

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 353/2013

Date of institution ... 05.01.2015

Date of judgment 25.05.2016

Muhammad Haroon Khan
S/o Muhammad Farid Khan
R/o Village Gidarai, Tehsil and District Battagram.
Ex-Drawing Master, GMS Bartoni, Mansehra.

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. The District Coordination Officer now Deputy Commissioner, Mansehra.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR REINSTATEMENT OF THE APPELLANT INTO SERVICE AND FOR ALLOWING HIM THE CONSEQUENT RETIREMENT AND PENSIONARY BENEFITS ETC ON ATTAINING THE AGE OF SUPERANNUATION FOR WHICH APPELLANT FILED DEPARTMENTAL APPEAL BEFORE THE APPELLATE AUTHORITY BUT THE SAME HAS NOT YET BEEN DECIDED.

Mr. Khaled Rahman, Advocate.

.. For appellant.

Mr. Usman Ghani, Senior Government Pleader.

.. For respondents.

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

MR. PIR BAKHSH SHAH

.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:-

Facts giving rise to the instant appeal are that

the appellant was appointed as Drawing Master on 13.12.1978. That in the year 1999, appellant was falsely implicated in a murder case vide FIR No. 128 dated 14.04.1999 due to family animosity of relatives and was thus arrested in pursuance of the FIR. That after

the arrest of the appellant he was suspended w.e.f. 26.06.1999 vide order of the even date, which suspension was continued/extended vide orders dated 05.06.2000, 13.09.2000, 07.12.2000 and 05.06.2001 abut thereafter, the suspension was not extended vide entries at page 13 & 15 of the Service Book ibid. That subsequently appellant was challan to the Court of Session Judge, Battagram and after conclusion of the trial he was convicted and sentenced to death vide judgment dated 23.06.2001. Being aggrieved of the judgment, appellant filed Criminal Appeal before the Peshawar High Court, Abbottabad Bench, which was partially allowed vide judgment dated 19.02.2003 and the death sentence was converted into life imprisonment. Being further aggrieved, appellant yet preferred another appeal before the Supreme Court of Pakistan, which was also partially allowed and the sentence was further reduced vide judgment dated 07.12.2001. In pursuance of the judgment of the Hon'ble Apex Court, the appellant was later on released from captivity after serving the sentence. That the date of birth of the appellant is 01.01.1952 and therefore his date of retirement falls on 01.01.2012, on which date the appellant was behind the bars. That after the release, appellant preferred department appeal before the appellate authority for reinstatement and consequent retirement and pensionary benefits etc. but the same has not yet been decided, hence this appeal with a prayer that on acceptance of the instant appeal, the appellant may graciously be reinstated into service and be consequently allowed retirement on attaining the age of superannuation and the consequent pensionary benefits etc for the service appellant rendered.

2. The learned counsel for the appellant argued that respondents had not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article-4 of the Constitution of Islamic Republic of Pakistan. He further argued that appellant had at his credit 22 years regular, continuous and meritorious service record and was entitled for pensionary benefits under the rules keeping in view the peculiar facts and circumstances of the case. He further argued that appellant was first suspended from service which was not extended hence as per rule-6 of the E & D Rules 2011 stand reinstated in service. He further argued that the appellant had not been terminated from his service therefore on the date of retirement on attaining the age of superannuation, the

Q.F.1

appellant was a civil servant and stood entitled for retirement benefits under the rules adding further that the offence which the appellant was charged with was not one of moral turpitude and therefore the same did not fall within the definition of misconduct as per rule-2 (1) (vii) of the E & D Rules 2011 therefore was entitled for reinstatement and retirement benefits. He prayed that on acceptance of the instant appeal the appellant may be reinstated in service and may consequently be allowed retirement on attaining the age of superannuation and to consequent pensionary benefits for the services he rendered.

3. The learned Senior Government Pleader resisted the appeal and argued that the appellant had been convicted by the competent court of law which was modified by the Hon'ble High Court to that of life imprisonment. He further argued that the appeal before august Supreme Court of Pakistan also met with the same fate and the conviction remained intact. The learned Senior Government Pleader contended that the departmental appeal before the appellate authority was barred by time hence the appeal before the Service Tribunal is automatically time barred particularly when there is no application for condonation of delay. The learned Senior Government Pleader further contended that the appellant reached to the age of superannuation on 01.01.2012 the date on which the appellant was behind the bar and instituted the instant service appeal after his superannuation. The learned Senior Government Pleader requested that the appeal may be dismissed as all codal formalities have been fulfilled and the impugned order is commensurate with the gravity of misconduct committed by the appellant.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that the appellant was appointed as Drawing Master in 1978 and was criminally proceeded in case FIR No. 128 dated 14.04.1999 which culminated into death sentence and on appeal there-against the same was converted into life imprisonment by the Peshawar High Court. The said sentence was reduced by the Supreme Court of Pakistan vide judgment dated 07.12.2011. The appellant while undergoing imprisonment superannuated on 01.01.2012 and thereafter released from jail after serving the imprisonment. He approached the departmental authority for reinstatement and consequent retirement and pensionary benefits which were not decided hence his resort to

the Tribunal. From perusal of the record the Tribunal is of the view that the appellant was criminally proceeded for his involvement in a murder case for which he was punished by the competent courts of law. In so far as conduct of departmental proceedings are concerned, he was initially suspended from service which was not further pursued by the departmental authority as the record is silent in this regard. The claim of the appellant to have got retired as a civil servant and his claim for formal retirement on superannuation and payment of pensionary benefits requires to be looked into by the departmental authority in light of relevant law/rules. In the circumstances, we deem it appropriate to remit the case to the respondent-department with direction to examine the pending departmental appeal of the appellant on its merits strictly in accordance with law and rules and decide the same within a period of 60 days after the receipt of this judgment. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.05.2016



(PIR BAKHSI SHAH)
Member



(ABDUL LATIF)
Member

24.4.2015

Appellant in person and Mr. Ziaullah, GP with Javed Ahmad, Supdt. for the respondents present. Counsel for the appellant is not available. To come up for arguments on 24.11.2015.



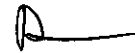
MEMBER



MEMBER

24.11.2015

Counsel for the appellant and Addl: AG for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I. Khan. Therefore, the case is adjourned to 22/4/16 for arguments.



Member

22.04.2016

Counsel for the appellant and Mr. Usman Ghani, Sr. GP for respondents present. Arguments heard. To come up for order on 17.05.2016.



Member



Member

28.3.2014

Counsel for the appellant and Mr. Khurshid Khan, SO for respondents with AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. A last chance is given for written reply/comments on 30.6.2014.


Chairman

30.6.2014

Clerk of counsel for the appellant and AAG for the respondents present. Neither written reply has been received on behalf of the respondents nor representative of the respondents is present despite last chance given for submission of written reply on the previous date. The learned AAG requested for further time on the ground that he could not establish contact with the office of DEO, E&SE, Mansehra. On the request of learned AAG, another last chance is give for written reply/comments on 28.10.2014.

Postulid

Chairman

28.10.2014

Clerk of counsel for the appellant, M/S Khurshid Khan, S.O for respondent No.1 and Mosam Khan, AD for respondent No.2 with Mr. Muhammad Adeel Butt, AAG for the respondents present. Written reply has not been received on behalf of the respondents despite another last chance given for the purpose on the previous date. Therefore, the right of the respondents to submit written reply is forfeited. To come up for arguments on the available record on 24.04.2015.


Chairman

17.05.2016

Counsel for the appellant and Addl. AG for respondents present. Order could not be announced due to learned Member is an official tour to A/Abad. To come up for order on 25.5.2016.



Member

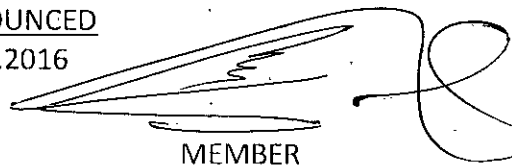


Member

25.05.2016

Counsel for the appellant and Mr. Usman Ghani, Senior Government Pleader for respondents present. Arguments heard and record perused. Vide our detailed judgment of today placed on file, we deem it appropriate to remit the case to the respondent-department with direction to examine the pending departmental appeal of the appellant on its merits strictly in accordance with law and rules and decide the same within a period of 60 days after the receipt of this judgment. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.05.2016



MEMBER



MEMBER

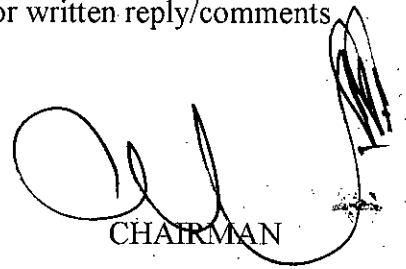
3-6-13

The Horth bench is on Ben
Dreaper case is opened 0610-9-13

AD
Reada

10.9.2013

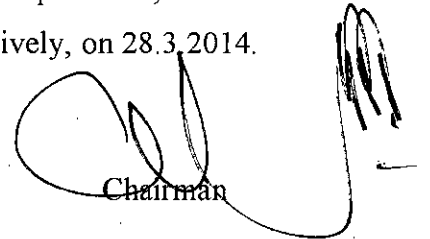
No one is present on behalf of the appellant. M/S Khurshid Khan, SO for respondent No. 1 and Mosam Khan, AD for respondent No. 2 with AAG for the respondents present. To come up for written reply/comments on 1.1.2014.



CHAIRMAN

01.01.2014

Counsel for the appellant, M/S Khurshid Khan, S.O for respondent No.1, Javed Ahmad, Supdt: for respondent No.2 with AAG for the respondents present. Written reply has not been received. On the request of representatives of the respondents, another chance is given for written reply/ comments, positively, on 28.3.2014.



Chairman

Appeal No. 353/2013.
Mr. Muhammed Hassan.

3. 28.3.2013

Counsel for the appellant present and heard:

Contended that the appellant was appointed as D.M on 13.12.1978. In the year he was falsely implicated in a murder case vide FIR No. 128 dated 14.4.1999. He was suspended w.e.f. 26.6.1999. In pursuance of judgment of the Hon'ble Apex Court, the appellant was released after serving the sentence period. The appellant preferred a departmental appeal for his re-instatement and consequent retirement benefits but with no response. Hence, the instant appeal. The learned counsel for the appellant further argued that the appellant has not been treated in accordance with law. The appellant was innocent and falsely implicated in a false murder case. The appellant has not been terminated from service, therefore, he is entitled for pensionary benefits under the rules but the same has been refused to him without any reason. Points raised need consideration. The appeal is admitted to regular hearing, but subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 3.6.2013 for submission of written reply.


Member.

4. 28.3.2013



This case be put before the Final Bench T for further proceedings.


Chairman.

Form- A
FORM OF ORDER SHEET

Court of _____

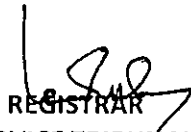
Case No. 353/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11/02/2013	<p>The appeal of Mr. Muhammad Haroon Khan resubmitted today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	13-2-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>28-3-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>


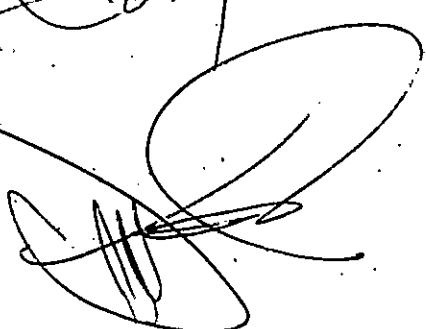
This is an appeal filed by Mr. Muhammad Haroon Khan today on 04/02/2013 for his reinstatement against which he preferred a departmental appeal on 12.11.2012 which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellants/counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action.

No. 256/ST,
Dt. 6/2/2013


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR. KHALED REHMAN ADV. PESH.


resubmitted after
completion

4/2/13

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 353 /2013

Muhammad Haroon Khan

.....Appellant

Versus

The Govt. of KPK and
others

.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-6
2.	Extracts from the Service Book		A	7-13
3.	F.I.R.	14.04.1999	B	0-14
4.	Judgment of the Sessions Judge, Battagram	23.06.2001	C	15-29
5.	Judgment of the Hon'ble High Court, Peshawar	19.02.2003	D	30-47
6.	Judgment of the Hon'ble Supreme Court of Pakistan	07.12.2011	E	48-54
7.	Departmental appeal		F	55-58
8.	Wakalat Nama			

Through

Appellant

Muhammad Haroon Khan
Khaled Rahman
Advocate, Peshawar

9-B, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 0345-9337312

Dated: 31 / 01/2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 353 /2013

Muhammad Haroon Khan
S/o Muhammad Farid Khan
R/o Village Gidarai,
Tehsil and District Battagram.
Ex-Drawing Master,
GMS Bartoni, Mansehra.....Appellant.

38L
04-2-13

Versus

1. The Govt. of Khyber Pakhtunkhwa through Secretary, Elementary and Secondary Education, Civil Secretariat, Peshawar.
2. The Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Coordination Officer now Deputy Commissioner, Mansehra.....Respondents
4. DISTRICT Education officer Mansehra.

DM

vide order sheet dated 28-10-2014. The right of written reply of respondents is forfeited.

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR REINSTATEMENT OF THE APPELLANT INTO SERVICE AND FOR ALLOWING HIM THE CONSEQUENT RETIREMENT AND PENSIONARY BENEFITS ETC. ON ATTAINING THE AGE OF SUPERANNUATION FOR WHICH APPELLANT FILED DEPARTMENTAL APPEAL BEFORE THE APPELLATE AUTHORITY BUT THE SAME HAS NOT YET BEEN DECIDED.

PRAYER:

On acceptance of the instant appeal, the appellant may graciously be reinstated into service and be

Re-submitted to the
and filed.

4/2/13

consequently allowed retirement on attaining the age of superannuation and the consequent Pensionary benefits etc. for the service appellant rendered.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant was appointed as Drawing Master on 13.12.1978 and performed his duty regularly and continuously to the entire satisfaction of his superiors and thus has at his credit long drawn meritorious service. He was lastly serving at GMS Bartoni, Mansehra. (Copy of Service Book *Annex:-A*)
2. That in the year 1999, appellant was falsely implicated in a murder case vide F.I.R. No.128 dated 14.04.1999 due to family animosity of relatives and was thus arrested in pursuance of the F.I.R (*Annex:-B*).
3. That after the arrest of the appellant he was suspended w.e.f. 26.06.1999 vide order of the even date, which suspension was continued/extended vide orders dated 05.06.2000, 13.09.2000, 07.12.2000 and 05.06.2001 but thereafter, the suspension was not extended vide entries at Page 13 & 15 of the Service Book *ibid*.
4. That subsequently appellant was challaned to the Court of Session Judge, Battagram and after conclusion of the trial he was convicted and sentenced to death vide Judgment dated

23.06.2001 (*Annex:-C*). Being aggrieved of the Judgment, appellant filed Criminal Appeal before the Peshawar High Court, Abbottabad Bench, which was partially allowed vide Judgment dated 19.02.2003 (*Annex:-D*) and the death sentence was converted into life imprisonment. Being further aggrieved, appellant yet preferred another appeal before the Supreme Court of Pakistan, which was also partially allowed and the Sentence was further reduced vide Judgment dated 07.12.2011 (*Annex:-E*). In pursuance of the Judgment of the Hon'ble Apex Court, the appellant was later on released from captivity after serving the sentence.

5. That the date of birth of the appellant is 01.01.1952 and therefore his date of retirement falls on 01.01.2012, on which date the appellant was behind the bars.
6. That after the release, appellant preferred departmental appeal before the appellate authority (*Annex:-F*) for reinstatement and consequent retirement and pensionary benefits etc. but the same has not yet been decided, hence this appeal inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973

alleged 60 yrs.
Superannuation.

7-1-12

and unlawfully refused to reinstate the appellant and allow other service benefits, which is unjust, unfair and hence not sustainable in the eye of law.

