

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 23/2018

Date of institution ... 27.12.2017

Date of judgment ... 03.10.2019

Muhammad Jamil Khan, Ex-Chowkidar son of Ghulam Haider
Resident of Landi Bala Tehsil & District Peshawar.

... (Appellant)

VERSUS

1. Director General Health Services Khyber Pakhtunkhwa Peshawar.
2. Secretary Health Department Khyber Pakhtunkhwa Peshawar.
3. Administrator Lady Reading Hospital Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
ORDER DATED 14.06.2017 OF DISMISSAL OF THE APPELLANT
FROM SERVICE AND REPRESENTATION OF THE APPELLANT
IS TILL NOT DECIDED SO FAR.

Mr. Muhammad Ibrahim Khan Chamkani, Advocate ..

For appellant.

Mr. Riaz Ahmad Paindakheil, Assistant Advocate General ..

For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI ..

MEMBER (JUDICIAL)

MR. AHMAD HASSAN ..

MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the
appellant and Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the
respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant
was appointed as Chowkidar in Health Department vide order dated 18.02.1986
and was performing his duties regularly. He was involved in case FIR No. 450
dated 08.06.1999 under section 302/324/34 PPC PS Pustakhara. He was
arrested on 16.04.2015 in the aforesaid case. On conclusion of trial, he was
acquitted vide detailed judgment dated 12.01.2017. -The appellant filed

*M. Amin
3.10.2019*

departmental appeal to the competent authority on 19.04.2017 for joining his duty, the Deputy Medical Superintendent Administration sought opinion from the Director General Health Services Khyber Pakhtunkhwa Peshawar vide letter No. 13222/LRH/E-IV dated 02.05.2017 to the effect that the appellant was appointed in the hospital as Chowkidar on 18.02.1986. About 18 years ago, he was involved in a murder case ^{on} ~~from~~ 08.06.1999 and now he has been acquitted by the trial court. The Assistant Director (P-II) Directorate General Health Services, Khyber Pakhtunkhwa Peshawar directed the Deputy Medical Superintendent (Admin) LRH/MTI Peshawar to submit full background of the case as well as service documents of the appellant vide letter No. 11833/Personnel dated 24.05.2017 but again the Deputy Medical Superintendent (Admin) LRH/MTI Peshawar write a letter No. 17818/LRH/E-IV dated 14.06.2017 that no record of the appellant is available as he remained absent for a long period i.e 08.06.1999 till now. It was also stated ~~that~~ in the said letter that the Budget & Account Officer LRH also reported that service book of the appellant was not found as it is very old. The respondent-department has not decided that departmental appeal dated 19.04.2017 within the stipulated period of 90 days hence, the present service appeal.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving as Chowkidar in Health Department. It was further contended that he was falsely involved in the aforesaid criminal case. It was further contended that after criminal trial, the appellant was hon'ble acquitted by the Trial Court vide judgment dated 12.01.2017. It was further contended that neither departmental proceeding was initiated by the respondent-department against the appellant nor he was dismissed or removed from service by the respondent-department and the appellant is still a civil servant. It was further contended that after acquittal,

1/20.01.2019

the appellant reported for joining his duty but he was not allowed by the respondent-department to perform duty therefore, the appellant filed departmental appeal dated 19.04.2017 for allowing him to join duty but the same was also not responded therefore, prayed for acceptance of appeal. It was also contended by the learned counsel for the appellant that the appellant was having 13/14 years service in his credit but the respondent-department has not considered the same.

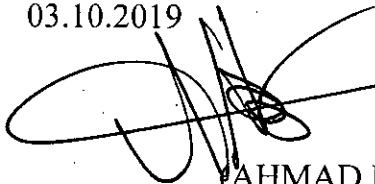
5. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was appointed as Chowkidar vide order dated 18.02.1986. It was further contended that he was involved in the aforesaid criminal case on 08.06.1999 and was arrested on 16.04.2015. It was further contended that the appellant remained absent for a long period. It was further contended that the appellant was to be retired in the year 2014 as per his National Identity Card his date of birth is 1954 therefore, he is not entitled to be reinstated in service and prayed for dismissal of appeal.


6. Perusal of the record reveals that the appellant was appointed as Chowkidar in Health Department vide order dated 18.02.1986. The record further reveals that he was involved in criminal case vide FIR No. 450 dated 08.06.1999 under section 302/324/34 PPC PS Pustakhara Peshawar. The record further reveals that he was arrested by the local police on 16.04.2015 as revealed from the certificate issued by the Superintendent Central Prison Jail. The record further reveals that the appellant was acquitted by the competent court vide detailed judgment dated 12.01.2017. The record further reveals that neither any departmental proceeding was initiated by the respondent-department against the appellant nor he was imposed any penalty of termination or removal from service. The record further reveals that after acquittal, the appellant filed application/departamental appeal on 19.04.2017 but the same was not decided by

M. Amin
3.10.2019

the respondent-department therefore, in such circumstances when neither any departmental proceeding has been initiated against the appellant nor he has been imposed penalty of termination/removal by the respondent-department and he also having 13/14 years service in his credit, we deem it appropriate to direct the departmental authority to decide his application/departamental appeal dated 19.04.2017 within a period of 90 days from the date of copy of receiving of this judgment with further direction to also provide opportunity of personal hearing to the appellant before disposing of said application/departamental appeal dated 19.04.2017 and thereafter if the appellant was aggrieved, he is at liberty to file service appeal subject to all legal objections. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
03.10.2019


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Service Appeal No. 23/2018

20.08.2019

Appellant alongwith his counsel and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant submitted rejoinder, which is placed on record. Learned counsel for the appellant also requested for adjournment for arguments. Adjourned to 03.10.2019 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

03.10.2019

Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed on file, we deem it appropriate to direct the departmental authority to decide his application/departmental appeal dated 19.04.2017 within a period of 90 days from the date of copy of receiving of this judgment with further direction to also provide opportunity of persona hearing to the appellant before disposing of said application/departmental appeal dated 19.04.2017 and thereafter if the appellant was aggrieved, he is at liberty to file service appeal subject to all legal objections. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

03.10.2019


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

02.05.2019

Appellant in person and Khan Said, Litigation Officer for respondent No. 3 alongwith Mr. Usman Ghani, District Attorney for the respondents present.

The representative of respondent No. 3 requests for further time to submit the requisite reply on the ground that the personal file of appellant stands misplaced at the office. In the interest of justice, another opportunity is given to the respondent No. 3 who shall positively submit the reply on next date of hearing failing which the defence of the respondent will be closed.

Adjourned to 21.06.2019 before S.B.



Chairman

21.06.2019

Appellant alongwith his counsel and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Saleem Javed, Litigation Officer on behalf of respondents No. 1 & 2 present. Para-wise comments on behalf of respondents No. 1 & 2 has already been submitted. None present on behalf of respondent No. 3 therefore, respondent No. 3 is proceeded ex-parte. Case to come up for rejoinder and arguments on 20.08.2019 before D.B.



(Muhammad Amin Khan Kundi)
Member

14.02.2019

No one present on behalf of appellant. Jaffar Ali Assistant representative of respondents No.1 & 2, and Khan Said Superintendent for respondent No.3 present. Written reply submitted on behalf of respondents No.1 & 2 while the reply of respondent No.3 is still awaited. Representative of the respondent No.3 seeks time to furnish written reply/comments. Granted by way of last chance. To come up for written reply/comments behalf of respondent No.3 on 02.04.2019 before S.B.


Member

02.04.2019

Counsel for the appellant present. Mr. Kabirullah, Addl: AG alongwith Mr. Khayal Muhammad, Legal Advisor for respondents present. Written reply on behalf of respondent no. 3 not submitted. Requested for adjournment. Another last opportunity granted. Case to come up for written reply of respondent no.3 on 02.05.2019 before S.B.


(Ahmad Hassan)
Member

14.12.2018

Appellant alongwith his counsel present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply not submitted despite extension of last opportunity at the cost of Rs. 2000/-. Learned Additional AG requested for further adjournment. Last opportunity is further extended subject to payment of further cost of Rs. 1000/- which shall be borne by the respondents from their own pockets. Representative of the respondent-department is also not present therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply positively on the next date. Adjourned. To come up for written reply/comments and cost of Rs. 3000/- on 23.01.2019 before S.B.


Muhammad Amin Khan Kundi
Member

23.01.2019 Appellant with counsel present. M/S Hazrat Shah Superintendent and Jafar Ali Assistant representatives of respondents No.1 & 2 present and seeks time to furnish written reply on behalf of respondents No.1 & 2. No one present on behalf of respondent No.3. Notice be issued to respondent No.3 with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 14.02.2019 before S.B.


Member

10.05.2018

The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 04.07.2018.


Reader


04.07.2018

Clerk of the counsel for appellant and Mr. Sardar Shaukat Hayat, Addl: AG alongwith Mr. Jaffar Khan, Assistant for the respondents present. Written reply not submitted despite last opportunities. Requested for further adjournment. Last opportunity is further extended subject to payment of cost of Rs. 1000/- which shall be borne by respondents from their own pockets. To come up for written reply/comments on 20.08.2018 before S.B

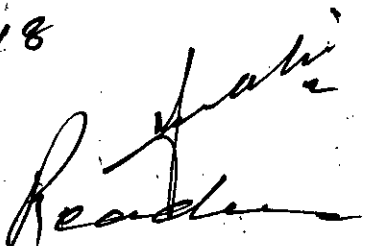

Member

20.08.2018

Counsel for the appellant and Mr. Kabirullah Khattak, AAG for the respondents present. None present on behalf of the official respondent. Therefore fresh notices be issued to the respondent department attend the court positively. Written reply not submitted despite extension of last opportunity and cost of Rs. 1000/- Another last opportunity is extended subject o payment of further cost of 2000/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments on 30.10.2018 before S.B.


(Muhammad Amin Kundi)
Member

30-10-18 Due to Retirement of Honorable
Chairman the Tribunal is non functional
Therefore the case is adjourned to come up
the same on 14-12-2018


Reader

12.03.2018

Clerk of the counsel for appellant and Assistant AG for the respondent present. Written reply not submitted. Learned Assistant AG requested for adjournment. Adjourned. To come up written reply/comments on 27.03.2018 before S.B.



(Muhammad Amin Khan Kundi)
Member

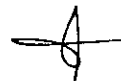
27.03.2018

Appellant absent. Counsel present on behalf of appellant. Mr. Kabir Ullah Khattak, Addl: AG, alongwith Mr. Khayal Muhammad Mohmand, Legal Officer (LRH) for the respondent present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply and comments on 10.04.2018 before S.B.


Member

10.04.2018

Appellant alongwith counsel and Addl: AG present. None present on behalf of respondent department. Therefore, fresh notices be issued to the respondent department to attend the court positively. Written reply not submitted. Requested for adjournment. Adjourned. Last opportunity is granted. To come up for written/comments on 10.05.2018 before S.B.



