

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7451/2021

Date of Institution ... 22.09.2021

Date of Decision ... 01.04.2022

Shah Nawaz Khan S/O Safdar Khan, R/O Wazir Garhi P/O Pabbi
Tehsil & District Nowshera.

... (Appellant)

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa Peshawar and
two others.

... (Respondents)

MS. ROEEDA KHAN,
Advocate

--- For appellant.

MR. NOOR ZAMAN KHATTAK,
District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)


JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Brief facts forming the background of the instant service appeal are that departmental action was taken against the appellant on the allegations that he was charged in criminal case bearing FIR No. 254 dated 13.03.2021 under sections 324/34 PPC registered in Police Station Pabbi District Nowshera. On conclusion of the inquiry, the appellant was dismissed from service vide impugned order dated 25.05.2021 passed by District Police Officer Nowshera. The departmental appeal of the appellant was also rejected by the Regional Police Officer Mardan vide order dated 30.08.2021, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their joint reply, wherein they refuted the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the appellant was not at all associated with the inquiry proceedings and the inquiry officer even did not bother to afford opportunity to the appellant to record his statement. He further argued that neither any charge sheet nor any statement of allegations was issued to the appellant and the inquiry was conducted in violation of mandatory provisions of Police Rules 1975. He further argued that neither copy of the inquiry report was provided to the appellant nor any final show-cause notice was issued to him. He also argued that the impugned order of dismissal of the appellant was passed prior to outcome of the trial of the criminal case registered against him, which fact has rendered the impugned order as void ab-initio. He next contended that the appellant has already been acquitted in the criminal case registered against him, therefore, the impugned orders are liable to be set-aside and the appellant is entitled to be reinstated in service with all back benefits.


4. On the other hand, learned District Attorney for the respondents has contended that the appellant was found guilty in a regular inquiry, therefore, he has rightly been dismissed from service. He further argued that the appellant was provided opportunity of personal hearing but he failed to give any plausible reason in his defense. He next contended that criminal and departmental proceedings can run parallel and mere acquittal of the appellant in the criminal case could not entitle him to be exonerated in the departmental proceedings. In the last he requested that the appeal in hand being devoid of any merit may be dismissed with costs.

5. Arguments heard and record perused.

6. A perusal of the record would show that upon the report of complainant Subhan Ullah S/O Jamal Shah, case FIR No. 254 dated 13.03.2021 was registered against the appellant as well as his brother Khyber and one Raza Gul S/O Ghulam Muhammad in Police Station Pabbi District Nowshera. The appellant was suspended and show-cause notice was issued to him on 16.03.2021. The appellant submitted reply to the show-cause notice and on receipt of the same, District Police Officer wrote an

endorsement on the same, directing SP Investigation to probe that what was role of the appellant in the incident and to leave compromise apart. The report submitted by SP Investigation to District Police Officer Nowshera is available on the record, which would show that the appellant was not at all associated during the proceedings conducted by SP Investigation. It is also evident from the aforementioned report that no firing was made by the appellant. The procedure so adopted during the inquiry proceedings would show that the appellant was condemned unheard.

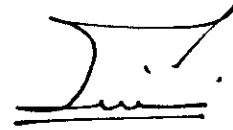
7. On receipt of report of the SP Investigation, the appellant was straight away dismissed by the competent authority vide the impugned order dated 25.05.2021, without issuing him show cause notice. Similarly, copy of the proceedings conducted by SP Investigation was also not provided to the appellant. This Tribunal has already held in numerous judgments that issuing of final show-cause notice as well as providing of copy of the inquiry report to the delinquent official/officer is must. Reliance is also placed on judgment of august Supreme Court of Pakistan reported as PLD 1981 Supreme Court 176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the inquiry report to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him.

8. The appellant was proceeded against departmentally on the ground of his involvement in criminal case, however he has been acquitted in the said criminal case by learned trial court vide order dated 02.11.2021. In view of acquittal of the appellant, the very charge, on the basis of which the appellant was proceeded against, has vanished away. Nothing is available on the record, which could show that the acquittal of the appellant has been challenged by the department through filing of appeal before the higher forum.

9. In view of the above discussion, the appeal in hand is accepted by setting aside the impugned orders and the appellant

is reinstated in service with all back benefit. Parties are left to bear their own costs. File be consigned to record room after necessary completion and compilation.

ANNOUNCED
01.04.2022



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



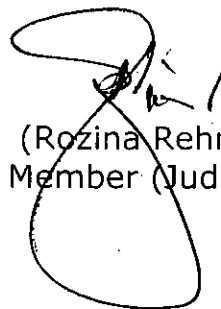
(ROZINA REHMAN)
MEMBER (JUDICIAL)

ORDER
01.04.2022

Learned counsel for the appellant present. Mr. Muhammad Fayaz, Head Constable alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present. Learned counsel for the appellant produced attested copy of order of acquittal of the appellant, which is placed on file. Arguments ~~have already~~ ^{4.} been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is accepted by setting aside the impugned orders and the appellant is reinstated in service with all back benefit. Parties are left to bear their own costs. File be consigned to record room after necessary completion and compilation.

ANNOUNCED
01.04.2022


(Rozina Rehman)
Member (Judicial)


(Salah-Ud-Din)
Member (Judicial)

23.11.2021

Counsel for the appellant present. Preliminary arguments have been heard.

Learned counsel for the appellant argued that the impugned order dated 25.05.2021 has been challenged in the instant service appeal. The penalty of dismissal from service has been imposed on the appellant vide the impugned order dated 25.05.2021. He submitted departmental appeal which was rejected vide appellate order dated 30.08.2021, hence, the instant service appeal filed in the Service Tribunal on 22.09.2021. It was further contended that no regular enquiry has been conducted against the appellant and no charge sheet/statement of allegations issued to him and as such the ends of justice have not been met before awarding the major penalty.


The appeal is admitted to regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter notices be issued to the respondents for submission of written reply/comments. To come up for written reply/comments on 26.01.2022 before S.B.

Appellant Deposited
Security & Process Fee


(Mian Muhammad)
Member(E)

26.01.2022

Appellant in person present. Mr. Noor Zaman Khattak, District Attorney for respondents present and submitted reply/comments, which are placed on file and copy of the same is handed over to the appellant. To come up for rejoinder if any, and arguments before the D.B on 01.04.2022.




(Atiq-Ur-Rehman Wazir)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7451 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/09/2021	<p>The appeal of Mr. Shah Nawaz Khan resubmitted today by Roeda Khan 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> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/11/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Shah Nawaz Khan son of Safdar Khan District Nowshera received today i.e. on 22.09.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Annexures-D and G of the appeal are illegible which may be replaced by legible/better one.

No. 1887 /S.T,

Dt. 22/09 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Roeeda Khan Adv. Pesh.

objection No 192
has been removed



23/9/2021

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title:

Shah Nawaz vs - Police

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

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

Name:

Raza Q

Signature:

R

Dated:

23-9-2021

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No: _____/20201

Shah Nawaz Khan

VERSUS


P.P.O KPK & Others

INDEX

S#	Description of Documents	Annexure	Pages
1.	Grounds of Petition.		1-4
2.	Affidavit.		5
3.	Addresses of parties		6
4.	Application for Condonation of Delay		7-8
5.	Copy of FIR	"A"	9
6.	Copy of show Cause Notice and reply	"B & C"	10 11
7.	Copy of bail order	"D"	12
8.	Copy of dismissal order	"E"	13
9.	Copy of departmental appeal and rejection order	"F & G"	14 15
10.	Wakalatnama		


APPELLANT

Through


Roeeeda Khan
Advocate, High Court
Peshawar.

Dated: 22/09/2021

①

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

In Re S.A No. 7451 /2021

Diary No. 7627

Date: 22/9/2021

Shah Nawaz Khan S/o Safdar Khan R/o Wazir Garhi P/O
Pabbi Tehsil & District Nowshera

Appellant

VERSUS

1. The Provincial Police Officer KPK Peshawar
2. The Regional Police Officer Mardan Region Mardan.
3. The District Police Officer, Nowshera.

