

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 590/2018

Date of Institution ... 27.04.2018

Date of Decision ... 04.10.2019

Zhaid Ali S/O Sardar Muhammad R/O Street no. 14, Mohallah Hazrat Usman,  
Sardar Colony, Charsadda, Road Peshawar. ... (Appellant)

VERSUS

The Govt: of Khyber Pakhtunkhwa through Inspector General of Police, Khyber  
Pakhtunkhwa, Peshawar and three others. ... (Respondents)

PRESENT:

MR. NOOR MUHAMMAD KHATTAK,  
Advocate --- For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,  
Assistant Advocate General --- For respondents.

MR. AHMAD HASSAN, --- MEMBER(Executive)  
MR. MUHAMMAD AMIN KHAN KUNDI --- MEMBER(Judicial)

JUDGMENT.

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the  
parties heard and record perused.

ARGUMENTS

02. Learned counsel for the appellant argued that he was appointed as Junior Clerk on 05.10.1994 and got promoted as Senior Clerk in 2009. That while in service FIR no. 436 U/S 460/452 PPC dated 24.05.2017 PS Mathra, Peshawar was lodged against him. Subsequently, on the basis of the statement of the mother of the deceased, it was converted to Section 302/457 PPC. He was granted bail by the Peshawar High Court, Peshawar vide order dated 28.07.2017. On the basis of involvement in criminal case departmental proceedings were initiated against him

which culminated in his dismissal from service vide impugned order dated 19.01.2018. He filed departmental appeal on 24.01.2018 which was dismissed on 09.04.2018 followed by the present service appeal. Departmental proceedings against the appellant were not conducted in accordance with the spirit of Police Rules 1975. As due process was not followed and opportunity of defense was denied to the appellant, thus he was condemned unheard.

03. Learned counsel for the appellant further pointed out glaring illegality committed by the respondents in the present service appeal. Charge sheet was served under the signatures of SSP, Special Branch, whereas the impugned order was passed by DIG, Special Branch, who was not the competent authority in the case in hand. As such the impugned order was coram-non-judice and void ab-initio. Reliance was placed on case law reported as 2010 SCMR 1554, 2008 SCMR 1406, 2016 SCMR 108, 1997 SCMR 1073, 2007 PLC (C.S) 997, 2005 PLC (C.S) 417, 2019 PLC (C.S) 255, PLJ 2006 SC 921 and PLJ 2008 SC 65.

04. Learned Assistant Advocate General argued that criminal case vide FIR no. 436 U/S 460/452 PPC dated 24.05.2017 PS Mathra, Peshawar was registered against the appellant. That the appellant while present in drawing room of his house called one Shahid, his neighbor and the student of Class 10<sup>th</sup> and tried to commit unnatural act/sodomy which resulted <sup>in</sup> scuffle between the two. In retaliation Shahid died due to firing by the appellant. Departmental proceedings were initiated and after observance of all codal formalities, major penalty was awarded to the appellant.


### CONCLUSION

05. The present case revolves around the murder of one Shahid a student of class 10<sup>th</sup> and neighbor of the appellant. Purportedly, the appellant called the deceased to his house and tried to commit unnatural act with him which ensued in scuffle between the two. Allegedly, he was killed as a result of firing by the appellant. Initially, vide FIR no. 436 U/S 460/452 PPC dated 24.05.2017 PS Mathra, Peshawar was lodged against the appellant but subsequently on the statement of the mother of the deceased the same was converted into 302/457 PPC. The appellant was released on bail by the Peshawar High Court, Peshawar vide judgment dated 28.07.2017. In the meanwhile disciplinary proceedings were initiated against him and thereafter, major penalty of dismissal from service was awarded to him.

06. During the course of hearing on 13.06.2019 this Tribunal inquired from the respondents whether ministerial staff working under their administrative control would be proceeded under Police Rules 1975 or Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 and whether the Police Department had adopted E&D Rules 2011? In written response through a concise statement, the respondents informed that according to Section-1 of Khyber Pakhtunkhwa Police Rules 1975 these were applicable to Police Officials of and below the rank of DSP i.e from constable to DSP and furthermore special law applies only to Police personnel in uniform. However, Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 were applicable to the government servants of Special Branch and above beside ministerial staff of the Khyber Pakhtunkhwa Police. However, they could not clarify a point that with regard to adoption of E&D Rules 2011 by the Khyber Pakhtunkhwa Police. The major ambiguity that still

persists in this case is as to who is the appointing/competent authority in the case in hand. In case charge sheet was served by the SSP, Special branch then impugned order should have been passed <sup>by him</sup> him. As impugned order was passed by DIG, Special Branch thus it raised apprehensions in our mind whether under the rules, ~~whether~~ he was competent to pass any such order? In case he was not competent to do so then the impugned order was coram-non-judice in the eyes of law. Due to this major flaw we have restrained from analyzing the contents of the inquiry report and was it handled according to the invogue procedure. In order to resolve this controversy it is incumbent upon the respondents to conduct de-novo by taking into consideration our observations.

07. In view of the foregoing, the appeal is accepted, impugned order 19.01.2018 and 09.04.2018 are set aside and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry strictly in accordance with the law and rules within a period of ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

  
(AHMAD HASSAN)  
MEMBER

ANNOUNCED  
04.10.2019

Order

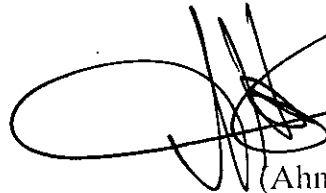
04.10.2019

Appellant with counsel present. Asst: AG for respondents present. Arguments heard and record perused.


Vide our detailed judgment of today of this Tribunal placed on file, the appeal is accepted, impugned order 19.01.2018 and 09.04.2018 are set aside and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry strictly in accordance with the law and rules within a period of ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own cost. File be consigned to the record room.

Announced:

04.10.2019



(Ahmad Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

05.07.2019

Counsel for the appellant present. Addl: AG alongwith Mr. Muhammad Suleman, Legal Reader for respondents present. Reply/comments as per order sheet dated 13.06.2019 have not been submitted by the respondents. They are directed to file concise statement on or before the next date of hearing. Case to come up for further proceedings on 30.08.2019 before D.B.



(Ahmad Hassan)  
Member



(M. Amin Khan Kundi)  
Member

30.03.2019

Appellant in person present. ~~Addl AG~~ alongwith Mr. Muhammad Asif, DSP for respondents present. Learned AAG submitted addl: documents which are placed on file. Learned AAG further stated that the present service appeal was heard by the bench comprising of Learned Member, Muhammad Amin Khan Kundi and Learned Member, Ahmad Hassan, therefore the case may be adjourned and fixed before the bench which partially heard the arguments. Adjourned. To come up for arguments on 04.10.2019 before D.B.



Member



Member

10.06.2019

Counsel for the appellant and Mr. Ziaullah, DDA alongwith Suleman Legal Reader for the respondents present.

Learned counsel for the appellant states that the date of hearing of instant appeal was noted in his diary for 13.06.2019, therefore, he is not in possession of brief today. Adjourned to 13.06.2019 for arguments before the D.B.

  
Member

  
Chairman

13.06.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Suleman Legal Reader for the respondents present.

The case was argued at some length. However, this Tribunal during the course of arguments observed that whether ministerial staff of the respondent was required to be proceeded under Police Rules, 1975 or Efficiency & Discipline Rules, 2011? Whether the police department had adopted Efficiency & Discipline Rules, 2011, if so, relevant notification/record would be vital for deciding this case. On the other hand learned Additional AG presented a copy of corrigendum dated 29.08.2017 through which competent authorities have been designated for initiation of disciplinary proceedings against the ministerial staff/employees of the Police Department. However, learned Additional AG was unable to produce anything in black and white through which it could be established that ministerial staff was required to be proceeded under the Government of Khyber Pakhtunkhwa Efficiency & Disciplinary Rules, 2011. At this juncture he made request for adjournment to consult the respondents and properly assist this Tribunal. Adjourned to 05.07.2019 for arguments before D.B.

  
(AHMAD HASSAN)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

19.12.2018

Noor Muhammad Khattak Advocate present submitted wakalat nama in favor of appellant. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Asif DSP present. Representative of the respondents submitted written reply which is placed on file. Adjourn. To come up for rejoinder if any and arguments on 14.02.2019 before D.B. 7/11

  
Member

14.02.2019


Appellant in person present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Due to strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Adjourned to 26.03.2019 for rejoinder and arguments before D.B.

  
(HUSSAIN SHAH)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

26.03.2019

Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Asif DSP for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 10.06.2019 before D.B.

  
(Hussain Shah)  
Member

  
(Muhammad Amin Khan khudi)  
Member



02.08.2018

Appellant Zahid Ali alongwith his counsel Mr. Jehanzeb Khalil, Advocate counsel for the appellant and heard in limine.

Contends that after registration of a criminal case against the appellant and without conclusion of his trial by the competent court of law, the appellant has been punished by dismissing him from service without affording him opportunity of hearing.

Points raised need consideration. The appeal is admitted to full hearing, subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 13.09.2018 before S.B.

  
Chairman

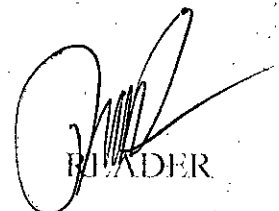
13.09.2018

Appellant Zahid Ali in person present. Security and process fee not deposited. Appellant is directed to deposit the same within 7 days, thereafter notice be issued to the respondents for written reply/comments on 01.11.2018 before S.B.

  
Chairman

01.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 19.12.2018.

