

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

SERVICE APPEAL NO. 431/2024.

Inspector Khursheed No. 163/H, Police Station Koli Pallas, Lower Kohistan.

.....Appellant.

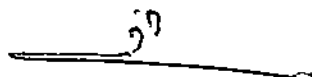
VERSUS

1. Regional Police Officer, Hazara Range, Abbottabad.
2. District Police Officer, Abbottabad.
3. District Police Officer, Lower Kohistan.

.....Respondents.

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Dy: Superintendent of Police,
Legal, Abbottabad.

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Para-wise comments on behalf of respondent No. 1 & 2.

Respectfully Sheweth.

That the respondents submit as under:-

PRELIMINARY OBJECTIONS:-

1. That the instant Service Appeal is not maintainable in the present form.
2. That the appellant is estopped by his own conduct to file the instant appeal.
3. That the appellant has not come to the Hon'ble Tribunal with clean hands.
4. That the appellant has suppressed material facts from the Hon'ble Tribunal.
5. That the instant Service Appeal is barred by law and limitation.

ON FACTS:-

1. Incorrect, the appellant while posted as ASHO PS Mirpur, on 05.10.2023 an incident of firing occurred at Banda Qazi, Mirpur, he visited the place of occurrence but failed to take necessary legal action against the dully armed persons/ individuals while the incident was witnessed by the residents of area. The appellant failed to handle the situation and did not take legal action against the culprits. Similarly, the accused namely Fareed also made his escape good from ATH Abbottabad, but he could not take action against him, he also did not report the matter. The acts and omissions of the appellant were gross misconduct in terms of Khyber Pakhtunkhwa Police Efficiency and Discipline Rules-1975 (amended 2014). Therefore, the appellant was issued charge sheet and statement of allegations vide this office memo: No. 232/PA dated 12.10.2023 to which the appellant could not give satisfactory reply and he was held guilty by the enquiry officer. (Copies of charge sheet and enquiry report are attached as Annexure "A").
2. Incorrect, proper departmental enquiry was conducted, SP Cantt, Abbottabad was appointed as enquiry officer, who conducted proper enquiry and held the charges proved. Therefore, the appellant was issued final showcause notice vide this office No. 289/PA dated 31.10.2023, the appellant failed to adduce any solid defense. Hence, he was awarded minor punishment of stoppage of 03 year increments with

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15989

Dated 23-09-24

cumulative effect vide this office OB No. 260 dated 08.11.2023. (Copy of order is attached as Annexure "B")

3. Incorrect, proper departmental enquiry was conducted. The enquiry officer collected the relevant evidence, all legal requirements were fulfilled in the departmental proceedings. The appellant was given the right of personal hearing and self-defense.
4. Incorrect, the appellant was held guilty of misconduct, therefore, he was awarded minor punishment as per law/ rules. The punishment is quite legal and maintainable.
5. In reply to this para it is submitted that the appellant preferred departmental appeal / representation against the order of punishment to the Regional Police Officer, Hazara Region, Abbottabad which was rejected/ filed by the competent authority on lawful grounds and justifications vide his office order No. 1176-78/PA dated 23.02.2024. (Copy of order is attached as Annexure "C").
6. Incorrect, the appellant is generating false stories to absolve himself from liabilities. He was proceeded against on specific allegations, which were proved in the departmental enquiry and appellant was found guilty of misconduct.
7. Incorrect, the appellant could not take legal action against the culprits and the guilt was established through strong evidence. He failed to perform his lawful duty and orders of the senior officers.
8. Incorrect, the appellant is adducing false plea, he could not prove his innocence in the departmental enquiry, rather, the charges were proved beyond any shadow of doubt. Hence, the punishment is lawful and maintainable.
9. Incorrect, the appellant could not prove any solid defense in the departmental enquiry. The enquiry officer highlighted the misconduct of appellant. The fact of the matter is that the appellant could not take legal action against the culprits and failed to perform his duties. Incident of firing took place in his presence, however, he failed to discharge his obligations against the culprits. The allegations were proved through cogent evidence.
10. Incorrect, it was established that accused Fareed escaped from the ATH. However, the appellant could not take legal action against him. Being responsible officer, it was his duty to ensure the arrest of accused Fareed at ATH Abbottabad, however, the appellant remained negligent which let the incident happen.
11. Incorrect, the appellant failed to discharge his lawful duties. Therefore, consequent upon departmental proceedings he was awarded minor punishment of stoppage of 03 year increments with cumulative effect by the district Police officer Abbottabad. The punishment is lawful and maintainable.

