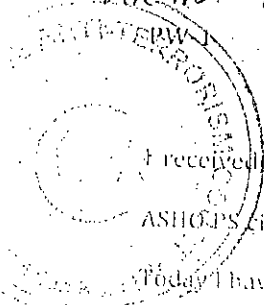


In the Court of Judge ATC - Kohat

Case No. 24/ATC-KT of 2014

State vs. Syed Muhiarram Ali Shahi et al

FIR No. 1220 DC: 18.11.2013 u/s: 302/324/353 PS City Kohat
13A0/34/7ATA



Statement of Syed Muhammad Abdullah ASI PS City Hangu (On Oath)

During the days of occurrence I was posted as Muharrir ASI at PS City Kohat.

I received murassila sent by Mazhar Jehan SHO PS City, Kohat through Peshawar Khan ASHO PS City Kohat on 18.11.2013. On the basis of which I chalked out FIR which is Ex PA. Today I have seen the contents of FIR which is correct and correctly bears my signature.

XXX... The occurrence took place at 12.00 noon. While the murassila was received at 1415 hours. It is correct that distance between place of occurrence and PS is about one furlong. It is correct that when the murasila was produced before me by Peshawar Khan ASHO who also brought the case property and arrested the accused to the PS. It is correct that the case property mentioned in the murasila as well as in the FIR were not sealed rather it was in unsealed condition. I kept the case property in unsealed condition in the mall khana of the PS which was required to be examined. I have not annexed the entry made in the register No. 19 in the PS however, I have made the entry of the case property (arms & ammunition) in the relevant register. I have recorded my statement to the IO to the extend of entries regarding register No. 19. Confronted with statement made u/s 161 Cr.P.C not so recorded. It is correct that after examination of armourer the case property may have been sealed by IO but I don't know who may. It is correct that the case property was in my possession as I was in charge of register No: 19. The IO took the case property on 22.11.2013 and returned it to me after sealing it and I kept it in the safe custody of the PS mall khana. To this effect I have not recorded any thing in writing. I consumed 45 mins in chalking of the FIR. It is correct that I have not sent the FIR by anyone to the IO to the spot. I have handed over the case property to the IO and the SHO who was present at that time got the case property checked from the IO and got it examined from the armourer in my presence. Most of the case property were licensed one however, I do not remember exactly. It is incorrect to suggest that the FIR was registered very late and none was charged till 10:00 pm. Further it is incorrect to suggest that the FIR was lodged after receipt of PM report. It is also further incorrect to suggest that nothing was recovered from the possession of the accused while they were arrested. All the suggestions are incorrect. It is also incorrect to suggest that all the four accused was taken from the Inam Bargah by

COPIED
At 9/11/2014

12

the SHO for meeting with the DCO however, instead of taking them to DCO office they took them to the PS Saddar.

RO & AC
Dated: 27.8.2014

Judge, Anti Terrorism Court,
Kohat Division, Kohat,
Camp Court at Central Jail,
Peshawar.

PW-3

Statement of Zeeshan Ali No. 500 Police lines Kohat. (On Oath)

During the days of occurrence I was posted as guard of Imam Bargah Syed Habib Shah. On the eventful day, I was present at my duty, in the meanwhile a procession duly armed with daggers and lathis. And upon reaching, the procession started firing near the Imam Bargah. And I took shelter and noticed that the fire was coming from all four sides. As a result of firing the procession dispersed and I saw two dead bodies one of police official and one of private person and the other police contingent reached to the spot and shifted them to the hospital.

XXX..... I received information regarding procession proceeding to Imam bargah, 20 mins earlier. It is correct that the Imam bargah is situated in a depression from the road and towards the left side of Imam bargah there are buildings situated higher than it. There are a few steps also situated towards the left of Imam bargah used by the public as thorough fare. I cannot say as to from which side the firing was made.


RO & AC

Dated: 27.8.2014

(Muhammad Asim Imam)
Judge, Anti-Terrorism Court,
Kohat Division, Kohat,
Camp Court at Central Jail,
Peshawar

Statement of Senior Public Prosecutor ATC Kohat.

I abandon PW Constable Asim Raza No. 885, Constable Nihad Ali No. 1108, Mumtaz Ali No 202 and Syed Raza No. 153 being unnecessary.


Sr. Public Prosecutor ATC
Kohat, Camp Court at
Central Jail, Peshawar.

(Muhammad Asim Imam)
Judge, Anti-Terrorism Court,
Kohat Division, Kohat,
Camp Court at Central Jail,
Peshawar

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Ali 46
19/11
COPYING AGENCY
ANTI-TERRORISM COURT,
KOHAT

پہلے جکائیں پیرا پیرا لسان رک کر رکھی ہو۔ یہ وہ ہے

181/5

(10) کالیان زکیشان علی 500 مدینہ منورہ میں گارو امام بارگاہ اذان
سید حبیب شاہ نے بلور یافت بیان کیا کہ اس روز جب شہزادہ
امام بارگاہ کے قریب پوچھا تو اوپر سے طرف سے حاضر نہاس ہوئی
بھگدڑ مچ گئی۔ حاضرین سے کالیان اور قسدر اور ان
پہلے رک کر حوض پیر جان بحق ہوئے۔ یہاں تین پیرا پیرا لسان
رک کر رکھی ہوئے۔ یہ وہ بیان ہے۔

(11) کالیان سید فیاض 153 مدینہ منورہ میں گارو امام بارگاہ اذان
سید حبیب شاہ نے بلور یافت بیان کیا کہ اس روز جب شہزادہ
جاووں امام بارگاہ کے قریب آئے ہیں زیارت شہید کے
گلی میں کھوڑا کھالہ میں دوران اوپر سے حاضر نہاس شروع ہوئی۔
جسکی فائروں سے کالیان اور قسدر اور ایک پہلے رک کر حوض
جان بحق ہوئے۔ اور دیگر تین پیرا پیرا لسان
رکھی ہوئے۔ یہ وہ بیان ہے۔

(12) مہر لوار جان اک بیان ہے بلور یافت تھانہ سٹی میں بیان
کیا کہ آپ اللہ کے ہاتھ نے بلور یافت حوض جان بحق

AACy

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 218 /2016



Shah Duran, Sub Inspector.
District Police Kohat.

**N.W.F. Province
Service Tribunal**
Diary No. 207
Dated 10-3-2016

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Deputy Inspector General of Police Kohat Region, Kohat.
3. The District Police Officer, Kohat.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 30.10.2015, WHEREBY THE INTERVENING PERIOD OF THE APPELLANT'S COMPULSORY RETIREMENT W.E.F. 09.01.2014 TO 11.03.2015 IS TREATED AS LEAVE WITHOUT PAY AND NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 30.10.2015 MAY BE SET ASIDE AND RESPONDENTS MAY BE DIRECTED THE TO CONSIDER THE PERIOD W.E.F.09.01.2014 TO 11.03.2015 WITH ALL PAY & SERVICE BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Shah Duran
10/3/16



Date of Institution ... 10.03.2016

Date of Decision ... 18.04.2018

Shah Duran, Sub Inspector.
District Police Kohat.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar. and 2
others. (Respondents)

SYED NOMAN ALI BUKHARI,
Advocate

For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

For respondents

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN; MEMBER:-


This judgment shall dispose of the instant service appeal as well as connected service appeals no. 218/2016 titled Ayatullah as similar question of law and facts are involved therein.

ATTESTED

Arguments of the learned counsel for the parties heard and record perused.

FACTS

The brief facts are that the appellant was serving as S.I in Police Department. disciplinary proceedings were initiated against him and upon conclusion major penalty of compulsory retirement was imposed on him vide order dated 09.01.2014. That he filed revision petition and upon acceptance he was reinstated in service and


Ahmad Hassan
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

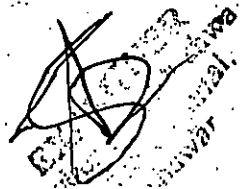
directions were given for conducting de-novo enquiry. De-novo enquiry was conducted and the competent authority exonerated him of the charges leveled against. However, the intervening period w.e.f 09.01.2014 to 11.03.2015 was treated as leave without pay vide order dated 31.10.2015. Feeling aggrieved he filed departmental appeal on 30.10.2015 which was not responded within stipulated period, hence the instant service appeal.

ARGUMENTS

4. Learned counsel for the appellant argued that while serving as S.I in Police Department, disciplinary proceedings were initiated against him and upon conclusion major penalty of compulsory retirement was imposed on him vide order dated 09.01.2014. Feeling aggrieved he filed revision petition and upon acceptance he was reinstated in service with directions to conduct de-novo enquiry. De-novo enquiry was conducted and the competent authority exonerated him of the charges leveled against. However, the intervening period w.e.f 09.01.2014 to 11.03.2015 was treated as leave without pay vide order dated 31.10.2015. Feeling aggrieved he filed departmental appeal on 30.10.2015 which was not responded within stipulated period, hence the instant service appeal. As the officer was exonerated from the charges so under the rules he was entitled for pay for the period mentioned above. He was not engaged in any gainful employment as is evident from an affidavit submitted by the appellant. He relied on case law reported as 2013 SCMR 752 and this Tribunal judgment dated 01.03.2016 in service appeal no. 510/2016.

