15.12.2022

**CERTIFICATE**

Certified that as per instructions of my client, that  
this is the first Service Appeal on the subject  
before this Honourable Tribunal.

ADVOCATE  


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**TRIBUNAL, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2020


Pir Muhammad, Ex. Technical Head Constable No. 744-SB  
..... Appellant

VERSUS

Inspector General of Police and others ..... Respondents

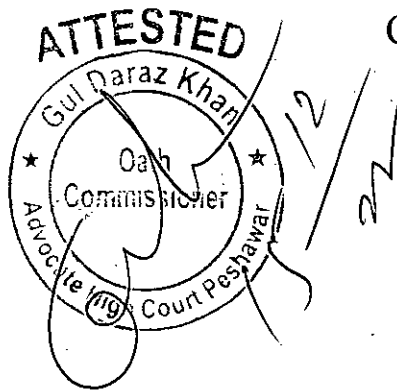
**AFFIDAVIT**

I, Pir Muhammad, Ex. Technical Head Constable No. 744-SB S/o Noor Muhammad Khan R/o Village Umar Abad, P.O Kaka Abad, Jangi Tehsil Katlang, District Mardan, Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

  
Deponent

CNIC: 16101-3158231-7

Cell: 0314-9383426



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**IN THE COURT OF SHER AZIZ  
ADDITIONAL SESSIONS JUDGE, MARDAN AT KATLANG**

**Case No.**.....90/SC of 2020

**Date of institution**.....03.11.2020

**Date of decision**.....07.07.2022

15/07/22

State through Rooh Ullah son of Sardaraz Khan resident of Umar Abad, Tehsil Katlang, District Mardan.....Complainant

398

Versus

1) Abdullah 2) Iftikhar 3) Mukaram Khan all sons Umara Khan and 4) Pir Muhammad son of Noor Muhammad all residents of Umar Abad, Tehsil Katlang, District Mardan.....Accused facing trial

**FIR No. 427 Dated 30.06.2020 U/S 302/324/34 PPC PS Katlang, Mardan**

**JUDGEMENT**  
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- Brief facts of the instant case are that Reporting Officer Sartaj Khan ASI forwarded the Murasila (Exh.PA/1) to Katlang Police Station with the report that on receipt of information, he rushed to Inzargi Hospital where one Rooh Ullah while attending the dead body of his brother Noor Ullah reported that on the day of occurrence, he and his uncle Noor Muhammad were riding on their motorcycle while going to Katlang Bazar and his deceased brother Noor Ullah was riding his own motorcycle while going to Madina Concrete Factory situated at Ghundo; deceased was ahead of them; when they reached to the place of occurrence, accused facing trial, armed with deadly weapons already present there, started firing at them whereupon his brother Noor Ullah got hit and died on the spot while they remained unhurt; motive has been shown as dispute on pathway..
- Reporting Officer prepared the injury sheet and inquest report of the deceased and sent the same to the Doctor for postmortem through Constable Raziq No. 3130. He also sent the Murasila to police station for registration of case through Constable Sibgat Ullah No. 1911.

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80

3. On receipt of said Murasila, Abdul Mateen Khan SI incorporated its contents in the sha of FIR and registered the case against accused facing trial. The investigation was entrusted to Gul Sher, Inspector/OII. On completion of investigation, complete challan u/s 173 Cr.PC was submitted against the accused facing trial wherein accused Mukaram Khan was shown in column No. 2 of Challan as he was absconder then. Later on, supplementary Challan was submitted against the said accused after his arrest. After provision of copies of relevant documents to the accused, formal charge was framed on 28.11.2020 to which they did not plead guilty and claimed trial. On claiming trial, prosecution witnesses were summoned. In order to prove its case, prosecution produced as many as eleven witnesses. The summarized testimony of the PWs are as under:

**DFC Bashir No. 3232 (PW-1)**

PW-1 had served/executed processes under section 204/87 Cr.PC against the accused Abdullah and Mukaram. Warrants and reports are Exh.PW1/1 to Exh.PW1/8 respectively.

**Dr. Rabail (PW-2)**

PW-2 deposed in respect of conducting the autopsy of dead body of Noor Ullah. His examination in chief is as under:

*"During the days of occurrence I was posted in TDH, Katlang. On 30.06.2020 at 05:55 hours, I conducted autopsy on the dead body of deceased Noor Ullah s/o Sardaraz r/o Umar Abad aged about 40/41 years brought by rescue 1122 was identified by Mutabar Khan and Awaldad and I found the following:*

**1. External appearance:**

*Normal stout dead body of middle age of 40 years old brought by rescue 1122 wearing white color Shalwar Qamees soaked with blood. Pale complexion, eye closed, mouth closed, no cheering marks and rigor mortis not developed.*

*On examination the wounds are as follow:*

- 1. Sternum wound at the level of the 4<sup>th</sup> intar costal space entry wound measuring 1 cm and the exit wound is on the back alongwith the medial margins scapula left side the exit wound of 2 cm in size.*

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(81)

- 2. RT Hypochondrial wound measuring of 1 cm and exit wound on the right paraspinal region measuring 2 cm.
- 3. Left flank wound entrance of 1 cm in the exit of on the opposite side of the right flank posterior of 2 cm.
- 4. Left side face wound entrance of 1 cm of exit on the same left side of neck measuring 2 cm.

2. Cranium and Spinal Cord

3. Thorax

Plurae, larynx and trachea, right lung and left lung were found intact.

4. Abdomen

Mouth, pharynx and esophagus, diaphragm, stomach, and its contents, pancreas, spleen, kidneys, bladder and generator organs were found intact.

5. Muscle, Bones, Joints

Sternum, muscles of the abdomen were found damaged.

6. Remarks by Medical Officer

In my opinion the sternum wound has directly hit the pericardium and heart major vessels injuries causing massive bleeding and damage to the heart and instantaneously cardio arrest.

Probable time elapsed between injury and death was 15 minutes. Probable time elapsed between death and PM was about 20 minutes.

The PM report consisting of 6 pages including the pictorial is Exh.PW2/1 while my endorsement on injury sheet is Exh.PW2/2 and 1/3 respectively which is correct and correctly bear my signature."