- B. That appellant was innocent and was falsely implicated in the case due to enmity of the close relatives with the deceased party and was convicted on the basis of false evidence adduced by the opposite side. When appellant preferred appeal before the Apex Court, during the pendency of the appeal, almost the sentence of life imprisonment was served out and perhaps due to that reason, the Hon'ble Apex Court refrained from delving deep into the merits of the case.
- C. That be that as it may, the offence which the accused was charged with, was not one of moral turpitude and therefore, the same was not falling within the definition of misconduct as per Rule-2(1)(I)(vii) of the Government of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, therefore, appellant is entitled for reinstatement and retirement benefits.
- D. That till date, appellant has not been terminated from his service, therefore, on the date of retirement i.e. on attaining the age of superannuation, appellant was civil servant and therefore, he is entitled for retirement benefits under the rules.
- E. That initially appellant was suspended from service and the period of suspension was extended

for sometime but the same was not further extended and as per Rule-6 of the Government of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, if the period of suspension is not extended within 30 days of the expiry of initial period of suspension, then the Govt. servant stands reinstated and as per Civil Service Regulations 420(c) A suspension followed by reinstatement does not entail forfeiture of past service.

- F. That similarly under Civil Service Regulations 417-A, if an officer who has been suspended during enquiry into his conduct, attains the age of superannuation before the completion of the enquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated the period spent on duty. Similar references can be made to Civil Service Regulations 416 & 417. A person is also deemed suspended when he is arrested in pursuance of a criminal offence.
- G. That appellant has served the Govt. for about 22 years regularly and continuously with meritorious service record and is entitled for the Pensionary benefits under the rules and keeping in view the peculiar facts and circumstances of the case, appellant is entitled for pensionary benefits in the interest of justice and fair-play.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.


Appellant

Through


Khaled Rahman,
Advocate, Peshawar.

Dated: 31 / 01 / 2013

SUSPENSION.

In continuation of this office order No. 29459-61 dated. 26-06-99 the suspension in r/o Mohammed Haroon D.W. Govt: Middle School Bartooni (KD) is hereby extended upto 28-4-2000.

Answer 193 (7)

27/3/00

DISTRICT EDUCATION OFFICER
(MALE) SECONDARY MANSEHRA.

Endst: No. 14141-42

Dated. 5/7 / 2000.

Copy forwarded for information to :-

1. Director Secondary Education N.W.F.P Peshawar.
2. District Account Officer Mansehra.

Pholun
DISTRICT EDUCATION OFFICER
(MALE) SECONDARY MANSEHRA.

ATE

A

8

Holder of S.S.C Examination of the B.I.S.-2
Peshawar Under roll No. 11273 Session Annual
1977 in Grade "D"

Sub-Divisional Education Officer
(Male) Battagram (Muzaffargarh)

Roll No.

Dated

received back

Self-Inspection impression

Signature

Qualification

Date

Qualifications

Date

First Arts

B. A. or B.S.

Papership examination

Training School final examination

Other qualifications--

Completed two months Short Term

Drawing Master Course WEF

27.7.1982 to 26.9.1982 at

Govt. College of Elementary Edu

(Male) Kohat.

Sub-Divisional Education Officer
(Male) Battagram (Muzaffargarh)

9

Note.—The entries in this page should be renewed or re-attested at least every five years, and the signature in lines 9 and 10 should be dated.

1. Name.. Mohammad Haroon

2. Race Swati

3. Residence village Gadri P.O. Gadri Tehsil Ballagram District Mansehra.

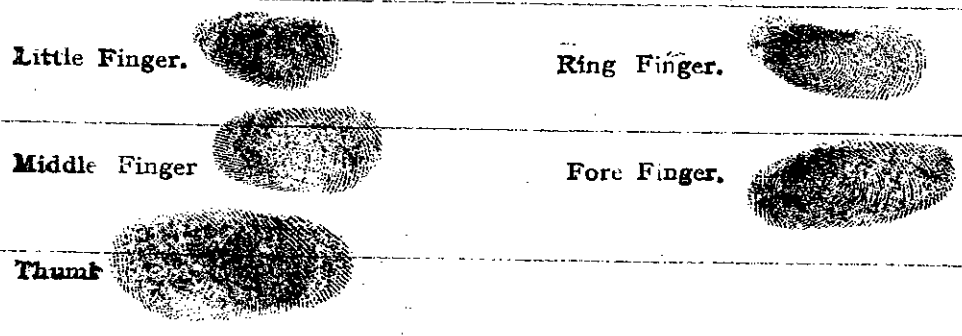
4. Father's name and residence Mohammad Farid Khan of Gadri

5. Date of birth by Christian era as Third August N.H.A. Fifty one 3-8-1951
nearly as can be ascertained (3.8.1951)

6. Exact height by measurement 5-6

7. Personal marks for identification cut mark on fore head

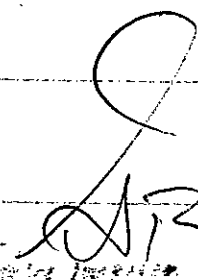
8. Left hand thumb and finger impression of (non-gazetted) officer



9. Signature of Government servant M. Haroon Khan

10. Signature and designation of the Head of the Office, or other Attesting Officer

prepared by


 Sub-Divisional Education Officer
 (Male) Ballagram (Mansehra)

Asstt. District Inspector
 Schools Ballagram, District
 Mansehra

Distt. Inspector of Schools
 Mansehra, Distt. Mansehra.

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating, and whether permanent or temporary	If officiating state— (i) substantive appointment or (ii) whether service counts for pension under Art. 371, C. S. R.	Pay in substantive post	Additional pay for officiating	Other emoluments falling under the term "Pay"	Date of appointment	Signature of Government servant
GMS D.M. (untrained)			315/- PM Fixed				
Postho.	Temp.		315/- PM Fixed			16-12-78	M. H. Hood S. D. RHC
-do-	-do-	Grade	560/-	Checked for R. R. Allibon 1/10/81 8/12/81 8-7			
-do-	-do-	Grade: 620/-	560/-	620/- PM Fixed		1-2-83	M. H. Hood
-do-	-do-		620/-			1-2-83	M. H. Hood
D.M.	-do-		620/-			1-5-87	M. H. Hood
GMS Biland Kol	-do-	Grade: 830 - 38 - 1590 D.M. (9)	830/-			1-2-87	M. H. Hood
-do-	-do-		830/-			1-2-87	M. H. Hood
-do- D.M.	-do-		830/-			1-12-87	M. H. Hood
GMS Biland Kol	-do-		830/-			1-12-87	M. H. Hood
-do-	-do-		830/-			1-12-87	M. H. Hood
-do-	-do-		830/-			1-12-87	M. H. Hood

16

1	2	3	4	5	6	7
Description and particulars of the work done or other matter referred to in the order	Date of completion of work	Particulars of the work done or other matter referred to in the order	Particulars of the work done or other matter referred to in the order	Particulars of the work done or other matter referred to in the order	Signature of the head of the office or other officiating officer	Reference to any order, sanction, or award or previous order of the Government (if any)
S.D.E. Schools, Battagram	30-6-83	Revision of pay 7 NPS 1983	L. E. Office	[Signature]	Appointed vide D.F. [Signature]	Manshehra Dist: Manshehra.
[Signature]		Office of the Accounts Officer, S.D.E.P. Manshehra.	Pay fixed to Basic Pay Scale 1251 of No. [Signature] B.C.No. [Signature]	[Signature]	Services verified from 16.12.78 to 30.11.79 from the Acquittances Rolls and other office records.	[Signature] D. E. Office, Battagram
S.D.E.O. (M) Battagram	8 5/87	Tourist Assit: Accounts Officer	[Signature]	[Signature]	[Signature]	[Signature]
S.D.E.O. (M) Battagram	30 6/87	Revision of pay 1-7-87	S.D.E.O. (M) Battagram	[Signature]	[Signature]	[Signature]
S.D.E.O. (M) Battagram		DRAWN No 157/52	[Signature]	[Signature]	[Signature]	[Signature]
S.D.E.O. (M) Battagram	31 10/88	Post: Transfer	[Signature]	[Signature]	[Signature]	[Signature]
Head Master GHS Biland	30 11/88	Auditor	[Signature]	[Signature]	[Signature]	[Signature]
[Signature]	27-12-89	[Signature]	[Signature]	[Signature]	[Signature]	[Signature]
[Signature]	30-12-89	[Signature]	[Signature]	[Signature]	[Signature]	[Signature]
[Signature]		[Signature]	[Signature]	[Signature]	[Signature]	[Signature]
[Signature]		[Signature]	[Signature]	[Signature]	[Signature]	[Signature]
[Signature]		[Signature]	[Signature]	[Signature]	[Signature]	[Signature]

Sub Div: Education Officer, (M) Battagram (Manshehra)

S.D.E.O. (M) Battagram (Manshehra)

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating state— (i) substantive appointment or (ii) whether service counts for pension under Art. 371, C. S., R.	Pay in substantive post	Additional pay for officiating	Other emoluments falling under the term "Pay"	Date of appointment	Signature of Government servant
<p>DM</p> <p><u>Govt Biland post</u></p>	<p>Revised</p> <p>off. temp.</p>	<p>BPS-(7)</p>	<p>1327</p>	<p>1185/- PM (Revised)</p>		<p>11/4/91</p>	

Order of the Accountant General
M. W. D. Fulekar
Pay Band in the Revised Pay Scale 1997
of Rs. 1185/- PM
M. W. D. F. 14-1097

1327 - 1185/- 11/4/91
Cutting attested at this page
A. J. J. J.
Govt. High School
Biland (M. W. D. Fulekar)
District Mandla

Actual drawn
@ 1185/- PM
No over payment involved
Note: debited
Accounts Officer

Note
The following amount of payment made
@ 144/- PM 4 - 16 to 31 5/93 Rs. 3456/-
Also attested

GO
Biland

11

Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 4	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Nature and duration of leave taken	Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government servant
	31/5/91	Pay Scale Revised			DRAWN Rs. 157/50... PAY on A/c of N.E.R. For Calendar Year 1982... No. 831	Dt 18/3/82 for 1982
GOVT. HIGH SCHOOL Biland Kote Dist. Manshehra		GOVT. HIGH SCHOOL Biland Kote Dist. Manshehra			Supd: [Signature] Dist. A/c Officer Manshehra	3.62
Office of the Accountant General N. W. F. P. Lahore	Pay fixed in the Revised Basic Pay Scales 1987 of Rs. 334/- with cost increment on	Account Officer Dny Station Party			Service Verified w. e. f. 1.12.1980 to 30.11.82 from the Acq. Rolls and other Office Record.	S.D.E.O. (M) Batagram, (Manshehra).
					Drawn amount in BPS from roll WCF 1-7-83 to 31-8-83 total Rs. 288 Less B.F. METEB. 284/- vid CT No. 82 dated 2/84	N. N. [Signature] DIST. A/c Officer Manshehra
					Drawn A/c of Pay w.B.F. 12 To 30/83 vide m.o. No. 45 dated 19.2.86 amounting to Rs. 2099/-	[Signature] Dist. A/c Officer Manshehra
					Service Verified w. e. f. 1.12.83 to 30.11.84 from the Acq. Rolls and other Office Record.	S.D.E.O. (M) Batagram, (Manshehra). Leave Sanctioned vid. D.E.O (M) Manshehra No: 4683
					Service Verified w. e. f. 1.12.85 to 30.11.86 from the Acq. Rolls and other Office Record.	dated 17.4.86 w. E. F 24-85 To 17.7.85 (24 days) on P. w/c Pay. [Signature] Dist. Education Officer (M) Batagram (Manshehra)

Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating state— (i) substantive appointment or (ii) whether service counts for pension under Art. 374, C. & R.	Pay to substantive post	Additional pay for officiating	Other emoluments falling under the term "Pay"	Date of appointment	Signature of Government servant
DM GHS Biland Kot	Scale No 9 off/Temp	Rs 1185/-	PM Fixed 1185/-	✓	-	1 ⁶ / ₉₁	[Signature]
) -	do -	-	1605/-	✓	-	1 ⁶ / ₉₄	[Signature]
GMS: Dagai	do -	-	1605/-	-	-	3 ¹ / ₉₈	-
DM GMS, Bartoon	do	-	1605/-	-	-	14 ⁶ / ₉₈	-
DM GMS, Bartoon	do	-	1605/-	-	-	1 ¹² / ₉₈	-

12

Signature and designation of the head of the office or other attesting officer in accordance of sections 1 to 8

Date of transfer or appointment

Particulars of transfer or appointment, transfer, promotion, etc.

Particulars of service in the office to which transferred

Particulars of service in the office to which transferred

Particulars of service in the office to which transferred

Signature of the head of the office or other attesting officer

Reference to any recorded punishment or award or praise of the Government servant

A. G. Ghosh
Head Master
Govt. High School
Biland Kot
District Bhatnagar

A. Ghosh
Head Master
Govt. High School
Biland Kot
District Bhatnagar

Service Verified w.e.f. 1-12-86 to 30-11-87 from the Acq. Rolls and other Office Records.

S. D. E. O. (M) Bhatnagar
(Biland Kot)

A. Ghosh
Head Master
Govt. High School
Biland Kot
District Bhatnagar

Head P.D.O. Govt. School Biland Kot

Service verified w.e.f. 1-12-82-31-10-88 from the Acq. roll and other records kept in this office.

S. D. E. O. (M) Bhatnagar

S. D. E. O. (M) Secy Bhatnagar

13/98
6/98
5/98

S. D. E. O. (M) Secy Bhatnagar

Service Verified w.e.f. 1-11-87-31-11-88 from the Acq. roll and other office records kept in this office.

Head Master GHS Biland Kot

Service verified w.e.f. 1-11-83-31/10 from the Acq. Roll and other records kept in this office.

Head Master GHS Biland Kot

Service Verified w.e.f. 2-8-89 to 30-11-89 from the Acq. Roll and other records kept in this office.

Head Master GHS Biland Kot

Drawn a \$1. cr. of 1-83 in 31-12-83 via M. No 95 at 16-9-90 p. u. 2521

Head Master GHS Biland Kot

[Handwritten signature]

13

Signature and designation of the head of the office or other attesting officer in attestation of sub-section 1 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Nature and duration of leave taken	Allocation of pay in case of leave on average pay up to four months for which leave salary is payable to another Government	Signature of the head of the office or other attesting officer in attestation of sub-section 1 to 8
						<p>Service was verified from the acqui. rolls and other record of the school.</p> <p>Service verified w.e.f. 3-1-98 to 13-6-98 from the Acq. roll and other record kept in this office</p> <p>D.E.O (M) Secondary Battagram</p> <p><u>Suspension</u> Suspended from duty w.e.f. 26-6-99 vide D.O (M/S) Manshera Endst. No. 39459-61 dated 26-6-99</p>
						<p>Drawn Rs = 10285/29 w.e.f. 1-10-2000 to 31-12-2000 (3 months) vide P.O No. 673 dated 22-2-2001</p> <p>T-1130</p> <p>Drawn Rs. 8680/- on A/c Suspension Allowance w.e.f. 6-1-2001 to 31-3-2001 vide T.No. 1130 dt. 8-6-2002</p> <p>Drawn Rs. 11574/72 on ch. & suspension allow: w.e.f. 1-6-99 to 30/9/99 vide T.No. 2 dt. 14/11/99</p> <p>Drawn Rs. 15958/58 on A/c on Pay & allow: w.e.f. 1/5/99 to 31-10-99 vide T No. 707 dt. 13/11/99</p> <p>Drawn Rs. 20054/01 on A/c & sus: allow: w.e.f. 14/12/99 to 31-5-00 vide T. No. 388 dt. 8/1/00</p> <p>Extension of Suspension upto 27-7-2000 vide DDO (M/S) Manshera No. 14143-44 dt. 5-6-2000</p>

DISTRICT EDUCATION OFFICER (Male) Secondary Manshera

DISTRICT EDUCATION OFFICER (Male) Secondary Manshera

9	10	11	12	13		14	15
Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Leave		Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government servant
				Allocation of periods of leave on average pay up to four months for which leave salary is debitab to another Government			
				Nature and duration of leave taken	Period Government to which debitab		
						<p>Extension of Suspension up to 25-13-2000 vide DEO (M) Secy Manshra No: 2000-1 of 13-9-2000</p> <p><i>Chalawaz</i> Dy. DEO (M) Manshra DISTRICT EDUCATION OFFICER (Male) Secondary Manshra</p>	
						<p>Extension of Suspension up to 24-1-2001 vide DEO (M/S) Manshra Enclt. No: 25164-67/AE-III dtd 7-12-2000.</p> <p><i>Chalawaz</i> DISTRICT EDUCATION OFFICER (Male) Secondary Manshra</p>	
						<p>Extension of Suspension up to 28-4-2001 vide DEO (M) Secy. Manshra Enclt. No: 441-42 of 5/4/2001</p> <p><i>Trivedi</i> District Officer (Admin: & Dev) Secondary Education Manshra SECY. EDUCATION MANSHRA</p>	

