

26.11.2018

Counsel for the appellant present.

The case of appellant, as laid down in the memorandum of appeal is that he was working as Junior Clerk in the Directorate General, Local Government & Rural Development Department, Peshawar since 17.08.1993 when on 15.08.1995 he was transferred to the office of Assistant Director, LG&RDD, North Waziristan Agency. He took charge at place of his transfer and started performing his duty. On 14.04.1999 an FIR was lodged against him under Section 302/34-PPC dated 14.04.1999 P.S Takht-e-Nasrati District Karak. As consequences of the trial the appellant was acquitted from the charge, in the said case on 21.3.2012. That after acquittal, the appellant visited the office of respondents for rejoining his duty however, he was handed over the impugned order of removal from service dated 18.07.2002. A departmental appeal was preferred against the said order which remained un-responded till date.

Learned counsel for the appellant was heard whose emphasis was to the effect that although the appellant stood acquitted on 21.3.2012, he remained unable to join his duty due to non-settlement of the issue, under the stated FIR, according to tribal norms. This fact had forbidden him from submission of departmental appeal in time.

The record relied upon by the appellant is depictive of the fact that although the appellant was acquitted as a result of trial in FIR No. 76 under Section 302/34-PPC on 21.3.2012, he submitted departmental appeal on 17.7.2018 i.e. after lapse of more than 6 years. This inaction on the part of the appellant was in clear violation of Rule 17 of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. The reason set-forth for delay does not have any force warranting admission of instant appeal for regular hearing.

Consequently, the appeal in hand is dismissed in limine. File be consigned to the record room.

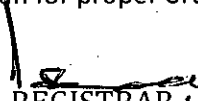


Chairman

Announced:
26.11.2018

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1322/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/10/2018	<p style="text-align: center;">The appeal of Mr. Iqbal Hussain presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 19/10/18</p>
2-	17-11-2018	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26-11-18</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1322/2018

IQBAL HUSSAIN

VS

LOCAL GOVT: DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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2	Orders	A & B	4- 5.
3	Departure report	C	6.
4	Arrival report	D	7.
5	FIR	E	8.
6	Order	F	9.
7	Judgment	G	10- 17.
8.	Impugned order	H	18.
9.	Departmental appeal	I	19.
10.	Vakalat nama	20.

APPELLANT

THROUGH:


**NOOR MOHAMMAD KHATTAK,
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1322 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1542

Dated 19-10-2018

Mr. Iqbal Hussain, Ex-Junior Clerk (BPS-11)
O/O the Assistant Director LG&RD, District North Waziristan.

..... **APPELLANT**

VERSUS

- 1- The Director General, Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Assistant Director, Local Government & Rural Development, North Waziristan Tribal District.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 18-07-2002 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE w.e.f. 14.04.1999 AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL DATED 17.07.2018 OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 18.7.2002 whereby the appellant has been removed from service w.e.f 14.4.1999 may very kindly be set aside and the appellant may kindly be re-instated into service with all consequential back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

1. That appellant was enlisted as Junior Clerk (BPS-05) now (BPS-11) in the respondent Department on 17.08.1993 by respondent no. 2 after fulfilling all the codal formalities required for appointment to the post and was lastly transferred/posted in the office of respondent no.3 vide order dated 15.08.1995. Copies of the orders are attached as annexure **A&B.**
2. That appellant after receiving the transfer/posting order submitted departure report with respondent no. 2 on 20.08.1995 and took over the charge of his post with respondent no. 3 on the same day. Copies of the Departure and arrival report are attached as annexure **C&D.**

Filed to-day
Registrar
19/10/18.

3. That, appellant was performing his duty with full zeal & zest in the respondent Department. That an FIR No.76 dated 14.04.1999 under section 302/34 was lodged against the appellant in PS Takhte Nasrati District Kohat in which the appellant was falsely been implicated into the matter and accordingly the service of the appellant was suspended by the respondent vide order dated 11.05.1999 from the date of lodging of FIR dated 14.04.1999. Copies of FIR & Order are attached as annexure **E&F.**
4. That, the appellant faced the trail before the competent Court by contested the above mentioned FIR and after conclusion of the trail the appellant was acquitted from the charges leveled against the appellant vide judgment dated 21.03.2012. Copy of judgment is attached as annexure..... **G.**
5. That after acquittal the appellant visited the concerned quarter to join his duty as junior clerk but in response the respondents handed over the impugned order dated 18.7.2002 to the appellant whereby the appellant was removed from service..... **H.**
6. That feeling aggrieved the appellant filed Departmental Appeal vide dated 17.07.2018 which is not responded till date. Copy of Departmental Appeal is attached as annexure **I.**
7. That appellant feeling highly aggrieved and having no other remedy but to file the instant appeal on the following grounds amongst the others.

GROUND:

- A- That impugned removal order dated 18.07.2002 issued by the respondents is void in nature against the law, facts and norms of natural justice hence not tenable and is liable to be set aside.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the codal formalities required for the major penalty of removal from service was not fulfilled by the respondents while issuing the impugned order dated 18.07.2002.
- D- That, the respondents acted in an arbitrary and malafide manner while issuing the impugned removal order dated 18.07.2002.