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Abdul Mateen, SI (PW-3)

This PW is the author of FIR (Exh.PA) which he had registered the case against accused facing trial on receipt of Murasila.

Constable Ibrar No. 1023 (PW-4)

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82

This PW endorsed recovery memo, Exh.PW4/1, as co-marginal witness vide which pistol of 30 bore without number along with fixed charger was recovered during the house search of accused Iftikhar. He also authenticated signature of other co-marginal witness Riaz Khan ASI.

**Ijaz Ali PASI (PW-5)**

This PW endorsed certain recovery memos, Exh.PW5/1 and Exh.PW5/2 pertaining to the recovery of HDD of CCTV camera and motorcycle of deceased bearing No. FJ7552/MRD. He also verified the signature of co-marginal witness Akbar Ali No. 2897.

**Sartaj Khan, ASI (PW-6)**

PW-6 recorded the report of complainant in the shape of Murasila. During the course of his examination in chief, he narrated the entire story of Murasila. He also prepared injury sheet and inquest report of the deceased. Murasila, injury sheet and inquest report are Exh.PA/1, Exh.PW6/1 and Exh.PW6/2 respectively.

**Rooh Ullah s/o Sardaraz r/o Umar Abad, Katlang (PW-7)**

This PW is the complainant of the instant case. His entire examination in chief is as

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*"Stated that Noor Ullah deceased was my brother while PW Noor Muhammad is my maternal uncle. Accused facing trial Abdullah, Mukaram Khan, and Iftikhar are brothers inter-se sons of Umara Khan. Accused facing trial Pir Muhammad s/o Noor Muhammad is their relative. On the day of occurrence, I along with PW Noor Muhammad were on one motorcycle while deceased Noor Ullah on his motorcycle came out of our house, were going to Madina concrete factory situated at Ghundo. Noor Ullah was going ahead of us while we were following them. When we reached to the spot, it was 05:40AM, there accused facing trial named above were present duly armed with firearms and on seeing us started firing upon us. Resultantly, my brother Rooh Ullah got hit and died at the spot while we escaped unhurt luckily. Motive for the offence was dispute over a path and land. Then we shifted the dead body to CH Inzargai where at 16:00 AM I made the report to the police. The contents of the report were read over and*

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83

explained to me which I signed in English. Noor Muhammad PW endorsed report by signing it. The site plan Exh.PB was prepared at my pointation. I charge the accused facing trial for the offence."

**Noor Muhammad s/o Gul Kareem r/o Ghala, Katlang (PW-8)**

PW-8 is the cited eye witness of the occurrence. His entire of examination in chief is reproduced as under:

"PW Rooh Ullah is my nephew while the deceased is also my nephew. On the day of occurrence we came out of the house of my sister. I and Rooh Ullah intended to go to Katlang Bazar while the deceased Noor Ullah intent to go to Madina concrete Ghundo. I was sitting on a motorcycle with Rooh Ullah complainant while the deceased was sitting on his own motorcycle. The registration of our motorcycle was 8983/MRD while the registration number on which the deceased sitting is FJ-7552 MRD. Noor Ullah was riding on his motorcycle ahead of us and we were on normal speed. When we reached to the spot, there accused facing trial namely Abdullah, Ifikhar, Per Muhammad and Mukaram duly armed with deadly weapon started firing at us as a result whereof Noor Ullah got hit and died while we escaped unhurt. Motive for the occurrence was dispute over a path. I also pointed out the spot to the IO. I am also marginal witness to recovery memo,

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Exh.PW8/1 vide which the IO secured blood P1 from the spot. I am also marginal witness to the recovery memo, Exh.PW8/2, vide which the IO took into possession a deformed bullet P2 from point C. I am also marginal witness to recovery memo Exh.PW8/3 vide which the IO took into possession 3 empties P3 of 30 bore freshly discharged from the spot. I am also marginal witness to recovery memo, Exh.PW8/4 vide which the IO took into possession blood stained clothes P4. All the articles aforementioned were sealed into parcels and all the recovery memos correctly bear my signatures as well as signatures of Zulqarnain. I on 11.07.2020 produced the motorcycle registration No. 8983 MRD along with the registration copy as Exh.P5 and P6 belonging to the complainant which was taken into possession vide recovery memo Exh.PW8/5. The recovery memo prepared to this



(84)

effect correctly bears my signature. To the aforementioned the IO recorded statement. I charge the accused facing trial for the commission of offence."

**Constable Ibar Bacha No. 1027 (R-PW-4)**

Statement of this PW was already recorded as PW-4. But during the course of proceedings, counsel for complainant submitted application for re-summoning this PW and PW Said Bahadur, Muharrir which was allowed keeping in view the no objection endorsed by learned opposite counsel. This PW endorsed certain recovery memos which are Exh.PW4/7 and Exh.PW4/8. He also took parcels No. 2, 3, 6, 8, 9 and 10 to FSL for analysis vide receipt No. 408/21.

**Gul Sher, Inspector/OII (PW-9)**

This PW investigated the case. During the course of his examination in chief, he fully described all the aspects of the investigation conducted by him. Site plan, sketch of the place of recovery of pistols from accused facing trial, application for obtaining warrants u/s 204 Cr.PC and process u/s 87 Cr.PC, cards of arrest, application for physical custody of accused, pointation memos, applications to FSL, FSL reports, DD No. 5 dated 29.06.2021, DDs No. 17, 18, 4, 19 and 26, application to DIG for departmental proceedings, and list of legal heirs of deceased are Exh.PB, Exh.PW8/1, Exh.PW8/2, Exh.PW8/3, Exh.PW8/4, Exh.PW5/1, Exh.PW5/2, Exh.PW8/5, Exh.PW9/7, Exh.PW9/8, Exh.PW9/9, Exh.PB/1, Exh.PW9/15, Exh.PW9/16, Exh.PW9/17, Exh.PW9/1, Exh.PW9/2, Exh.PW9/3, Exh.PW9/4, Exh.PW9/5, Exh.PW9/6, Exh.PW9/10, Exh.PW9/11, Exh.PW9/12, Exh.PZ, Exh.PZ/1, Exh.PZ/2, Exh.PW9/13, Exh.PW9/14, Exh.PW9/18 and Exh.PW9/19 respectively. He verified the signature of the then SHO Parvez Khan who submitted complete Challan, Exh.PC, against accused facing trial.