ابتدائی اطلاع رپورٹ

14

نمبر

فائل (ابتدائی اطلاع نسبت خرم قابل دست اندازی پولیس رپورٹ شدہ زبردندانہ ۵۴ مجموعہ ضابطہ نوعداری

صنلع ہلگام

تھانہ ہلگام

50 عدلت 128 تاریخ و وقت وقوع 14/4/99 وقت 15:15 بج

تاریخ و وقت رپورٹ	14/4/99 وقت 15:45 بج
نام و سکونت اطلاع دہندہ و مستغیث	مسافر شاہ ولد جیٹ قوم ٹھکان لہور ویب ۵۵ سال سکے باندہ نالہ 3027
محقق کیفیت خرم (مدد دہندہ) حال اگر کچھ لیا گیا ہو	زر دھم PR 324
جگہ وقوع فاصلہ تھانہ سے اور سمت	احاطہ کپیری ہلگام جانب شمال لفاصلہ 1/2 KM از تھا
نام و سکونت ملزم	
کارروائی جو تفتیش کے متعلق کا گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	برسیدگی حرام فقہ درج رجسٹر ہوا۔
تھانہ سے روانگی کی تاریخ و وقت	بہ سبیل ڈاک

تھا ہلگام بدست اس ابتدائی اطلاع نے درج کردہ بوقت ۱۵:۴۵ بج حرم کی حوالہ دہندہ محمد حسین نے کہا ہلگام رپورٹ مسافر شاہ ولد جیٹ قوم ٹھکان لہور ویب ۵۵ سال سکے باندہ ۱۴/۴/۹۹ وقت ۱۵:۴۵ بج المیرجنہ وارڈ CH ہلگام میں رپورٹ کرتا ہے کہ آج میں حسن نادر خان ولد سمندر خان، دلدار ولد شاہ افضل خان ساکنان دیہہ میں کا میں حزرایا بیرون آج تاریخ کے سلم میں عدالت ہلگام آئے۔ جب تاریخ سے تاریخ ہوکر بوقت ۱۵:۱۵ بج نزدیکی گیسٹ عدالت لہور نیا قوساف سے حزر ہارون ولد فریاد کے گڈری کی اسلمہ التمش سے ماہرنگ کے جو ایک گول نام خان کو سامنے پپا دیل جبکہ دوسری قول دلدار خان کو بائیں طرف چھاں درنگ کر رہے ہوئے اور گڑھے ملزم ہارون موقع سے بھاگ گیا واقع حذا کوئی عدلوہ دیل کاخ لوگوں نے دیکھا۔ وجہ عدالت سابق قتل حذا حے ماہرنگ فریاد تھا میں مالکان ام پر بار بارہ قتل مارنگ کرنا بڑھکد ملزم ہارون و عدو بیرون رپورٹ سن لے جو

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۱۱ نشان انگوہا کاروالہ پولیس سب کفٹ سائل رپورٹ
 صدر پورہ پور شاہ کھانا گاہ۔ ص ۱۰ دست نمبر ۱۰
 انگوہا بت کی۔ علاوہ بدن جبرو صین ہو کر نارطان کے پیٹ پر
 کے قریب ایک زخم داخل اور بعض جانب جو ٹرے قریب خارج جبکہ دلہ
 کے دائیں طرف چھانہ در زخم خون آلود داخل یا اگر لفظ صدر چھانہ (۱۰)
 کے قریب ہو کر حوالہ ڈاکٹر ما ہوئے۔ صفحہ ۱۰ رپورٹ سے صورت صرح
 بالہ یا کہ کار حوالہ بصرہ بالہ صرح خمر صرح لار بدست عدہ الہیہ ۱۰۶ لہجہ
 قائم حوالہ ارسال تھا۔ ص ۱۰ صرح صرح قفٹن ہون دستہ رنڈر نما
 ح ۱۰ نیس AS تھا ط گلا ح ۱۴ کاروالہ تھا آفرہ مراملہ صرف حرف
 صرح صدر ہوا۔ دریں اثناء خمر صرح خانہ AS نے بزرگ فون اطلاق
 دی جبکہ صفحہ ۱۰ دلدار طان زخات کے تالانہ لار CH ط گلا ح ۱۰
 تھا ہو چکا۔ آفرہ اطلاع کے مطابق دفعہ ۳۰۲ PP کے ریز ادارے کے ہاں
 افران مالہ کو اطلاع دی جا رہی ہے۔ ص ۱۰ SHOC سے صلح شہادت کو حوالہ
 شریف رگوتی ہے۔ ص ۱۰ رپورٹ رپورٹ گزار ہے

M. Lalani P.S.B.T. 9
 ۱۴۱ ۴ ۹۹

دستخط

عہدہ

اطلاع کے نیچے اطلاع دہندہ کا دستخط ہوگا یا اس کی ہر یا نشان لگایا جائے گا اور افسر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔
 حروف الفبا ب سرخ روشنائی سے بالمقابل نام پر ایک لزم یا شہر علی الترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیا یا افغانستان جہاں ہون
 لکھنا چاہیے۔

نوٹ

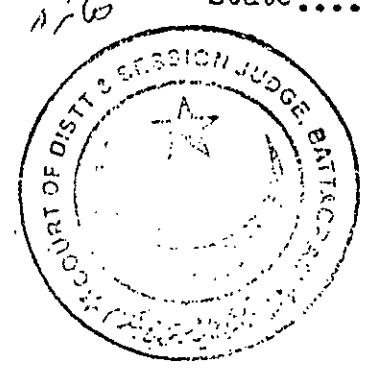
82
18/08/1999
23/06/2001
IN THE COURT OF MR SHAH JEHAN KHAN, SESSIONS JUDGE, BATAGRAM.

پ.پ. 302/324
آی.اے 128/99

Sessions Case No 89/8 of 1999.
Date of decision.....23.6.2001.

ANNEX C

State.....V/S.....MUHAMMAD HAROON, son of Muhammad Farid, resident of Giddri, P.S Kuza Banda, Tehsil and District BATAGRAM.



'accused'

FIR NO: 128, dated 14.4.1999, under section 302/324 PPC, Police station Batagram.

Present: Prosecution conducted by SPP assisted by Qazi Shamsudin, advocate, Mansehra.
Defence conducted by Mr. Ghulam Mustafa Khan Swati, advocate, Mansehra.

JUDGMENT:

1. Accused Haroon was sent up to stand trial in case FIR NO:128, dated 14.4.1999, under section 302/324 PPC, registered at Police station Batagram.
2. Brief facts of the prosecution case are that on 14.4.99 at 1545 hours Musafar shah son of Chatay, caste Pathan, aged 50/55, resident of Banda Bala, Tehsil and District Batagram made report before Muhammad Banaris Khan ASI, in emergency ward Civil Hospital Batagram, to the effect that he is tenant of Nadir Khan son of Sumandir Khan and Dildar Khan son of Sher Afzal Khan. That on the day of occurrence he alongwith Nadir Khan son of Sumandir Khan and Dildar

Shah Jehan
23.6.2001
Sessions Judge, Batagram

Certified U/A 87 of the Q-e-s order 1999
Examiner District & Sessions Judge Batgram

18.07.12

Shah Jehan

83

16

.2.

Khan son of Sher Afzal Khan, had come to District Kitchary Batagram in connection with a case. After attending the court proceedings, when they reached near eastern gate of the court, it was about 1515 hours, in the mean time, Muhammad Haroon son of Farid, resident of Gaidrri started firing at them, with fire arm, from the front side. As a result of which Nadir Khan was hit and injured on his belly with one bullet while Dildar was hit and got injured on his right side chest with 2nd bullet and both of them fell down on the ground. Accused then decamped from the spot. The occurrence was stated to have been seen by many other people present on the spot besides him.

Motive for the occurrence is previous blood feud. He charged accused Haroon for the commission of the offence. The report of complainant was reduced into writing by Banaris Khan ASI in the shape of Murasila, on the basis of which case vide FIR NO:128, dated 14.4.1999 u/s 302/324 PPC was registered against the accused.

That Khan
Magistrate
Batagram

3. After completion of the investigation, local police through prosecution branch submitted challan before Judicial Magistrate, Batagram who after compliance of provisions u/s 190(3) Cr.P.C sent the same to this court for trial.

4. Accused was summoned from jail, who appeared and after compliance of provisions u/s 265C Cr.P.C formal charge was framed and served upon him, to which he pleaded not guilty and claimed trial. Prosecution in support of the charge examined 11 witnesses and closed its evidence. The resume of prosecution evidence is as under:

P. 02
 Certified U/A 87 of the
 Q-e-s order 1984

Examiner
 District & Sessions Judge
 Batagram

18-07-2012

[Handwritten Signature]

84

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.3.

5. Pw1 Muhammad Afzal IHC:

5. On receipt of Murasila, he incorporated its contents into the FIR, Ex.PA, FIR Ex.PA is in his hand writing and bears his true signature.

Pw2 Abdus Samad F.C 157:

6. This Pw brought the Murasila to police station for the registration of the case. He is also marginal witness to recovery memo Ex.Pw.2/1 vide which I.O took into his possession one blood stained shirt of deceased Dildar white in colour, kind K.T P1, handed over to him by doctor alongwith post mortem report, same were packed and sealed into parcel by the I.O in his presence.

Pw3 is Attaur Rehman son of Muhammad Furqan:

7. This Pw deposed that I.O inspected the spot in his presence and during spot inspection he recovered some blood stained earth from the place of injured Nadir Khan, same was packed and sealed into parcel in his presence. In his presence I.O also recovered one empty shell of 30 bore P2 giving smell of fresh discharge near the place of accused situated inside the gate on the westren side of the stairs and took the same into his possession vide recovery memo Ex.Pw.3/1.

Pw4 Agil Khan son of Samar Ali Khan:

8. He is marginal witness to recovery memo Ex.Pw.4/1 vide which I.O during the personal search of accused recovered one black belt P3 alongwith Kash P4 30 bore Pistical from the wast of the accused in his presence, and in presence of IHC Amjid Hussain.

Pw5 doctor Fazal Qayum, M.O: DHQ hospital Batagram

Examiner
District & Sessions Judge
Batgram

9. On 14.4.99 at 3.30 PM he examined Dildar son of Sher Afzal Khan, aged 29/30 years, caste Swati, resident of Banda Bala, brought by ASI, P.S. Batagram and on external examination he found the following:

P-03
Certified U/A 87 of the
Q-e-s order 1984

18.07.2011

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1. An entry wound of a fire arm on anterior aspect of right chest ~~xx~~ between 8th and 9th inter costal space about $\frac{1}{2}$ x $\frac{1}{2}$ " in size, skin ~~xx~~ into muscles and body cavity deep, injured the vital organs. Patient was in shock and blood pressure was unrecordable. Emergency treatment was given.

Probable duration of injury: 15 to 45 minutes.
 Weapon of offence: Fire arm injuries.
 Nature of injury: Grievous.

He prepared medico legal to this effect which is Ex.Pw.5/1.

On the same day i.e 14.4.99 he examined Nadir Khan son of Sumandar Khan, aged about 46 years, r/o Banda Bala, brought by ASI, P.S Batagram and examined him at 3.30 PM and found the following:

1. Entry wound of fire arm in epigastrium about $\frac{1}{2}$ x $\frac{1}{2}$ " in size. Skin into muscle and body cavity (abdomen) deep.
 2. Exit wound on right buttock on the inner part about 1 x 1" in size with everted margins, there was massive bleeding from the exit wound and patient's blood pressure was not recordable. Emergency treatment was given and patient was referred to Ayub Teaching Complex for further management.
- Time between injury : About 15 to 45 minutes
 Caused by fire arm and in case of both the injuries the nature of the injuries were grievous. Medico legal report to this effect prepared by him is Ex.Pw.5/2 , same is in his hand writing and bears his true signature.

[Signature]
 P.S. Batagram

P.04

Certified U/A 37 of the Q-e-s order 1984

Examiner
 District & Sessions Judge
 Batagram

18.07.2012

On the same day i.e 14.4.99 at 4.00 PM he conducted autopsy on the dead body of Dildar Khan, son of Sher Afzal Khan, aged about 29/30 years, brought by ASI, P.S Batagram, identified by Attaur Rehman son of Farqan, r/o Shagay and Hasham Khan, son of Jahangir Khan, r/o Banda Bala and on external examination he found that the deceased was a young healthy man of about 30 years with good body physique, eyes closed, shaved white colour with shalwar and Qameez.

[Signature]

86

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16:

.5.

1. An entry wound of fire arm on right side of lower chest between 8th and 9th inter costal about 1 x 1" in size.

INTERNAL EXAMINATION: In thorax region right pleural cavity were found injured, right lung was injured blood vessels were found injured. In abdominal region walls were injured, peritonium was injured and was full of blood, stomach was found injured and was full of br semi digested material, small intestine was found injured. Large intestine was found injured, liver injured.

OPINION: In my opinion death of the person is due to fire arm injury, causing injuries to the vital organs like liver, stomach, peritonium, lung, colon and vessles. Injuries to these structures resulted into massive internal haemorrhage. The case of death of severe haemorrhage, resulted into shock and death. Probable time elapsed between injury and death: About 1/2 hour to one hour.

Signature
23.4.99
Batagram

Time between death and post mortem 10 to 15 minutes
Post mortem report consisting of five pages including pectorial is EX.PM.

P-05
Certified U/A 87 of the
Q-c-s order 1984

After post mortem examination he handed over clothing of the deceased duly signed by him to police alongwith P.M documents. On 16.4.99 Investigating Officer made a query from him regarding the bullet, as there was no exit wound and he answered the query vide his report dated 25.4.99 which is EX.PM and the same is as follows:

Examiner
District & Sessions
Batagram

"He searched for the bullet in body cavity but did not recover the bullet"

18.07.12

Pw6 Amjid Hussain ASI:

10. He deposed that on the day of occurrence at about 9.00 AM he alongwith Jamilur Rehman F.C. 85 left for village Kohani for the investigation of a criminal case registered u/s 337 PPC and also warrant for the recovery of Wapda dues, issued against persons residents of village Batagram. After service of warrant

Signature

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.6.

of Wapda recovery dues, he reached Colony Batagram on Shamlai road, he heard report of fire shots and report of hue and cries from the side of court premises and also saw that people were running after a person. He thought that some occurrence might have taken place in the court premises, so he waited for a while and watched the situation of running of a person and its followers. He deposed that he was near the Ara Machine of Malang Khan on the upper side at a shorter distance. He got aside, so that the person running, may not change his direction seeing them in uniform. He saw that the person running a head of the mob was some time looking back to the mob. There was a crying in the mob, calling every body to catch hold of this man as he has killed two persons in the court premises. The person was fully exhausted, coming near us, he (this Pw) stepped a head and arrested him. As the situation was very much tense and he was worried about the security of the person arrested by him, so he made a wireless call to the P.S on which Incharge of police station Batagram namely: Banaris Khan rushed towards his place and he handed over the accused to him. Banaris Khan inquired the name from the accused and then conducted his personal search and recovered one waistler P3 of Pital 30 bore from the possession of accused in his presence and in presence of other witness, he took the same into his possession and prepared recovery memo Ex.Pw.4/1. He further deposed that on the arrest of the accused he replied that he has not committed the murder. Thereafter he accompanied Banaris Khan ASI to the place of occurrence and in his presence, during the spot inspection Banaris Khan ASI picked up blood stained earth from the spot and an empty

[Signature]
 Sessions Judge
 23/6/84

p. 06
 Certified U/A 87 of the
 Q-e-s order 1984

Examiner
 District & Sessions
 18.07.84

[Signature]

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of Wapda recovery dues , he reached Colony Batagram on Shamlai road, he heard report of fire shots and report of hue and cries from the side of court premises and also saw that people were running after a person. He thought that some occurrence might have taken place in the court premises, so he waited for a while and watched the situation of running of a person and its followers. He deposed that he was near the Ara Machine of Malang Khan on the upper side at a shorter distance. He got aside , so that the person running , may not change his direction , seeing them in uniform. He saw that the person running a head of the mob was some time looking back to the mob. There was a crying in the mob, calling every body to catch hold of this man as he has killed two persons in the court premises. The person was fully exhausted, coming near us , he (this Pw) stepped a head and arrested him. As the situation was very much tense and he was worried about the security of the person arrested by him, so he made a wireless call to the P.S on which Incharge of polie station Batagram namely: Banaris Khan rushed towards ~~the~~ his place and he handed over the accused to him. Banaris Khan inquired the name from the accused and then conducted his personal search and recovered one waistler P3 of Pital 30 bore from the possession of accused in his presence and in presence of other witness, he took the same into his possession and prepared recovery memo Ex.Pw.4/1. He further deposed that on the arrest of the accused he replied that he has not committed the murder. Thereafter he accompanied Banaris Khan ASI to the place of occurrence and in his presence , during the spot inspection Banaris Khan ASI picked up blood stained earth from the spot and an empty

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of 30 bore Pital from the spot P2 vide recovery memo Ex.Pw.3/1 and packed and sealed these articles into different parcels in his presence. He was also examined by the I.O u/s 161 Cr.P.C.

