

11.01.2019

Learned counsel for the appellant and Mr. Zia Ullah
learned Deputy District Attorney for the respondents present.
Learned counsel for the appellant requested for
adjournment. Adjourned. To come up for arguments on
08.02.2019 before D.B.


Member



Member

08.02.2019 Appellant alongwith counsel present. Mr. Riaz Ahmad
Paindakheil, Assistant Advocate General alongwith Mr. Atta-ur-
Rehman, S.I (Legal) for the respondents present. Arguments heard
and record perused.

Vide our detailed judgment of today consisting of five pages
placed in connected Service Appeal No. 501/2018 "Mudasir Khan
Versus The Provincial Police Officer, Khyber Pakhtunkhwa,
Peshawar and two others, we partially accept the appeal, set-aside the
impugned order. However, the respondent-department is at liberty to
conduct de-novo inquiry in the mode and manner prescribed by rules
within a period of ninety days from the date of copy of receipt of this
judgment. Parties are left to bear their own costs. File be consigned to
the record room.


ANNOUNCED
08.02.2019


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

17.08.2018

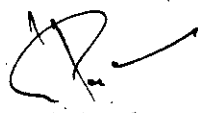
Mr. Khalid Rehman, Advocate counsel for the appellant present. Mr. Atta Ur Rehman, SI alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply on behalf of the respondents submitted which is placed on file. To come up for rejoinder, if any, and arguments on 16.10.2018 before d.B.


Chairman

16.10.2018

Clerk to counsel for appellant and Mr. Zia Ullah learned Deputy District Attorney present. Clerk to counsel for appellant submitted rejoinder which is placed on file and seeks adjournment as learned counsel for appellant is not in attendance. Granted. To come up for arguments on 21.11.2018 before D.B.


Member


Member

21.11.2018

Since 21.11.2018 has been declared as public holiday on account of 12th Rabi-ul-Awal. Therefore, the case is adjourn.. To come on 11.01.2019 before D.B.

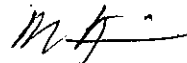

Reader

22.06.2018

Counsel for the appellant Saleem Khan present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department. It was further contended that during service the appellant was imposed major penalty and he was reverted from the rank of Sub-Inspector to Assistant Sub-Inspector vide order dated 06.10.2017 on the allegation that he shown slackness in his official duty in case FIR No. 235 dated 13.04.2017 under sections 302/14/149/7ATA Police Station Sheikh Maltoon. It was further contended that the appellant filed departmental appeal on 13.10.2017 which was rejected on 02.04.2018 hence, the present service appeal on 10.04.2018. It was further contended that neither proper charge sheet and statement of allegation was served upon the appellant nor proper inquiry was conducted nor opportunity of hearing and defence was provided to the appellant and the appellant was condemned unheard therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days thereafter notice be issued to the respondents for written reply/comments for 17.08.2018 before S.B.




Appellant Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi)
Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 502/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10/04/2018	<p>The appeal of Mr. Saleem Khan presented today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	11/04/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26/04/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	26.04.2018	<p>Appellant in person present. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on <u>22.06.2018</u> before S.B.</p> <p style="text-align: right;"> Reader</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 502 /2018

Salim Khan Appellant

Versus

The PPO and others Respondents

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Appellant

Appellant

Through

Khaled Rahman
Advocate,
Supreme Court of Pakistan
3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off. Tel: 091-2592458
Cell # 0345-9337312

Dated: 10 /04/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 502 /2018Salim Khan

ASI formerly SI,

Police Lines, Mardan Appellant

VERSUS

1. The Provincial Police Officer
Khyber Pakhtunkhwa, Peshawar
2. The Regional Police Officer,
Mardan Region, Mardan.
3. The District Police Officer,
District Mardan Respondents

Khyber Pakhtunkhwa
Service TribunalDiary No. 522Dated 10-4-2018

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORIGINAL ORDER DATED 6.10.2017 PASSED BY RESPONDENT NO.3 WHEREBY APPELLANT WAS IMPOSED UPON THE MAJOR PENALTY OF REVERSION TO THE RANK OF ASI WITH IMMEDIATE EFFECT AGAINST WHICH APPELLANT PREFERRED DEPARTMENTAL APPEAL TO RESPONDENT NO.2 ON 13.10.2017 WHICH WAS UNLAWFULLY REJECTED VIDE IMPUGNED APPELLATE ORDER DATED 02.04.2018.

PRAYER:

Filed to-day

Registrar

10/4/18

On acceptance of the instant appeal, the impugned original order dated 06.10.2017 passed by Respondent No.3 and the impugned appellate order dated 02.04.2018 passed by Respondent No.2 may graciously be set aside and appellant may be restored to the his substantive rank of SI w.e.f. 06.10.2017 with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That the appellant joined the Police Force on 25.07.1994. Later on, he was promoted to the rank of SI in 2016 and has rendered meritorious service for a period of 24 long years. During the service, appellant has not ever been departmentally proceeded against nor even minor penalty has ever been imposed upon him, thus the service of the appellant remained unblemished, spotless throughout.
2. That appellant while posted at the Police Station Sheikh Maltoon a case FIR No.235 dated 13.04.2017 (*Annex:-A*) was lodged against the culprits of the brutal murder of deceased Mashal Khan at Abdul Wali Khan University, Mardan who was the student of the said University. During the entire tragic episode, the appellant tried his level best to retrieve the deceased and succeeded to recover the dead body otherwise a huge mob of 2000 students and employees were going to burn the body of deceased and in course of such efforts, the appellant received blows, strokes and kicks of the mob participants.
3. That since at the time of occurrence the high-ups were also present rather reached before the arrival of the appellant but unfortunately, the shocking incident occurred in such dramatic manner that nobody could reach in time inas much as he had concealed himself in a hostel room of which nobody knew and it was believed that he had gone out of the University Campus. It has been a prevalent practice in this country that always the burden is thrown at the lowest side. To this effect the story was published in different Daily Newspapers (*Annex:-B*) reporting that the high-ups of the Police force had not probed the case in accordance with law and had also mentioned that the Department was busy to save the senior Police Officers in the instant case, scapegoating junior officers.
4. That to augment the stance of the appellant it is significant to add here that a Professor namely Ziaullah Hamdard who was performing duties in the Abdul Wali Khan University on the day of occurrence in his statement (*Annex:-C*) recorded under Section-164 before a Judicial Magistrate had categorically stated to have requested the SSP Operations who was sitting in the University to save the

innocent soul but invain.

5. That after the occurrence, the appellant was issued Charge Sheet and Statement of Allegations on 08.08.2017 (*Annex:-D*). Since the charges were baseless, ill-founded, based on malafide and conspiracy and also discriminative, therefore, the appellant denied the charges wholesale and submitted his reply (*Annex:-E*) thereby explaining his position. The reply to charge sheet may be considered as a part and parcel of this appeal.
6. That thereafter the so called enquiry was conducted without associating appellant with proceedings which was conducted by the Sub-Divisional Police Officer, Takht Bhai, Mardan who submitted his report (*Annex:-F*) on 28.09.2017 and recommended appellant for dismissal from service.
7. That without issuing Final Show Cause Notice and affording opportunity of personal hearing, vide impugned original order dated 06.10.2017 (*Annex:-G*) appellant was imposed upon major punishment of reversion to the rank of ASI with immediate effect.
8. That being aggrieved of the order *ibid*, appellant preferred a Departmental Appeal (*Annex:-H*) to Respondent No.2 on 13.10.2017. However, the appellate authority instead of deciding the same referred the same to Respondent No.1 with observation that the undersigned conducted enquiries, therefore, could not proceed vide letter dated 10.01.2018 (*Annex:-I*). In response, Respondent No.1 vide letter dated 19.01.2018 (*Annex:-J*) asked for the requisite enquiry reports conducted by him but Respondent No.2 vide letter dated 02.02.2018 (*Annex:-K*) observed that the same was confidential. Thereafter, Respondent No.2 vide letter dated 26.03.2018 (*Annex:-L*) remanded the matter back to Respondent No.2 for decision being appellate authority.
9. That finally vide impugned appellate order dated 02.04.2018 (*Annex:-M*) the departmental appeal of appellant was unlawfully

rejected. Hence the instant appeal on the following amongst other grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4&10-A of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That under the Police Rules, when high Police officers are present particularly on occasions of unruly mobs then it is the higher officer who is to proceed act and order. It is an admitted position that at the time of occurrence, the SSP Operations, concerned DSP were all available and the appellant was subject to their direction at that time.
- C. That without prejudice to the ground mentioned above, it is submitted that the occurrence took place in such circumstances that before any action could be taken to save the deceased, the action was carried out in utter haste. There was a uncontrollable mob of around 2000 students and employees supported by political workers who had taken the entire University in their control. It was widely rumored that the deceased has run out of the University premises as his whereabouts were not known for a long time. Somehow, some of the members of the mob located him in a hostel room which was situated at a distance of one kilometer from the Administration Block where all the staff, Police members were available. On gaining the information that the students have broken the room and brought out the deceased, the entire police officers and officials ran towards the hostel, some in vehicles while some including the appellant on foot. However, the deceased was instantly shot dead on the spot by the students as soon as he was found and then thrown down the stairs. During severe beating, pulling, pushing, the Police managed to take possession of the deceased by bringing it to the vehicle but the mob was not allowing the vehicle to proceed and later on the vehicle was drew back and the deceased was put in the back Trunk (Diggy) of the car and was stealthily drew out of the

premises.