**Said Bahadur, Muharrir of the PS (PW-10)**

This PW was custodian of parcels No. 1 to 10. He made entries in register No. 19 (Exh.PW10/1) and sent the same to FSL through receipt Exh.PW10/2. He also sent recovered pistol along with empties and spent bullet to FSL for comparison vide receipt Exh.PW10/3.

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Muhamand Khan SI (PW-11)

85

This PW submitted complete Challan against the accused facing trial which is Exh.PC/1.

- 4. After conclusion of prosecution evidence, statements of accused were recorded u/s 342 Cr.PC wherein they falsified the prosecution charge. But they neither opted to produce defense evidence nor wanted to be examined on oath. Pro and contra argument heard. Record perused.
- 5. The learned counsel for the complainant assisted by the learned Senior Public Prosecutor argued that the crime report has promptly been made; the motive was clearly mentioned in the initial report which gets support from the record and evidence on the point; there is no possibility of consultation, false implication and substitution within 20 minutes; the well consistent ocular testimony in the shape of statements of PW-7 and 8 are connecting the accused with the heinous crime of murder beyond doubt; the recoveries in the shape of weapons of crime, empty shells, positive FSL report and blood collected from the place of occurrence etc. corroborate the ocular account; the site plan and the postmortem report further corroborate the prosecution version; in the nutshell, the prosecution had proved the charge against the accused facing trial beyond the shadow of doubt; as such, they deserve conviction and exemplary punishment.
- 6. On the other hand, the learned defense counsel argued that the prosecution has miserably failed to substantiate the charge against the accused facing trial; the ocular evidence produced by the prosecution is full of doubts and dents; the corroborative evidence, if any, shall not be beneficial for prosecution in view of the defective substantive evidence; the presence of the complainant and eye witness on the spot is a sheer chance as they have not disclosed the specific purpose for their presence on the spot; the complainant (PW-7) categorically admits that he used to go to Peshawar to attend his office on daily basis; in view of this admission, the presence of the complainant on the spot at the relevant time is highly doubtful; the kind of weapon was not mentioned in the initial report which further beclouds the ocular testimony; the Rescue 1122 was subsequently introduced which also renders the presence of the complainant party on the spot doubtful; similarly, the escape of the complainant and eye witness despite the firing of four persons

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ADMINISTRATIVE SERVICES  
MARDAN

86

is also a question mark; the FSL report do not support the prosecution version; similarly, the site plan and postmortem report are also contradictory with the version of prosecution; the recovery of three empty shells also create doubt; the data of CCTV installed in the adjacent filling station was not produced; in these circumstances, the accused facing trial deserve acquittal.

7. Perusal of record in the light of pro and contra argument reveals that:

i. The charge, in the nutshell, is that on 30.06.2020 at 0540 hours the accused facing trial made fires on the deceased, complainant and the eye witnesses Noor Muhammad near Jehangir Patrol Pump at Nary Garha, Shero as the deceased was going to Madina Concrete factory Ghundo while the complainant and eye witness were going to Katlang Bazar on two separate motorcycles; as a result of this murderous firing, the deceased Noor Ullah got hit and died on the spot while the complainant and his companion escaped unhurt; the motive was mentioned as agrarian an path dispute.

ii. The prosecution case hinges upon ocular testimony of the complainant (PW-7) and Noor Muhammad (PW-8). Recoveries of weapons of crime, motorcycles, blood collected from the spot, one deformed bullet, three empty shells, bloodstained Shalwar Qameez of deceased having bullet cuts, hard disk of CCTV camera and FSL report have been produced as supportive evidence. Site plan, postmortem report and pointation memo etc. have also been relied upon by the prosecution. The reporting and investigation officer have recorded their depositions. Witnesses of the recovery memos have also deposed in support of prosecution charge.

iii. The substantive evidence as presented in this case consists of the statements of complainant (PW-7) and Noor Muhammad (PW-8); both the eye witnesses have recorded their deposition in a very natural and consistent manner without any improvement of dishonest nature. No contradiction is detected in the said statements. The pre and post occurrence episodes have been narrated in quite consistent mode. The ocular account has also been presented without any

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87

improvement and contradiction. However, the learned defense counsel has questioned the presence of complainant and eye witness on the following grounds:

The complainant and the eye witness have not disclosed the purpose of their being on the spot per initial report. The deceased was going to Madina concrete factory on his motorcycle while the complainant and eye witness were going to Katlang Bazar on separate motorcycle. Hence, purpose and reason of being on the place of occurrence has been explained in the very initial report. The presence of the complainant party and deceased on the place of occurrence which is a public road is not a chance phenomenon. People make like excursion early in the morning to go to their destination. In this regard, the learned counsel for the accused focused on the explanation made by PW-7 in the outset of his cross examination. The said explanation is reproduced below:

*"...I am doing my own business of software at Peshawar. During the days of occurrence, my office was at Peshawar in Deans Plaza...I used to go in connection of my job daily from my village. I used to reach Peshawar at 11:00 AM and as routine I used to return from Peshawar at 1700 hours."*

This explanation clarifies the ambiguity qua the presence of the complainant at the place of occurrence at the relevant time. Crux of the explanation is that the complainant used to reach Peshawar at 1100 AM and return at 1700 hours daily. The maximum time of travel from Umar Abad Katlang to Dean Plaza Peshawar is three hours. It means that if one leaves for Peshawar at 08:00 AM he will reach at 11:00 AM. It was also explained that the complainant used to return from Peshawar daily. So, his availability in the area may not be doubted. PW-7 further says that he had not disclosed the purpose of his visit because the scribe of report had not asked about it. It is also in the evidence that accompanying eye witness

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SHER AZIZ  
Additional Magistrate & Sessions Judge  
Mardan

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08 DEC 2022

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88

PW-8 was a police officer. Had the report been fabricated, it was very easy for him to fill color therein. But everything seems to be natural.