Member

Form-A

FORM OF ORDERSHEET

Court of _____
 Case No. 23/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	5/1/2018	<p>The appeal of Mr. Muhammad Jamil Khan resubmitted today by Mr. Muhammad Ibrahim Khan Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;">REGISTRAR 5/1/18</p>
2-	11/01/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>22/01/18.</u></p> <p style="text-align: right;">CHAIRMAN</p>
	22.01.2018	<p>Learned counsel for the appellant present Preliminary arguments heard.</p> <p>Perusal of file would show that the appellant (Ex-Chowkidar) remained absent from duties for Eighteen (18) years including abscontion for Sixteen (16) years in a murder case. After a long period of absence and acquittal in the murder case the appellant allegedly reported to respondent No.3 who allegedly told the appellant orally that he has been dismissed from service.</p> <p>Points raised need consideration admitted for regular hearing subject to all just/legal objections. The appellant is directed to deposit security and process fees within 10 days, thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 12.03.2018 before S.B</p> <p style="text-align: right;">(Muhammad Hamid Mughal)</p>

Appellant Deposited Security & Process Fee


MEMBER

The appeal of Mr. Muhammad Jamil Khan Ex-Chowkidar Health Department received today i.e. on 27.12.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 2- Copy of impugned dismissal order is not attached with the appeal which may be also be placed on it.

No. 2765 /S.T,

Dt. 28/12 /2017


REGISTRAR 28/12/17
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

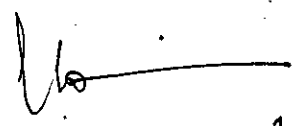
Mr. Muhammad Ibrahim Khan Chamkani
Adv. Pesh.

5-01-2018

Sir,

It is submitted that the appellant have applied to the Authority respondent No. 1 for providing the above documents as per objections of the Hon'ble Registrar but the respdt No. 1 have not received the application from the appellant and stated that we have not holding any document about the service record of the appellant in our office. Application is attached herewith.

It is submitted that the appeal of the appellant may kindly be put up before the Hon'ble Bench.


(Muhammad Urdin Khan)
Advocate.

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

Appeal No. 23 of 2018

Muhammad Jamil Khan, Ex-Chowkidar
..... Appellant

VERSUS

Director General Health Services KPK Peshawar and
others

..... Respondents

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Dated 27/12/2017

Appellant

Through

Muhammad Ibrahim Khan
Chamkani

Murad Ali Khan

Advocates, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No. 23 of 2017

Muhammad Jamil Khan, Ex-Chowkidar Son of Ghulam Haider Resident of Landi Bala Tehsil & District Peshawar.

..... Appellant

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1459

Dated 27-12-2017

VERSUS

- 1- Director General Health Services KPK Peshawar.
- 2- Secretary Health Department KPK Peshawar.
- 3- Administrator Lady Reading Hospital Peshawar.

..... Respondents

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 14/06/2017 OF DISMISSAL OF THE APPELLANT FROM SERVICE AND REPRESENTATION OF THE APPELLANT IS TILL NOT DECIDED SO FAR.

Prayer

On acceptance of appeal, the impugned order dated 14/06/2017 of dismissal from service may be set aside and the appellant may be reinstated in service with all back benefits.

Filed to-day
Registrar
27/12/17

Respectfully Sheweth:

Re-submitted to -day and filed. Brief facts leading to the instant appeal are as under;

Registrar
5/1/18

- 1- That the appellant having been inducted in service as Chowkidar at Lady Reading Hospital Peshawar

vide order dated 18/12/1986 Letter No.2914-17/PGMI/LRH Peshawar. (Copy of appointment order is annexed as Annexure "A" and Medical Fitness Certificate is annexed as Annexure "B").

2- That the appellant was falsely involved in a murder vide case FIR No.450 dated 08/06/1999 U/S 302/324/34 PPC PS Pustakhara and was arrested. (Copy of FIR is annexed as Annexure "C").

3- That the appellant was confined at Central Jail Peshawar and in the meanwhile trial of the case was started in the Court of Session Judge Peshawar.

4- That after conclusion of trial the appellant was acquitted of the charges leveled against him on 12/01/2017. (Copies of the judgment / order dated 12/01/2017 is annexed as Annexure "D").

5- That after acquittal and release from Jail the appellant reported to respondent No.3 (Administrator of Lady Reading Hospital) who said to the appellant orally that he is dismissed and further that service book and other record pertaining to the appellant service are not available in our office. (Copies pay slips 8 Nos which were available with the appellant are annexed as Annexure "E").

- 6- That after consultation with counsel the appellant applied to the respondent No.3 through a departmental appeal on 19/04/2017. (Copy of departmental appeal is annexed as Annexure "F").
- 7- That departmental appeal was forwarded to respondent No.1 by respondent No.3 vide Letter No.13222/LRH/E-IV dated 02/05/2017. (Copy of the same is annexed as Annexure "G").
- 8- That respondent No.1 office replied to respondent No.3 above letter on 24/05/2017 vide Letter No.11833 for the submission of all service record pertaining to the appellant service for further proceedings. (Cop of Letter above is annexed as Annexure "H").
- 9- That reply to the above Letter, respondent No.3 sent a detail Letter No.17815/LRH/E-IV dated 14/06/2017 that no record is available in this Office pertaining to appellant's service.
- 10- That non-availability of service record documents pertaining to the appellant service is a clear cut negligence on the part of the department and dismissal of the appellant from service without any reason is likely to be set aside on the following amongst other grounds:

GROUNDS:

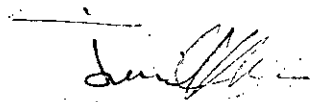
- A) That dismissal of the appellant from service is against law, illegal, unconstitutional and unjustified and hence the appellant be reinstated with all back benefits.
- B) That non-availability of the appellant's service record with the concerned office of the department showed negligence on the part of the department itself, which cannot be ignored lightly, hence extending justice to the appellant, the order of dismissal from service may be set aside and he be reinstated in service with all back benefits.
- C) That the appellant was not absent but he was unable to inform the department regarding his arrest in a frivolous case by the police.
- D) That department have not observed the legal proceeding against the appellant just like, inquiry, show cause notice, defence, publication in the new papers or other service procedure but straightaway the department destroyed all the service record of the

appellant, therefore, the appellant is entitled to be reinstated in service with all back benefit.

E) That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.

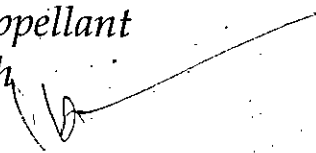
It is, therefore, most humbly respectfully prayed that keeping in view the grounds. The orally dismissal order of the department may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.

Dated 27/12/2017

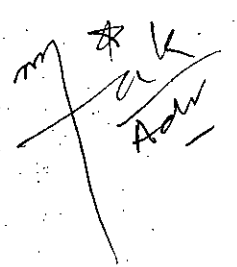


Appellant

Through



Muhammad Ibrahim Khan
Chamkani
Murad Ali Khan
Advocates, Peshawar



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

Service Appeal No. _____ of 2017

Muhammad Jamil Khan, Ex-Chowkidar
..... Appellant

VERSUS

Director General Health Services KPK Peshawar and
others
..... Respondents

**APPLICATION FOR CONDONATION OF
DELAY OF ANY**

Respectfully Sheweth:

1- The petitioner prays for condonation of delay if any
on the following grounds:

Grounds:

- A) That the grounds mentioned in appeal may be treated as the integral part of this application.
- B) That it is the settled law of the august Supreme Court of Pakistan that the cases be decided on merits and not on technicalities such as limitation.
- C) That the petitioner has not committed any misconduct, and if the delay if any is not condoned his whole life shall be destroyed.

D) That the appellant was in judicial lockup vide Case FIR No.450 as stated in the appeal grounds who could not approach the department as well as this Hon'ble Tribunal. in time.

It is, therefore, prayed that on acceptance of this application, the delay if any shall be condoned to meet the ends of justice.

Dated 27/12/2017

[Handwritten signature]

Appellant
Through
[Handwritten signature]
Muhammad Ibrahim Khan
Chamkani
Murad Ali Khan
Advocates, Peshawar

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AELW

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

Service appeal No. _____ of 2017

Muhammad Jamil Khan, Ex-Chowkidar
..... Appellant

VERSUS

Director General Health Services KPK Peshawar and
others

..... Respondents

AFFIDAVIT

I, Muhammad Jamil Khan, Ex-Chowkidar
Son of Ghulam Haider Resident of Landi Bala
Tehsil & District Peshawar, do hereby solemnly
affirm and state on oath that all contents of the
application for condonation of delay if any are
true and correct to the best of my knowledge and
belief and nothing wrong has been stated by me in
the matter.

Muhammad Jamil Khan

ATTESTED

DEPONENT

CNIC # 42401-5243581-5



27 Dec 2017



حکومت پاکستان

قومی شناختی کارڈ

42401-5243581-5

نام: محمد عیوب خان

پتہ: حیدرآباد

والد کا نام: محمد عظیم

شناختی علاقہ: ہیرے درجہ کے نگران

1954

تاریخ پیدائش:

عثمان یوسف بھٹو

دستخط جسٹس جنرل

دستخط مائل کارڈ



شناختی نمبر: 42401-5243581-5 فائڈ ان نمبر: LY5357

موجودہ پتہ: نذر بانی مسجد، محلہ فرشتیہ کالونی قاسم آباد، کراچی

تعمیر و صلیح کراچی غربی

سنگونڈی بالا، ڈاکخانہ اسلامیہ کلچرل یونیورسٹی، تعمیر و صلیح پشاور

13NK5438E

179

شناختی نمبر

تاریخ تسخیر: تااحیات

تاریخ اجراء: 01/04/2015

گمشدہ کارڈ ملے پر قریبی لیٹر بکس میں ڈال دیں



"A" (8)

OFFICE OF THE DEAN POSTGRADUATE MEDICAL INSTITUTE & ADMINISTRATOR
L.R.H. PESHAWAR.

OFFICE ORDER

Mr. Jamil Khan S/O Ghulam Haider is hereby appointed as Chowkidar N.P.S. I plus other allowances as admissible to him/her under the rules against an existing vacancy at PGMI/Lady Reading Hospital, Peshawar with effect from the date of resuming duty.

His appointment in this Institution is purely on temporary basis liable to termination at any time without any notice and assigning reason.

His appointment is on probation basis for a period of six months.

He will be governed by such rules and orders to leave T.A. Medical Charges etc. as may be issued by the Govt. for the category of Govt. Servant.

His appointment is subject to the Medical Fitness Report for Govt. Service.

DEAN
POSTGRADUATE MEDICAL INSTITUTE
& ADMINISTRATOR LRH PESHAWAR.