- D. That no regular inquiry was conducted into the case nor any documentary or oral evidence was recorded in presence of the appellant nor he was provided opportunity of hearing. The entire action was taken at the back of the appellant and thus he was condemned unheard. It is a settled law that where a major penalty is to be imposed then regular inquiry is necessary which has not been done in the case in hand, hence the impugned penalty is ultra vires, void and thus not maintainable.
- E. That in the impugned order no time limit for the continuation of reversion has been specified, which is a legal requirements under FR-29 therefore, the impugned orders are nullity in the eye of law and liable to be set aside.
- F. That the appellant has been discriminated because other senior Police Officers who were more responsible for the tragedy were let off the hook for malafide reasons while the appellant was made an scapegoat which amounts to utter discrimination.
- G. That the appellant was not issued a final Show Cause Notice which is a mandatory requirement of law and he was also not provided opportunity of personal hearing which too is essential and thus the appellant was condemned unheard rendering the impugned punishment void ab-initio.
- H. That the appellant has served the Department for about 24 years and has consumed his precious life in the service and keeping in view his longstanding unblemished service the imposition of the major penalty in peculiar facts and circumstances of the case is harsh, excessive and does not commensurate with the guilt of the appellant.
- I. That appellant would like to offer some other grounds during the course of arguments.

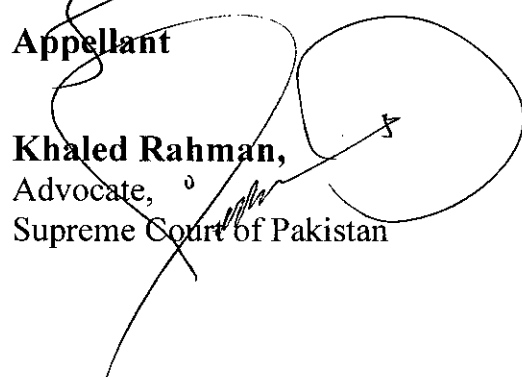
It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.



Appellant

Through



Khaled Rahman,
Advocate,
Supreme Court of Pakistan

Dated: 10/04/2018

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ANSWER B

میں نے اس وقت تک نہیں دیکھا ہے کہ کوئی شخص اس قدر بے پرواہ ہو کر اپنے دوستوں کے ساتھ برتاؤ کرے۔

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ACCEPTED

امریکا ہوا ہے، رحمان امین حسین

9-

تھے وہ دوکان بند ہو گئی، پتھر مارا جاتی

اشفاق حسین، اعلیٰ افسران کو کلین چٹ

دوایس ایچ اوز کی تنزیلی کے احکامات

پشاور (صبح نیوز) اشفاق خان گل کیس کی انکوائری
کے لئے خواتین کے روز یونیورسٹی میں موجود پولیس
میں افسران کو کلین چٹ دئے ہوئے دوایس ایچ اوز کی
حکایت بددیہ کے اشفاق گل کیس میں
پشاور کے ایک ایجنٹ نے ایک ایجنٹ کے بطور گواہ
دئے ہیں کہ وہ ایک ایجنٹ کی تھی

ATTESTED

ہوئی
-10-
ان
کا

انہوں نے معافی مانگنے میں تیار ہوئے اور
پہلے گھر میں رہنے کے بعد پھر
میں کی جاتی تھیں ان کے پاس
میں تھے

تاہم بیٹی نے ان سے بیانات مانگے
وقت وہ جو وہ ان سے کہنے لگی
آپ شہید ہوئے ہیں اسے میں نے
نے بے اداسی سے سنا اور سب
بیٹی کے احکامات جاتی رہیں
سربراہی میں بیٹی نے ماتحت اہلکاروں
اور سزا پانے والے اہلکاروں کی

بھی کوئی پیش رفت نہ ہو
اور خرم شہزاد کی حنا
ساتھ لیاقت باغ

ATTESTED

In the Court of Mohib-ur-Rehman, Judicial Magistrate, Mardan.

State vs Wazirhat etc

PC No. 833 Dated: 13.4.17

U/s 302/324/148/149/297/109/127 PPC-7ATA

Police Station: Sheikh Talab, Mardan.

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ADWBY C

Statement of Zia Ullah Hamdani s/o Shafi Ullah R/o Shana, Mohallah
Yousaf Khel, District Swabi u/s 164 CrPc. (CNIC # 16202-2029730-5) :-

On oath stated that I belong to a lower middle class and hail from Swabi. My family is religious one and I am Hafiz-e-Quran. I am lecturer at Abdul Wali Khan University, Mardan and my subject is Journalism. I studied Tafseer of Holy Quran from Mary International High School, Peshawar. I got appointed in the varsity as Lecturer in Journalism and Mass Communication in Jan, 2013 and till my resignation date, I was posted over there. In the five TV Programme of "Raj Shazeb Khanzada Kabalti", I announced to resign from my service. I was residing in Teacher's Faculty Hostel inside varsity. Deceased Mashal was known to me for the last two (02) years and he was the topper of Class. Abdullah and Zubair were also brilliant students of the class. I used to visit Mashal at his room once a blue moon and he also came alike. Mashal was a humanist, interested in socialism and was a nationalist in political affiliation's. He liked sophism and believed in philosophy of non-violence. I never heard Mashal talking impiously of Supreme-Being. It would be unjust to call Mashal a loony and profligate as he never committed blasphemy. He was a smily face and had leadership qualities. I personally don't hold any administrative portfolio in Varsity. On 13.04.2017, I was in hostel and at some .00 AM, I was called by the office Assistant Ancees Amin through phone to come immediately to the Journalism Deptt in lieu of an sue that some students have gathered and are threatening to

21/4/17

Mohib-ur-Rehman
Judicial Magistrate
C-1V, Mardan

(Witness 2)

ATTESTED

The Court of Mohib-ur-Rehman, Muz Mardan

Statement No 164/2017

Contd. ... Page 4/2

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Kar Mashal and Abdullah and that Madam Sana is there in Dept. I rushed to the Dept to find out the Controversy. I reached there and saw some journalism Dept students alongwith others in Clerk's office while Madam Sana and Abdullah were inside the Clerk's office of Ghisiel Zamani. We opened Chairman's office and told the angry students to come inside. Rashed Zaman, Anves Amin and Farid were with me in office. The students complained that Mashal and Abdullah had launched anti-Islamic propaganda on social-media. They further told that Mashal is a Russian Agent and is being funded by Russia. I told the students that it is the duty of Intelligence Agencies to keep surveillance over such activities and to which, we are not bound for. I also demanded proof but no one gave it. One of the students told that he and Mashal had a tour of Baluchistan some two months back where Mashal used indecent words about Prophet Dawood (A.S). The other student told that Mashal had huge amount in possession. Wajahat told that Mashal also had addressed irreverently Bibi Zainab (RA). Sensing the gravity of situation, I deemed it appropriate dispersing the aggressive students and told them to leave. Meanwhile, Prof. Farooq and Prof. Idrees came inside. They were also told of the story in brief. Prof. Idrees stood up and told that we are all Muslim's and will justify Mashal. I argued with Prof. Idrees and suddenly, an employee came and told that he will kill Mashal even at the cost of his service. Students suddenly flared up and chanted slogans of Allah-o-Akbar. Mashal texted me that these people are politically motivated and he has nothing to do with Director Administration. Pr. Rafandiar was called and when he came, I complained of the employees conduct. He, on turn, called Police. He also told me to address a Confidential Report Registrar. DSP Harder also came alongwith Cops and he was

Mohib-ur-Rehman
Judicial Magistrate/
CJ-IV, Mardan

W
20/11/17


(withheld sign)


ATTESTED

The Court of JMC Mohib-ur-Rehman, Mardan

(Page # 03) Contd

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Also informed. We told him that we want to rescue Abdullah, who is hiding in Chairman's office wash room but before explaining the whole matter, students started hitting the doors and window-panes and broke door of washroom. They beat Abdullah who sustained injuries but fortunately, was rescued by police and taken to hospital. Later on, I went to Faculty Hostel where, I saw some 15 to 20 students who surprised me. They thought I have locked Mashal inside my room in order to save him. They forced me to open room and entered angrily, breaking cup-board and windows but couldn't find Mashal. They alleged that I am a hypocrite, saving an atheist but I negated in toto. Then, to the utmost dismay of my fortune, Mashal texted me and told that he was still inside the hostel, though I was told by someone earlier that Mashal had gone from Varsity Premises. Angry students noticed message of Mashal and snatched my phone and locked me inside. Sr. Jafil came and opened my room where-from, I proceeded to the Administration office. There i.e. inside the office of Administration, an SSP operation, Mardan was sitting with the professors. Some officers of Administration were also present. I earnestly requested the Urdu-Speaking SSP Operations Mardan to save an innocent soul as he could but he replied that his SSP would resolve the matter. I also told him that Mashal is alive and in hostel as he texted me some minutes back but SSP put responsibility over his ASP. Being dejected, I proceeded to Vice Chancellor's office where, Sr. Saad ul Islam told that a boy has expired. I inquired of name of deceased and he told, Mashal died. I prayed for the soul of Mashal. DSP Kamia came and through his phone, I talked to RPO Mardan as DSP told. The RPO that Hamdard wants to talk to you. Later on, I was taken to RPO and DIG Mardan in police security where, I met them and afterwards, went to Peshawar. As the Varsity Administration was in conscious knowledge of issue, they could prevent # lynching of Mashal at mob's hand. I didn't saw Mashal's dea