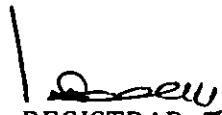



  
MEMBER

Appellant Deposited  
Security & Process Fee

Form-A  
FORM OF ORDERSHEET

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

Case No. 590/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	27/04/2018	<p>The appeal of Mr. Zahid Ali, presented today by Mr. Jehanzeb Khan Khalil 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 <u>27/4/18</u></p>
2-	15/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24/05/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	24.05.2018	<p>None present on behalf of the appellant. Adjourned. To come up for preliminary hearing on 12.07.2018 before S.B.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member</p>
	12.07.2018	<p>Neither appellant nor his clerk of the counsel present. Preliminary arguments could not be heard due to killing of a lawyer Barrister Haroon Bilour in a suicide attack during the election campaign. To come up for preliminary hearing on <u>02.08.2018</u> before S.B.</p> <p style="text-align: right;"> Chairman</p>



**PAKISTAN** National Identity Card

ISLAMIC REPUBLIC OF PAKISTAN

Name  
**Zahid Ali**



Father Name  
**Sardar Muhammad**

Gender Country of Birth

**M Pakistan**

Identity Number  
**17102-2097674-7**

Date of Birth  
**14.07.1976**

Date of Issue  
**21.12.2017**

Date of Expiry  
**21.12.2027**



*Signature*  
Holder's Signature



HON'ABLE SERVICES TRIBUNAL K.P.K, PESHAWAR

2018

Zahid Ali

Vs

Government of K.P.K etc

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Appellant

Through

Jehanzeb Khan Khalil

&

Aman durrani

Nasir Khan

Advocates

High Court Peshawar

1

BEFORE THE HON'ABLE SERVICES TRIBUNAL K.P.K, PESHAWAR

APPEAL NO: 590 2018

ZAHID ALI S/O SARDAR MUHAMMAD R/O STREET NO: 14,  
MOHALLAH HAZRAT USMAN. SARDAR COLONY, CHARASADA  
ROAD PESHAWAR.....Appellant

Khyber Pakhtunkhwa  
Service Tribunal

VS

Diary No. 634

Dated 27-4-2018

- GOVERNMENT OF KHYBER PAKHTOONKHWA THROUGH
1. INSPECTOR GENERAL OF POLICE KHYBER PAKHTOONKHWA
  2. DEPUTY INSPECTOR GENERAL OF POLICE HEAD QUARTERS PESHAWAR
  3. DEPUTY INSPECTOR GENERAL OF POLICE SPECIAL BRANCH KHYBER PAKHTOONKHWA PESHAWAR.
  4. SP/R&A SPECIAL BRANCH HEAD QUARTERS PESHAWAR.

.....Respondents

APPEAL UNDER SECTION 4 OF THE KPK SERVICES ACT 1974 (AMENDED UP TO DATE) AGAINST THE ORDERS NO: 530-35/EB DATED 19/01/2018 AND 1960-67/E-V DATED 09/04/2018 WHEREIN THE MAJOR PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND HIS DEPARTMENTAL APPEAL DISMISSED, WHICH IS AGAINST REAL FACTS, LAW, PRESCRIBED RULES, BASED ON MALAFIDE HENCE LIABLE TO BE SET ASIDE

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED ORDERS NO: 530-35/EB DATED 19/01/2018 AND 1960-67/E-V DATED 09/04/2018 MAY KINDLY BE SET ASIDE AND CONSEQUENTLY THE APPELLANT MAY BE REINSTATED TO HIS POST OF SERVICE FROM THE DATE OF DISMISSAL FROM SERVICE WITH ALL BACK BENEFITS

Respectfully Sheweth,

Brief facts:

1. That the appellant is law abiding citizen of Pakistan.  
(Copy of CNIC is attached)

Filed to-day  
Registrar  
27/4/18

2. That the appellant was appointed as junior Clerk on 05/10/1994 and was promoted to the rank of senior clerk in the year 2009 and performed his duties with due diligence & honesty. (Copy of service card is attached as annexure A)
3. That on 24/05/2017 the appellant lodged an FIR no: 436 dated 24/05/2017 under section 460/452 PPC at PS Mathra Peshawar, but later on the same was converted under section 302/457 PPC upon the statement of the mother of the deceased and the appellant was charged for the murder of the deceased hence arrested. (Copy of FIR is attached as annexure B)
4. That on 28/07/2017 the August High Court Peshawar allowed the bail petition of the appellant, hence released on bail and the same order is still intact. (Copy of bail order of the August High Court Peshawar is attached as annexure C)
5. That on the basis of the above mentioned criminal allegations the respondent illegally passed the impugned order of dismissal from service of the appellant upon conducting an illegal, against the real facts inquiry. (Copy of impugned order and departmental inquiry is attached as annexure D & E)
6. That feeling aggrieved from the above mentioned impugned order the appellant filed a departmental appeal before the respondents but the same was turn down by the respondents. (Copies of departmental appeal and impugned order dated 09/04/2018 are attached as annexure F & G)
7. That feeling aggrieved from the above mentioned impugned orders the appellant approaches this honorable tribunal for the purpose to challenge the validity of the same on the following grounds, inter alia;

### Grounds

- A. That the whole procedure of constitution of probing committee conducting inquiry etc by the respondents are against the relevant Law, rules and procedure, hence having no legal effect.
- B. That the report of probing committee is beyond its domain (TORs) and based on surmises and conjunctures and against the relevant rules and procedure.
- C. That the probing committee failed to collect any piece of evidence supporting the allegation of the complainant against the appellant.

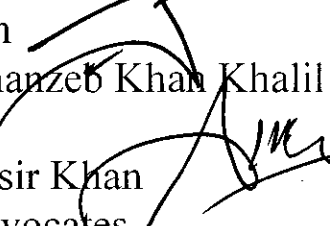
- D. That the criminal case against the appellant is still to be tried by the competent court of Law and the appellant have every hope of success in the said criminal case but the respondent in a hip hazard manner burden the appellant with criminal liability and passed the impugned orders which is also amounting as pre trial conviction/ sentence, hence on this score alone the impugned orders of the respondents are totally against Law of the land, prescribed procedure, against the relevant provision of the constitution of Pakistan with respect to the right of fair trial, against the natural justice.
- E. That the respondents with mala fide intention failed to give an opportunity of personal hearing and proper defense to the appellant during the course of inquiry and the appellant was condemned unheard by showing so called illegal inquiry, hence the impugned orders are against the relevant rules of Law and natural justice.
- F. That under the Law no person/accused could be declare guilty of an offence unless and until he is declare guilty by the competent court of law after the conclusion of fair, legal trial and after availing the opportunities of appeal ETC before the highest forum/courts of Law of the country but the respondent totally ignored the legal right of the appellant of fair trial and proper decision of the competent court of Law by passing the impugned orders which amounts as pre mature conviction/ sentence, hence the impugned order is not tenable in the eyes of Law.
- G. That the impugned order is also against the relevant Law, natural justice, constitution of Pakistan 1973, pre mature for the reason if after proper trial by the competent of Law if the appellant was acquitted from the charges leveled against him then the appellant will suffer irreparable loss due to the impugned order a proper trial there is nothing available on file there is no evidence regarding the involvement of the appellant in the allegation of irregularities in the selection process of ADOs and the whole process of selection was adopted and completed with the direction of the then competent authorities i.e member in charge but the probing committee badly failed to record the statements of the above mentioned competent authorities in respect of the allegation of the irregularities.
- H. That the whole proceedings of the respondents in shape od so called inquiry ETC are against the Law, and relevant rules, totally based on malafide, hence having no legal effect.



- I. That the impugned order of the dismissal of appellant from service is also against the Law and real facts.
- J. That the appellant rendered more then 24 years in the service with the respondents having no previous history regarding his involvement in such like activities.
- K. That any other ground will be raised at the time of argument before the Honorable Tribunal.


It is therefore, humbly requested that on acceptance of this appeal The impugned orders of dismissal from service of the appellant orders no:530-35/EB DATED 19/01/2018 AND 1960-67/E-V DATED 09/04/2018 may kindly be set aside and consequently the appellant may be reinstated with further direction to allow the appellant all back and consequential benefits. Any other relief not specifically prayed for through this appeal and deemed fit in the interest of justice may kindly be allowed to the appellant.

  
Appellant

Through   
Jehanzeb Khan Khalil  
&  
Nasir Khan  
Advocates  
High Court Peshawar

Verification:

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Honorable Tribunal.

Deponent  


S

BEFORE THE HON'ABLE SERVICES TRIBUNAL K.P.K, PESHAWAR


APPEAL NO: \_\_\_\_\_ 2018

Zahid Ali  
Vs

Government of K.P.K etc

Affidavit

I Zahid Ali S/O Sardar Muhammad R/O Street No: 14, Mohallah Hazrat Usman Sardar Colony, Charsada Road Peshawar do hereby solemnly affirm and declare on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this honorable Court.

  
Deponent



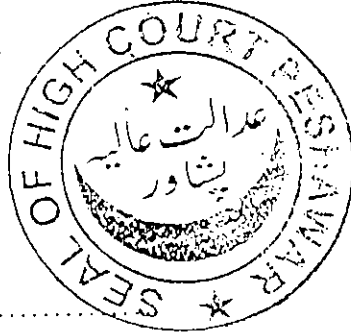


Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR,  
JUDICIAL DEPARTMENT.

Cr.Misc. BA No. 1322-P/2017.

Zahid Ali...vs...The State.



JUDGMENT

Date of hearing.....28.7.2017.....

Petitioner(s) by Mr. Hussain Ali, Advocate.

State by Syed Qaiser Ali Shah, AAG.

Complainant by Sahibzada Riazat Ul Haq, Advocate.

\*\*\*\*\*

MUHAMMAD AYUB KHAN, J:- Petitioner, Zahid Ali s/o of Sardar Muhammad, seeks his release on bail in case FIR No. 436 dated 24.5.2017 registered under section 302-457 PPC at P.S Mathra, Peshawar, after being remained unsuccessful to get the same relief from the learned lower court.

2. SHO P.S Mathra, after getting information reached the house of Zahid Ali complainant (now accused-petitioner). He found the dead body of a young boy in the house of petitioner. Petitioner reported that he was asleep alongwith his family members of the house. After hearing some noise he got up. He saw the deceased in his house who had entered the house for theft. The complainant/accused-petitioner raised lalkara and fired at

ATTESTE  
EXAMINER  
Peshawar High C  
29 JUL 201

Attested.

the deceased who got hit and died. After identification the dead body was identified to be of Shahid son of Yousaf Ali. As per inquest report the dead body was identified by the brother and sister of the deceased. Likewise the dead body was identified again by the brother and sister of the deceased before the Doctor at the time of Postmortem examination. On 27.5.2017, statement of mother of the deceased was recorded under section 164 Cr.PC. She charged the accused-petitioner for the murder of her son.