- E- That the impugned removal order dated 18.7.2002 issued by the respondent No.2 is void-ab initio in a sense that the same has been issued with retrospective effect i.e. w.e.f. 14.04.1999.
- F- That, no codal formalities were fulfilled required for the major penalty of "Removal from Service" has been adopted by the respondents while issuing the impugned order dated 18.07.2002.
- G- That, no regular or fact finding inquiry is conducted in the matter which is pre-requisite as per the judgments of the Apex Supreme Court of Pakistan in punitive matters.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 14.10.2018

APPELLANT


IQBAL HUSSAIN

THROUGH:


NOOR MOHAMMAD KHATTAK

&

MUHAMMAD MAAZ MADNI
ADVOCATES,
High Court Peshawar

A-4

DIRECTORATE GENERAL
LOCAL GOVT: AND RURAL DEV: DEPTT:
N.W.F.P. PESHAWAR.

Dated Peshawar the 17th August, 1993.

OFFICE ORDER

No. DG(RWP)1(11)/73. On the recommendations of Departmental Selection Committee, the following candidates are hereby appointed as Junior Clerks BPS-5 (Rs.1035-49-1770) against the vacant posts in Directorate General, LGRDD, NWFP, Peshawar with effect from the date of taking over the charge of their duties.

1. Mr. Haider Ali S/O Muhammad Safdar,
Village Ghundi P.O. Jamrud Khyber Agency.
2. Mr. Iqbal Hussain S/O Bani Khan
Vill: Latri Qala F.R. Bannu.
3. Mr. Karan Muhammad S/O Wali Muhammad
Vill: & P.O. Thana Malakand Agency.
4. Mr. Riaz Muhammad S/O Abdul Farid
Vill: Dangram Tehsil Baluzi Distt Swat C/O
Divisional Director LGRDD Swat at Saidu Sharif.

Their appointments will be subject to production of the following documents:-

1. Health and Age Certificate.
2. Character Certificate.
3. Academic Qualification Certificate.
4. Domicile Certificate.

These appointments have been made purely on temporary basis which can be terminated at any time without any notice or reasons but in case if they desire to leave the job, they shall either give fifteen days notice in advance or shall deposit fifteen days pay in lieu of notice.

They are directed to report to the Directorate General, Local Govt: and Rural Development Department, NWFP, Peshawar immediately for duty.

Director General
Local Govt; & Rural Dev; Deptt; NWFP.

Copy forwarded to:-

1. The Accountant General, NWFP, Peshawar.
2. Mr. Haider Ali S/O Muhammad Safdar, vill: Ghundi PO Jamrud Khyber.
3. Mr. Iqbal Hussain S/O Bani Khan vill: Latri Qala F.R. Bannu.
4. Mr. Karan Muhammad S/O Wali Mhd vill: & PO Thana Malakand Agency.
5. Mr. Riaz Muhammad S/O Abdul Farid C/O Divisional Director
LG & RDD Swat at Saidu Sharif.
6. EA(RWP) Directorate General.
7. Office order file.

Assistant Director (Admn)

ATTACHED

B-5

DIRECTORATE GENERAL
LOCAL GOVERNMENT AND RURAL DEVELOPMENT
N.W.F.P., PESHAWAR

OFFICE ORDER

Dated Peshawar the 15th August 1995

No. DG(RWP)2(8)/73. Mr. Iqbal Hussain, Junior Clerk, office of Divisional Director, LGROD, Bannu is hereby transferred and posted as Junior Clerk in the Office of Assistant Director, LGROD, NW-Agency (Miranzhab) against a vacant post.

Director General
Local Govt. and Rural Dev.
Department, RWP, Peshawar

Copy to :-

1. The Divisional Director, LGROD, Bannu.
2. The Assistant Director, LGROD, NW-Agency.
3. The District Accounts Officer, Bannu.
4. The Agency Accounts Officer, Miranzhab.
5. Mr. Iqbal Hussain, Junior Clerk,
Divl. Directorate, LGROD, Bannu.
6. Office order file.

for information and necessary action:

Yuly
(Mahmood Yalva Khan Kanoli)
Assistant Director (Admin)
LGROD, RWP, Peshawar.

Copy of the above is forwarded to the Private Secretary to Minister, LGROD, NWP for information.

Assistant Director (Admin)
LGROD, RWP, Peshawar.

ATTACHED
[Signature]

C-6

To,
The Divisional Director,
Local Govt: and Rural Dev:
Deptt: Bannu Division Bannu.

Subject:- DEPARTURE REPORT.

R/Sir,
In compliance with The Director General,
Local Govt: and Rural Dev: Deptt: N.W.F.P, Peshawar,
Office order No. DG(RWP)2(8)/73, dated 15th August 1995,
I, Mr. Iqbal Hussain J/Clerk here by submit my departure
report to-day on 20th August 1995, F/Noon.