Respondents

APPEAL U/S-4 OF THE KHYBER
PAKHTUNKHWA SERVICES
TRIBUNAL ACT 1974 AGAINST THE
ORDER DATED 25-05-2021, WHEREBY
THE APPELLANT HAS BEEN
AWARDED MAJOR PUNISHMENT OF
DISMISSAL FROM SERVICE AND
AGAINST WHICH THE APPELLANT
FILED DEPARTMENTAL APPEAL
WITHIN ONE MONTH FROM THE
COMMUNICATION OF THE
IMPUGNED ORDER DATED 25.05.2021
WHICH HAS BEEN REJECTED ON
30/08/2021 ON NO GOOD GROUNDS,

Filed to-day
Registrar
22/9/2021

PRAYER:-

ON ACCEPTANCE OF THIS APPEAL BOTH
THE IMPUGNED ORDERS DATED
25/05/2021 & 30/08/2021 MAY KINDLY BE

(2)

**SET ASIDE AND THE APPELLANT MAY
KINDLY BE REINSTATED IN SERVICE
ALONG WITH ALL BACK BENEFITS. ANY
OTHER REMEDY WHICH THIS AUGUST
TRIBUNAL DEEMS FIT THAT MAY ALSO
BE ONWARD TRIBUNAL DEEMS FIT
THAT MAY ALSO BE GRANTED IN
FAVOUR APPELLANT.**

Respectfully Sheweth,

1. That the Appellant was appointed as Constable since long time with Respondent Department.
2. That the appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.
3. That while performing his duty with respondent department, a false and fabricated case FIR No: 254, Dated 13/03/2021, U/S 324/34/337F(V) PPCPS: Pabbi against the appellant was lodged, in which the appellant has been suspended. **(Copy of FIR is annexure "A")**
4. That a show cause notice has been issued to the appellant on 16.03.2021 which has been properly replied by the appellant where the appellant denied all the allegation level against him. **(Copy of show Cause Notice and reply attached at annexure "B" & "C").**
5. That the appellant submitted has pre arrest bail petition in the court concern which has been confirmed on 06.05.2020 by the concern court. **(Copy of bail order is attached as annexure "D").**

3

6. That the appellant has been dismissed from service on 25.05.2021 on the ground of involvement of the said criminal case. **(Copy of dismissal order is attached as annexure "E")**.
7. That the appellant submitted departmental appeal within one month from the communication of the impugned order dated 25.05.2021 which has been rejected on 30.08.2021. **(Copy of departmental appeal and rejection order are attached as annexure "F" & "G")**.
8. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

GROUND:-

- A. That the impugned order 25/05/2021 and rejection order dated 30/08/2021 are void and ab-initio order because it has been passed without fulfilling codal formalities in this respect the appellant relied upon a judgment reported on 2007 SCMR Page 834.
- B. That no charge sheet no statement of allegation has been issued or communicated to the appellant which is a clear cut violation of Rule 6 of Police Rule 1975.
- C. That no regular or departmental inquiry was conducted against the appellant which is mandatory before imposing the major penalty and no opportunity of personal hearing.
- D. It is a well settled maxim no one can be condemned unheard because it is against the natural justice of law in this respect the appellant

(4)

relied upon a judgment reported on 2008 SCMR,
page:678.


- E. That no opportunity of cross examination has been provided to the appellant. In this respect the appellant relied upon a judgment reported on 2016 SCMR Page 108.
- F. That the respondent department should be waited for the decision of the criminal cases above.
- G. That the appellant has already on bail by the court concern in the above cited criminal case.
- H. That any other ground not raised here may graciously be allowed to be raised at the time full of arguments on the instant service appeal.

It is therefore, most humbly prayed that on acceptance of this appeal both the impugned Orders dated 25/05/2021 & 30/08/2021 may kindly be set aside and the Appellant may kindly be reinstated in service along with all back benefits.

Any other relief not specifically asked for may also graciously be extended in favour of the Appellant in the circumstances of the case.


APPELLANT

Through


Roeed Khan
Advocate, High Court
Peshawar.

Dated: 22/09/2021

NOTE:-

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.


Advocate.

(5)

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/20201

Shah Nawaz Khan

VERSUS


P.P.O KPK & Others

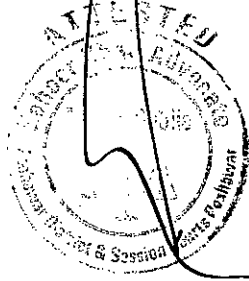
AFFIDAVIT

I, **Shah Nawaz Khan S/o Safdar Khan R/o Wazir Garhi P/O Pabbi Tehsil & District Nowshera**, do hereby solemnly affirm and declare that all the contents of the **instant appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Court.


DEPONENT

IDENTIFIED BY:


Roeda Khan
Advocate High Court
Peshawar.



6

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S:A No. _____/20201

Shah Nawaz Khan

VERSUS

P.P.O KPK & Others

ADDRESSES OF PARTIES

PETITIONER.


Shah Nawaz Khan S/o Safdar Khan R/o Wazir Garhi
P/O Pabbi Tehsil & District Nowshera

ADDRESSES OF RESPONDENTS

1. The Provincial Police Officer KPK Peshawar
2. The Regional Police Officer Mardan Region Mardan.
3. The District Police Officer, Nowshera.


APPELLANT

Through


Roeda Khan
Advocate, High Court
Peshawar.

Dated: 22/09/2021

(7)

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/20201

Shah Nawaz Khan

VERSUS

P.P.O KPK & Others

APPLICATION FOR CONDONATION OF DELAY (IF ANY)

Respectfully Sheweth,

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That the appellant filed a departmental appeal within one month from the communication of the impugned order dated 25.05.2021.

GROUND:

- A. That the impugned order is void and illegal and no limitation run against the void orders because the impugned order has been passed without fulfilling the codal formalities.

8

B. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

C. That there are many judgment of the superior court as well as specific provision of service law that limitation has been counted from the date of communication/knowledge.

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.



APPELLANT

Through



Roeeda Khan

Advocate, High Court

Peshawar.

Dated: 22/09/2021

فارم نمبر ۲۲
 نسبی انسدادی شاہ خان

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۲ مجموعہ ضابطہ لوجہ دار

0344-8937097

فون نمبر

بی

وقت وقوع 13/3/21 وقت 08:45

علاقہ 254

حاکمیت برسر 13/3/21 وقت 09:40

13/3/21 وقت 9:20

وقت رپورٹ

سبحان اللہ ملہ جمال شاہ سائل وزیر گڑھی

0314-6096539
 17202-034529-3

م سکونت اطلاع دہندہ مستفیض

324-34 / 337 F(1)

مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔

ذاتہ خودہ نزد سید عائشہ خان و سید
 وزیر گڑھی، لفاصلہ و قریب قریب از خانہ جانب قریب

جانے وقوعہ فاصلہ خانہ سے درست

شاہ اوازین حیدر ایسوان صفدر ملہ غلام محمد ساکنان فرید گڑھی

نام سکونت طرز

سید گئی ممبری مسلم مقدمہ درج کیا جاتا ہے۔

کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرنا

بہ مہیل ڈاکے

تھانہ سے روانگی کی تاریخ و وقت

وقت وقوعہ 13/3/21 وقت 08:45
 علقہ 254
 حاکمیت برسر 13/3/21 وقت 09:40
 13/3/21 وقت 9:20
 وقت رپورٹ
 م سکونت اطلاع دہندہ مستفیض
 0314-6096539
 17202-034529-3
 مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔
 ذاتہ خودہ نزد سید عائشہ خان و سید
 وزیر گڑھی، لفاصلہ و قریب قریب از خانہ جانب قریب
 جانے وقوعہ فاصلہ خانہ سے درست
 نام سکونت طرز
 سید گئی ممبری مسلم مقدمہ درج کیا جاتا ہے۔
 کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرنا
 تھانہ سے روانگی کی تاریخ و وقت

ابتدائی اطلاع کے درج کر کے
 سید گئی ممبری مسلم مقدمہ درج کیا جاتا ہے۔
 کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرنا

13.3.21 Asi-PS-Pabli

ATTACHED

واقعہ خودہ شاہ خان ملہ

(10) MB

OFFICE OF THE DISTRICT POLICE OFFICER, NOWSHERA

SHOW CAUSE NOTICE

(Under Rule 5 (3) KPK Police Rules, 1975)

1. That you Constable Shah Nawaz No. 1145, while posted at Guard Session House now under suspension at Police Lines, Nowshera rendered yourself liable to be proceeded under Rule (3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct:
Charged in a criminal case registered vide FIR No. 254 dated 13.03.2021 u/s 324/34 PPC F Pabbi, which amounts to grave misconduct on your part.
2. That by reasons of above, as sufficient material is placed before the undersigned; therefore is decided to proceed against you in general Police proceeding without aid of enquiry officer.
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force.
4. That your retention in the Police force will amount to encourage inefficiency and unbecom of good Police officers. That by taking cognizance of the matter under enquiry, undersigned as competent authority under the said rules, proposes stern action against by awarding one or more of the kind punishments as provided in the rules.
5. You are, therefore, called upon to show cause as to why you should not be dealt strict accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred above.
6. You should submit reply to this show cause notice within 07 days of the receipt of the failing which an ex-parte action shall be taken against you.
7. You are further directed to inform the undersigned that you wish to be heard in person or

District Police Officer
Nowshera

No. 45 /PA
Dated 16/03 /2021

[Handwritten signature]
17-3-21

[Handwritten signature]

طالع

میرا موصول شوکار نوٹس اجلاس آئیں 45/PA جان طاب
16/03/2021
نوٹس حضور کی خدمت میں

میرا نوٹس 13/3/2021 سے گزرتے ہوئے کیلئے شکار سیشن ہاؤس آکر
رشتہ داران نے اطلاع دی کہ رشتہ داران رضاعی، برادر ام صبر نے انکو
کی فوجا نوبت سے اور فوجا نوبت کے سیم میں سباز انہ در حال
دہ آم زخمی ہوا ہے۔ فرحین رضاعی اور فرحیم سباز انہ کے پاس کو
عصر سے جائیداد پر تنازع ہے اور روز بروز مذکورہ فرحین رضاعی در عین
دہ گھر آکر جس پر فوجا نوبت نے آکر میرے گھر پر فوجا نوبت
گھر میں موجود افراد نے کچھ سوال نامہ پوچھ کر کے سیم کے طور پر
سباز انہ کو گھر سے ہرا ہے میں بے فکریہ نے خود در
کوئی فیصلے سے جا چکے ہیں کی نوٹس کر رہا ہے۔
پہلے دو سیم خورس کے نام سے فوراً عدالت سے BBA حاصل کر
اس سیم میں بے گناہ ہوں شوکار نوٹس میرا
کا رشتہ داران کا اور سیم کر رہا ہوں۔ داخل دفتر فرحین رضاعی

Mukhammad

13 مارچ 1145
16/03/2021

NO. 845/PA
dt 04/03/2021

Previous record
DIE 01-08-2008
GIE 02
BIE 03
May 0
Nil
mm 01

Finced RS = 2000/- for two days
absent

ATTENDED

what is his role in
incident??
Cause compromise report

17

BETTER COPY

ORDER:

Dated 06-05-2021

1. Instant case file received from the court of learned ASJ-VI Nowshera be entered in to the relevant petitioner/ accused Shahnawaz son of Safdar Khan is present on ad-interim pre-arrest bail with his consel. APP imran hussain is present for the state complainant/ injured subhan ullah is also present consel for the petitioner has submitted an application for insertion of section 337-F(v) PPC in the BBA petition which was inadvertently no written in the bail petition as per record of the petition consel seems genuine hence accepted and section 337-F(v) be inserted in the bail petition with red ink. Muharar is directed to do the needful.
2. Petitioner accused Shahnawaz S/o Safdar Khan seeks his relief on pre-arrest bail in case FIR No 254 dated 13-03-2021 under section 324/34, 337-F(v) of Police Pabbi. At the very outset complainant/ injured has stated at the bar that he has entered in to compromise with the accused/ petitioner and therefore he has got now no objection on acceptance of the BBA of the petition and later on his a acquittal. Statement of the complainant/ injured has been recorded wherein he has exhibited the compromise deed as EX.PB and his CNIC as Ex.PA.
3. The offense with which the accused petitioner is charged are compoundable in the light of the provision of section 345 read with 2nd schedule of CrPC , the compromise between the parties seems genuine and free from force or coercion, therefore the entrance of justice the compromise between the parties is accepted and resultantly the BBA petition is also accepted the interim pre-arrest bail earlier granted to the petitioner is confirmed against the existing bonds petitioner/ accused is directed to co-operate with the investigation officer for completion of investigation. A copy of the order be placed on case record where after the same be returned while this file be consigned to record room after his completion and compilation.

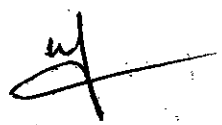
Pronounced in Open Court

06-05-2021

**Tufail Ahmad
Additional Session Judge
Model Criminal Trail Court Nowshera**

1. Instant case file received from the court of learned ASJ-VI, Nowshera. Be entered into the relevant register. Petitioner/accused Shah Nawaz son of Safdar Khan is present on ad-interim pre-arrest bail with his counsel. APP Inqam Hussain is present for the State. Complainant/injured Subhan Ullah is also present. Counsel for petitioner has submitted an application for insertion of section 337-F(v) PPC in the BBA petition which was inadvertently not written in the bail petition. As per record, the request of the petitioner's counsel seems genuine, hence, accepted and section 337-F(v) be inserted in the bail petition with red ink. Muharri is directed to do the needful.
2. Petitioner/accused Shah Nawaz son of Safdar Khan seeks his release on pre-arrest bail in Case FIR No.254 dated: 13.03.2021 under section 324/34/337-F(v) PPC of Police Station Pabbi. At the very outset complainant/ injured has stated at the bar that he has entered into compromise with the petitioner/accused and therefore he has got no objection on acceptance of the BBA petition of the petitioner and later on, on his acquittal. Statement of the complainant/ injured has been recorded wherein he has exhibited the compromise deed as Ex.PB and his CNIC as Ex.PA.
3. The offences with which the petitioner/accused is charged, are compoundable in light of provisions of section 345 read with second schedule of CrPC. The compromise between the parties seems genuine and free from force or coercion, therefore, in the interest of justice the compromise between the parties is accepted and resultantly the BBA petition is also accepted. The ad-interim pre-arrest bail earlier granted to the petitioner is confirmed against the existing bonds. Petitioner/accused is directed to co-operate with the Investigation Officer for completion of investigation. A copy of this order be placed on case record whereafter the same be returned, while this file be consigned to record room after its completion and compilation.

Pronounced in open Court.
06.05.2021




(Tufan Ahmed)
Additional Sessions Judge-II
Model Criminal Trial Court, Nowshera

POLICE DEPARTMENT

NOWSHERA DISTRICT

ORDER

Constable Shah Nawaz No. 1145, he while posted at Guard Session House, charged/involvement in a criminal case registered wide FIR No. 254 dated 13.03.2021 u/s 324/34 PPC PS Pabbi.

On account of which, he was suspended, closed to Police Lines and served with Show Cause Notice, to which, he submitted his reply. The same was entrusted to SP investigation, Nowshera in order to highlight the role of the defaulter official in the incident, who after doing the needful submitted his report to the undersigned highlighted therein that although accused Raza Gul fired at the complainant but FC Shah Nawaz No. 1145 was present at the place of occurrence.