No. 2014-17 /PGMI/LRH Peshawar dated 18/2/1986

Copy forwarded to :-

1. Dy: Medical Supdt. PGMI/LRH Peshawar.
2. Asstt: Account Officer PGMI/LRH Peshawar.
3. Head Jamadar -do-
4. Mr. Jamil Khan S/O Ghulam Haider

Chowkidar J. Sanga Lami Bala Po Islamabad College
Distt. D.I.H. Peshawar.
for information and n/action.

ZAHOR

DEAN
POSTGRADUATE MEDICAL INSTITUTE
& ADMINISTRATOR LRH PESHAWAR.

Attended

MEDICAL CERTIFICATE.

Name of Official: Jamil Khan
 Cast, or race: Afghan
 Father's name: Abdul Haq
 Residence: Sangi, Landa, Balochistan
 Date of birth: 24 July 13.9.62 (Army Service Book)
 Exact height by measurement: 5'5"
 Personal mark of identification: A black mark on the right shoulder
 Signature of the Official: Jamil Khan
 Signature of head of office: [Signature]
 Seal of Office: [Seal]
 Deputy Medical Superintendent,
 P.G.M.I./L.R.H. Peshawar

I do hereby certify that I have examined Mr. Jamil Khan a candidate for employment in the Office of the Lady Reading Hospital, Peshawar and cannot discover that he had any disease communicable or other constitutional affection or bodily infirmity except Nil

I do not consider this as disqualification for employment in the office of the Lady Reading Hospital, Peshawar. His age according to his own statement 24 year and by appearance about 24 years (twain four)

LEFT HAND THUMB AND FINGER IMPRESSIONS



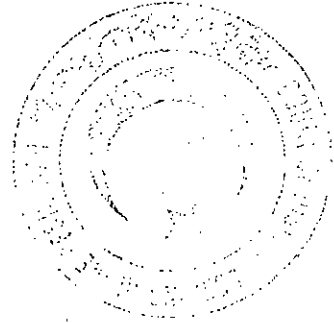
Medical Superintendent,
 Civil Hospital, Peshawar

[Signature]
 18/9/62

IN THE COURT OF SYED YASIR SHABBIR
ADDITIONAL SESSIONS JUDGE-VI, PESHAWAR.

Sessions Case No.16 of 2015.

Date of Original Institution..... 23.04.2015.
Charge framed on12.05.2015.
Date of Entrustment to this Court...08.04.2016.
Date of Decision.....12.01.2017.



The State.

Versus

1. Muhammad Jamil Khan S/o Ghulam Haider R/o Sangu Landi Bala, Peshawar.....(Accused facing trial).
2. Muhammad Ayaz S/o Khan Haider R/o Sangu Landi Bala, Peshawar.....(Absconding accused).

FIR No.450 Dated 08/06/1999, U/S 302/324/34 PPC read with Section 512 Cr.PC, Police Station Pishtakhara, Peshawar.

State represented by: Miss Hina APP for the State.
 Complainant represented by: Mr. Asfandiyar Khan Advocate.
 Accused represented by: Mr. Jalal Uddin Akbar Azam Khan Advocate.

JUDGMENT

Accused Muhammad Jamil Khan [produced in custody], is facing trial, charged under section 302/324/34 PPC vide FIR No.450, dated 08/06/1999, Police Station Pishtakhara, Peshawar.

Brief facts of the case of the prosecution are that the complainant Ihsan Ullah s/o Gul Sher reported the matter to the local police of Police Station Pishtakhara on the spot that he alongwith his

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father Gul Sher and his cousin Sadayat came out of their Hujra and were proceeding towards road by crossing the fields. In the meantime, Muhammad Jamil Khan s/o Ghulam Haider [the accused facing trial] and his co-accused namely Muhammad Ayaz s/o Khan Haider duly armed with firearms came running from their houses towards them and when they reached near the complainant party, the accused started firing at them as a result of which Sadayat got hit and died on the spot while the complainant and his father remained unhurt. Motive for the occurrence was stated to be dispute over landed property. The occurrence was witnessed by the complainant and his father alongwith other people present on the spot, hence, the FIR.

After completion of investigation in the instant case, challan against the accused were sent to the court of Sessions Judge, Peshawar u/s 512 Cr.PC on 08/05/2000 which was entrusted to the court of the then ASJ-III, Peshawar for trial. On 18/02/2002 statement of SW/DFC No. 2136(retired) was recorded wherein he stated that accused Muhammad Jamil [The accused facing trial] and Muhammad Ayaz have gone into hiding and were avoiding their lawful arrest, thus, in view of the statement of the SW/DFC proceedings u/s 512 Cr.PC were initiated against them and prosecution was allowed to adduce evidence in absence of the accused. On 17/12/2003 after recording evidence of material witnesses accused Muhammad Jamil Khan [the accused facing trial] and Muhammad Ayaz were declared proclaimed offenders and perpetual warrant of arrest was issued

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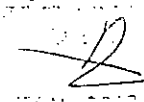
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against them. The accused Muhammad Jamil Khan submitted his BBA petition before the court of the then learned ASJ-IX, Peshawar which was dismissed on 13/04/2015 and the accused facing trial stood arrested. Supplementary challan against the accused Muhammad Jamil Khan was submitted before the court of learned Sessions Judge, Peshawar on 23/04/2015 which was entrusted to the court of the court of learned ASJ-I, Peshawar for trial. On 23/04/2015 accused Muhammad Jamil Khan was summoned through Zamima Bay from Central Prison, Peshawar. On 05/05/2015 accused Muhammad Jamil was produced in custody before the court of learned ASJ-I, Peshawar and mandatory provisions of section 265-C Cr.PC were complied with Charge against the accused was framed on 12/05/2015 to which the accused pleaded not guilty and claimed trial, hence, PWs were summoned alongwith case property. On 08/04/2016 the instant case was transferred to this court vide Endorsement No.2236-2361/Admin dated 29/02/2016 and order dated 14/03/2016 of the then learned District & Sessions Judge, Peshawar.

In order to establish the guilt of the accused, the prosecution produced as many as 11 PWs. Brief summary of the prosecution evidence is as under:-

PW-1 is the statement of Yousaf Khan SI who stated that during the days of occurrence he was posted in Police Station Pishtakhara. Constable Wasil Khan brought blood stained garments of deceased from the mortuary and handed over the

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same to the I.O. in his presence, which was taken into possession vide recovery memo Ex:PW1/1 and sealed in parcel No.4 by affixing 3 monogram of AH. He admitted the recovery memo as correct and correctly bearing his signature.

PW-2 is the statement of Lal Hameed Khan Inspector (Rtd) who stated that during the days of occurrence he was posted as ASI in Police Station Pishtakhara. The constable Khaista Gul brought the murasila to the Police Station which he incorporated in shape of FIR No.450 dated 08/06/1999 u/s 302/324/34 PPC. He admitted the copy of FIR Ex:PW2/1 as correct and correctly bearing signature.

PW-3 is the statement of Pervez Khan DFC (Rtd) who stated that during the days of occurrence he was posted as DFC Police Station Pishtakhara. He was entrusted with the warrant of arrest issued u/s 204 Cr.P.C. against the accused Muhammad Ayaz and Muhammad Jamil Ex:PW3/1 to Ex:PW3/2. He searched for the accused at the given addresses but could not find them and it was reported to him that the accused had left their abode and had gone to some unknown place. Similarly, he was also entrusted with the proclamation notices Ex:PW3/3 to Ex:PW3/4, which he executed as per law and returned third copy of each notices to the I.O. alongwith his report overleaf the same. The I.O. recorded his statement u/s 161 Cr.PC. He admitted the above mentioned documents as correct and correctly bearing his signature.

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PW-4 is statement of Nisar Ahmad SI who stated that he was posted in Police Station Pishtakhara. On 13/04/2015 the Court of learned, ASJ-IX, Peshawar recalled the BBA of accused facing trial, so he formally arrested the accused and issued his card of arrest as Ex:PW4/1. He produced the accused before JMIC vide his application Ex:PW4/2 and requested for 7 days police custody and 2 days custody was allowed. He interrogated the accused and on the expiry of period of custody he again produced him before the court for further custody vide his application Ex:PW4/3, but the learned JMIC turned down the application and sent the accused to the judicial lockup. After completion of investigation he handed over the case file to the SHO for the submission of challan. He admitted the relevant documents as correct and correctly bearing his signature.

PW-5 is the statement of Khizar Hayat Khan SI who stated that he was posted as SHO Police Station Pishtakhara. After completion of investigation against the accused facing trial the I.O. forwarded the case file. He submitted supplementary challan against the accused. He admitted the relevant document as correct and correctly bearing his signature.

PW-6 is the statement of Gulsher s/o Gulfaraz who had died during the time intervening the date of recording his statement on 25/11/2002 in the proceedings u/s 512 Cr.PC and the time of arrest of the accused facing trial. After recording statement of

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CW-1 the statement of PW-06 was reproduced at the request of learned defence counsel, which was recorded on 25/11/2002 in the proceeding u/s 512 Cr.P.C. Said PW stated that on the day of occurrence, he alongwith his son Ehsan Ullah (complainant) and nephew Sadayat (deceased) were proceeding toward road by crossing the fields. Sadayat was going ahead of them while Jamil s/o Ghulam Haider and Ayaz s/o Khan Haider, their co-villagers, were running towards them from their house side. They were armed with firearms. When they reached close to them, both of them started indiscriminate firing upon them, with the intention of committing their Qatle-e-Amd, as a result of which his nephew Sadayat was hit and expired on the spot, while he alongwith his son escaped unhurt and took shelter in their Hujra. Motive behind the occurrence is dispute over property between them and the accused party. On arrival of police party his son Ehsan Ullah made report regarding the occurrence. He charged the accused for the commission of offence.

PW-7 is the statement of Baktawar Shah s/o Khan Afzal who stated that on 08/06/1999 the police conducted search of house the accused and prepared the house search memo Ex:PW7/1 in his presence. He is marginal witness to the said memo, which is correct and correctly bears his signature.

PW-8 is the statement of Dr. Fasih Ullah KMC, Peshawar who stated that on 08/06/1999 at 10:30 AM he examined the

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dead body of deceased Sadayat brought by Wasil Khan No.2104 and found the following.

External Examination:

No mark of ligature on neck and dissection etc. A man with age of 30-35 years with strong built with light blue Shalwar and Qameez stained with blood. P.M lividity and R.M are developing.