3. Arguments of the learned counsel for the parties heard and record perused with their assistance.

4. As per the accused-petitioner he acted in the defence of his property. The learned counsel for petitioner referred to section 103 PPC, for convenience same is reproduced below:

*Handwritten notes:*  
 1. [unclear]  
 2. [unclear]

"103. When the right of private defence of property extends to causing death.

The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrongdoer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:--

- First. Robbery;
- Secondly. House-breaking by night;
- Thirdly. Mischief by fire committed on any building, tent or vessels, which building, tent or vessel is used as a human

**ATTESTED**  
 EXAMINER  
 Peshawar High Court  
 29 JUL 2017

*Attested*

dwelling or as a place for the custody of property;

*Fourthly.* Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised."

As per ibid section the right of private defence of property extends to causing death in case of house-breaking by night.

5. The occurrence took place at 1.00 am night. Section 105 PPC is in respect of commencing and continuance of the right of private defence of property, according to which " *the right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.*"

6. The occurrence took place in the house of the accused-petitioner and the dead body was found by the police in the house of the petitioner. At present, it seems that the petitioner acted in private defence of property, hence he is entitled to the concession of bail. It will be seen at the trial if he has exceeded this right. Let the prosecution prove so, through cogent evidence.

7. For the reasons given herein above, the instant Cr.Misc. BA No. 1322-P/2017 is accepted and the accused-petitioner is allowed bail provided he furnishes bail bonds

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ATTESTED  
EXAMINER  
Peshwar High Court  
19 JUL 2017

Attested

60

in the sum of Rs. 200,000/- (Rupees two Lac) with two local, reliable and men of means sureties, each in the like amount to the satisfaction of Ilaqa Judicial Magistrate/ MOD.

8. The observations given by this court while deciding bail application, are not to be considered during the trial of the accused, which are tentative in nature and shall not, in any manner, influence the trial Court, which is free to apprise the evidence strictly in accordance with the law and merits of the case.

Announced on;  
28<sup>th</sup> of July, 2017  
\*Tarshad\*

*Sd/- Muhammad Azeem*

*A. R.*  
JUDGE



CERTIFIED TO BE TRUE COPY  
Examiner,  
Peshawar District Court, Peshawar  
Authorized Under Article 87 of  
The Qandahar-Shahdai Order 1984  
29 JUL 2017

No. 2891  
Date of Presentation of Application 28/7/17  
No of Pages 7  
Copying fee \_\_\_\_\_  
Urgent Fee \_\_\_\_\_  
Total 28000  
Date of Preparation of Copy 28/7/17  
Date Given For Delivery 28/7/17  
Date of Delivery of Copy 28/7/17  
Received By [Signature]

Attested

11  
Annexure "D"

DEPARTMENTAL ENQUIRY AGAINST ZAHID ALI, SENIOR CLERK,  
SPECIAL BRANCH, PESHAWAR

Brief Facts:

Zahid Ali, posted as Senior Clerk in Special Branch Hqrs: Peshawar was served with a charge sheet along with summary of allegations by the competent authority wherein he was charged to be guilty of misconduct for being involved in criminal case FIR No: 436, dated 24-05-2017 u/s 457/302 PPC, PS Mathra Peshawar during his posting as Senior Clerk, Special Branch Hqrs: Peshawar. He was directed to submit his written defence to the Enquiry Officer within a stipulated period.

The facts of the case are that on 24-05-2017 at about 01:50 hrs. Zahid Ali, Senior Clerk (accused) reported to the local Police of PS Mathra, Peshawar that he was sleeping in his home situated at Aslam Dheri Pajaggi Road area of PS Mathra. He woke up due to slight noise/movement and saw someone had entered into his home for committing theft. On his shouting, the suspect tried to escape. The accused Zahid Ali further reported that he opened fire by using the right of self defence with his 9MM Pistol. The deceased was hit by his firing and died on the spot. Later on, he identified the deceased as Shahid s/o Yousaf Ali r/o Aslam Dheri, PS Mathra. On the report of accused Zahid Ali a case FIR No: 436 dated 24-05-2017 u/s 460 PPC, PS Mathra was registered against him. Weapon of offence 9MM Pistol was recovered from the custody of accused Zahid Ali and he was not arrested on the spot. During investigation Mst. Bakht Taja w/o Yousaf Ali, mother of deceased Shahid recorded her statement u/s 164 CrPC in the court of law and charged Zahid Ali for murder of her son Shahid. After her statement, u/s 164 CrPC the sections of law were charged by the Investigation Officer as 457/302 PPC, 15AA and he was arrested in the case. Later on, the accused Zahid Ali was released on bail by the order of Peshawar High Court.

Proceedings:

Reply to the charge sheet was submitted by the accused Zahid Ali, Senior Clerk Special Branch Hqrs: Peshawar wherein he stated that at midnight of 23/24-05-2017, he was sleeping in his home. He woke up on hearing a slight noise and saw someone inside his home that entered the home by climbing the gate for theft. He opened fire on him by using the right of self defence and shot him injured. He informed the local Police of PS Mathra on phone. Meanwhile, the injured person succumbed to his injuries. Police arrived on the place of occurrence and on his report registered a case FIR No: 436, dated 24-05-2017 u/s 302/457 PPC. Later on, he was arrested and sent to Central Jail, Peshawar. He was then released on bail by Peshawar High Court. He further stated that his case has been put in the court for trial thus departmental enquiry initiated against him may be kept pending till the decision of the court. He also requested to reinstate him. During the course of departmental enquiry, the following persons were called and their statements were recorded.

1. Zahid Ali, Senior Clerk, Special Branch Hqrs: Peshawar (under suspension)

Statement of accused official Zahid Ali, Senior Clerk was recorded. He stated that he is working in Special Branch Hqrs: Peshawar as Senior Clerk for the last 04 years. He was living in his own house at Aslam Dheri, area of PS Mathra Peshawar. On the night of 23/24-05-2017, he was present along with his family in his home. He has no son and is the only male member of the

Attested



family. When he was going to sleep, he noticed unusual movement at the main gate of his house. Being the employee of Police department, he became alert due to the fear of any possible terrorist attack/target killing. He opened firing in the direction of main gate with his personal 9MM Pistol. At the same time he heard the bullet shots from outside his home. At that time there was no electricity and nothing was visible due to darkness. He at once made a call to Police Station, Mathra and got the cell No: of SHO, Malang Jan who was then called by him on cell No: 0315-9167573 through his cell No: 0345-9897359. Malang Jan, SHO was informed about the occurrence and was requested to come soon to the place of occurrence. After about half an hour, SHO Malang Jan along with Police personnel reached the place of occurrence. On the arrival of local Police, he identified the dead body in the light of torch which was of Shahid s/o Yousaf Ali r/o Aslam Dheri, area PS Mathra, lived in his neighborhood. He further stated that on his report, a case FIR No: 436 dated 24-05-2017 u/s 302/457 PPC, PS Mathra was registered. He was not arrested by the SHO on the spot but was arrested on 27-05-2017 when he was nominated in the case by Mst. Bakht Taja, the mother of deceased Shahid in her statement recorded u/s 164 CrPC in the court of law wherein she charged him for the murder of her son.

2. Mst: Bakht Taja w/o Yousaf Ali m/o deceased Shahid r/o Aslam Dheri area of PS Mathra.

Mst: Bakht Taja m/o deceased Shahid stated that on 24/05/2017 at 0015hrs her son Shahid was present in his drawing room. Their neighbour Zahid Ali called her son Shahid out of the home where he asked him for unnatural act but he refused and punched him on his face due to which Zahid Ali became angry and shot & killed her son. Zahid Ali dragged the dead body of Shahid to his nearby house and called the Police. On hearing fire shots and hue & cries, she went to the house of Zahid Ali and saw that her son Shahid was laying murdered there. Local police of PS Mathra was also present there. She charged accused Zahid Ali for the murder of her son in her statement recorded in the court of law u/s 164 CrPC. She further stated that there was no previous enmity between them and Zahid Ali. Her son Shahid was a student of 10<sup>th</sup> class and was innocent. Her son neither had committed the crime of theft nor had been involved in immoral activities and also was not wanted to police in any case.

3. Farhad Hussain, SI Police Station Mathra, Peshawar

Farhad Hussain, SI PS Mathra, Peshawar stated that he was posted as OII in Police Station Mathra. On 27-07-2017, a case FIR No: 436 dated 24-05-2017 u/s 457/302 PPC, PS Mathra received from Peshawar High Court was handed over to him for further investigation. He recorded the statement of Mst. Fatima Gul d/o Zahid Ali accused r/o Aslam Dheri Pajaggi Road u/s 161 CrPC and later on handed over the case file to SHO PS Mathra to submit complete Challan against accused Zahid Ali in the case. Imtiaz Khan, SI ex-OII, PS Mathra has initially investigated the case and later on the case was handed over to him after his transfer.

Q: Did Mst. Bakht Taja, mother of deceased Shahid produce any evidence or witness during investigation?

A: No.

4. Imtiaz Khan, SI PS Mathra presently PS Banamari, Peshawar

Imtiaz Khan, SI stated that on the day of occurrence, he was posted as Incharge Investigation OII in PS Mathra. After receiving Murasila u/s 460 PPC from SI Malang Jan, Acting SHO, PS

Attested

Mathra, the case was registered and handed over to him for further investigation. He went to the house of accused Zahid Ali who was present there. SI Malang Jan had already sent the dead body of Shahid s/o Yousaf Ali to mortuary for postmortem. On examination of place of occurrence blood of the deceased was found fallen on the ground near the gate. The empty shells were found lying on the stairs. The gate of the house of Zahid Ali was found hit from inside of the house with firing. SI Malang Jan had recovered the weapon of offence from the possession of Zahid Ali. He prepared site plan on pointation of accused Zahid Ali, recorded the statements of wives of Zahid Ali and her daughter Mst. Fatima u/s 161 CrPC. Later on, the matter was discussed with the high ups and in view of the statement of the deceased's mother, the section of law was changed into 302/457 PPC, 15AA while Zahid Ali was charged and arrested in the case. During investigation, Zahid Ali remained firm on his early statement on which case was registered. To ascertain any contact between the female members of family of accused Zahid Ali and the deceased Shahid, CDR have also been checked but no record of such contact has been found.