Your's Obediently,

(
sd/-
(Iqbal Hussain)
(J/Clerk).

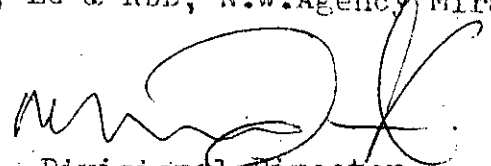
.....

DIVISIONAL DIRECTORATE, LG & RDD, BANNU DIVISION BANNU.

No. 817-18/DDB, dated Bannu the 20th August 1995.

Copy forwarded to:-

- 1). The Director General, Local Govt: and Rural Dev:
Deptt: N.W.F.P, Peshawar.
- 2). The Distt: Accounts, Officer, Bannu.
- 3). The Asstt: Director, LG & RDD, N.W.Agency Miranshah.



Divisional Director,
Local Govt: and Rural Development
Department, Bannu Division Bannu.

*****@*****

ATTACHED



D-7

To, The Asstt: Director,
LG & RDD, N.W. Agency
Miranshah.

Subject:- ARRIVAL REPORT.

R/Sir,

In compliance with Director General, Local
Govt: and Rural Dev: Deptt: N.W.F.P, Peshawar, Office
order No. DG(RWP)2(8)/73, dated 15th August 1995, I,
Mr. Iqbal Hussain here by submit my arrival report for
duty as J/Clerk today on 20th August ~~1995~~ 1995, P/Noon.

Yours Obediently,

Sd/-
(Iqbal Hussain)
J/Clerk.

.....
OFFICE OF THE ASSTT: DIRECTOR, LG & RDD, N.W.AGENCY MIRANSHAH.

No. _____/ADRD, Dated 20/8/1995.

Copy forwarded to:-

- 1). The Director General, Local Govt: & Rural Dev: Deptt:
N.W.F.P, Peshawar.
- 2). The Divisional Director, LG & RDD, Bannu Division.
- 3). ~~The District Officer~~
- 3). The Agency Accounts Officer, Miranshah.

Assistant Director,
Local Govt: and Rural Development
Department, N.W. Agency Miranshah.

*****@*****

ATTESTED
[Signature]

فارم نمبر ۳ - ۵۰ - ۵۱

انگریزی میں جو یہ سرفہ نام نمبر ۴

ایسٹیبلیشمنٹ ایف ایس ایف

جی۔ پی۔ سی

فائل نمبر اندازاً اطلاع ثبت رقم قابل درستی اندازاً ایف ایس رپورٹ شدہ زبردستی ۵۰ مجموعہ ضابطہ فوجی

خانہ کتب لکھنؤ

ملک

نمبر 4976

تاریخ و وقت روز جمعہ 14/4/71 وقت 37.07

تاریخ و وقت رپورٹ 14/4/71	5:08	کا لنگھال بزم 14/4/71	وقت 10:09
نام و سکونت اطلاع دہندہ دستاویز	عبدالرحمان ولد عبدالرحمن علی خان بھٹو	بھٹو	146
کیفیت بزم (مہنگا یا سستا) حال اگر کچھ دیا گیا ہو	3.4	3.4	
جگہ و قوت فاضل خانہ سے اور پیمائش	فرس	بزد قرون ۵۰۰۰	بھٹو
نام و سکونت ملزم		بھٹو	بھٹو
دیوانی جو تفتیش سے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو۔		بھٹو	بھٹو
خانہ سے روانگی کی تاریخ و وقت		بھٹو	بھٹو

بھٹو ولد بھٹو علی بھٹو خان بھٹو
 727/511 خانہ کراچی عبداللہ
 اسم اجہ بھٹو، دفعہ سیکرٹری
 دیہی اسم ایف ایف ایف ایف
 سیکرٹری ایف ایف ایف ایف
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 سائیکل سروس سروس
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F-9

OFFICE OF THE ASSISTANT DIRECTOR, LOCAL GOVT: AND RURAL
DEVELOPMENT DEPARTMENT N.W.AGENCY.

OFFICE ORDER

No. 552-58-A/ADRD/NWA

DATED 11/15/1999

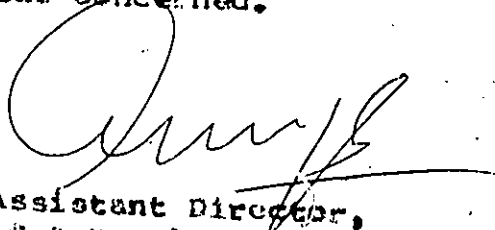
Mr. Tobaal Hussain Junior Clerk of this office is involved in Criminal Case vide FIR No. 4976/5 P. K. K. dated 14.4.1999, under section 302 is hereby suspended w.e. from 14.4.1999 for period of 3 months or till the decision of the Law Court which ever is earlier.

Assistant Director,
LG & Rural Deve: Deptt:
N.W. Agency Miranshah.

No. & date A.S.