21-4-17

Mohib-ur-Rehman
Judicial Magistrate
C.J. - IV, Mardan

(Signature)

CONFIDENTIAL

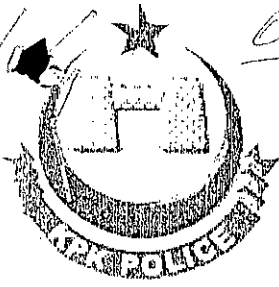
Also informed we told him that we want to rescue Abdullah, who is hiding in Chairman's office wash room but before explaining the whole matter, students started hitting the doors and window-panes and broke door of washroom. They beat Abdullah who sustained injuries but fortunately, was rescued by police and taken to hospital later on. I went to Faculty Hostel where, I saw some 15 to 20 students who surprised me. They thought I have locked Mashal inside my room in order to save him. They forced me to open room and entered angrily, breaking cupboard and windows but could not find Mashal. They alleged that I am a hypocrite, saving an atheist but I regretted in toto. Then, to the utmost dismay of my fortune, Mashal texted me and told that he was still inside the hostel, though I was told by someone earlier that Mashal had gone from Varsity. Angry students noticed message of Mashal and snatched my phone and locked me inside. Mr. Jalil came and opened my room where-from, I proceeded to the Administration office. There i.e. inside the office of Administration, an SSP operation, Mardan was sitting with the professors. Some officers of Administration were also present. I earnestly requested the residue-speaking SSP Operations Mardan to save an innocent soul as he could but he replied that his SSP would resolve the matter. I also told him that Mashal is alive and in hostel as he texted me some minutes back, but SSP put responsibility over his DSP. Being dejected, I proceeded to Vice Chancellor's office where, Mr. Saad ul Islam told that a boy has expired. I inquired of name of deceased and he told, Mashal died. I prayed for the soul of Mashal. DSP Kamra came and through his phone, I talked to RPO Mardan as DSP told the RPO that Hamdard wants to talk to you. Later on, I was taken to RPO and DIG Mardan in police security where, I met them and afterwards, went to Peshawar. As the Varsity Administration was in conscious knowledge of issue, they could prevent the lynching of Mashal at mob's hand. I didn't see Mashal's dead

21.4.17

Mohib-ur-Rahman
Judicial Magistrate
CJ-IV, Mardan

(Signature)

ATTESTED



OR 3/17

OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpo_mardan@yahoo.com
Facebook: District Police Mardan
Twitter: @dpomardan

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No. 774345 /PA

Dated 8/8/2017

DISCIPLINARY ACTION

I, Dr. Mian Saeed Ahmad (PSP), District Police Officer Mardan, as competent authority am of the opinion that SI Saleem Khan, himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Rules, 1975.

STATEMENT OF ALLEGATIONS

Whereas, SI Saleem Khan, while posted as SHO Police Station Sheikh Maltoon (now Police Lines Mardan), on 13.04.2017 one Mashal Khan son of Muhammad Iqbal Khan, a student of Journalism Department Abdul Wali Khan University Mardan who was lynched by a mob of students on account of unconfirmed charges of blasphemy while, on receipt of the information he arrived to the University at 1305 hours and remained till the end of incident however, during the course of preliminary enquiry conducted by the Worthy Regional Police Officer Mardan, it was found that he has shown slackness in disposal of his official duty and failed to take concrete steps against the agitating students resultantly, the unfortunate mob justice incident, took place.

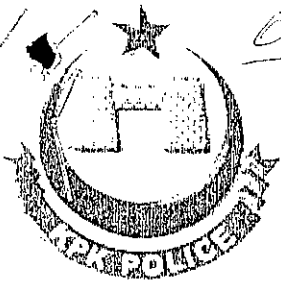
For the purpose of scrutinizing the conduct of the said accused Officer with reference to the above allegations, ASP T/Bhai is nominated as Enquiry Officer.

The Enquiry Officer shall, in accordance with the provision of Police Rules 1975, provides reasonable opportunity of hearing to the accused Police Officer, record/submit his findings and make within (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused Officer.

SI Saleem Khan is directed to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer.

ATTACHED

(Dr. Mian Saeed Ahmad) PSP
District Police Officer,
Mardan.



OR 13/17

OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

17-

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpo_mardan@yahoo.com
Facebook: District Police Mardan
Twitter: @dpomardan

No. 774345 /PA

Dated 8 / 8 /2017

DISCIPLINARY ACTION

I, Dr. Mian Saeed Ahmad (PSP), District Police Officer Mardan, as competent authority am of the opinion that SI Saleem Khan, himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Rules, 1975.

STATEMENT OF ALLEGATIONS

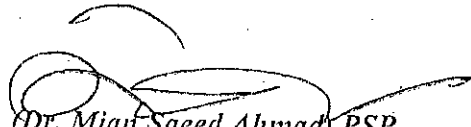
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SI Saleem Khan is directed to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer.

ATTESTED


(Dr. Mian Saeed Ahmad) PSP
District Police Officer,
Mardan.

مجموعہ خارجہ سہ ماہی 44-7743 شمیرہ سہ ماہی فروری 1977ء 13

گومین ہنری میں ڈیوٹی NTS کے سپورٹس کلب کی شیخ مینوں میں موجود تھا۔ کہ اس دوران
DSF/SMI میں داخلہ دے کہ گارڈن کسی (AWK) میں درج ہو۔ صحت اور ہم یونیورسٹی پیم کر
کے لئے کیا ہے۔ اور اسے انڈر ڈیوٹی کے لئے طلبہ کو کثیر تعداد میں جمع (پیرک جرنلزم ڈیپارٹمنٹ میں
اختیاج کر دے ہیں۔ متعلقہ ڈیپارٹمنٹ کے لئے کثیر تعداد میں طلبہ متعلقہ جمع ہوئے تھے۔ اور
نمبر بازی کر دے تھے۔ DSF میں بھی موجود تھا۔ متعلقہ طلبہ جرنلزم ڈیپارٹمنٹ کے شیٹوں
کو قدرتی طور پر داخل ہوئے اور عید اللہ نامہ شیٹوں کو بائندروم سے نکال کر اس میں جمع اور ہونے
میں بہ امداد وکیل خان نے اس سے DSF میں وہاں سے نکال کر اسیک روایت میں۔ اس کے بعد میں
اگر آپ اس لئے صحت میں بہ طلبہ جرنلزم ڈیپارٹمنٹ سے منسٹر پورک و تنظیم یونیورسٹی اور افسران
بالا یو بی جرنلزم ڈیپارٹمنٹ سے ایڈمنسٹریشن برائے اس کے ساتھ ساتھ یہاں سے کر دے تھے۔
کہ اس دوران داخلہ دے کہ یہاں سے متعلقہ طلبہ نے مثال طور کو نقل کر ڈالا ہے
اس سے پہلے تنظیم یونیورسٹی کا مقصد تھا کہ مثال طور یونیورسٹی میں موجود رہے۔

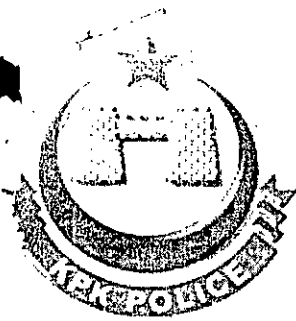
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ATTESTED



OFFICE OF THE
SUB-DIVISIONAL POLICE OFFICER,
TAKHT BHAI CIRCLE

Tel. & Fax: 0937552211, E-Mail: dsp.tbi@gmail.com

No. 2254 /ST, Dated: 28/09/2017.

To,

The Worthy District Police Officer,
Mardan

- 19 -
ANNE F

Subject: DISCIPLINARY ACTION AGAINST SI SALEEM KHAN.

Memo:

Kindly refer to your office Diary No. 7743-44/PA, dated 08.08.2017.

In pursuance of your kind order, the undersigned completed enquiry in the above subject case. Its step-wise detail is given below.

STATEMENTS OF ALLEGATIONS:

Whereas, SI Saleem Khan, while posted as SHO PS Sheikh Maltoon (now Police Lines Mardan), on 13.04.2017 one Mashal Khan son of Muhammad Iqbal Khan, a student of Journalism Department Abdul Wali Khan University Mardan who was lynched by a mob of students on account of unconfirmed charges of blasphemy while, on receipt of the information he arrived to the University at 13:05 hrs and remained till the end of incident. However, during the course of preliminary enquiry conducted by the Worthy Regional Police Officer Mardan, it was found that he has down slackness in disposal of his official duty and failed to take concrete steps against the agitating students resultantly, the unfortunate mob justice incident, took place.

PROCEEDINGS:

The defaulter SI Saleem Khan was summoned; the summary of allegations was served upon him; he submitted his written reply; he was heard in person and raised some questions about his role.