5. Malang Jan, SI, Police Station Yakkatoot Agha Mir Jani Shah, Peshawar

Statement of Malang Jan, SI was recorded in which he stated that on 24-05-2017 he was posted as SHO PS Mathra. On the day of occurrence at midnight, Zahid Ali r/o Aslam Dheri area PS Mathra called him through his cell phone number 0345-9897359 on his cell phone number 0315-9167573 and asked him to reach his home soon because he had shot an unknown person who entered his house by climbing the gate and he did not know whether he is alive or dead. He along with Police personnel reached to the house of Zahid Ali who opened the main gate which was properly locked. He entered the house and saw a dead body of a young person lying on the stairs inside the house. Initiating the investigation, he prepared injury sheet and inquest report and sent the dead body of deceased for postmortem. In the meantime, neighbours coming out from their houses identified the dead body as Shahid s/o Yousaf Ali r/o Aslam Dheri, PS Mathra. 9MM Pistol (without license) along with loaded magazine was also recovered from the possession of accused Zahid Ali and a case FIR No: 436 dated 24-05-2017 u/s 302/460 PPC, PS Mathra was registered against him. Later on, the section of law was changed to 302/457 PPC, 15AA in light of the statement of Mst. Bakht Taja w/o Yousaf Ali (mother of deceased) recorded u/s 164 Cr.PC. Initially the accused Zahid Ali was released but was then arrested on the statement of deceased's mother.

Q: Did you recover anything from the deceased Shahid?

A: No. He was wearing Shalwar and vest at that time and was also barefooted.

Conclusion

From the perusal of FIR, statements of the accused Zahid Ali, Mst. Bakht Taja m/o deceased Shahid, SI Malang Jan the then SHO PS Mathra, Investigation Officers of the case SI Imtiaz and SI Farhad Hussain and case file, it is concluded that accused Zahid Ali & deceased Shahid were neighbours, had good relations and there was no previous enmity between them. However according to the statement of Mst. Bakht Taja mother of deceased Shahid, recorded u/s 164 CrPC in the court of law (copy attached), accused Zahid Ali called out her son from her residence on 24/05/2017 at 0015hrs and her son went out with accused Zahid Ali. After 30minutes she heard fire shots and hue & cries. She along with her family members came out of their house and came to know that shots were fired in the house of Zahid Ali. On that they went to the house of Zahid Ali and saw that her son Shahid was laying murdered there. She charged accused Zahid Ali for the murder of her son. Accused Zahid Ali admitted in his statement that

Attended

deceased Shahid was shot and murdered by him. He took the plea that deceased Shahid was shot by him because he entered his house for theft and he exercised the right of self-defense which seems to be not justified because deceased had no weapon, was wearing vest and shalwar and was barefooted. His stance of exercising the right of self-defense has also not been taken into consideration by the Investigation Officer of the case during investigation. According to the statement of accused Zahid Ali there was no electricity, it was darkness and nothing was visible but he opened fire towards the gate of his house on hearing a slight noise without confirming as to who was there. There was every possibility of presence of someone from his own family living at the ground floor of the house. On the other hand accused Zahid Ali reported to Police that the deceased was shot by him when he entered into his house and tried to escape. According to the Postmortem report there was firearm entry wound, right side from the chest while firearm exit wound in the back of dead body, below the base of neck which shows that the deceased was not shot while trying to escape otherwise instead of exit wound, he should have entry wound in the back. In the site plan prepared by the local police one empty shell has been shown found and recovered from the place very near to the dead body which indicates that a fire was shot from that place on deceased Shahid which probably was the cause of his injuries and death, which is also supported by the injuries shown in the Postmortem Report. The accused Zahid Ali has also been charged in the case by the local Police u/s 15-AA for possessing illegal weapon (9MM pistol) which was without license.

In the light of above facts, in the instant case, due to his act and extreme step taken by him, accused Zahid Ali, Senior Clerk, Special Branch Hqrs: Peshawar is found to be guilty of misconduct.

(Saffraz Ali Shah)  
SP/R&A, Special Branch Hqrs, Peshawar

#### Enclosures

- 1) Written defense statement of accused Zahid Ali in reply to the Charge Sheet
- 2) Statement of Mst: Bakht Taja w/o Yousaf m/o deceased Shahid
- 3) Statement of accused Zahid Ali Senior Clerk, Special Branch Hqrs, Peshawar
- 4) Statement of SI Malang Jan the then SHO PS Mathra
- 5) Statement of SI Imtiaz Khan the then OII, Investigation Officer PS Mathra
- 6) Statement of SI Farhad Hussain Investigation Officer PS Mathra
- 7) Copy of Statement of Mst: Bakht Taja m/o deceased Shahid u/s 164CrPC
- 8) Copy of FIR No: 436 dated 24/05/2017 u/s 457/302 PPC, 15-AA PS Mathra
- 9) Copy of Site Plan prepared by Investigation Officer PS Mathra
- 10) Copy of Postmortem Report
- 11) Copy of case diary
- 12) Copy of statement of accused Zahid Ali recorded by IO u/s 161CrPC
- 13) Three photographs of the house of accused Zahid Ali (place of occurrence)

Attested

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ORDER.

This order will dispose of departmental proceedings against Sr. Clerk Zahid Ali of this Establishment. The brief facts of the case are that the defaulter official has been involved in a criminal case vide FIR No.436, dated 24-05-2017, u/s 157/302-PPe, Police station Mathra, District Peshawar, wherein he was charged for culpable homicide of one Shahid s/o Yousaf Ali r/o Aslam Dheri Peshawar by using his pistol at his house.

In this regard, proper departmental proceedings were initiated under Khyber Pakhtunkhwa (Efficiency and discipline) Rules 2011 by issuing Charge Sheet and Statement of Allegations against the defaulter Senior Clerk Zahid Ali. Mr. Sarfaraz Ali Shah SP/R & A Special Branch was appointed as Enquiry Officer to probe into the matter.

The Enquiry officer, after conducting detailed enquiry, found the defaulter official guilty of misconduct in his finding/conclusion.

The defaulter official was issued Final Show Cause Notice vide No.8452/EB, dated 20-12-2017, besides heard in person on 10-01-2018 by the undersigned. His reply to Final Show Cause Notice was not satisfactory/convincing, therefore, I, Qazi Jamil-ur-Rehman Dy: Inspector General of Police, Special Branch, KP, Peshawar being the competent authority impose upon him major penalty of dismissal from service under Khyber Pakhtunkhwa (Efficiency and Discipline) Rules 2011.

*scd*

(Qazi Jamil-ur-Rehman)  
Deputy Inspector General of Police,  
Special Branch, Khyber Pakhtunkhwa,  
Peshawar.

No. 530-35  
/EB, Dated Peshawar, the 19 / 01 / 2018.

Copy to all concerned.

(19,7)  
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To

Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.

Subject: Appeal against office order No.530-35/EB, dated 19.01.2018  
of the DIGP, Special Branch K.P Peshawar whereby  
appellant was dismissed from service for no legal reason.

Respected Sir,

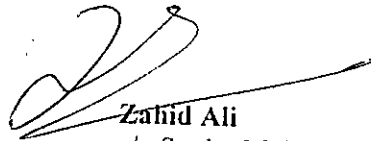
- 1) That appellant was appointed as Junior Clerk on 05.10.1994 and was promoted to the rank of Senior Clerk in the year, 2009.
- 2) That on 24.05.2017, appellant himself lodged FIR for the murder of Shahid Ali, which trial is still awaiting FOR till date.
- 3) That on the aforesaid FIR, I was served with show cause notice on the allegation of involvement in criminal case which was replied and denied the allegations.
- 4) That perhaps inquiry into the matter was initiated but the same was not conducted as per the mandate of law as no statement of complainant or other responsible was recorded nor appellant was afforded opportunity of cross examination, what to speak of self defence.
- 5) That any how, after completion of the so-called inquiry. final show cause notice was issued which was replied in the aforesaid manner by denying the allegations.
- 6) That as stated earlier, result of the criminal case is still pending and as per the verdicts of the apex court, no one can be punished mere on lodging of FIR against a servant.
- 7) That legal formalities were not observed in the inquiry proceedings, stated above, so the punishment is of no legal effect.

*Attested*

- 8) That the enactment under which appellant is dealt with, is not applicable in the case in hand.
- 9) That mother of the deceased is not an eye witness of the occurrence. How she came to know that her son was called for illicit relation.
- 10) That whole of the proceedings in the case are against law and rules, hence based on malafide.

It is, therefore, most humbly requested that order date 19.01.2018 of the authority be set aside and appellant be reinstated in service with all consequential benefit and obliged.

Thanking you Sir,



Zahid Ali  
s/o Sardar Muhammad  
R/o St.No.14, Mohallah Hazrat Usman  
Sardar Colony, Charsadda Road, Peshawar  
Ex-Sr.Clerk Special Branch, Hq, Peshawar

Dated: 24.01.2018

Attested



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(12)

OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
CENTRAL POLICE OFFICE  
PESHAWAR

Ph: 091-9210545 Fax: 091-9210927  
E-Mail: - OSEstabV@gmail.com

NO. 1960-67 /E-V

Dated, Peshawar the 9/4/ April, 2018

**ORDER.**

This order will dispose of the departmental appeal submitted by Senior Clerk Zahid Ali of Special Branch, Khyber Pakhtunkhwa Peshawar. The brief facts of the case are that the defaulter official has been involved in a criminal case vide FIR No.436, dated 24.05.2017 u/s 457/302-PPc, Police Station Mathra , District Peshawar, wherein he was charged for culpable homicide of Shahid s/o Yousaf Ali r/o Aslam Dheri Peshawar by using his pistol at his house.