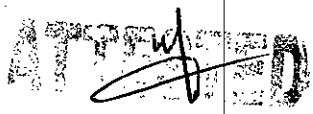
On 25.05.2021, he was heard in orderly room but failed to satisfy the undersigned, therefore, he is hereby awarded major punishment of dismissal from service with immediate effect, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules-1975

OB No. 514
Dated 25/05/2021


District Police Officer,
Nowshera

1209-06/PA, dated Nowshera, the 25/05/2021.
Copy for information and necessary action to the:

1. Pay Officer.
2. Establishment Clerk.
3. OHC
4. FMC together with its enclosures (21 sheets).
5. Official concerned.



جناب عالی! سائل کو بحوالہ آڈر بک نمبر 514 مورخہ 25/05/2021 کو نوکری سے برخاست کیا گیا۔

سائل اس سلسلے میں ذیل عرض گزار ہے۔

- (۱) یہ کہ سائل سال 2008 کا بھرتی شدہ کا نشیبل ہے اور تاحال کبھی بھی افسران بالا کو شکایت کا موقع فراہم نہیں کیا اور اپنی تمام ملازمت انوکری نہایت ایمانداری سے سرانجام دیتا رہا۔
- (۲) یہ کہ مورخہ 13/03/2021 کو میں حسب معمول گھر خود میں موجود تھا۔ کہ اسی دوران میں نے اپنے گھر میں فائرنگ کی آواز سنی اور یہاں پر نکلا تو دیکھا کہ میرا ماموں زاد بھائی مسی رضا گل اور مسی سبحان اللہ ایک دوسرے پر فائرنگ کر رہے ہیں اور نتیجے مسی سبحان اللہ مخالف فریق کے فائرنگ سے زخمی ہوا اسی دوران جب مسی سبحان اللہ نے مجھے اپنے ماموں زاد بھائی مسی رضا گل کے ساتھ دیکھا تو کہا کہ آپ بھی مسی رضا گل کی طرف داری کر رہے ہیں حالانکہ ایسا نہ تھا۔ یہ کہ میں سرکاری ملازم ہوں تو مجھے پھسانے کے لئے مقامی پولیس کو رپورٹ درج کرائے ہوئے مجھے بھی مسی رضا گل کیساتھ نامزد کی حالانکہ میں نے کوئی فائرنگ نہ کی ہے۔
- (۳) یہ کہ FIR میں نامزد ہونے پر افسران بالا نے مجھے پولیس لائن کلوز کی اور سپینڈ بھی کیا اور باقاعدہ انکوائری شروع کی یہ کہ میں نے ڈسپلن فورس میں ہونے کے ناطے فوری طور پر عدالت مجاز سے BBA کروائی۔
- (۴) یہ کہ SP انسوسٹی گیشن صاحب نے میری بذریعہ انسپکٹر تلاوت شاہ خان انکوائری کی بعد از انکوائری تفتیشی افسر نے مسی رضا گل کو قصور وار ٹھہرا کر میری وہیل پر صرف موجدگی ظاہر کی ہے۔
- (۵) یہ کہ اس مقدمے میں دیرپہ مشران نے لیا قاعدہ راتھی تلامذہ کی کوشش شروع کی اور دیا آخرا کلامیاب ہوئے اور عدالت مجاز میں لیا قاعدہ راتھی پیش کر کے عدالت سے بری کر دیا بقوللات راتھی تلامذہ لقمہ ہے۔
- (۶) یہ کہ مورخہ 25/05/2021 کو جناب DPO صاحب نوشہرہ اردلی روم میں پیش ہو کر صاحب موصوف نے نوکری سے برخاست کیا۔
- (۷) یہ کہ اس سلسلے میں سائل بالکل بے گناہ ہے اس لئے معافی کا طلب گار ہے۔
- (۸) لہذا استدعا ہے کہ سائل کی گزارشات کی روشنی میں سائل کو نوکری پر دوبارہ بحال کر کے مشکور فرمائیں۔
- (۹) آئندہ کے لئے محتاط ہوں گا۔

بندہ تاعمر دعا گو رہیگا۔

عرض گزار

تابع فرماں شاہ نواز نمبر 1145 سابقہ کا نشیبل ساکن وزیر گڑھی وہی

رابطہ نمبر 0333-9084651

ATTACHED

BETTER COPY

ORDER:

This order will dispose-off the departmental appeal preferred by Ex Constable Shah Nawaz No 1145 of Nowshera District Police, against the order of District Police Officer, Nowshera, whereby he was awarded major punishment of dismissal from service vide OB No 514 dated 25-05-2021. The appellant was proceeded against departmentally on the allegations that he while posted at Guard Session House, Nowshera, charged/ involved in a criminal case vide FIR No 254 dated 13.03.2021 U/s 324/34-PPC Police Station, Pabbi District Nowshera.

He was served with show cause notice to which he submitted his reply but the same was found unsatisfactory. Hence, superintendent of Police Investigation Nowshera was entrusted with the task to probe in to the matter Superintendent Of Police Investigation Nowshera submitted his report wherein he stated that after fulfillment of all legal and codal formalities, it transpired that at the time of occurrence. The delinquent officer was present on the spot while only accused Raza Gul fired at the complainant.

The delinquent Officer was heard in orderly room by the District Police Officer Nowshera on 21-04-2021, wherein he failed to produce any cogent reason in his defense. Therefore he was awarded major punishment of dismissal from service vide OB No 514 dated 25.05.2021.

Feeling aggrieved from the order of District Police Officer Nowshera the appellant preferred the instant appeal. He was summoned and heard in person Orderly Room held in this office on 24.08.2021.

From the perusal of the enquiry file and service record to the appellant has been found that allegations of misconduct against the appellant have been proved beyond any shadow of doubt. Moreover the delinquent Officer is challenged on case vide FIR No 254 dated 13.03.2021 U/S 324/34-PPC Police Station Pabbi District Nowshera. The delinquent officer is guilty of the offense . therefore order passed by the competent authority does not warrant any interference

Keeping in view above, I, Yaseen Farooq PSP Regional Police Officer, Mardan, being the appellate authority find no substance in the appeal therefore the same is rejected and filed being devoid of merit.

Order Announced

**Regional police officer,
Mardan.**

No. 4700 /ES, dated Mardan the 30-08-2021

Copy forwarded to District Police Officer Nowshera for information and necessary action w/r to his office Memo No 1324/PA dated 08-06-2021. His service record is return herewith.

189

ORDER

This order will dispose off the departmental appeal preferred by Ex-Constable Shah Nawaz No. 1145 of Nowshera District Police, against the order of District Police Officer, Nowshera, whereby he was awarded major punishment of dismissal from service vide OB: No. 514 dated 25.05.2021. The appellant was proceeded against departmentally on the allegations that he while posted at Guard Sessions House, Nowshera; charged/involved in a criminal case vide FIR No. 254 dated 13.03.2021 u/s 324/34-PPC Police Station, Pabbi District Nowshera.

He was served with Show Cause Notice to which he submitted his reply but the same was found unsatisfactory. Hence, Superintendent of Police, Investigation, Nowshera was entrusted with the task to probe into the matter. Superintendent of Police Investigation, Nowshera submitted his report wherein he stated that after fulfillment of all legal and codal formalities, it transpired that at the time of occurrence, the delinquent Officer was present on the spot while only accused Raza Gul fired at the complainant.

The delinquent Officer was heard in Orderly Room by the District Police Officer, Nowshera on 21.04.2021, wherein he failed to produce any cogent reason in his defense. Therefore, he was awarded major punishment of dismissal from service vide OB: No. 514 dated 25.05.2021.

Feeling aggrieved from the order of District Police Officer, Nowshera, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 24.08.2021.

From the perusal of the enquiry file and service record of the appellant, has been found that the allegations of misconduct against the appellant have been proved beyond any shadow of doubt. Moreover, the delinquent Officer is chairman in case vide FIR No. 254 dated 13.03.2021 U/S 324/34-PPC Police Station, Pabbi District Nowshera. The delinquent Officer is guilty of the offence. Therefore, order passed by the competent authority does not warrant any interference.

Keeping in view the above, I, Yaseen Farooq, PSP Regional Police Officer, Mardan, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed being devoid of merit.

Order Announced.

[Signature]
Regional Police Officer,
Mardan.

No. 4700 /ES, Dated Mardan the 30 / 08 / 2021

Copy forwarded to District Police Officer, Nowshera for information and necessary action w/r to his office Memo. No. 1324/PA dated 08.06.2021. His Service Record is returned herewith.

File by w. attian
[Handwritten initials]

By No. 169/11A
13/9/2021

[Stamp]
[Signature]

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

Service Appeal No. 7451/2021

Shah Nawaz Khan s/o Safdar Khan r/o Wazir Garhi,
Tehsil Pabbi, District Nowshera.