Injuries:

1. F.A. entry wound on right side face 1x1 cm in size, 1 cm below right eye, 0.5 cm from the nose.
2. F.A. entry wound on right side chest 1x.5 cm in size, 5 cm from the midline, 1 cm above clavicle.
3. F.A. entry on outer aspect of right side of chest, 0.5 cm in diameter, 2 cm above costal margin, 21 cm from the midline.
4. F.A. entry on right front of abdomen, 0.5 cm in diameter, 7 cm below the costal margin, 15 cm from the midline.
5. F.A. entry wound on front of left abdomen, 0.5 cm in diameter, 2 cm from the midline, 10 cm below the costal margin.
6. F.A exit on right back of skull 8x5 cm in size, 7 cm behind right ear, 10 cm above the base of neck with brain matter come outside from the wound.
7. F.A exit on right back of chest 4x2 cm in size, 13 cm from the midline, 5 cm below the tip of shoulder.

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- 8. F.A. exit on right back of abdomen 2x1 cm in size, 17cm from the midline, 9 cm above the iliac crest.
- 9. F.A. exit on back of right abdomen 2x1 cm in size, 16 cm from the midline, 5 cm above.
- 10. F.A. exit on outer aspect of left chest 2x1 cm in size, 18 cm from the midline, 7 cm above the costal margin.
- 11. F.A gutter wound on left back of abdomen 11x2 cm in size, 2 cm from the midline, 5 cm above the iliac crest.
- 12. F.A. graze wound on right top of shoulder 5x1 cm in size.
- 13. F.A. graze wound on right check 4x1 cm in size, 3cm below right ear, 4 cm from the angle of mouth.
- 14. F.A. entry on outer aspect of left arm 2x1 cm in size, 7 cm below the top of shoulder, 17 cm above elbow joint
- 15. F.A exit on anterior axillary fold 5x2 cm in size.

Internal Examination:-

Scalp, skull, injured, membranes, brain injured.

Thorax:-

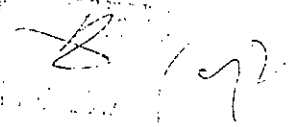
Wall, ribs, cartilages, pleurae, right and left lungs, pericardium and heart injured, blood vessels injured.

Abdomen:-

Wall, peritoneum, diaphragm, stomach and its contents, small and large intestines alongwith their contents, liver injured.

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Muscles, Bones, Joints:-

Skull, ribs fractures.

Opinion

In his opinion the deceased died due to injury to the brain, heart, right and left lungs, small and large intestines, stomach and blood vessels correspondingly due to firearm. One bullet recovered from the body, sealed and handed over to the police.

Probable time between injury and death ...Immediate.

Probable time between death and P.M.....2 to 4 hours.

After conducting P.M. examination the dead body alongwith clothes of deceased and P.M. documents were handed over to the police. He admitted the P.M. report Ex:PW8/1 and pictorial Ex:PW8/2 as correct and correctly bearing his signature.

PW-9 is the statement of Umer Khan S/o Gul Khan who stated that the deceased was his nephew. He correctly identified the dead body of the deceased Sadayat before the police as well as in mortuary before the doctor at the time of postmortem examination.

PW-10 is the statement of Ehsan Ullah S/o Gul Sher (complainant) who stated that the deceased Sadayat was his paternal cousin. PW Gul Sher (now dead) was his father, while the accused are his father's cousins. On the day of occurrence

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at about 08:00 A.M he, his father Gul Sher and deceased Sadayat were proceeding from their Hujra towards the road through the fields. When they reached the place of occurrence, accused facing trial Jamil and absconding accused Ayaz duly armed with deadly weapons appeared from their house who on seeing them started firing at them. Due to the firing of accused above named deceased Sadayat was hit and injured, while he and his father PW Gul Sher (now dead) remained unhurt as they ran back towards Hujra. Deceased Sadayat succumbed to his injuries at the spot. The accused decamped from the spot after the occurrence. The occurrence was witnessed by him, his father Gul Sher (now dead) and other persons present at the spot. The motive for the occurrence is dispute over landed property between them and the accused party. He charged the accused facing trial and the absconding co-accused for the commission of the offence. The site plan was also prepared at his instance.

PW-11 is the statement of Abdul Hameed (retired Inspector) who stated that during the days of occurrence he was posted as ASI at Police Station Pishtakhara. On the day of occurrence he was on routine gasht and received the information regarding the present occurrence and came to the spot alongwith other police contingent where the dead body of the deceased Sadayat was lying. The complainant PW Ehsan Ullah S/o Gul Sher was present and reported the matter which

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Pishtakhara
Police Station

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he reduced into writing in the shape of Murasila Ex.PW11/1. After the report the same was read over to the complainant who after admitting the same to be correct, signed the same, whereafter he prepared the injury sheet Ex.PW11/2 as well as the inquest report Ex.PW11/3 of the deceased and sent the dead body to the mortuary for PM examination under the escort of Wasil Khan Constable for the registration of FIR. The murasila was also sent to the police station. After registration of the FIR, the investigation of the case was entrusted to him and after receiving the copy of FIR on the spot, he prepared the Site Plan Ex.PW11/4 at the instance of complainant. During spot inspection he secured the blood stained earth from the place of deceased and prepared the recovery memo Ex.PW11/5. He also secured and took into possession 19 empties of 7.62 bore Ex.P-1 from point-4 and 15 empties of 7.62 bore Ex.P-2 from point-5. In this regard he prepared the recovery memo Ex.PW11/6 in presence of marginal witnesses. He recorded statements of the PWs u/s 161 Cr.PC. He has also placed on file the postmortem report. Ex.PW8/1 Blood stained garments of the deceased as produced by Constable Wasal No.2104, were taken into possession by him which were consisting of Qameez Ex.P-3, Shalwar Ex.P-4, (blood stained). In this respect he prepared recovery memo already exhibited as Ex.PW11/1. Vide his application Ex.PW11/7 the blood stained articles were sent to the FSL for analysis and the result whereof is Ex.PZ which is in positive. After the commission of offence

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the accused were avoiding their lawful arrest, therefore, vide his application Ex.PW11/8, he applied for warrants u/s 204 Cr.PC. Similarly vide his application Ex.PW11/9, he applied for proclamation notice u/s 87 Cr.PC against the accused. After completion of the investigation he handed over the case file to the SHO for onward proceedings. As SHO Farid Khan Bangash who had submitted the challan u/s 512 Cr.PC against the accused has been martyred, the present witness admitted the challan as correct and correctly bearing the signature of deceased SHO Farid Khan, with which he is well conversant. He admitted all the documents exhibited in court as correct and correctly bearing his signatures.

CW-1 is the statement of Ijaz Ahmad DFC No.230 who stated that in the instant case he was entrusted by the court with the summon issued for production of eye witness Gul Sher s/o Gul Faraz R/o Sangu, Sarband. He visited to the house of deceased Gul Sher, where his son namely Ehsan Ullah informed him that his father Gul Sher has died earlier. In this respect he scribed his report overleaf the summon Ex.CW1/1, duly verified by the SHO PS concerned. The same was correct and correctly bearing his signature. Similarly, he was also entrusted with the summon issued for the official PWs. He served the same accordingly however, it was reported to him that PW Farid Hussain Khan Bangash DSP has been martyred,

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so he submitted his report overleaf the summon Ex.CW1/2, which was correct and correctly bearing his signature.

CW-2 is the statement of Ijaz Ahmad DFC No.230 who stated that he was entrusted with the warrant of arrest issued against the PWs including PW Said Faqir s/o Muhammad Ibrar, Fazal Qadeem s/o Abdul Salam and constable Khaista Gul No.1376. He went for the search of said witnesses on the given addresses but it was reported to him by Muhammad Imtiaz s/o Ibrar Hussain and Said Shah s/o Bakhtawar Shah that the PWs namely Said Faqir and Fazal Qadeem have died. In this respect he recorded their statement overleaf the warrant Ex:CW2/1 and obtained their signatures thereon. Whereas, PW Khaista Gul constable No.1376 had also died. He admitted the warrant Ex:CW2/1 duly endorsed by the SHO concerned, as correct and correctly bearing his signature.

C.W-3 is the statement of Sadiq ur Rehman DFC who stated that he was entrusted with warrant against PWs Constable Wisal No.2104 and Zubair HC. He went for the search of the said witnesses at their given addresses and came to know that PW namely Wasal has been martyred in Police Station Mattani, while Zubair too had died. The warrant is Ex.CW1/1, while his report overleaf is Ex.CW1/2 which is correct and correctly bearing his signature.

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C.W-4 [inadvertently mentioned/written as CW-1 is statement recorded on 31/10/2016] is the statement of Saddiq ur Rehman DFC who stated that the PW Wasil No.2104 has been martyred in the year 2007, while PW Zubair HC has died during his duties in an accident. One Ali Akbar Khan SI Police Station Pishtakhara who has remained on duty with the said PW Zubair HC and might be well conversant with his handwriting and signature, therefore, may be summon/called by the court for recording statement before the court. The summon is Ex.CW1/1 and report overleaf is Ex.CW1/2.

C.W-5 [inadvertently written as CW-2 is the statement recorded on 05/11/2016] is the statement of Ali Akbar S.I who stated that PWs constable Wasil No.2104 and Zubair HC remained with him on duty. He is well conversant with the signature of PW Wasil No.2104 who escorted the dead body of the deceased to the mortuary for PM examination. Likewise, he is also well conversant with the signature of PW Zubair HC who is the marginal witness to the recovery of blood stained earth and empties vide recovery memo already exhibited as Ex.PW11/5 & Ex.PW11/6. He admitted the signatures of both the PWs as correct.

After closure of the prosecution evidence, statement of accused was recorded u/s 342 Cr.P.C on 16/11/2016, wherein he professed

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his innocence, however, neither he opted to record his statement on oath nor wished to produce any defence evidence.

I have heard the detailed arguments of the learned APP, learned private counsel for the complainant and learned counsel for the defense and have perused the record in minute details with their able assistance.

The learned APP for the State assisted by private counsel for the complainant argued that the instant is a case of heinous and grave nature wherein one innocent person was done to death mercilessly by the accused facing trial and his absconding co-accused. That the ocular testimony as furnished by the complainant while appearing as PW10 as well as by PW9 Umar Khan and the transposed statement of deceased eye witness Gul Sher (FW6) is straightforward, credible, consistent in all the material aspects of the case, confidence inspiring and has gone un-rebutted. That the medico legal report of the deceased in the shape of injury sheet Exh.PW11/2, inquest report Exh. PW11/3 and the postmortem report Exh.PW8/1 alongwith pictorial Exh.PW8/2 fully support the ocular version and that there is no major discrepancy in the statements of the various PWs regarding the date, time, mode and manner of the occurrence itself. That the accused facing trial was well known to the complainant and the private PWs hence, there is no chance of mistaken identity of the accused and his absconding co-accused. That the occurrence took place in the pathway (Pakdandi) of the village and at the spot where presence of the complainant, his deceased father namely Gul Sher,

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Additional & Session Judge
12 Feb 2017

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face severe financial problems.

as well as that of the deceased Sadayat himself at the given time is

That it is very much inconceivable for the accused facing trial and his absconding co-accused Ayaz shared the

prosecution and has even otherwise, remained unchallenged.