In this regard, proper departmental Enquiry was initiated against the accused official under Khyber Pakhtunkhwa Efficiency and discipline Rules 2011. Charge Sheet and statement of allegations were issued and Mr. Sarfaraz Ali Shah SP(R & A) Special Branch was appointed as Enquiry Officer.

The enquiry officer after conducting proper departmental enquiry found the defaulter official guilty of misconduct in his findings thus, the accused official was issued Final Show Cause Notice, he submitted his reply which was not found satisfactory and he was also heard in person on 01.01.2018, but he could not satisfy the competent authority therefore he was awarded major punishment of dismissal from service by DIG/Special Branch, Khyber Pakhtunkhwa vide his office order No. 530-35/EB, dated 19.01.2018.

After awarding the punishment of dismissal from service, the appellant submitted departmental appeal to the next appellate authority for set aside his punishment awarded to him. He was called in Orderly Room held on 04-04-2018 at CPO Peshawar, wherein the appellant was heard in person in detail but he failed to offer any plausible grounds/reason in his defense. Besides, the allegations/charges were also proved against him in the departmental proceedings. Hence, his appeal has no substance.

Keeping in view the position explained above, the departmental appeal submitted by the appellant is hereby rejected/filed by the competent authority.

Order announced.

Sd/-

**SHER AKBAR PSP, S.St**

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

Endst: No. & date even.

Copy forwarded to the: -

- Addl: Inspector General of Police HQrs: CPO, Peshawar.
- Deputy Inspector General of Police HQrs, CPO, Peshawar.
- Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar.
- PA to the Assistant Inspector General of Police: Estt: CPO Peshawar.
- Registrar, CPO Peshawar.
- Office Supdtt: CPB, CPO Peshawar.
- Incharge Central Registry Cell.

*supdt/Secy/CPB Peshawar*

*Attest*

(AHISAN SAIFULLAH) PSP

AIG/Establishment,

For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.

50 روپے	36737
ایڈوکیٹ:	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
بار کونسل ایسوسی ایشن نمبر: PC-12-3610	
رابطہ نمبر: 0313-9955020	

بعدالت جناب: سروس ٹریڈینگز سہیل کونوخواہ

مخائب: اپیلانٹ	دعویٰ: Appeal
زائد	علت نمبر:
بنام	مورخہ:
حکومت سہیل کونوخواہ	جرم:
	تھانہ:

بابت تحریر آئکہ

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

المرقوم: 27/04/2018

الع بد واه شد الع بد  
مقام لپٹم کے لیے منظور ہے۔



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 590/2018.

Zahid Ali s/o Sardar Muhammad r/o Street No. 14, Mohallah Hazrat Usman, Sardar Colony,  
Charsadda Road, Peshawar ..... (Appellant)

Versus

Government of Khyber Pakhtunkhwa, through

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar.
4. SP/R&A Special Branch Headquarters Peshawar.

.....(Respondents)

S.No	Description of Documents	Annexure	Page No.
1.	Service Appeal		1-3
2.	Authority letter		4
3.	Affidavit		5

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Charsadda Road, Peshawar ..... (Appellant)

Versus

Government of Khyber Pakhtunkhwa, through

- 1. Inspector General of Police, Khyber Pakhtunkhwa.
- 2. Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa, Peshawar.
- 3. Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar.
- 4. SP/R&A Special Branch Headquarters Peshawar.

.....(Respondents)

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No. 1, 2, 3, 4.**

**Preliminary Objections**

- a) The appeal has not been based on facts.
- b) The appeal is not maintainable in the present form.
- c) The appeal is bad for mis-joinder and non-joinder of necessary parties.
- d) The Appellant is estopped to file the appeal.
- e) The Appellant has got no cause of action to file the appeal.
- f) The Appellant has not come to the Hon'ble Service Tribunal with clean hands.

**FACTS**

- 1. Incorrect, according to enquiry report and record of criminal case FIR No. 436 dated 24.05.2017 under section 302/457 PPC Police Station Mathra, District Peshawar on 24.05.2017, Appellant while present in drawing room of his house called out Shahid (his neighbor and student of 10<sup>th</sup> Class). Shahid while obliging the call of Appellant went out from his abode where the Appellant persuaded him for commission of sodomy/un natural act which infuriated Shahid and he punched Appellant on his face. In retaliation Appellant killed Shahid by way of making pistol firing on him and thereafter Appellant lodged false report before Police stating there in that Shahid committed trespass into his house and he while exercising right of self-defiance killed him. During course of investigation the above mentioned facts came to surface and Appellant was booked for the offence of murder. Appellant was serving Police department as senior clerk, and he allegedly committed murder of innocent young student of 10<sup>th</sup> Class and also concealed the actual facts therefore he was proceeded against departmentally and was dismissed from service vide impugned order.
- 2. Correct to the extent that Appellant was serving Police department as senior clerk but he committed a grave misconduct of allegedly killing a young student and producing wrong picture of the occurrence before police for saving his skin.

- 3. Correct to the extent of lodging report by the Appellant but during course of investigation it came to light that he has alleged committed murder of a student therefore he was arrested.
- 4. Correct to the extent that Hon'ble Peshawar High Court granted bail to the Appellant in the aforementioned criminal case.
- 5. Incorrect, Appellant was correctly dismissed from service, he allegedly persuaded a student for commission unnatural offence and on refusal he killed the student and gave colour of trespass to the murder occurrence. He has admitted the commission of offence and has also produced unlicensed pistol before Police, which was taken into possession as weapon of offence.
- 6. Correct to the extent that the departmental appeal of Appellant being without force and substance was turned down.
- 7. Incorrect, the appeal of Appellant on the given grounds is not sustainable.

**GROUND**

- A. Incorrect, proper procedure was adopted. Charge sheet was issued to Appellant and regular enquiry was conducted and the enquiry officer found the Appellant guilty of the charges.
- B. Incorrect, enquiry officer was examined the mother of deceased, and other Police officers for ascertaining the actual facts.
- C. Incorrect, the findings of enquiry officer is in detail and he has relied on oral and documentary evidence collected during course of enquiry proceedings.
- D. Incorrect, criminal charge and departmental charge are distinct in nature. Strong and trustworthy evidence is required for proving the criminal charge while in case of misconduct prima facie allegations of commission of misconduct are sufficient for imposing departmental penalty. The victim was a student, Appellant has admitted his killing on false plea of self-defiance. Weapon of offence has been recovered. Witnesses gave statements before enquiry officer therefore Appellant was rightly punished for commission of misconduct.
- E. Incorrect, proper opportunity of defense was provided to Appellant but he failed to defend the charge.
- F. Incorrect, the principle of law contended by Appellant govern the circumstantial evidence but not departmental proceedings. Criminal and departmental charge is distinct in nature and opinion of one forum is not binding on the other forum and both proceedings can run parallel to each other.
- G. Incorrect, this Para is mere repetition of Para "F" of the grounds of Appeal.
- H. Incorrect, proper legal and lawful action was taken against Appellant.
- I. Incorrect, the impugned order is just, legal and have been passed in accordance with law and rules.

J. Incorrect, long service is no defense in response to commission of grave misconduct.

K. The respondents may also be allowed raise other grounds during hearing of the case.

**Prayer**

It is therefore most humbly prayed that on acceptance of above submissions, the appeal of the Appellant may very kindly be dismissed with cost.

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

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

Deputy Inspector General of Police,  
Special Branch, Khyber Pakhtunkhwa, Peshawar.  
(Respondent No.3)

SP/R&A  
Special Branch Khyber Pakhtunkhwa,  
Peshawar.  
(Respondent No.4)

4

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 590/2018.

Zahid Ali s/o Sardar Muhammad r/o Street No. 14, Mohallah Hazrat Usman, Sardar Colony,  
Charsadda Road, Peshawar ..... (Appellant)

Versus

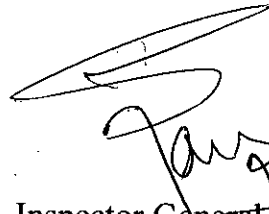
Government of Khyber Pakhtunkhwa, through

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar.
4. SP/R & A Special Branch Headquarters Peshawar.

.....(Respondents)

**AUTHORITY LETTER**

Muhammad Asif DSP Legal, Special Branch, Khyber Pakhtunkhwa Peshawar is hereby authorized to appear on behalf of the Respondents Nos. 1, 2, 3 & 4 before the Hon'ble Service Tribunal Peshawar. He is authorized to submit all required documents and replies etc pertaining to the appeal through the Government Pleader.



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



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



Deputy Inspector General of Police,  
Special Branch, Khyber Pakhtunkhwa, Peshawar.  
(Respondent No.3)



SP/R&A  
Special Branch Khyber Pakhtunkhwa,  
Peshawar.  
(Respondent No.4)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 590/2018.

Zahid Ali s/o Sardar Muhammad r/o Street No. 14, Mohallah Hazrat Usman, Sardar Colony,  
Charsadda Road, Peshawar ..... (Appellant)

Versus

Government of Khyber Pakhtunkhwa, through

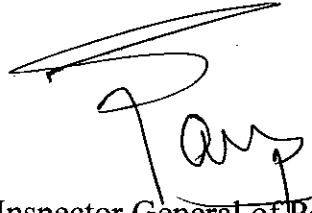
1. Inspector General of Police, Khyber Pakhtunkhwa.
2. Deputy Inspector General of Police, Headquarters Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar.
4. SP/R & A Special Branch Headquarters Peshawar.

.....(Respondents)

**AFFIDAVIT**

We the deponents do hereby declare that the contents of the written reply are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Tribunal.