5. Learned Deputy District Attorney argued that though de-novo enquiry was conducted and he was exonerated of the charges but as he had not performed duty so the intervening period of compulsory retirement was treated as leave without pay

ATTENDED

BY

 [Illegible text]

the SHO for meeting with the DCO however, instead of taking them to DCO office they took them to the PS Saddar.

RO & AC
Dated: 27.8.2014

Judge, Anti-Terrorism Court,
Kohat Division, Kohat;
Camp Court at Central Jail,
Peshawar.

PW-2 Statement of Akhter Abbas LHC No. 32 PS Usterzai (On Oath)

During the days of occurrence, I was posted as Guard Commandar of Imam Bargah Syed Habib Shah. At about 12 noon a procession of about 40/50 persons with latices were approaching towards Imam Bargah and they raised slogans against Shia sect. When the procession passed my point then firing started and the procession dispersed. Once the firing stopped we saw two dead bodies one of Police man and one another of a private person. I saw one injured as well the dead body and injured were shifted to the hospital.

XXX..... I was posted to protect the Imam Bargah as guard commander. I do not remember as to when I came to know about the procession moving towards the Imam Bargah. At the time of occurrence I had five Police official at guard duty. I have posted all the five police officials at different points at the Imam bargah. It is correct that the Imam Bargah is located at a slope of about 5 to 6 feet from Milad Chowk. It is correct that in front of Imam Bargah there is a college which is higher than the Imam Bargah and steps in a shape of stair case adjacent to it which is used by public as thorough fare. The procession proceeded from the Milad Chowk. I cannot say that the procession proceeded towards the Imam Bargah from all the four sides. It is incorrect to suggest that we were fired upon from the stairs mentioned in my statement. Self stated that I cannot say as to from which side the firing was made as my point was on the left side of the Imam bargah. I cannot say whether the firing was made from one point or from two or three points. I cannot say that whether Abid Ali Shah was booked u/s 107/151 Cr.P.C and Muharram Ali Shah was present in katchery for getting his bail. It is correct that Muharram Ali Shah has left the Imam bargah in the morning of 18.11.2013. I have not seen Muharram Ali Shah returned to Imam Bargah before the occurrence.

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ANTI-TERRORISM COURT,
KOHAT

RO & AC
Dated: 27.8.2014

Judge, Anti-Terrorism Court,

رپورٹ ضمنی

(۱۵۳)

۱۸/۱۱/۱۳

آخرتیناس 32 شمارہ نمائندہ متعینہ احام بارگاہ ازبک سید
 نے بدریافت بیان کیا، امروز جب شرکاء قتلوں احام بارگاہ قریب
 یونیورسٹی اوپریٹو طرف سے فائرنگ ہوئی، گھنگڑ چوٹی سے فائرنگ
 سے پولیس کانسٹیبل نور محمد اور ایک پبلک بلک کر موقع پر جان بحق
 ہوئے ہیں۔ بیان پر ایئرٹ گسان زخمی ہوئے۔ یہ حیران بیان ہے۔

(6)

کانسٹیبل شاہ مہر رضا 885 متعینہ مستقل نگار نے بدریافت بیان
 کہ امروز جب شرکاء قتلوں احام بارگاہ قریب یونیورسٹی اوپریٹو
 کی طرف سے فائرنگ ہوئی، گھنگڑ چوٹی سے فائرنگ سے پولیس
 کانسٹیبل نور محمد اور ایک پبلک بلک کر موقع پر جان بحق ہوئے
 ہیں۔ بیان پر ایئرٹ گسان زخمی ہوئے۔ یہ حیران بیان ہے۔

(7)

کانسٹیبل شاہ مہر رضا 110 متعینہ مستقل نگار احام بارگاہ سید حیدر شاہ
 نے بدریافت بیان کیا کہ امروز جب شرکاء قتلوں احام بارگاہ قریب
 یونیورسٹی اوپریٹو طرف سے فائرنگ ہوئی، گھنگڑ چوٹی سے فائرنگ
 سے پولیس کانسٹیبل نور محمد اور ایک پبلک بلک کر موقع
 پر جان بحق ہوئے۔ بیان پر ایئرٹ گسان زخمی ہوئے۔ یہ
 حیران بیان ہے۔

(8)

قمر شاہ علی 202 متعینہ مستقل نگار احام بارگاہ سید حیدر شاہ نے
 بدریافت بیان کیا کہ امروز جب شرکاء قتلوں احام بارگاہ قریب
 یونیورسٹی اوپریٹو طرف سے فائرنگ ہوئی، گھنگڑ چوٹی سے فائرنگ
 سے پولیس کانسٹیبل نور محمد اور ایک پبلک بلک کر موقع پر جان بحق
 ہوئے۔ بیان پر ایئرٹ گسان زخمی ہوئے۔ یہ حیران بیان ہے۔

(9)

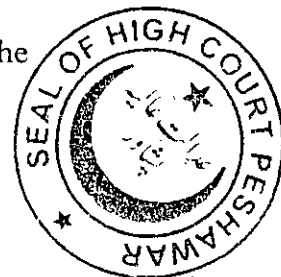
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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT
W.P. No.946-P/2019

JUDGMENT

Date of hearing: **09.07.2019**

Mr. Matiullah Khan Marwat, Advocate, for the petitioner.



ABDUL SHAKOOR, J. Petitioner,

Asmat Ullah, by invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has sought a declaration to the effect that Assistant Commissioner, Darra Adam Khel, FR Kohat was having no lawful authority to transfer his Khasadari services in favor of respondent No.3 vide order dated 05.11.2018 on the basis of opinion of Jirga which was having no existence after merger of erstwhile FATA with Khyber Pakhtunkhwa in view of 25th amendment in the Constitution of Pakistan, 1973 notified on 05.06.2018.

ER

ATTESTED

EXAMINER
Peshawar High Court

2. Precise grievance of the petitioner is that the Assistant Commissioner was having no lawful authority to transfer his longstanding Khasadari services vide impugned order dated 05.11.2018 in favour of respondent No.3 on the basis of opinion of Jirga as it was having no existence in view of 25th amendment in the Constitution of Pakistan, 1973, since on 05.06.2018 erstwhile FATA was merged with settled areas of Khyber Pakhtunkhwa.

3. This Court in view of the law point raised in the instant petition, issued pre-admissions notices to respondents No.1 and 2 and notice to the worthy Advocate General for today.

4. At the very outset of hearing, learned AAG appearing on behalf of the respondents No.1 and 2 when confronted with the aforesaid law point, he candidly conceded to it correct and agreed, the impugned order passed by the Assistant Commissioner, Darra Adam Khel, FR

5

ATTESTED

EXAMINER
Peshawar High Court

Kohat is having no existence in the eyes of law, as on that very day when he passed the impugned order, could not have act on the basis of opinion of Jirga for transferring the longstanding Khasadari services of the petitioner in favor of responded No.3. Even otherwise, the Apex Court has also declared vide judgment and order dated 31.12.2018 in the case titled, "National Commission on Status of Women through its Chairperson Vs. Government of Pakistan through its Secretary Law & Justice etc (C.P. No.24 of 2012), "the manner in which jirgas/panchayats etc. function is violative of Articles 4, 8, 10-A, 25 and 175(3) of the Constitution". When such being the case, we are left with no other option but to declare that the Assistant Commissioner, Darra Adam Khel, on the day when he passed the order of transfer of Khasadari services of the petitioner in favor of respondent No.3, in view of opinion of Jirga was

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ATTESTED

EXAMINER
Peshawar High Court

having no lawful authority to do so, as the Jirga system stood abolished on 05.06.2018 by way of 25th amendment in the Constitution of Pakistan.

5. For the foregoing reasons, we admit and allow the instant writ petition and declare the impugned order dated 05.11.2018 passed by the Assistant Commissioner, Darra Adam Khel, FR Kohat, is void ab-initio and non-est, hence, it is struck down accordingly. Consequently, petitioner's services of Khasadari are restored; however, he shall not be entitled for the wages during the period in which he remained out of service on the principle of "no work no wages", however, his aforesaid period shall be considered as leave without pay.

Announced
Dt:09.07.2019
(Muhammadullah)




JUDGE



JUDGE

(DB) Hon'ble Mr. Justice Mohammad Ibrahim Khan and Hon'ble Mr. Justice Abdul Shakoor

No. 2480
Date of Presentation of Application 21/7/2020
No of Pages 10-9
Copying fee _____
Total 40
Date of Preparation of Copy 21/7/2020
Date of Delivery of Copy 21/7/2020
Received By Asif Sarwar


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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Qanun-e-Shahadat Order 1984
21 JUL 2020

Some of the evidence was
in ATC Kohat.