.....Appellant

V E R S U S

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc

.....Respondents

I N D E X

S.No.	Description of documents	Annexure	Pages
1.	Reply of Respondents	-	1-2
2.	Reply of condonation of delay	-	03
3.	Affidavit	-	04
4.	Copy of Show Cause Notice	A	05
5.	Copy of enquiry	B	06
6.	Copy of rejection order	C	07


**Inspector Legal,
Nowshera**

①

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

Service Appeal No. 7451/2021

Shah Nawaz Khan s/o Safdar Khan r/o Wazir Garhi,
Tehsil Pabbi, District Nowshera.

.....Appellant

V E R S U S

1. Provincial Plice Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Mardan.
3. District Police Officer, Nowshera.

.....Respondents

REPLY ON BEHALF OF RESPONDENTS

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS: -

1. That the appellant has got no cause of action and locus standi.
2. That the appeal is badly barred by law and limitation.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Honourable Tribunal with clean hands.
6. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.

Reply on Facts: -

1. Para pertains to record.
2. Each and every Police Officer/Official is duty bound to perform his duty with devotion and upto the entire satisfaction of his high-ups.
3. Incorrect. Appellant, alongwith other accused, was directly charged by complainant in case vide FIR No. 254 dated 13-03-2021 u/s 324/34/337-F(v) PPC Police Station, Pabbi.
4. Correct to the extent that appellant was issued Show Cause Notice to which he submitted his reply but the same was found unsatisfactory hence, enquiry against the appellant was conducted through SP Investigation, Nowshera. (Copy of Show Cause Notice is annexure "A" and copy of enquiry is annexure "B").
5. Mere grant of bail does not mean that appellant has been exonerated from the charges. Moreover, criminal and Departmental proceeding can run side by side.
6. Correct to the extent that due to involvement of appellant in a criminal case, he was dismissed from service vide order dated 25-05-2021, under the disciplinary rules.
7. Correct to the extent that appellant submitted departmental appeal before the appellate authority against the punishment order and the same was rejected by

the appellate authority vide order dated 30-08-2021.(Copy of rejection order is annexure "C").

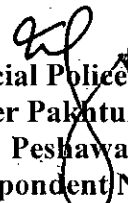
8. Appeal of the appellant is liable to be dismissed inter-alia on the following grounds: -

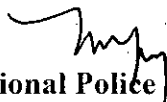
Reply on GROUNDS

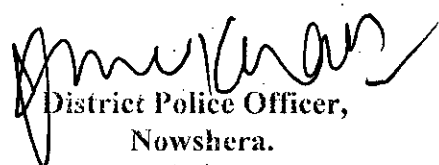
- A. Incorrect. Order dated 25-05-2021, whereby appellant was awarded punishment and order dated 30-08-2021, whereby departmental appeal of the appellant was rejected, were passed after fulfillment of all legal and codal formalities.
- B. Incorrect. Appellant was issued Show Cause Notice which has already been annexed as annexure-A.
- C. Incorrect. Proper Enquiry was conducted through SP Investigation, Nowshera, copy of enquiry has already been annexed as annexure-B.
- D. Incorrect. Appellant was provided opportunity of self-defense as he was heard in orderly room on 25-05-2021, but he failed to give any plausible reason in his defense.
- E. Para already explained above.
- F. Incorrect. Criminal proceedings and departmental proceedings are two different entities which can run side by side. Fate of one does not affect the other.
- G. Mere grant of bail does not mean that appellant has been exonerated from the charges.
- H. The respondents also seek permission of this Honourable Tribunal to advance additional grounds at the time of arguments.

Prayers

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


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No. 01


Regional Police Officer,
Mardan.
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No.03

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

Service Appeal No. 7451/2021

Shah Nawaz Kan

.....Applicant

V E R S U S

Provincial Plice Officer, Khyber Pakhtunkhwa, Peshawar and others.

.....Respondents

REPLY TO THE APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth: -


1. Incorrect. The instant service appeal is fixed for hearing before the Honourable Tribunal for 26-01-2022.
2. Para is for the appellant to prove that he filed departmental appeal within stipulated time.


Grounds: -

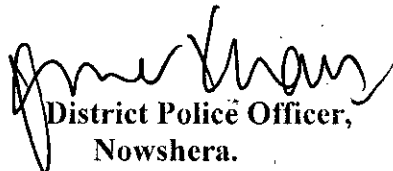
- A. Incorrect. Punishment order against the appellant dated 25-05-2021 was passed in accordance with law/rules and after fulfillment of all legal and codal formalities, hence, being a lawful order, is covered by limitation i.e limitation runs against this order.
- B. Incorrect. There are plethora of judgments of the superior court, that in case of delay of appeal, proper explanation for each day is required to be given, while appellant has failed to explain any reason for such delay.
- C. Para is for the appellant to prove that order was communicated to him late.

Prayers

It is, therefore, most humbly prayed that on acceptance of above submissions; the instant application for condonation of delay may very kindly be dismissed/filed, please.


**Provincial Police Officer,
 Khyber Pakhtunkhwa,
 Peshawar.
 Respondent No. 01**


**Regional Police Officer,
 Mardan.
 Respondent No. 02**


**District Police Officer,
 Nowshera.
 Respondent No.03**

BEFORE THE HONOURABLE, KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7451/2021

Shah Nawaz Khan s/o Safdar Khan r/o Wazir Garhi,
Tehsil Pabbi, District Nowshera.

.....Appellant


V E R S U S


- 1. Provincial Plice Officer, Khyber Pakhtunkhwa, Peshawar.
- 2. Regional Police Officer, Mardan.
- 3. District Police Officer, Nowshera.

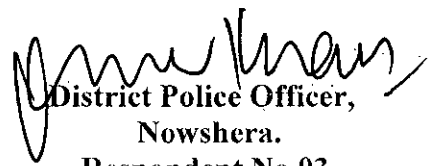
.....Respondents

AFFIDAVIT

We the respondents No. 1, 2 & 3 do hereby solemnly affirm and declare on Oath that the contents of reply to the appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the Honourable tribunal.


 Provincial Police Officer,
 Khyber Pakhtunkhwa,
 Peshawar.
 Respondent No. 01


 Regional Police Officer,
 Mardan.
 Respondent No. 02


 District Police Officer,
 Nowshera.
 Respondent No.03

Annex
5 (A)

(15)

OFFICE OF THE DISTRICT POLICE OFFICER, NOWSHERA

SHOW CAUSE NOTICE

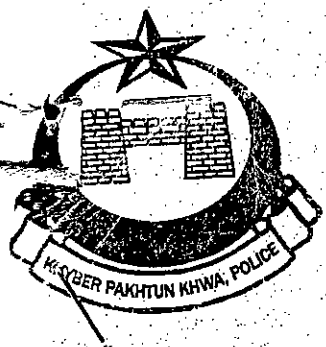
(Under Rule 5 (3) KPK Police Rules, 1975)

1. That you Constable Shah Nawaz No. 1145, while posted at Guard Session House now under suspension at Police Lines, Nowshera rendered yourself liable to be proceeded under Rule (3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct:
Charged in a criminal case registered vide FIR No. 254 dated 13.03.2021 u/s 324/34 PPC PS Pabbi, which amounts to grave misconduct on your part.
2. That by reasons of above, as sufficient material is placed before the undersigned; therefore is decided to proceed against you in general Police proceeding without aid of enquiry officer.
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force.
4. That your retention in the Police force will amount to encourage inefficiency and unbecoming of good Police officers. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules.
5. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred above.
6. You should submit reply to this show cause notice within **07** days of the receipt of the notice failing which an ex-parte action shall be taken against you.
7. You are further directed to inform the undersigned that you wish to be heard in person or not

District Police Officer
Nowshera

No. 45 /PA
Dated 16/03 /2021

[Handwritten Signature]
17-3-21



Annex B (6)

OFFICE OF THE SUPERINTENDENT OF POLICE INVESTIGATION
NOWSHERA

Tel: 0923-9220433, Fax: 0923-9220432

No. _____/H.C, dated Nowshera the ___/___/2021.