Moreover, the accused too are situated at a distance of

recovery of as many as nineteen empty shells of 7.62 bore from

point No.4 ascribed to the present accused facing trial and similarly,

attributed to absconding co-accused Ayaz. Further augments the

prosecution version that the present occurrence was the handiwork of

the accused facing trial and his absconding co-accused. That the

mere fact that empties recovered from point No.4 Ex.P1 and from

point No.5 Ex.P2 were not sent to the FSI for safe custody/report is

not sufficient to discard the ocular version as the said recoveries are

merely corroborative of the ocular version itself. That the accused

facing trial as well as his absconding co-accused Ayaz shared the

motive against the complainant party and in order to execute their evil

plan into action, ambushed the complainant party and resorted to

indiscriminate firing while armed with deadly weapons whereby

deceased Sadayat received multiple fire shot injuries and expired at

the spot while the complainant and his deceased father (PW5) luckily

remained unhurt. That the accused facing trial absconded soon after

Case FIR No 209 dated 26/02/2016 Charge U/S 462-1 PPC

Police Station: WARDHA HOUSE

State VERSUS Wajid

BEFORE THE COURT LEARNED DISTRICT & SESSIONS

JUDGE, HANGU

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BEFORE THE COURT LEARNED DISTRICT & SESSIONS

JUDGE, HANGU

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BEFORE THE COURT LEARNED DISTRICT & SESSIONS

Mag. Yasir Shabbir
Magistrate & Session Judge
Peshawar

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CRIMINAL TRIAL IN THE INSTANT CASE

DISPOSAL/DECISION OF THE INSTANT

THIS HONBLE COURT TILL THE FINAL

FROM PERSONAL APPEARANCE BEFORE

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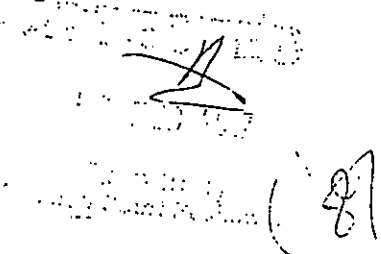
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EXEMPTION OF ACCUSED FACING

APPLICATION FOR PERMANENT

the occurrence and has been arrested on 13/04/2015 i.e. after about 16 years of the occurrence itself and due to the afflux of time it is but natural that minor discrepancies not going to the roots of the case might have crept in the statement of the various PWs. That dispute over landed property has been admitted by the defense and thus the motive part of the prosecution evidence remains established. That the complainant and PW-09 have remained steadfast in their testimony despite the lapse of so many years and have not been shaken or shattered notwithstanding the lengthy and taxing cross examination by the defense. That the prosecution has fully established its case beyond reasonable doubt against the accused facing trial. Hence, requested that the accused facing trial be convicted and awarded the maximum punishment as provided under the law and the maximum amount of compensation as admissible under section 544-A Cr.PC be awarded to the legal heirs of the deceased. The prosecution relied upon the cases reported in

- YLR 2001 page 715
- 2003SCMR page 862
- PCr.LJ 2016 page 89
- PCr.LJ 2014 page 1625
- 1998SCMR page 1823 (E,G)
- 2008SCMR page 1623
- 2002SCMR page 350
- PLD (Peshawar) 2004 page 134
- 2004 SCMR page 723



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- 2001 SCMR page 177
- 1996 SCMR page 853
- YLR 2016 633
- 2005 SCMR page 1958
- PLD (SC) 2008 page 416
- 1986 SMCR page 1027
- 2001 SCMR page 1474
- PCrLJ 2003 page 847
- 2008 SCMR page 1228
- PCrLJ 1998 page 114
- PCrLJ 2016 page 30(a)
- PLJ Cr.C 2001 page 861(iii) Peshawar.
- MLD-1999 page 400
- 2003 SCMR page 747
- 2001 SCMR page 387
- PCrLJ 2016 page 30(a)
- 2005 SCMR page 1568

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Standing on the other side of aisle, learned defense counsel argued that the prosecution has failed to prove the mode, manner, time and place of the occurrence. That there are material contradictions and grave lacunae in the prosecution evidence. That the PWs have failed to prove their presence at the spot at the relevant time. That the medical evidence is in conflict with ocular version, That no specific role has been attributed to the accused facing trial. That presence of the accused at the spot has not been proved by the

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prosecution through independent sources. That the complainant as well as PW-9 Umar Khan have failed to prove their own presence at the spot at the relevant time and that of deceased PW-6 Gul Sher. That despite the fact that house of deceased was situated near the place of occurrence, neither the legal heirs of the deceased have lodged the report nor have charged the present accused facing trial and his absconding co-accused Ayaz. That the empties recovered from the spot were not sent to the FSL for analysis. That the ocular account is irreconcilable with the medical evidence available on record. That the motive is a double edged weapon which cuts both ways and in instant case it has motivated the complainant party to falsely implicate the accused facing trial. That the complainant, deceased PW-6 Gul Sher and PW-9 Umar Khan are all highly inimical towards the accused party and thus highly interested witnesses who have otherwise failed to prove their presence at the spot through independent sources. That being chance witnesses at the most, the said PWs were required to establish their presence at the spot at the relevant time. That the report in the matter has been delayed and in the meantime, the complainant party had entered into lengthy consultation and after due deliberation, the charge was faisely laid against the accused facing trial and his absconding co-accused. That the statements of complainant, PW6 Gul Sher and PW9 Umar Khan are inconsistent and mutually destructive in all the major aspects of the case, hence, are not worthy of any credence. The learned defense counsel requested for acquittal of the accused facing trial by relying on the following dicta of the superior courts

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- ❖ PLD 1969 SC page 127
- ❖ 2008 SCMR page 1001
- ❖ 1983 SCMR page 529
- ❖ 2016 PCrLJ page 104
- ❖ 2016 SCMR page 2021
- ❖ 2008 SCMR page 158
- ❖ PCrLJ 1998 page 1177 Peshawar.

The learned counsel for the defense also relied on the following unreported cases.

- ❖ Criminal Appeal No. 277-P of 2012, titled Muhammad Noor versus Riaz Shah and others.
- ❖ Criminal Appeal No.288-P of 2012, titled Sajjad etc Versus Aziz Khan etc.
- ❖ Criminal Appeal No.658/2005, titled Yousaf Versus Murad Gul etc.
- ❖ Criminal Appeal No.367/2011 with murder reference No.11/2011 titled Muhammad Tariq Versus Muhammad Ghias.
- ❖ Criminal Appeal No.142-P/2012 titled Abdur Rehman alias Malang Versus Rahim Dad etc

I have considered the arguments advanced at the bar and have gone through the available record in minute details. The crucial point for determination before this court is "whether the occurrence has taken place in the mode, manner, date, time and place as alleged by the prosecution or not". Additionally it is to be seen in view of

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Peshawar

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the evidence available on record whether the complainant and deceased PW-06 Gul Sher have prove their presence at the spot at the relevant time as natural witnesses or as to whether the said PWs being chance witnesses at the most were required to prove their presence at the spot through independent evidence.

The prosecution story has been recollected in detail in the foregoing paras. As per the complainant Ehsan Ullah he, the deceased Sadayat and PW Gul Sher were going towards the road through the fields at about 08:00 A.M when they were attacked and fired upon by the accused facing trial and his absconding co-accused Ayaz. Admittedly, the complainant, PW Gul Sher (the deceased father of the complainant) and deceased Sadayat are close relatives and were residents of the same village. The house of deceased Sadayat is situated at distance of 40/50 paces from the place of occurrence as per statement of complainant, while the house of PW-09 Umer Khan (the uncle of the deceased), who identified the dead body of the deceased before the police as well as in the mortuary at the time of postmortem examination of the deceased is situated at a distance of 25/30 paces from the spot as per the complainant and as per PW-09 himself, the said distance might be about three jirabs. The house of complainant is situated at a distance of about 50/55 paces from the place of occurrence as per statement of complainant himself. The deceased Sadayat has been ascribed point No.1 in the Site Plan while complainant Ehsan Ullah showed himself to be present at point No.2, while PW-06 Gul Sher (deceased PW) was shown present at point No.3 at the time of occurrence. Similarly, point No.4 has been

Syed Yasir Shahid
 Addl Dist & Session Judge
 Peshawar
 01-11-17

10 FEB 2017

(25)

ascribed to accused facing trial Jamil and point No.5 has been attributed to his absconding co-accused Ayaz in the Site Plan Exh.PW11/4. On a kaleidoscopic view of the Site Plan Exh.PB as prepared by the IO at the instance of the complainant Ehsan Ullah. It is revealed that the distance between point No.1 i.e. the place of presence of deceased Sadayat and point No.2 i.e. the place of presence of complainant Ehsan Ullah is 10 paces which roughly translates to about 30 feet, while the distance between point No.3 & 1 i.e. the place of presence of PW Gul Sher and the deceased Sadayat is 08 paces i.e. roughly about 24 feet. Similarly, the distance between point No.4 ascribed to accused facing trial and point No.1 is 05 paces i.e. about 15 feet and between point No.5 (attributed to co-accused Ayaz) and point No.1 the distance mentioned as 04 paces i.e. about 12 feet. The distance between point No.2 and point No.4 is given as 09 paces i.e. about 27 feet, while the distance between point No.3 and point No.4 is 07 paces i.e. about 21 feet while the distance of point No.2 from point No.5 is 12 paces i.e. about 36 feet and between point No.3 and point No.5 is 10 paces i.e. about 30 feet.

Further As per medical evidence in the shape of Inquest Report and Postmortem Report Exh.PW8/1 there are as many as 15 fire shots entry and exit wounds found on the person of deceased Sadayat and the deceased was riddled with fire arm injuries. On the other hand not even a scratch has been sustained by either the complainant PW-10 or deceased PW-06. If at all the deceased and the complainant alongwith PW-06 were going together as alleged by the prosecution and if at all the complainant and his father PW-06 were present at the

Syed Yasir Shahid
 Syed Yasir Shahid
 Advocate & Sessions Judge
 Peshawar
 12-01-17

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forward to lay the charge against the accused facing trial and his absconding co-accused Ayaz.

Viewed from an another angle too, the prosecution story regarding the presence of complainant Ehsan Ullah and PW Gul Sher in the company of deceased at the time of occurrence is belied inasmuch as PW-11 Abdul Hameed retired Inspector who is the scribe of murasila Exh.PW11/1, Injury Sheet Exh.PW11/2 and Inquest Report Exh.PW11/3 has stated in his testimony that he was on routine gasht as an ASI in the area when he received information regarding the present occurrence whereupon he alongwith other police contingent attracted to the spot. In his entire testimony the said PW-11 has not mentioned the time of receipt of information regarding the occurrence itself. The said PW has further stated in his cross examination that he does not know as to who had informed him about the occurrence though as per Article-8 of the Qanoon-e-Shahadat Order 1984 PW-11 being a Police Officer is not bound to disclose the source of information regarding the commission of any offence however, said PW was duly bound to mention the time of receipt of such information about the present occurrence. No relevant record of the Daily Diary of the Police Station regarding the departure of PW-11 and the Police Party for Mobile Gasht has been brought on record. Similarly, PW-11 has not mentioned the names of other Police Officials who as per his version were on Mobile Gasht at the time of receipt of information. PW-11 who had completed the initial proceedings at the spot as detailed above was later on entrusted with the investigation of the case itself who being the IO of the case

S. Yasir
Syed Yasir Shabbir
Additional Sessions Judge
Peshawar
12/01/17

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16 FEB 2017

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prepared Site Plan Exh.PW11/4, secured blood stained earth from the place of presence of deceased through recovery memo Exh.PW11/5, secured and took into possession 19 empties of 7.62 bore Exh.P-1 from point No.4 (the point attributed to present accused facing trial) and 15 empties of 7.62 bore Exh.P-2 from point No.5 (the point ascribed to absconding accused Muhammad Ayaz) vide recovery memo Exh.PW11/6. The said PW also placed on file the postmortem report of the deceased, secured the blood stained garments of the deceased, sent the blood stained articles to FSL for analysis and report and placed on file the report thereof as Exh.PZ. Even though 19 empties of 7.62 bore Exh.P-1 and 15 empties of 7.62 bore Exh.P-2 were secured from the spot from points No.4 & 5 respectively yet, the same were never sent to the Fire Arms Expert FSL Peshawar for safe keeping and for report to the effect whether the said two sets of empties were fired from one and the same weapon or from two/multiple weapons as alleged by the prosecution. Thus, the recovery of empties by itself does not lend any corroboration to the prosecution case that both the accused facing trial and his absconding co-accused Ayaz has resorted to firing at the deceased and at the complainant and PW-06 simultaneously. Similarly, the spent bullet recovered from the dead body of deceased Sadayat during postmortem and handed over to the police by Dr. Fasih Ulah PW-08 was never sent to the FSL alongwith the recovered empties to wed the same with either set of the recovered empties.

Complainant Ehsan Ullah and deceased PW Gul Sher have conveniently shown their presence at points No:2 & 3 in the Site Plan

13 FEB 2017
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Dr. Fasih Ullah
 Addl. Dist. Magistrate
 Peshawar
 12/01/17

Exh.PW11/4. at a safe distance and certainly outside the line of fire in order to lend credence to their miraculous escape in the present episode however, if at all complainant and PW Gul Sher were travelling with the deceased Sadayat as alleged by them then the distance between them inter se could not have been 10 & 08 paces apart as they would naturally be walking side by side and in a group. Though the complainant and PW-06 claimed to have taken shelter in their nearby Hujra however, the distance of said Hujra from the place of occurrence is not mentioned in the Site Plan itself and the statement of complainant while appearing as PW-10 to the effect that the distance between his house and the spot would be 50/55 paces is thus clearly an afterthought. Moreover, complainant has not pointed out the place in the Hujra where he and deceased PW Gul Sher took shelter. Complainant has shown his ignorance as to who had gone to the house of deceased Sadayat to inform his legal heirs about the occurrence. PW-10 further admitted categorically that none of the inmates of the house of deceased Sadayat attracted at the spot after the occurrence. Complainant or deceased PW-06 did not take the pains to inform the said inmates about the occurrence itself. Complainant and deceased PW-06 did not inform the police about the present occurrence themselves nor through any other person. Deceased Sadayat was lying dead at the spot for considerable time after the occurrence yet complainant did not make any effort to shift his dead body to his nearby house. Complainant was employed in the PAF during the relevant days however, he has failed to bring on record that the time of occurrence i.e. 08:00 A:M was not past his

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Syed Yasir Shabbir
Addl Distt & Session Judge VI
Peshawar

2017-17

arrival time for duty. The learned counsel for the defense has rightly used the term "inertiated" during the course of arguments to describe the conduct of the complainant party immediately after the occurrence as it is against normal human behavior and conduct to remain in suspended animation for so many minutes after the occurrence and not even to make the effort to save the life of the injured and/or to shift the injured/deceased from the place of occurrence in order to provide emergency treatment notwithstanding the grave nature or number of injuries sustained by such an injured/deceased. Such unnatural conduct of the complainant as well as of PW-06 Gul Sher does not auger well for the prosecution case and in the case reported in 2015 SCMR page 315 such an unnatural conduct of the PWs at the scene of occurrence and at the time of occurrence itself was dilated upon and found to be unworthy of credence and consequently, the accused in the said case were given benefit of the doubt and were acquitted of the charge by setting aside the conviction and sentence of imprisonment passed by the courts below.

In the instant case too the complainant has failed to prove his presence and the presence of his father PW Gul Sher at the time of occurrence at the place of occurrence as natural witnesses. The complainant has failed to furnish any reason or purpose of travel together of the complainant, PW-06 and the deceased Sadayat at the time of occurrence. Complainant and PW-06 being chance witnesses whose presence at the spot could not have been reasonably presumed were to the contrary, required to prove their presence through independent sources which they miserably failed to do. In

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 Syed Yasir Shabbir
 Addl. Dist. & Session Judge VI
 Peshawar
 12-01-17

backdrop of history of ill will and animus between the complainant party and the accused facing trial and his absconding co-accused Muhammad Ayaz the complainant and deceased PW Gul Sher can rightly be termed as highly interested witnesses who would endeavor to leave no stone unturned to seek the conviction of the accused facing trial and his absconding co-accused in order to settle their private score with the latter. In the case in hand the prosecution story as put forward is not believable, hence, to base any sentence of conviction thereon would defeat the very ends of justice.

Accused Muhammad Jamil has remained in absconsion for about 16 years after the occurrence but the said fact of absconsion by itself is not a substitute for evidence of his culpability. The ocular account as furnished by the complainant as well as by the transposed statement of PW-06 Gul Sher is not trustworthy and is not believable as such. The prosecution evidence is discrepant, procured, maneuvered and thus, not worthy of credence. Thus, extending the benefit of doubt to the accused facing trial namely Muhammad Jamil S/o Ghulam Haider, the accused is acquitted of the charge leveled against him. He is in custody, hence, be released if not found involved in any other case.

So far as co-accused namely Muhammad Ayaz is concerned, he is prima facie connected with the offence charged with in view of the evidence recorded in his absentia. Hence he is declared as Proclaimed Offender and perpetual warrant of arrest against the accused Muhammad Ayaz be issued accordingly. Copy of this judgment be sent to the District Public Prosecutor, Peshawar and

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 Syed Yasir Shabbir
 Additional & Session Judge
 Peshawar
 12-07-17

quarter concerned for enlisting the name of accused Muhammad Ayaz in the relevant register/record.

Case property be shall kept intact till the arrest of the absconding co-accused Muhammad Ayaz and conclusion of trial against him. File shall be consigned to the record room after its completion.

Announced
12/01/2017

S. Yasir Sh.

(Syed Yasir Shabbir)
Additional District & Sessions Judge-VI,
Peshawar
Add: Distt & Session Judge VI
Peshawar

CERTIFICATE

Certified that this judgment consists of (29) pages and each page has been signed by me after doing the necessary correction.

S. Yasir Sh.

(Syed Yasir Shabbir)
Additional District & Sessions Judge-VI,
Peshawar
Add: Distt & Session Judge VI
Peshawar

No. 27032	
Dated of Application	09/2/17
Name of Application	اصول
Word	11600 - 7-28
Fee	Urgent/Fee
Signature of Copyist & Date	<i>[Signature]</i> 10/2/17
Dated of Preparation	10/2/17
Date of Delivery	10/2/17

ATTESTED

10 FEB 2017

(Examined)
Session Court Peshawar

C93

(40)

TO WHOM IT MAY CONCERN

Certified that Muhammad Jamil Khan s/o Ghulam Haidar R/o Village Sango Landi Bala Peshawar was admitted into this jail on 16-04-2015 as an undertrial prisoner in case FIR No. 450 dated 08-06-1999 u/s 302/324/34 of police station Pishtakhara Peshawar by the order of Mr. Akbar Ali Mohmand JMIC Peshawar.

On 12-01-2017 the prisoner in question was acquitted in the above cited case by the order of the of Mr. Syed Yasir Shabbir Additional Sessions Judge Peshawar and released from this jail on the same day i.e 12-01-2017.

This certificate is given to him on his written request dated 16-02-2017.


SUPERINTENDENT
CENTRAL PRISON PESHAWAR

16/2/17

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DEPARTMENT A/C CODES 42201/1987/3
 PAY ROLL REGISTER
 DEPARTMENT--ADMINISTRATOR LRH
 RUN DATE 01-02-85
 NON-GAZETTED

Prepared by Habib Bari, Liaison Computer Division	PERSONNEL NO. 0574235	NAME JAMIL KHAN	DESIGNATION CHUNKIAR	MINISTRY GRADE = R-01	DIVISION T	DEPARTMENT				
	EARNINGS		AMOUNT	DEDUCTIONS		AMOUNT	FUND/PLI ACCOUNT NO.	INSTALMENT	BALANCE	PAY PERIOD 01-02-85 TO 29-02-85
	001-SUBSTANTIVE PAY		626.00	001-GENUINE FUND		5.00				SERVICE
	131-CONVEYANCE ALLOWANCE		735.00							
	134-HOUSE ALLOWANCE		270.00							
	137-WASHING ALLOWANCE		5.00							
	138-MEDICAL ALLOWANCE		05.00							
143-KIT-UNIFORM ALLOWANCE		200.00								
GROSS EARNINGS		1069.00	TOTAL DEDUCTIONS		5.00	BANK ACCOUNT DETAILS CASH			NET PAY 1063.00	

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PERSONNEL NO. 0574265		NAME JAMIL KHAN		DESIGNATION CHOWKIDAR		MINISTRY		GRADE E-01		DIVISION		DEPARTMENT	
EARNINGS		AMOUNT		DEDUCTIONS		AMOUNT		FUND/PLI ACCOUNT NO.		INSTALMENT		BALANCE	
001-SUBSTANTIVE PAY		440.00		381-BENEVOLENT FUND		5.00						PAY PERIOD 01-05-86 TO 31-05-86	
131-CONVEYANCE ALLOWANCE		70.00										SERVICE	
134-HOUSE ALLOWANCE		198.00										NET PAY	
137-WASHING ALLOWANCE		15.00										798.00	
018-INDEXED PAY		59.00											
143-KIT-UNIFORM ALLOWANCE		21.00											
GROSS EARNINGS		803.00		TOTAL DEDUCTIONS		5.00		BANK ACCOUNT DETAILS					
								CASH					