STATEMENT OF SI SALEEM KHAN:

He stated in his statement that on 13.04.2017, he was in special duty of NTS Test at sports Complex Mardan. DSP SMT informed him to come to Garden Campus of (AWKUM). He rushed to spot and found that a lot of students stage a protest / regarding the three students named Mashal, Abdullah & Zubair of Journalism Department were accused of blasphemy. DSP Sheikh Maltoon also present on the spot. Meanwhile, the protestor went to Journalism Department and entered where they attacked on Abdullah and he rescued him with the help of DSP Haidar Khan & ASI Wakeel. After that, SPOPs also reached and disperse the protestor from journalism department then the W/SPOP went to Administration block to negotiate with the administration and students of university, where he got information of Mashal murder and when he get information, he has a pedestrian racing to hostel-I, because the vehicle was far from him and W/SPOP reached through his squad mobile. When he reached there and helped with seniors in taking the dead body, as mob was bent on burning the body. Further, he is performing his

time but order of the charge is not on the power of SHO in the
acc of high-ups. Further stated that a lot of students arrested in incredible
owed. He took active part in bringing the situation into control inside the
university and in the end arresting the culprits from the mob. A case vide FIR No.
233 dated 13.04.2017 u/s 302, 324, 148/149, 7ATA/297/109/427 PPC PS Sheikh
Maltoon has been registered and arrested maximum member of nominated
accused. Which are on record and further requested for apologise.

FINDING & RECOMMENDATION:

From the perusal of available record, the defaulter SI
Saleem Khan entered the main gate of AWKUM at 13:05 hrs.
However, his role to avert the happening of this unfortunate incident
is condemnable. The allegation mentioned in the charged has been
proved against him.

Therefore, he is recommended to be immediately dismissed
from service if agreed.

Encl : 03

Captain (R) Ali Raza Fariq PSP
Sub-divisional Police Officer,
Takht Bhai

ATTESTED



OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpo_mardan@yahoo.com
Facebook: District Police Mardan
Twitter: @dpomardan

No. 9822-26/PA

Dated 9 / 10 / 2017

ORDER ON ENQUIRY OF SI SALEEM KHAN

This order will dispose-off a departmental enquiry under Police Rules 1975, initiated against the subject Police Official, under the allegations that while posted as SHO PS Sheikh Maltoon. (now Police Lines), one Mashal Khan Son of Muhammad Iqbal Khan, a student of Journalism Department Abdul Wali Khan University Mardan was lynched by a Mob of Students on account of unconfirmed charges of blasphemy. On receipt of information, SI Saleem Khan arrived to the University at 1305 hours and remained there till the end of incident. However, during a preliminary enquiry conducted by Worthy Regional Police Officer Mardan in this matter, it was found that he has shown slackness in disposal of his official duty and failed to take concrete steps against the agitating students, resultantly the unfortunate mob justice incident took place.

To ascertain real facts, SI Saleem Khan was faced departmentally through Captain Ali Bin Tariq SDPO Takht Bhai vide this office Disciplinary Action No.7743-44/PA dated 08.08.2017, who after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.2254/ST dated 28.09.2017, holding responsible the alleged official for negligence/misconduct & recommending him for major punishment of dismissal from service.

Final Order

SI Saleem Khan was heard in O.R held at Police Lines on 03.10.2017 & awarded major punishment of reversion to the rank of ASI with immediate effect, in exercise of the power vested in me under P.R 1975.

O.B No. 2286

Dated 6 / 10 / 2017.


District Police Officer,
Mardan.

Copy forwarded for information & n/action to:-

1. The Deputy Inspector General of Police Mardan Region-I, Mardan, please.
2. The SP Operations Mardan.
3. The DSP/HQrs: Mardan.
4. The Pay Officer & E.C (Police Office) Mardan.
5. The OSI (Police Office) Mardan with () Sheets.

ATTACHED

BEFORE THE WORTHY DIG MARDAN REGION-I MRDAN.

Subject: APPEAL AGAINST THE OB NO: 2286 DATED 6/10/2017 ISSUED BY DPO MARDAN WHEN THE APPELLANT WAS AWARDED PUNISHMENT OF REVERSION TO THE RANK OF ASI.

Respect Sir,

- 1) The matter pertains to case FIR No.233 dated 13-4-2017 u/s 302/14/149/7ATA PS SMT. The occurrence of the instant case took place on 13/04/2017 and, after the lapse of 04 months the appellant was issued charge sheet of statement of allegation No.7741-42/PA dated 8-8-2017 to the appellant with the following allegations.

"That while posted as SHO PS ^{SMT} Fort (Now Police lines) one Mashal Khan s/o Muhammad Iqbal Khan a student of journalism department AWK university Mardan was lynched by a MOB of students on account of unconfirmed charges of blasphemy. On receipt of information, SI Saleem Khan arrived to university at 13:05 Hrs and remained there till the end of incident. However, during a preliminary enquiry conducted by Worthy Regional Police Officer Mardan, in this matter, it was found that he has shown slackness in disposal of his official duties, and failed to take concrete steps against agitating students, resultantly the unfortunate MOB (the incident took place.

- 2) In the light of the above aforementioned charge sheet, a departmental enquiry was initiated against appellant. ASP / TBI was appointed as EO. The appellant produced a detailed and comprehensive reply before the EO, but his version was not considered. The EO blamed the appellant for negligence/ misconduct in the light of enquiry finding DPO Mardan awarded punishment of reversion to the rank of ASI Vide. OB No. 2286 dated 6/10/2017. Hence the present appeal (Copy of OB No2286 dated 6/10/2107 is enclosed)

- 3) As per charge sheet + statement of allegations the appellant has been blamed for the following:

- A: Showing slackness in disposal of official duty.
B: Failed to take concrete steps against the agitating students

- 4) The facts behind the said incident are:

On 13/4/2017, the appellant was on special duty at NTS / Test at sport complex Mardan. Meanwhile, DSP SMT directed on telephone to reach immediately to Garden campus (AWKU). The appellant rushed to the campus immediately, where DSP / SMT was already found present. In the premises of journalism department, students were gathered and were crying. The administration staff of the university was also present in committee room. The MOB of the student entered in committee room. They broke the windows and doors and attacked on a student namely "Abdullah" student of journalism department. The appellant along with DSP/ SMT succeeded to resolve the said Abdullah from the clutches of the MOB. The said Abdullah was transported to MMC. During the while, the following officials also reached to the spot.

- i) SP / Operation along with Squad,
ii) DSP/ SMT along with Mobile
iii) SHO / SMT along with Mobile
iv) SHO/ Ghari Kapura along with police.
v) ATS / QRF Squads along with their commanders.

- 5) SP/Operation, DSP SMT and administration staff of university stated negotiation on the subject incident in the administration block of university. The appellant along with other police official were remained present out-side the Administration block. In the meanwhile, it was learnt that the student MOB had fired at Mashal present in hostel No.1.

- 6) SP/Operation along with squad rushed to hostel No.1 in his own official vehicles and DSP/ SMT in private M/Car. The appellant along with other official ran away to the hostel No.1. It is worth mentioning that the distance between Administration block and

ATTACHED

hostel No.1 is more than one kilometer. On reaching to the hostel No.1 SP/ Operation and DSP/ SMT were already present there, MOB of student were busy in disgracing the dead body of Mashal. They were also trying to burn the dead body of the deceased.

- 23-
- 7) The appellant along with other official succeeded to get the dead body of the deceased from the clutches of MOB and sent to MMC in official vehicles. On the direction of High-ups the appellant drafted a Murasila upon which the instant case was registered.
- 8) During investigation, the appellant has arrested 13 accused which evident from the case file. The appellant conducted several raids for the arrest of the accused. After completion of investigation, the appellant has submitted challan in the present case.

Conclusion:

- A: The appellant was a junior officer present on the spot. The matter and spot was already under the control of SP/ Operation and DSP / SMT respectively. The appellant was duty bound to obey the order of the seniors.
- B: On receipt of information the appellant rushed to the spot without wasting any more time and complied with the command of senior officers and this has not shown any slackness in the disposal of official duty. This fact is also evident from rescue action regarding student Abdullah.
- C: The murder of Mahal was not occurred in the presence of the appellant rather no police official was present in hostel No.1. That time and hence no failure to take concrete steps against the agitator lies on the part of appellant.
- D: The appellant has performed his official duty as per the requirement of the situation and directives of the seniors present on the spot and has shown no negligence / miscount for which the appellant has been blamed by EO.
- E: The appellant was issued against charge sheet + statement of allegations after the laps of 04 months which is against norm of justice. If the appellant was guilty for allegation leveled, then why he was not charge sheeted soon after the occurrence, which amount injustice.
- F: The appellant was enlisted as constable in police department on 27/7/1994. The appellant was never dealt departmentally prior to this. Similarly, the appellant was not punished throughout his service. All the "ACRs" given to him are above Grade "A". All such facts are evident from the shining service record of the appellant.
- G: The appellant intends to become officer and to get, promotion in future. The punished so awarded to the appellant will certainly effect badly on the service carrier.
- H: The appellant is married with 05 kids. The livelihood of the entire family depends upon the police services of the appellant.

Keeping in view the above facts and circumstances, it is humbly prayed, that the appeal of the appellant may kindly be accepted on humanitarian basis and the order of DPO / Mardan be set-a-side by restoring the appellant in the rank of Sub-Inspector please.