To The District Police Officer,
Nowshera.

Subject: - INVOLVEMENT OF CONSTABLE SHAH NAWAZ NO. 1145 IN A
CRIMINAL CASE VIDE FIR NO. 254 DATED 13.03.2021 U/S
324/34 PPC P.S PABBI

Memo: - Kindly refer to your office Endst: No. 845/PA, dated 04.05.2021.

It is submitted that the above named accused official was suspended and a show cause notice was issued to him being involved in the subject mentioned case. He submitted his written reply to the show cause notice whereupon the worthy DPO Nowshera directed the undersigned by passing the following remarks: -

"what is his role in incident? Take compromise apart"

In this connection report of Inspector Tilawat Shah OII P.S Pabbi was sought.

1. As per report of Inspector Tilawat Shah OII P.S Pabbi, Subhanullah complainant of the case charged three accused for the offence including Constable Shah Nawaz No. 1145.
2. As per version of the FIR, Constable Shah Nawaz fired at the complainant as a result of which he hit and received bullet injuries.
3. During interrogation accused Raza Gul confessed that he fired with his pistol at the complainant.
4. Constable Shah Nawaz has secured B.B.A from the court of law.
5. Compromise in the case has also been affected between the parties.

Previous record

ME 1-68-2082

GE 01

BE 03

ME 01

ME 01

I also heard Inspector Tilawat Shah, who stated that during investigation it transpired that accused Constable was present on the place of occurrence although only accused Raza Gul fired at the complainant.

Handwritten signature of the Superintendent of Police, Investigation Nowshera.

Superintendent of Police,
Investigation Nowshera.

1198
EX

Annex. C3
⑦

ORDER.

This order will dispose-off the departmental appeal preferred by **Ex-Constable Shah Nawaz No. 1145** of Nowshera District Police, against the order of District Police Officer, Nowshera, whereby he was awarded major punishment of dismissal from service vide OB: No. 514 dated 25.05.2021. The appellant was proceeded against departmentally on the allegations that he while posted at Guard Sessions House, Nowshera, charged/involved in a criminal case vide FIR No. 254 dated 13.03.2021 u/s 324/34-PPC Police Station, Pabbi District Nowshera.

He was served with Show Cause Notice to which he submitted his reply but the same was found unsatisfactory. Hence, Superintendent of Police, Investigation, Nowshera was entrusted with the task to probe into the matter. Superintendent of Police Investigation, Nowshera submitted his report wherein he stated that after fulfillment of all legal and codal formalities, it transpired that at the time of occurrence, the delinquent Officer was present on the spot while only accused Raza Gul fired at the complainant.

The delinquent Officer was heard in Orderly Room by the District Police Officer, Nowshera on 21.04.2021, wherein he failed to produce any cogent reason in his defense. Therefore, he was awarded major punishment of dismissal from service vide OB: No. 514 dated 25.05.2021.

Feeling aggrieved from the order of District Police Officer, Nowshera, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 24.08.2021.

From the perusal of the enquiry file and service record of the appellant, it has been found that the allegations of misconduct against the appellant have been proved beyond any shadow of doubt. Moreover, the delinquent Officer is challaned in case vide FIR No.254 dated 13.03.2021 U/S 324/34-PPC Police Station, Pabbi District Nowshera. The delinquent Officer is guilty of the offence. Therefore, order passed by the competent authority does not warrant any interference.

Keeping in view the above, I, **Yaseen Farooq, PSP Regional Police Officer, Mardan**, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed being devoid of merit.

Order Announced.


Regional Police Officer,
Mardan.

No. 4700 /ES, Dated Mardan the 30/08 /2021.

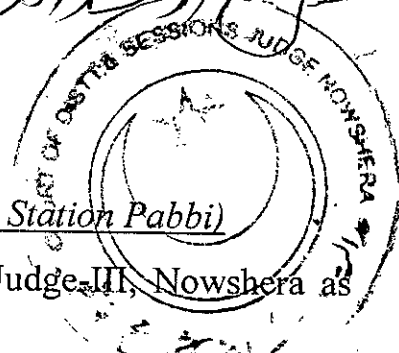
Copy forwarded to District Police Officer, Nowshera for information and necessary action w/r to his office Memo: No. 1324/PA dated 08.06.2021. His Service Record is returned herewith.

(*****)

By: No. 169/11/2021
3/9/2021

EC/Pme
For u. action
3/9/2021

فہمہ علیہ السلام (ع) نے اپنے والدین کے ساتھ مل کر
مذکورہ واقعہ میں شرکت کی ہے۔



CHARGE

(FIR # 254 dated 13.03.2021 of Police Station Pabbi)

I, Tufail Ahmad, Additional Sessions Judge-III, Nowshera as Juvenile court, do hereby charge you accused:-

- (i) Shah Nawaz aged about 35 years, (ii) Khyber aged about 46/47 years sons of Safdar & (iii) Raza Gul aged about 39/40 years son of Ghulam Muhammad resident of Wazir Garhi, Tehsil & District Nowshera, as follows:-

FIRSTLY: That on 13.03.2021 at 08:45 hours, at Wazir Garhi near masjid Khaista Khan, within the criminal jurisdiction of Police Station Pabbi, you accused duly armed with firearm weapons started firing in furtherance of your common intention at complainant namely Subhan Ullah with intention to kill as a result of which he got hit and sustained injuries on his different body and thereby you committed an offence punishable under Section 324/34 PPC and within the cognizance of this Court.

SECONDLY: That on above date, time and place, within the criminal jurisdiction of Police Station Pabbi, you accused duly armed with firearms weapons started firing in furtherance of your common intention at complainant namely Subhan Ullah as a result of which he got hit and fractured his fingers and hand; thereby you committed an offence punishable under Section 337-F (V) PPC and within the cognizance of this Court.

And I hereby direct you, that you be tried by this court for the said offence.

Dated: 25.09.2021

Tufail Ahmad
Additional Sessions Judge
Model Criminal Trial Court
Juvenile court
Nowshera

25/9

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12 NOV 2021

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72

The charge has been read over and explained to accused.

Q. Have you heard and understood the meaning of charge?

A. Yes, I have heard and understood the meaning of charge.

Q. Do you plead guilty or claim trial?

A. No. I do not plead guilty. I claimed trial.

Q. What is your plea?

A. I am innocent and has falsely been charged in the present case.


R.O & A.C

Accused Shah Nawaz:

Khyber _____ Raza Gul _____

Certified under section 364 Cr.P.C

25.09.2021


Tufail Ahmad
 Additional Sessions Judge
 Model Criminal Trial Court
 Nowshera

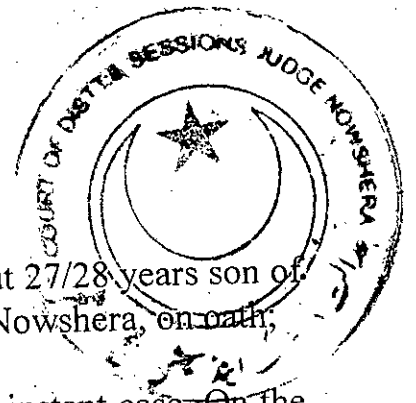
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73

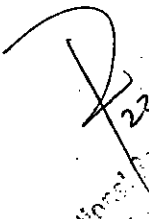
PW-01
23.10.2021

Statement of Subhan Ullah aged about 27/28 years son of
Jamal Shah r/o Wazir Garhi District Nowshera, on oath;



Stated that I am complainant/injured of the instant case. On the relevant day I was going from Masjid Khaista Khan to my home when I reached to the spot thoroughfare near Masjid Khaista Khan Wazir Garhi, accused facing trials were already sitting there with duly armed. On seeing they were started firing at me on their respective weapons, as a result of firing of Shah Nawaz, I was hit on different parts of my body and got injured. The occurrence was also witnessed by the people present there. Motive behind the occurrence is land dispute. I was shifted to the hospital and report there in shape of murasila which is thumb impressed by me as a token of its correctness and my uncle Hassan Khan verified my report and who also signed the same. I was also examined by the Doctor at Hospital. I charged the accused facing trials in the murasila for the commission of offence. Today I have seen my report, which is correct.