Copy to:-

1. The Director General, LG&RD N-W-Peshawar.
2. The Political Agent, N.W. Agency Miranshah.
3. Superintendent of Police District Karak.
4. Agency Accounts Officer, N.W. Agency Miranshah.
5. The Accountant LG&RD N.W. Agency, to stop the pay till f.o
6. The Official concerned.
7. The Personal File of the official concerned.


Assistant Director,
LG & Rural Deve: Deptt:
N.W. Agency Miranshah.

(35)

G-10

THE COURT OF ASGHAR SHAH KHILJI,

ADDITIONAL SESSIONS JUDGE-I, KARAK/

CAMP COURT, TAKHT-E-NASRATI,

DISTRICT KARAK.

CASE FILE NO. 6/7 OF 2012

stitution 29.04.2010

transfer to this court 14.02.2012

session 21.03.2012

Muhammad Abdullah Jan son of Zardali Khan, r/o Laprhi Kalla, Tehsil Takht-e-Nasrati District Karak..... (Complainant)

V E R S U S

Iqbal Hussain son of Nabi Khan, r/o Laprhi Kalla, District Karak..... (Accused Under-Trial)

Abid Hussain son of Nabi Khan, r/o Laprhi Kalla, District Karak..... (Acquitted Accused)

CASE FIR NO.76, DATED 14.04.1999 U/S 302/34 PPC, PS, TAKHT-E-NASRATI,
DISTRICT KARAK.

J U D G M E N T

Facts in brief are that complainant, Abdullah Jan, on 14-04-1999 at about 5:00 AM brought the dead body of his uncle Ameer Nawaz on a datsun pick up with the help of co-villagers in the police station Takht-e-nasrati and made a report in police station Takht-e-Nasrati to the local police to the effect that on 14.04.1999 at about 07.30 hours he along with his uncle Mir Nawaz, (deceased), Hazrat Usman and Mst. Eid Begum d/o Mir Nawaz were busy in harvesting the wheat crop near their Hujra whereas the deceased Mir Nawaz was sitting near them in the threshing floor, when in the meanwhile Iqbal Hussain (accused facing trial) and Abid Hussain (acquitted accused) who were duly armed came on their bicycle, got down and accused facing trial Iqbal Hussain opened firing at deceased Mir Nawaz followed by the acquitted accused Abid Hussain as a result of which Mir Nawaz (deceased) got hit and died on the spot and the accused after commission of the offence did flee off the spot, leaving behind the bicycle. Motive for the offence was stated as the previous blood feud enmity. The occurrence was stated to have had been witnessed by the complainant, Hazrat usman and Mst. Eid begum. Hence, the FIR in question was registered against the accused.

ATTESTED



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After the registration of case and arrest of the accused Abid Hussain (admitted) challan was put in court, accused Abid Hussain was charge sheeted to which he pleaded not guilty and claimed trial whereas proceedings u/s 512 Cr.PC were initiated against the present accused Iqbal Hussain. After completion of trial against accused Abid Hussain, he was acquitted vide judgment dated 30.09.2000 of the learned Sessions Judge and the accused facing trial Iqbal Hussain was declared as Proclaimed Offender. At the arrest of accused facing trial, supplementary challan against him was put in court, he was summoned and on his appearance before the court, he was supplied with the copies of relevant documents within the meaning of section 265-C Cr.PC, whereafter, charge was framed against the accused facing trial, to which the accused pleaded not guilty and demanded trial. Thereafter, PWs were summoned, out of which nine witnesses appeared and recorded their statements as:

PW-1 Gharib Nawaz Khan SHO deposed that he had formally arrested accused Iqbal Hussain on 19.09.2009 in the police station who had moved BBA petition for the card of arrest ExPW-1/1 and thereafter he had submitted complete challan against the accused on 03.11.2009, when he was SHO of Police Station Takht-e-Nasrat.

PW-02 is Dr. Islam Jan, Senior Medical Officer, Civil Hospital, Takht-e-Nasrat, who on 14.04.1999 at 10.00 a.m. had conducted the post mortem examination on the dead body of deceased Amir Nawaz aged about 80 years son of Gulibat Khan, r/o Jhari Kalla and found the following.

EXTERNAL:

Fresh stout body, clothes blood stained having corresponding holes, P.M rigidity not developed.

WOUNDS:

1. FAI ¼ inch X ¼ inch on right side of skull making exit of 4 inch X 4 inch on right cheek.
2. ¼ inch X ¼ inch F.A.I on medial side of right shoulder posteriorly making exit of 3 inch X 3 inch on sternum anteriorly.
3. ¼ inch X ¼ inch F.A.I on left shoulder posteriorly making exit on epigastrium anteriorly
4. FAI ¼ inch x ¼ inch on chest posteriorly making exit 2 inch x 3 inch on left hypocondrium.
5. ¼ inch x ¼ inch F.A.I on front of right upper leg making exit 2 inch x 2 ½ inch on postero medial side of right knee joint.

INTERNAL:

Cranium and spinal cord:

Skull and brain damaged.

~~ATTESTED~~
Examiner Copying Branch
Karachi
27/11/2009

ATTESTED

IX.