Deponents



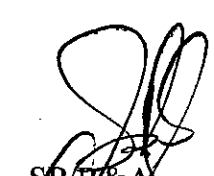
Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)



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



Deputy Inspector General of Police,  
Special Branch, Khyber Pakhtunkhwa, Peshawar.  
(Respondent No.3)



SP/R & A  
Special Branch Khyber Pakhtunkhwa,  
Peshawar.  
(Respondent No.4)

بیان از ازاں زائد علی سنہ ۱۹۷۱ (مصلح)

سینٹل بر ایچ لیٹور

بیان کیا کہ جس عرصہ تقریباً ۴ سال سے سینٹل بر ایچ میں  
لیٹور سنٹر ملزک تعمیرات ہوں۔ میں اصل ماسٹہ ہتھی ضلع  
طاردہ کا پون جبکہ موجودہ ریٹس اسلم ڈھیری چلی روڈ  
معدنہ تھا نہ مہرا میں ہے جو مہرا ڈی ای ٹھہری ہے۔ مہرا و قوسم  
مورضہ  $\frac{5}{17}$  23/24 کو وقت تقریباً درضائی سب میں عرصہ ایل و عیال  
اپنے گھر میں موجود تھا۔ مہری کوئی نرسہ اولاد نہیں ہے۔ میں سونے  
کی تیاری کر رہا تھا کہ اسی دوران میں نے اپنے گھر کے گیٹ پر غیر معمولی  
آہٹ سی۔ اُس وقت مہری ایل و عیال سو چکے تھے۔ چونکہ میں  
پولیس ڈیپارٹمنٹ میں ملازمت کرتا ہوں اور موجودہ حالات  
کے مطابق پولیس ایگوارڈیشنگ دونوں کٹانے پر میں لہذا مہری  
ذہن میں فوری طور پر یہ ضیال آیا کہ شاید کوئی ایسی قسم کا  
دشمندہ چھ پر حملہ کرنے کی غرض سے مہری گھر کا گیٹ معدنہ  
میں داخل ہوا ہے۔ لہذا میں حفاظت خود ارضیا کی خاطر  
اپنا ذاتی لیٹول 9mm جو مہری پاس موجود تھا نکالا اور


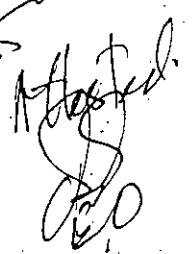
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گیس کی طرف فائرنگ کی۔ اسی دوران میں نے گیس کے باہر سے  
 نامعلوم افراد کی طرف سے آئی گیس فائرنگ کی آوازیں سنیں۔ بوقت وقوعہ  
 بجلی نہیں تھا اور فوہر تھا۔ میں نے خوری طور پر تھکانہ سٹور اچون  
 کرائے ان سے SHO تھکانہ جلد جان کا ہوائیل ٹر حاصل کیا اور اسی  
 ہوائیل ٹر (9167573-0315) پر اپنے ہوائیل ٹر 0345-9897359  
 سے SHO کو وقوعہ کی اطلاع دی اور اسے خوری طور پر جانے وقوعہ  
 پر پہنچنے کی درخواست کی، کیونکہ اس وقت تک مجھے اپنی جان کو خطرہ  
 محسوس ہو رہا تھا۔ تقریباً نصف گھنٹے کے بعد SHO مجھے نفی پہنچ کر  
 میں نے اسے تمام واقعہ سے آگاہ کیا۔ ~~حقاً~~ حقاً پولیس نے وقوعہ پر  
 اونڈھنے میں بیڑی ہوئی جو ان العمر شخص کی لاش کو سیدھا لیا تو مارا  
 کی روٹی میں میں نے اسے پہچان لیا جو سابقہ ولدہ جو سیف علی سکنہ الم  
 ڈھیری علاقہ تھکانہ سٹور آئی لاش تھی جو سہری پھاسا شہی میں ہی رکھا گیا  
 رکھا تھا۔ حقاً پولیس نے لاش کو تھکانہ لے گئی جہاں میں بھی تھکانہ  
 چلا گیا اور وہاں پر سہری بدعت میں مقدمہ نمٹ 436 حوالہ 5/17 24  
 پپر 302/457 P.P.C تھکانہ سٹور درج کیا گیا۔ مجھے جوتھ پر SHO  
 تھکانہ سٹور نا دو شخصیات پر چھوڑا۔ بعدہ حوالہ 5/17 کو

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فقہول شافعیہ و لہذا یوسف علی کی والدہ نے نذر لیم عدالتی بیان  
 زبردستی 164 CPC نمبر اپنے بیٹے کے قتل کی دعویداری کی  
 اس دعویداری کی بنیاد پر صحیحہ گرفتار کیا گیا اور پھر اس دوران  
 صحافی ریٹائرمنٹ حاصل کر کے جہانگیر آباد ضلع مظفر آباد  
 و سیکرٹریل جیل لنگر پور بھجوا دیا گیا۔ جس نے سیشن جج (ایڈیشنل) کو  
 لنگر پور کی عدالت میں ضمانت کیلئے درخواست دی جو کہ ناخوشگوار ہوئی  
 بعد ازاں صحیحہ حوالہ 13/17 کو کراچی عدالت سے ضمانت پر رہ گیا  
 گیا۔ جس نے ایک ذمہ دار لوہیوں الیکٹریسیوں۔ جیل ازمین کسی قسم کے  
 جرائم میں ملوث نہیں رہے اور ایک پرائیمن اور صاف سمجھتی  
 زندگی گزار رہی ہیں۔ جس نے جو کچھ بھی کہا ہے صرف حفاظت خود  
 اختیاری کی خاطر کہا ہے۔ جس کے ساتھ انصاف کیا جائے۔ صحافی  
 کا خواستگار ہوں۔ جسے باقی فرمائے جسے عطلی حکم کر کے صحیحہ حل لڑنے  
 سے بحال کیا جائے۔

فراہم علی، سیکرٹری کلر سیکرٹری جیل لنگر پور  



xxx کیا آپ کی حضورؐ سے یہ ولدِ یوسف علیؑ کے ساتھ کبھی قسم کی

گزشتہ، نجس پادشہی کا تعلق ہے؟

ہی نہیں

xxx کیا آپ نے یہ علیؑ ولدِ یوسف علیؑ کو گلیٹ بمبارنگ کے وقت بھی

لایا تھا؟

ہی نہیں، اس وقت اندھرا تھا اور گلی نہیں تھی۔

Attested  
CEO

Statement of Bkht Taja wife of Yousaf Ali, aged about 45/46 years,  
resident of Aslam Dheri, Peshawar on oath.

On 24/5/17 at 1215 hours night accused Zahid Ali son of Sardar Ali, resident of Aslam Dheri called out my son deceased Shahid and on this my son went out of his house and went with Zahid Ali. After 30 minutes I heard the reports of fire shots and also heard hue and cries. On this I alongwith my family members came out of our house and came to know that shots were fired in the house of said Zahid Ali. On this we went to the house of Zahid Ali and saw that my son Shahid was lying murdered there. I charge accused Zahid Ali mentioned above for the murder of my son Shahid.

RO & AC.

Bakht Taja.

CNIC No. 17301-8291289-8.

Certified u/s 164 Cr.PC.

Judl: MIC-VI, Peshawar.

Dated: - 27/5/17.

27<sup>05</sup>/<sub>17</sub>

Jamil Khan  
Peshawar

بیان ان کے ساتھ جت نامہ زوم و سبھی

والدہ شہیدہ تقویٰ لکنہ الہم ڈھری جلی روزیہ

بیان کیا کہ حوض 24/17 کو وقت 12:15 بجے سب زاید علی ولد

سردار علی لکنہ الہم ڈھری جلی روڈ لکے عمر ہو کہ ہمراہ سب سے

ہمارے گھر آکر ہمراہ گھوڑی بیٹھک میں موجود خیرے بیٹے ساید کو

بیٹھک سے بلا کر باہر نکالا اور اسے غلط کام کرنے کا لٹے کیا جو

خیرے بیٹے نے غصے میں آکر زاید علی کی منہ پر معاً کھڑو دیا جس

سے زاید علی جو مسلح بہ لیٹول تھکانے میں بیٹے پر فائرنگ کرکے

خیرے بیٹے ساید کو قتل کر دیا اور اس کی لاش کو گھسٹا ہوا

نزدیک واقع الہی گھر لے گیا اور عزیز زاید علی نے پولیس کو

بلا کر شور و غل کی آواز پر جس باہر نکل کر بیٹھک میں دیکھا

تو اپنے بیٹے ساید کو حود نہ پایا جس نے زاید علی کا گھر جا کر دیکھا

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مہرا بیٹا شاید زاید علی کے گھر کے اندر گیس کے قریب قتل کیا گیا

تھا جبکہ تقاضی نوٹس کے تحت مہرا علی وہاں موقع پر موجود تھی۔

تقاضی نوٹس کے تحت مہرا نے زاید علی کی رپورٹ پر مقدمہ عدالت 436

سولہ 24/17 ج 460 درج کیا تھا جو بعد میں جس نے

عدالت میں بیان دیا کہ زاید علی نے اپنے بیٹے شاید کے قتل

کی دعویٰ کی جس پر مقدمہ میں لے کر عدالت 302/457

PC اعداد کی گئی۔ جس میں اپنے بیٹے شاید کے قتل کی زاید علی خرم

کے خلاف دعویٰ ازیں۔ اس نے مہرا بیٹے کی سزا قتل

کیا ہے جبکہ قتل ازیں مہرا اور زاید علی کے حاکم کی قسم

کی رخصت یا دستخط بھی نہیں تھے۔ مہرا بیٹا شاید مہرا کا ماطا لعل

تھا اور انہی نے سائے سائے ساتھ صحبت مزوری سے کرتا تھا۔ وہ نہ تو

مورتھا اور نہ ہی گھس اس نے موری جیسی حرکت کی تھی۔ نہ ہی

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3

درد کو کسی میں لرم یا بقدوم میں مطلوب تھا وہ ایک

شرف النفس لہ کا تھا اور کسی میں قسم کی غیر اخراجی وکالت میں جلو

نہیں تھا۔ زاہد علی کلزم لیسانہ بیمار کے تعلق سے بہتر ہے اور ایک دوسرے کو آنا جانا

کبھی تھا



حماة بنت تالمہ زردلم لوسف علی

17301-8291289-8

Adha

گواہ شدہ۔ گوئی علی ولد امام علی رکنہ تعالیٰ بایں لیس

(بجسٹیا) ازاں حماة بنت تالمہ

17301-4691590-1

0345-9138124

Attested  
JEO

AA4


42 12/17

A

**CHARGE SHEET**

I, Gul Afzal Khan Afridi, SSP/Admn: Special Branch, Khyber Pakhtunkhwa Peshawar, as a competent authority, under Rule 5(b) of Khyber Pakhtunkhwa, (Efficiency & Disciplinary) Rules, hereby charge you Senior Clerk Zahid Ali as follows:-

- 2) That you have involved in Case FIR No.436, dated 24.05.2017, U/s 457/302 PPC, PS/Mathra Peshawar.
- 3) Your this act amounts to gross misconduct and this speaks highly adverse on your part warranting stern disciplinary action against you under the relevant Rules of Khyber Pakhtunkhwa, Government Civil Servants Efficiency and Discipline Rules-2011.
- 4) By reasons of the above, you appear to be guilty of misconduct under Rule 4 of Khyber Pakhtunkhwa Govt. Servants Efficiency and Disciplinary Rules, 1973 (amended in 2011) and has rendered you liable to all or any of the penalties specified in the Rules ibid.
- 5) You are, therefore required to submit your written defense within Seven days of the receipt of this charge sheet to the Enquiry Committee/Enquiry Officer as the case may be.
- 6) Your written defense, if any, should reach the Enquiry Officer / Enquiry committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case and ex-parte action shall follow against you.
- 7) Intimate whether you desire to be heard in person.
- 8) A statement of allegations is enclosed.

  
(Gul Afzal Khan Afridi)  
Sr: Superintendent of Police, Admn:  
Special Branch Khyber Pakhtunkhwa,  
Peshawar.

(P)

جناب عالی!

بحوالہ چارج شیٹ نمبر 6309/EB مورخہ 19-09-2017 معروض خدمت ہوں کہ مورخہ 23/24 مئی، 2017 کی درمیانی شب میں اپنے گھر میں مجھ کو خواب تھا کہ اس دوران بوقت تقریباً نصف شب آہٹ سن کر بیدار ہوا تو دیکھا کہ ایک شخص میرے گھر کی دیوار پھلانگ کر گھر میں چوری کی غرض سے داخل ہو کر کھڑا تھا۔ سائل نے اپنی حفاظت حق خود اختیاری کی خاطر اُس شخص پر فائر کر دیا جس سے وہ زخمی ہو گیا۔ سائل نے اُسی وقت تھانہ متھر اکو بذریعہ فون واقعہ کی اطلاع دی۔ اس دوران مذکورہ زخمی شخص جاں بحق ہو چکا تھا۔ پولیس موقع پر پہنچی اور میری درخواست پر مقدمہ عدلت نمبر 436 مورخہ 24-05-2017 جرم PPC 302/457 درج رجسٹر کیا اور بعد ازاں اسی وجہ سے گرفتار ہو کر سنٹرل جیل پشاور بھجوا دیا گیا اور پشاور ہائی کورٹ سے ضمانت پر رہا ہوا ہوں۔ سائل کا کیس چونکہ عدالت میں زیر غور ہے لہذا بذریعہ درخواست استدعا کی جاتی ہے کہ سائل کے خلاف محکمانہ انکوائری کو تا فیصلہ عدالت معطل کیا جائے اور سائل کی سسپنشن کو ختم کیا جائے۔ عین نوازش ہوگی۔

العارض

زاہد علی، سینئر کلرک متعینہ R&A سیکشن، پیشل برانچ پشاور۔



Sir:

In compliance with the Final Show Cause Notice received to me on 21.12-2017 vide No.8452/EB, dated 20.12.2017.

It is submitted that I am a low paid Govt: Servant and have no male member in my house except my 7-daughters all is minor and school going.

The charge regarding committing of murder is not correct. Infact I was sleeping in my house notice unusual movement at the main gate. I voiced the movement when in the meanwhile; I heard firing near the gate. In myself defense also made firing and to know the matter, I called for SHO of the Police Station Mathra for help.

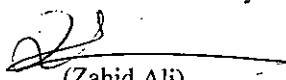
He reached the spot found dead body of one Shahid. Later on I was charged for the same due to suspicion as the occurrence was of mid night.

Sir, I am innocent and have no concern with the same. A part from the above. Trial is in progress in the court of law and request for to wait till final decision of the same.

By keeping in view the aforesaid submissions. It is therefore requested that the departmental enquiry against me, may kindly be kept pending till the decision of the Hounrable's court please.

I want to appear before your good honors for heard in person please.

Yours Obediently.



(Zahid Ali)

Senior Clerk R & A Special Branch,  
Peshawar.

Call him for 10/01



FINAL SHOW CAUSE NOTICE

I, Qazi Jamil-ur-Rehman, DIG/Special Branch KP, Peshawar being competent authority under Rule 5(b) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, issue this final show cause notice to you **Senior Clerk Zahid Ali** on the following grounds:-

"That you while posted to R & A Section SB/HQrs <sup>were</sup> was charged for committing murder vide case vide FIR No.436, dated 24-05-2017, u/s 457/302-PPC, PS / Mathra, District Peshawar".

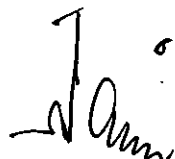
After going through the findings of the Enquiry Officer, the material available on record and other connected papers, I am satisfied that you have committed the misconduct being defined under Rule 2(1) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011. As a result thereof, I Qazi Jamil-ur-Rehman DIG/Special Branch Khyber Pakhtunkhwa Peshawar as competent authority have tentatively decided to impose major punishment upon you under Rule 4 of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules 2011.

You are therefore, directed through this Final Show Cause to reply **within 07 days** as to why the aforesaid penalty should not be imposed upon you.

In case your reply is not received within stipulated period, it shall be presumed that you have no defense to put. In that case an ex-parte action shall be taken against you.

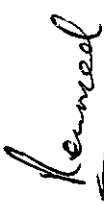
Also state as to whether you desire to be heard in person.

Copy of finding of the enquiry officer is enclosed.

  
(QAZI JAMIL UR REHMAN)  
Dy: Inspector General of Police,  
Special Branch Kp. Peshawar.

No. **8452** /EB, Dated Peshawar, the **20** /12/2017.

Copy to S/C Zahid Ali, SB HQrs, Peshawar.

  
20/12/17

**DEPARTMENTAL ENQUIRY AGAINST ZAHID ALI, SENIOR CLERK,  
SPECIAL BRANCH, PESHAWAR**

**Brief Facts:**

Zahid Ali, posted as Senior Clerk in Special Branch Hqrs: Peshawar was served with a charge sheet along with summary of allegations by the competent authority wherein he was charged to be guilty of misconduct for being involved in criminal case FIR No: 436, dated 24-05-2017 u/s 457/302 PPC, PS Mathra Peshawar during his posting as Senior Clerk, Special Branch Hqrs: Peshawar. He was directed to submit his written defence to the Enquiry Officer within a stipulated period.

The facts of the case are that on 24-05-2017 at about 01:50 hrs. Zahid Ali, Senior Clerk (accused) reported to the local Police of PS Mathra, Peshawar that he was sleeping in his home situated at Aslam Dheri Pajaggi Road area of PS Mathra. He woke up due to slight noise/movement and saw someone had entered into his home for committing theft. On his shouting, the suspect tried to escape. The accused Zahid Ali further reported that he opened fire by using the right of self defence with his 9MM Pistol. The deceased was hit by his firing and died on the spot. Later on, he identified the deceased as Shahid s/o Yousaf Ali r/o Aslam Dheri, PS Mathra. On the report of accused Zahid Ali a case FIR No: 436 dated 24-05-2017 u/s 460 PPC, PS Mathra was registered against him. Weapon of offence 9MM Pistol was recovered from the custody of accused Zahid Ali and he was not arrested on the spot. During investigation Mst. Bakht Taja w/o Yousaf Ali, mother of deceased Shahid recorded her statement u/s 164 CrPC in the court of law and charged Zahid Ali for murder of her son Shahid. After her statement, u/s 164 CrPC the sections of law were charged by the Investigation Officer as 457/302 PPC, 15AA and he was arrested in the case. Later on, the accused Zahid Ali was released on bail by the order of Peshawar High Court.

**Proceedings:**

Reply to the charge sheet was submitted by the accused Zahid Ali, Senior Clerk Special Branch Hqrs: Peshawar wherein he stated that at midnight of 23/24-05-2017, he was sleeping in his home. He woke up on hearing a slight noise and saw someone inside his home that entered the home by climbing the gate for theft. He opened fire on him by using the right of self defence and shot him injured. He informed the local Police of PS Mathra on phone. Meanwhile, the injured person succumbed to his injuries. Police arrived on the place of occurrence and on his report registered a case FIR No: 436, dated 24-05-2017 u/s 302/457 PPC. Later on, he was arrested and sent to Central Jail, Peshawar. He was then released on bail by Peshawar High Court. He further stated that his case has been put in the court for trial thus departmental enquiry initiated against him may be kept pending till the decision of the court. He also requested to reinstate him. During the course of departmental enquiry, the following persons were called and their statements were recorded.