Dated : 13/10/2017

Yours obediently



ASI Salim Khan
NO.392/MR
Police Lines Mardan

ATTACHED

GOVERNMENT OF KHYBER PUKHTUNKHWA,
OFFICE OF THE REGIONAL POLICE OFFICER,
MARDAN:

Phone No. 0937-9230113, Fax No.0937-9230115.
Email. digmardan@gmail.com & adig.mardan@gmail.com

From : The Regional Police Officer,
Mardan

To : The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

No. 180 /ES, dated Mardan Region, the 10/January/2018

Subject: DEPARTMENTAL APPEAL

Memo:

It is submitted that appeals, submitted by ASI Saleem Khan, then posted as SHO PS Sheikh Maltoon District Mardan and ASI Mudassir Khan, then posted as SHO Toru District Mardan who were reverted to the rank of ASI from the rank of SI after their slackness was proved during enquiries in Mashal Murder Case, couldn't be proceed by the undersigned as the undersigned conducted these enquiries.

Therefore, appeal, comments alongwith service record received from District Police Officer, Mardan are submitted herewith for your kind perusal and necessary action, please.

(Muhammad Alam Shinwari) PSP
Regional Police Officer,
Mardan

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PROCESSED I



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

229
22-1-18

No. S/ 339 /18, dated Peshawar the 19/01/2018.

To: Regional Police Officer,
Mardan.

Subject: - DEPARTMENTAL APPEAL.

Memo:

Please refer to your office Memo: No. 180/ES, dated 10.01.2018.

Copy of preliminary enquiry report conducted by Regional Police Officer, Mardan has not been found attached with your above referred letter which may please be sent to this office to process the appeals in the Appellate Board.

Moreover, it may please be clarified that whether the appellants namely ASI Saleem Khan and ASI Mudasir Khan have instituted service appeals in Service Tribunal or otherwise.

Sir,
pps Attached.
Alec

[Signature]

(SYED ZIA ALI SHAH)

Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

17/11

OS
EC
for m/s
18/21/2018

ATTESTED

- 25 -
ANWEL J

Government of Khyber Pakhtunkhwa
Office of the Regional Police Officer,
Mardan
Phone No. 0937-9230113, Fax No. 0937-9230115

072
05/1/18

To: The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

-26-

No. 827 /BS.

02, February, 2018.

ANWAR K

Subject: DEPARTMENTAL APPEAL.

Memo: Kindly refer to your office Memo: No. S/339/18 dated 19.01.2018 on the subject noted above.

~~It is submitted~~ that the preliminary enquiry classified by the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

It is worth mentioning here that the appellants have not filed service appeals before the Honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar.


Regional Police Officer,
Mardan.

ATTACHED



31/12/18

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

No. S/ 1091 /18, dated Peshawar the 26/03/2018.

To : The Regional Police Officer,
Mardan.

Subject: DEPARTMENTAL APPEALS.

Memo:

Saleem Khan and Muddasir Khan ASIs of district Mardan had filed departmental appeal before your good office against the orders bearing OB No. 2266 & 2291 dated 06.10.2017 respectively of District Police Officer, Mardan vide which penalty of reversion from the rank of Sub-Inspector to the rank of ASI was imposed on them.

Both the departmental appeals were submitted to CPO for disposal as your office has reportedly conducted enquiries against them. The Appellate Board examined the cases which revealed that Charge Sheet and Statement of allegations were issued to the appellants by the District Police Officer, Mardan and proper enquiry was conducted by Ali Bin Tariq PSP Sub Divisional Police Officer Takhtbhai. There is nothing on record about any proceedings on the part of your office. The disposal of first appeals by CPO will deprive the appellants of their right of 2nd appeal / revision.

Foregoing in view, the Board is of the opinion that your office may decide the departmental appeal at your end purely on merit.

(SHER AKBAR)

PSP, S.St

Deputy Inspector General of Police HQrs,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

1/2018

ANNEX M 28

ORDER

This order will dispose-off the appeal preferred by ASI Muhammad Saleem No. 392/MR of Mardan District Police against the order of the District Police Officer, Mardan, whereby he was awarded Major punishment of Reversion from the rank of Sub Inspector to the rank of ASI vide District Police Officer, Mardan OB No. 2286 dated 06.10.2017.

Brief facts of the case are that the appellant while posted as SHO Police Station Sheikh Maltoon Mardan, one Mashal Khan s/o Muhammad Iqbal Khan, a student of Journalism Department Abdul Wali Khan University, Mardan was lynched by a Mob of students on account of unconfirmed charged of blasphemy. On receipt of information the appellant arrived to the University at 1351 hours and remained there till the end of incident. However, during a preliminary enquiry conducted by the undersigned in this matter, it was found that he shown slackness in disposal of his official duty and failed to take concrete steps against the agitating students, resultantly the unfortunate mob justice incident took place. Therefore he was proceeded against departmentally through the then SDPO/Takht Bhai. The Enquiry Officer after fulfilling necessary process submitted his finding report & recommended him for major punishment of dismissal from service. He was called by the then District Police Officer, Mardan for Orderly Room on 03.10.2017 & awarded him Major Punishment of reversion from the rank of SI to the rank of ASI.

He was called in orderly room held in this office on 28.03.2018 and heard him in person, but he did not produce any substantial evidence about his innocence. Therefore, I find no grounds to intervene the order passed by the then District Police Officer, Mardan. Appeal is rejected.

ORDER ANNOUNCED

e/c (Muhammad Alam Shirwari)PSP
Regional Police Officer,
Mardan

No. 2155-56 ES, Dated Mardan the 02/04 2018.

Copy forwarded to the:-

1. Worthy Provincial Police Officer Khyber Pakhtunkhwa, Peshawar for favour of information w/r to his office Memo: No. S/1091/18 dated 26.03.2018 please.
2. District Police Officer, Mardan for information and necessary action. The Service Record is returned herewith.

(*****)

ATTESTED


ORDER

This order will dispose-off the appeal preferred by ASI Muhammad Saleem No. 392/MR of Mardan District Police against the order of the District Police Officer, Mardan, whereby he was awarded Major punishment of Reversion from the rank of Sub Inspector to the rank of ASI vide District Police Officer, Mardan OB No. 238 dated 06.10.2017.

Brief facts of the case are that the appellant while posted as SHO Police Station Sheikh Mallon Mardan, one Mashtal Khan s/o Muhammad Iqbal Khan, a student of Journalism Department Abdul Wali Khan University, Mardan was lynched by a Mob of students on account of unconfirmed charges of blasphemy. On receipt of information the appellant arrived to the University at 1351 hours and remained there till the end of incident. However, during a preliminary enquiry conducted by the undersigned in this matter, it was found that he shown slackness in disposal of his official duty and failed to take concrete steps against the agitating students, resultantly the unfortunate mob justice incident took place. Therefore he was proceeded against departmentally through the then SPO/Asst Bhai. The Enquiry Officer after fulfilling necessary process submitted his finding report & recommended him for major punishment of dismissal from service. He was called by the then District Police Officer, Mardan for Orderly Room on 03.10.2017 & awarded him Major Punishment of reversion from the rank of SI to the rank of ASI.

He was called in orderly room held in this office on 28.03.2018 and heard him in person, but he did not produce any substantial evidence about his innocence. Therefore, I find no grounds to intervene the order passed by the then District Police Officer, Mardan. Appeal is rejected.

ORDER


(Muhammad Aam Shikwar) PSP
Regional Police Officer,
Mardan

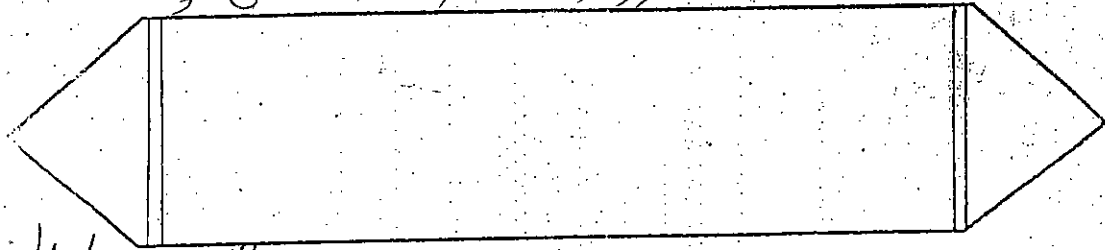
No. 3127/2018 Dated Mardan the 02/10/2018

Copy forwarded to:-

1. Worthy Provincial Police Officer Khyber Pakhtunkhwa, Peshawar for favour of information w/ to his office Memo: No. 24109/VI dated 26.03.2018 please.
2. District Police Officer, Mardan for information and necessary action. The Service Record is returned herewith.

(*****)

بعد الت



2018ء منجانب ایس ایس ڈی

سلیم خان بنام مولیٰ

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئینکے

مقدمہ مشدرجہ عننوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی دیکھ کر کارروائی متعلقہ
آن مقام کے لئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار دیا گیا۔ نیز
دیکھ لیا صاحب کو رضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک رو پیہار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخ
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ
پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جاننا التوائے مقدمہ کے سبب سے دہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 10 ماہ 10 2018

واہ العبد
کے لئے منظور ہے۔
بمقام
Accepted

C

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 502/2018.

Saleem ASI District Police Mardan.....Appellant.

VERSUS.

District Police Officer, Mardan & others.....Respondents.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.

REPLY ON FACTS.