Walls, ribs, pleurae, right lung, left lung, heart and their vessels--- injured.

men:

Walls, peritoneum, mouth, diaphragm---injured.

Stomach injured and semi digested food present.

marks:

Fire arm injuries both of lungs, heart and their vessels and brain leading to instantaneous death.

Time between injury and death:..... within 0 to 15 minutes.

Time between death and P.M examination..... Within 3 hours.

His report is ExPM whereas his endorsement on injury sheet and inquest report are ExPM/1 and ExPM/2.

PW-03 is Amir Sardar IHC (Rtd), who during those days was posted at the station Takht-e-Nasrati. He is marginal witness to the recovery memo ExPW 3/1 which the I.O in his presence took into his possession shirt, shalwar, chaddar blood stained belonging to deceased and sent by the doctor through LHC Aqal Zaman No. 116. Shirt, shalwar and chaddar are already exhibited as ExP-1 to ExP-3. Similarly, the I.O in his presence also took into possession during spot inspection, blood stained earth, pieces of a piece of bone, an eagle popular cycle, chaddar, a pair of spectacle, 4 empties of 7.62 as ExP-4 to ExP-9 from the places of accused through recovery memo ExPW 3/2.

PW-04 is Mir Qalam DFC No. 109, who during those days was attached to Takht-e-Nasrati. He was entrusted with the warrant u/s 204 Cr.PC issued against accused Iqbal Hussain. He searched for him in his village and in the surrounding area but accused was not available. He then returned such warrant ExPW 4/1 unserved with his report at its back ExPW 4/2. Similarly, he was also entrusted with the proclamation notice u/s 37 Cr.PC issued against the above named accused. He pasted one copy on the notice board of the issuing court, second copy on the outer door of the house of accused and returned the third copy ExPW 4/3 with his report at its back ExPW 4/4.

PW-05 is Gul Mohammad Khan SHO (Rtd) who has partially investigated the present case and during such investigation he initiated proceedings u/s 204 and 87 Cr.PC against accused facing trial through his application ExPW 5/1 and ExPW 5/2 respectively. He also arrested the acquitted accused Abid Hussain on 09.06.1999 when his arrest bail was turned down and has issued his card of arrest which is on the file as ExPW 5/3. He also recorded the statements of DFC and on completion of investigation submitted complete challan against the accused.

ATTESTED
Examiner Copying Branch
Karak

ATTESTED

(13)

PW-06 is Aqal Zaman FC No. 116 (Rtd) who during those days was posted at police station Takht-e-Nasrati. He escorted the dead body of deceased from police station to Civil Hospital at Takht-e-Nasrati. After the P.M examination, the doctor handed over to him the garments of deceased consisting upon shirt, shalwar and chaddar, which were delivered to the I.O on the spot.

PW-07 is Shah Khan, who had identified the dead body of deceased Mir Nawaz Khan before the police as well as before the doctor at the time of P.M examination.

Since, complainant of the case namely Abdullah Jan was dead at the time of trial of the present accused, so in view of statement of SW-1, his statement recorded in the trial of acquitted co-accused as PW-6 was transferred to the trial of the present accused under Article 47 of Qanon-e-Shahadat Order 1984. The statement of the said complainant is recorded in the previous trial as PW-06, the verbatim of the same is reproduced here.

The complainant Abdullah Jan, who had stated in his statement that deceased Amir Nawaz was his paternal uncle. Abid Hussain acquitted accused and Iqbal Hussain accused in the present trial are brothers' inter-se. That on the day of occurrence, he along with Amir Nawaz deceased and Mst. Eid Begum daughter of Amir Nawaz and Hazrat Usman were busy in harvesting the wheat crop near their Hujra. Deceased Amir Nawaz was sitting in a threshing floor near them when in the mean time accused Iqbal Hussain and Abid Hussain came armed with Kalashnikovs on a bicycle and on arrival on the spot, they got off of the bicycle. Iqbal Hussain, accused facing trial fired firstly at the deceased with which deceased Amir Nawaz was hit. Thereafter, Abid Hussain (acquitted accused) also fired at the deceased with which he too was hit. As a result of firing of the accused, the deceased died on the spot. The accused left their cycle on the spot and decamped. That they then took the deceased in a datsun / pick up to Takht-e-Nasrati where he lodged the report. Motive for offence was previous blood feud enmity. The site plan was prepared at his instance by Mst. Hazrat Usman and Mst. Eid Begum.

PW-08 is eye-witness Hazrat Usman, who stated that on the day of occurrence he along with his uncle Abdullah Jan now dead and his maternal aunt Mst. Eid Begum were busy in harvesting wheat crops near their Hujra while his grand father Amir Nawaz deceased was sitting in a threshing floor. Accused Iqbal Hussain and acquitted Abid Hussain both sons of Manni Khan came there in the meanwhile on bicycle and after getting off the bicycle accused Iqbal Hussain made firing at his grandfather Amir Nawaz. Due to the firing of both the accused, his grandfather was hit and died while the accused after firing decamped from the spot. He pointed out the place of occurrence to the I.O and I.O prepared the site plan on his position. He charged the accused for the offence.

PW-9 is Rustam Khan SHO (Rtd) who during those days was posted as I.O at police station Takht-e-Nasrati. On 14.04.1999 the complainant Abdullah Jan brought the dead body of the deceased on a pick up No. DMC 727 with the help of his co-

ATTESTED

[Signature]

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rs and made a report to him in the police station about the present occurrence. He own the report of the complainant in shape of FIR ExPA. He had read over the its of report to the complainant who signed it as a token of its correctness. He had red the injury sheet of the deceased already exhibited as ExPM/1 and inquest report deceased: ExPM/2 and sent the dead body of deceased to the Civil Hospital, Takht-e-ti. under the escort of constable Aqal Zaman. He on the same date of occurrence went : spot and prepared the site plan ExPB at the pointation of complainant and eye- sses. He during the spot inspection, recovered blood-stained earth as ExP-1, pieces of ExP-2, a piece of bone ExP-3 and also recovered and took into his possession a bicycle popular bearing No. 318171 G ExP-4, a chaddar ExP-5, a pair of spectacle ExP-6 and empties of 7.62 bore ExP-7, lying near places of accused and he sealed the aforesaid. les into parcel except bicycle and prepared the memo ExPW 2/2. He conducted raid he house of accused but neither the accused nor any incriminating articles were lable, however, he prepared search memo exhibited as ExPW 3/1. He took into his ession blood-stained clothes of deceased consisting upon shirt ExP-1, shalwar of grey ur P-2, a chaddar of white colour P-3 and produced by Aqal Zaman constable to him he police station after P.M examination alongwith P.M papers. He sent the blood- ned articles to chemical examiner for analysis and received FSL report ExPW 9/3. He l recorded the statements of PWs u/s 161 Cr.PC.

Whereafter, the prosecution closed the prosecution evidence being mplete. Thereafter the statement of accused U/S 342 Cr.PC was recorded, but the cused neither produced evidence in defence nor wished to be examined on oath U/S 40 (2) Cr.PC.

Arguments heard and record perused.

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Examiner Copying Branch
Karak 10/10/22

From the arguments and record available on file, it reveals that as per FIR PA, the complainant Abdullah Jan has mentioned the time of occurrence as 07:30 AM hereas the report was lodged in the police station Takht-e-nasrati at about Karak at 08.50 M. The distance between the place of occurrence and police station has been shown as 1/25 K.M. and could be covered at the most in 30 minutes; yet lodging of report with a delay of one hour and twenty minutes have increased the chances of pre-consultation and deliberation in nominating the accused facing trial. The said delay during the whole investigation and evidence has not been sufficiently explained. Moreover when the placed in juxta position with the post-mortem report EXPM of the deceased Ameer Nawaz and statement of eye Witness Hazrat Usman PW8, which post mortem on the dead body of deceased was carried out at 10:AM then it would reveal that the doctor has found semi digested food in his stomach where as the PW8 stated on page two of his cross examination that they have not taken any thing with the morning tea and such the stomach of the deceased was suppose to be empty but the presence of semi digested food in the

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Each of deceased would contradict the time of occurrence as mentioned by the complainant in his report.

The perusal of contents of FIR ExPA would reveal that the complainant has mentioned therein that the accused during the occurrence have fired with their arms and no notification of the arms used have been given but in evidence as PW6 the complainant mentioned the said weapons as kalashinkoves without any source of information being used as to how he knew that the weapons used were kalashinkoves. Moreover in the FIR it has been stated that the present accused Iqbal Hussain fired first followed by the admitted accused Abid Hussain at the deceased but the eye witness Hazrat Usman PW8 stated at page two of his cross examination that both the accused fired simultaneously with the deceased. Moreover the local police during the investigation recovered 04 empties of 7.62 and taken the same vide recovery memo ExPW.3/2 but neither the same were sent to the Forensic Laboratory (SL) to determine as to how many weapons have been used during the occurrence nor the same have been shown in the site plan EXPB as to where from the same have been recovered. The marginal witness of the recovery memo Ameer Sardar PW3 made a strange deposition in his cross examination that the recovered empties were produced to the IO by a female from her pocket but neither the said female was named nor produced. With regard to the recovered empties the statement of eye witness Hazrat Usman is worth perusal. He stated in his cross examination at page 2 that total 7/8 shots were fired by the accused which not only contradicts the stance of the local police pertaining to the recovered four empties but also arises a question that if the version of the eye witness is correct then where other empties have gone. This question has been answered by the eye witness Hazrat Usman at page 2 of his cross examination that they were present at the spot from the time of occurrence till the arrival of the local police to the spot besides the place of occurrence is adjacent to the hujra of complainant's party and there was no chance of the empties being missing, yet the deposition of the alleged eye witness that 7/8 shots were fired would be the very presence of the said witnesses at the relevant time of occurrence at the spot is doubtful. Moreover the post mortem report EXPM would also contradict the said statement which provides 05 entry wounds on the body of the deceased. As far as the recovery of bicycle from the spot is concerned in this regard the complainant as PW6 has stated that the same belong to the accused facing trial as the accused have approached on the same to the place of occurrence and left the same at the spot while decamping from the spot but the eye witness Hazrat Usman as PW8 has not stated a single word with regard to the said bicycle in his examination in chief besides no connection of the same was proved with the accused facing trial.

The complainant Abdullah Jan was dead at the time of the present trial therefore his statement recorded as PW 6 during the previous trial was transferred to the present trial. The said statement is worth perusal and when got confronted with the FIR it reveals that in the FIR it was stated by the complainant that at the time of occurrence he was busy in harvesting the crop near their hujra and as PW6 he further clarified that the

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Place where he was busy in cutting the crops is situated towards the west of the place of occurrence but the Investigation Officer as PW9 in the first page of his cross examination has stated that there exist no field between hujra and last line of threshing floor, the site plan EXPB also speaks so where in the complainant has been shown at point 2 between the hujra and threshing floor having no fields in between, hence the version of the complainant that he was busy in cutting the crops at the time of occurrence proves wrong. Besides neither the tools of cutting the crops nor the cuttued crops were taken in to possession by the local police to confirm the presence of the witnesses at the spot and their act of cutting the crops as alleged by them in the initial report. Mst Eid begum who is the daughter of deceased Ameer Nawaz was not produced though she was stated to be the eye witness of the occurrence but was not produced. The Said witness if had witnessed the occurrence and was not produced then, it would be deemed that the best evidence has been withheld and provision of Articles 129 of the Qanoon-e-Shahdat Order 1984 would be attracted which provides that; if the best evidence is withheld then the presumption would be drawn that had such evidence would have been produced it would have gone against the person so producing.

3). With regard to motive, it has been mentioned in the FIR ExPA by the complainant Abdullah Jan that existing of previous enmity between the parties resulted into the present occurrence. But no proof of the previous enmity was provided. Even otherwise the motive is a double edge weapon and can injured either of the parties as if the complainant party claim that due to previous enmity the present occurrence has taken place, the accused party could also claim that due to the said enmity they have been falsely & wrongly implicated.

4). Moreover the accused after his arrest neither confessed his guilt nor any thing incriminating recovered either from his immediate possession or at his pointation besides no pointation of the place of occurrence has been made by the accused during the investigation. The statement of the complainant Abdullah Jan, eye witness Hazrat Usman in contradiction with each other and medical evidence, site plan, recovered empties and other circumstantial evidence available on the case file. The manner & mode in which the occurrence has been committed and claimed by the complainant has not been proved by the prosecution in its original spirit rather the said statements have doubted the very presence of the witness at the spot at the relevant time of occurrence and the only ground of abscondance could not be a hurdle for the acquittal of accused who is otherwise entitled for his acquittal on merit. No independent witness from the village produced nor the alleged eye witness Mst. Eid begum as mentioned in the FIR was produced to depose against the accused facing trial. The co-accused Abid Hussain to whom the same role was attributed has been acquitted on the basis of same evidence hence, the case of the present accused facing trial is not on different footing from the case of the acquitted co-accused Abid Hussain.

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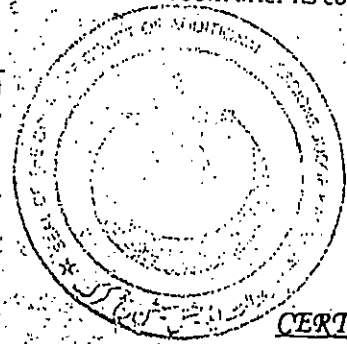
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20) So the net shell of the above discussion is that the prosecution has failed to prove their case against the accused facing trial beyond any shadow of doubts, the failure on the part of prosecution and complainant to marshal their troops in a right way resulted in creation of sufficient doubts in the version of complainant/prosecution. The case of the prosecution is rather full of contradictions, doubts and withholding of important evidence, the benefit of which must be extended in favour of accused. Therefore, the accused facing trial Iqbal Hussain in the light of above stated facts is hereby acquitted of the charges levelled against him via FIR in question. Accused is on bail, his sureties stand discharged from the liability of bail bonds. Case property be disposed off in accordance with law after the expiry of period prescribed for appeal/ revision.

A copy of this order be placed on police/judicial file, while file of this court be consigned to the record room after its completion and compilation.

announced

03.2012



(ASGHAR SHAH KHILJI)

Additional Sessions Judge-i, Karak/

Camp Court, Takht-e-Nasrati

CERTIFICATE

21-03-12

Certified that this judgment consist of Eight (08) pages, and each page has been read, checked, corrected and signed by me where necessary.

03.2012



(ASGHAR SHAH KHILJI)

Additional Sessions Judge-i, Karak/

Camp Court, Takht-e-Nasrati

21-03-12

568-
 27-3-2012
 860-
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 8-24-
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 27-3-2012
 27-3-2012

~~27/3/12~~
 27/3/12

ATTACHED

Handwritten signature

BETTER COPY OF ANNEXURE H

PAGE: (18)

OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT NORTH WAZIRISTAN AGENCY MIRAN
SHAH.