Pw7 is Musafar shah (complainant)

11. He is complainant of the case and his statement has already been mentioned in the earlier part of this judgment. He has narrated the story of FIR in his statement.

Pw8 Nadir Khan (injured)

12. He has narrated the same story as deposed by complainant, Musafar shah, during his examination in chief, hence no need for his reproduction.

Pw9 Banaris Khan ASI:

13. On getting information about the present occurrence he went to Civil hospital Batagram, where one Musafar shah son of Chatary resident of Banda Bala lodged report about the occurrence to him, which he reduced the same into writing in the shape of Murasila, Ex.PA/1. After recording the same, he read over it to complainant, who after admitting the same to be correct thumb impressed the same. He sent this Murasila through Abdul Samad F.C to P.S for registration of the case. Thereafter he prepared injury sheet of Dildar deceased then injured which is Ex.Pw.9/1. He also prepared injury sheet of Nadir Khan injured which is Ex.Pw.9/2. He deposed that within a short span Dildar injured succumbed to the injury and he prepared his inquest report Ex.Pw.9/3 and his dead body was handed over to the doctor for post mortem examination and he also informed Police station about the death of Dildar deceased. He deposed that at this juncture he was informed by Amjid IHC that he has arrested the accused near Batagram village and on this information he (this Pw) went there and formally

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arrested the accused and took his personal search. During search of accused he recovered one waistler black colour alongwith a black belt which was attached to the black belt, same is P3 and P4 respectively, same were taken into his possession vide recovery memo Ex.Pw.4/ He also prepared skitch of the place where from he arrested the accused and effected recovery. The skitch is Ex.Pw.9/4. Thereafter he inspected the spot, and during spot inspection he took into his possession one empty of 30 bore Pista P2 and blood stained earth vide recovery memo Ex.Pw.3/1 in presence of the marginal witnesses. He sealed the empty in parcel No: 2 and blood stained earth in parcel No 1. Thereafter he recorded statements of marginal witnesses u/s 161 Cr.P.C. He prepared site plan Ex.PB on the pointation of eye witnesses. He vide his application Ex.Pw.9/5 obtained five days police custody for the accused. On 15.4.99 one shirt blood stained P1 belonging to deceased, Dildar Khan was taken into possession by him vide recovery memo Ex.Pw.2/1 in presence of the marginal witnesses, same was packed and sealed into parcel. He recorded statement of Nadir Khan Pw in Ayub Medical Complex Abbottabad. On 20.4.99 he took into his possession one shirt P5 blood stained having corresponding cut marks belonging to Nadir Khan injured Pw produced before him by Attaur Rehman r/o Kuza Banda, same was taken into possession by him vide recovery memo Ex.Pw.9/6 in presence of the marginal witnesses. He also recorded statements of marginal witnesses. He sent blood stained earth and clothes to Chemical Examiner/Seralogist vide his docket Ex.Pw.9/7. He placed on file the result of Chemical Examiner which is Ex.Pw.9/8. Then he handed over

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 10.5.1999
 12/2/99

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Pw10 doctor Ouzair Sabir, Ayub Medical Complex
Abbottabad:

14. On and before 23rd April, 1999 he was posted as Registrar Surgical " A" Unit Ayub Medical Complex Abbottabad. Nadir Khan son of Sumandar Khan, r/o Batagram was admitted in male Surgical A ward on bed No: 24 under admission No:378/62 as a case of fire arm injury in the abdomen since 14.4.1999. He was operated on the same day. This Pw issued a certificate in respect of Surgery and the time of internal injury. Certificate in this respect is Ex.Pw.10/1, which is in his hand writing and bears his signature.

Pw11 Fida Muhammad Khan Inspector :

15. He deposed that investigation in this case was conducted by N Banaris Khan ASI. He after completion of the investigation submitted complete challan in this case on 5.5.1999. He also interrogated the accused during the period of custody.

16. Thereafter statement of accused was recorded under section 342 Cr.P.C, wherein he denied the allegations and professed innocence. He neither wished to produce oral defence , however he placed on file photo copy of his application and photocopies of affidavits which are Ex.B4 to Ex.D7 and relied on these documents. However he did not wish to be examined on oath.

17. I have heard arguments of learned SPF assisted by counsel for complainant and defence counsel and have gone through the record.

18. The prosecution case mainly hinges upon the eye see account/evidence furnished by Musafar Khan complainant Pw7 and Nadir Khan injured eye witness Pw8, circumstantial evidence in the shape of medical legal reports of Dildar Khan deceased then injured and Nadir Khan Pw, Ex.Pw.5/1 and Ex.Pw.5/2 respectively, prepared by

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Judge
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doctor Fazal Qayum M.O, DHQ, hospital Batagram Pw5, post mortem report Ex.FM of Dildar Khan deceased, prepared by the said doctor, who conducted autopsy on the person of deceased Dildar at 4.00 PM after his death in the hospital and medical certificate furnished by Doctor Ouzair Sabir Pw10, Registrar of Ayub Medical Complex Abbottabad, who operated Nadir Khan injured Pw for fire arm injury, recovery of blood stained earth from the place of Pw Nadir Khan and recovery of an empty of 30 bore Pistol P2 giving smell of fresh discharge from the spot vide recovery memo Ex.Pw.3/1 in presence of marginal witnesses namely: Attaur Rehman and Amjid Hussain IHC, taking into possession of blood stained Qameez belonging to Dildar deceased P1 by Banaris Khan ASI Pw9 vide recovery memo Ex.Pw.2/1 in presence of the marginal witnesses namely: Abdul Samad F.C 157 and Gulfraz F.C 166, arrest of the accused by Amjid Hussain IHC soon after the occurrence and recovery of black belt alongwith black Kash of 30 bore Pistol from the waist of accused at the time of his personal search after his arrest by Banaris Khan ASI vide recovery memo Ex.Pw.4/1 in presence of marginal witnesses namely: Aqil Khan and Amjid Hussain

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Certified U/A 87 of HCO's statements of marginal witnesses of the recovery Q-e-s order 1984

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memos namely: Abdus Samad F.C 157, Attaur Rehman son of Muhammad Furqan Pw3, Aqil Khan Pw4, Amjid Hussain IHC Pw6, Banaris Khan ASI(I.O) Pw10 and Fida Muhammad Khan SHO, Pw11 and motive.

13.07.12

19. I would like to appreciate the above mentioned pieces of evidence one by one to see as to whether the prosecution has been able to bring home the charge against the accused beyond reasonable shadow of doubt or not.

20. At the very out set of my discussion I would like to say that it is a broad day light occurrence

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which has taken place at 3.15 PM on 14.4.1999 in the eastren gate of District Kitchary Batagram regarding which report in the shape of Murasila, Ex.PA/1, was made by Musafar shah complainant in DHQ hospital Batagram, before Banaris Khan ASI within a short spain of half an hour soon after the occurrence. It is also worth mentioning here that it is a case of single accused, only one person namely: Haroon has been charged for committing the murder of Dildar Khan deceased and for attempting at the life of Nadir Khan Pw effectively, thus, no question for substitution and mistaken identity arises. Ocular account in this case has been furnished by Musafar shah complainant and Nadir Khan injured Pw. Their presence on the spot is established keeping in view their un-shattered straight forward eye account and stamp of grievous injury on the person of Pw Nadir Khan. Musafar shah Pw7 and Nadir Khan Pw8 had deposed before this court at the time of their statements that " on the day of occurrence they alongwith Dildar had come to District Kitchary Batagram in connection with a case and after attending the court proceedings when they reached near the eastren gate of the court, it was about 3.15 PM in the mean time Muhammad Haroon, son of Farid resident of Giddri started firing at them with fire arm i.e 30 bore Pital from the front side. As a result of which Nadir Khan was hit and injured on his belly with one bullet while Dildar was hit and got injured on his right side chest with second bullet, which both of them fell on the ground and then accused decamped from the spot. Both these Pws are though related to each other and the deceased but their testimonies worthy of credence, because during the course of lengthy cross examination by defence counsel, the statements of these Pws were not at all shattered and defence failed to bring on record any material

Musafar Shah
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contradiction in their statements interse to discard their testimony, though there are some slightest omissions and addition in their statements but these are of trivial nature and are not sufficient to bruske aside their evidence. Their presence on the spot and witnessing the occurrence is established in toto.

21. Eye seen account of the present occurrence furnished by Musafar shah complainant Pw7 and injured Pw namely: Nadir Khan , Pw8 find fully support from medical evidence. Medico legal reports of Nadir Khan injured Pw, Ex.Pw.5/2 and medico legal report of Dildar Khan deceased then injured, Ex.Pw.5/1 coupled with medical certificate furnished by Doctor Ouzair Khan Sabir Pw10 , who operated upon Nadir Khan injured Pw in Ayub Medical Complex Abbottabad duly testified by Doctor Fazal Qayum Pw5 and Doctor Ouzair Sabir Pw10, whose statements were not at all shattered during cross examination, coupled with post mortem report, EX.PM of deceased Dildar Khan furnished by Doctor Fazal Qayum fully strengthen and corroborate the eye seen account of Musafar shah complainant and Nadir Khan injured eye witness.

22. Moreover recovery of blood stained earth from the spot and recovery of an empty of 30 bore Pystal from the spot vide recovery memo Ex.Pw.3/1 duly testified by Attaur Rehman , Amjid Hussain IHC, marginal witnesses and Banaris Khan I.O Pw9 further lend support to the prosecution case.

23. Accused Haroon after the occurrence fled away from the spot and was chased by people and was arrested near Ara Machine of Ma lang Khan in Batagram Colony by Amjid Hussain IHC soon after the occurrence and on conducting his personal search one black belt P3

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alongwith black Kash P4 of 30 bore Pistical was recovered from his waist by Banaris Khan ASI in presence of Aqil Khan and Amjid Hussain IHC vide recovery memo Ex.Pw.4/1. This recovery memo was duly testified by Aqil Khan, Amjid Hussain IHC, Banaris Khan ASI in their statements which were not at all shattered during cross examination. Thus arrest of accused soon after the occurrence while running from the spot and recovery of black belt alongwith black Kash of 30 bore from his possession fully support the prosecution case.

24. Last piece of evidence is motive. It is established from the evidence on file that there is a blood feud enmity between accused and the deceased party and on account of this enmity Haroon accused committed the present occurrence.

25. The upshot of the above discussion is that the prosecution has been able to bring home charge against accused Muhammad Haroon, beyond reasonable shadow of doubt, hence he is liable to be convicted for the offences with which he is charged. Thus upon his conviction he is convicted and sentenced to death for the murder of deceased Dildar Khan under sec:302B PPC. He shall be hanged byneck till he dies subject to the confirmation of his death sentence by worthy Peshawar High Court, Peshawar, circuit bench, Abbottabad. He shall also pay Rs. one lac as compensation to the LRS of deceased Dildar Khan according to their shari shares, under sec:544A Cr.P.C, or in default thereof to undergo six(6) months imprisonment. He is also convicted and sentenced to ten (10) years R.I and a fine of Rs.20,000/- (twenty thousand) for attempt to commit Qatli Amad of Nadir Khan Pw under sec:324 PPC and in default of payment of fine he shall suffer one year R.I under the said section of law. He is also convicted and sentenced for causing

Shah
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grievous injury on the belly of Nadir Khan Pw, for a term of seven (7) years R.I and Arsh amounting to Rs. one lac to victim Nadir Khan under section 337D PPC in addition to the punishment given to the convict/accused under section 324 PPC. He shall also pay Rs.50,000/(fifty thousand) as compensation under sec: 544A Cr.P.C to Nadir Khan Pw, or in default thereof to undergo six (6) months imprisonment. Benefit of sec: 382B Cr.P.C is given to accused/convict. Accused present in custody and is sent back to jail. He is directed to file an appeal before worthy High Court, circuit bench Abbottabad against his conviction, within seven days. Copy of the judgment be given to accused free of costs. A reference be made to Pw worthy Peshawar High Court, circuit bench, Abbottabad under sec:374 Cr.P.C. Case property be kept intact till period of appeal /revision.

Announced.
23.6.2001.

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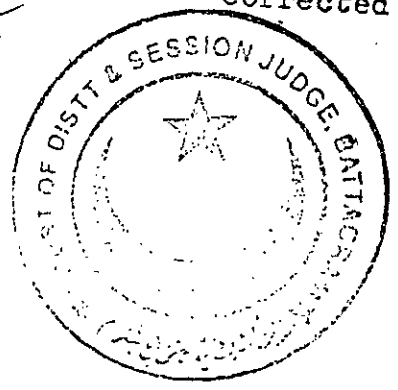
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(Shah Jehan Khan)
Sessions Judge,
Batagram. 23.6.2001

Examiner District & Sessions Judge, Batagram. Note:

Certified that this judgment consists of fourteen pages. Each page has been read, corrected wherever necessary and signed by me.

19.07.12



(Signature)
Sessions Judge,
Batagram. 23.6.2001

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Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR. CIRCUIT BENCH,
 ABBOTTABAD.

JUDICIAL DEPARTMENT.

Cr. A. No. 47 of 2001-199

JUDGMENT

Date of hearing 30-10-2002 & 31-10-2002
 Appellant (Mohammad Haroon) by M/s Saeed Akhtar Khan,
 Respondent (State) by Mr. Mr. Mohammad Asif Khan & Shaukat
 Advocate for complainant

SHAHZAD AKBAR KHAN, J.-

Muhammad Haroon, the

convict has filed this appeal against the judgment dated 23.6.2001 recorded by the learned Sessions Judge, Batagram, whereby the appellant was convicted under section 302-B of PPC and was sentenced to death and to pay Rs.1,00,000/- (one lac) as compensation in terms of section 544-A Cr.P.C., to the legal heirs of the deceased or in default of payment of compensation amount he was to undergo six months imprisonment. He was also convicted under section 324 PPC for an attempt to commit 'Qatl-e-Amd' of Nadir Khan PW and was sentenced to 10 years ^{R.I.} and a fine of Rs.20,000/-. In default of payment of fine he was to undergo one year further imprisonment. He was also sentenced to seven years imprisonment for causing grievous injury to PW Nadir Khan and 'Arsh' amounting to Rs.1,00,000/- under section 337-D PPC. He was

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also ordered to pay Rs.50,000/- as compensation under section 544-A Cr.P.C. to Nadir Khan or to suffer six months imprisonment, for default in payment of the compensation amount. Benefit of section 382-B Cr.P.C. was, however, extended to the appellant.

2. On 14.4.1999 on the report of complainant Musafir Shah PW.7, a 'Murasila' Ex.PA was recorded by Banaras Khan ASI PW.9, which culminated into registration of case FIR No.128 in Police Station, Batagram under section 302/324 PPC. Musafir Shah charged the appellant for causing injuries to Nadir Khan PW.8 and to Dildar-Khan by firing at them in the vicinity of courts of Batagram. Dildar Khan subsequently succumbed to the injuries and died.

3. After making report by Musafir Shah, Banaras Khan ASI undertook the investigation of the case. He prepared the injury sheet of Dildar-Khan, who was then injured and that of Nadir Khan Ex.PW.9/1 and Ex.PW.9/2 respectively. On the death of Dildar Khan, his inquest report Ex.PW.9/3 was

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prepared and the dead body was sent for post mortem examination. He was informed by Amjad IHC that the appellant was arrested near Batagram village, who went there and arrested the appellant. The personal search of the appellant led to the recovery of one waistler which were and black belt entered into recovery memo Ex.PW.4/1. He prepared the sketch of place of the arrest of the appellant Ex.PW.9/4. The venue of occurrence was inspected wherefrom the I.O. secured one empty of 30 bore pistol P.2 and blood stained earth, vide recovery memo Ex.PW.3/1. The empty and blood stained earth were sealed into parcels. He recorded the statements of witnesses under section 161 Cr.P.C. and the site plan was prepared as Ex.PB. On 15.4.1999 he took into possession one blood stained shirt P.1 belonging to the deceased vide recovery memo Ex.PW.2/1. He also took into possession shirt with corresponding cut marks P.5 belonging to Nadir Khan injured PW. The Chemical Examiner's report regarding blood stained earth and clothes was Ex. ^{be} 1/3. Further investigation

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was handed over to the SHO.

4. During the course of trial the prosecution examined 11 witnesses in support of its case.

PW.3 Atta-ur-Rehman was examined as a marginal

witness, in whose presence the blood stained earth,

and empty of 30 bore giving smell of fresh

discharge were taken into possession by the I.O.

Aqil Khan was examined as PW.4 as a marginal

witness to the recovery memo Ex.PW.4/1, vide

which the I.O. recovered the black belt and

'Kash' of 30 bore pistol from the accused. PW.5

is Dr. Fazal Qayum, Medical Officer, DHQ hospital,

Batagram, who on 14.4.1999 examined Dildar and

Nadir Khan in injured condition. On examination

of Nadir Khan PW, he found entry wound of fire-arm

in epigastrium about ¼" x ¼" and exit wound on

right buttock sizing 1" x 1" with averted margins.

On the same day he examined the dead body of

Dildar Khan deceased and found the following:-

- "1. An entry wound of fire arm on right
the
side of/lower chest between 8th and
space
9th inter costal/about ½" x ½" in size.

INTERNAL EXAMINATION:-

In thorax region right pleural cavity

Q. Atta-ur-Rehman

4/12

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were found injured, right lung was injured blood vessels were found injured. In abdominal region walls were injured, peritonium was injured and was full of blood, stomach was found injured and was found full of semi digested material, small intestine was found injured, large intestine was found injured, liver injured.

OPINION:- In my opinion death of the person is due to fire arm injury, causing injuries to the vital organs like liver, stomach, peritonium, lung, colon and vessels. Injuries to these structures resulted into massive internal haemorrhage. The cause of death of severe haemorrhage, resulted into shock and death. Probable time elapsed between injury and death: About 1/2 hour to one hour. Time between death and P.M: 10 to 15 minutes.

The post mortem report consisting of five pages including pictorial is Ex.PM and is prepared by me and is in my hand writing and bears my signature.

After the post mortem examination I handed over clothing of the deceased duly signed by me to the Police alongwith PM documents. On 16.4.99 Investigating Officer made a query from me regarding the bullet, as there was no exit wound and I answered the query vide my report dated 25.4.99 which is available as Ex.PM and the same is as follows:

"I searched for the bullet in body cavity but did not recover the bullet".

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5. Amjad Hussain ASI was examined as PW.6, who had arrested the appellant while he was being chased by a mob and gave wireless call to the Police Station which attracted Banaras-Khan to the place of arrest and the appellant was handed over to him. He was also a witness and signatory to the recovery memo Ex.PW.4/1. He also deposed that the I.O. picked up blood stained earth and empty of 30 bore pistol from the spot and packed the same into different parcels. He acknowledged the correctness of his signature on the recovery memos. Musafir-Shah complainant was examined as PW.7. He deposed that he is the tenant of Nadir Khan PW. On the day of occurrence he, Nadir Khan and Dildar Khan were on the premises of court in connection of a case in the court of Assistant Commissioner, Batagram. After the adjournment of the case, they started towards eastern gate of the court of the SDM, when Nadir Khan was followed by Dildar Khan and him respectively. When they were stepping the stairs, he saw Muhammad Haroon armed with 30 bore pistol, who

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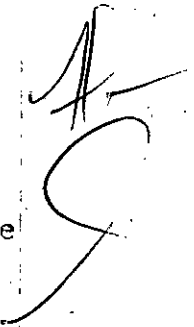
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started firing at Nadir Khan and Dildar Khan, with which both were hit and fell on the ground. The appellant sped away from the spot, running in a narrow street, duly armed with a pistol. Both the injured were taken to the hospital. He reported the matter to the 'Thanidar'. He admitted the correctness of the 'Murasila' and his thumb impressession thereon. He deposed that Dildar Khan died soon after the occurrence in the hospital. He accompanied the I.O. to the spot, who prepared the site plan at his instance. An empty of 30 bore and blood stained earth were recovered by the I.O. in his presence, which were sealed into parcels. The motive for the occurrence was disclosed by this PW as blood fued between the appellant and the deceased party.



6. Nadir Khan, the injured PW was examined as PW.8 who stated that on the day of occurrence he alongwith his nephew Dildar (deceased) and Musafir Shah complainant had gone to the court of SDM Batagram to attend to a case. After its



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adjournment they all the three left for their house and when reached the eastern gate of the court premises, he was going ahead followed by Dildar and Musafir Shah consecutively. When they reached the top stair he saw the appellant standing having 30 bore pistol who fired at him and received a bullet injury in his belly. The appellant fired a second shot which hit Dildar-Khan on his chest. Resultantly they fell on the ground and the appellant ran away from the spot. The occurrence was witnessed by Musafir Shah besides him and many other people. The motive for the offence was stated as blood fued between him and the appellant. He remained admitted in the hospital for about twenty days. Banaras Khan ASI was examined as PW.9. He stated that during the days of occurrence he was posted as ASI P.S. Batagram. On receiving information he went to Civil Hospital Batagram where Musafir Shah lodged the report to him. It was reduced into writing as a 'Murasila' and was thumb impressed by the complainant acknowledging its correctness. The 'Murasila' is Ex.PA/1. He started investigating

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the case and prepared the injury sheets of Dildar deceased then injured Ex.PW.9/1 and of Nadir Khan as Ex.PW.9/2. Shortly thereafter Dildar succumbed to the injury and he prepared the inquest report Ex.PW.9/3. He was informed by Amjad IHC that he had arrested the accused near Batagram village. He therefore reached there and arrested the accused. He recovered from the possession of the accused one waistler P.4 and black belt P.3. The relevant recovery memo is Ex.PW.4/1. The sketch of the place of arrest of the appellant was prepared as Ex.PW.9/4. During the inspection of venue of occurrence he secured an empty of 30 bore pistol P.2 and blood stained earth vide recovery memo Ex.PW.3/1. The empty was sealed in a parcel. The statements of the marginal witnesses were recorded under section 161 Cr.P.C. The site plan was prepared as Ex.PB. The shirt of the deceased P.1 and was received by him on 15.4.1999/ entered the same into recovery memo Ex.PW.2/1. Statement of Nadir-Khan injured PW was recorded in Ayub Medical Complex and his blood stained shirt P.5 having corresponding out marks was also taken into possession vide

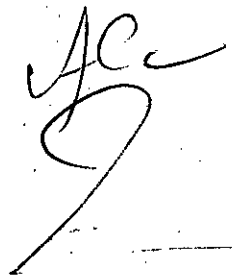


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recovery memo Ex.PW.9/6. The blood stained earth and clothes were sent to Seralogist/ Chemical Examiner whose report was on file as Ex.PW.9/8. Dr.Ouzair is PW.10 who testified his certificate Ex.PW.10/1. Fida Muhammad-khan Inspector was examined as PW.11 who submitted complete challan in the court. The appellant was examined under section 342 Cr.P.C. who denied the allegations and pleaded innocence. He neither recorded his statement on oath nor any defence was produced.



7. The learned counsel appearing for the appellant argued that the medical report is not conformable to the prosecution version as no spent bullet was recovered from the body of Dildar deceased and the doctor stated that the injury could be caused with bullet or pellet. He further stated that the sizes of injuries on the body of Dildar deceased and Nadir Khan injured PW are different therefore the offence does not appear to be the act of one man. He further argued that complainant Musafir Shah was third in the line and at the time of the firing



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he being on the ground and not on the step of the stair was not in a position to see the assailant/s being on a higher level which renders his testimony unworthy of credence. He further argued that the empty recovered from the place of occurrence was not sent to FSL for its examination. He next argued that the manner of the arrest of the accused as per story of the prosecution is not believable as Amjad IHC who statedly arrested the accused neither produced the FIR of the case nor warrant of arrest for the execution of which he claimed himself to be present in the area. On this point he further argued that no body from the mob statedly chasing the appellant was examined. Elaborating his view point on the arrest of the appellant he urged that the appellant was shown arrested at the distance of 3/4 furlongs from the place of occurrence which does not appear to be possible as the accused could not ^{be} ~~not~~ expected to run for such a distance after commission of the offence. He further argued that the pistol was not recovered from the appellant and there is no explanation from prosecution side as to where and

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when the pistol was thrown by the appellant. He also argued that the complainant side had a number of enmities in the area and it was possible that the offence was committed by any other enemy of the complainant party. As a last resort the learned counsel for the appellant submitted that at least the defence has succeeded in creating inconsistencies in the evidence of the eye-witnesses which though not fatal in character but can be considered as extenuating circumstance for the lesser punishment of life imprisonment and relied on the judgment of the august Supreme Court captioned as Falak Sher..Vs..The State reported as NLR 2000 Criminal 188. He also relied on 1993 SCMR 1660 and 1980 SCMR 859.

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8. On the other side the learned counsel engaged by the injured PW Nadir Khan and the learned counsel for the State have defended the impugned conviction and sentence of the appellant by arguing that this is a broad-day-light occurrence. The FIR was lodged with reasonable promptitude and the ocular account by Musafir-Shah complainant and injured PW Nadir Khan having

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gone un-shattered by the prosecution and is supported by the medical evidence, recovery of blood stained earth, the empty of 30 bore and the which motive for the occurrence/inspire confidence has validly been made as basis for conviction of the appellant by the trial court.

9. We have heard the arguments of the learned counsel for the parties and have extensively gone through the record. With regard to the first argument of the learned counsel we observe that there is no discordance between the medical report and the version of the prosecution. According to the eye-witnesses the appellant fired with a pistol of 30 bore. The doctor has not excluded the injury caused with the bullet. He has simply stated that the injury could be caused with the bullet or pellet which is merely an opinion and has not the effect of out-weighting the testimony of the eye-witnesses who are found truthful and trust worthy. We have thoroughly examined the testimony of Musafir Shah complainant and the injured eye-witness Nadir Khan in the light of the arguments of the learned counsel for the appellant.

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They successfully stood the test of cross-examination as their testimony could not be shattered through a searching cross-examination.

They remained consistent on all the material aspects of the case. PW Nadir Khan received injury in the incident which establishes his presence on the spot and nothing could be highlighted to show that this PW had not spoken the truth. Similarly the quick lodging of the

FIR by PW Musafir Shah also eloquently speaks about his presence with the deceased and the injured PW at the time of occurrence. We have no reason to dis-believe the testimony of either of the two. The size of injuries depends upon the location of body i.e. softness or hardness of tissues.

The different sizes of wounds would not speak, invariably, about the variety of weapons. The second argument of the learned counsel that Musafir Shah complainant being on the ground level was not in a position to see the assailant/s has also not impressed us as there

are only two steps near the exit gate where the occurrence has taken place and the complainant was so close to the deceased and the injured P.W.

that his view could not be obstructed for the purpose of identifying the culprits. He was second to Nadir Khan P.W. who had received the injury at the

Q. 11/11/1978

At

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hand of the appellant. The third argument of the learned counsel that the empty was not sent to the Forensic Science Laboratory for examination is insignificant as the crime weapon was not recovered. Moreover the charge is against one man only. Therefore, the non-sending of the empty to the Laboratory would not be of any help to the appellant.

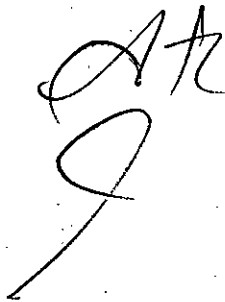


On the point of arrest we may observe that the non-production of the FIR or the warrant by Amjad Hussain, is wholly immaterial and the arresting official would not make any difference. The presence of Amjad Hussain PW.6 for the purpose of arrest of the appellant cannot be doubted on such consideration. Nothing has been brought on the record to establish that the presence of PW.6 on the spot was impossible. We also feel that the non-examination of any witness from the chasing mob about the arrest of the appellant is inconsequential. Nothing could be brought on the record to establish that the accused was arrested from some other place or that he had appeared before the police voluntarily. The next argument of the learned counsel was that the crime pistol was not recovered from the possession of the



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appellant and the prosecution has not given any explanation about the said pistol. The appellant after commission of the offence started running from the place of occurrence who covered about 3/4 furlongs distance and it is just possible that during such run he had the opportunity of throwing away the pistol having gone un-noticed by any of the chasers. This feature of the case cannot produce any fatal effect upon the case of the prosecution. We also cannot receive with any favour the argument of the learned counsel for the appellant that the offence might be committed by some other enemy of the complainant party as they had numerous enmities in the area. This is a day-light occurrence and no reasons are forthcoming to believe that the appellant was substituted for the real culprits as substitution, in our country, is a rare phenomena.



10. Since we have expressed our belief in the truthfulness and trust-worthiness of the ocular account furnished by PW Musafir Shah and the injured PW Nadir Khan having been supported by circumstantial

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evidence such as recovery of empty, blood stained earth from the venue of occurrence and also by the medical report supported by a very strong motive of blood feud between the appellant and the complainant party, therefore, we uphold the conviction of the appellant recorded by the learned trial court.

On the quantum of punishment we feel persuaded by the submission of the learned counsel for the appellant. We conceive that in the instant case when the appellant and the deceased or for that matter Nadir Khan PW being involved in bloody strife when confronted with each other, the possibility of exchange of some harsh words could not be excluded which feature of the case appears to have been concealed by the prosecution. As per site plan the appellant and the victims were within a talking distance. Thus keeping the overall circumstances of the case and the judgment of the august Supreme Court referred above, we feel that the punishment of life imprisonment would be sufficient to serve the purpose of justice. Consequently we alter the death punishment of the appellant into life imprisonment. The amount of compensation of Rs.1,00,000/- payable



46

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to the legal heirs of the deceased in terms of
 section 544-A Cr.P.C. and the rest of the
 conviction and sentences of the appellant shall
 remain in tact. The Murder Reference sent by
 the learned trial court under section 374 Cr.P.C.
 is answered in the negative. Benefit of section 382-B
 is extended to the appellant.

Announced on
19 / 2 / 2003.

sed y
19/2

M.GUL

~~*[Signature]*~~
~~*[Signature]*~~
JUDGE

Office
[Signature]
 20/2/

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Announced on

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ANN & E

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE TASSADUQ HUSSAIN JILLANI
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE EJAZ AFZAL KHAN

CRIMINAL APPEAL NOS. 532 & 533 OF 2006

(On appeal from the judgment 19.2.2003 passed by
Peshawar High Court, Circuit Bench, Abbottabad in
Cr.A. 47/2001)

- | | | |
|----|-----------------|-------------------|
| 1. | Nadir Khan | (In Cr.A. 532/06) |
| 2. | Muhammad Haroon | (In Cr.A. 533/06) |
| | | ... Appellants |

VERSUS

- | | | |
|----|----------------------------|-------------------|
| 1. | Muhammad Haroon and others | (In Cr.A. 532/06) |
| 2. | The State | (In Cr.A. 533/06) |
| | | ... Respondents |

For the Appellants: Mr. Tahir Hussain Lughmani, ASC
(In Cr.A. 532/2006)

For the Appellants: Mr. Saeed Akhtar Khan, Sr. ASC
(In Cr.A.533/2006)

For the Respondents: Mr. Saeed Akhtar Khan, Sr. ASC
(In Cr.A. 532/2006)

For the State: Mr. M. Aslam Ghumman, ASC
For AG KPK.

Date of Hearing: 07.12.2011

ORDER

TASSADUQ HUSSAIN JILLANI, J.- This judgment shall dispose of Criminal Appeal No. 533/2006 filed by Muhammad Haroon convict and Criminal Appeal No. 532/2006 filed by Nadir Khan complainant as they are directed against the same judgment dated 19.2.2003 passed by a learned Division Bench of the Peshawar High Court vide which the appeal of the convict Muhammad Haroon was

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

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partly allowed and while maintaining his conviction under Section 302(b) PPC for the murder of Dildar Khan and for causing injuries to Nadir Khan PW his sentence of death was converted into life imprisonment. The other sentences and quantum of compensation and the sentences in default whereof were however maintained (*i.e. conviction under Section 324 PPC for an attempt to commit Qatl-e-Amd for 10 years and a fine of Rs. 20,000/- in default whereof to undergo one year further imprisonment; under Section 337-D PPC for seven years with 'Arsh' amounting to Rs. 100,000/- and also a fine of Rs. 50,000/- as compensation under Section 544-A Cr.P.C to Nadir Khan or to suffer six months imprisonment for default in payment of the compensation amount*).

2. Learned counsel for the appellant / complainant in Cr.A. 532/2006 submitted that the respondent - convict Muhammad Haroon had caused the murder in a broad daylight and that too in the premises of the District Courts where Dildar deceased had come for court hearing; that there was a blood feud between the parties; that the respondent had come with criminal intent to cause the murder; that he repeated the shots and no case for lesser sentence was made out. He further contended that the finding of the learned High Court that some altercation may have preceded the occurrence is rather conjectural and is not supported by anything on record.

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Supreme Court of Pakistan
ISLAMABAD

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3. Learned counsel for the respondent - convict Muhammad Haroon submitted that so far as the alteration of sentence from death to life is concerned, the same does not call for interference because there is nothing in evidence to indicate that he had come with a plan to cause the death of Dildar; that he did not repeat the fire; that there is only single injury on the person of the deceased and that the respondent has already served out the altered sentence of life imprisonment; that he is about to be released and is being detained only because his sentence of 10 years awarded under Section 324 PPC and 7 years under Section 337-D PPC which were to run consecutively has yet to be served out. Assailing the direction that the sentences should run consecutively, learned counsel contended that the two courts below have not correctly appreciated the import of Section 35 Cr.P.C and the law laid down by this Court in Shah Hussain Vs. State (PLD 2009 SC 460) as also previous judgment reported at Javed Shaikh Vs. State (1985 SCMR 153).

4. Learned counsel for the State adopted the arguments of learned counsel for the appellant in Cr.A. 532/2006 and submitted that the learned High Court fell in error in holding that there was possibility of some altercation having taken place prior to the occurrence and therefore, the judgment to the said extent merits interference. Even on question of the running of sentences, learned counsel

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

(51)

supported the concurrent findings of the courts below that the sentences awarded should run consecutively.

5. Having heard learned counsel for the parties as also for the State and having gone through the impugned judgment, we find that while altering the sentence of respondent Muhammad Haroon from death to life, the learned Division Bench was persuaded by the fact that the parties had a history of blood feud and when on the date of hearing of a case, they ran into each other, some altercation / exchange of harsh words may have preceded the occurrence and therefore, it was a mitigating circumstance calling for a lesser sentence. The Court found as follows: -

"On the quantum of punishment we feel persuaded by the submission of the learned counsel for the appellant. We conceive that in the instant case when the appellant and the deceased or for that matter Nadir Khan PW being involved in bloody strife when confronted with each other, the possibility of exchange of some harsh words could not be excluded which feature of the case appears to have been concealed by the prosecution. As per site plan the appellant and the victims were within a talking distance. Thus keeping the overall circumstances of the case and the judgment of the august Supreme Court referred above, we feel that the punishment of life imprisonment would be sufficient to serve the purpose of justice."

6. We confronted learned counsel for the appellant Nadir Khan / complainant as to whether there was any direct enmity between respondent - convict Muhammad Haroon and

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deceased Dildar and whether is there any evidence of some immediate cause / motive for the occurrence and reply was in the negative. In the afore-referred circumstances, the finding of the learned High Court that there was possibility of exchange of harsh words preceding the occurrence is neither arbitrary nor conjectural particularly when the entire evidence and the background of blood feuds are kept in view. Even otherwise, Section 302(b) PPC provides for two legal sentences i.e. either death or life; both are tenable and it is for the Court seized of a case to exercise the discretion judicially in awarding either of the two sentences. The exercise of discretion in this regard by the learned High Court is reasoned and is not against the law declared by this Court. This brings us to the other issue raised by learned counsel for the respondent - convict Muhammad Haroon i.e. that the learned Trial Court could not have directed the sentences to run consecutively as in the said event, the sentences would go beyond the maximum term of punishment provided in terms of Section 35 proviso 'a' Cr.P.C. The said provision reads as follows: -

"35. Sentence in cases of conviction of several offences at one trial. (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Pakistan Penal code sentence him, for such offences, to the several punishments prescribed therefore which such Court is competent to inflict; such punishments, when consisting of imprisonment to commence the one after the

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

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expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows:

(a) Maximum term of punishment. In no case shall such person be sentenced to imprisonment for a longer period than twenty five years;

(b) if the case is tried by a Magistrate the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, the aggregate of consecutive sentences passed under this section in case of conviction for several offences at one trial shall be deemed to be a single sentence."

7. A bare perusal of proviso 'a' referred to above would show that the learned Trial Court could not have awarded the consecutive sentences which had the effect of making the total period of sentences more than 25 years. This is in line with the law laid down by this Court in two judgments to which reference has been made by respondent - convict's learned counsel.

8. For what has been discussed above, Criminal Appeal No. 532/2006 filed by the complainant Nadir Khan for enhancement of sentence of Muhammad Haroon is dismissed

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Supreme Court of Pakistan
ISLAMABAD

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and Criminal Appeal No. 533/2006 filed by Muhammad

Haroon - convict is partly allowed i.e. it is directed that the

sentences awarded under Sections 302(b), 324 & 337-D PPC

shall run concurrently and the remaining sentences shall

remain intact.

Scd - Jassadly Hussain Gillani, J
Scd - Mian Saqib Arisad, J
Scd - Ejaz Azhar Khan, J

Certified to be true Copy

[Signature]
Superintendent,
Supreme Court of Pakistan
ISLAMABAD

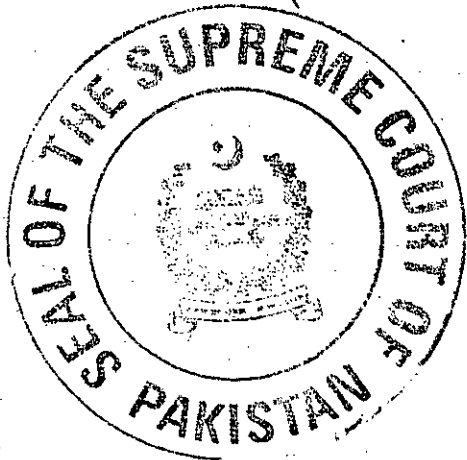
Islamabad, the

07th December, 2011.

Not Approved For Reporting

Khurram

10-12-11



To

The District Coordination Officer,
District Manshehra.

155
Annex F²

Subject: Departmental appeal for reinstatement for the purpose of retirement and Pensionary benefits etc.

Respected Sir,

With due respect I have the honour to submit this departmental appeal/representation for your kind consideration and favourable action on the following facts and grounds:

1. That appellant was appointed as Drawing Master on 13.12.1978 and performed his duty regularly and continuously to the entire satisfaction of his superiors and thus has at his credit long drawn meritorious service. He was lastly serving at GMS Bartoni, Manshehra. (Copy of Service Book *Annex:-A*)
2. That in the year 1999, appellant was falsely implicated in a murder case vide F.I.R. No.128 dated 14.04.1999 due to family animosity of relatives and was thus arrested in pursuance of the F.I.R (*Annex:-B*).
3. That after the arrest of the appellant he was suspended w.e.f. 26.06.1999 vide order of the even date, which suspension was continued/extended vide orders dated 05.06.2000, 13.09.2000, 07.12.2000 and 05.06.2001 but thereafter, the suspension was not extended vide entries at Page 13 & 15 of the Service Book *ibid*.
4. That subsequently appellant was challaned to the Court of Session Judge, Battagram and after conclusion of the trial he was convicted in sentence to death vide Judgment dated 23.06.2001 (*Annex:-C*). Being aggrieved of the Judgment, appellant filed Criminal Appeal before the Peshawar High Court, Abbottabad Bench, which was partially allowed vide Judgment dated 19.02.2003 (*Annex:-D*) and the death sentence was converted into life imprisonment. Being further aggrieved, appellant yet preferred another appeal before the Supreme Court of Pakistan, which was also partially allowed and the Sentence was further reduced vide Judgment dated 07.12.2011 (*Annex:-E*). In pursuance of the Judgment of the Hon'ble Apex Court, the appellant was later on released from captivity after serving the sentence.
5. That the date of birth of the appellant is 01.01.1952 and therefore his date of retirement falls on 01.01.2012, therefore, appellant prefers this departmental appeal before your good self for reinstatement and consequent retirement and pensionary benefits etc. on the following amongst other grounds:-

AB

Grounds:-

SG

- A. That appellant was innocent and was falsely implicated in the case due to enmity of the close relatives with the deceased party and was convicted on the basis of false evidence adduced by the opposite side. When appellant preferred appeal before the Apex Court, during the pendency of the appeal, almost the sentence of life imprisonment was served out and perhaps due to that reason, the Hon'ble Apex Court refrained from delving deep into the merits of the case.
- B. That be that as it may, the offence which the accused was charged with, was not one of moral turpitude and therefore, the same was not falling within the definition of misconduct as per Rule-2(1)(1)(vii) of the Government of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, therefore, appellant is entitled for reinstatement and retirement benefits.
- C. That till date, appellant has not been terminated from his service, therefore, on the date of retirement i.e. on attaining the age of superannuation, appellant was civil servant and therefore, he is entitled for retirement benefits under the rules.
- D. That initially appellant was suspended from service and the period of suspension was extended for sometime but the same was not further extended and as per Rule-6 of the Government of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, if the period of suspension is not extended within 30 days of the expiry of initial period of suspension, then the Govt. servant stands reinstated and as per Civil Service Regulations 420(c) A suspension followed by reinstatement does not entail forfeiture of past service.
- E. That similarly under Civil Service Regulations 417-A, if an officer who has been suspended during enquiry into his conduct, attains the age of superannuation before the completion of the enquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated the period spent on duty. Similar references can be made to Civil Service Regulations 416 & 417. A person is also deemed suspended when he is arrested in pursuance of a criminal offence.
- F. That appellant has served the Govt. for about 22 years regularly and continuously with meritorious service record and is entitled for the Pensionary benefits under the rules and keeping in view the peculiar facts and circumstances of the case, appellant is entitled for pensionary benefits in the interest of justice and fair-play.

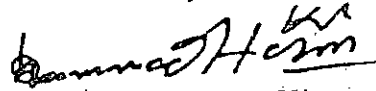
It is, therefore, humbly requested that on acceptance of this departmental appeal, appellant may graciously be reinstated into service and

MS

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consequently be allowed retirement on attaining the age of superannitation and the consequent pensionary benefits etc. or any other relief/benefit to which is entitled may also be allowed to him.

Yours faithfully



Muhammad Haroon Khan
S/o Muhammad Farid Khan
R/o Village Gidarai,
Tehsil and District Battagram.
Ex-Drawing Master,
GMS Bartoni, Mansehra

Dated: 12/11.2012



(58)

DISTRICT GOVERNMENT MANSEHRA
OFFICE OF THE DISTRICT COORDINATION OFFICER

NO.A-I/_____/AE
Dated 31/12/2012

To

The Executive District Officer,
(E & SE) Mansehra.

Subject: **Departmental appeal for reinstatement for the purpose of retirement and pensionary benefits etc.**

I am directed to enclose herewith self contained an application dated 12.11.2012 (in original) submitted by Mr.Muhammad Haroon Khan S/O Muhammad Farid Khan R/O Village Gidarai, Tehsil & District Battagram (Ex-Drawing Master, GMS Bartoni) along with its enclosures, for disposal under the rules at your end please.

Euel

No. 28338 /AE.

Human Resource Dev: Officer,
Mansehra

Copy to Mr.Muhammad Haroon Khan S/O Muhammad Farid Khan R/O Village Gidarai, Tehsil & District Battagram for information with reference to his appeal dated 12.11.2012.

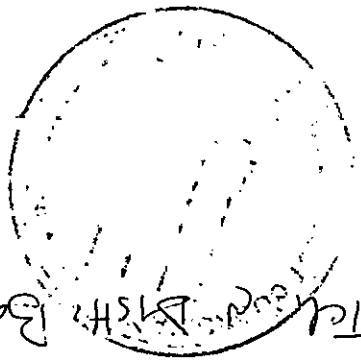
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Mansehra

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To

OPSS

Mr. Mehd Haseen Khan 80 Mehd Farid Khan
R/o Village Gidara Taluka Bishr Bahugana



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

No. 947 /ST

Dated 6/6/2016

To


The Secretary E&SE,
Peshawar.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 25.5.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 353 /2013

Muhammad Haroon.....Appellant

Versus

The Govt. and others.....Respondents

WRITTEN POINTS

Respectfully Sheweth,

1. 417A Civil Service Regulations:

Under-417A CSR if an officer during suspension pending inquiry attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as spent on duty.

(Extract of the 417A CSR is **Annexure-A**)

2. Identical decision:

Service Appeal No.1689/2010 titled "Muhammad Irshad ..VS.. The Secretary and others" involving similar law point was allowed by the Hon'ble Tribunal on 13.06.2011 and the relief was granted to the appellant/convict.

(Copy of the Judgment is **Annexure-B**)

3. Not convicted of moral turpitude:

Only moral turpitude under Rule-2(I)(vii) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 constitutes misconduct and as such. The appellant was convicted of offence though he was falsely implicated due to family blood-feud enmity.

(Extracts of Rule-2(I)(vii) **Annexure-C**)

4. Not removed or dismissed till date:

That since his arrest on 26.06.1999 till date appellant has neither been proceeded against departmentally nor removed or dismissed from service. His date of superannuation is 01.01.2012, therefore, he is entitled for full pensionary benefits inas much as under Rule-8(a) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 the competent authority may dismiss a civil servant if convicted by a court of law on the charges of corruption, moral turpitude or entered into a plea bargain.

(Extracts from Rule-8 of the KP Civil Servants (E & D) Rules-2011 **Annexure-D**)

5. Compassionate Allowance:

Under Section-19(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the Government may even in case of removal or dismissal from service allow Compassionate Allowance not exceeding 2/3rd of the pension or gratuity admissible to him as if he is invalidated on the date of dismissal/removal.

(Extracts of Section-19(3) **Annexure-E**)

Submitted by:

Khaled Rahman,
Advocate,
Supreme Court of Pakistan

Dated: 17/05/2016

Annex "A"

2

THE CIVIL SERVICE REGULATIONS

With Appendice

(APPLICABLE TO THE FEDERAL CIVIL SERVANTS THROUGH-OUT PAKISTAN)

By

HAMID ALI

M.A., M.Ed., LL.B.

(Exponent of Civil Service, Labour, Taxation & General Laws)

Upto-date Amendments Incorporated

REVISED EDITION

1991



THE IDEAL PUBLISHERS



خالد رحمن ایڈ و کیٹ

پریم کورٹ آف پاکستان

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Note 1.—[The Government of Pakistan and Local Governments may delegate their power under this Article to Heads of Departments as regards officers serving under them.]

Note 2.—The Government of Pakistan or a Local Government may issue general orders under this Article in regard to any specified class of officers under training.]

Deputation out of Pakistan

412. When an officer is deputed out of Pakistan on duty, the whole period of his absence from Pakistan counts. When an officer on leave out of Pakistan is employed, or is detained after the termination of his leave on duty, the period of such employment or detention counts.

Recall to Duty

413. Time spent on the voyage to India upto 14th August, 1947 and to Pakistan thereafter by an officer who is recalled to duty before the expiry of any recognised leave out of India/Pakistan counts, provided his return to duty is compulsory (see Article 199).

Class IV Service

414. A class IV servant counts leave with and without allowances not exceeding in the aggregate that which might be given with allowances under the rules in Chapters XII and XIV.

415. *Cancelled.*

SECTION III.—SUSPENSIONS, RESIGNATION, BREAKS AND DEFICIENCIES IN SERVICES

Periods of Suspension

416. Time passed under suspension pending enquiry into conduct counts, if the suspension is immediately followed by reinstatement, but time passed under suspension adjudged as a specific penalty does not count.

*[417. Time passed under suspension followed by reinstatement shall count for pension irrespective of whether the Government servant was or was not allowed full pay and allowances for that period.]

¹[417-A. If an officer, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.]

Resignation and Dismissals

418. (a) Resignation of the public service, ²(or dismissal) or removal from it for misconduct, insolvency, inefficiency not due to age, or (failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment to take up another appointment service in which counts, is not a resignation of the public service.

419. Any authority who, on revision or appeal, reverses an order dismissing ²(or removing) an officer, may declare that the officer's past service counts.

¹Article 417-A inserted by S. R. O. 1144 (I)/80, dated 10th Nov., 1980, Gazette of Pakistan, Extraordinary, Part II, Page No. 2215, dated November 20, 1980.

²The words in brackets occurring in Articles 418 and 419 take effect from 18th June 1935.

*Article 417 substituted by S. R. O. 227 (I)/83, dated 17th Feb., 1983, Gaz. of Pak., Extr., Part II, P. No. 325, dt. March 8, 1983.

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Annex "B"

4

Restatement of the Service and Sentence.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1689/2010

Date of institution: - 20.09.2010

Date of decision: - 13.06.2011



Muhammad Irshad, MA, MEd. Ex CT, Government: High School Kolka, District
Manshura (Appellant)

VERSUS

1. Secretary to Government of KPK, Elementary and Secondary Education Department Peshawar.
2. Director Elementary and Secondary Education, Department KPK, Peshawar.
3. Executive District Officer, (Elementary and Secondary Education) KPK, District Manshura (Respondents)

Appeal under section 4 of the KPK Service Tribunals Act, 1974 for the release of salary of the appellant with effect from 2.10.2009 i.e when the appellant undergone his conviction, the departmental appeal dated 20.5.2010 has not been responded despite the lapse of ninety days.

Mr. Ijaz Anwar Advocate For Appellant
Mr. Tahir Iqbal Khattak For Respondents

SYED MANZOOR ALI SHAH MEMBER
MR. KHALID HUSSAIN MEMBER

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER: This appeal has been filed by the appellant for the release of salary of the appellant with effect from 2.10.2009 i.e when the appellant undergone his conviction.

2. Brief facts of the case as per memo of appeal are that the appellant is serving in the education Department. He was initially appointed as C.T in the year 1997 in BPS 14. He was later-on allowed BPS 15. While serving in the said capacity, the appellant was falsely implicated in a criminal case under section 302/324/148/149 PPC on 27.9.2007. FIR No. 267, P.S Oghi. In the mean time the appellant was arrested in the criminal case on 28.9.2007. When this information was conveyed to the respondents, the appellant was suspended from service. He was however, allowed subsistence

ATTESTED

allowance as admissible under rules. The criminal case proceeded and the trial commenced. After the conclusion of the trial, the learned Additional Sessions Judge Manshra at Oghi vide his judgment and order dated 19.9.2009 convicted the appellant under Section 324 PPC and sentenced him to suffer three years R.I with compensation of Rs. 10,000, with addition the appellant was also convicted under Section 324 r/w 337 (1) (2) PPC and sentenced one year imprisonment as Tazir. He was also liable to Daman amounting to Rs. 5000/- The appellant filed criminal appeal No. 112/2009 in the Peshawar High Court Abbottabad Bench. Similarly a criminal Revision was also filed for the enhancement of sentence to the appellant. Both the appeal and revision were heard together but both were dismissed, maintaining the judgment of learned additional Section Judge Manshra at Oghi Vide appellate judgment and order dated 10.5.2010. The appellant served out the sentence and was released on 2.10.2009. After dismissal of his appeal on 20.5.2010 he submitted his appeal for the release of his salary and permission to join his duty, however, no action was taken on the representation of the appellant despite the lapse of ninety days. Hence, the instant appeal.

3. Arguments heard and file perused.

4. The learned counsel for the appellant argued that the appellant has been denied salary without any lawful justification. Withholding of salary is a punishment, however, while withholding the salary no right of hearing was provided to him. The appellant was convicted u/s 324 PPC, the same does not amount conviction in the case of moral turpitude, hence, the appellant is entitled to the salary and arrears. The appellant was illegally implicated in a criminal case. The allegations leveled were not of heinous in nature. Hence, entitling the appellant to the reinstatement with arrears of pay. The appointment of the appellant is still intact, hence, the respondents department is bound to allow the appellant to join his duty and to release his salary. He prayed that on acceptance of this appeal the respondents be directed to release the salary of the appellant with effect from 2.10.2009 with all arrears.

5. The A.G.P argued that the appellant has been convicted in a murder case and sentenced to punishment. Hence is liable, under the jurisdiction of service law, to be

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

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terminated with no further benefits. With-holding of salary is punishment in such a criminal case, while the case of appellant is substantially enough to hold back his salary. The appellant has been charged under Section 392/324 PPC which is as per with other sections in the manner of service rules and is adequate to withhold the salary. The appellant was criminally sentenced to punishment and fined, which is sufficient enough to hold back the service benefits under the rules. The appellant will possibly meet the termination, as provided under the rules, and hence, has no right to claim any salary. He prayed that the appeal may be dismissed.

6. In view of the above, the Tribunal while agreeing with the arguments put forth by the learned counsel for the appellant accepts the appeal. The respondents are directed to release the salary of the appellant w.e.f. 20.5.2010, the date he reported his arrival to duty after serving out the sentence as no duty was performed by the appellant till 20.5.2010, hence, claim for arrears etc is denied (No work no pay). No order as to costs. File be consigned to the record.

ANNOUNCED,
13.06.2011.

[Signature]
(KHALID HUSSAIN)
MEMBER.

[Signature]
(SYED MANZOOR ALI SHAH)
MEMBER.

Certified to be true copy
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 1-7-11
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Copying Fee 2/-
Urgent 2/-
Total 10/-
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Date of Completion of Copy 1-7-11
Date of Delivery of Copy 1-7-11

Annex "C" (7)

Under Rule 2(1)(I)(iii) of the E & D Rules 2011
only moral Turpitude constitutes misconduct

**KHYBER PAKHTUNKHWA
GOVERNMENT SERVANTS
(EFFICIENCY AND DISCIPLINE)
RULES, 2011**

ICHALEK RENJAN
Advocate
High Court, Peshawar
S.B. Haroon Marg,
Khyber Bazar, Peshawar.

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EXTRAORDINARY
GOVERNMENT

REGISTERED NO. PI

GAZETTI



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 16TH SEPTEMBER, 2011.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION DEPARTMENT.

NOTIFICATION

Peshawar dated the 16th September, 2011.

No.SO(REG-VI)E&AD/2-6/2010.-In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. **Short title, application and commencement.**---(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. **Definitions.**---(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "accused" means a person in Government service against whom action is initiated under these rules;
- (b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;
- (d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;

- (e) "Chief Minister" means the Chief Minister of the Khyber Pakhtunkhwa;
- (f) "competent authority" means-
- (i) the respective appointing authority;
 - (ii) in relation to a Government servant of a tribunal or court functioning under Government, the appointing authority or the Chairman or presiding officer of such tribunal or court, as the case may be, authorized by the appointing authority to exercise the powers of the competent authority under these rules;

Provided that where two or more Government servants are to be proceeded against jointly, the competent authority in relation to the accused Government servant senior most shall be the competent authority in respect of all the accused.

- (g) "corruption" means-
- (i) accepting or obtaining or offering any gratification or valuable thing, directly or indirectly, other than legal remuneration, as a reward for doing or for bearing to do any official act; or
 - (ii) dishonestly or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or
 - (iii) entering into plea bargain under any law for the time being in force and returning the assets or gains acquired through corruption or corrupt practices voluntarily; or
 - (iv) possession of pecuniary sources or property by a Government servant or any of his dependents or any other person, through his or on his behalf, which cannot be accounted for and which are disproportionate to his known sources of income; or
 - (v) maintaining a standard of living beyond known sources of income; or
 - (vi) having a reputation of being corrupt;
- (h) "Governor" means the Governor of the Khyber Pakhtunkhwa;
- (i) "inefficiency" means failure to efficiently perform functions assigned to a Government servant in the discharge of his duties;
- (i) "incompetence" means failure to perform functions assigned to a Government servant in the discharge of his duties;

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(k) "inquiry officer" means an officer appointed by the competent authority under these rules;

(l) "misconduct" includes-

- (i) conduct prejudicial to good order or service discipline; or
- (ii) conduct contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987, for the time being in force; or
- (iii) conduct unbecoming of Government servant and a gentleman; or
- (iv) involvement or participation for gains, directly or indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or
- (v) any act to bring or attempt to bring outside influence, directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service; or
- (vi) making appointment or promotion or having been appointed or promoted on extraneous grounds in violation of any law or rules; or
- (vii) conviction for a moral offence by a court of law. ✓

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Province Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. Grounds for proceedings.---A Government servant shall be liable to be proceeded against under these rules, if he is-

- (a) inefficient or has ceased to be efficient for any reason; or
- (b) guilty of misconduct; or
- (c) guilty of corruption; or
- (d) guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any un-authorized person, and his retention in service is prejudicial to national security; or

- (f) entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

4. Penalties.---(1) The following are the minor and the major penalties, namely:

(a) Minor penalties:

- (i) censure;
- (ii) withholding, for a specific period, promotion or increment subject to a maximum of three years, otherwise than for unfitness for promotion or financial advancement, in accordance with the rules or orders pertaining to the service or post:

Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale:

- (iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order;

(b) Major penalties:

- (i) reduction to a lower post or pay scale or to a lower stage in a time scale.
- (ii) compulsory retirement;
- (iii) removal from service; and
- (iv) dismissal from service.

(2) Dismissal from service under these rules shall disqualify a Government servant from future employment under Government.

(3) Any penalty under these rules shall not absolve a Government servant from liability to any other punishment to which he may be liable for an offence, under any other law, committed by him while in service.

5. Initiation of proceedings.---(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-

- (a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry:

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- (b) give him a reasonable opportunity of showing cause against the proposed action, within seven days of receipt of the order or within such extended period, as the competent authority may determine;
- (c) on receipt of reply of the accused within the stipulated period or after the expiry thereof, if no reply is received, determine whether the charge or charges have been proved against the accused or not:

Provided that after receipt of reply to the show cause notice from the accused, the competent authority, except where the Chief Minister himself is the competent authority, shall decide the case within a period of ninety days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons:

Provided further that if the case is not decided by the competent authority within the prescribed period of ninety days, the accused may file an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period;

- (d) afford an opportunity of personal hearing before passing any order of penalty under clause (f), if it is determined that the charge or charges have been proved against him;
- (e) exonerate the accused, by an order in writing, if it is determined that the charge or charges have not been proved against him; and
- (f) impose any one or more penalties mentioned in rule 4, by an order in writing, if the charge or charges are proved against the accused:

Provided that where charge or charges of grave corruption are proved against an accused, the penalty of dismissal from service shall be imposed, in addition to the penalty of recovery, if any.

8. Action in case of conviction or plea bargain under any law.---Where a Government servant is convicted by a court of law on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices, or has been acquitted by a court of law as a result of compounding of an offence involving moral turpitude under any law for the time being in force, the competent authority, after examining facts of the case, shall:

- (a) dismiss the Government servant where he has been convicted on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices voluntarily;

Provided that dismissal in these cases shall be with immediate effect from the date of conviction by a court of law; and

- (b) proceed against the Government servant under rule 5 where he has

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- (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
- (ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or
- (iii) a Government servant is involved in subversive activities; or
- (iv) it is not reasonably practicable to give such an opportunity to the accused; or

(b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

Provided that the competent authority shall dispense with the inquiry where-

- (i) a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or
- (ii) a Government servant is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

(2) The charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent authority.

6. **Suspension.**---A Government servant against whom action is proposed to be initiated under rule 5 may be placed under suspension for a period of ninety days, if in the opinion of the competent authority, suspension is necessary or expedient, and if the period of suspension is not extended for a further period of ninety days within thirty days of the expiry of initial period of suspension, the Government servant shall be deemed to be reinstated:

Provided that the competent authority may, in appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave as may be admissible to him, from such date as may be specified by the competent authority.

7. **Procedure where inquiry is dispensed with.**---If the competent authority decides that it is not necessary to hold an inquiry against the accused under rule 5, it shall-

- (a) inform the accused by an order in writing, of the grounds for proceeding against him, clearly specifying the charges therein, alongwith apportionment of responsibility and penalty or penalties proposed to be imposed upon him;

Provided that, when the appointment is made on a current-charge basis or by way of additional charge, his pay shall be fixed in the prescribed manner:

Provided further that where a civil servant has, under an order which is later set aside, been dismissed or removed from service or reduced in rank, he shall, on the setting aside of such order, be entitled to such arrears of pay as the authority setting aside such order may determine.

18. Leave:- A civil servant shall be allowed leave in accordance with the leave rules applicable to him; provided that the grant of leave will depend on the exigencies of service and be at the discretion of the competent authority.

19. Pension and gratuity:—(1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.

(2) In the event of death of civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity, or both, as may be prescribed.

(3) No pension shall be admissible to a civil servant who is dismissed or removed from service for reasons of discipline, but Government may sanction compassionate allowance to such civil servant, not exceeding two-third of the pension or gratuity which would have been admissible to him had he been invalided from service on the date of such dismissal or removal.

(4) If the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualified for pension or gratuity, and any over payment on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family.

20. Provident Fund:- (1) Before the expiry of the third month of every financial year, the Accounts Officer or other officer required to maintain provident fund accounts shall furnish to every civil servant subscribing to a provident fund the account of which he is required to maintain a statement under his hand showing the subscriptions to including the interest accruing thereon, if any, and withdrawals or advances from his provident fund during the preceding financial year.

(2) Where any subscription made by a civil servant to his provident fund has not been shown or credited in the account by the Accounts Officer or other officer required to maintain such account, such subscription shall be credited to the account of the civil servant on the basis of such evidence as may be prescribed.

21. Benevolent Fund and Group Insurance:- All civil servants and their families shall be entitled to the benefits admissible under the West Pakistan Government

¹ The words "or grade" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

² Section-19 substituted by the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 (Khyber Pakhtunkhwa Act No. III of 2013) published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 22nd January, 2013.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 353 /2013

Muhammad Haroon.....Appellant

Versus

The Govt. and others.....Respondents

WRITTEN POINTS

Respectfully Sheweth,

1. 417A Civil Service Regulations:

Under-417A CSR if an officer during suspension pending inquiry attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as spent on duty.

(Extract of the 417A CSR is **Annexure-A**)

2. Identical decision:

Service Appeal No.1689/2010 titled "Muhammad Irshad ..VS.. The Secretary and others" involving similar law point was allowed by the Hon'ble Tribunal on 13.06.2011 and the relief was granted to the appellant/convict.

(Copy of the Judgment is **Annexure-B**)

3. Not convicted of moral turpitude:

Only moral turpitude under Rule-2(I)(vii) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 constitutes misconduct and as such. The appellant was convicted of offence though he was falsely implicated due to family blood-feud enmity.