70

IN THE COURT OF Mr.
SALEEM JAN JUDGE ANTI
TERRORISM COURT I /CAMP
COURT CENTRAL JAIL,
PESHAWAR.

Case No .61/ATC-I/2014

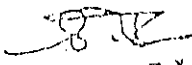
Date of
institution.....16.4.2014

Date of decision
.....7.10.2015

State

VERSUS

1. Syed Muharram Ali Shah S/O Syed
Habib Shah FVO Mohallah Sikandar
Khan City Kohat.
2. Ghazanfar Ali Shah S/O Syed Mazhar
Ali Shah R/O Mohallah Sikandar
Khan City Kohat.
3. Syed Abid Ali Shah S/O Syed Amjid
Ali Shah R/O Mohallah Sikandar
Khan City Kohat.
4. Haider Ali Shah S/O Farzand Ali
Shah R/O Mohallah Sikandar Khan
City Kohat.


Judge ATC-I
Peshawar.

Charge: Under Sections 302/324/353/34 PPC-r/w 7 ATA
1997 FIR No.1220 Dt: 18.11.2013 of P.S. City
Kohat.


Prosecution conducted by Faheem Khan
assisted by counsel for the complainant and

legal heirs of deceased Muhammad Saeed Khan
Advocate

Defence conducted by Jalal Ud Din Akbar Azam
Gara Advocate.

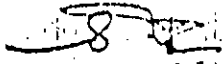
INDUCTION

1. The above mentioned accused faced trial in case F.I.R.No.1220 dated 18.11.2013. U/S 302/324/353/34 PPC r/w 7 ATA-1997 of P.S. City Kohat, District Kohat.
2. Brief facts of the case according to FIR Ex. PA are that complainant Mazhar Jehan SHO/Inspector alongwith other police contingent was present in Kohat City. In the wake of incident of *Muharram Ul Haram*, Rawalpindi today *Ahli-Sunat-w-Jumat*, defunct *Spah-Sahaba* as solidarity procession from Tehsil Gate to Shah Faisal Gate was arranged consisting of 350/400 persons. It was headed by Haider Wakeel. When the said procession reached Shah Faisal Gate, the participants of the procession got infuriated when Hafiz Sohail Mawana and Mulana Qazi Khwaja Muhammad made provocative speeches. during the said speeches, they made a demand that a temporary *chapar* erected for *Zulmah*(horse), in front of Syed Habib Shah Imam Bargah be removed. Unless and until it was not removed, participants of the procession would not go from there. DSP City informed them that a group of young persons comprising of 40/50 having flags sticks in their respective hands be blocked in




Judge ATC-I
Peshawar.

Zaman chowk. When he reached Milad Chowk. In spite of police obstruction the mob was moving towards the said Chapar. In the meanwhile accused facing trial namely Syed Ghazanfar Ali Shah armed with 12 bore Repeater, Syed Abid Ali Shah armed with Kalashnikov, Haider Ali Shah armed with Kalakov, Syed Muharram Ali Shah armed with 88 mm rifle from the roof top of the said Imam Bargah emerged and Syed Muharram Ali Shah threatened loudly the mob if they come forward a pace then they would be killed but the said mob continued their forward movement. Accused Syed Muharram Ali Shah ordered his accomplice for firing at the mob. Accused facing trial started firing at police party as well as participants of the mob. From their firing he and DSP Lal Farid Khan escaped un-hurt while gunner constable Noor Muhammad 1126 of DSP Lal Farid Khan and one Khair Ur Rehman sustained serious injuries and died on the spot. From the said firing Arshad, Mir Ahmad, Abdullah sustained injuries. The dead and injured were shifted to hospital immediately. Reinforcement was called to the spot. After reaching the reinforcement, the said Imam Bargah and residence were searched for the accused facing trial. In the Imam Bargah they arrested Syed Muharram Ali Shah with 88mm rifle No.297489 with fixed magazine loaded with 4 live rounds of the said bore. from Syed Abid Ali Shah one Kalashnikov body No.20815 with loaded magazine


 Judge ATC-1
 Peshawar

containing 15 live rounds of the same bore, from accused Haider Ali Shah a Kalakov body No. 7508 loaded with magazine containing 10 live rounds of the same bore, and from accused Ghazanfar Ali Shah a 12 bore Repeater loaded with 3 live rounds of the same bore without number were recovered. The police also recovered from the residence of one Mazhar Ali Shah different bore of weapons alongwith live rounds of various kind. Accused were arrested formally and a case was registered against them.

3. The I.O., after completion of investigation on 16.4.2014., submitted complete challan against accused facing trial in the court of Judge ATC, Kohat Division Kohat. Accused named above were summoned from District Jail, Kohat. Copies were provided to them U/S 265(C) Cr.P.C.
4. Formal charge was framed against accused named above by Judge Anti Terrorism Court, Kohat Division Kohat. The accused facing trial named above did not plead guilty to the charge and contested the charge and claimed trial.
5. On 27.5.2014., accused facing trial were shifted to Central Jail, Peshawar due to security reasons, and through a notification of Home Department, KP, declared a place of sitting for Anti Terrorism Court, Kohat.
6. On 25.9.2014. the instant case was transferred from the court of Judge ATC Kohat Division Kohat to this court vide order

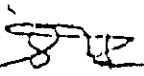

Judge ATC-I
Peshawar.

of Hon'ble Administrative/Monitoring Judge ATCs U/S 13(4) of the ATA-1997.

- 7. On 2.10.2014.. case file of the instant case was received from learned Judge ATC, Kohat Division Kohat.
- 8. Prosecution in support of its case examined twentyone(22) PWs and abandoned 14 PWs.
- 9. Before discussing the merits of the case I would like to produce the brief resume of the prosecution evidence. The detail of which is as under:-

Syed Muhammad Abdullah ASI(PW1) stated that during the days of occurrence he was posted as Muharrir ASI at PS City, Kohat. He received murassila sent by mazhar Jehan SHO P.S. City, Kohat through Peshawar Khan ASHO PS City Kohat on 18.11.2013. On the basis of which he chalked out FIR which is Ex PA. Today he has seen the contents of FIR which is correct and correctly bears his signature.

Akhtar Abbass LHC No.32(PW2) stated that during the days of occurrence, he was posted as Guard Commander of Imam Bargah Syed Habib Shah. At about 12 noon a procession of about 40/50 persons with *laties* were approaching towards Imam Bargah and they raised slogans against Shia sect. When the procession passed his point then firing started and the procession dispersed. Once the firing stopped they saw two dead bodies one of police man and one



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another of a private person. He saw one injured as well as the dead body and injured were shifted to the hospital.


Zeeshan Ali No. 500 (PW3) stated that during the days of occurrence he was posted as guard of Imam Bargah Syed Habib Shah. On the eventful day, he was present at his duty in the meanwhile a procession duly armed with daggers and *laties*. And upon reaching the procession started firing near the Imam Bargah. And he took shelter and noticed that the fire was coming from all four sides. As a result of firing the procession dispersed and he saw two dead bodies one of police official and one of private person and the other police contingent reached to the spot and shifted them to the hospital.

Muhammad Iqbal SHO/Inspector (PW4) stated that after completion of investigation by the I.O., the case file was handed over to him for onward submission in the court against accused Muharram Ali Shah nominated in the case.

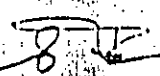
Mazhar Jehan Inspector (PW5) stated that on 18.11.13... due to the incident of clash between two sects at Rawalpindi, on that very day there was a procession of *Sepah-e-Subha*. That very procession of *Sepah-e-Subha* from Faisal Gate to King Gate (Faisal Gate). On reaching the King Gate, they made a sit in (Dhrana). One Sohail Mayvia leader of *Sepah-e-Subha* accompanied by Khawaja Muhammad made


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speeches. During their speeches, they demanded that a horse standing in front of Imam Bargah Syed Habib Shah be removed. He was informed by DSP Lal Farid Khan that some young chaps of the said procession are coming towards the *Chapper* where the horse is standing alongwith sticks. The young chaps were emotional, so on his stopping, they have not stopped and went towards the said *Chapper*. He alongwith DSP Lal Farid and other police contingents rushed to stop the young chaps, during this time, accused Muharram Ali Shah raised a *Lalkara* from the top of the boundary wall of the Imam Bargh of Syed Habib Shah. In the meanwhile, accused Muharram Ali Shah, Haider Ali Shah, Abid Ali Shah and Ghazanfar Ali Shah (accused facing trial) started firing at them. As a result of the said firing he and Lal Farid DSP escaped unhurt, while gunner/constable Noor Muhammad of DSP Lal Farid and constable Khiar Ur Rehman sustained serious injuries and died on the spot. Three persons namely Arsalhd S/O Shez Ali, Munir Akbar S/O Khista Gul and Abdullah S/O Muhammad Khalid sustained injuries from the said firing of accused facing trial. He ordered the police personnel on the spot to take the injured and dead body to the hospital for treatment and autopsy. He cordoned the spot. Later on the contingent of Pakistan Army and lady constable reached the spot, thereafter they entered the said



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Imam Bargah and overpowered all accused facing trial. He recovered from the possession of accused Ghaznfar Ali Shah one Repeater .12 bore Ex P-1, loaded with three cartridges Ex-P-2 of the same bore. He also recovered from the possession of Syed Abid Ali Shah one K.K., No. 20815-3 Ex P-3 alongwith fixed charger, containing 15 live rounds Ex P-4 of the same bore, from the possession of accused Haider Ali Shah recovered one Kala Kov. No.7508 Ex P-5 with fixed charger having 10 live rounds Ex P-6. From the possession of accused Muhram Ali Shah, 8mm rifle Ex P-7 model Bren Gun Model No.297489 with fixed charger having four live rounds Ex P-8 of the same bore having freshly discharged shell and sealed into different parcels. He formally arrested the accused facing trial. On further search of the *kota* of accused Mazhar Ali Shah, he recovered one rifle semi automatic No. 3P469 Ex P-9, one double barrel gun Ex P-10, two rifles 7mm Ex p-11 without numbers, another double barrel gun No.9204 Ex P-12, One Revolver P-13, one pistol .30 bore No.G110 P-14, two numbers spare charges with 18 live rounds Ex P-15 of the same bore with bandolier. Another .30 bore pistol No. 4469 Ex P-16 with fixed charger loaded with four live rounds Ex P-17, one pistol .30 bore No. 403815 without charger Ex P-18, one pistol .22 bore No.1205146 without charger Ex P-19, one bandolier Ex P-20


 Judge ATC-1
 Peshawar.

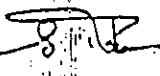
containing 25 live cartridges of 12 bore Ex P-21, 44 cartridges of 455 bore Ex P-22, 200 live rounds of 7.62 bore Ex P-23 and took into my possession vide recovery memo Ex PW 5/1 in the presence of its marginal witnesses. He also formally arrested all the accused facing trial vide Cards of arrest Ex PW 5/2. He also drafted murasila Ex PA/1. He vide his application (the carbon copy) Ex PW 5/3 sent the above mentioned case property to the Armorer expert for its opinion. The report of which is available on the file which is Ex PW 5/4. Thereafter he sent the murasila alongwith the accused and case property to the P.S., for registration of the case through Peshawar Khan ASHO/SI for the registration of the case. All the documents exhibit above are correct and correctly bear his signature. The I.O. prepared the site plan at his instance. I.O. also took photographs of the place of occurrence in his presence.

Muhammad Munir S/O Khlsta Gul (PW6) stated that on the days of occurrence i.e. 18.11.13., he came out of Government High Secondary School No.1, Kohat. At 12:00 P.M., he reached Doctor Rashid clinic, in the meanwhile he saw a procession of 25/30 persons alongwith the police contingent were coming towards Zuljinah place (where the horse was standing). The police were trying to stop the mob, but the police failed to do so, in the meanwhile the mob reached the place


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of Zuljinah. From the boundary wall of the Imam Bargah Syed Habib Shah and from the house of accused Mazhar Ali Shah Advocate, four accused namely Muharram Ali Shah, Ghazanfar Ali Shah, Haider Ali and Abid Ali Shah started firing, as a result of firing he along with three others including police official got hit. He was injured. His injury was on his right hand, thereafter he went to the hospital for medical treatment. He charge the accused facing trial for the commission of offence.

Abdullah S/O Muhammad Khalid (PW7) stated that on the day of occurrence i.e. 18.11.13., at 12:00 hours, he brought his aunt to the clinic of Dr. Rashid. He came out of the said clinic for call of nature. He saw a mob of 25/30 persons who were coming towards the place of Zuljinah/place of horse. The local police were trying to stop them. When the mob reached near to the place of horse/Zuljinah. Firing started from the top of Imam Bargah. Thereafter firing also started from the roof of the house of Mazhar Ali Shah Advocate. Accused facing trial namely Muharram Ali Shah, Ghazanfar Ali Shah, Abid Ali Shah and Haider Ali Shah fired at him and he got injured along with one police official and three others. He was taken to the hospital by the people of locality in Rickshaw for medical treatment. He was examined by the Police and his statement was also recorded by the Illaqa


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Judicial Magistrate. He charge all the four accused facing trial.

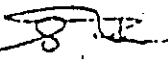
Wahid Zadin S/O Sher Zadin (PW8) stated that the deceased Arshid Khan was his brother. On 18.1.2013, his brother was killed by accused facing trial from the roof boundary wall of Syed Habib Shah Imam Bargah as well as roof and boundary wall of Syed Mazhar Ali Advocate, and he after due satisfaction charge the accused facing trial for the commission of offence. His statement to this effect was also recorded by the police as well as by the Illaqa Judicial Magistrate.

Numan S/O Amal Shah (PW9) stated that deceased Khair Aman was his son. On 18.11.13., his son was killed by accused facing trial from the roof boundary wall of Syed Habib Shah Imam Bargah as well as roof and boundary wall of Syed Mazhar Ali Advocate and, he after due satisfaction charge the accused facing trial for the commission of offence. His deceased son was a laborer who carried hand cart for transportation of goods. His statement to this effect was also recorded by the police as well as by the Illaqa Magistrate.

Lal Farid Khan DSP(PW10) stated that on the day of occurrence, he was supervising the police contingent at main Bazar, Kohat City of the procession of Sipah Suhaba. The procession started from Tehsil Gate and reached at King Gate where it tuned into a public meeting. Sohail Mavia and Mulana Qazi Muhammad Khwaja started speeches over there. They stated in

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their respective speeches that near Syed Habib Shah Imam Bargah a shed was made where a horse(Zuljinah) lied. They demanded that the said horse(Zuljinah) shall be removed immediately, if the Shia sect failed to do so, then they will forcibly removed the said horse(Zuljinah). A group consisting of 40/50 persons came out the said procession and proceeded towards the shed of horse(Zuljinah). He called the concerned SHO on mobile and wireless to stop the mob of 40/50 persons in the bazar of Zargran. He also chased them from the back. At Milad Chowk, Zargran Bazar, the SHO tried to stop them but he failed. When the mob reached near the said shed of horse(Zuljinah), from the roof of said Imam Bargah Syed Habib Shah, Muhram Ali Shah accused facing trial made a "LALKARA" to the mob as well as to the police contingents, but the mob was moving towards the said place. In the meanwhile accused facing trial namely Muhram Ali Shah, Ghazanfar Ali Shah, Abid Ali Shah and Haider Ali Shah started firing at mob and the police contingents. As a result of the said firing, his gunman Noor Muhammad constable as well as Khir ur Rehman, Arshad, Munir and Abdullah got hit and fell down. His gunman Noor Muhammad constable and Khir ur Rehman died on the spot, while Munir, Arshad and Abdullah shifted to hospital. Later on Arshad succumbed to his injuries in the hospital.


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As there was shortage of police contingents, he called on his pocket phone police *nafri* for re-enforcement. He alongwith his contingents available with him cordoned off the place of occurrence including Imam Bargah. In the meanwhile the police re-enforcement, as well as Pak Army, B.D.U., and lady constable reached the place of occurrence. They on mega phone commanded the accused to surrender, but they did not surrender to the police. Thereafter, the SHO alongwith the police *nafri* entered the said Imam Bargah and arrested the accused facing trial namely Ghazanfar Ali Shah, Muhrram Ali Shah, Haider Ali Shah and Abid Ali Shah alongwith the weapons of offence. He charged the accused facing trial for the commission of offence. His statement was recorded U/S 161 Cr.P.C., by the I.O.

Dr. Raza Ali, Women & Children LMH, Kohat(PW11) stated that on 18.11.2013., at 12:40 P.M., he examined injured Abdulah S/O Muhammad Khalid aged about 16/17 years, brought by police and found the following:-

The injured was conscious at that time

1. Fire arm entry wound on right left side of knee, exit on medial side of upper knee.

Weapon used fire arm.

He advised X-Ray right knee and then referred the patient to the Orthopedic Surgeon,

K.D.A., for further treatment. His report is Ex PW 11/1. Report later on.

Nature of injury..... grievous

Today he has seen his report which is correct and correctly bear his signature.

Dr. Sajjad Rauf CMO Women and Children Liaqat memorial Hospital Kohat(PW12) stated that on 18.11.2013., at 12:10 P.M., he examined Munir Ahmad S/O Mubashta Gul aged about 25/26 years brought by police and found the following:-

The injured was conscious.

1. He has got fire arm entry wound over the right elbow joint about 1cm in dia-meter. swelling seems at the site.


He advised him X-Ray right elbow, AP-Lateral view and referred the patient to Orthopedic Surgeon K.D.A. Hospital for further treatment.

The nature of injury at the time of examination was later on.

The duration between injured and examination was within 30 minutes.

The weapon used was fire arm.

His report is Ex PW 12/1.


Judge ATC-1
Peshawar.

Similarly he also examined injured Arshad Khan S/O Shiraz Ali aged about 28/29 years R/O Jandi Station Kohat at 12:25 P.M., on the same date brought by police., and found the following:-

The patient was conscious but confused.

1. He has got fire arm entry wound over the left Inguinal region about 1 cm in size.
2. Fire arm exit wound over the right renal area about 5cmx3 cm in size.

All muscles, skin and deep fascia all injured.

Patient serious, wound stitched, bleeding stopped and patient referred to V.S., K.D.A. hospital, Kohat for further management.

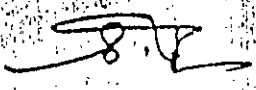
Nature was later on.

The duration between injury and examination was about 20/40 minutes.

The weapon used was fire arm.

His report is Ex PW 12/2 which is correct and correctly bear his signature.

Dr. Saleem Ullah, Medical Officer, KMC, Pesh:(PW13) stated that


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on 18.11.2013., at 11:00 P.M., he conducted autopsy over the dead body of Arshad S/o. Sher Zadin R/O Kohat aged about 22/25 years, brought by Manzar Ali constable No.367 from L.R.H., Surgical-A Ward, Peshawar, identified by Aqilza Din S/O Noor Zadin and Shairza Din S/O Speen Za Din R/O Kohat.

External Appearance.

A bearded man of average body built, wearing sky blue color *Qameez/Shalwar* and white *bunyan* which were blood stained with fire arm defects.

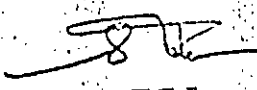
Post Mortem Levidity and R/mortus started developing. He examined the dead body and found the following :-

1. Fire Arm stitched entry wound .5 cm x .5 cm in size on the left and inguinal ligament middle part. It was 4cm in mid line.
2. Fire arm exit wound right side back of abdomen 5x3 cm in size, 12 cm from posterior mid line, 1 cm above the posterior superior iliac spine, it was stitched.
3. Surgically produced mid line laparotomy wound 13x 1 cm in size, it was stitched.
4. Surgically produced drain wound 1x2 cm in size, it was on the left side 3 cm below the coastal margin, 6 cm from mid line.
5. Surgically produced ileostomy wound on the right side of abdomen to which small intestine was stitched, it was 3x2 cm in size.

External Injuries

ABDOMEN

Wall, peritorum, small and large intestines were injured.


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Peshawar.

In his opinion the deceased died due to fire arm injuries. The deceased was hospitalized.

Probable time between death and P.M 2 to 3 hours.

His PM report is Ex PW 13/1 consisting of 6 sheets including pictorial, he also endorsed the Inquest Report which is correct and correctly bear his signature. Similarly, he also placed on file the treatment chart of the deceased and death summary which is Ex PW 13/2 consisting of six sheets.

Dr. Muhammad Farid Afridi DHQ hospital KDA(PW14) stated that on 18.11.2013., at 12:45 P.M., he conducted autopsy on the dead body of Noor Muhammad Khan S/O Khan Badshah R/O Swoor Gul Kohat gunner of Lal Farid DSP, aged about 31/32 years, brought by police personnel alongwith public and identified by Shahid Malook and Gul Janan .

EXTERNAL APPEARANCE

The deceased was stout dressed in police uniform. He started post mortem at 1245 hours till 1:00 P.M.

INJURIES.

1. Fire arm entry wound on over tip of left shoulder slightly posteriorly measuring

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M. J. ATCA

about half inch x half inch in size with corresponding entry wound over right hypochondria interiorly measuring about 1 inch x 1 inch in size.

INTERNAL INJURIES

THORAX

Walls, Ribs, and Cartilages, pleura, left lung, pericardium and heart along with blood vessels were injured.

ABDOMEN

Walls, peritoneum, diaphragm, large intestines and its contents, liver were found injured.

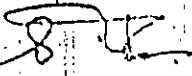
Muscles Bone

Corresponding muscles and bones injured.

In his opinion the deceased died of the injury to the vital organs like heart, lungs, and liver leading to shock cardiorespiratory arrest and death due to fire arm injury.

Probable time between injury and death.....Immediate.

Probable between death and P.M..... within two hours.


Judge J. M. C. A.
P. S. G. A. R.

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The dead body alongwith uniform and six pages P.M., report Ex PW 14/1. He also endorsed the inquest report and injury sheet Ex PW 14/2 and Ex PW 14/3. Today he has seen all the documents which are correct and correctly bear my signatures.

Similarly on 18.11.2013., at 1:45 P.M., he conducted autopsy on the dead body of Khiaar ur Rehman S/O Numan R/O Sadda Kurram Agency aged about 25/26 years, brought by police personnel alongwith public and identified by Waheed S/O Dad Gul R/O Sadda Kurram Agency, Shahid S/O Dad Gul.


EXTERNAL APPEARANCE:

The deceased was stout dressed in shalwar and qameez. He started post mortem at 1:15 PM till 1:45 P.M.

INJURIES:

1. A fire arm entry wound on over supra sternal notch measuring about 1/2 inch x 1/2 in size with corresponding exit wound over left flanges, posteriorly measuring 1 1/2 x 1 1/2 inch in size.

INTERNAL INJURIES


J. P. Peshawar

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THORAX

Walls, Ribs, Cartilages, left lung, pericardium and heart alongwith blood vessels were injured.

ABDOMEN

Large intestines and its contents, spleen, kidney left injured were found injured.

Muscles Bone

Corresponding muscles and bones injured.

In his opinion the deceased died of the injuries to the vital organs like heart, spleen, lungs leading to shock and death due to fire arm injury.

Probable time between injury and death.....Immediate.

Probable between death and P.M..... within two to three hours.

The dead body alongwith *shalwar qameez* six pages F.M., report Ex PW 14/4. He also endorsed the inquest report and injury sheet Ex PW 14/5 and Ex PW 14/6. Today he has seen all the documents which are correct and correctly bear his signatures


Judge ATC-1
Faisalwar

Yousaf Zaman HC(PW15) stated that after PM examination of deceased, their garments were handed over to him by the concern doctor and he have the same to the I.O. in the P.S, alongwith the injury sheets and P.M. reports. The I.O. took these items on recovery memo.

Din Muhammad S/O Khan Bad Shah (PW16) stated that deceased namely Noor Muhammad head constable was his brother. On the day of occurrence his brother Noor Muhammad deceased was performing his duty with DSP in Police Department. On 11.11.2013 his brother was martyred during duty. Now after complete satisfaction he came to know that his brother namely Noor Muhammad deceased head constable was killed by accused Muharrim Ali, Haider, Ali Shah, Ghazanfar Ali Shah, and Abid Ali Shah from the boundary wall of Imam Bargah Syed Habib Shah and house of Mazhar Ali Shah. He was also examined by the I.O. U/S 161 Cr.P.C. and also U/S 164 Cr.P.C. by the Illaqa Judicial Magistrate. He charge the above four accused for the murder of his late brother Noor Muhammad. The documents are correct and correctly bear his signatures and thumb impression.


Judge JCA
Peshawar.

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Shahid Salook S/O Salook Khan (PW17) stated that deceased Noor Muhammad was his brother-in-law. He had identified his dead body before doctor in KDA, hospital, Kohat.

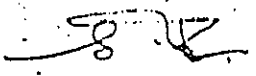
Amjid Hussain S.I.(PW18) stated that he is marginal witness to the recovery memo already Ex PW 5/1 vide which the then SHO Mazhr Jehan while made entry in the Imam Bargah, arrested accused facing trial namely Syed Ghazanfar Ali Shah alongwith Repeater, Syed Abid Ali Shah alias Bablu alongwith K.K, Syed Haider Ali Shah alongwith Kalakove, Syed Muhrram Ali Shah with Rifle 8mm Brengun with live rounds as mentioned in the recovery memo having fresh smell of discharge from each of the barrels of the weapons and took into possession, sealed into separate parcels as mentioned in the recovery memo.

Likewise vide the same recovery memo the then SHO Mazhar Jehan also recovered from the residential room of Mazhar Ali Shah one rifle semi


Judge (T.C.)
Deshmukh

automatic, shot gun double barrel, two rifle 7mm, shot gun double barrel, one revolver, one pistol .30 bore, alongwith spare charger and 18 live rounds and two bandoliers, .30 bore pistol with fixed charger, .30 bore without charger, pistol 22 bore, bandolier 25 live rounds of 12 bore, 44 Nos cartridges of 455 bore, and 200 live rounds of 7.62 bore as mentioned in the recovery memo already exhibited on 6.12.2014 as Ex PW 5/1. The recovery memo is correct and correctly bear his signature. His statement was also recorded by the I.O. U/S 161 Cr.P.C.