XX..... It is correct that I have not mentioned the specification of the weapons. It is correct that we have land dispute. It is incorrect to suggest that on the basis of land dispute I have falsely charged the accused facing trials for commission of offence. It is correct that I have not mentioned the distance between me and accused facing trial. It is correct that I have not mentioned in my murasila that I have narrow from the firing of the other accused. It is correct that accused facing trial have satisfied me regarding their innocence through elders of locality. It is correct that at the time of report I was unconscious and gave specific role to the accused Shah Nawaz. I am not interesting in further prosecution case of accused facing trials. Today I do not want to charge the accused facing trials for commission of offence and if this Hon'able court acquits the accused facing trials from the


23/10/2021
Additional District Judge
Magistrate (Additional) Court
Nowshera

74

State Vs Shah Nawaz FIR No. 254 U/S 324/34 PPC Police Station Pabbi

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12 NOV 2021

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Branch. D.S.J. Nowshera

charge leveled against them, I would have got no objection. It is incorrect to suggest that the accused facing trials were charged just to dispose of my property dispute with accused facing trials. It is correct that today I am sound and healthy and I delivered my statement before the court at my free will.

R.O & A.C

Dated: 23.10.2021


Tufail Ahmad
Additional Sessions Judge
Model Criminal Trial Court
Nowshera

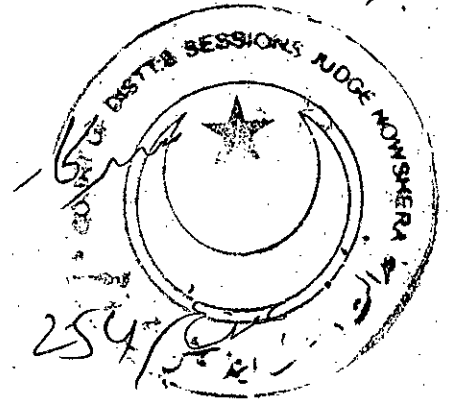
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25

محکم دلائل سے مزین و متنوع ومنفرد موضوعات پر مشتمل مفت آن لائن مکتبہ

شاہ نور علی



تاریخ: 23/11/2021
34PR

ڈیوٹی سٹریٹ جارجنگ

جن صاحب

ایئر ایسٹریٹ جارجنگ

23/11/21

23/11/2021 کو راولپنڈی میں ڈیوٹی سٹریٹ جارجنگ کے لیے درخواست دی گئی اور اس پر 265K/CRP سے درخواست پیش کی گئی ہے۔

یہ کہ مقدمہ عنوانیلا عدالت سے رجوع کیا گیا ہے۔

265K/CRP سے رجوع کیا گیا ہے۔

جن صاحب

یہ کہ مقدمہ میں کسی بھی چیز کا ذکر نہیں ہے۔

265K/CRP سے رجوع کیا گیا ہے۔

ایئر ایسٹریٹ جارجنگ

ATTESTED

12 NOV 2021

Examiner Copying Agency
Branch, D.S.J. Nowshera

63

Before the Court of Session Judge Nowshera

The state vs Shah Nawaz

Application for Permanent Exemption of
accused facing trial namely Mykber and
Sajza Gul till the final disposal of the
case.

R, Sir

It is submitted as under,

2/11

(i) That the subject mentioned trial is pending
before this honorable court and fixed for today

(ii) That the subject mentioned accused
facing trial do work outside the province due
to which they cannot appear on each and
every date before the honorable court, hence this
application.

6/11

ATTESTED

12 NOV 2021
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Branch. D.S.J. Nowshera

Date 02-11-2021

It is therefore most humbly prayed
that the above mentioned accused facing
trial may kindly be exempted from
personal appearance till the final
disposal of the case

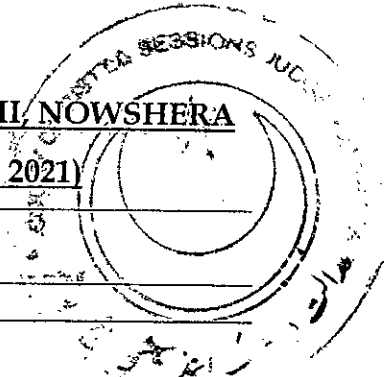
Through Counsel

Mian Arshad Jan
Advocate
Honorable Court of Pakistan

Petitioner

IN THE COURT OF TUFAIL AHMAD, ADDL: SESSIONS JUDGE-III, NOWSHERA

The State Vs Shah Nawaz etc..... (Session trial No.68/7 of 2021)



Serial No. of Order of Proceedings	Date of Order of Proceedings	Order/Proceedings
1	2	3
<p>Order</p>	<p>02.11.2021</p>	<p>1. Accused Shah Nawaz, Khyber and Raza Gul on bail present. Dy.PP for the State Muzaffar is present. Through this order I intend to dispose of the application submitted by the accused facing trial for their acquittal under section 265-K Cr.PC.</p> <p>2. Accused facing trial are facing trial in case F.I.R No.254 dated 13.03.2021 under section 324/34/337-F(v) PPC of Police Station Pabbi, Nowshera.</p> <p>3. Brief facts of the case are that on 25.05.2017, the complainant subhanullah reported to local police that he was going to his house from mosque, when reached to the place of occurrence, where accused facing trial were present there armed with firearm weapons and they made firing on him with their weapons with intention to kill him. Resultantly, he received injuries on different parts of his body. Motive of the occurrence was mentioned as land dispute with accused party. On basis of such report, present case was registered against the accused facing trial.</p> <p>4. On completion of the investigation, the complete challan was submitted against the accused on 08.09.2021. Copies of the relevant documents were handed over to accused facing trial in compliance of section 265-C Cr.PC. Formal charge was framed against the accused facing trial on 25.09.2021, however they pleaded not guilty and claimed trial, therefore, the prosecution was directed to produce its evidence. Prosecution has so far examined one PW in support of its case. After which, an</p>

[Handwritten Signature]
 Additional Sessions Judge
 Model Criminal Trial Court
 Nowshera

68
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02.11.2021

with respect to veracity of prosecution case against the accused facing trial.

7. Now coming to the circumstantial evidence of the case, as no weapon of offence is recovered from the possession of the accused facing trial and also he has not made any pointation in this respect. It is settled by now that the recovery of empties etc are always considered to be corroborative piece of evidence and such kind of evidence by itself is not sufficient to bring home the charges against the accused especially when no other cogent material put-forward by the prosecution in respect of guilt of the accused. Reliance is made on 2001 SCMR 424 & 2007 SCMR 1427.

8. To summarize the discussion above, this court has reached the conclusion the alleged occurrence has not taken place as brought on record, and it seems that it was an unseen and un-witnessed occurrence wherein the complainant got injuries, which the prosecution has miserably failed to prove against the accused facing trial. It is admitted fact on the record that no confession is made by accused facing trial before the competent court and no recovery or discovery was made on his pointation although remained in police custody. It is golden principle of administration of criminal justice that prosecution is bound to prove its case beyond any shadow of doubt. If any reasonable doubt arises, the benefit of the same must be extended to accused not as a grace or concession, but as a matter of right. Similarly, it is also well established principle of criminal justice that there is no need of so many doubts in the prosecution case; rather, any reasonable doubt arising out of the prosecution evidence, pricking the judicious mind is sufficient for

Additional Sessions Judge
Model Criminal Trial Court
Nowshera

70
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Examiner Copying Agency
Branch. D.S. Nowshera

02.11.2021

with respect to veracity of prosecution case against the accused facing trial.

7. Now coming to the circumstantial evidence of the case, as no weapon of offence is recovered from the possession of the accused facing trial and also he has not made any pointation in this respect. It is settled by now that the recovery of empties etc are always considered to be corroborative piece of evidence and such kind of evidence by itself is not sufficient to bring home the charges against the accused especially when no other cogent material put-forward by the prosecution in respect of guilt of the accused. Reliance is made on 2001 SCMR 424 & 2007 SCMR 1427.