(Extracts of Rule-2(I)(vii) **Annexure-C**)

4. Not removed or dismissed till date:

That since his arrest on 26.06.1999 till date appellant has neither been proceeded against departmentally nor removed or dismissed from service. His date of superannuation is 01.01.2012, therefore, he is entitled for full pensionary benefits inas much as under Rule-8(a) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 the competent authority may dismiss a civil servant if convicted by a court of law on the charges of corruption, moral turpitude or entered into a plea bargain.

(Extracts from Rule-8 of the KP Civil Servants (E & D) Rules-2011 **Annexure-D**)

5. Compassionate Allowance:

Under Section-19(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the Government may even in case of removal or dismissal from service allow Compassionate Allowance not exceeding 2/3rd of the pension or gratuity admissible to him as if he is invalidated on the date of dismissal/removal.

(Extracts of Section-19(3) **Annexure-E**)

Submitted by:

Khaled Rahman,
Advocate,
Supreme Court of Pakistan

Dated: 17/05/2016

Annex A

(2)

THE CIVIL SERVICE REGULATIONS

With Appendice

(APPLICABLE TO THE FEDERAL CIVIL SERVANTS THROUGH-OUT PAKISTAN)

By

HAMID ALI

M.A., M.Ed., LL.B.

(Exponent of Civil Service, Labour, Taxation & General Laws)

Upto-date Amendments Incorporated

REVISED EDITION

1991



THE IDEAL PUBLISHERS



خالد رحمن ایڈوکیٹ

پریئم کورٹ آف پاکستان

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091-2592458 فون

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3-D ہارڈن سٹیشن خیبر بازار پشاور

میرآمین 0313-9140434

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Note 1.—[The Government of Pakistan and Local Governments may delegate their power under this Article to Heads of Departments as regards officers serving under them.]

Note 2.—The Government of Pakistan or a Local Government may issue general orders under this Article in regard to any specified class of officers under training.]

Deputation out of Pakistan

412. When an officer is deputed out of Pakistan on duty, the whole period of his absence from Pakistan counts. When an officer on leave out of Pakistan is employed, or is detained after the termination of his leave on duty, the period of such employment or detention counts.

Recall to Duty

413. Time spent on the voyage to India upto 14th August, 1947 and to Pakistan thereafter by an officer who is recalled to duty before the expiry of any recognised leave out of India/Pakistan counts, provided his return to duty is compulsory (see Article 199).

Class IV Service

414. A class IV servant counts leave with and without allowances not exceeding in the aggregate that which might be given with allowances under the rules in Chapters XII and XIV.

415. *Cancelled.*

SECTION III.—SUSPENSIONS, RESIGNATION, BREAKS AND DEFICIENCIES IN SERVICES

Periods of Suspension

416. Time passed under suspension pending enquiry into conduct counts, if the suspension is immediately followed by reinstatement, but time passed under suspension adjudged as a specific penalty does not count.

*[417. Time passed under suspension followed by reinstatement shall count for pension irrespective of whether the Government servant was or was not allowed full pay and allowances for that period.]

¹[417-A. If an officer, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.]

Resignation and Dismissals

418. (a) Resignation of the public service, ²(or dismissal) or removal from it for misconduct, insolvency, inefficiency not due to age, or (failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment to take up another appointment, service in which counts, is not a resignation of the public service.

419. Any authority who, on revision or appeal, reverses an order dismissing ²(or removing) an officer, may declare that the officer's past service counts.

¹Article 417-A inserted by S. R. O. 1144 (I)/80, dated 10th Nov., 1980, Gazette of Pakistan, Extraordinary, Part II, Page No. 2215, dated November 20, 1980.

²The words in brackets occurring in Articles 418 and 419 take effect from 18th June 1935.

*Article 417 substituted by S. R. O. 227 (I)/83, dated 17th Feb., 1983, Gaz. of Pak., Extr., Part II, P. No. 325, dt. March 8, 1983.

Reinstatement after serving Sentence

Annex B²

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appal No. 1689/2010

Date of institution - 20.09.2010

Date of decision - 13.06.2011



Muhammad Irshad, MA, Med. Ex CT, Government: High School Kolka, District
Manshra (Appellant)

VERSUS

1. Secretary to Government of KPK, Elementary and Secondary Education
Department Peshawar.
2. Director Elementary and Secondary Education, Department KPK, Peshawar.
3. Executive District Officer, (Elementary and Secondary Education) KPK, District
Manshra (Respondents)

Appeal under section 4 of the KPK Service Tribunals Act, 1974 for the release
of salary of the appellant with effect from 2.10.2009 i.e when the appellant
undergone his conviction, the departmental appeal dated 20.5.2010 has not been
responded despite the lapse of ninety days.

Mr. Ijaz Anwar Advocate For Appellant
Mr. Tahir Iqbal Khattak For Respondents

SYED MANZOOR ALI SHAH MEMBER
MR. KHALID HUSSAIN MEMBER

JUDGMENT

SYED MANZOOR ALI SHAH MEMBER: This appeal has been filed by the
appellant for the release of salary of the appellant with effect from 2.10.2009 i.e when
the appellant undergone his conviction.

2. Brief facts of the case as per memo of appeal are that the appellant is serving in
the education Department. He was initially appointed as C.T in the year 1997 in BPS
14. He was later-on allowed BPS 15. While serving in the said capacity, the appellant
was falsely implicated in a criminal case under section 302/324/148/149 PPC on
27.9.2007. FIR No. 267, P.S Oghi. In the mean time the appellant was arrested in the
criminal case on 28.9.2007. When this information was conveyed to the respondents,
the appellant was suspended from service. He was however, allowed subsistence

ATTESTED

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3. Arguments heard and file perused.

4. The learned counsel for the appellant argued that the appellant has been denied salary without any lawful justification. Withholding of salary is a punishment, however, while withholding the salary no right of hearing was provided to him. The appellant was convicted u/s 324 PPC, the same does not amount conviction in the case of moral turpitude, hence, the appellant is entitled to the salary and arrears. The appellant was illegally implicated in a criminal case. The allegations leveled were not of heinous in nature. Hence, entitling the appellant to the reinstatement with arrears of pay. The appointment of the appellant is still intact, hence, the respondents department is bound to allow the appellant to join his duty and to release his salary. He prayed that on acceptance of this appeal the respondents be directed to release the salary of the appellant with effect from 2.10.2009 with all arrears.

5. The A.G.P argued that the appellant has been convicted in a murder case and sentenced to punishment. Hence is liable, under the jurisdiction of service law, to be

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

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terminated with no further benefits. With-holding of salary is punishment in such a criminal case, while the case of appellant is substantially enough to hold back his salary. The appellant has been charged under Section 392/324 PPC which is as per with other sections in the manner of service rules and is adequate to withhold the salary. The appellant was criminally sentenced to punishment and fined, which is sufficient enough to hold back the service benefits under the rules. The appellant will possibly meet the termination, as provided under the rules, and hence, has no right to claim any salary. He prayed that the appeal may be dismissed.

6. In view of the above, the Tribunal while agreeing with the arguments put forth by the learned counsel for the appellant accepts the appeal. The respondents are directed to release the salary of the appellant w.e.f. 20.5.2010, the date he reported his arrival to duty after serving out the sentence as no duty was performed by the appellant from 20.5.2010, hence, claim for arrears etc is denied (No work no pay). No order as to costs. File be consigned to the record.

ANNOUNCED
13.06.2011

[Signature]
(KHALID HUSSAIN)
MEMBER.

[Signature]
(SYED MANZOOR ALI SHAH)
MEMBER.

Certified to be true copy
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Annex "C"

under 2(I)(I)(iii) of E & D Rules 2011
only moral turpitude constitutes misconduct.

**KHYBER PAKHTUNKHWA
GOVERNMENT SERVANTS
(EFFICIENCY AND DISCIPLINE)
RULES, 2011**

MHALEK RENNAN

Advocate

High Court, Peshawar

3-B, Hazrat Nizamuddin,
Khyber Bazar, Peshawar.

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KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 16TH SEPTEMBER, 2011.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION DEPARTMENT.

NOTIFICATION

Peshawar dated the 16th September, 2011.

No.SO(REG-VI)E&AD/2-6/2010.-In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. **Short title, application and commencement.**---(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. **Definitions.**---(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "accused" means a person in Government service against whom action is initiated under these rules;
- (b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;
- (d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;

(e) "Chief Minister" means the Chief Minister of the Khyber Pakhtunkhwa;

(f) "competent authority" means-

(i) the respective appointing authority;

(ii) in relation to a Government servant of a tribunal or court functioning under Government, the appointing authority or the Chairman or presiding officer of such tribunal or court, as the case may be, authorized by the appointing authority to exercise the powers of the competent authority under these rules:

Provided that where two or more Government servants are to be proceeded against jointly, the competent authority in relation to the accused Government servant senior most shall be the competent authority in respect of all the accused.

(g) "corruption" means-

(i) accepting or obtaining or offering any gratification or valuable thing, directly or indirectly, other than legal remuneration, as a reward for doing or for bearing to do any official act; or

(ii) dishonestly or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or

(iii) entering into plea bargain under any law for the time being in force and returning the assets or gains acquired through corruption or corrupt practices voluntarily; or

(iv) possession of pecuniary sources or property by a Government servant or any of his dependents or any other person, through his or on his behalf, which cannot be accounted for and which are disproportionate to his known sources of income; or

(v) maintaining a standard of living beyond known sources of income; or

(vi) having a reputation of being corrupt;

(h) "Governor" means the Governor of the Khyber Pakhtunkhwa;

(i) "inefficiency" means failure to efficiently perform functions assigned to a Government servant in the discharge of his duties;

(j) "incompetence" means-

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(k) "inquiry officer" means an officer appointed by the competent authority under these rules;

(l) "misconduct" includes-

- (i) conduct prejudicial to good order or service discipline; or
- (ii) conduct contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987, for the time being in force; or
- (iii) conduct unbecoming of Government servant and a gentleman; or
- (iv) involvement or participation for gains, directly or indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or
- (v) any act to bring or attempt to bring outside influence, directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service; or
- (vi) making appointment or promotion or having been appointed or promoted on extraneous grounds in violation of any law or rules; or
- (vii) conviction for a moral offence by a court of law.

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Province Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. Grounds for proceedings.---A Government servant shall be liable to be proceeded against under these rules, if he is-

- (a) inefficient or has ceased to be efficient for any reason; or
- (b) guilty of misconduct; or
- (c) guilty of corruption; or
- (d) guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any un-authorized person, and his retention in service is prejudicial to national security; or

- (f) entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

4. Penalties.---(1) The following are the minor and the major penalties, namely:

(a) Minor penalties:

- (i) censure;
- (ii) withholding, for a specific period, promotion or increment subject to a maximum of three years, otherwise than for unfitness for promotion or financial advancement, in accordance with the rules or orders pertaining to the service or post:

Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale:

- (iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order;

(b) Major penalties:

- (i) reduction to a lower post or pay scale or to a lower stage in a time scale.
- (ii) compulsory retirement;
- (iii) removal from service; and
- (iv) dismissal from service.

(2) Dismissal from service under these rules shall disqualify a Government servant from future employment under Government.

(3) Any penalty under these rules shall not absolve a Government servant from liability to any other punishment to which he may be liable for an offence, under any other law, committed by him while in service.

5. Initiation of proceedings.---(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-

- (a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry:

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- (b) give him a reasonable opportunity of showing cause against the proposed action, within seven days of receipt of the order or within such extended period, as the competent authority may determine;
- (c) on receipt of reply of the accused within the stipulated period or after the expiry thereof, if no reply is received, determine whether the charge or charges have been proved against the accused or not:

Provided that after receipt of reply to the show cause notice from the accused, the competent authority, except where the Chief Minister himself is the competent authority, shall decide the case within a period of ninety days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons:

Provided further that if the case is not decided by the competent authority within the prescribed period of ninety days, the accused may file an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period;

- (d) afford an opportunity of personal hearing before passing any order of penalty under clause (f), if it is determined that the charge or charges have been proved against him;
- (e) exonerate the accused, by an order in writing, if it is determined that the charge or charges have not been proved against him; and
- (f) impose any one or more penalties mentioned in rule 4, by an order in writing, if the charge or charges are proved against the accused:

Provided that where charge or charges of grave corruption are proved against an accused, the penalty of dismissal from service shall be imposed, in addition to the penalty of recovery, if any.

8. Action in case of conviction or plea bargain under any law.---Where a Government servant is convicted by a court of law on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices, or has been acquitted by a court of law as a result of compounding of an offence involving moral turpitude under any law for the time being in force, the competent authority, after examining facts of the case, shall-

- (a) dismiss the Government servant where he has been convicted on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices voluntarily;

Provided that dismissal in these cases shall be with immediate effect from the date of conviction by a court of law; and

- (b) proceed against the Government servant under rule 5, where he has

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- (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
- (ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or
- (iii) a Government servant is involved in subversive activities; or
- (iv) it is not reasonably practicable to give such an opportunity to the accused; or

- (b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

Provided that the competent authority shall dispense with the inquiry where-

- (i) a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or
- (ii) a Government servant is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

(2) The charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent authority.

6. **Suspension.**---A Government servant against whom action is proposed to be initiated under rule 5 may be placed under suspension for a period of ninety days, if in the opinion of the competent authority, suspension is necessary or expedient, and if the period of suspension is not extended for a further period of ninety days within thirty days of the expiry of initial period of suspension, the Government servant shall be deemed to be reinstated:

Provided that the competent authority may, in appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave as may be admissible to him, from such date as may be specified by the competent authority.

7. **Procedure where inquiry is dispensed with.**---If the competent authority decides that it is not necessary to hold an inquiry against the accused under rule 5, it shall-

- (a) inform the accused by an order in writing, of the grounds for proceeding against him, clearly specifying the charges therein, alongwith apportionment of responsibility and penalty or penalties proposed to be imposed upon him;

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Provided that, when the appointment is made on a current-charge basis or by way of additional charge, his pay shall be fixed in the prescribed manner:

Provided further that where a civil servant has, under an order which is later set aside, been dismissed or removed from service or reduced in rank, he shall, on the setting aside of such order, be entitled to such arrears of pay as the authority setting aside such order may determine.

18. Leave:- A civil servant shall be allowed leave in accordance with the leave rules applicable to him; provided that the grant of leave will depend on the exigencies of service and be at the discretion of the competent authority.

19. Pension and gratuity:—(1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.

(2) In the event of death of civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity, or both, as may be prescribed.

(3) No pension shall be admissible to a civil servant who is dismissed or removed from service for reasons of discipline, but Government may sanction compassionate allowance to such civil servant, not exceeding two-third of the pension or gratuity which would have been admissible to him had he been invalided from service on the date of such dismissal or removal.

(4) If the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualified for pension or gratuity, and any over payment on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family.

20. Provident Fund:- (1) Before the expiry of the third month of every financial year, the Accounts Officer or other officer required to maintain provident fund accounts shall furnish to every civil servant subscribing to a provident fund the account of which he is required to maintain a statement under his hand showing the subscriptions to including the interest accruing thereon, if any, and withdrawals or advances from his provident fund during the preceding financial year.

(2) Where any subscription made by a civil servant to his provident fund has not been shown or credited in the account by the Accounts Officer or other officer required to maintain such account, such subscription shall be credited to the account of the civil servant on the basis of such evidence as may be prescribed.

21. Benevolent Fund and Group Insurance:- All civil servants and their families shall be entitled to the benefits admissible under the West Pakistan Government

¹ The words "or grade" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

² Section-19 substituted by the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 (Khyber Pakhtunkhwa Act No. III of 2013) published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 22nd January, 2013.

WAKALAT NAMA

IN THE COURT OF

K.P.K. Peshawar Tribunal

Muhammad Haroon Appellant(s)/Petitioner(s)

VERSUS

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Respondent(s)

I/We _____ do hereby appoint
Mr. Khaled Rehman, Advocate in the above mentioned case, to do all or
any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

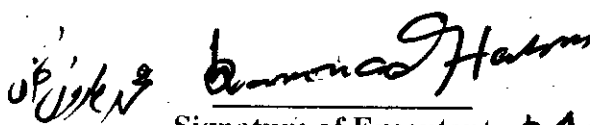
- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by


Khaled Rehman,
Advocate, Peshawar.

9-B, Haroon Mansion
Khyber Bazar, Peshawar


Signature of Executants


Mohd Haroon