Razim SJ(PW19) stated that on the day of occurrence he alongwith the I.O. Ibrahim Ullah Khan Inspector proceeded to the spot wherein in his presence the I.O. took into possession blood through cotton from place of deceased constable Noor Muhammad Ex P-24, from the place of deceased Khir Ur Rehman Ex P-25, injured Arshad Ex P-26, Munir Ahmad Ex P-27, and Abdullah Ex P-28. Similarly in his presence the I.O. also


Judge ATC-I
Peshawar

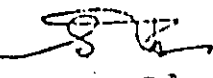
took into his possession 5 empties of 12 bore Ex P-29 from the place of accused Ghazanfar Ali Shah, 14 empties of 7.62 bore from the place of accused Abid Ali Shah Ex P-30, 13 empties of 222 bore from the place of accused Haider Ali Shah Ex P-31, 5 empties of 8 mm Ex P-32 from the place of accused Muhrram Ali Shah and the same were sealed into separate parcels in his presence through recovery memo Ex PW 19/1. Similarly, in his presence I.O., took into his possession the garments of deceased and injured which were produced by constable Yousaf Zaman, the same were sealed into four separate parcels which are Ex P-33 to Ex P-36 vide recovery memo Ex PW 19/2. Similarly in his presence, on 2.12.2013, accused facing trial while in hand cuffs in an official vehicle pointed out the different places where they were standing at the time of occurrence. The memos are correct and correctly bear his signatures.


Judge
Peshawar

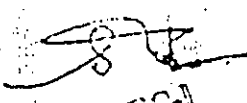
Ibrahim Ullah Inspector/
I.O.(PW20) stated that during the days

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of occurrence, he was posted as incharge Circle Investigation Officer City, Kohat. After receiving the information, regarding the registration of the present case. He came to P.S., from Rescue-15, and the case FIR was handed over to him. He proceeded to the spot alongwith Investigation Staff as a Joint Investigation Team was already constituted. He prepared the site plan Ex PB at the instance of complainant Mazhar Jehan the then SHO P.S. City. During spot inspection, he obtained blood through cotton from the places of deceased constable Noor Muhammad, Khisar ur Rehman, Arshid, and injured, Munir Ahmad and Abdullah. Vide recovery memo already Ex PW 1971 and sealed the same in separate parcel in the presence of its marginal witnesses. Similarly, he also took into possession from place of accused Ghazanfar Ali five empties of 12 bore, from place of accused Syed Abid Ali Shah 14 empties of 7.62 bore, from place of accused Haider Ali Shah 13 empties of 7.62 bore, and


Judge
Peshawar.

from the place of accused Muhrram Ali Shah 5 empties of 8mm were recovered and sealed the same into different parcels in the presence of its marginal witnesses vide recovery memo already Ex PW 19/1. He also recorded the statements of PWs U/S 161 Cr.P.C. Vide recovery memo already Ex-PW 19/2, he took into possession blood stained garments of deceased constable Noor Muhammad uniform consisting of black shirt, black sweater, khaki patloon. One another blood stained shirt of injured Munir Ahmad. One shalwar of khar(grey) color which was blood stained belonging to deceased Khar Ur Rehman. Similarly, he also took into his possession blood stained shalwar and Qameez of the then injured Arshad which were produced by Yousaf constable, he sealed the same into different parcels in the presence of its marginal witnesses. Vide his application Ex PW 20/1, he sent the recovered empties, and case property to the fire arm expert, the receipt of which is Ex PR/1, and the report of the same



 Judge A.C.C-1
 Peshawar

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placed on file which is Ex PW 20/2 (consisting of two sheets).

Similarly, vide his application Ex PW 20/3, he also sent the recovered blood stained garments alongwith blood stained cotton of deceased and injured to FSL, the report of which is placed on file Ex PW 20/4. Receipts of which is Ex PR. Likewise, he also took photographs of the different places of the place of occurrence and placed on file consisting of sixteen in number which is Ex PW 20/5. Vide his application Ex PW 20/6, he produced all accused facing trial for obtaining their police custody, and the court concerned granted fourteen days police custody. He interrogated the accused. He recorded their statements U/s 161 Cr.P.C., they admitted their guilt.

The accused facing trial led the police party to the place of occurrence and pointed out different places where they were present at the time of occurrence. the pointation memo is already Ex PW 19/3, and he made entry

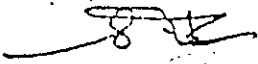


Judge MJC-1
Peshawar.

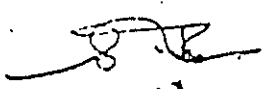
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in the site plan with the red ink which is Ex PW 20/7.

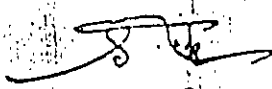
He also placed on file P.M reports of the deceased, and similarly the MLC reports of the injured. Vide his application Ex PW 20/8 for obtaining mobile data of accused facing trial to the quarter concerned and the mobile data placed on file is Ex PW 20/9 (consisting of Eighteen sheets). According the Ex PW 20/9, the location of accused facing trial at the relevant time was established at the place of occurrence. He also produced the injured persons Munir Ahmad and Adullah vide my application Ex PW 20/10 for recording their statements U/S 164 Cr.P.C.; in the court of *Illaga* Judicial Magistrate, their statements are placed on file which are Ex PW 20/11 to Ex PW 20/12. He also recorded the statements of the legal heirs of the deceased U/S 161 Cr.P.C. Vide his application Ex PW 20/13, he got recorded the statements of legal heirs of deceased namely Din Muhammad Shah brother of deceased


Judge ATC-I
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Noor Muhammad, Mr. Numan F/O deceased Khair Ur Rehman, Wahid Zadeen brother of deceased Arshad U/S 164 before the court of Illaqa Judicial Magistrate vide Ex PW 20/14. He also got recorded the statements of the shopkeepers adjacent the place of occurrence U/S 161 Cr.P.C. After the expiry of police custody of accused facing trial, he produced them before the Illaqa Judicial Magistrate for their confessional statements vide his application Ex PW 20/15, but they did not confess their guilt and, the concerned court sent them to judicial lockup. During investigation, he sent application to the concerned authority for verification of arm licences of accused facing trial issued in the name of Syed Muharram Ali Shah for 222 bore and 8mm rifle, the report of which is placed on file, and the same is Ex PW 20/16. He also placed on file the daily diary No.10 dated 17.11.2013 through which one Wajid Nazeer reported that when he was coming, the accused Abid


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Ali Shah, Waqar, Asad, Ali Haider and five other un-known persons assaulted him which is Ex PW 20/17. Similarly he also placed on file the Daily Diary Nos.3,4 and 5 dated 18.11.2013, regarding arrival and departure of ASI Nazar Abaas P.S. City regarding producing one of the accused Syed Abid Ali Shah before the court who was challenged U/S 107 Cr.P.C., to the concerned court, and returned back of the concerned ASI after he was released on bail by the concerned court which are Ex PW 20/18. The timing of arrival and departure is mentioned in the Daily Diary. All the case property of the present case had already exhibited. All the documents are correct and correctly bear his signatures.


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Gul Shehzada SI, LRH(PW21) stated that on 18.11.2013., one Arshad Zareen S/O Sher Zareen aged about 22/23 years R/O Kohat who was brought in injured condition to L.R.H., Peshawar as he was referred from Kohat hospital. He was admitted in Surgical Ward,

however he succumbed to his injuries on the same day i.e. at night time. He has prepared his injury sheet and inquest report which are Ex PW 21/1 & Ex PW 21/2 respectively. Today he has seen both the documents which are correct and correctly bear his signatures.

Akbar Shah S.I.(PW22) stated that during the days of occurrence he was posted at P.P., political sarai cantt, Kohat. He prepared the injury sheets of injured Munir Ahmad, Abdullah and Arshad of the present case which are Ex PW 22/1 to Ex PW 22/3. The documents are correct and correctly bear his signatures.

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- 10. After the close of prosecution evidence, accused facing trial were examined U/S 342 Cr.P.C. in which they opted not to be examined on oath nor wish to produce any defence evidence, and professed that they are innocent and falsely charged in the present case.
- 11. After close of prosecution evidence and statement of accused recorded U/S 342 Cr.P.C., it transpires to the undersigned that due to clerical mistake formal charge in the instant case has wrongly been

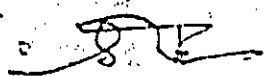
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framed. So on 01/09/2015 afresh charge was framed after close of prosecution evidence and statement of accused recorded U/S 342 Cr.P.C. Both the prosecution and defence counsel relied on the already recorded evidence and statement of accused U/S 342 and in this regard their joint statement recorded, placed on file.

12. I had already heard the arguments of the learned Prosecutor for the state and counsel for the defence.

13. Learned PP for the state assisted by learned counsel for injured private PWs and legal heirs of three deceased contended in their arguments that all the accused facing trial Syed Muharram Ali Shah, Syed Ghazanfar Ali Shah, Syed Abid Ali Shah and Syed Abid Ali Shah are directly charged in the FIR for the cold blood murder of constable Noor Muhammad, Khair ur Rehman and Arshad. They are further charged for effective firing at Muhammad Munir and Abdullah (PWs). They are further charged for firing at the police party.

14. During the trial all the PWs had supported story of the prosecution. There is no major contradictions in their statements, nor their statements are based on any improvements.