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Amended

Prepared by
Habib Bank Limited.
Computer Division

PERSONNEL NO. 0574275	NAME JAMIL KHAN S/D	GRADE/DESIGNATION 0018/CHUKKIDAR	GRADE 8-01	MARRIAGE STATUS T	FICARD NO. 00000000000000000000	CASH-LOC 000	DEPARTMENT ADMINISTRATOR LRH	
EARNINGS		DEDUCTIONS		FUND/PLI ACCOUNT NO.		INSTALMENT	BALANCE	PAY PERIOD
001-SUBSTANTIVE PAY	AMOUNT 639.00	001-1503 PROV FUND (J M)	AMOUNT 25.00	4-JM-14960	25.00	175.00	01-12-88 TO 31-12-88	
131-CONVEYANCE ALLOWANCE	78.00	381-BENEVOLENT FUND	5.00				SERVICE	
134-HOUSE ALLOWANCE	270.00						NET PAY	
137-WASHING ALLOWANCE	25.00							
136-MEDICAL ALLOWANCE	50.00							
018-INDEXED PAY	18.00							
143-KIT-UNIFORM ALLOWANCE	21.00							
GROSS EARNINGS	1099.00	TOTAL DEDUCTIONS	30.00	BANK ACCOUNT DETAILS				
				CASH			1069.00	

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PAY ROLL MONTH- MARCH ,1991 A S (N W F F) PESHAWAR P A Y R O L L
DEPARTMENT A/C CODES 42200001/4610/2 PAY ROLL REGISTER

PAGE NO. RUN DATE 9
DEPARTMENT--A.O LRH PESHAWAR NON-GAZ

State Bank Limited
Corporate Division

PERSONNEL NO	NAME	CATER/DESIGNATION	GRADE	MINISTRY	STATUS	IICARD-NO	DIVISION	CASH-LOC	DEPARTMENT	
0574265	JAMIL KHAN	0018/CHOWKIDAR	9-01	*****	T			000	A.O LRH PESHAWAR	
EARNINGS/WTD/O		DEDUCTIONS		AMOUNT		FUND/PLI ACCOUNT NO.		INSTALLMENT	BALANCE	PAY PERIOD
001-SUBSTANTIVE PAY	665.00	05 -1503 PROV FUNDS (J M)	25.00	4 JM	149	25.00	984.00	01-03		TO
131-CONVEYANCE ALLOWANCE	96.00	381-BENEVOLENT FUND	10.00					01-03		
134-HOUSE ALLOWANCE	270.00									SERVICE
137-WASHING ALLOWANCE	25.00									
141-ADVICE RELIEF	200.00									
136-MEDICAL ALLOWANCE	50.00									
018-INDENTED PAY	19.00									
143-KIT-UNIFORM ALLOWANCE	21.00									
199-SPL COMPENSATORY ALLOW	33.00									
147-ADDE:COMPENSATRY ALL	67.00									
GROSS EARNINGS		TOTAL DEDUCTIONS	35.00	BANK ACCOUNT DETAILS					1411.00	

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Attended

Prepared by Habib Bank Limited Computer Division	PERSONNEL NO.	NAME	CATER/DESIGNATION	GRADE	MINISTRY	STATUS	IIICARDI-NORWISQW-CASH-LOC	DEPARTMENT	
	0574265	JAMIL KHAN S/O	0018/CHOWKIDAR	B-01		T	000	ADMINISTRATOR LRH	
	EARNINGS		AMOUNT	DEDUCTIONS		AMOUNT	FUND/PLI ACCOUNT NO.	INSTALMENT	BALANCE
013-LEAVE SALARY		652.00	05 -1503 PROV FUND (J M)		25.00	4-JM-14960	25.00	575.00	01-04-90 TO 30-04-90
134-HOUSE ALLOWANCE		270.00	321-BENEVOLENT FUND		10.00				SERVICE
137-WASHING ALLOWANCE		25.00							NET PAY
138-MEDICAL ALLOWANCE		50.00							1034.00
018--INDEXED PAY		18.00							
143-KIT-UNIFORM ALLOWANCE		21.00							
199-SPL COMPENSATORY ALLOW		33.00							
GROSS EARNINGS		1069.00	TOTAL DEDUCTIONS		35.00	BANK ACCOUNT DETAILS			

AMT 2074

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PRINCIPAL BANK
Habib Bank Limited
Computer Division

PERSONNEL NO.	EMPLOYEE NAME	GRADE / DESIGNATION	MINISTRY / STATUS	EDUCATION	DIVISION / OFFICE	ADVISOR	EXPENSE
	J. H. HAN	B-31			000	ADMINISTRATIVE	
EARNINGS		AMOUNT	DEDUCTIONS		FUND/PLI ACCOUNT NO.	INSTALLMENT	BALANCE
SALARY		1067.00	PROV. FUND (JUN)		1429-1496	25.00	525.00
LEAVES		0.00	REVENUE FUND				
LOANANCE		0.00					
TOTAL		1067.00	TOTAL DEDUCTIONS		BANK ACCOUNT DETAILS		
					CASH		1954.00

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Approved

Prepared by
Habib Bank Limited
Computer Division

PERSONNEL NO.	NAME	GRADE / DESIGNATION	GRADE	**MINISTRY	STATUS	IDCARD-NO	CASH-LOC	DEPARTMENT	
0013/CHOWKIDAR		0013/CHOWKIDAR	S-01		T		000	A.O LRH PESHAWAR	
EARNINGS		AMOUNT	DEDUCTIONS		AMOUNT	FUND/PLI ACCOUNT NO.	INSTALMENT	BALANCE	PAY PERIOD
0013/CHOWKIDAR		1178.00	05-1503 PRGV FUND (J M)		23.00	4 JN 14000	25.00	1595.00	01-06-92
100	HOUSE RENT ALLOWANCE		381-BENEVOLENT FUND		10.00				TO
101	HOUSE RENT ALLOWANCE								31-08-92
102	HOUSE RENT ALLOWANCE								SERVICE.
103	HOUSE RENT ALLOWANCE								
104	HOUSE RENT ALLOWANCE								
105	HOUSE RENT ALLOWANCE								
106	HOUSE RENT ALLOWANCE								
107	HOUSE RENT ALLOWANCE								
TOTAL DEDUCTIONS					33.00	BANK ACCOUNT DETAILS			NET PAY
GROSS EARNINGS		1178.00							1714.00

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PAY ROLL NO. 1994
 DEPARTMENT A.O.L.R.H. PESHAWAR
 PAY ROLL REGISTRY
 DEPARTMENT A.O.L.R.H. PESHAWAR
 PAGES NO. 2803
 DATE 04/07/94
 NO. GAZETTED

PERSONNEL NO.		NAME	GRADE	ADMINISTRY STATUS	ID CARD NO	CASH-LOC	DEPARTMENT
C374255		JAMIL KHAN	B-201		14960	000	A.O.L.R.H. PESHAWAR
EARNINGS		AMOUNT	DEDUCTIONS		FUND/PLI ACCOUNT NO.	INSTALMENT	BALANCE
SUBSANTANTIVE PAY		1505.00	35.00		4 JUN	35.00	2656.00
COMPENSATIVE ALLOWANCE		50.00	10.00				
HOUSE ALLOWANCE		414.00	100.00				
FASHING ALLOWANCE		50.00	100.00				
MEDICAL ALLOWANCE		50.00	50.00				
LIT. DEFEND. ALLOWANCE		35.00					
SUBSANTANTIVE PAY		415.00					
TOTAL EARNINGS		2656.00	TOTAL DEDUCTIONS				
			295.00				
			BANK ACCOUNT DETAILS				
							2350.00

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PAY PERIOD
 01-07-94
 TO
 31-07-94
 SERVICE
 NET PAY

مختار احمد صاحب
L.R.H
کراچی

دعوتِ برادر عظمیٰ کی مدد سے
دراسی میں داخل ہوئے (اردنی پوسٹ)

جناب عالی! اس سلسلے میں ذیل درجہ کی باتیں ہیں

1۔ یہ سلسلہ تمام غریب و شہسازوں کے لئے مفت ہے

2۔ اس سلسلے میں داخلہ کے لئے کوئی شرط نہیں ہے

3۔ یہ سلسلہ صرف مسلمانوں کے لئے ہے

4۔ یہ سلسلہ صرف پاکستان کے باشندوں کے لئے ہے

5۔ اس سلسلے میں داخلہ کے لئے کوئی رقم نہیں ہے

6۔ یہ سلسلہ صرف ان کے لئے ہے جو تعلیم سے محروم ہیں

7۔ اس سلسلے میں داخلہ کے لئے کوئی شرط نہیں ہے

8۔ یہ سلسلہ صرف ان کے لئے ہے جو تعلیم سے محروم ہیں

9۔ اس سلسلے میں داخلہ کے لئے کوئی شرط نہیں ہے

10۔ یہ سلسلہ صرف ان کے لئے ہے جو تعلیم سے محروم ہیں

Attented

اس سلسلے میں داخلہ کے لئے کوئی شرط نہیں ہے
L.R.H
کراچی

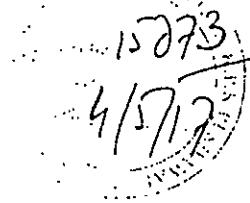
7
"67" (50)

LADY READING HOSPITAL, PESHAWAR
MEDICAL TEACHING INSTITUTION

No. 13,229 /LRH/E-IV, Dated. 02/05/2017.

To

The Director General
Health Services Govt
Of Khyber Pakhtunkhwa,
Peshawar.




Subject:- RE-INSTATEMENT INTO SERVICE MR. MUHAMMAD JAMIL S/O GHULAM Haidar EX- CHOWKIDAR

Memorandum:

Mr. Muhammad Jamil Khan S/O Ghulam Haidar was appointed in this hospital as a Chowkidar BPS-1 on 18/02/1986 (order copy and Medical certificate are attached). He is civil servant.

About 18 years ago he was involved in a murder case from 08/06/1999 he was absent and after court of trial he is now acquitted by the honourable court of Law (decision copy is attached).

So his case is referred to your good office for further necessary action.


Dy: Medical Supdt: (Admn)
LRH/MTI Peshawar
Dated _____/2017.

No. _____/LRH/E-IV

Copy to:

1. Mr. Muhammad Jamil S/O Ghulam Haidar village Sango Landi Bala District Peshawar.

Dy: Medical Supdt: (Admn)
LRH/MTI Peshawar

Attached

درخواست گزار: محمد جمال خان سید
پت: سونو لندی بالی تحصیل
وفا: 2/5/17

"H"

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**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR**



E-Mail Address: nef@pks.gov.pk office Ph# 091-9210269 Fax# Exchange# 091-9210187, 9210196 Fax# 091-9210230
No. 11233 /Personnel Dated: 24/05/2017

To:


The Dy: Medical Superintendent (Admn)
LRH/MTI Peshawar.