1. Pertains to record, hence, no comment.
2. Correct to the extent of brutal murder of a student namely: Mashal Khan in Abdul Wali Khan University, Mardan by a mob and registration of FIR to that effect. The appellant, however, being SHO and a responsible Police Officer could not succeed to defend life of an assaulted student rather failed to show his professional tactics/measures to handle such like situations.
3. As the fact is admitted in this Para to the extent that he, though was at two minutes drive i.e. at Sheikh Maltoon Sports Complex, Mardan and reached to the spot later than other officials/officer. This shows that he has not developed still his sources of information in the locality, if so, he would have been timely informed of the occurrence which has been erupted at 12 clock and thereafter too he lacked professional skills to cope with the situation rather ran here and there but with no success. Rest of the allegations carried in this Para are biased & baseless, hence, denied.
4. Incorrect. The appellant alongwith other subordinates/junior officers were being properly instructed by the high ups present on the spot and it is the SHO/junior officer who remain more practical and involved in such like situations. The appellant, being SHO, has failed to follow the instructions of his seniors rather showed slackness in the performance of his duty which led to wastage of a precious life. This is why those Police Officers who shows bravery and professionalism are always bestowed rewards and awards and remembered in good words, publically and in their parent departments, too.
5. Incorrect. The charges leveled against appellant are founded and there is no element of malafide and conspiracy. Hence, denied. **(Copy of Inquiry is attached as Annexure-A).**
6. Incorrect. Proper departmental inquiry has been conducted and all codal formalities has been complied with.
7. Incorrect. The appellant has been treated as per rules/law and all codal formalities has been fulfilled. The appellant was given opportunity of personal hearing and heard in orderly room held on 03.10.2017 in the office of respondent No. 03. **(Copy of order of respondent No. 03 is attached as Annexure-B).**
8. Incorrect. As the preliminarily inquiry in the matter was conducted by the office of respondent No. 02, so, the departmental appeal was referred to Central Police Office, Peshawar which was returned with the observation that **"...the Board is of the opinion that your office may decided the departmental appeal at your end purely on merit."** In compliance the respondent No. 02 called upon the appellant on 28.03.2018 and heard him

in person, however, on the ground his failure to prove his innocence, the appeal was rejected accordingly vide order No. 2155-56/ES dated 02.04.2018 (Copy of rejection order is attached as Annexure-C).

9. Incorrect. The impugned order dated 02.04.2018 is lawful and in accordance with rules/law, hence, the instant appeal holds no grounds, legal or moral, to stand here on in this Honourable Court.

REPLY ON GROUNDS:-

- A. Incorrect. The appellant has been treated as per rules/law and there is no violation of any article of the Constitution of Pakistan. Hence, the impugned orders are legal, fair and sustainable in the eyes of law.
- B. Incorrect. The appellant was SHO of the Police Station concerned and being responsible officer was bound to have taken all precautionary measure professionally and timely. His failure to tackle the situation professionally has led to loss of a precious life.
- C. Incorrect. This is not the only occurrence in the history of Police as they always face and manage such like situations. The Police officers are more practical, well-trained and skilful in handling such like situations but the appellant has shown slackness and had not shown his professional skills which he was required to practice timely.
- D. Incorrect. Proper inquiry under rules/law was conducted by providing opportunities of hearing/defence and dealt the appellant without any malafide/prejudice. Hence, denied.
- E. Incorrect, hence, denied. As replied above.
- F. Incorrect and baseless, hence, strongly denied. As replied above.
- G. Incorrect. The appellant has been dealt in accordance with rules/law and there is no discrimination, hence, denied.
- H. Pertains to record, however, the instant penalty is the result of misconduct he committed during a tragic incident which was too at an educational institution and led to bad image of Police not only in Pakistan but throughout the world.
- I. The respondents also seek permission to raise additional grounds, if any, at the time of arguments.

PRAYER:-

The prayer of the appellant, being baseless & devoid of merits, is liable to be dismissed with costs.

**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)**

**Deputy/Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)**

**District Police Officer,
Mardan
(Respondent No. 03)**

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

Service Appeal No. 502/2018.

Saleem ASI District Police Mardan.....Appellant.

VERSUS.

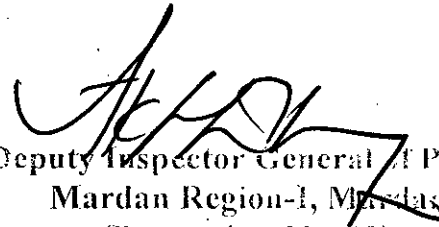
District Police Officer, Mardan & others.....Respondents.

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.



**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)**



**Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)**



**District Police Officer,
Mardan
(Respondent No. 03)**



OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpo_mardan@yahoo.com
Facebook: District Police Mardan
Twitter: @dpomardan

No. 7743-45 /PA

Dated 8 / 8 /2017

DISCIPLINARY ACTION

I, Dr. Mian Saeed Ahmad (PSP), District Police Officer Mardan, as competent authority am of the opinion that SI Saleem Khan, himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Rules, 1975.


STATEMENT OF ALLEGATIONS

Whereas, SI Saleem Khan, while posted as SHO Police Station Sheikh Maltoon (now Police Lines Mardan), on 13.04.2017 one Mashal Khan son of Muhammad Iqbal Khan, a student of Journalism Department Abdul Wali Khan University Mardan who was lynched by a mob of students on account of unconfirmed charges of blasphemy while, on receipt of the information he arrived to the University at 1305 hours and remained till the end of incident however, during the course of preliminary enquiry conducted by the Worthy Regional Police Officer Mardan, it was found that he has shown slackness in disposal of his official duty and failed to take concrete steps against the agitating students resultantly, the unfortunate mob justice incident, took place.

For the purpose of scrutinizing the conduct of the said accused Officer with reference to the above allegations, ASP T/Bhai is nominated as Enquiry Officer.

The Enquiry Officer shall, in accordance with the provision of Police Rules 1975, provides reasonable opportunity of hearing to the accused Police Officer, record/submit his findings and make within (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused Officer.

SI Saleem Khan is directed to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer.


Dr. Mian Saeed Ahmad PSP
District Police Officer,
Mardan.



OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpo_mardan@yahoo.com
Facebook: District Police Mardan
Twitter: @dpomardan

CHARGE SHEET

I, Dr. Mian Saeed Ahmad (PSP), District Police Officer, Mardan, as competent authority, hereby charge SI Saleem Khan while posted as SHO PS Sheikh Maltoon (now Police Lines Mardan), as per attached above Statement of Allegations.

1. By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.
2. You are, therefore, required to submit your written defense within 07 days of the receipt of this Charge Sheet to the Enquiry Officer, as the case may be.
3. Your written defense, if any, should reach the Enquiry Officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.

(Dr. Mian Saeed Ahmad) PSP
District Police Officer,
Mardan.



OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpo_mardan@yahoo.com
Facebook: District Police Mardan
Twitter: @dpomardan

No. 9822-26/PA

Dated 9 / 10 / 2017

ORDER ON ENQUIRY OF SI SALEEM KHAN

This order will dispose-off a departmental enquiry under Police Rules 1975, initiated against the subject Police Official, under the allegations that while posted as SHO PS Sheikh Maltoon, (now Police Lines), one Mashal Khan Son of Muhammad Iqbal Khan, a student of Journalism Department Abdul Wali Khan University Mardan was lynched by a Mob of Students on account of unconfirmed charges of blasphemy. On receipt of information, SI Saleem Khan arrived to the University at 1305 hours and remained there till the end of incident. However, during a preliminary enquiry conducted by Worthy Regional Police Officer Mardan in this matter, it was found that he has shown slackness in disposal of his official duty and failed to take concrete steps against the agitating students, resultantly the unfortunate mob justice incident took place.

To ascertain real facts, SI Saleem Khan was faced departmentally through Captain @ Ali Bin Tariq SDPO Takht Bhai vide this office Disciplinary Action No.7743-44/PA dated 08.08.2017, who after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.2254/ST dated 28.09.2017, holding responsible the alleged official for negligence/misconduct & recommending him for major punishment of dismissal from service.

Final Order

SI Saleem Khan was heard in O.R held at Police Lines on 03.10.2017 & awarded major punishment of reversion to the rank of ASI with immediate effect, in exercise of the power vested in me under P.R 1975.

O.B No. 2286

Dated 6 / 10 / 2017.


District Police Officer,
Mardan.

Copy forwarded for information & n/action to:-

1. The Deputy Inspector General of Police Mardan Region-I, Mardan, please.
2. The SP Operations Mardan.
3. The DSP/HQrs: Mardan.
4. The Pay Officer & E.C (Police Office) Mardan.
5. The OSI (Police Office) Mardan with () Sheets.

OFFICE OF THE
SUB-DIVISIONAL POLICE OFFICER,
TAKHT BHAI CIRCLE

Tel & Fax: 0937552211, E-Mail: dsp.thi@gmail.com

No. 2254 /ST, Dated: 28/09/2017.

To, The Worthy District Police Officer,
Mardan

Subject: DISCIPLINARY ACTION AGAINST SI SALEEM KHAN.

Memo:

Kindly refer to your office Diary No. 7743-44/PA, dated 08.08.2017.

In pursuance of your kind order, the undersigned completed enquiry in the above subject case. Its step-wise detail is given below:

STATEMENTS OF ALLEGATIONS:

Whereas, SI Saleem Khan, while posted as SHO PS Sheikh Malloon (now Police Lines Mardan), on 13.04.2017 one Mashal Khan son of Muhammad Iqbal Khan, a student of Journalism Department Abdul Wali Khan University Mardan who was lynched by a mob of students on account of unconfirmed charges of blasphemy while, on receipt of the information he arrived to the University at 13:05 hrs and remained till the end of incident. However, during the course of preliminary enquiry conducted by the Worthy Regional Police Officer Mardan, it was found that he has down slackness in disposal of his official duty and failed to take concrete steps against the agitating students resultanty, the unfortunate mob justice incident, took place.

PROCEEDINGS:

The defaulter SI Saleem Khan was summoned; the summary of allegations was served upon him; he submitted his written reply; he was heard in person and raised some questions about his role.

STATEMENT OF SI SALEEM KHAN:

He stated in his statement that on 13.04.2017, he was in special duty of NTS Test at sports Complex Mardan. DSP SMT informed him to come to Garden Campus of (AWKUM). He rushed to spot and found that a lot of students stage a protest / regarding the three students named Mashal, Abdullah & Zubair of Journalism Department were accused of blasphemy. DSP Sheikh Malloon also present on the spot. Meanwhile, the professor went to Journalism Department and entered where they attacked on Abdullah and he rescued him with the help of DSP Haidar Khan & ASI Wakeel. After that, SPOs also reached and disperse the professor from Journalism department then the W/SPOP went to Administration block to negotiate with the administration and students of university, where he got information of Mashal murder and when he get information, he has a pedestrian racing to hostel-I, because the vehicle was far from him and W/SPOP reached through his squad mobile. When he reached there and helped with seniors in taking the dead body, as mob was bent on burning the body. Further, he is performing his

time but order of the latter charge is not on the power of SHO in the
face of high-ups. It is stated that a lot of students arrested in incredible
dowd. He took active part in bringing the situation into control inside the
university and in the end arresting the culprits from the mob. A case vide FIR No.
233 dated 13.04.2017 u/s 302, 304, 148/149/7ATA/297/109/427 PPC PS Sheikh
Maltoon has been registered and arrested maximum member of nominated
accused. Which are on record and further requested for apologise.

FINDINGS & RECOMMENDATION:

From the perusal of available record, the defaulter SI
Saleem Khan entered the main gate of AIWKUM at 13:05 hrs.
However, his role to avert the happening of this unfortunate incident
is condemnable. The allegation mentioned in the charged has been
proved against him.

Therefore, he is recommended to be immediately dismissed
from service if agreed.

Encl : 03

Captain (R) Ali Raza Farid PSP
Sub-divisional Police Officer,
Tahsil Bhal

ATTESTER

(1)


ORDER.

This order will dispose-off the appeal preferred by ASI Muhammad Saleem No. 392/MR of Mardan District Police against the order of the District Police Officer, Mardan, whereby he was awarded Major punishment of Reversion from the rank of Sub Inspector to the rank of ASI vide District Police Officer, Mardan OB No. 2286 dated 06.10.2017.

Brief facts of the case are that the appellant while posted as SHO Police Station Sheikh Maltoon Mardan, one Mashal Khan s/o Muhammad Iqbal Khan, a student of Journalism Department Abdul Wali Khan University, Mardan was lynched by a Mob of students on account of unconfirmed charged of blasphemy. On receipt of information the appellant arrived to the University at 1351 hours and remained there till the end of incident. However, during a preliminary enquiry conducted by the undersigned in this matter, it was found that he shown slackness in disposal of his official duty and failed to take concrete steps against the agitating students, resultantly the unfortunate mob justice incident took place. Therefore he was proceeded against departmentally through the then SDPO/Takht Bhai. The Enquiry Officer after fulfilling necessary process submitted his finding report & recommended him for major punishment of dismissal from service. He was called by the then District Police Officer, Mardan for Orderly Room on 03.10.2017 & awarded him Major Punishment of reversion from the rank of SI to the rank of ASI.

He was called in orderly room held in this office on 28.03.2018 and heard him in person, but he did not produce any substantial evidence about his innocence. Therefore, I find no grounds to intervene the order passed by the then District Police Officer, Mardan. Appeal is rejected.

ORDER ANNOUNCED.


(Muhammad Alam Shinwari)PSP
Regional Police Officer,
Mardan

No. 2155-56 /ES, Dated Mardan the 02/04 /2018.

Copy forwarded to the:-

1. Worthy Provincial Police Officer Khyber Pakhtunkhwa, Peshawar for favour of information w/r to his office Memo: No. S/1091/18 dated 26.03.2018 please.
2. District Police Officer, Mardan for information and necessary action. The Service Record is returned herewith.

(*****)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 502/2018.


Saleem ASI District Police Mardan.....Appellant.


VERSUS.

District Police Officer, Mardan & others.....Respondents.

AUTHORITY LETTER.

Mr. Atta-ur-Rahman Sub-Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)


Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)


District Police Officer,
Mardan
(Respondent No. 03)

Service Appeal No. 502/2018

Saleem Khan ASI District Police Mardan Appellant

Versus

District Police Officer, Mardan & others Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. Appellant has availed the jurisdiction of this Hon'ble Tribunal with clean hands and for that matter having cause of action. Nothing has been concealed from this Hon'ble Tribunal. Estoppel cannot run against law, appeal is maintainable, and all the necessary parties are arrayed in the titled service appeal.

Facts:

1. Needs no rejoinder.
2. Incorrect hence denied. Being responsible official appellant took all necessary measures to save the innocent student of the said university. Appellant received blows, strokes and kicks of the mob participants but appellant tried his best in the whole case. Furthermore, the high ups were also present on the spot where appellant performed his duty under their supervision.
3. Misleading. Appellant reached to the spot alongwith high ups/seniors who were also present on the spot. Appellant

having no authority to handle the matter in presence of the seniors. Rest of the para is misconceived. Department has badly failed to point out that what kind of slackness was committed by the appellant. Moreover, the matter was also highlighted in the dailies reporting that the high ups of the Police Force had not probed the case in accordance with law and had also mentioned that the department was busy to save the seniors Police Officers, scapegoating the junior officers.

4. Incorrect hence denied. The statement of the said Professor supported the stance of the appellant who categorically mentioned in his Statement U/S 164 Cr.P.C. before the Judicial Magistrate that he had informed the high-ups and requested the then SSP Operations to save innocent students but no heed was paid. Therefore, being a subordinate Officer, appellant performed duty as per the instructions of high-ups. Even otherwise it was not the job of a single person among the huge throbbing mob of almost two thousand students to tackle the situation alone.
5. Erroneous hence denied. Mere allegation is nothing until and unless the same has been proved against the appellant upon solid grounds. Appellant in his detailed reply explained his position and each and every aspect of the matter but unfortunately his reply was not given due consideration.
6. Untrue hence denied. No impartial enquiry was conducted against the appellant and the basic requirements of law regarding imposition of penalty have been violated and in very hasty manner, without considering the facts of the case in arbitrary manner, the Enquiry Officer recommended the appellant for the punishment.

7. False. It is a settled legal principle of law that every individual should be treated as per law whereas in case of appellant the mandatory requirements have been violated by not issuing final Show Cause Notice as well as providing opportunity of personal hearing and appellant was awarded major punishment of reversion to the rank of ASI with immediate effect.
8. Incorrect hence denied. Appellant preferred Departmental Appeal, however, the appellate authority instead of deciding the same referred the same to Respondent No.1 with observation that he had conducted enquiry against the appellant but no such record was available, therefore, the same was again transmitted to the same authority for decision as per law.
9. Untrue hence vehemently denied.

Grounds:

- A. Incorrect. The appellant was not treated according to law and rules. The impugned orders are unjust and unfair, therefore, liable to be struck down.
- B. Incorrect hence denied. It has earlier been submitted that Professor of the said University stated in his statement that he had requested the SSP Operation to save the life of innocent person who at that time was alive but no heed was paid, therefore, being subordinate, appellant acted upon the orders of the high-ups at the time of occurrence.
- C. Misconceived hence denied. The detailed reply has already been given.
- D. Untrue hence emphatically denied. It is not only the mandatory requirement of law but also voice of natural justice that before proceeding against a person, Department shall be duty bound to

conduct a regular enquiry instead of a fact finding enquiry as well as provide the chance of personal hearing whereas all the proceedings have been conducted at the back of the appellant, therefore, the same are not sustainable in the eye of law and liable to be struck down.

E&F. Incorrect. Detailed rejoinder has already been submitted. Furthermore, no time limit for the continuation of reversion has been specified, which is a legal requirement under FR-29. Hence, the same are liable to set aside.

G. Untrue hence vehemently denied. The detailed reply has already been given in the preceding paras.

H. Untrue. Spotless career of the appellant corroborated his efficiency and dedication of service, appellant has never been departmentally proceeded and has rendered 24 years valuable service to the Police Force.

K. Needs no rejoinder.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaled Rahman
Advocate, Peshawar

Dated: 16/10/2018

Verification

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 502/2018

Saleem Khan ASI District Police Mardan Appellant

Versus

District Police Officer, Mardan & others Respondents

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO REPLY FILED BY RESPONDENTS.

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. Appellant has availed the jurisdiction of this Hon'ble Tribunal with clean hands and for that matter having cause of action. Nothing has been concealed from this Hon'ble Tribunal. Estoppel cannot run against law, appeal is maintainable, and all the necessary parties are arrayed in the titled service appeal.