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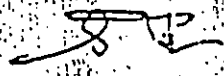
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The FSL report and P.M. reports placed on file fully supports story of the prosecution. Stamp of injuries on the injured PWs further strengthen case of the prosecution. The site plan also supports story of the prosecution. So in these circumstances the prosecution had proved its case beyond shadow of doubt. Thus all the four accused mentioned above be convicted for charges leveled against them.

15. In rebuttal learned counsel for defence contended in his arguments that in the present case time of occurrence is shown as 1200 hours and the time of report has shown as 1400/1500 hours, therefore, there is an un-explained delay in lodging the report. He further contended in his arguments that there is major contradictions in the statements of all the PWs. The two eye witnesses Akhter Abbas No.32 P.S. Usterzai(PW2) and Zeeshan Ali No. 500 Police Lines Kohat had not uttered a single word to the effect that they saw all the accused facing trial firing at the police party as well as on the mob. The learned counsel for defence further contended in his arguments that medical evidence also does not support the story of the prosecution. It is not in line with the ocular

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evidence because the Post Mortem report of all three deceased reveals that there is one entry wound. A lot of empties were recovered from the spot and the prosecution alleged that all accused facing trial fired indiscriminately. He further contended in his arguments that the injured witnesses(PW 6 & 7) had not identified accused facing trial, but later on they charged accused facing trial in their statements recorded U/S 161 and 164 Cr.P.C., and they had charged them after due satisfaction. The I.O. failed to conduct Identification Parade from these injured witnesses in respect of all accused facing trial. He further contended in his arguments that the site plan Ex PB also does not support story of the prosecution. So in these circumstances prosecution had miserably failed to prove its case against all the accused facing trial. Thus benefit of doubt be extended to accused facing trial and they be acquitted from the charges leveled against them.


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16. The prosecution case rests on the following categories of evidence:-

- (i) Ocular testimony furnished by Akhter Abbas LHC(PW2) and Zeeshan Ali constable No.500(PW3), Mazher Jehan

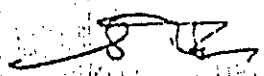
Inspector/complainant(PW5) and Lal Farid DSP(PW10)

(ii) Injured PWs namely Muhammad Munir (PW6) and Abdullah(PW7).

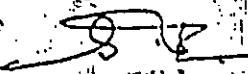
(iii) P.M. reports Ex PW 13/1, Ex PW 14/1 & Ex PW 14/2, FSL report Ex PW 20/1, Ex PW 20/2, Ex PW 20/3, Ex PW 20/4 and site plan Ex PB.

(iv) I have given my anxious thoughts to the arguments of learned counsels for the parties.

17. According to story of the prosecution on the tragic day i.e. 18.11.13., due to the incident of clash between two sects at Rawalpindi, on that very day there was a procession of Sepah-e-Subha. That very procession of Sepah-e-Subha from Tehsil Gate to King Gate(Fisal Gate). On reaching the King Gate, they made a sit in(Dhrana). One Sahail Mayvia leader of Sepah-e-Subha accompanied by Khawaja Muhammad made speeches. During their speeches, they demanded that a horse standing in front of Imam Bargah Syed Habib Shah be removed. He was informed by DSP Lal Farid Khan that


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some young chaps of the said procession are coming towards the Chapper where the horse is standing alongwith sticks. The young chaps were emotional, so on his stopping, they have not stopped and went towards the said Chapper. He alongwith DSP Lal Farid and other police contingents rushed to stop the young chaps. during this time, accused Muharram Ali Shah raised a Lalkara from the top of the boundary wall of the Imam Bargh of Syed Habib Shah. In the meanwhile, accused Muharram Ali Shah, Haider Ali Shah, Abid Ali Shah and Ghazanfar Ali Shah (accused facing trial) started firing at them. As a result of the said firing he and Lal Farid DSP escaped un-hurt, while gunner/constable Noor Muhammad of DSP Lal Farid and constable Khair Ur Rehman sustained serious injuries and died on the spot. Three persons namely Arsahd S/O Shez Ali, Munir Akbar S/O Khista Gul and Abdullah S/O Muhammad Khalid sustained injuries from the said firing of accused facing trial. He ordered the


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police personnel on the spot to take the injured and dead body to the hospital for treatment and autopsy. He cordoned the spot. Later on the contingent of Pakistan Army and lady constable reached the spot, thereafter they entered the said Imam Bargah and overpowered all accused facing trial.

18. In the present case there are two set of witnesses. The first set is of police witnesses who are also eye witnesses in the present case. The second set is of injured PWs.

19. First of all I will discuss the set of eye witnesses.


20. (PW5) Mazher Jehan admitted in his statement that five police personnel were guarding Imam Bargah. During the trial the police guards who were guarding the Imam Bargah Akhtar Abbas and Zeeshan Ali were examined by the prosecution as (PW2) and (PW3). Akhter Abbas was examined in the court as (PW2) stated before the court during the days of occurrence he was posted as guard Commander of Imam Bargah Syed Habib Shah. At about 12 noon a procession



of about 40/50 persons with lathies were approaching towards Imam Bargah and they raised slogans against Shia sect. When the procession passed his point then firing started and the procession dispersed. Once the firing stopped they saw two dead bodies one of police man and another of a private person. He saw one injured as well as the dead body and injured were shifted to the hospital.

21. This witness further stated in his cross examination that it is correct that Muharran Ali Shah has left the Imam Bargah in the morning of 18.11.2013. He has not seen Muharran Ali Shah returning to Imam Bargah before the occurrence.

22. Zeeshan Ali No. 500 examined in the court as (PW3) stated in his examination in chief that during the days of occurrence he was posted as guard of Imam Bargah Syed Habib Shah. On the eventful day, he was present at his duty in the meanwhile a procession duly armed with daggers and lathies. And upon reaching the procession started firing near the Imam Bargah. And he took shelter and noticed that the fire was coming from


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all four sides. As a result of firing the procession dispersed and he saw two dead bodies one of police official and one of private person and the other police contingent reached to the spot and shifted them to the hospital.

23. So in these circumstances I hold that these witnesses are natural witnesses and were present at the time of place of occurrence but they have not uttered a single word about the accused facing trial.

24. Mazhar Jehan, Inspector/Complainant (PW5) further stated before the court during the trial that he handed over all the accused and ammunitions recovered to Peshawar Khan Additional SHO for onward transmission to the P.S.

25. Mazhar Jehan (PW5) further stated that he sealed the weapons recovered from the possession of accused facing trial. This stance of this witness is again negated by (PW1) Syed Abdullah ASI. When he received the murasila he incorporated into FIR. In cross examination he stated that when Peshawar Khan Additional SHO (abandoned PW) brought the case property and accused

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facing trial to the P.S., he kept the case property in an un-sealed condition in the *Mall khana* of the P.S., which was required for examination. He further stated in his cross examination that case property might have been sealed after Armourer examination by the I.O. He then admits that he was incharge of Register 19 and the I.O. took the case property on 22.11.2013 and returned to him after sealing it.

26. So in these circumstances the possibility can not be ruled out that the I.O. himself later fired through planted weapons and sent the empties alongwith weapons to FSL to procure the positive report. This positive report has been fabricated against the accused facing trial even otherwise positive report of Fire Arm Expert is only a corroborative piece of evidence and by itself is not considered sufficient for conviction when ocular evidence is discarded.

27. Perusal of the statements of Mazhar Jehan Inspector (PW5) and Lat Farid DSP(PW/10), their statements are full of contradictions and improvements, and according to the


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statements of (PW2) Akhter Abbas and (PW3) Zeeshan Ali, their presence i.e. PW-5 Mazher Jehan Inspector/complainant and PW-10 Lal Farid DSP at the time of place of occurrence is highly doubtful because these witnesses had not uttered a single word to the effect that PW-5 Mazhar Jehan Inspector and Lal Farid (PW10) were present at the time, place and firing by the accused facing trial.


28. Perusal of the record reveals that Peshawar Khan ASHO was abandoned un-necessary by the prosecution and adverse inference has drawn against the prosecution that Peshawar Khan ASHO being examined he would have not supported the version of the prosecution story. As the prosecution challenged the arrest of accused facing trial from the place of occurrence and recovery of weapons from their possession, then Peshawar Khan ASHO was an important witness for the case of the prosecution.

29. Now I will discuss the two injured witnesses.

Presence of injured witnesses can not be challenged, however it is testimony which requires scrutiny whether they are telling


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the truth or not? The two injured witnesses in present case are Muhammad Munir and Abdullah. They were examined during trial as PW6 and PW7 respectively. Muhammad Munir(PW6) remained in the hospital for two days and Abdullah (PW7) for one day. As per their replies in cross examination statements of both of them were recorded on 26.11.2013.. at a belated stage. If they had received injuries in the manner as depicted by them then question of identity of the accused arises. Both witnesses have charged the accused facing trial by name in their depositions in this court. However, when Investigating officer (I.O being king of every case) of the case, PW-20, Ibrahim Ullah Inspector was confronted with the statements recorded by him U/S 161 Cr.P.C., and later their production for statements U/S 161 Cr.P.C., before the learned Magistrate, both the injured witnesses had stated they had charged them only after due satisfaction. Now, if a person/accused is not known to one, then holding of Identification Parade is essential to arrive at the correct identity of any of


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accused. In the instant case the injured witnesses and the I.O. PW20 have admitted that no such exercise was conducted. The I.O., so boldly replied during cross examination on page 36(10th line from the top) " *That he has already placed on file the photographs of accused facing trial, therefore, it was not necessary to conduct the same*". The I.O. of the case has scant regard to the well settled principles of law governing the subject laid down by the Superior Courts. This by itself speaks of the dishonest investigation carried out against the accused facing trial, their later implication in the case, fabrication of evidence against them. Even the legal heirs of the deceased namely Wahid Zadin, Nauman and Din Muhammad Shah, who are examined as PW8, PW9 and PW16 respectively, have admitted in their cross examination that they charged the accused facing trial after their arrest and when police showed them the names.

30. So in these circumstances I hold that the two injured PWs namely Muhammad Munir and Abdullah (PW6) & (PW7) had not

identified all the four accused facing trial at the time and the place of occurrence.

31. Perusal of the record further reveals that the I.O., failed to conduct the Identification Parade of these two PWs i.e. (PW6) & (PW7) from all accused facing trial.

32. I.O., of the case Ibrahim Ullah Inspector examined in the court as (PW20) stated in his cross examination that he has recorded the statements of shopkeepers Farid Ahmad, Yaseen, Rehan, Haq Nawaz, Shuja and Muhammad Anwar U/S 161 Cr.P.C. The shops are situated on the left gate of Imam Bargah. In the said statements of the PWs firing are mentioned, but the names of the accused are not mentioned. Therefore, I hold that they were natural witness of the occurrence.

33. As far as medical evidence is concerned also does not support the story of the prosecution because medical evidence is and considered always as confirmatory nature of evidence. In the instant case the medical evidence has negated and belied the ocular account. All the victims of the case have received solitary wound each. If

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sustained only when firing was made by anyone standing or posted on the road.

35. PW 5 Mazher Jehan Inspector/Complainant of the case admitted in his cross examination that the site plan Ex PB was prepared at his pointation to the extent of dead bodies only. Then question arises who then showed the places where accused were present, where injured were present and the police party. In the site plan Ex PB first all the accused facing trial are shown at Point No.7,8,9, & 10 respectively. However, to justify the recovery from roof top of Mazher Ali Shah house, later two accused are shown at Points No.A and 10A. Strangely neither in the murasila nor in the statement of Mazher Jehan (PW5) he stated any thing about firing from points No.A and A10. Therefore I hold that site plan Ex PB also does not support story of the prosecution.

36. There is also un-explained delay of lodging of FIR by the prosecution and the delay has not been explained in the murasila nor in the evidence.

37. As discussed above and according to statements of (PW2) and (PW3) the presence of Mazher Jehan complainant of the case (PW5) and Lal Farid DSP(PW10) are highly doubtful and injured PWs Muhammad Munir(PW6) and Abdullah(PW7) had not identified all the accused facing trial at the time of firing.

38. As a result of my above discussion I hold that the prosecution had failed to prove its

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case against all the accused facing trial Syed Muharram Ali Shah, Syed Ghazanfar Ali Shah, Syed Abid Ali Shah and Haider Ali Shah. Thus the benefit of doubt is extended to all of them, and they are acquitted from the charges leveled against them. They are in custody, they be released forthwith if not required in any other case.

- 39. Case property if any be kept intact till the expiry of period of appeal/revision.
- 40. Attested copy of this judgment be given to the learned PP free of cost.
- 41. File be transmitted to the Hon'ble Peshawar High Court, Peshawar U/S 25 of the ATA-1997.

ANNOUNCED
Dated:- 7.10.2015

(SALEEM JAN)
Judge
Anti-terrorism Court-
I/Camp Court Central Jail,
Peshawar.

CERTIFICATE

Certified that, this Judgment consists of Fortyseven(47)pages. Each page is checked and signed by me.

Dated:-7.10.2015 -

(SALEEM JAN)
Judge
Anti-terrorism Court-
I/Camp Court Central Jail,
Peshawar.

Syed Muhammad Abdullah and two others Vs Police

This judgment shall dispose of the instant service appeal as well as connected service appeals no – and --- as common question of law and facts are involved therein.

Brief facts of the case are that the appellant, while serving as Assistant Sub Inspector in Police Department, was proceeded against on the allegations of recording wrong statement before the trial court in case FIR No 1220 dated 18-11-2013, which allegedly resulted into release of the terrorist on such statement. As a result of disciplinary proceedings, major penalty of dismissal from service was imposed upon the appellant vide order dated 07-01-2016. After availing departmental remedy, the appellant filed appeal in this Tribunal vide Service Appeal No 259/2016, which was decided in favor of the appellant vide judgment dated 04-12-2017 with directions to the respondents to conduct de-novo inquiry. As a result of de-novo proceedings, the appellant was re-instated in service with imposition of minor penalty of forfeiture of approved service of up to 2 years as well as treating the intervening period as leave without pay vide order dated 04-05-2018. Feeling aggrieved, the appellant filed departmental appeal dated 11-05-2018, which was rejected vide order dated 13-07-2018, hence the instant service appeal with prayers that the impugned order dated 04-05-2018 may be set aside and the appellant may be restored to his original position with all back benefits.

Learned counsel for the appellant has contended that the de-novo proceedings has been conducted in total violation of the judgment of this Tribunal, as the appellant was neither issued with any charge sheet/statement of allegation nor did provided appropriate opportunity of defense; that no chance of personal hearing has been afforded nor provided fair opportunity of trial as is guaranteed by Article 10-A of the Constitution; that no pro and contra evidence has been collected by the inquiry officer nor did opportunity of cross-examination has been provided which is mandatory as per rule and law; that the appellant was not provided copy of the inquiry report, hence the appellant was unable to furnish relevant reply to the show cause notice; that the appellant has been condemned unheard and the penalty imposed is discriminatory. The learned counsel prayed that on acceptance of the instant appeal, the impugned order dated 04-05-2018 may be set aside to the extent of imposition of minor penalty and the appellant may be restored to his original position with all back benefits.

Learned ----- appearing on behalf of official respondents has contended that the appellant while posted as Moharar was a marginal witness in a heinous crime; that the appellant delebrately recorded wrong statement in trail court, which benefited the accused to the extent that they were acquitted of the charges; that the appellant was proceeded against on such charges which culminated into his dismissal; that in light of judgment of this Tribunal, the appellant was re-instated in service and de-novo proceedings were conducted as per rule and law; that the appellant was associated with the inquiry proceedings and was afforded every opportunity of defense but he failed to prove his innocence. The learned ----- prayed that the instant appeal being devoid of merit may be dismissed.

We have heard learned counsel for the parties and have perused the record. Main allegation leveled against the appellant was that while recording statement before the trial court u/s 164 CrPc, he willfully resiled from his earlier statement recorded u/s 161 CrPc, which resultantly led to acquittal of the accused. Based on such allegations, the appellant was proceeded against but the appellant abated such allegations, rather blamed the prosecution for such failure, even so the appellant was dismissed from service. The appellant, after availing the remedy of Service Appeal was again subjected to de-novo proceedings and charge sheet/statement of allegation were served upon the appellant with the same allegations, upon which the appellant was removed from service earlier and to which the appellant responded in the same description, which he had furnished in an earlier proceedings, but this time, his major penalty of dismissal was converted into minor penalty of forfeiture of approved service for two years as well as the intervening period was treated as leave without pay. We are unable to understand as to what yardstick was accustomed for de-escalating his penalty, inspite of the fact that allegations were the same and reply was also the same. Placed on record is an epitomic inquiry report, which does not contain any such information to determine as to whether the allegations were proved otherwise or the earlier proceedings had overrated such allegations. The inquiry report also does not contain any solid evidence or statements of witnesses to corroborate that sole reason for acquittal of the accused was statement of the appellant nor we found that the appellant was afforded opportunity to cross-examine witnesses. To us it was an eye wash and fulfillment of a codal formality, wherein the proceedings so conducted were alter ego of the earlier proceedings. The main issue in question was failure on part of the respondents to win over the case against the accused, but such failure was attributed solely to the statement of the appellant, whereas other important actors like public prosecutors, DSP, SHO and ASHO were ignored, despite the fact that serious reservations had been raised by the Anti-terrorist Court in Para 27-28 of the judgment dated 07-10-2015 regarding their dubious role, which was discriminatory. Besides, statement recorded u/s 161 CrPc has no evidentiary value in the eye of law, hence deviation if any, from such statement would carry no meaning before the court of law and penalizing the appellant for such an allegation would amount to miscarriage of justice.

We are of the considered opinion that the appellant was not treated in accordance with law, rather he was discriminated. The de-novo proceedings were also replete with deficiencies, as the investigations were only confined to the extent of the appellant and ignored other important factors, which were mainly responsible for such failure. In view of the fore-going, the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.