Subject:

RE-INSTATEMENT INTO SERVICE MR. MUHAMMAD JAMIL S/O GHULAM HAIDER EX:
CHOWKIDAR.

Memo:

I am directed to refer to your letter No. 13222/LRH/E-IV dated 02.05.2017, on the subject noted above, with the request to submit full back ground of the case as well as all the service documents of Mr. Muhammad Jamil Chowkidar, so as to proceed further in the matter.


ASSISTANT DIRECTOR (P-II)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K PESHAWAR

24/05/17

Attended.


"J" (52)

LADY READING HOSPITAL, PESHAWAR
MEDICAL TEACHING INSTITUTION

No. 17815 /LRH/E-IV,

Dated. 14-6/2017.

To

The Director General
Health Services Govt
Of Khyber Pakhtunkhwa,
Peshawar.

Subject:-

RE-INSTATEMENT INTO SERVICE MR. MUHAMMAD JAMIL S/O GHULAM
HAIDAR EX- CHOWKIDAR.

Memo:


Reference your letter No 11833/Personnel dated 24/05/2017 (Mr. Muhammad Jameel Khan S/O Ghulam Haidar Ex Chowkidar).

I am directed to inform you that no record is available in this office as he remained absent for a long time i.e from 08/06/1999 till now.

Also the Budget & Account Officer LRH as reported the two record keepers have searched. Service Book of the official concerned not found as it is very old.

As regards his personnel file, this office did shifting two times & the old record is not present in this office as the case has been opened after 18 years.

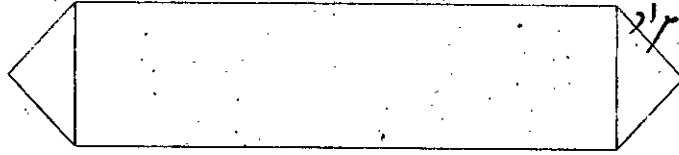
The official concerned had some record in his home which he submitted and we now sent to your good office i.e appointment order, copy of Medical certificate issued by Medical Superintendent Civil Hospital Peshawar and one pay slip of Accountant General Office for the month of April, 1990.


Dy: Medical Supdt: (Admn)
LRH/MTI Peshawar — 3

Attended.


0333-9124275 بعد الت جہا جہت منہ صمد اسٹریٹس پرائیویٹ لمیٹڈ

0333-8881822



2 پنجاب ایجنڈا

بنام D. 9

محمد حسین رضی

مورخہ

مقدمہ

دعویٰ

جرم

سروس ایجنسی

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پر مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر 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 مختار 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 باختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

محمد حسین رضی ایجنڈا

سہ ماہی

Attested
Accepted

Fak
Adv

2017

دسمبر

ماہ

27

الرقوم

العہد گاہ العہد

کے لئے منظور ہے۔

شیخ اور

مقام

گرفتہ ذرا - ڈاکٹر عبدالغنی صاحب مدظلہ العالی

درخواست گزار: سید محمد امجد علی خان
1- پتہ: 140/1، سٹیٹ 2- شوکارا، سٹیٹ 3- ایئر سروس
اور 4- نوڈل ایجنسی ڈیپارٹمنٹ

ذرا - سید عبدالغنی صاحب مدظلہ العالی

1- سید محمد امجد علی خان صاحب مدظلہ العالی
2- سید محمد امجد علی خان صاحب مدظلہ العالی
3- سید محمد امجد علی خان صاحب مدظلہ العالی
4- سید محمد امجد علی خان صاحب مدظلہ العالی

گرفتہ ذرا - سید محمد امجد علی خان

سید محمد امجد علی خان صاحب مدظلہ العالی
140/1، سٹیٹ 2، شوکارا، سٹیٹ 3، ایئر سروس
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سید محمد امجد علی خان

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140/1، سٹیٹ 2، شوکارا، سٹیٹ 3، ایئر سروس
اور 4، نوڈل ایجنسی ڈیپارٹمنٹ

Attended
m &
Juk
Adv

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

SERVICE APPEAL NO. 23 OF 2018

Muhammad Jamil Khan, Ex-Chowkidar.....**Appellant**

Versus

Govt. of Khyber Pakhtunkhwa and others.....**Respondents**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 2.

Respectfully Sheweth,

Preliminary Objections:-

1. That the appellant has got neither cause of action nor locus standi to file the instant appeal.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the appellant has remained absent from duties since 08/06/1999, as per stance of the appellant he had been nominated in a murder case of dated 08/06/1999, wherein he remained absconder for a long time i.e. 16 years and when the case was put for trial, he was acquitted from the murder charges 12/01/2017, but mere acquittal from a criminal case does not postulate that the Civil Servant must be reinstate into service.
4. That the appellant was allegedly acquitted as 12/01/2017 but he moed the Departmental appeal and that too was before the wrong forum on 19/04/2017 after delay of more than 2 months thus departmental appeal was badly time barred, which delay has not been condoned by the appellant authority.
5. That the instant appeal is before this Honorable Tribunal is also time barred. As the departmental appeal had moved on 19/04/2017, while the instant service appeal has been moved on 27/12/2017 more so no classable and cogent reason has been furnishes for condonation of delay and the alleged incarceration and imprisonment had allegedly taken place prior to acquittal order of dated 12/01/2017 and not thereafter, so the same cannot be taken as a valid ground for condonaton of delay.
6. That the instant appeal is against the prevailing Law and Rules.
7. That the appeal is not maintainable in the present form and also in the present circumstances of the issue.
8. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
9. That the appellant has not come to the Tribunal with clean hands.
10. That the appeal is time barred.
11. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.

ON FACTS:

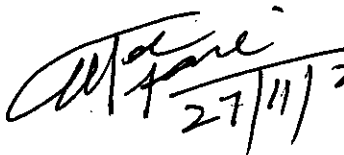
1. Correct.
2. Subject to proof. But it is submitted that before his arrest the appellant remains absconder for long 16 years and never bothered to intimate his department about the alleged occurrence.
3. Subject to proof.
4. Subject to proof. However, acquitted from criminal charges does not entitled any Civil Servant for reinstatement.
5. Incorrect and denied. However, no record of the appellant is available with MTI LRH as the appellant remain absent for a very long time i.e. from 08/06/1999 till now.
6. Correct to the extent of appeal to the answering respondent but as the answering respondent was not the competent authority. So his departmental appeal was processed and sent to the relevant appellate authority, but both the departmental appeals as well as the instant service appeal are time barred.
7. Correct.
8. Correct.
9. Correct detailed reply is given above.
10. Incorrect and denied. Proper reply is given above.

ON GROUNDS.

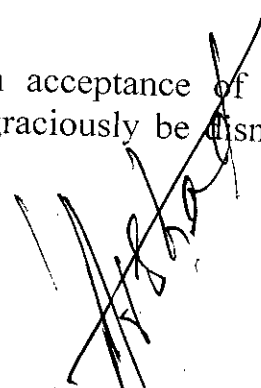
- A. Incorrect and denied.
- B. Incorrect and denied. Proper reply is already been given above.
- C. Hippocratic, concocted vexatious and frivolous, hence denied. Proper and detailed reply has already been given above.
- D. Incorrect and denied. The codal formalities was strictly followed and observed before passing the dismissal orders.
- E. No. comments.

PRAYER:

It is therefore, most humbly prayed that on acceptance of the instant comments, the service appeal of the appellant may graciously be dismissed with costs.


27/11/2018

Secretary, Health Department,
Khyber Pakhtunkhwa, Peshawar.
Respondent No. 02


Director General Health Services,
Khyber Pakhtunkhwa; Peshawar.
Respondent No. 01

BEFORE THE KHYBER PAKHTUNKHWA TRIBUNAL
PESHAWAR.

Appeal No.23 of 2018

Muhammad Jamil Khan Ex-Chowkidar LRH Pesh

*** Versus***

Director General Health Services & others.

REJOINDER ON BEHALF OF APPELLANT
TO THE COMMENTS OF RESPONDENTS
NO.1 AND 2

Respectfully Sheweth:

Preliminary Objections:

That none of the objections raised by the respondents are sustainable in the eyes of law, facts, hence liable to be rejected..

Facts:

1) That Para No.1 of the comments and appeal are correct.

2) That Para No.2 of the comments is incorrect and while this para of appeal is correct.

Because the attested copy of the order of the

learned Addl: Sessions Judge Peshawar is attached with the appeal.

3) *That Para No.3 of the comments is incorrect, and while this para of appeal is correct.*

4) *That Para No.4 of the comments is incorrect, and while this para of appeal is correct, the acquittal from the criminal charge by the Competent Court entitled the appellant for reinstatement in service.*

5) *That Para No.5 of the comments is incorrect, because it is the prime duty of the Deptt: to keep the record of serviceman in its safe custody.*

6) *That Para No.6 of the comments is incorrect, because the appellant was appointed in service as Chowkidar under the service rules.*

and respondent No.1 is the competent authority.

- 7) That Para No.7 of the comments is correct.
- 8) That Para No.8 of the comments is correct.
- 9) That Para No.9 of the comments is correct.
- 10) In reply of Para No.10 of the comments is incorrect. While the para No.10 of appeal is correct under services the law.

Grounds:

A to E. Grounds A to E of appeal are correct and its replies are incorrect.

It is, Therefore, most humbly prayed that on acceptance of appeal and rejoinder, the appellant may kindly be reinstated in service with all back benefits.

Dated /07/2012

Appellant

Through

Muhammad Ibrahim Khan

Chamkni

&

Murad Ali Khan

Advocates, High Court

Peshawar.

lb - Adw

mm - LS
R-200

BEFORE THE KHYBER PAKHTUNKHWA TRIBUNAL
PESHAWAR.

Appeal No.23 of 2018

Muhammad Jamil Khan Ex-Chowkidar LRH Pesh

*** Versus ***

Director General Health Services & others.

Affidavit

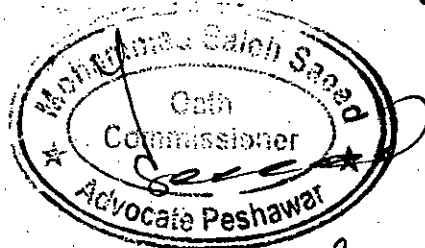
I, Muhammad Jamil Khan Ex-Chowkidar Son of Ghulam Haider R/o Landi Bala, Tehsil & District Peshawar do hereby solemnly affirm and state on oath that all contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.



DEPONENT

CNIC # 42401-5243581-5

ATTESTED



24 Aug 2018.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1899-1906ST

Dated 29-10 / 2019

To


1. The Director General, Health Services,
Government of Khyber Pakhtunkhwa,
Peshawar.
2. Administrator,, Lady Reading Hospital,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 23/2017, MR. MUHAMMAD JAMIL KHAN.

I am directed to forward herewith a certified copy of Judgement dated 03.10.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.