**1. Zahid Ali, Senior Clerk, Special Branch Hqrs: Peshawar (under suspension)**

Statement of accused official Zahid Ali, Senior Clerk was recorded. He stated that he is working in Special Branch Hqrs: Peshawar as Senior Clerk for the last 04 years. He was living in his own house at Aslam Dheri, area of PS Mathra Peshawar. On the night of 23/24-05-2017, he was present along with his family in his home. He has no son and is the only male member of the

family. When he was going to sleep, he noticed unusual movement at the main gate of his house. Being the employee of Police department, he became alert due to the fear of any possible terrorist attack/target killing. He opened firing in the direction of main gate with his personal 9MM Pistol. At the same time he heard the bullet shots from outside his home. At that time there was no electricity and nothing was visible due to darkness. He at once made a call to Police Station, Mathra and got the cell No: of SHO, Malang Jan who was then called by him on cell No: 0315-9167573 through his cell No: 0345-9897359. Malang Jan, SHO was informed about the occurrence and was requested to come soon to the place of occurrence. After about half an hour, SHO Malang Jan along with Police personnel reached the place of occurrence. On the arrival of local Police, he identified the dead body in the light of torch which was of Shahid s/o Yousaf Ali r/o Aslam Dheri, area PS Mathra, lived in his neighborhood. He further stated that on his report, a case FIR No: 436 dated 24-05-2017 u/s 302/457 PPC, PS Mathra was registered. He was not arrested by the SHO on the spot but was arrested on 27-05-2017 when he was nominated in the case by Mst. Bakht Taja, the mother of deceased Shahid in her statement recorded u/s 164 CrPC in the court of law wherein she charged him for the murder of her son.

2. **Mst. Bakht Taja w/o Yousaf Ali m/o deceased Shahid r/o Aslam Dheri area of PS Mathra.**

Mst. Bakht Taja m/o deceased Shahid stated that on 24/05/2017 at 0015hrs her son Shahid was present in his drawing room. Their neighbour Zahid Ali called her son Shahid out of the home where he asked him for unnatural act but he refused and punched him on his face due to which Zahid Ali became angry and shot & killed her son. Zahid Ali dragged the dead body of Shahid to his nearby house and called the Police. On hearing fire shots and hue & cries, she went to the house of Zahid Ali and saw that her son Shahid was laying murdered there. Local police of PS Mathra was also present there. She charged accused Zahid Ali for the murder of her son in her statement recorded in the court of law u/s 164 CrPC. She further stated that there was no previous enmity between them and Zahid Ali. Her son Shahid was a student of 10<sup>th</sup> class and was innocent. Her son neither had committed the crime of theft nor had been involved in immoral activities and also was not wanted to police in any case.

3. **Farhad Hussain, SI Police Station Mathra, Peshawar**

Farhad Hussain, SI PS Mathra, Peshawar stated that he was posted as OII in Police Station Mathra. On 27-07-2017, a case FIR No: 436 dated 24-05-2017 u/s 457/302 PPC, PS Mathra received from Peshawar High Court was handed over to him for further investigation. He recorded the statement of Mst. Fatima Gul d/o Zahid Ali accused r/o Aslam Dheri Pajaggi Road u/s 161 CrPC and later on handed over the case file to SHO PS Mathra to submit complete Challan against accused Zahid Ali in the case. Imtiaz Khan, SI ex-OII, PS Mathra has initially investigated the case and later on the case was handed over to him after his transfer.

Q: Did Mst. Bakht Taja, mother of deceased Shahid produce any evidence or witness during investigation?

A: No.

4. **Imtiaz Khan, SI PS Mathra presently PS Banamari, Peshawar**

Imtiaz Khan, SI stated that on the day of occurrence, he was posted as Incharge Investigation OII in PS Mathra. After receiving Murasila u/s 460 PPC from SI Malang Jan, Acting SHO, PS

Mathra, the case was registered and handed over to him for further investigation. He went to the house of accused Zahid Ali who was present there. SI Malang Jan had already sent the dead body of Shahid s/o Yousaf Ali to mortuary for postmortem. On examination of place of occurrence blood of the deceased was found fallen on the ground near the gate. The empty shells were found lying on the stairs. The gate of the house of Zahid Ali was found hit from inside of the house with firing. SI Malang Jan had recovered the weapon of offence from the possession of Zahid Ali. He prepared site plan on pointation of accused Zahid Ali, recorded the statements of wives of Zahid Ali and her daughter Mst. Fatima u/s 161 CrPC. Later on, the matter was discussed with the high ups and in view of the statement of the deceased's mother, the section of law was changed into 302/457 PPC, 15AA while Zahid Ali was charged and arrested in the case. During investigation, Zahid Ali remained firm on his early statement on which case was registered. To ascertain any contact between the female members of family of accused Zahid Ali and the deceased Shahid, CDR have also been checked but no record of such contact has been found.

#### **5. Malang Jan, SI, Police Station Yakkatoot Agha Mir Jani Shah, Peshawar**

Statement of Malang Jan, SI was recorded in which he stated that on 24-05-2017 he was posted as SHO PS Mathra. On the day of occurrence at midnight, Zahid Ali r/o Aslam Dheri area PS Mathra called him through his cell phone number 0345-9897359 on his cell phone number 0315-9167573 and asked him to reach his home soon because he had shot an unknown person who entered his house by climbing the gate and he did not know whether he is alive or dead. He along with Police personnel reached to the house of Zahid Ali who opened the main gate which was properly locked. He entered the house and saw a dead body of a young person lying on the stairs inside the house. Initiating the investigation, he prepared injury sheet and inquest report and sent the dead body of deceased for postmortem. In the meantime, neighbours coming out from their houses identified the dead body as Shahid s/o Yousaf Ali r/o Aslam Dheri, PS Mathra. 9MM Pistol (without license) along with loaded magazine was also recovered from the possession of accused Zahid Ali and a case FIR No: 436 dated 24-05-2017 u/s 302/460 PPC, PS Mathra was registered against him. Later on, the section of law was changed to 302/457 PPC, 15AA in light of the statement of Mst. Bakht Taja w/o Yousaf Ali (mother of deceased) recorded u/s 164 Cr.PC. Initially the accused Zahid Ali was released but was then arrested on the statement of deceased's mother.

**Q:** Did you recover anything from the deceased Shahid?

**A:** No. He was wearing Shalwar and vest at that time and was also barefooted.

#### **Conclusion**

From the perusal of FIR, statements of the accused Zahid Ali, Mst: Bakht Taja m/o deceased Shahid, SI Malang Jan the then SHO PS Mathra, Investigation Officers of the case SI Imtiaz and SI Farhad Hussain and case file, it is concluded that accused Zahid Ali & deceased Shahid were neighbours, had good relations and there was no previous enmity between them. However according to the statement of Mst: Bakht Taja mother of deceased Shahid, recorded u/s 164 CrPC in the court of law (copy attached), accused Zahid Ali called out her son from her residence on 24/05/2017 at 0015hrs and her son went out with accused Zahid Ali. After 30minutes she heard fire shots and hue & cries. She along with her family members came out of their house and came to know that shots were fired in the house of Zahid Ali. On that they went to the house of Zahid Ali and saw that her son Shahid was laying murdered there. She charged accused Zahid Ali for the murder of her son. Accused Zahid Ali admitted in his statement that

deceased Shahid was shot and murdered by him. He took the plea that deceased Shahid was shot by him because he entered his house for theft and he exercised the right of self-defense which seems to be not justified because deceased had no weapon, was wearing vest and shalwar and was barefooted. His stance of exercising the right of self-defense has also not been taken into consideration by the Investigation Officer of the case during investigation. According to the statement of accused Zahid Ali there was no electricity, it was darkness and nothing was visible but he opened fire towards the gate of his house on hearing a slight noise without confirming as to who was there. There was every possibility of presence of someone from his own family living at the ground floor of the house. On the other hand accused Zahid Ali reported to Police that the deceased was shot by him when he entered into his house and tried to escape. According to the Postmortem report there was firearm entry wound, right side from the chest while firearm exit wound in the back of dead body, below the base of neck which shows that the deceased was not shot while trying to escape otherwise instead of exit wound, he should have entry wound in the back. In the site plan prepared by the local police one empty shell has been shown found and recovered from the place very near to the dead body which indicates that a fire was shot from that place on deceased Shahid which probably was the cause of his injuries and death, which is also supported by the injuries shown in the Postmortem Report. The accused Zahid Ali has also been charged in the case by the local Police u/s 15-AA for possessing illegal weapon (9MM pistol) which was without license.

In the light of above facts, in the instant case, due to his act and extreme step taken by him, accused Zahid Ali, Senior Clerk, Special Branch Hqrs: Peshawar is found to be guilty of misconduct.

(Saffraz Ali Shah)

SP/R&A, Special Branch Hqrs, Peshawar

#### Enclosures

- 1) Written defense statement of accused Zahid Ali in reply to the Charge Sheet
- 2) Statement of Mst: Bakht Taja w/o Yousaf m/o deceased Shahid
- 3) Statement of accused Zahid Ali Senior Clerk, Special Branch Hqrs, Peshawar
- 4) Statement of SI Malang Jan the then SHO PS Mathra
- 5) Statement of SI Imtiaz Khan the then OII, Investigation Officer PS Mathra
- 6) Statement of SI Farhad Hussain Investigation Officer PS Mathra
- 7) Copy of Statement of Mst: Bakht Taja m/o deceased Shahid u/s 164CrPC
- 8) Copy of FIR No: 436 dated 24/05/2017 u/s 457/302 PPC, 15-AA PS Mathra
- 9) Copy of Site Plan prepared by Investigation Officer PS Mathra
- 10) Copy of Postmortem Report
- 11) Copy of case diary
- 12) Copy of statement of accused Zahid Ali recoded by IO u/s 161CrPC
- 13) Three photographs of the house of accused Zahid Ali (place of occurrence)

Statement of Bakht Taja wife of Yousaf Ali, aged about 45/46 years,  
resident of Aslam Dheri, Peshawar on oath.

On 24/5/17 at 1215 hours night accused Zahid Ali son of Sardar Ali, resident of Aslam Dheri called out my son deceased Shahid and on this my son went out of his house and went with Zahid Ali. After 30 minutes I heard the reports of fire shots and also heard hue and cries. On this I alongwith my family members came out of our house and came to know that shots were fired in the house of said Zahid Ali. On this we went to the house of Zahid Ali and saw that my son Shahid was lying murdered there. I charge accused Zahid Ali mentioned above for the murder of my son Shahid.

RO & AC.

Bakht Taja.

CNIC No. 17301-8291289-8.

Certified u/s 164 Cr.PC.

Judl: MIC-VI, Peshawar.

Dated: - 27/5/17.

27<sup>05</sup>/<sub>17</sub>

Stamp: JUDICIAL MAGISTRATE VI, PESHAWAR