The presence of the eye witness has also been explained on the query of the learned defense counsel. It is in the evidence that PW-8 is the maternal uncle of the complainant and deceased. In a response to a query, PW-7 had stated that PW-8 had spent night at their house being their maternal uncle. Like visits of close relatives is normal in rural societies. Similarly, the presence of the deceased at the spot was also plausibly explained. PW-8 explains in his cross examination while responding to a positive suggestion of learned defense counsel that his younger brother was having a concrete factory and the deceased was serving as Munshi in the said factory some time ago. PW-7 also endorsed this fact in his cross examination stating that it was the routine of the deceased that he used to go early in the morning for duty to the above said factory and used to return in evening. These explanations, per the judgments of the superior courts, may not be considered dishonest improvements because the same were made on the query of learned defense counsel.

Non identification of the dead body by the complainant and eye witness, per the argument, implies the non-presence of the complainant and the eye witness on the spot. This may not be considered a valid reason because it is generally observed that near relatives do like jobs by way of facilitation of the bereaved persons being in shock. The ocular testimony may not be thrown away due to non-identification of the dead body by the complainant and the eye witness.

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MUNSHI PARVIZ I. KHAN

Yet another point agitated in this regard is the non-specification of weapon of offence by the eye witness. Generally, the police use certain terminologies in most of the crime reports. "Aslaha Aflasheen" is one of them. So instead of using it as a rule of thumb, so the non-specification of weapon is not fatal for the prosecution case.

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89

Yet another point raised by the defense counsel is that how the eye witnesses escape unhurt despite firing of four persons. The distance between the accused facing trial (Iftikhar and Abdullah) and the complainant/eye witness is longer than that of deceased. Per the record, the accused facing trial (Iftikhar and Abdullah) were interested to annihilate the deceased being allegedly instrumental in the land/path dispute. Moreover, faraway targets cannot be certainly achieved by pistol.

The subsequent introduction of Rescue 1122 which had shifted the dead body to the hospital was debated upon the learned defense counsel being fatal for the prosecution negating the presence of the eye witnesses. This being only mode of shifting of dead body from the place of occurrence to the hospital does not negate the presence of eye witnesses on the spot.

Another point raised is that the direct recourse to hospital despite the fact that the deceased had died on the spot creates doubt. Admittedly, the rescue team was involved. The only concern of rescue personnel is to shift the injured whether dead or alive to the nearby hospital. As such, this argument is not convincing.

The time scheme of the occurrence was also objected to by the learned defense counsel. It was argued that the doctor had examined the dead body at 0555 AM while the report was made at 0600 AM. According to post mortem, the time of arrival of dead body is 0555 AM while the time of examination at 0600 AM. PW-2 has explained this point in his cross examination that he had started postmortem on 0600 AM. Hence, this point is also not fatal.

In these circumstances, the presence of the complainant and eye witness on the spot is quite natural and the same cannot be doubted.

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iv. According to the site plan (Exh.PB), the specific roles of firing have been attributed to accused Abdullah and Iftikhar. They have been shown at point No. 2 and 3 while the deceased has been shown at point A (initially) and point 1.

90

(subsequently) being hit. Both the accused are near to the deceased who was in clear range of their fires. C1 is the place wherefrom three empties of 30 bore have been recovered. C1 situates near the place of accused Abdullah and Iftikhar. It shows that both the said accused have made fires on the deceased. No empty shells have been recovered from the place of rest of the accused namely Mukaram Khan and Pir Muhammad shown at point No. 5 and 4 respectively. It may be safely inferred that no fire have been made by the said accused facing trial. Hence, the role of accused Abdullah and Iftikhar is separable from the role of accused Mukaram Khan and Pir Muhammad. The weapons of crime e.g. pistol of 30 bore have been recovered from all the accused at their respective pointation except accused Iftikhar. In this regard, site plans of recovery have also been made. The FSL reports (Exh.PZ/1 and Exh.PZ/2) further connect the accused Iftikhar with the murder as it has been reported that the 30 bore crime empties (C1 and C2) have been fired from 30 bore pistol marked A which had been recovered on the pointation of the said accused.

v. The recovery of motorcycles also authenticates the prosecution version on circumstantial level. The Post Mortem is also supportive of the ocular evidence. A deformed crime bullet has also been recovered from the place of the deceased.

vi. This case has got very strong and proved motive. Per initial report, the motive has been described an agrarian/path dispute. The PWs have also deposed the motive part in their statements. In this regard, Naqalmd No. 5 dated 29.06.2020 Exh.PW14/13 is available on the case file. In the said Naqalmd, the complainant along with the deceased has reported that the accused facing trial and others have destroyed the path leading to their house giving life threats. In the said report, the factum of land, purchased from one Jansheed, and the disputed path have specifically been mentioned. This incidence has taken place just a day before the day of occurrence. This motive part also connects the accused facing trial (Abdullah and Iftikhar) with the commission of offence beyond shadow of doubt.

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زوالقرین و اسرار  
Name of Application: \_\_\_\_\_  
No. of Application: 20994  
Date of presentation of application: 8/12/20  
Date of preparation of copies: 08/12/20  
Number of Pages: 13-1  
Court Fees: 1000  
Urgent Fees: \_\_\_\_\_  
Signed of copyist/Examiner: \_\_\_\_\_  
Date of Delivery: 08/12/2020



vii. To conclude, the occurrence was promptly reported excluding the possibility of false implication. The complainant party has not implicated other persons named in the above mentioned Naqalmaid No. 5 which shows that the report has genuinely been made. The ocular account is consistent. The same has been corroborated by the above mentioned recoveries etc. The motive is proved beyond doubt.

8. Hence, it may safely be concluded that the accused Abdullah and Ifitkhar have committed Qatl-e-Amad of the deceased Noor Ullah while per the above recorded findings, the accused Mukarram and Pir Muhammad are not connected with the murder and attempted murder. The charge of attempting the life of the complainant and the eye witness is shrouded in doubts. No material exists on case file to support this charge.
9. Therefore, in these circumstances, the accused Abdullah and Ifitkhar are hereby convicted and sentenced to suffer rigorous imprisonment of 25 years u/s 302(c) PPC each. A fine of Rs. 300,000/- is also imposed on each of the convict u/s 544-A Cr.PC in order to compensate the legal heirs of deceased. In case of default of payment of the said fine, they shall undergo simple imprisonment for six months each. Benefits of section 382-B Cr.PC be extended to both the convicts.
10. The accused Mukaram and Pir Muhammad are hereby acquitted of the charge giving them the benefit of doubt. They be released forthwith if not required in any other criminal case. Case property be dealt with in accordance with law after expiry of period of appeal.

**Announced**  
07.07.2022

**CERTIFICATE**

It is certified that this judgment of mine consists of thirteen (13) pages and each page is duly signed by me after necessary corrections.

**Announced**  
07.07.2022

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**Sher Aziz**  
Additional Sessions Judge,  
Mardan at Katlang

**Sher Aziz**  
Additional Sessions Judge,  
Mardan at Katlang

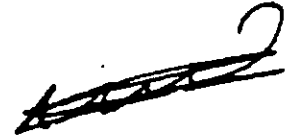
(24) 39

Am-B

**ORDER**

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

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



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



No. S266-69 /EB; dated Peshawar the. 30 / 6 /2020.

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

(25) 40

Am - C

CHARGE SHEET.

I, Muhammad Irshad Khan, SP/Admn: Special Branch, Khyber Pakhtunkhwa Peshawar  
competent authority under Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) hereby  
charge you Technical Constable Pir Muhammad No.744/SB as follow:-

You while posted at SB/HQrs Peshawar got involved in Criminal case bearing FIR No  
427, dated 30.06.2020 U/s 302-324-34/PPc, Police Station Katlang District Mardan.

By the reason of the above, you appear to be guilty of misconduct under the Khyber  
Pakhtunkhwa Police Rules 1975 and have rendered yourself liable to all or any of the penalties  
specified in the said rules.

1. You are, therefore, directed to submit your written defense within 7 days of the receipt of this Charge Sheet to the Enquiry Officer.
2. Your written defense, if any, should reach to the enquiry officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case, ex-parte action will be taken against you.
3. You are also at liberty, if you wish to be heard in person.
4. Statement of allegation is enclosed.



(Muhammad Irshad Khan )  
Superintendent of Police Admn:  
Special Branch Khyber Pakhtunkhwa,  
Peshawar.



SUMMARY OF ALLEGATIONS.


1. Muhammad Irshad Khan, SP/Admn: Special Branch, Khyber Pakhtunkhwa Peshawar being competent authority, is of the opinion that Technical Constable Pir Muhammad rendered himself liable to be proceeded against, as he has committed the following acts of omissions / commissions within the meaning of Khyber Pakhtunkhwa Police Rules 1975.

STATEMENT OF ALLEGATIONS.

He, while posted at SB/IQrs Peshawar got involved in Criminal case bearing FIR No. 427, dated 30.06.2020 U/s 302-324-34/PPc, Police Station Katlang District Mardan

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation, Sajad Khan SP-SB Mardan is appointed as enquiry officer to conduct enquiry under Police Rules 1975.

3. The Enquiry Officer shall, in accordance with the provision of the said Rules, provide reasonable opportunity of hearing to the accused, record its findings and make within 15 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

  
( Muhammad Irshad Khan )  
Superintendent of Police Admn:  
Special Branch Khyber Pakhtunkhwa,  
Peshawar.

No. 5270-71/EB: dated Peshawar the. 30 / 06 / 2020.

Copy of above is forwarded to the:-

1. Enquiry Office with the direction to initiate departmental proceedings against the accused under the Rules and submit his findings in shortest possible time.
2. LO/SB to deliver upon the official concerned.

(27)

No. 74 /PA, A-1E

Dated 27/07/2020

### ENQUERY REPORT

Charge Sheet/Statement of Allegation issued by the SSP/Admin: Special Branch Khyber Pakhtunkhwa Peshawar vide his good office No. 5270-71/EB, dated 30-06-2020 against Technical Constable Pir Muhammad No. 744, involved in case vide FIR No. 427 dated 30-06-2020 u/s 302/304/34 PPC Police Station Katlang District Mardan wherein the undersign has been appointment as enquiry officer of conduct departmental enquiry against the above name Constable.

During the course of enquiry, Duplicate copy of FIR and other relevant documents were obtained from police station Katlang and was thoroughly perused. Accused Constable has applied for BBA wherein next date of hearing is fixed for 25-07-2020. Constable Pir Muhammad disclosed that the other accused charged in the FIR are his relatives and they have land dispute with complainant party and that's why complainant party charged him with his relatives in the case.

The enquiry conducted so far revealed that Constable Pir Muhammad No. 744/SB has applied for BBA wherein 25-07-2020 is fixed as next date of hearing. He should better wait till decision of the learned court as the case is also under investigation.

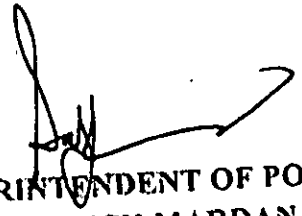
In view of the above circumstances, it is recommended that his enquiry may be kept pending till decision of the learned court, please.

DSP - Legal  
for opinion pl.

~~SP - Admin~~  
24-08-2020

R/Sir,  
Needful  
done.

SP - Legal

  
SUPERINTENDENT OF POLICE  
SPECIAL BRANCH MARDAN REGION

Subject:

43 (28) Am-F  
ENQUIRY AGAINST TECHNICAL CONSTABLE PIR  
MUHAMMAD BELT NO. 744.

Brief Facts:

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

Proceedings:

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

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

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

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

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

In the statement of the IO stated that:

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

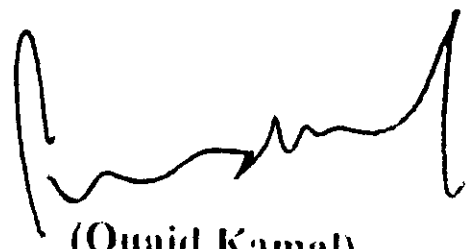
- 4. At the time of occurrence all accused presence were reported at the crime scene.
- 5. During interrogation three 30 bore pistols were recovered from accused Pir Muhammad, Abdullah and Mukaram. Recovered empty shells were dispatched to FSL, Peshawar for forensic opinion which is still awaited
- 6.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

**Conclusion:**

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

**Recommendation:**

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



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

**FINAL SHOW CAUSE NOTICE**

30

Am-67

1. Muhammad Inshad Khan SSP/Admn: Special Branch KP, Peshawar being competent authority under Khyber Pakhtunkhwa Police Rules, 1975 (Amended 2014), issue this final show cause notice to you Technical Constable Pir Muhammad No. 744/SB on the following grounds:-

That, you while posted to SI/110/Peshawar got involved in criminal case bearing FIR No. 427 dated 30.06.2020 w/s 302/324/34 PPC PS Kailang District Mardan.

You were served with Charge sheet and statement of allegations based on said

charges were issued to the accused officer vide this office order No. 5270-71 dated 30.06.2020.

Sajid Khan SP/ SB Mardan was nominated as Enquiry Officer to scrutinize the conduct of

accused officer with reference to the charges leveled against him. The Enquiry Officer after

conduct of Enquiry, in his findings reached to the conclusion that due to insufficient evidence the

enquiry proceedings may be kept pending till decision of the trial court in the criminal case.

However the undersigned being the competent authority did not agree with the findings and

directed de novo proceeding in the matter wherein Enquiry Officer (Sajid Kamal SP Peshawar

Region Special Branch, Peshawar was appointed. The Enquiry Officer after conduct of de novo

enquiry, in his findings reached to the conclusion that the accused officer is found guilty of

commission of misconduct.

After going through the findings of the Enquiry Officer, the material available on

record and other connected papers, I am satisfied that you have committed misconduct being

defined under this Rules. As a result thereof, I Muhammad Inshad Khan SSP/Admn, Special

Branch KP, Peshawar as competent authority have tentatively decided to impose upon you

punishment under this Rules.

You are therefore, directed through this Final Show Cause Notice to reply within

15 days as why not punishment be imposed upon you.

In case your reply is not received within stipulated period, it shall be presumed

that you have no defense to put and in that case an ex-parte action shall be taken against you.

Also state whether you desired to be heard in person.

Copy of the finding of the Enquiry Officer is enclosed.

(Muhammad Inshad Khan)  
Senior Superintendent of Police Admn  
Special Branch KP, Peshawar  
Dated Peshawar, the 12.7.2020

No. 7342, BB





نے گناہوں کا زلزلہ ثبوت ہے . میرے خلاف جو  
 ہے وہ من گھڑت اور بنیاد ہے . میں اس سلسلے  
 کے گناہیوں . میں قانونی تقاضوں سے کشتہ پولیس  
 واقف ہوں . میں کبھی بھی اللہ اور ام نہیں کر سکتا  
 میرے خلاف افسران بارا سے جاری شدہ چارج شیٹ اور  
 رمری ان ایلیٹیشن داخل دفتر فرمایا جائے .  
 یہی میرا بیان ہے جو حقیقت پر مبنی ہے .

ال  
 744  
 H.C.  
 سید فضل شاہ  
 سید نور الدین

Deed  
 100

48 (33) Am-11  
**ORDER**

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


Technical Constable Pir Muhammad No. 744/SB (hereinafter referred to as an accused officer) while posted to SB/11Qr Peshawar got involved in criminal case bearing FIR No. 427 dated 30.06.2020 u/s 302/324/34 PPC PS Katlang District Mardan.

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

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

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

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

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

No. 7451-521 EB, dated Peshawar the, 21 / 09 / 2020.

Copy to all concerned for information and necessary action.

7968

10/08/2022

بخدمت جناب ڈی آئی جی صاحب، سپیشل برانچ ہیڈ کوارٹر پشاور۔

جناب عالی!

مودبانہ گزارش ہے کہ سائل سال 2008 میں سپیشل برانچ ہیڈ کوارٹر پشاور میں بطور ٹیکنیکل کانسٹیبل بھرتی ہوا تھا۔ سائل اپنی ڈیوٹی احسن طریقے سے سرانجام دے رہا تھا۔ مورخہ 30-06-2020 کو سائل کے خلاف زیر دفعہ 302 کے تحت جھوٹا مقدمہ درج کیا گیا۔ اس سلسلے میں سائل نے اپنے آپ کو پولیس کے حوالے کر کے عدالت نے جیل بھجوادیا۔ اس دوران عدالت میں ٹرائل شروع ہوا جو کہ تقریباً دو سالوں تک جاری رہا۔ اس دوران محکمہ پولیس سپیشل برانچ نے سائل کو ملازمت سے بھی برخاست کر دیا تھا۔ مورخہ 07-07-2020 کو عدالت عالیہ نے دیگر ملزمان کو سزا سنائی جبکہ سائل کو باعزت طور پر بری کر دیا۔

لہذا آپ جناب سے بذریعہ درخواست ہمدردانہ استدعا کی جاتی ہے کہ سائل کو مورخہ 30-06-2020 سے ملازمت پر بحال کئے جانے کا حکم صادر فرما کر مکھو فرمائیں۔ سائل اور اس کے ضعیف والدین آپ کی لمبی عمر کیلئے تا عمر دعا گو ہیں گے۔

العارض،  
DSP/leg for comm

10/08/2022

پیر محمد ولد نور محمد، سابقہ ٹیکنیکل ہیڈ کانسٹیبل نمبر 744، سپیشل برانچ ہیڈ کوارٹر پشاور۔

R/Six,

10-08-2022

مورخہ:

It is requested that the matter may  
Please be sent to AIG Legal CPO  
for Legal opinion due to the vacant  
post of DSP Legal Special Branch.

JIC Legal Sect

10/08/2022

10/08/2022

35

36

Am-kr

ORDER

This order is passed in departmental appeal filed by Ex-Constable Pir Muhammad No.744/SB (hereinafter only referred as accused officer) of this establishment against the impugned order of his Dismissal from Service vide Order No. 7451-52/EB dated 21.09.2020 passed by Senior Superintendent of Police, Admin, Special Branch, Khyber Pakhtunkhwa, Peshawar. Facts leading to the instant departmental appeal are as follows:-

That accused officer while posted in Special Branch was charged in criminal case bearing No. 427 dated 30.06.2020 u/s 302/324/34 PPC PS Katlang District Mardan.

Resultantly, proper departmental proceedings were initiated against the accused officer on the direction of Competent Authority under Khyber Pakhtunkhwa Police Rules 1975 (Amended 2014). Charge sheet and statement of allegations based on said charges were issued to the accused officer vide this office Endst: No. 5270-71 dated 30.06.2020. Sajad Khan SP/ SB Mardan was nominated as Enquiry Officer to scrutinize the conduct of accused officer with reference to the charges leveled against him. The Enquiry Officer after conduct of Enquiry, in his findings reached to the conclusion that due to insufficient evidence the enquiry proceedings may be kept pending till decision of the trial court in the criminal case. However, the undersigned being the competent authority did not agree with the findings and directed denovo proceeding in the matter wherein Enquiry Officer Quaid Kamal, SP Peshawar Region, Special Branch, Peshawar was appointed. The Enquiry Officer after conduct of denovo enquiry, in his findings reached to the conclusion that the accused officer is found guilty of commission of misconduct within the meaning of ibid Rules as he committed this horrific offence hence Dismissed from Service vide Order No. 7451-52/EB dated 21.09.2020.

Accused officer disciplinary proceedings and criminal proceedings are quite distinct from each other having altogether different characteristics and there is nothing common between the adjudicative forums by whom separate prescribed procedure and mechanism is followed for adjudication and both the forums have their own domain of jurisdiction. Decision of one forum would have be a misconceived notion to consider the acquittal in criminal trial as an embargo against disciplinary proceedings.

The departmental appeal preferred by the defaulter ex-constable technical is badly time barred by approximately two (02) years. Though, he is acquitted of the charge giving him benefit of doubt but this is not sufficient cause for his exoneration. Therefore, the appeal of appellant is rejected and filed being time barred coupled with his actions.

Deputy Inspector General of Police,  
Special Branch Khyber Pakhtunkhwa,  
Peshawar.


No. 16472-79 /EB

dated Peshawar the; 28 / 11 /2022

Copies to all concerned for information and necessary action.

قیمت 50 روپے	52455			
ایڈریس: خیال محمد مسند		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل / ایسوسی ایشن نمبر: 11-1577 BC				
رابطہ نمبر: 0321-9587361				

بعدالت جناب: صبر من سرور ٹریبونل خیبر پختونخواہ

مخاطب: ایڈوانس / Appellant	دعویٰ: سرور ایپل
 <p>پشاور ٹریبونل بنام ایڈوانس / اپیل انسٹریکشن برائے ریفرنس نمبر</p>	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

### باعث تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آن مقام کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کر کے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا سہاختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کر لیں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے



Attested  
Accepted

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

ایڈوانس / ریفرنس / سرور ایپل / عدالت نور محمد خان / سکریٹری / پشاور ٹریبونل / خیبر پختونخواہ

55  
SCANNED  
KPST  
Peshawar

14/6/23

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 1810/2022.

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

VERSUS

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 5984

Dated 14/6/2023

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

.....(Respondents)

**INDEX**

S. No	Description of Documents	Annexure	Page No.
1.	Reply of Service Appeal		1-3
2.	Authority letter		4
3.	Affidavit		5
4.	Copy of FIR	A	6
5.	Suspension Order	B	7
6.	Statement of Investigation Officer	C	8-10
7.	Denovo Enquiry Report	D	11-12

86

SCANNED  
KPST  
Peshawar

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 1810/2022.

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

VERSUS

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

.....(Respondents)

**REPLY BY RESPONDENTS.**

**PRELIMINARY OBJECTIONS:-**

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

**FACTS:-**

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



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

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

**GROUNDS:-**

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

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

**PRAYER:-**

Keeping in view of above stated Facts, it is therefore humbly prayed that Service Appeal is devoid of merits and based on wrong grounds may kindly be dismissed with costs, please.



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



Deputy Inspector General of Police,  
Special Branch, Khyber Pakhtunkhwa, Peshawar.  
(Respondent No. 2)



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

59

4

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 1810/2022.

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

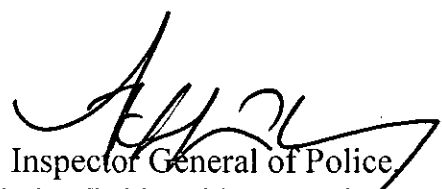
VERSUS

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

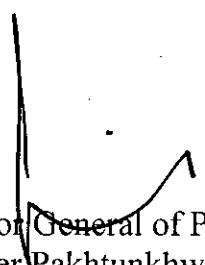
.....(Respondents)

**AUTHORITY LETTER**

Javed Iqbal DSP Special Branch, Khyber Pakhtunkhwa Peshawar is hereby  
authorized to appear on behalf of the Respondents before the Hon'ble Service Tribunal  
Peshawar. He is authorized to submit all required documents and replies etc pertaining to  
the appeal through the Government Pleader.



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



Deputy Inspector General of Police,  
Special Branch, Khyber Pakhtunkhwa, Peshawar.  
(Respondent No. 2)



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

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 1810/2022.

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

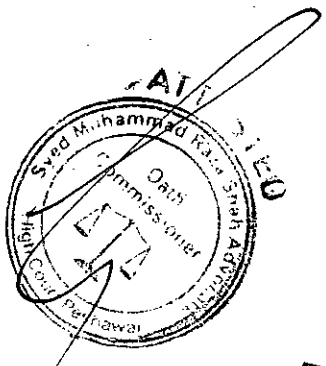
VERSUS

Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa and two 2 others  
.....(Respondents)

**AFFIDAVIT**

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

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



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

19 JUN 2023



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ORDER

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

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



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

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

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

*Handwritten notes:*  
Battled  
2/6  
2/6  
2/6

جناب عالی!

حقیقی انگریزی بڈی 08/20 Pesh dt 119/INT, Pesh dt 08/20  
برایغ پشاور کا تعلق مقدمہ نمبر 427 جودم 30/20 ج 30  
302-324 خانہ کا نمبر  
34/15AA سے ہے۔

FIR کا متن حسب ذیل ہے۔

دنِ حدیٰ مقدمہ رُوحِ اللہ نے لُغش و قُصُولِ برادرِ نورِ اللہ پور 39 سالہ مقامِ کھوئی پشمال  
انڈیا میں سربراہ خان ASI کو پیش کرتے ہوئے روٹا کی لگا آج میں ہم قانون ام نور محمد نسوری  
پورٹ سائیکل فور جہد و قُصُولِ نورِ اللہ برادر ام اپنے پورٹ سائیکل پر گور خوسہ کیلئے۔ صبر اور  
قانون ام بازار کا نمبر ہے۔ برادر ام و قُصُولِ نورِ اللہ عدینہ بنگلہ قمر کی واقعہ مذکور  
جاری ہے۔ برادر ام و قُصُولِ ام سے کچھ فاصلہ پر آئے جبکہ ہم اسکا پہچنے جاری ہے۔  
صا جانے وقوعہ بالا لکھے تو وہاں پیر جیسے سے مسلمان عبداللہ، حکیم خان، افتخار حسین  
عمر خان اور پندرہ ولد نور محمد سائیکل بنگلہ قمر سے ہم اسکا آئینہ ہو رہے ہیں۔  
دیکھے ہیں انہوں نے ہم پر لکھے اسلحوں سے بہ ارادہ قتل فائرنگ شروع کی۔  
جسکی فائرنگ سے قُصُولِ نورِ اللہ بنگلہ قمر جان بچا سو جاکہ ہم جاں بال بچ گئے۔ واقعہ پورا  
ہم دونوں کا ہتھیار ہے۔ ہم عمار و لگان مسافر واسطہ اراخی پر تیار ہے۔ اس  
نے اپنے آپ کا قانون اسلحوں پر بہ ارادہ قتل فائرنگ کیا برادر ام و قُصُولِ  
نورِ اللہ نے قتل کا برخلاف لگان والا پھونڈاری کی۔

Noted  
M  
H

attested  
Signature

کاروائی لفیشن :-

دنِ حدیٰ من اسکا موقع جار لفتہ موقع و جب ما۔ موقع و لڑائی سے اڑھا و قُصُولِ  
قدر خون بند رہی ہوئی و کھا کر بروئے فرد صفحہ پولیس کی۔ اور اسی طرح آپ  
عدد گولی مسکے برادر کرتے بروئے فرد صفحہ پولیس کی اور سن عدد خون کارٹوس  
38 پورٹ سائیکل جلدہ ہم پورٹ سائیکل قُصُولِ برادر کرتے بروئے فرد کھوئی پشمال

(ii) پارچہات قمیض شہوار برنگ سفید خون الود ازان قصول نورانیہ فرسڈن و والدہ صاحبہ برو و فرم پولیس کی

(iii) طاق وقوع پٹنول میں عید CTV کمر لفت شدہ کا بارڈ ڈسک برآمد کر برو فرم پولیس کی جو بارڈ ڈسک چیک کرنے پر ناقابل استمال پایا گیا

(iv) دعویٰ خانہ تلاشی ملزم اعجاز کے قوتیہ خوشیاں سے رکتیہ ب پٹنول 30 فور ملزم برآمد کرکے جس کے میں سے تازہ چلیدن بارود کی جو آریں تھی قندہ حوزا میں لیور اہر قتل برو و فرم پولیس میں کر بندہ پارسل کی گئی

Noted  
10/9/20  
not here

(v) گویاں خوات کے بیانات نے گئے۔ ملزمان اعجاز اور پیر محمد عبداللہ اور علی خان نے عدالت آف کانسٹیب سے عبوری ضمانت کرکے جو قدرت تابع پر سونہ ہو کر جب ضابطہ گرفتار کے گئے۔

(vi) ملزم پیر محمد سیشن راج پشاور میں لقمیات کا جو قوتیہ 26/6 سے بدکرد غیر حاضر چلا آ رہا ہے۔

(vii) روز وقوع پر ملزمان عبداللہ، اعجاز، پیر محمد علی خان وقوع و دوران پر موجود تھے۔

(viii) ملزمان کے عدالت علاقہ قلمیٹ سے 2 نومبر 2011 کو پولیس حاصل کرکے دعویٰ نمائندگی پٹنول 30 فور اور ملزم پیر محمد سے پٹنول 30 اور علی خان ملزم سے بھی پٹنول 30 فور برآمد کرکے بندہ پارسل میں لیا گیا۔ برآمد شدہ خول کارٹوس وقوع و دوران سے 26/6 پشاور چھوڑ گئے جسکی روٹ کا حال جو پولیس میں ہو گیا۔  
(ix) ملزمان اور گویاں اور شہدائے بیانات قلمیٹ کے گئے تھے۔

(x) وجہ عباد کے نسبت قصول نے شب وقوع ایک روٹ روزیہ و صحت کر رہا تھا جسکا اقلہ مسائل کا مولیٰ کی گئی اور علاوہ ازیں عدلیاں نے 25/6 ضابطہ کے تحت ملزمان کو خلاف ایک شہادتہ عدالت قلمیٹ جو سال کا روٹی کی گئی



(3)

(xi) ملزمان کو عرض Confessional Statement زبردفع 164 / صاف 364 سے عذرت میں پیش کر کے مگر ملزمان عذرت میں اپنے بیانات سے خوف ہو کر دہلی جیل ورن کے دہلی۔

(xii) مقدمہ میں برخلاف ملزمان نے (سارے) کو ان کا اعلان صکل زبردفع 173 / صاف 364 دیا ہے۔ تفتیش سے ملزمان کو پتہ چلا ہے۔

ریورٹ ورن ہو کر گزارش ہے۔

INSP/OII - PS-12TG  
14 / 09 / 2020

attested  
[Signature]

Mahbubul  
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Legal Section

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66

U/D  
2/3/11

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

**Brief Facts:**

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

**Proceedings:**

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

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

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

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

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

In the statement of the IO stated that:

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

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

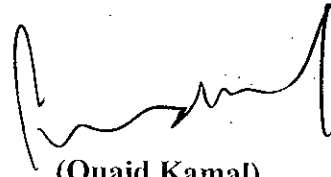
**Conclusion:**

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

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**Recommendation:**

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



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

68

**ORDER**

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


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

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

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

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

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

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

No. 7451-521 EB, dated Peshawar the, 21 / 09 / 2020.

Copy to all concerned for information and necessary action.

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