8. To summarize the discussion above, this court has reached the conclusion the alleged occurrence has not taken place as brought on record, and it seems that it was an unseen and un-witnessed occurrence wherein the complainant got injuries, which the prosecution has miserably failed to prove against the accused facing trial. It is admitted fact on the record that no confession is made by accused facing trial before the competent court and no recovery or discovery was made on his pointation although remained in police custody. It is golden principle of administration of criminal justice that prosecution is bound to prove its case beyond any shadow of doubt. If any reasonable doubt arises, the benefit of the same must be extended to accused not as a grace or concession, but as a matter of right. Similarly, it is also well established principle of criminal justice that there is no need of so many doubts in the prosecution case; rather, any reasonable doubt arising out of the prosecution evidence, pricking the judicious mind is sufficient for

Additional Sessions Judge
Model Criminal Trial Court,
Nowshera

90
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12 NOV 2021
Examiner Copying Agency
Branch. D.S.J. Nowshera

02.11.2021

acquittal of the accused, whereas, the case in hand is pregnant with jumble of doubts and infirmities. Therefore, keeping in view the above mentioned facts it is held that further proceedings in the instant case would be a futile exercise because there could not arise any probability of conviction of the accused facing trial from the available record and evidence.

9. In wake of the foregoing discussion, the application of 265-K Cr.PC is hereby accepted and accused facing trial namely Shah Nawas, Khyber and Raza Gul are hereby acquitted under section 265-K Cr.PC. They are on bail, so their bail bonds are cancelled and sureties are discharged from liability of their bail bonds. . Case property, if any, be disposed of in accordance with law after the expiry of period of appeal/revision. File be consigned to record room after its necessary completion and compilation.

ANNOUNCED:

02.11.2021

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Branch. D.S.J. Nowshera



(TUFAIL AHMAD)

Additional Sessions Judge-III/
Model Criminal Trial Court
Nowshera.



71

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWA

Service Appeal No. 6350/2020

Date of Institution 29.06.2020

Date of Decision ... 09.11.2021

Aurangzeb Ex-Head Constable No. 1853
R/O District Mardan.

... (Appellant)

VERSUS

District Police Officer Mardan and two others.

... (Respondents)

MS. ROEEDA KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD RASHEED,
Deputy District Attorney

--- For respondents.

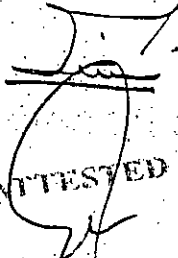
MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Through this single judgment we intend to dispose of the instant service appeal as well as connected Service Appeal bearing No. 6351/2020 titled "Abdullah versus District Police Officer Mardan and two others" as well as Service Appeal bearing No. 6352/2020 titled "Ibrahim Versus District Police Officer Mardan and two others", as common question of law and facts are involved therein.


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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

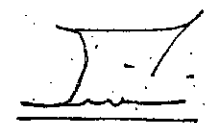
2. Precise facts giving rise to filing of the instant as well as connected service appeals are that the appellants were proceeded against departmentally on the allegations of their

charging in case FIR No. 2 dated 01.01.2019 under sections 365-A/34 PPC registered at Police Station Kalu Khan District Swabi. On conclusion of the inquiry, the appellants were dismissed from service and their departmental appeals also remained unfruitful, therefore, they have now approached this Tribunal through filing of the appeals for redressal of their grievance.


3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellants in their appeals.

4. Learned counsel for the appellants has contended that the inquiry proceedings were conducted at the back of the appellants and neither any opportunity of personal hearing was provided to them nor were they provided any opportunity of self defense; that the appellants were admittedly confined in prison at the time of inquiry proceedings against them, therefore, they were not in a position to properly defend themselves; that the inquiry proceedings were conducted in violation of relevant provisions of Khyber Pakhtunkhwa Police Rules, 1975; therefore, the impugned orders being void and illegal are liable to be set-aside; that the appellants were proceeded against on the allegations of their involvement in criminal case, however they have been acquitted by the competent court of law in the concerned criminal case; that the appellants were confined in prison and after their release, they approached the department for joining of their duty, however they came to know they have been dismissed from service, therefore, they filed departmental appeals, which were wrongly and illegally rejected; that the impugned orders being bereft of any legal sanctity may be set-aside and the appellants may be reinstated in service with all back benefits.

5. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellants were involved in a criminal case of kidnapping for ransom and their illegal activities have stigmatized the police department; that



ATTESTED


 ENABENER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

a regular inquiry was conducted against the appellants by complying all legal and codal formalities and as they were found guilty during the inquiry, therefore, they have rightly been dismissed from service; that the departmental appeals of the appellants were time barred, therefore, their service appeals are not maintainable and are liable to be dismissed with cost.

6. Arguments heard and record perused.

7. A perusal of the record would show that after charging of the appellants in the criminal case, they were arrested and sent to prison. They remained confined in prison and were released after their acquittal on 05.03.2020. The departmental appeals of the appellants were disposed by the Regional Police Officer Mardan vide separate orders dated 24.06.2020 and it is even evident from the said orders that the appellants were confined in prison at the time of inquiry proceedings against them. The said orders would also show that ex-parte action was taken against the appellants despite the facts that they were confined in prison, being charged in the criminal case registered against them. In this scenario, we are of the opinion that the appellants were not treated fairly, rather they were treated with discrimination. The impugned order dated 02.07.2019 also shows that the inquiry officer initially appointed for conducting inquiry in the matter had opined that the inquiry may be held in abeyance till the availability of the appellants, however the competent Authority disagreed with the inquiry officer and proceeded with the inquiry by appointing another inquiry officer for conducting inquiry in the matter. The procedure so adopted by the competent Authority has caused prejudice to the appellants in the inquiry proceedings against them.

8. Disciplinary action was taken against the appellants on the ground of their involvement in criminal case, however the appellants have been acquitted in the said criminal case by learned trial court vide judgment dated 05.03.2020. The

J. T.

TESTED

MEMBER
 Member Pakhtunkhwa
 Service Tribunal
 Peshawar

appellants were proceeded against on the ground of their involvement in the criminal case, however after their acquittal in the criminal case, the very charge, on the basis of which the appellants were proceeded against has vanished away. Nothing is available on the record, which could show that the acquittal of the appellants have been challenged by the department through filing of appeal before the higher forum. In this situation, the acquittal order of the appellants has attained finality. It is settled law that acquittal of an accused in a criminal case even if based on benefit of doubt would be considered as honourable.

9. The appellants were acquitted in the criminal case on 05.03.2020 and they have alleged in their application for condonation of delay that it was after their acquittal that they came to know about their dismissal from service, therefore, they filed departmental appeals on 02.04.2020. In this view of the matter, the departmental appeals of the appellants are within time. Reliance in this respect is placed on PLD 2010 Supreme Court 695, wherein the worthy apex court has held as below:-

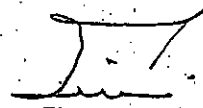
"We may also observe in this context that the respondent had been acquitted in the criminal case on 22.09.1998 and he had filed his departmental appeal on 12.10.1998, i.e within three weeks of his acquittal in the relevant criminal case. It would have been a futile attempt on the part of the respondent to challenge his removal from service before earning acquittal in the relevant criminal case and, thus, in the peculiar circumstances of this case we have found it to be unjust and oppressive to penalize the respondents for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation for his removal from service"


TESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar


10. In light of the above discussion, the instant service appeal as well as connected Service Appeal bearing No. 6351/2020 titled "Abdullah versus District Police Officer Mardan and two others" as well as Service Appeal bearing No.

6352/2020 titled "Ibrahim Versus District Police Officer Mardan and two others", are accepted by setting-aside the impugned orders. The appellants are reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.11.2021


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 23/11/21
No. 2800
30 -
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31 -
Date of Delivery of Copy 23/11/21
23/11/21



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 915 /ST

Dated: 25-4- /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262


To

The District Police Officer,
Government of Khyber Pakhtunkhwa
Nowshera.

Subject: JUDGMENT IN APPEAL NO. 7451/2021 MR. SHAH NAWAZ KHAN.

I am directed to forward herewith a certified copy of Judgement dated 01.04.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR