

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1021/2018

Date of Institution ... 16.08.2018

Date of Decision ... 27.01.2022

Mr. Mursaleen, Ex-Constable/No. 4302 Capital City Police Peshawar.

... (Appellant)

**VERSUS**

The Superintendent of Police Headquarters, Khyber Pakhtunkhwa Peshawar and others. ... (Respondents)

Uzma Syed,  
Advocate

... For Appellant

Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

**AHMAD SULTAN TAREEN**  
**ATIQU-UR-REHMAN WAZIR**

...  
...

**CHAIRMAN**  
**MEMBER (EXECUTIVE)**

**JUDGMENT**

**ATIQU-UR-REHMAN WAZIR MEMBER (E):-** Brief facts of the case are

that the appellant while serving as Constable in Police Department was charged in two FIRs i.e. FIR No 698 U/S 364A PPC dated 13-09-2013 District Nowshera and FIR No. 499 U/Ss 324/353/427/471 dated 13-09-2013 District Peshawar. The appellant was suspended from service vide order dated 19-09-2013 and was proceeded departmentally on the charges of registration of FIRs against him. The proceedings ultimately culminated into his dismissal from service vide order dated 28-02-2014. The appellant was granted bail in both cases by the competent court of law vide judgment dated 29-03-2017 and 31-03-2017 and later on acquitted of the criminal charges in FIR No. 698 vide judgment dated 21-11-2017 and in FIR No. 499 vide judgment dated 29-08-2019. The appellant after acquittal from the

criminal charges in FIR No. 698, filed departmental appeal, which was rejected vide order dated 17-07-2018, hence the instant service appeal with prayers that the impugned orders dated 28-02-2014 and 17-07-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the appellant was acquitted of the same charges, upon which he was dismissed from service, hence there remains no ground to maintain such penalty; that respondents were required to suspend the appellant as per police rules, 1934 and to wait for conclusion of the criminal case, but the respondents without waiting for conclusion of the criminal case, dismissed the appellant in an arbitrary manner; that the impugned order and attitude of the respondents department is in sheer violation of Article 4, 25 and 38 of the Constitution; that the impugned order was passed without fulfilling the requisite formalities; that the appellant was condemned unheard and has not been treated in accordance with law.

03. Learned Deputy District Attorney for the respondents has contended that upon registration of FIRs against the appellant, the appellant went in hiding and remain fugitive from law for some time, who later on was arrested by police. The appellant was proceeded departmentally and was awarded with major punishment of dismissal from service; that proper procedure was adopted by issuing charge sheet/statement of allegation to the appellant; that proper inquiry was conducted against the appellant and the appellant was afforded appropriate opportunity of defense, but the appellant did not opt to be associated with departmental proceedings, hence he was proceeded ex-parte; that the appellant filed departmental appeal with delay of almost four years, which is badly time barred; that the appellant though acquitted of the criminal charges but it is a well settled legal proposition that criminal and departmental proceedings can run side

by side without affecting each other; that the appellant has been treated in accordance with law and was awarded with appropriate punishment after fulfillment of all the codal formalities.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant being involved in case FIR No. 698 U/S 364A PPC dated 13-09-2013 District Nowshera and FIR No. 499 U/Ss 324/353/427/471 dated 13-09-2013 District Peshawar, was proceeded departmentally in absentia as the appellant was in jail and was released on Bail from both cases vide judgment dated 29-03-2017 and 31-03-2017 and was later on acquitted from the criminal charges in FIR No 698 vide judgment dated 21-11-2017 and in FIR No. 499 vide judgment dated 29-08-2019 but before his acquittal from criminal charges, the appellant was dismissed on 28-02-2014, hence the appellant in the first place was not afforded opportunity of defense, as the appellant was not associated with proceedings of the departmental inquiry, as he was proceeded against in absentia. To this effect, the Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

06. Being involved in a criminal case, the respondents were required to suspend the appellant from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellant and dismissed

him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

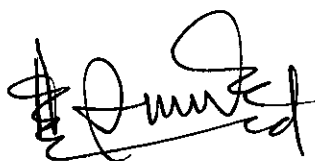
07. The criminal cases were decided in favor of the appellant and the appellant was acquitted of the criminal charges in both the cases. In a situation, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460. Supreme Court of Pakistan in its judgment reported as PLD 2003 SC 187 has held that where the departmental proceedings were initiated only on the basis of criminal charge, which was not subsequently proved by the competent court of law and resulted in acquittal, would be entitled to be re-instated in service. It is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. Moreover, the appellant was acquitted of the same

charges by the criminal court; hence, there remains no ground to further retain the penalty so imposed. Accused civil servant in case of his acquittal was to be considered to have committed no offense because the criminal court had freed/cleared him from the accusation or charge of crime – such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period. Reliance is placed on 1998 SCMR 1993 and 2007 SCMR 537.

08. We are also mindful of the question of limitation, as the appellant filed departmental appeal after earning acquittal from the charges leveled against him, The Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.

09. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
27.01.2022



(AHMAD SULTAN TAREEN)  
CHAIRMAN



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

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 1027 /2018

Mursaleen

V/S

Police Department.

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*Mursaleen*  
**APPELLANT**

Mursaleen

THROUGH:

*Uzma Syed*  
**(UZMA SYED)**

**ADVOCATE HIGH COURT,**

*& Noman Ali Bukhari*  
**SYED NOMAN ALI BUKHARI**

**ADVOCATE HIGH COURT**

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 1021 /2018

Khyber Pakhtunkhwa  
Service Tribunal

Mr. Mursaleen, Ex-Constable/No.4302  
Capital City Police, Peshawar.

Diary No. 1289

Dated 16-8-2018

(Appellant)

VERSUS

1. The Superintendent of Police Headquarters, KPK, Peshawar.
2. The Capital City Police Officer, KPK, Peshawar.

(Respondents)

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APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 28.02.2014 WHEREIN THE APPELLANT WAS AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE AND AGAINST THE ORDER DATED 17.07.2018 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

Filed to-day

Registrar

16/8/18

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 28.02.2014 AND 17.07.2018 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

**RESPECTFULLY SHEWETH:**

**FACTS:**

1. That the appellant was appointed as Constable in the year 2008 in Police Department and work with entire satisfaction of his superior.
2. That during the fulfillment of obligation, 2 subsequent FIRs were registered against the appellant i.e FIR NO 698 dated 13/9/2013 U/S 364 –A PPC police station pabbi District Nowshera, however the second FIR NO 499 dated 13/9/2013 U/S 324,353,427,471 ppc sarband district Peshawar . **Copy of FIRs are attached as Annexure-A.**
3. That on the basis of said FIRs the appellant was directly dismissed from service on 28-2-2014 received on 21-03-2018 without waiting for the finalization of the criminal case. **Copy of dismissal order is attached as Annexure-B.**
4. That the appellant was release on Bail vide order dated 29.03.2017 and 30.03.2017. thereafter, the appellant was acquitted from the charges, which is leveled against the appellant in FIR no 698 dated 13.09.2013 vide judgment dated 21.11.2017 and the trail of FIR NO 499 dated 13/9/2013 U/S 324,353,427,471 ppc is still pending. **Copy of bail order and acquittal order is attached as Annexure-C & D.**
5. That all the actions taken against the appellant is before the finalization of the criminal case which is also the violation of CSR 194. The appellant was acquitted from all the charges vide judgment dated 21.11.2017. the appellant after acquittal the appellant received impugned order through application on 21.03.2018. thereafter the appellant filed departmental appeal for reinstatement in service which was rejected vide order dated 17.07.2018 received on 21-03-2018. Hence present appeal **Copy of judgment and departmental appeal is attached as Annexure-E & F.**

**GROUND:**

- A) That the impugned order dated 28.02.2014 & 17.07.2018 are against the law, facts, norms of justice and material on record and principle of fair play.



- B) That the appellant was acquitted from the charge due to which appellant was dismissed from the service and there is no more ground remained to punished the appellant, hence the appellant is eligible for the reinstatement.
- C) That all the actions taken against the appellant is before the finalization of the criminal case which is also the violation of CSR 194. The department is duty bound to kept departmental proceeding pending till the finalization of case.
- D) That the impugned order and attitude of respondent department is in sheer violation of Article 4, 25 and 38 of the constitution.
- E) That due to impugned order and Harsh View of the respondents department, the appellant and his family has suffered a lot.
- F) That no chance of personal hearing was provided to the appellant at the time of passing impugned order, which against the law and rules.
- G) That before passing impugned order no codal formalities was fulfilled and no proper procedure was adopted which is the violation of the law and rules hence the impugned order is not sustainable, liable to be set aside.
- H) That no proper procedure has been followed before passing the impugned order and even, there is no show cause notice and statement of allegation was served upon the appellant, thus the proceedings so conducted are defective in the eye of law.
- I) That the appellant was condemned unheard and has not been treated according to law and rules.
- J) That the appellant has not been treated accordance with law, fair played justice, despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- K) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

*مورسالىن*  
**APPELLANT**

Mursaleen

THROUGH:

*Uzm*  
**(UZMA SYED)**

**ADVOCATE HIGH COURT,**

*& Noman*

**SYED NOMAN ALI BUKHARI**

**ADVOCATE HIGH COURT**





63239858210

2013

AMH. S. 58  
15.9.013

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Annex

(B) (7)

ORDER

This office order relates to the disposal of formal departmental enquiry against Constable Mursalin No.4302 on the allegations/charges that he while posted at SIU, Peshawar involved in criminal cases vide FIR No.499 dated 13.09.2013 u/s 324/353/427/471-PPC PS Sarband & FIR No.698 dated 13.09.2013 u/s 364-A PS Pabbj and remained absent from lawful duty w.e.f 14.09.2013 till date.

In this connection, he was placed under suspension vide No.3260-O.B dated 19.09.2013. Proper departmental enquiry was initiated. DSP HQrs Peshawar was appointed as Enquiry Officer. He conducted the enquiry proceedings & submitted his report that the alleged constable declared as PO in criminal cases. The E.O further recommended that his enquiry may be kept pending till the final decision of the court after seeking opinion of DSP Legal vide Enquiry Report No.2144/ST dated 23.12.2013.

Upon the finding of Enquiry Officer, the opinion of DSP Legal was sought. He opined that the E.O may be directed to complete the enquiry as the accused constable has been declared as P.O.

Therefore, the enquiry paper was again sent to Enquiry Officer for proper enquiry. He again conducted the enquiry and submitted his report that prolong absence of the accused constable shows his guiltiness in both heinous cases. He further recommended major punishment for the accused official vide Enquiry report No.2144/S dated 17.01.2014.

In the light of findings of Enquiry Officer as well as DSP/Legal opinion, it has been proved beyond any shadow of doubt that he is guilty in both criminal cases. Therefore, the power vested in me under Police disciplinary rules 1975, Constable Mursalin No.4302 is hereby dismissed from service with immediate effect. Hence, the period he remained absent from 14.09.2013 till date is treated without pay.

Received on  
21/3/2018

SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

O.B No. 682 /dated 28-2 - /2014

No. 933-41 /PA, dated Peshawar, the 28/2 /2014

Copy forwarded for information & n/action to:

1. The Capital City Police Officer, Peshawar.
2. The SSP/Operation Peshawar.
3. DSP/Hqrs, Peshawar.
4. Pay Officer/R.I, LO, Police Lines Peshawar.
5. OASI, CRC & FMC along-with complete departmental file.
6. Official concerned

ATTESTED

IN THE COURT OF JAVAID UR REHMAN,  
ADDITIONAL SESSIONS JUDGE - XII, PESHAWAR

*Mursaleen ..... Vs ..... State*

Case File # 111/BA of 2017

ORDER  
 29/03/2017

1. Dy.PP for the State present. Counsel for accused, petitioner present. Record is also available and gone through with the able assistance of the learned counsel for the accused/petitioner and Dy.PP for the State.
2. Accused/petitioner Mursaleen s/o Gul Marjan booked in case FIR No.499 dated 13/09/2013 u/s 324/353/427/471 PPC at Police Station Sarband, Peshawar, and seeks his post arrest bail.
3. Learned counsel for the accused/petitioner is of the view that the alleged occurrence is an-witness as it is at night occurrence no one arrested on the spot, in that one of the co-accused Zubair was already allowed bail by ASI-IV, Peshawar. Furthermore, the present accused/petitioner has not specifically charged even by the complainant and injured and that the punishment of the offence does not touch the prohibitory clause of section 497 Cr.PC and last but not the least that the alleged abscondence was not willful. He relied upon a case reported in 2009 SCMR 299. Hence, requested for grant of post arrest bail.
4. Learned Dy.PP resisted the grant of post arrest bail of the accused/petitioner being directly charge for a non bailable offence and proceeding u/s 512 Cr.PC already been initiated as accused/petitioner remained willful absconder etc..

**ATTESTED**

06 APR 2017

(Extra Judge)

Sessions Judge Peshawar

**ATTESTED**

22.3.17

ATTACHED

Copying Agency Session Court  
(Examiner)  
Peshawar

CERTIFIED TO BE TRUE COPY

No.	4790
Date	5-4-17
Preparation	6-4-17
Delivery	6-4-17

Additional Sessions Judge-XII,  
Jawaid Ur Rehman,  
Reshwar  
28.3.17

Announced  
29/03/2017

5. Without touching the merit of the case although the present accused/petitioner is charged for a non-bailable offence but the punishment of the offences is not falling in the ambit of prohibitory clause, similarly, the complainant/injured seems not to be interested even to prosecute him further as even in the instant bail he do not turn up to contest the same, similarly, the co-accused Zubair has already been released on bail thus keeping in view the nature of offence coupled with the circumstance and the plea that it can be safely held that the matter is falling in the ambit of further inquiry. As for as the alleged absence may not be a handle in the release of the accused on bail if the case is arguable. Thus on this sole ground, the post arrest bail of the accused/petitioner is hereby allowed. If he submitted bail bonds in the tune of RS.80,000/- with two, local and reliable sureties each in the like amount to the satisfaction of this Court. He be released if not required in any other case. Copy of this order be placed on police/judicial file. Requisitioned record be returned to the quarter concern.

6. The be assigned to record room after necessary completion, and

(9)



BEFORE THE COURT OF ASS. PESHAWAR

~~ADRS-71~~

Let it be  
returned in Misc. No. 3  
31-3-17



Mursaleen vs State

Application for Addition of  
Sections 171, 512, 530 in the  
Release Warrant of Petitioner.

33/6-F

Respectfully sheweth,

1 - That the above titled Bail application  
was decided by the Honorable Court  
on 29-3-2017 and the petitioner was  
granted bail.

2 - That the above mentioned sections of  
law as inadvertently not mentioned  
in the petition, therefore his release  
was determined from Jail.

3 - That the above mention omission  
was not intentional.

It is therefore, humbly  
prayed that the above mentioned  
section of law may please be  
added in the release warrant  
petitioners  
counsel

Dated 31-3-17 **ATTESTED**

06 APR 2017  
(Examined)  
Session Court Peshawar

**ATTESTED**

11  
2

Order -  
30/03/2017

Misc: petition submitted. Be entered. Record available. Dy.PP for the State is also present. Learned counsel for the petitioner informed the Court that the bail petition for accused/petitioner Mursaleen was submitted and after hearing, the same was answered in affirmative and bail bonds to the tune of Rs.80,000/- was submitted and later on, release order was issued, however, it was returned by the Jail Authorities with remarks that in the Judicial warrant the accused is also charged U/s.171 PPC/13 A.O/512 CR.P.C, hence, requested that in the previous bail petition the entry with respect to the above referred section of law may be allowed. Similarly, in the release order, necessary correction may also be made accordingly.

Record transpires that the accused/petitioner is charged u/s.324/353/427/171 PPC/13 A O read with 512 Cr.P.C, however, inadvertently, the bail petition was filed for the offence U/s.324/353/427/471 PPC. Thus keeping in view the above referred situation, the instant misc: is accepted. Let it be placed on the record of bail petition 111/BA titled Mursaleen VS state and let fresh release order be issued with the superintendent Jail that only section of law mentioned in the release order may be considered in the Judicial warrant lying with them. File be consigned to the record room after necessary completion.

ANNOUNCED.  
31/3/2017.

JAVOID UR REHMAN  
AD&SJ-II, Peshawar  
31-3-17

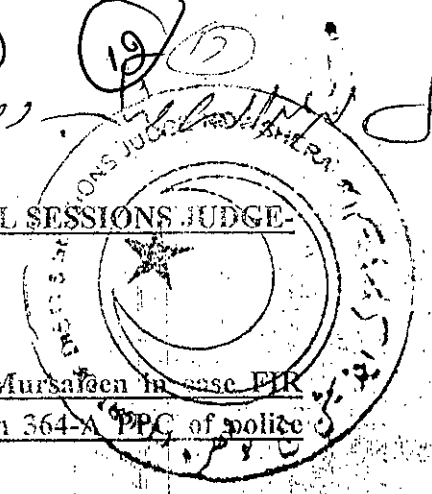
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06/1/17  
(Examiner)  
Copying Agency Session Court  
Peshawar

No:	4822
Dated of Application	6/4/17
Name of Application	Supl
Word	22/2 AD
Fee	Urgent/Fee
Signature of Copyist & Date	[Signature]
Date of Preparation	6/4/17
Date of Delivery	6/4/17

ATTESTED

Annex - (A) 19/12  
ADP - III



BEFORE THE COURT OF HON'BLE ADDITIONAL SESSIONS JUDGE-  
III, NOWSHERA

The State.....Versus.....Mursaleen.

Subject: Application for discharge of accused Mursaleen in case FIR  
No. 698 dated 13.09.2013 under section 364-A PPC of police  
station Pabbi

Respectfully Sheweth,

1. That the above titled case is pending trial before this Hon'ble Court and is fixed for attendance of accused for today 21.11.2017.
2. That the complainant has charged un-known accused in his report for the commission of the offence.
3. That on 16.09.2013 after recovery of abductee Hamza Shah he recorded his statement under section 164 Cr.P.C and charged accused Inayat Shah and un-known accused. Later on 25.09.2013 the abductee again recorded his statement under section 164 Cr.P.C and charged the accused facing trial alongwith co-accused Muhammad Zubair for his abduction.
4. That as per statement of 164 Cr.P.C of the mother of abductee she also charged un-known accused and as per that statement she was witness of the occurrence but no identification parade was conducted after the arrest of the accused.
5. That the complainant party has patched up the matter with the accused at bail stage and are no more interested in the prosecution of accused facing trial.
6. That co-accused Inayat Shah and Zubair Awan have been already acquitted by this Court under section 265-E Cr.P.C vide order dated 13.07.2015.
7. That the accused facing trial neither admitted nor confessed his guilt before the Court.
8. That in the above scenario there is no probability of conviction of accused facing trial as evidence is deficient.
9. That in view of the above facts the case is weak in evidentiary point of view, hence suggested for discharge.

It is, therefore, requested that the case is not fit for prosecution, therefore, accused may please be discharge.

Dated 21.11.2017.

State

Through:   
District Public Prosecutor,  
Nowshera.

**ATTESTED**  
11 JAN 2018

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

**ATTESTED**

36/7  
21/11/17  
12/4/17  
21/11/17  
637  
17  
27/11/17

FORMAL CHARGE

13

*(FIR No. 698 dated 13.09.2013 of Police Station Pabbi)*

I, *Dost Muhammad Khan, Additional Sessions Judge-III, Nowshera*, do hereby charge you accused:-

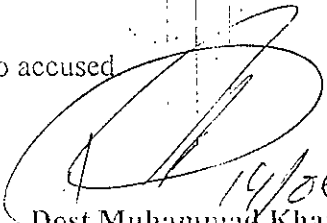
Mursaleen son of Haji Gul Marjan, aged about 30 years, resident of Dalazak road Gulozai, (CNIC No. 17201-3284156-7, as follows:-

That on 13.09.2013 at 1930 hours, near the house of Manzoor Shah situated in village Dag Basud, within the criminal jurisdiction of Police Station Pabbi, you accused named above, abducted Hamza son of Manzoor Shah, aged about 13 years in motorcar No. F1DV-7744 Khyber of white color in order that the said abductee may be murdered and you thereby committed an offence punishable under Section 364-A /34 PPC and within the cognizance of this Court.

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

The charge has been read over and explained to accused

Dated: 14.06.2017.


  
14/06  
Dost Muhammad Khan,  
Additional Sessions Judge-III,  
Nowshera.

- 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 guilt or claim trial?  
A. No. I do not plead guilty and claim trial.  
R.O & A.C

Mursaleen

Certified under section 364 Cr.P.C

14.06.2017.

  
14/06  
Dost Muhammad Khan  
Additional Sessions Judge-III  
Nowshera

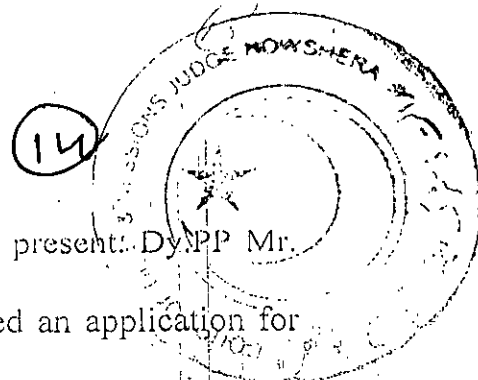
**ATTESTED**

71 JAN 2018

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

  
**ATTESTED**

ORDER  
21.11.2017



Accused Mursaleen alongwith his counsel present. Dy.PP Mr. Sangeen Shah is present for prosecution and filed an application for discharge of accused for the reason of deficiency of evidence.

As per case record, on 13.09.2013 complainant Tariq Ali reported to the local police that Hamza son of Manzoor Shah has been abducted by some unknown accused in motorcar No.FDV-7744. This case was initially registered in Police Station Pabbi vide FIR No. 698 dated 13.09.2013 under section 364-A PPC. Later on, when the abductee was recovered, on 16.09.2013 he recorded his statement u/s 164 Cr.PC wherein he charged his uncle Inayat Shah son of Zaiban Shah but on 25.09.2013 he again appeared before the learned Judicial Magistrate and again recorded his statement u/s 164 Cr.PC wherein he charged Inayat Shah, Muhammad Zubir, Mursaleen and Mehmandi Haji for the alleged occurrence.

After completion of investigation *challan* was submitted to this Court for commencement of trial. Accused were summoned and in the light of allegations made in the FIR, charge was framed against the accused under section 364-A/34 PPC. Prosecutor was directed to produce evidence, however, Prosecutor has filed an application for discharge of accused for the reason of deficiency of evidence.

I have gone through the available record. As per case record, co-accused Zubair Awan and Inayat Ali Shah have already been acquitted u/s 265-K, Cr.PC, by my predecessor-in-office vide his

ATTESTED

11 JAN 2018

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

(15)

order dated 13.07.2015. As per FIR, complainant charged the unknown accused. Later on, when the abductee was recovered, on 16.09.2013 he recorded his statement u/s 164 Cr.PC wherein he charged his uncle Inayat Shah son of Zaiban Shah but on 25.09.2013 he again appeared before the learned Judicial Magistrate and again recorded his statement u/s 164 Cr.PC wherein he charged Inayat Shah, Muhammad Zubir, Mursaleen and Mehmandi Haji. Record further shows that no identification parade was conducted after the arrest of accused Mursaleen.

It transpires from the case record that during earlier round of trial of the co-accused Zubair and Inayat Shah, the complainant Tariq Ali and alleged Abductee Hamza Shah have recorded their statements. Hamza Shah has stated that at the time of alleged occurrence all the accused had muffled their faces and he could not identify anyone of them. Moreover, he has stated that he was recovered on 13.09.2013 but he has nominated the accused in his statement on 25.09.2013. Thus, on the basis of such a statement of the alleged abductee, I do not see any chances of success of the case, therefore, I accept the application of prosecutor and resultantly I discharge accused Mursaleen. His sureties are relieved from the liability of bail bonds. This file shall be consigned to the record room after necessary completion and compilation.

Pronounced in open court.

21.11.2017

**ATTESTED**

11.1 JAN 2018  
Examiner Copying Agency  
Branch, D.S.J. Nowshera

(Dost Muhammad Khan)  
Additional Sessions Judge-III  
Nowshera

**ATTESTED**

Annex - (E) (16)  
Dy. 238/PA

19.4.18

The Most Respected  
Chief Capital Police Officer (CCPO)  
Peshawar

Subject:- APPLICATION FOR REINSTATEMENT IN SERVICE AS  
CONSTABLE IN THE BELOW DESCRIBE FACTS &  
CIRCUMSTANCES.

Respected Sir,

*applicant most humbly submits as below:*

1. That the applicant was appointed as constable in the esteemed institution of police on 26/06/2008 and performed his duties with zeal and zest, up to the satisfaction of the superior officers.
2. That during the fulfillment of obligation, 2 subsequent FIRs were registered against the applicant i.e. 1. FIR NO. 698 dated 13/09/2013 U/s 364 -A PPC Police station Pabbi District Nowshera, however the second one was FIR NO. 499 dated 13/09/2013 U/s 324, 353, 427, 471- PPC P.S Sarband District Peshawar. (Copies of both the FIRs are attached herewith this application)
3. That since the registration of the above both cases against the applicant, the appropriate authority of worthy police department dismissed the applicant from his service with speaking order.
4. That the proper case in respect of FIR No. 698 of Pabbai District Nowshera, was put up before the competent court of jurisdiction i.e. Hon'ble Additional Session Judge-III, Nowshera, which was disposed of accordingly by acquittal the applicant from the charged leveled against him vide order judgment dated 21/11/2017. (Copy of the said judgment is also annexed herewith)

*[Signature]*  
**ATTESTED**

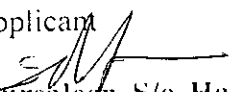
(17)

That acquittal order has been passed in favour of the applicant to the extent of one lodged FIR, which was certainly lodged against him in suspicious manner rather in ambiguous form, it was thus court rightly passed an acquittal order in favour of the applicant. However rest of the case rather FIR's challan is going to be put up for inauguration of trial, and it is very much expected from the competent Hon'ble court that the same acquittal order may be arrayed in favour of the applicant, BUT in this scenario the dismissal order passed in the hasty manner, by the competent authority of the police department is not justifiable, hence this application.

6. That it is just, fair, proper, legal and appropriate for the betterment of the service of mere police man, being only responsible member of his family to earn the bread and butter from them, to recall the said dismissal order purely on humanitarian as well as factual circumstances, which have been elaborated in the above stanza.


It is, therefore, most humbly prayed that the subject matter of this application may be considered and the dismissal order may be recalled and the applicant may graciously ordered to reinstate on his service of constable with all back benefits.

Applicant

  
Mursaleen S/o Haji Gul Mar  
Jan R/o Dalazak Road Bila  
Neko khan.

Belt No. 4302

Cell No. 0307-8276542

  
**ATTESTED**





Annex - (F) (18)  
**OFFICE OF THE  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR**

Phone No. 091-9210989

Fax No. 091-9212597


**ORDER**

This order will dispose off departmental appeal preferred by ex-constable Mursaleen No. 4302 who was awarded the major punishment of dismissal from service under Police Rules-1975 by SP-HQr: Peshawar vide OB No. 682 dated 28.02.2014.

2- The allegations levelled against him were that he while posted at S.I.U Peshawar involved in criminal cases vide FIR No.499 dated 13.09.2013 u/s 324/353/427/471 PPC PS Sarband and FIR No. 698 dated 13.09.2013 u/s 364-A PS Pabbi and remained absent from lawful duty w.e.f 14.09.2013 till his dismissal i.e 05.03.2014. Total absence (5-Months & 21-Days)

3- Proper departmental proceedings were initiated against him and Mr. Usman Ghani, DSP-HQr: Peshawar was appointed as the enquiry officer, who conducted a detailed enquiry. The enquiry officer in his conclusion recommended the appellant for major punishment. The competent authority after examining the enquiry report awarded him the major punishment of dismissal from service.

4- He was heard in person in O.R on 27.06.2018. The relevant record perused along with his explanation which revealed that the appellant after involvement in the criminal cases had gone into hiding and was declared as proclaimed offender, which led to his dismissal from service. All codal formalities were completed before awarding him the punishment of dismissal from service by the Competent Authority. His appeal for reinstatement in service is also badly time barred for 04-years, hence rejected/ filed.

  
(QAZI JAMIL UR REHMAN)PSP  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR

No. 783-88 /PA dated Peshawar the 17/07/ 2018

Copies for information and n/a to the:-

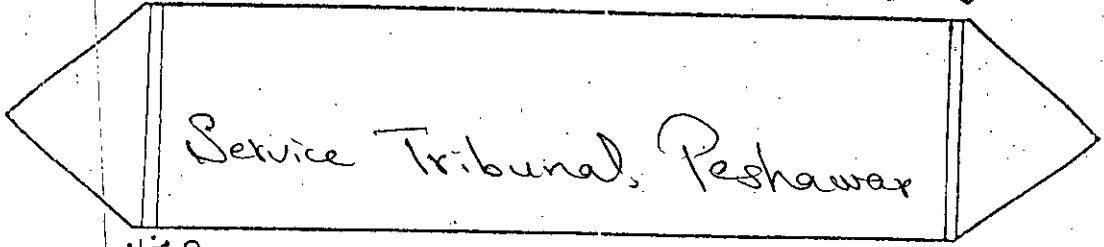
1. SP-HQr: Peshawar.
2. BO/OASI/ CRC for making necessary entry in his S.Roll.
3. FMC along with FM
4. Official concerned.

**ATTACHED**

03078276542

0333-9191814

بعدالت



2 منجانب  
بنام

موزخه  
مقدمہ  
دعوی  
جرم

### باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کاروائی متعلقہ

ایڈولیفٹ

آن مقام Peshawar کیلئے عطا شدہ ایڈولیفٹ سب

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

دکیل صاحب کو راضی نامہ کرنے و تقرر ثالت ہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی

نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور

کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ

پر داختم منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جائز التوائے مقدمہ کے سبب سے وہ ہوگا

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو دکیل صاحب پابند ہوں گے۔ کہ پیروی

مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Accepted

3/1/18

Accepted

المرقوم 16 8 2018

واہ العیاد

بمقام Peshawar کے لئے منظور ہے۔



ORDER  
27.01.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
27.01.2022



(AHMAD SULTAN TAREEN)  
CHAIRMAN



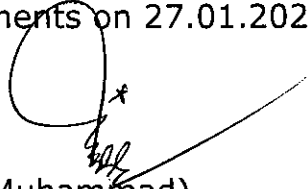
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)




29.10.2021

Learned counsel for the appellant present. Mr. Javed Ullah,  
Assistant Advocate General for the respondents present.

Learned counsel for the appellant sought adjournment  
being not prepared for arguments today. Adjourned. To come up  
for arguments on 27.01.2022 before the D.B.



(Mian Muhammad)  
Member (E)



(Salah-Ud-Din)  
Member (J)

01.04.2021

Appellant in person present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Former made a request for adjournment as his counsel is not available today being indisposed. Last chance is given.

Adjourned to 23/04/2021 for arguments before D.B.



(Atiq ur Rehman Wazir)  
Member (E)



(Rozina Rehman)  
Member (J)

23.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 17.08.2021 for the same as before.