12. Incorrect, the appellant minor punishment of stoppage of 03 year increments with cumulative effect as per law, rules based on facts and evidence. Therefore, the punishment is quite legal, in accordance with law and maintainable.

13. Incorrect, the appellant committed misconduct for which he was awarded appropriate punishment as provided under the law/ rules.


GRUNDS:-

- a. In reply to this para it is submitted that quite legal proceedings against the appellant were initiated as warranted under the law/ rules.
- b. Legal. Moreover, the appellant committed misconduct, therefore, departmental enquiry was conducted against him under the law / rules.
- c. Incorrect, the instant service appeal is badly time barred and not maintainable under the law/ rules.
- d. Incorrect, the appellant rendered himself for departmental proceedings due to his own fault and misconduct. Lawful action was taken against him as he committed misconduct.
- e. Incorrect, the respondents with the permission of this Honourable Tribunal shall argue any other point at the time of hearing of the case.

PRAYER.

In view of above, it is most humbly prayed that the instant Service Appeal does not hold any legal force which may graciously be dismissed with costs.

(Umar Tufail, PSP)
District Police Officer,
Abbottabad.
(Respondent No. 2)


(Tahir Ayub Khan, PSP)
Regional Police Officer
Hazara Region, Abbottabad
(Respondent No.1)

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AFFIDAVIT.

We, do hereby affirm on oath that the contents of written reply are true to the best of our knowledge & belief and nothing has been concealed from the honorable Service Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off/ cost.



(Umar Yufail, PSP)
 District Police Officer,
 Abbottabad.
 (Respondent No. 2)


 (Tahir Ayub Khan, PSP)
 Regional Police Officer
 Hazara Region, Abbottabad
 (Respondent No.1)

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....Respondents

AUTHORITY LETTER

We, the above respondents do hereby authorize and allow Mr. Muhammad Zahoor DSP Legal, Abbottabad to file reply/ parawise comments on our behalf in the honorable Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad, in service appeal mention above and do whatever is needed in the court.

(Umar Tufail, PSP)
District Police Officer,
Abbottabad
(Respondent No. 2)

(Tahir Ayub Khan PSP)
Regional Police Officer,
Hazara Region Abbottabad
(Respondent No. 1)

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Annexure "A"

CHARGE SHEET

- 1). I, Umar Tufail (PSP) District Police Officer Abbottabad as competent authority hereby charge you SI Khurshed No. 163 as explained in the attached statement of allegations.
- 2). You appear to be guilty of misconduct under Police Disciplinary Rules 1975 (amended 2014) and have rendered yourself liable to all or any of the penalties specified in the said Police Disciplinary Rules.
- 3). You are therefore, directed to submit your written defense within seven days on the receipt of this Charge Sheet to the Enquiry Officer.
- 4). Your written defense, if any shall reach the Enquiry Officer with in the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.
- 5). Intimate whether you desire to be heard in person or otherwise.
- 6). A statement of allegations is enclosed.

(Umar Tufail) PSP
District Police Officer
Abbottabad

Attested


7

DISCIPLINARY ACTION

I, Umar Tufail (PSP) District Police Officer Abbottabad as Competent Authority of the opinion that you **SI Khursheed No. 163** rendered yourself liable to be proceeded against as you committed the following act/omission within the meaning of Police Disciplinary Rules 1975 (amended 2014).

STATEMENT OF THE ALLEGATIONS

It has been reported that on 05-10-2023 an incident of firing was occurred at Banda Qazi Mirpur and you SI Khursheed No. 163 while posted as ASHO at PS Mirpur has visited the place of occurrence but being responsible has failed to take necessary legal action against duly armed persons/ individuals while the incident was witnessed by the residents of the area. You being responsible has failed to handle the situation nor took legal action against the culprits. Furthermore, the accused namely Fareed who made his escape good from ATH Hospital but no action was taken against him, neither any report was incorporated. All this your inefficiency, ill-will, rash negligence in performance of official duty, which leads to gross misconduct on your part, under E & D rules (amended 2014). Hence Charge sheeted.

- 2). For the purpose of scrutinizing your conduct with reference to the above allegations SP Tufail is hereby appointed as Enquiry officer.
- 3). The Enquiry Officer shall in accordance with the provision of this ordinance, provide reasonable opportunity of hearing to you, record finding and make within 25 days of the receipt of this order, recommendation as to punishment or the appropriate action against you.
- 4). You are hereby directed to attend the proceedings on the due date, time and place fixed by the Enquiry Officer.

(Umar Tufail) PSP
District Police Officer
Abbottabad

No: 32 /PA, Dated Abbottabad the 12/10 2023.

Copy to:

1. Enquiry Officer for initiating proceedings against the defaulter officer under provisions of the Police Disciplinary Rules 1975 (amended 2014) and submit findings within stipulated period.
2. **SI Khursheed No. 163** (delinquent officer/ official).

Attested
[Signature]

ALLEGATIONS:

A departmental enquiry was initiated against SI Khursheed Ahmad No. 163 vide your office No. 232 dated 12-10-2023 with the allegations that "It has been reported that 05-10-2023 an incident of was occurred at Banda Qazi Mirpur and He SI Khursheed Ahmad No. 163 the then ASHO PS Mirpur have the place of occurrence but being responsible have failed to take necessary legal action duly armed persons/individuals while the incident was witnessed by the residents of the area. Being supervisory officer, failed handle the situation nor took legal action against the culprits. Furthermore, the accused namely Fareed who de his escape good from ATH Hospital but no action was taken against him, neither any report was incorporated. All this inefficiency, ill-will rash negligence in performance of official duty, which leads to gross conduct on their part, under police E & D rules (amended 2014). Hence Charge sheeted

PROCEEDINGS:

On above cited allegations a departmental enquiry was initiated against the delinquent officials & undersigned was appointed as enquiry officer.

The undersigned proceeded accordingly & called the complainant party in the office, namely Raheel s/o M. Sabir & M. Yasir s/o M. Sadique. They were heard in person and statements were recorded which are efed as fallow:-

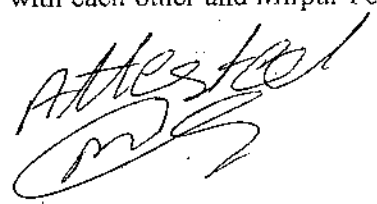
- Alleged accused namely Haider Shah s/o Syed Fida Hussain Shah alongwith other accused armed with weapons attacked village of the complainant party on 05-10-2023.
- The subject accused in connivance with the staff of revenue authority got demarcation order of the dispute landed property from AC Revenue office.
- Local Police of PS Mirpur including SHO & ASHO sided with the opponent party and ignored their indiscriminate firing at complainant's house. Instead, local police arrested Naveed, Waseem and Raheel from complainant's party from the spot and turned blind eye to illegal activities of the opponent's party despite many witnesses of the incident.
- Locals of the area then themselves got hold of one of the accused namely Fareed with weapon who was then taken to DPO Abbottabad office and then to SSP Traffic Warden office because of the biased attitude of Mirpur Police in the whole episode. The alleged accused alongwith weapon was then handed over to Mirpur Police for further legal proceeding but he escaped from ATH Hospital mysteriously and no action was taken against him.
- Concerned DSP circle was also tried to contact multiple times but no legal help was provided by him. Mirpur Police instead of proceeding against the accused party Mr. Haider Shah registered fake case vide FIR NO. 1211 u/s 365/506-II/147/148 PPC against the complainant party and registered another FIR No. 1218 u/s 506-II against the accused party on the application of the complainant party as formality.

The undersigned also called the following delinquent Police officials to the office of undersigned, and their statements were also recorded.

01. SI Muhammad Ali Khan No. 174 the then SHO PS Mirpur.
02. SI Khursheed Ahmad No. 163 the then ASHO PS Mirpur.
03. IHC Naveed Ahmad PS Mirpur.
04. FC Anees PS Mirpur.
05. ASI Aurangzeb IO PS Mirpur.
06. MHC Shahid PS Mirpur.
07. Muhammad Tariq (Driver PS Mirpur)

Brief summary of the incident as transpired from the statements of Police officials is that a written order of AC Revenue vide Endst No. 905-908/AAC(R) dated 27-09-2023 was received for necessary assistance during demarcation of land bearing Khasra No. 623/621/622/618/619 measuring 15-K 08-M situated at Moza Banda Qazi which was further marked to SI Khursheed Ahmad ASHO PS Mirpur, He along with police party and applicant Haider Ali Shah and revenue staff visited the spot for demarcation.

Meanwhile M. Navced s/o M. Akram & Waseem s/o Saleem resident of Banda Qazi reached the spot & started misbehaving with applicant party in the presence of local Police. To maintain law & Order situation they were arrested u/s 107/151 CrPC and sent to PS Mirpur. The local Police along with revenue staff left the spot after demarcation process, however, both parties started armed confrontation with each other and Mirpur Police had to interfere again in the dispute.

Attested


Meanwhile Haider Ali Shah moved an application against complainant party that they have servant namely Fareed and also provided a video clip in support of his application/grievances. The complainant advised the complainant (the persons present in police station) to produce/release the hostage but the complainant released till 17:40 (opportunity of 01 hours and 40 minutes was given to them) but they failed to produce the hostage and case vide FIR No. 1211 dated 05-10-2023 u/s 365/506-II/148/149 was registered against complainant party against Ahmad, Waqar, Raheel, Yasir, Asif Ghafoor, Zaheer, Waqas etc.

After registration of the case, the complainant party produced the hostage namely Fareed before SSP Traffic Warden who was further handed over to PS Mirpur through PS Cantt. He was found injured and further taken to Hospital for medical treatment. Meanwhile (at about 20:00 hrs) complainant Yasir moved an application regarding firing on them by opponent party which was further marked to SI Khurshced Ahmed for enquiry and subsequently case vide FIR No. 1218 dated 06-10-2023 U/S 506-II/34 was registered after codal formalities (video clip was also taken in custody for social media) against Haider Shah, Malik Mujahid and Fareed. Both the cases were handed over to investigation staff for further investigation/ proceedings. (statement's, photographs & videos are enclosed).

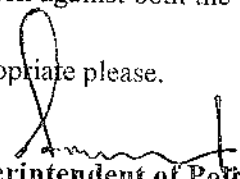
FINDINGS:


- Keeping in view the above mentioned facts, the undersigned has inferred following observation:-
- There is a civil nature dispute over subject property between the parties and case is subjudice before the court.
 - The local Police received the assistance order for demarcation purpose who then visited the spot along with revenue staff for demarcation of disputed land.
 - Locals of the area tried to interrupt the demarcation process on one pretext or another, however, Revenue staff along with Mirpur Police left the spot after completing the process. During this process, accused namely Naveed, Waseem and Raheel from complainant party were arrested by Mirpur Police u/s 107/151 CrPC but none from the opponent party for the reason best known to Police.
 - Mirpur Police then registered FIR No. 1211 u/s 365/506-II/148/149 PPC against the complainant party only despite the fact that both the parties had resorted to violence and firing and same fact was in the knowledge of SHO and ASHO PS Mirpur. Moreover, SSP Traffic Warden in his preliminary enquiry report has also incorporated this fact that he was informed by SHO Mirpur that both parties were involved in armed violence and directions were given to SHO Mirpur for legal action against both the parties. However, FIR against exclusively the complainant party despite clear directions from higher offices is beyond comprehension.
 - A video was presented before the enquiry officer in which one of the person from opponent party namely Fareed can be seen being beaten by the complainant party who was later-on produced before the SSP Traffic Warden and was then handed over to Mirpur Police alongwith weapon. He however, managed to sneak from ATH Hospital during medical and no proceeding was done against him regarding being armed at the spot which raises serious question about the partiality of Mirpur Police.
 - Mirpur Police then registered an FIR No. 1218 u/s 506-II PPC on the application of complainant party against the opponent party next day after enquiry with gap of 25 hours & 50 minutes inspite of the fact that 02 FIR's of the same incident cannot be registered resulting in further complication of the matter. The IO of the case also endorsed the fact that it was the same incident of which 02 different FIR's were registered and both the parties were involved in this armed conflict as numerous empty shells were recovered from the spot.

CONCLUSION:-

In the light of above discussion and available videos/ documentary evidences, the undersigned has come to conclusion that the act of SHO and ASHO Mirpur by taking action against the one party i.e complainant party in a disputed property matter is against all norms of justice and fair play. Mirpur Police should have acted judiciously and impartially as per directions given by higher offices by taking legal action against both the involved parties.

Submitted for further proceeding and suitable punishment, if deem appropriate please.


 Superintendent of Police,
 Cantt, Abbottabad.



Eed-ee

(10)

Annexure "B"

ORDER

This office order will dispose-off the departmental enquiry against SI Khursheed No. H/ 163. It has been reported that on 05-10-2023 an incident of firing was occurred at Banda Qazi Mirpur and he while posted as ASHO at PS Mirpur has visited the place of occurrence but being responsible has failed to take necessary legal action against duly armed persons/ individuals while the incident was witnessed by the residents of the area. He being responsible has failed to handle the situation nor took legal action against the culprits. Furthermore, the accused namely Fareed who made his escape good from ATH Hospital but no action was taken against him, neither any report was incorporated. All this showed his inefficiency, ill-will, rash negligence in performance of official duty, which leads to gross misconduct on his part, under E & D rules (amended 2014).

He was issued with Charge Sheet along with statement of allegations vide No. 232/PA dated 12-10-2023 and SP Cantt Abbottabad was appointed as Enquiry Officer to scrutinize the conduct of delinquent official. Enquiry Officer conducted proper departmental enquiry against the delinquent official and recorded statements of all concerned. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein allegations have been proved against delinquent official. He was issued with Final Show Cause Notice vide No. 289/PA dated 31-10-2023. He was given ample opportunity of hearing but he had nothing plausible to state in his defense.

Therefore, in exercise of the powers vested in the undersigned Police Disciplinary Rules-1975 (Amended 2014), I, Umar Tufail, PSP, District Police Officer, Abbottabad, as a competent authority, am constrained to award him the punishment of Stoppage of 03 years increments with accumulative effect with immediate effect.

Order announced.

OB No. 260

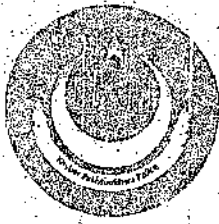
Dated 8-11-23

[Signature]
District Police Officer
Abbottabad

CC.

1. Pay Officer DPO Office.
2. Establishment Clerk DPO Office Abbottabad, alongwith Enquiry containing (2) pages for completion of record.

Attested
[Signature]



OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

0992-9310021-22

0992-9310023

r.r.pohazara@gmail.com

NO: 1176-78/PA DATED: 23/02/2024

ORDER

This order will dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkawa Police Rules, 1975 submitted by SI Khurshid No. 163/H (now Inspector) against the order of punishment i.e. stoppage of three years increments with cumulative effect awarded by DPO Abbottabad vide OB No.260 dated 08.11.2023.

"Brief facts leading of the instant request are that on 05-10-2023 an incident of firing occurred at Banda Qazi, Mirpur. He while posted as ASHO PS Mirpur visited the place of occurrence but failed to take necessary legal action against duly armed persons/individuals while the incident was witnessed by the residents of the area. He failed to handle the situation and did not take legal action against the culprits. Furthermore, the accused namely Fareed made his escape good from ATH but no action was taken against him neither any report was incorporated at Police Station"

The appellant was issued charge sheet along with summary of allegations and SP, Cantt, Abbottabad was deputed to conduct departmental enquiry. The EO held the appellant responsible of misconduct in his findings and recommended him for appropriate punishment. He was issued final show cause notice and given reasonable opportunity of defense, however he failed to advance any cogent reason. Consequently, DPO Abbottabad awarded him punishment of stoppage of three years increments with cumulative effect. Hence, the appellant submitted this present appeal.

After receiving his appeal, comments of DPO Abbottabad were sought and examined/perused. The undersigned called the appellant in OR and heard him in person. He has been provided reasonable opportunity of defense, however the appellant failed to advance any cogent justification in his defense. He, being Addl. SHO Mirpur failed to take legal action against the culprits. Hence, the punishment awarded by the competent authority seems reasonable.

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Therefore, in exercise of the powers conferred upon the undersigned under Rule 14 (a) of Khyber Pakhtunkhwa Police Rules, 1975 the instant appeal is hereby rejected/ filed with immediate effect.

MUHAMMAD IJAZ KHAN (PSP)
Regional Police Officer
Hazara Region, Abbottabad

No. 1176-78 /PA, dated Abbottabad the 23-2 /2024.

- 1. District Police Officer, Abbottabad for information and necessary action with reference to his office Memo No 2464/PA dated 26-12-2023. Service book, service roll and Fuji Missal containing enquiry file of the appellant is returned herewith for record.
- 2. District Police Officer, Kohat Pallas for information and necessary action.

District Police Officer,
Abbottabad

Attested