NO. _____/AD/LDD NWA

DATED

Whereas, Mr. Iqbal Hussain s/o Mr. Bani Khan Junior Clerk, Local
Government & Rural Development Department North Waziristan Agency Miran
Shah, was irregularly absented from government duty with effect from 14.04.1999 to

whereas he has been directed through notice at his home address as
published in daily Insaaf Islamabad dated 01.03.2002 to present himself
within (15) days after the publication, but he failed to do so.

Therefore, I, Mr. Faiz Muhammad Assistant Director Local
Government & Rural Development Department North Waziristan Agency Miran Shah
in authority hereby order "Removal from Service" of Mr. Iqbal Hussain
Bani Khan Junior Clerk LR & RDD North Waziristan Agency Miran Shah
effective from 14.04.1999, under the N.W.F.P Removal from Services (Special
Finance (As Amended) 2000.

Assistant Director,
Local Government & Rural
Development Department,
North Waziristan Agency.

33/AD/RDD NWA Miran Shah 18/07/2002

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Assistant Director,
Local Government & Rural
Development Department,
North Waziristan Agency.

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OFFICE OF THE ASSISTANT DIRECTOR
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT NORTH WEST FRONTIER PROVINCE PAKISTAN
Date _____
No. _____

Mr. Nizam Uddin Khan S/O Mr. Sami Khan Junior
Government and Rural Development Department
Islamabad Agency Islamabad with effect from
14.12.1999 to dated
14.12.1999. He has been directed through notice of
dismissal as well as published in Daily Ahsan-e-
Islam, 14.12.1999 to present himself within fifteen (15) days
under threat, but he fails to do so.
Therefore, Mr. Nizam Uddin Khan Assistant Director
Government and Rural Development Department North
West Frontier Province Islamabad Agency Islamabad hereby order
his removal from service of Islamabad Agency Islamabad with
effect from 14.12.1999, under the N.W.F.P. Removal from service
order, Islamabad (as amended) 2000.

o/c

Assistant Director
Local Government & Rural
Development Department
North West Frontier Province Islamabad

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22/12/1999 Islamabad Islamabad 18/12/2002

Mr. Nizam Uddin Khan S/O Mr. Sami Khan Junior
Government and Rural Development Department
Islamabad Agency Islamabad with effect from
14.12.1999 to dated
14.12.1999. He has been directed through notice of
dismissal as well as published in Daily Ahsan-e-
Islam, 14.12.1999 to present himself within fifteen (15) days
under threat, but he fails to do so.
Therefore, Mr. Nizam Uddin Khan Assistant Director
Government and Rural Development Department North
West Frontier Province Islamabad Agency Islamabad hereby order
his removal from service of Islamabad Agency Islamabad with
effect from 14.12.1999, under the N.W.F.P. Removal from service
order, Islamabad (as amended) 2000.

o/c

Assistant Director
Local Government & Rural
Development Department
North West Frontier Province Islamabad

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AK

(19) - I

بخدمت جناب عزت مآب سیکرٹری، محکمہ لوکل گورنمنٹ اینڈ رورل ڈیولپمنٹ، خیر

درخواست نمبر: محکمہ

جناب عالی!

مؤدبانہ گزارش کی جاتی ہے کہ سائل آپ حضور والا کے زیر سایہ بطور جوئیر کلرک مورخہ 7/08/1993 کو بعد میں نارٹھ وزیرستان ایجنسی کو ٹرانسفر کر دیا گیا۔ سائل کے خلاف سال 1999ء میں FIR درج ہوا۔ اور میں نوکر سے برخاست کر دیا۔ سائل نے پوری ٹرائل کا سامنا کیا اور بالآخر سال 2012ء کو سائل باعزت طور پر بھ نارٹھ وزیرستان میں بارہا افسران سے رجوع کیا لیکن سائل کی کوئی شنوائی نہیں ہوئی۔ اسلئے آپ صاحبان کی خدمت میں التماس کی جاتی ہے کہ سائل چونکہ باعزت طور پر بھری ہو چکا ہے۔ سا سے تعیناتی کے احکامات صادر فرمائیں سائل عمر بھر آپ کا دعا گو و مشکور رہے گا۔

العارض

المرقوم: 17/07/2018

Labia Hanain
آپکا تابعدار

اقبال حسین ولد ب

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VAKALATNAMA

*Before the Khyber Pakhtunkhwa Service Tribunal
Peshawar*

WRIT PETITION No. _____/2018

Iqbal Hussain

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Local Govt. Department

(RESPONDENT)
(DEFENDANT)

I/We *Iqbal Hussain*

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

Dated. ____/____/2018

Iqbal Hussain

CLIENT

[Signature]
ACCEPTED

NOOR MOHAMMAD KHATTAK

[Signature]
&
MUHAMMAD MAAZ MADNI
ADVOCATES

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141.

[Signature]
Shahzullah Khan Yousafzai
Advocate

Before the
in 18...

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