Facts:

1. Needs no rejoinder.
2. Incorrect hence denied. Being responsible official appellant took all necessary measures to save the innocent student of the said university. Appellant received blows, strokes and kicks of the mob participants but appellant tried his best in the whole case. Furthermore, the high ups were also present on the spot where appellant performed his duty under their supervision.
3. Misleading. Appellant reached to the spot alongwith high ups/seniors who were also present on the spot. Appellant

having no authority to handle the matter in presence of the seniors. Rest of the para is misconceived. Department has badly failed to point out that what kind of slackness was committed by the appellant. Moreover, the matter was also highlighted in the dailies reporting that the high ups of the Police Force had not probed the case in accordance with law and had also mentioned that the department was busy to save the seniors Police Officers, scapegoating the junior officers.

4. Incorrect hence denied. The statement of the said Professor supported the stance of the appellant who categorically mentioned in his Statement U/S 164 Cr.P.C. before the Judicial Magistrate that he had informed the high-ups and requested the then SSP Operations to save innocent students but no heed was paid. Therefore, being a subordinate Officer, appellant performed duty as per the instructions of high-ups. Even otherwise it was not the job of a single person among the huge throbbing mob of almost two thousand students to tackle the situation alone.
5. Erroneous hence denied. Mere allegation is nothing until and unless the same has been proved against the appellant upon solid grounds. Appellant in his detailed reply explained his position and each and every aspect of the matter but unfortunately his reply was not given due consideration.
6. Untrue hence denied. No impartial enquiry was conducted against the appellant and the basic requirements of law regarding imposition of penalty have been violated and in very hasty manner, without considering the facts of the case in arbitrary manner, the Enquiry Officer recommended the appellant for the punishment.

7. False. It is a settled legal principle of law that every individual should be treated as per law whereas in case of appellant the mandatory requirements have been violated by not issuing final Show Cause Notice as well as providing opportunity of personal hearing and appellant was awarded major punishment of reversion to the rank of ASI with immediate effect.
8. Incorrect hence denied. Appellant preferred Departmental Appeal, however, the appellate authority instead of deciding the same referred the same to Respondent No.1 with observation that he had conducted enquiry against the appellant but no such record was available, therefore, the same was again transmitted to the same authority for decision as per law.
9. Untrue hence vehemently denied.

Grounds:

- A. Incorrect. The appellant was not treated according to law and rules. The impugned orders are unjust and unfair, therefore, liable to be struck down.
- B. Incorrect hence denied. It has earlier been submitted that Professor of the said University stated in his statement that he had requested the SSP Operation to save the life of innocent person who at that time was alive but no heed was paid, therefore, being subordinate, appellant acted upon the orders of the high-ups at the time of occurrence.
- C. Misconceived hence denied. The detailed reply has already been given.
- D. Untrue hence emphatically denied. It is not only the mandatory requirement of law but also voice of natural justice that before proceeding against a person, Department shall be duty bound to

conduct a regular enquiry instead of a fact finding enquiry as well as provide the chance of personal hearing whereas all the proceedings have been conducted at the back of the appellant, therefore, the same are not sustainable in the eye of law and liable to be struck down.

E&F. Incorrect. Detailed rejoinder has already been submitted. Furthermore, no time limit for the continuation of reversion has been specified, which is a legal requirement under FR-29. Hence, the same are liable to set aside.

G. Untrue hence vehemently denied. The detailed reply has already been given in the preceding paras.

H. Untrue. Spotless career of the appellant corroborated his efficiency and dedication of service, appellant has never been departmentally proceeded and has rendered 24 years valuable service to the Police Force.

K. Needs no rejoinder.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

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Advocate, Peshawar

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Khaled Rahman
Advocate, Peshawar

Dated: 16/10/2018

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Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 501/2018

Date of institution ... 10.04.2018

Date of judgment ... 08.02.2019

Mudasir Khan, ASI formerly S.I,
Police Lines, Mardan

... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region, Mardan.
3. The District Police Officer, District Mardan.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE IMPUGNED ORIGINAL ORDER DATED 06.10.2017
PASSED BY RESPONDENT NO. 3 WHEREBY APPELLANT
WAS IMPOSED UPON THE MAJOR PENALTY OF
REVERSION TO THE RANK OF ASI WITH IMMEDIATE
EFFECT AGAINST WHICH APPELLANT PREFERRED
DEPARTMENTAL APPEAL TO RESPONDENT NO. 2 ON
13.10.2017 WHICH WAS UNLAWFULLY REJECTED VIDE
IMPUGNED APPELLATE ORDER DATED 02.04.2018.

Mr. Khaled Rahman, Advocate.

... For appellant.

Mr. Riaz Ahimad Paindakheil, Assistant Advocate General

... For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Our this

judgment shall dispose of aforementioned service appeal as well as service appeal No. 502/2018 titled "Salim Khan Versus The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two other" as common question of law and facts are involved in both the appeals.

2. Appellants alongwith counsel present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith Mr. Atta-ur-Rehman, S.I (Legal) for the respondents present. Arguments heard and record perused.

3. Brief facts of both the cases are that the appellants were serving in Police Department as Sub-Inspectors. However, they were imposed major penalty of reversion from the rank of Sub-Inspectors to the rank of Assistant Sub-Inspectors vide order dated 09.10.2017 by the competent authority on the allegation that one Mashal Khan son of Muhammad Iqbal Khan, a student of Journalism Department Abdul Wali Khan Mardan was lynched by Mob of students on account of unconfirmed charges of blasphemy and on receipt of information, the appellant (Mudasir Khan) arrived to the university at 13:51 hours and remained there till 15:01 hours while appellant (Salim Khan) arrived to the university at 13:05 hours and remained there till the end of incident. However, during preliminary inquiry it was found that they have shown slackness in disposal of their official duty and failed to take concrete steps against the agitated students, resultantly the unfortunate incident took place. The appellants filed departmental appeals on 13.10.2017 which were rejected on 02.04.2018 hence, the present service appeals on 10.04.2018.

4. Respondents were summoned who contested the appeals by filing written reply/comments.

5. Learned counsel for the appellants contended that both the appellants were serving in Police Department as Sub-Inspectors. It was further contended that both the appellants were awarded major penalty of reduction from the rank of Sub-Inspectors to the rank of Assistant Sub-Inspectors vide order dated 09.10.2017 on the allegations that they have shown slackness in disposal of their official duties and failed to take concrete steps against the agitated students regarding the unfortunate occurrence disclosed through vide FIR No. 235 dated

13.04.2017 under sections 302, 148, 149, 7ATA, 297, 109, 427 PPC read with 7ATA Police Station Shaikh Maltoon, District Mardan. It was further contended that after registration of the case statement of Ziaullah Hamdard Lecturer of Journalism of the said university was recorded by the Judicial Magistrate, Mardan under section 164Cr.PC on 21.04.2017 (copy of the same is available on record) which shows that at the time of incident the high-ups of the appellants were also present at the spot but the respondent-department has initiated departmental proceeding only against the appellants and they were made scapegoat for the reason best known to the respondent-department. It was further contended that after framing of charge sheet and statement of allegation, the appellants replied the said charge sheet and statement of allegation wherein they have totally denied the allegations and the inquiry officer has submitted inquiry report on 29.09.2017 to the competent authority but neither statement of any witness present at the spot/occurrence was recorded by the inquiry officer in the inquiry proceeding nor he recorded statement of any witness who deposed against the appellant but has only recorded the statements of the appellants in the inquiry report who have denied the allegations leveled against them. Moreover, the inquiry officer has also stated in the inquiry report of Mudasir Khan that statement of Constable Hazrat Ali No. 2004, Mir Afzal No. 1223 (Gunner) and Shakir Hussain Wireless Operator P.S Toru were also recorded and they also corroborated the stance of defaulter S.I Mudasir Khan but in-spite of that, the inquiry officer has recommended the appellants for major penalty. It was further contended that the final show-cause notice ^{also in} alongwith copy of inquiry report was ~~not~~ also issued to the appellant which has also rendered the inquiry proceedings illegal and prayed for acceptance of both the appeals.

6. On the other hand, Learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellants and contended that first information report was registered by the appellant namely Salim Khan in the aforesaid occurrence. It was further contended that the said FIR was registered by the appellant (Salim Khan) with sufficient delay. It was further contended that all the codal formalities were fulfilled by the inquiry officer and on the basis of inquiry report, the competent authority has rightly imposed major penalty of reduction to the rank of Assistant Sub-Inspectors therefore, it was contended that both the appeals have no force and prayed for dismissal of both the appeals.

7. Perusal of the record reveals that both the appellants were charge sheeted by the competent authority for showing slackness in their official duties. The record further reveals that both the appellants have denied the allegations leveled against them in the charge sheet through reply. The record further reveals that the inquiry officer has submitted the inquiry report against the appellants and recommended the appellant Mudasir Khan for punishment of stoppage of five increments while the appellant Salim Khan was recommended for dismissal from service but the inquiry report reveals that the inquiry officer has not recorded statement of any witness during inquiry proceeding who have deposed against the appellant but have only reproduced the statement of the appellants in the inquiry report wherein both the appellants have denied the allegations leveled against them. It is also pertinent to mention here that the inquiry officer has also stated in the inquiry report of Mudasir Khan that statement of Constable Hazrat Ali No. 2004, Mir Afzal No. 1223 (Gunner) and Shakir Hussain No. 412 Wireless Operator P.S Toru were also recorded and they all corroborated the stance of defaulter S.I Mudasir Khan but in spite of that the inquiry officer recommended them for the aforesaid penalty despite the