Reader

17.08.2021

Since 17.08.2021 has been declared as Public holiday on account of Moharram, therefore, case is adjourned to 29.10.2021 for the same as before.



Reader

18.08.2020

Due to summer vacations, the case is adjourned to 20.10.2020 for the same.

  
Reader

20.10.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned to 30.12.2020 for hearing before the D.B.



(Mian Muhammad)



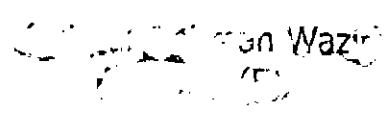
Chairman

30.12.2020

Due to summer vacation, case is adjourned to 01.04.2021 for the same as before.

  
Reader

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ Khattak, Member Additional Advocate  
~~\_\_\_\_\_~~ Zia Ullah Law Officer, Dr. Salim  
~~\_\_\_\_\_~~ Dr. Salim Javid Litigation Officer (for  
~~\_\_\_\_\_~~  
\_\_\_\_\_ was pay to the appellant and (b)  
the \_\_\_\_\_ signature of learned counsel for appellant  
\_\_\_\_\_ on the margin of order sheet. Last chance  
\_\_\_\_\_ for submission of comments/reply for  
\_\_\_\_\_ before D.B.

  
Wazir (5)

(Rozina Rehman)  
Member (2)

15.01.2020

Appellant absent. Learned counsel for the appellant absent. Due to general strike of the Bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 13.03.2020 before D.B. Appellant be put to notice for the date fixed.

  
Member

  
Member

13.03.2020

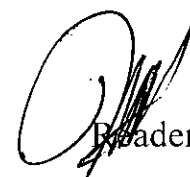
Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney present. Appellant seeks adjournment as his counsel is not available. Adjourn. To come up for arguments on 27.04.2020 before D.B.

  
Member

  
Member


27.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 18.08.2020 before S.B.

  
Reader

05.09.2019

None for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Aziz Shah, Reader for respondents present. Written reply on behalf of respondents not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 03.10.2019 before S.B.

  
(Ahmad Hassan)  
Member

03.10.2019

Nemo for the appellant. Mr. Kabirullah Khattak, Additional AG for the respondents present.

Representative of respondents absent, therefore, notices be issued to the respondents for written reply/comments for 30.10.2019 before S.B.

  
CHAIRMAN

30.10.2019

Counsel for the appellant and Addl. AG alongwith Muhammad Raziq, Reader for the respondents present.

Representative of respondents has furnished joint parawise comments on behalf of the respondents. The appeal is assigned to D.B for arguments on 15.01.2020. The appellant may submit rejoinder, within a fortnight, if so advised.

Chairman 




19.03.2019

Learned counsel present and requested for time to deposit security and process fee. Request accepted. Learned counsel for the appellant is directed to deposit the same within seven (07) days. Thereafter, notice be issued to the respondents for written reply/comments on 06.05.2019 before <sup>S</sup> D.B.

  
Member

06.05.2019

Learned Counsel for the appellant present and requested for further time to deposit security and process fee. Learned counsel for the appellant is directed to deposit the same within three days thereafter, notice be issued to the respondents for written reply/comments for 15.07.2019 before S.B.


  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

15.07.2019

Counsel for the appellant and Mr. Muhammad Riaz Khan Painsdakhel, Asstt. AG alongwith Muhammad Raziq, H.C for the respondents present.

Representative of respondents requests for further time. Adjourned to 05.09.2019 for submission of written reply/comments by the respondents.

  
Chairman

  
Appellant's Requested  
Security & Process Fee

02.01.2019

Counsel for the appellant Mursaleen present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department. It was further contended that the appellant was dismissed from service vide impugned order dated 28.02.214 on the allegation of his involvement in criminal case and remained absent from duty with effect from 14.09.2013. It was further contended that the said impugned order was communicated to the appellant on 15.03.2018 thereafter, the appellant filed departmental appeal on 19.04.2018 which was rejected on 17.07.2018 hence, the present service appeal. It was further contended that the appellant was hon'able acquitted by the competent court of law and neither any absence notice was issued to the appellant at his home address nor proper inquiry was conducted therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 07.03.2019 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

07.03.2019

~~Appellant absent. Learned counsel for the appellant absent. Security and process fee not deposited. Notice be issued to appellant and his counsel. Adjourned to 19.03.2019 before S. B. Only comments be submitted for written reply/comments on 16.03.2019 before S.B.~~

Member

Member

Form- A  
FORM OF ORDER SHEET

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

Case No. 1021/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/08/2018	<p>The appeal of Mr. Mursaleen presented today by Uzma Syed 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;"><i>[Signature]</i> REGISTRAR 16/8/18</p>
2-	17-8-2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>28-9-2018</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
	28.09.2018	<p>None present on behalf of the appellant. To come up for preliminary hearing on 14.11.2018 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> Chairman</p>
	14-11-2018	<p><i>Due to retirement of Honorable chairman the Tribunal is non functional therefore the cases adjourned to come up for the same on 2-1-2019</i></p> <p style="text-align: right;"><i>[Signature]</i> Reader</p>

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

**Service Appeal No.1021/2018.**

Mursaleen Ex-Constable No. 4302 Peshawar.....Appellant.

**VERSUS.**

1. Capital City Police Officer, Peshawar.
2. Superintendent of Police HQrs: Peshawar..... Respondents.

**Reply on behalf of Respondents No. 1, &2.**

**Respectfully Sheweth:-**

**PRELIMINARY OBJECTIONS.**

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appellant has got no locus standi and cause of action to file the instant appeal.

**FACTS:-**

- 1- First para of para No.1 is correct to the extent while rest of para denied on the ground that appellant committed gross misconduct. The present appeal is badly time barred.
- 2- Para No.2 is incorrect. In fact the appellant while posted at SIU, Peshawar involved himself in criminal cases vide FIR No. 499 dated 13.09.2013 u/s 324/353/427/471 PPC PS Sarband & FIR No.698 dated 13.09.2013 u/s 364-A PS Pabbi and also remained absent from lawful duty w.e.f 14.09.2013 till the date of dismissal (Total 05 Months & 21 days).
- 3- Para No.3 is incorrect. The appellant rendered himself for departmental action on the charges of FIRs and also remained absent from duty. Moreover criminal proceeding and departmental proceedings are two different things and can run side by side. Acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings.
- 4- Para No.4 is incorrect. The appellant after the commission of offence remained fugitive from law and remained absconder for long period.
- 5- Para No.5 is incorrect. Proper charge sheet and statement of allegations were issued to appellant. Proper departmental enquiry was conducted and the enquiry officer reported that the appellant was involved in two criminal cases, and declared him as proclaimed offender. The appellant filed departmental appeal which after due consideration was filed/rejected on the ground that the charges

leveled against him were proved, and his appeal was also time barred for about 04 years.

**GROUND:-**

- A- Incorrect. The punishment orders are just, legal and have been passed in accordance with law/rules.
- B- Incorrect. In fact the appellant involved in criminal cases and also remained absent from lawful duty, therefore the appellant is not eligible for re-instatement.
- C- Incorrect. The court proceedings and departmental proceeding are two different things and can run side by side.
- D- Incorrect. The appellant was treated as per law/rules and no provision of law has been violated.
- E- Incorrect. The appellant himself is responsible for the situation by committing gross misconduct.
- F- Incorrect. The appellant was provided full opportunity of personal hearing and was also called in OR on 27.06.2018, but the appellant failed to defend himself.
- G- Incorrect. Proper charge sheet and statement of allegations were issued to him and proper departmental enquiry was conducted. After fulfilling all codal formalities he was awarded major punishment.
- H- Incorrect. The allegations were proved beyond any shadow of doubt by the enquiry officer. After completion of all codal formalities he was awarded major punishment of dismissal from service.
- I- Incorrect. The appellant availed the opportunities of defense, but he could not prove himself innocent.
- J- Incorrect. The appellant was treated as per law/rules and liable to be upheld.
- K- That respondent also be allowed to advance any additional ground at the time of hearing the appeal.

**PRAYERS:-**

In view of the above, and keeping in view the gravity of slackness, willful negligence and misconduct of appellant, it is prayed that his appeal being devoid of any legal force may kindly be dismissed.

Capital City Police Officer,  
Peshawar.

Superintendent of Police,  
HQrs, Peshawar.

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

**Service Appeal No.1021/2018.**

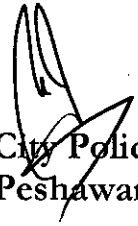
Mursaleen Ex-Constable No. 4302 CCP, Peshawar ..... Appellant.


**VERSUS.**

1. Capital City Police Officer, Peshawar
2. SP/HQrs: Capital City Police, Peshawar..... Respondents.

**AFFIDAVIT**

We respondents No. 1 & 2 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.

  
Capital City Police Officer,  
Peshawar.

  
Superintendent of Police,  
HQrs: Peshawar.

6

## CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Mursalin No.4302 of Capital City Police Peshawar with the following irregularities.

"That you Constable Mursalin No.4302 while posted at SIU, Peshawar were involved in a criminal case vide FIR No.499 dated 13.09.2013 U/S 324/353/427/471-PPC PS Sarband & FIR No.698 dated 13.09.2013 u/s 364-A PS Pabbi and also remained absent from lawful duty w.e.f 14.09.2013 till date. This amounts to gross misconduct on your part and against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.



SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

6

## DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Mursalin No.4302 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975


## STATEMENT OF ALLEGATION

"That Constable Mursalin No.4302 while posted at SIU, Peshawar was involved in a criminal case vide FIR No.499 dated 13.09.2013 U/S 324/353/427/471-PPC PS Sarband & FIR No.698 dated 13.09.2013 u/s 364-A PS Pabbi and also remained absent from lawful duty w.e.f 14.09.2013 till date. This amounts to gross misconduct on his part and against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and DSP-HQ/AS is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

No. 661 /E/PA, dated Peshawar the 19/9 /2012

1. DSP-HQ/AS is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned



(3)

4/13

**DEPARTMENTAL ENQUIRY REPRT.**

Please refer to your office No.661/E-PA, dated 19.09.2013, against Constable Mursalin No.4302 of Police Line Peshawar. This enquiry has been initiated on the basis of the following allegations.

That Constable Mursalin No.4302 while posted at SIU Peshawar was involved in a criminal case vide FIR No.499, dated 13.09.2013 u/s 324/353/427/471 PPC PS Sarband & FIR No.698, dated 13.09.2013 u/s 364-A PS Pabbi and remained absent from lawful duty w.e.f. 14.09.2013 till date. This amounts to gross misconduct on his part and is against the discipline of the force.

On the basis of this allegation an enquiry has been ordered and the then DSP / HQrs: was appointed as enquiry officer and now put up to the undersigned for submitting report.

On the receipt of enquiry papers, and after its perusal it revealed that the constable has been involved in two different cases in Police Station Sarband and Pabbi as mentioned above. The constable is still absented hence, the charge sheet and summary of allegations was not serve upon him.

**PS / Sarband.**

The CIO Inspector Sabir Khan was asked about the proceeding against the above named constable, vide case FIR No.499, dated 13.09.2013 u/s 324/353/427/471 PPC PS Sarband, who sated that the constable has been proceeded u/s 204/87 CrPC and declared him as Proclaimed offender. He further stated that the case has also been challaned to Court u/s 512 CrPC. The local Police of PS Chamkani has also been informed by him for preparation of history sheet. His detail report is enclosed at marke "A".

**PS / Pabbi.**

The IO of case FIR No.698, dated 13.09.2013 u/s 364-A PPC PS Pabbi was asked about the action taken against the above named accused constable who submitted his detail report attached at mark "B". He stated that the above mentioned case a motorcar along with the Kidnaper namely Hamza have been recovered and the accused constable was proceeded u/s 204/87 CrPC and declared him as proclaimed offender. The case has also been

challenged to court u/s 512 CrPC, while the local Police i.e. PS Chamkani has been directed for preparation of history sheet and proceeded u/s 88 CrPC.

No. 661/10/13  
DA 27/12/13

From the perusal of record of SIU Police Line where the constable was posted, it revealed that the accused constable is absented vide DD No.4, dated 14.09.2013 and still absented.

No. 144-LB  
27-12-013

**Recommendation:**

From the foregoing circumstances, it revealed that the constable is involved in two heinous cases of two different Police Stations. He has been proceeded u/s 204/87 and declared as PO. Both the cases are still lying pending in the concerned courts, it is therefore, recommended that the enquiry in hand may please be kept pending till the final decision of courts, after seeking the opinion of DSP / Legal.

Submitted for perusal and orders please.

*[Signature]*  
Dy. Superintendent of Police  
HQrs: CCP Peshawar.

NO. 2144 /S  
Dated 23.12.2013.  
Encl: ( 14 ) Papers.

DSP / Legal  
For legal opinion.

Mr Habibullah Asi  
an u/a Pt: R  
30/12/13

*[Signature]*  
Superintendent of Police  
HQrs: CCP Peshawar.  
24/12

DSP-HQrs

Sir,

The E.O may be directed to complete the enquiry as the accused Constable has been declared as P.O.

For proper enquiry  
or report.

*[Signature]*  
Superintendent of Police  
HQrs: CCP Peshawar  
31/12  
Worthy SP/H.Qrs:

*[Signature]*

DSP / Legal  
31-12-13

**VAKALATNAMA**

Before the Khyber Pakhtunkhwa Service Tribunal  
Peshawar

OF 2021

Mursaleen

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Police Deptt.

(RESPONDENT)  
(DEFENDANT)

I/We Mursaleen

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 01 / 04 / 2021

  
\_\_\_\_\_  
CLIENT

  
**ACCEPTED**  
**MIR ZAMAN SAFI**  
**ADVOCATE**

OFFICE:

Room No.6-E, 5<sup>th</sup> Floor,  
Rahim Medical Centre, G.T Road,  
Hashtnagri, Peshawar.  
Mobile No.0323-9295295

Before the Court of Hon'ble ASJ  
of the State  
29/8/19 31/8/19



Application of 265K CrPc for  
of the accused petitioner in the  
Case FIR-499, P.S, Sibband, Dated: 13-09-2013, offence: 324, 353, 11

Respectfully sheweth:

- 1) That the petitioner has been mentioned accused in the above captioned case is pending, adjudication in this court for evidence.
- 2) That the accused petitioner is innocent and falsely implicated in the instant case.
- 3) That no act whatsoever has been comm in the Fatoua transaction as evident from the record.
- 4) That the keeping in view the legal worth of the prosecution case to the extent of accused petitioner the material available on the file their is no remote proof of the conviction.

It is therefore humbly prayed that on acceptance of this application may kindly acquitt the accused petitioner of 265K CrPc.

Dated 18/06/2019.

ATTESTED  
31/8/19

petitioner  
by Adil Ali

In the Court of Mr. Ishfaq Ali Haider, A.J-V, Peshawar

The State vs Mursaleen etc

Or 17  
29.08.2019

Miss Fozia Durrani, APP for the State present.

Accused Mursaleen and Muhammad Zubair Awan along with counsel present. Accused Inayat Shah absconding.

Arguments on application under section 265-K Cr.P.C. heard and case file perused.

Accused/petitioner namely Mursaleen son of Gul Marjan r/o Gulozai Muhammad Zai, Peshawar charged in case FIR No.499 dated 13.09.2013 under section 324/353/427/471 PPC of PS Sarband, Peshawar.

The Prosecution story revolves around the fact that the local police were on gush meanwhile a motor car # 7744 FDU wherein a person wearing police uniform was signaled to stop but the driver accelerated the speed of the car.

The police party chased the said in a private vehicle as well as in official mobile and made firing on the tires of the car. On seeing the police party the accused sitting in the car also started firing at the police party as a result of their firing constable Niamat # 256 sustained injuries and then the police fired back at him.

The accused decamped taking the advantage of darkness while a boy aged about 12-14 years sitting in the rear seat of the car, who disclosed his name as Hamza and told the police that the accused have kidnapped him. Upon search of the car one bandolier, containing 10 cartridges of 30 bore and one group picture was recovered.

**ATTESTED**

31 AUG 2019

(Examiner)

Session

(2)

Admittedly accused have not been directly charged by name in the FIR and also no identification parade has been carried out as the occurrence took place at night time and the accused decamped in darkness. How the local police identified the accused is not known because there was no source of light available and also in the absence of identification parade, it is not clear how the accused facing trial has been nominated in the FIR.

Now coming to the alleged recovery of bandolier and cartridges from the motorcar. There are also no independent witnesses of the alleged recovery and provision of S. 103 Cr.P.C has also not been complied with. No person from the locality has been associated with the recovery proceedings. Under the circumstances, the alleged recovery is declared to be illegal.

Furthermore, the witnesses are not attending the court despite issuance of various summons and warrants showing lack of interest on the part of prosecution. How the case would be proved if the witnesses do not attend the court. All the available methods have been used to procure the attendance of the witnesses and the case is pending since 2018 but so far the entire evidence could not be completed due to lack of evidence on the part of prosecution.

Thus it is clear that the accused facing trial in the instant case, is not charged in the FIR and no recovery whatsoever has been made from him. The entire evidence of the prosecution is based upon self-conception. Obviously, there is no direct and clear evidence in the instant case and the prosecution to produce any evidence, the benefit of which would go to the accused. The accused never made any confession before the competent court, and nobody had seen him firing at the spot. There is also no evidence that the accused belongs to terrorists

ATTESTED

31 AUG 2018

(Examiner)  
Session Court

or has any connection with him. The entire record and evidence are totally going against the prosecution and in favour of the accused.

Nutshell of the above discussion is that the prosecution has badly failed to make out any case against the accused. The firing at the police party and recovery of bandolier and cartridges in the instant case has got no nexus with the accused and obviously when there is no case connecting the accused with the commission of offence, there can be no conviction.

For the reasons recorded above, the accused facing trial is hereby acquitted u/s 265-K Cr.P.C from the charges leveled against him. As the accused is on bail, therefore, his sureties are discharged from liability of bail bonds. Case property, if any, be kept intact till the expiry of period of appeal/revision and thereafter be destroyed according to law. As far as absconding accused Inayat shah son of Zabar Shah r/o Dag Besud PO Pabbi District Nowshera is concerned Perpetual warrant of arrest be issued against him. He is declared P.O and quarter concerned be asked to enter his name in the list of Proclaimed offenders. File be consigned to record room after its necessary completion and compilation.

Announced

29.08.2019

(ISHFAQ ALI HAIDER)  
ASJ-V, Peshawar

CERTIFIED TO BE TRUE COPY

31 AUG 2019

Copying Fee

No:	158/6
Dated of Application	31/8/19
Amount	51835/-
Word	2400/-
Fee	
Signature of	
Date of Delivery	31/8/19



KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

No. 1094 / ST

Dated: 18/05 /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 Superintendent of Police Headquarters,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 1021/2018, MR. MURSALEEN

I am directed to forward herewith a certified copy of Judgement dated 27.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR

KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR