

Mr. Mohammed Salame

From arguments advanced by the learned counsel for the parties and perusal of record, the Tribunal is of the view that there is no provision of second departmental appeal under the law. If the appellant was aggrieved from the order dated 03.1.2009, he should have approached this Tribunal within 30 days, but he filed appeal on 01.7.2004, which is hopelessly time barred. There is no application for condonation of delay with the appeal. As such the present appeal being hopelessly time barred is dismissed in limine. File be consigned to the record.

ANNOUNCED

06.02.2015

A. F. S.
Member

Mr Muhammad Salami

4, 06.02.2015

Appellant with counsel and Mr. Kabirullah Khattak, Asst: Advocate General for the respondents present. Preliminary arguments heard and record perused.

Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The appellant has impugned order dated 03.01.2009 whereby period of 31.1.2007 to 19.10.2007 was treated as extra ordinary leave. Against the impugned order he filed departmental appeal on 05.03.2014 which has not been responded within the statutory period of 90 days, hence the instant appeal on 01.07.2014. He further contended that a false and concocted case was registered against the appellant vide FIR No.18, dated 31.01.2007 charge under Section 302/34 PPC at Police Station Gandigaar, and as a result of that FIR the appellant remained absent from his duty from 31.04.2007 to 19.10.2007 and 20.10.2007 to 31.12.2008. After that the appellant was acquitted vide order dated 16.04.2008; that the impugned order dated 31.01.2009 is not legal on the reason that his absence for aforesaid period was not intentional but due to lodging of false and concocted case, therefore, the impugned order dated 03.01.2009 need modification regarding back benefit from 31.01.2007 to 19.10.2007 and 20.10.2007 to 31.12.2008 which is the legal vested right of the appellant. He requested that the instant appeal may be admitted for regular hearing. He relied on 1998 PLC (C.S) 1430.

The learned AAG while assisting the Court was of the view that the instant appeal is not maintainable in its present form being badly time barred as the appellant was removed from service on 28.08.2007 which is the original order while on his appeal he was reinstated into service vide order 03.01.2009 which is the appellate order and the appellant was required to approach this Tribunal within 30 days against that final order. However, the appellant filed a second departmental appeal which is not permissible under the law and filed the instant appeal on 01.07.2014 which is badly time barred. Moreover, no application for condonation of delay has been filed with the appeal. He relied on 2013 PLC (C.S) 1030, 2001 SCMR 1967 and 2003 SCMR 228, He requested that the instant appeal may be dismissed in limine.

2.

Reader Note:

10.11.2014

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 13.01.2015 for preliminary hearing.

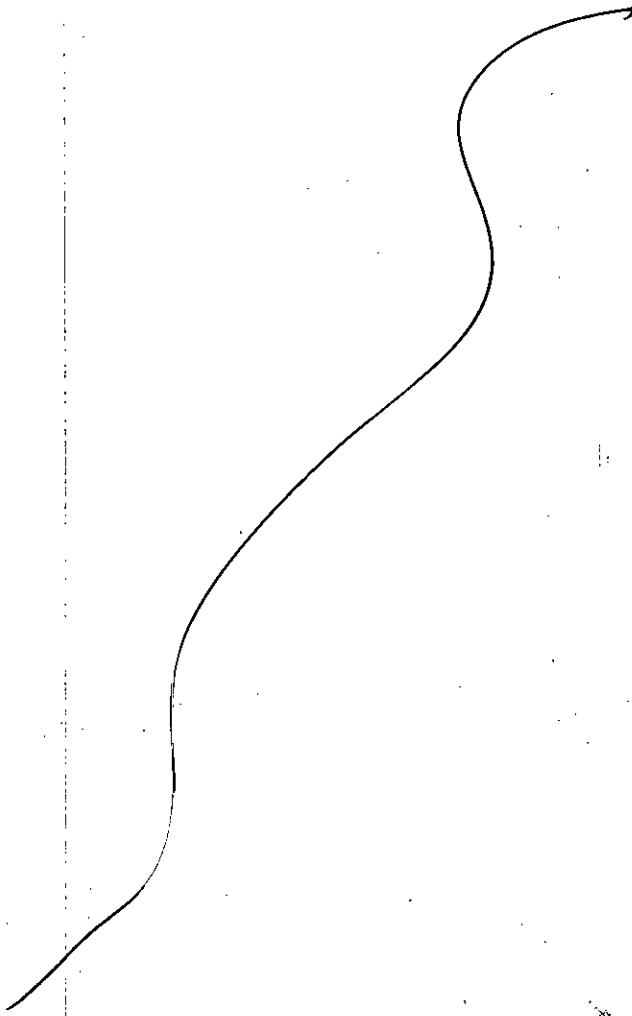

Reader

3.

13.01.2015

Appellant in person present, and requested for adjournment due to pre-occupation of his counsel in the Peshawar High Court Peshawar. Request accepted. To come up for further preliminary hearing on 06.02.2015.

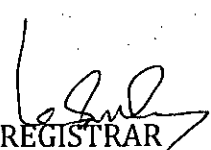
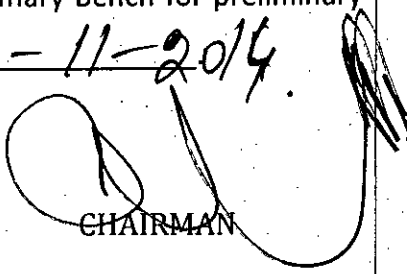

Member



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1054/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19/08/2014	<p>The appeal of Mr. Muhammad Salam resubmitted today by Mr. Rehmanullah 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	20-11-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>10-11-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Muhammad Salam Sepy levies Dir received today i.e. on 01.07.2014 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Address of respondent No. 1 is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Appeal may be page marked according to the Index.

No. 1021 /S.T,

Dt. 01/7 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Rehman Ullah Adv. Pesh.

19/8/14.

S/

Re submission after completion all objective.

Rehman Ullah
S/



Handwritten signature

دستخط حامل کارڈ

حکومت پاکستان
قومی شناختی کارڈ

1570-1168474-5

محمد سلام
مرد

پتو: لاہور کاناں • محمد انور بھروسہ

شناختی سلامت • دائیں ہاتھ پر ذمہ کالٹن

20/01/1975 • تاریخ پیدائش

گمشدہ کارڈ اپنے پرقریبی ایئرکس میں ڈال دیں۔



سلیم حسن

دستخط چھاپہ جرنل



TP5X5S

تذکرہ نمبر

15701-168474-5

شناختی نمبر

موجودہ پتہ : گدی پلا

کھنڈ، ضلع اہمداد

مستقل پتہ : اجنہ

10775084430

پتہ شناختی نمبر

تاریخ اجراء : 28/11/2001 تاریخ منسوخ : 31/10/2015

مستقل پتہ میں ہونے کی صورت میں نیا کارڈ بنویں۔



IN THE SERVICE TRIBUNAL ,K.P.K PESHAWAR

Service Appeal No. 1054/2014

Muhammad Salam

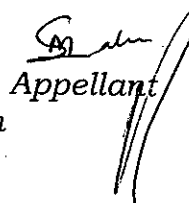
Sepy Levies Dir (BPS-05).....**Appellant**

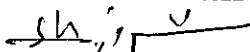
-Vs-

The Section Officer FATA & Others.....**Respondents**

INDEX

S.NO	Description Of Documents	Annex	Pages
1	Grounds of Service Appeal		1-4
2	Affidavit		4
3	Addresses of Parties		5
4	Copy of removal Order, with the appeal	A	6-9
5	Copy of order dated 03-01-2009, 16/1/09,	B	7-9
6	Copy of Departmental Appeal	C	10
7	Copy of order dated 16-4-2008	D	11-19
8	Copy of Supreme Court Judgment 1998 PLC (C.S) p.1940	E	20-23
9	Wakalatnama		24

Through 
Appellant

And 
Rahman Ullah
Shehryar Khan
Advocate Peshawar
High Court Peshawar,
Office 25-A Nasir Mansion
to Railway Road Peshawar
0333-9125367

IN THE SERVICE TRIBUNAL ,K.P.K PESHAWAR

Service Appeal No. 1054 /2014

Muhammad Salam

Sepy Levies Dir (BPS-05).....**Appellant**

VERSUS

933
01-7-2014

- 1. Section Officer FATA, *Civil Secy. Jaint. Peshawar.* ~~xxxxxx~~, *Peshawar Home Deptt.*
- 2. Government of KPK through Secretary Home & Tribal Affairs Department.
- 3. Home Secretary Govt of KPK, Peshawar
- 4. District Accounts Officer, Dir Upper, KPK, Peshawar.
- 5. District Coordinator Officer, Dir Upper KPK Peshawar.
- 6. Chief Secretary Govt of KPK, Peshawar**Respondents**

SERVICE APPEAL U/S 4 OF NWFP SERVICE TRIBUNAL ACT 1974 AGAINST ORDER DATED 3-1-2009 NO.SO (FATA) HD/12-19/DIR UPPER/08, WHEREBY THE APPELLANT'S PAY WAS WITHELD FOR THE PERIOD OF 31/01/2007 TO 19/10/2007 AND 20-10-2007 to 31-12-2008 & WAS TREATED AS EXTRA ORDINARY LEAVE, AND NOT TAKING ANY ACTION AGAINST THE DEPARTMENTAL APPEAL OF THE APPELLANT

Prayer in Appeal:

ON ACCEPATNCE OF THIS APPEAL ORDER NO.SO (FATA) HD/12-19/DIR UPPER/08 DATED 3-1-2009 MAY PLEASE BE **MODIFIED** AND THE PAY WITH ALL BACK BENEFITS & ARREARS FOR THE PERIOD OF 31/01/2007 TO 19/10/2007 AND 20-10-2007 to 31-12-2008 MAY VERY GRACIOUSLY BE GRANTED TO THE APPELLANT FOR THE SAKE OF JUSTICE.

Respectfully Sheweth:

- 1. That the appellant was appointed as Sepoy (BPS-05) in levy force

as submitted to ~~Dir~~ upper dir Registered no.82. and filed.

DIR

19/8/14

[Signature]
17/7/14

[Signature]

- 1 2
2. That the appellant has performed his duty at different places and presently performing his duty at Deputy Commissioner House Pana Kot.
 3. That a false and concocted case was registered against the appellant, case FIR No.18, dated 31/01/2007 charge under section 302/34 PPC at police station Gandigaar.
 4. That after Registration of the case against the appellant, the appellant remained absent from performing his official duty and an order No.SO (FATA) HD/12-19/Dir Upper/08, dated 3-1-2009 was issued under the Hands of Secretary to Government of NWFP to deprive the appellant from his pay for the period 31/01/2007 to 31/12/2008 and 20-10-2007 to 31-12-2008.
 5. After this the appellant moved departmental representation on 05/03/2014 which is still pending and no response is given by the Respondents till now.**(Copy of Departmental Appeal Attached)**
 6. That feeling aggrieved from the said order & not giving any positive reply of the departmental representation the appellant prefer this appeal inter-alia on the following grounds.

GROUND:

- A. That the impugned order *NO.SO (FATA) HD/12-19/DIR UPPER/08 dated 3-1-2009* and giving not any positive response of a departmental representation of the appellant is illegal, unlawful and against natural justice.
- B. That a false and concocted case was registered against the appellant, case FIR No.18, dated 31/01/2007 charge under section 302/34 PPC at police station Gandigaar, and from the result of that FIR the appellant remained absent from his duty from *31/01/2007 TO 19/10/2007 AND 20-10-2007 to 31-12-2008.*

- C. That in the above mentioned case the appellant was acquitted on 16-04-2008 from all the charges leveled against him. **(Copy of order sheet is attached as annexure).**
- D. That the impugned order *NO.SO (FATA) HD/12-19/DIR UPPER/08 Dated 3-1-2009* is not legal on the reason that his absence for aforesaid said period was not intentional but due logging of false and concocted case and the impugned order no. *NO.SO (FATA) HD/12-19/DIR UPPER/08 Dated 3-1-2009* need modification regarding back benefit from *31/01/2007 TO 19/10/2007 AND 20-10-2007 to 31-12-2008* which is the legal ~~right~~ vested right of the appellant.
- E. That the version of the appellant is supported by the judgment of the Supreme Court of Pakistan in 1998 PLC (C.S) page 1430 **(Copy of Judgment attached).**
- F. That the appellant has not been treated in accordance with law as provided and guaranteed under the constitution of 1973.
- G. That the order No.SO (FATA) HD/12-19/Dir Upper/08 dated 03-01-2009 was passed against the appellant in haste.
- H. That the impugned order is totally unfair, biased and not according to circumstances of the case in hand.
- I. That the appellant seek permission to advance other grounds and proof at the time of hearing.

It is, therefore, humbly prayed that On Acceptance of this appeal order No. So (FATA) Hd/12-19/Dir Upper/08 dated 3-1-2009 may please be **modified** and the pay with all back benefits & arrears for the period of 31/01/2007 to 19/10/2007 and 20-10-2007 to 31-12-2008 may very graciously be granted to the appellant for the sake of justice.

[Signature]
Appellant

Through

[Signature]

Rahman Ullah

And *[Signature]*

Shehryar Khan

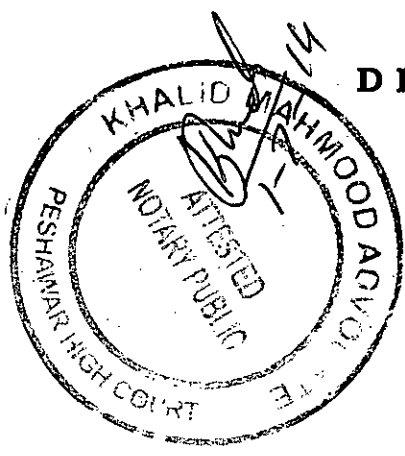
Advocates Peshawar.

AFFIDAVIT:

I Muhammad Salam Sepoy (BPS-05) Levies Dir, do hereby solemnly affirm and declare on oath that the contents of the accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon,ble Tribunal.

[Signature]

DEPONENT



6

IN THE SERVICE TRIBUNAL ,K.P.K PESHAWAR

Service Appeal No. _____/2014

Muhammad Salam

Sepy Levies Dir (BPS-05).....**Appellant**

-Vs-

The Section Officer FATA & others.....Respondents

APPELLANT

Muhammad Salam

Sepy Levies Dir (BPS-05).

RESPONDENTS:

1. Section Officer FATA, *Civil Secretariate, Near MPA Hostel, Peshawar.*
~~Government Road Peshawar.~~
2. Government of KPK through Secretary Home & Tribal Affairs Department.
3. Home Secretary Govt of KPK, Peshawar
4. District Accounts Officer, Dir Upper, KPK, Peshawar.
5. District Coordinator Officer, Dir Upper KPK Peshawar.
6. Chief Secretary Govt of KPK, Peshawar

B. Ullah

Appellant

Through

R. Ullah
Rahman Ullah

Advocate Peshawar

Annex A

6

OFFICE OF THE DISTRICT COORDINATION OFFICER, UPPER DIR.

No. 7801-3 /DCO/LHC Dated Dir the, 28 /8/2007.

OFFICE ORDER.

Where as I Ajmal Khan, District Coordination officer Upper Dir in the capacity of competent authority under Section 2(a) North-West Frontier Province Removal from Service (Special Powers) Ordinance, 2000 as amended vide NWFP Removal from Service (Special Powers) (Amendment) Ordinance 2001, read with notification No. SOR-II (S&GAD) 2000-Vol-III dated 28-09-2000, am of the considered opinion that Mohammad Salam Levy Sepoy (Provincial) Reg: No.182 has been proceeded against on account of mis-conduct as prescribed in section 3 of the said ordinance for the following acts of omission and commission.

"That he is absent from duty since 31-1-2007. This act on the part of the official concerned is against the discipline of the force and amounts to mis-conduct".

And whereas, for the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, Mr. Abdul Ghaffar District Officer Planning Upper Dir was appointed as Inquiry Officer under Section 5 of the ordinance.

And whereas, the Inquiry Officer recorded his findings and recommendations in his report received in this office vide letter No. 1569-71/DOP/Inq: dated 4-8-2007. The charge against the accused has been proved in the meaning of section 3 of the said ordinance.

Now therefore, I Ajmal Khan DCO, Upper Dir in the capacity of competent authority am satisfied, that the charge against the accused has been proved beyond any doubt. I, as a competent authority, under the powers conferred upon me under Section 3 of the NWFP Removal from Service (Special Powers) Ordinance 2000 as amended vide NWFP Removal from Service (Special Powers) (Amendment) Ordinance 2001, hereby impose a major penalty of Removal from Service as contained in Para-4 (b) (iii) of Govt. of NWFP S&GAD Peshawar Notification bearing No. SOS-III(S&GAD)1-83/73 dated 30-11-1973 upon Mohammad Salam Levy Sepoy Reg: No.182 with effect from his absence period i.e. 31-1-2007.

(Signature)
Ajmal Khan
District Coordination Officer
Upper Dir.

No. 7801-3 /DCO/LHC

Copy forwarded to:-

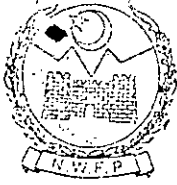
1. The District Accounts Officer, Upper Dir.
2. The Subedar Major Dir-Livies at Chakdara. *(Signature)*
3. Levy Head Clerk Local office.

For information and necessary action.

(Signature)
District Coordination Officer
Upper Dir.

(Signature)
Attested
M

(Handwritten text at the bottom of the page)



Annex B

R.D.
M.A.L.D.

**GOVERNMENT OF NWFP
HOME & TRIBAL AFFAIRS DEPARTMENT**

Dated Peshawar the January 3, 2009

7

ORDER

No. SO (FATA) HD / 12 - 19 / Dir Upper / 08: Record perused. The appellant was recruited as Sepoy in Dir Levies (Provincial) by the District Coordination Officer Dir Upper. He was granted 3 days leave on 30/01/2007 but he did not report for duty after expiry of leave and remained absent from duty with effect from 31/01/2007 to 18/10/2007. The Subidar Major Dir Levies Upper reported that according to Police Station Ghandigar an FIR was lodged against the Levy Sepoy under Section 302 PPC and absconded to avoid arrest. On 19/10/2007 he was arrested and was tried in the court of District & Sessions Judge Dir Upper. The District & Sessions Judge Dir Upper acquitted him on the basis of compromise on 09/05/2008.

In view of the honorable acquittal by the court the appeal of Mr. Mohammad Salam, Ex-Levy Sepoy Dir Upper is hereby accepted with the directions that the period from 31/01/2007 to 19/10/2007 shall be treated as extra ordinary leave without pay while the appellant shall be entitled to back benefit for the period from 09/10/2008 to 31/12/2008.

**Secretary to Government of NWFP
Home & Tribal Affairs Department**

Endst. No. & Date Even.

Copy for information to the:-

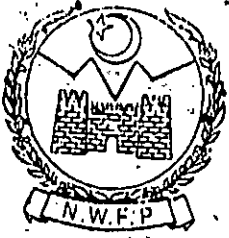
1. District Coordination Officer Dir Upper.
2. District Accounts Officer, Dir Upper.
3. P.S to Home Secretary, NWFP.
4. Official concerned.

Muhammad Ismail
(MUHAMMAD ISMAIL)
Section Officer (FATA)
Ph.# 091-9210078

15-09

*Recd
12-1-09*

*Attested
M*



GOVERNMENT OF NWFP
HOME & TRIBAL AFFAIRS DEPARTMENT

><><><><

No. SO (FATA) HD/ 12 - 19 / Dir Upper / 08
Dated Peshawar the January 16, 2009

To

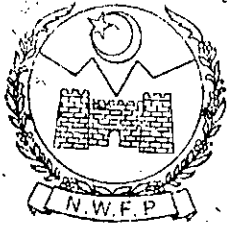
The District Coordination Officer,
Upper Dir.

Subject: **ORDER.**

I am directed to refer to your letter No. 196/DCO/LIIC dated 15/01/2009 on the subject mentioned above and to state that this Department order of even No. dated 03/01/2009 is very clear. The petitioner has been allowed back benefit for the period mentioned therein, while the rest of the period will be treated as leave without pay.

(MUSHAMMAD ISMAIL)
Section Officer (FATA)
Phone: 091-9210078

Mushtaq
Mr



GOVERNMENT OF NWFP
HOME & TRIBAL AFFAIRS DEPARTMENT

><><><>


No. SO (FATA) HD/ 12 - 19 / Dir Upper / 08
Dated Peshawar the January 16, 2009

To

The District Coordination Officer,
Upper Dir.

Subject: **ORDER.**

I am directed to refer to your letter No. 496/DCO/LHC dated 15/01/2009 on the subject mentioned above and to state that this Department order of even No. dated 03/01/2009 is very clear. The petitioner has been allowed back benefit for the period mentioned therein, while the rest of the period will be treated as leave without pay.


(MUHAMMAD ISMAIL)
Section Officer (FATA)
Phone: 091-9210078

*Attested
m*

To

The Chief Secretary,
Govt of KPK Peshawar.

05/03/14

Amna C

10

Subject: Departmental Appeal for treating the period
from 31-1-2007 to 19-10-2007 and 20-10-2007
to 31-12-2008 with full pay.

Sir,

1. I have the honour that I was falsely involved in a murder case and thereafter I was honourably acquitted by the competent court of law as received from the latter dated 03-01-2009. (Copy of letter attached).
2. That thereafter I had been reinstated in service by my superior officer.
3. That the dictionary mean of reinstatement to restore a person or thing to its former state of condition in such a circumstances, I am entitled to all back benefits but I have been deprived from the back benefits for the above mentioned period. (copies are attached).

It is therefore prayed that on acceptance of this representation, I may be declared entitled to all back benefits for the period 31-01-2007 to 19-10-2007 and 20-10-2007 to 31-12-2008.

Your most obedient servant



Muhammad Salam
Sepoy Levies Dir

Dated: 05/03/2014



مقدم ہو 18 سالہ رہنے
Annex 5

18 $\frac{8}{07}$

فیصلہ 16 $\frac{4}{08}$

سرکار برائے محمد سلیمان و سزا

(11)

302-34
512-34

18 مورخہ 16/31/07

سیف محمد خان کی طرف سے روٹی نام لکھی گئی

تاریخ نمبر

کو ہدایت کی گئی ہے کہ چالان مباح میں سیرت گوان میں
سے گواہ ڈاکٹر صادق الرحمن کے مباح کے جانے ڈاکٹر صادق الرحمن
کی طرف سے اور دیگر گوان کے ساتھ مورخہ 16 $\frac{04}{08}$ کو طلب ہو

03.04.08

Ikhitar Khan
Judicial Distt. & Sessions Judge
Secty ZQ Dir Upper



کس سرکار کی طرف سے جان جان ملتان شہر

اور جی ملحقہ برصغیر ملکوں میں جان جی ملحقہ جی اسلام زیر دراج

لوہیت جان سنیٹ سہیل احمد کس جان اسی طرح نقول

عزیز احمد کے درمیان، صفاہ حسینہ بی بی، والدہ نقول) صفاہ

باسمیں (بیوہ نقول) صفاہ بی بی سہیل، صفاہ سہیل بی بی،

صفاہ فاطمہ بی بی نقول، آمار احمد لکھنؤ (درمیان نقول)

کسی جان ورنہ، نقول نے ملتان کے سابقہ راجہ مباح EXPA

کے یہ اعداد اس وقت (مباح) درمیان کاسٹ کریڈیٹ گوان

نفاذ میں تھیں۔ جس سے یہ درمیان نے بیان کیا کہ

سیف محمد خان کے لئے جو الریفورسنگ دلت مورخہ 18/07/07

16.04.08

ATTESTED
3-9-07

16.04.08

محکمات جناب ایڈیشنل ڈسٹرکٹ ایجوکیشنل آفیسر جی ایف ایف ضلع قاضی پورہ

بنام ...

ذریعہ 32/34 PDC کے گورنر صاحب ملزمان نے ارسال
 کیے اور عدالت کے خلاف مقول عدین احمد کے حق کی
 دعویٰ کی تھی کہ اس کے دوران دینے ملزمان کے ساتھ
 اس طرح کے معاملے کے علاوہ راجی نوح کے ملزمان کو بھی سبیل اللہ
 کے واسطے اور ملزمان کی بریت بات راجی نوح پر مستحق
 ہے۔ راجی نوح کے سلسلے میں اس کے علاوہ بیان
 ہے کہ یوسف بن محمد بن محمد ولد علاء علی احمد خراسانی
 ولد بیان خان قادر ساکنان گنڈاپور کا مشہور بیان بھی ملزمان
 کے ساتھ ہے اس کے ساتھ راجی نوح کا لہجہ بھی ہے
 کہ وہ دریا و حقوں کے لئے لہجہ کر رہا ہے۔ لہذا جو ٹائپل
 میں بریت کے وقت وہ بھی فریاد ہے جس سے وہ تہو
 کہہ آئے ان سے ہے کہ مذکورہ بالا بیان کے
 مقول عدین احمد کے قانونی و شرعی دریا دیتے
 ان کے خلاف یہ ہے کہ وہ دریا و حقوں
 نے ملزمان کے ساتھ راجی نوح کے لئے اس کے بریت پر
 جس سے ہے۔ لہذا اس کے ذریعہ 32/34 کا بیان راجی نوح ہے

تاریخ حکم نمبر

صفحہ

طوری

16-04-08



ATTESTED
 3-2-04

16.04.08

لعدالت اختیار

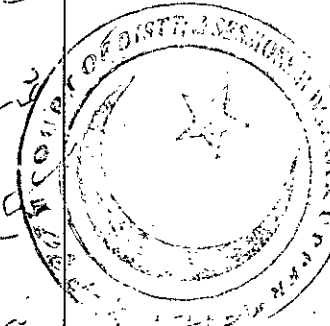
تاریخ حکم نمبر

حکم

16-09-08

(16)

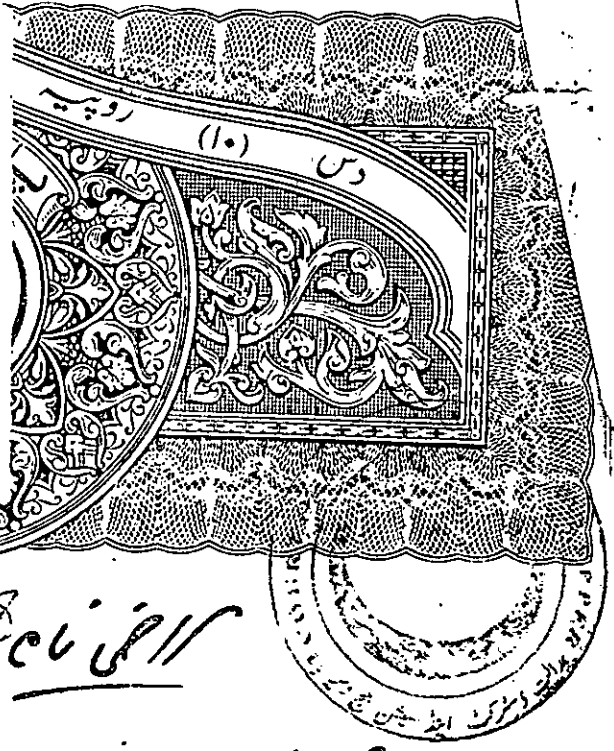
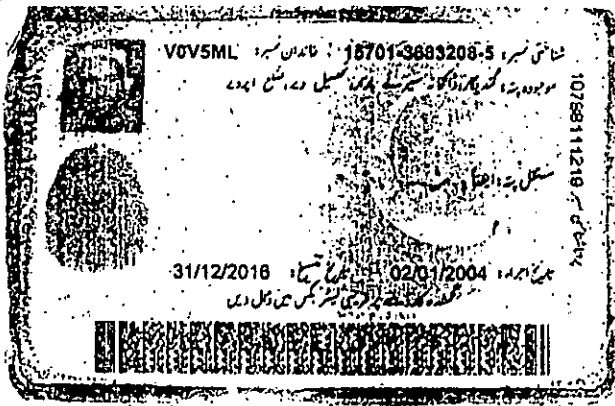
راہنما بنی ہو کر کسی زور و جبر کے بغیر مستحق لہذا ملزمان
 آپس میں فریب رشتہ داروں کے ذریعہ سے ان
 کے مابین دستخط صحیح ہو گا۔ ان حالات میں راہنما کو
 منظور کرتے ہوئے ملزمان خود اصلاح خود کو لہذا فریب
 کو جو راہنما کو مستحق قرار دیا گیا ہے اس کے ساتھ ساتھ
 خود اصلاح کو فریب قرار دیا گیا ہے لہذا اس کے ساتھ ساتھ
 ملزمان کو لہذا فریب قرار دیا گیا ہے اور اس کے ساتھ ساتھ
 ان کے ضامین اور انہیں مستحق قرار دینے کے آزاد کے ساتھ ساتھ
 مال قدر لہذا فریب قرار دیا گیا ہے اور اس کے ساتھ ساتھ
 فریب و ضامین کے ساتھ ساتھ فریب قرار دیا گیا ہے



ATTESTED
 3-2-014

احیاء
 اڈیشنل سیشن جج
 راجانی صلح قاضی دیرالہ

No	97
Dated of Application	30-1-014
Name of Applicant	محمد مراد
Word	بیت
Fee	12/-
Signature of Copyist & Date	محمد مراد 3-2-014
Date of Preparation	3-2-014
Date of Delivery	3-2-014



لائی نامہ نمبر 125/125
Ex P 11

- 11 کلینری جی بیوہ میان شہزبیا در گنہ گذریا راولپنڈی قتل
- 12 مہمان یا سہیلین زوجہ عزیز احمد گنہ گذریا راولپنڈی قتل
- 13 جی بیوہ سیارا ڈا صریح جی بیوہ کی مایہ دفتراں (گنہ گذریا راولپنڈی قتل)
- 14 میان شہزبیا در ساکنان گذریا و (گنہ گذریا راولپنڈی قتل)
- 15 آیاز احمد 17 فریاد (گنہ گذریا راولپنڈی قتل)
- 16 میان شہزبیا در ساکنان گذریا (گنہ گذریا راولپنڈی قتل)

نام

11 محمد علی محمد شاہ 3 فروری 2014ء
محمد انور ساکنان گذریا

مقررہ نمبر 18 مورخہ 27-1-2014ء رقم 304/34 PDL قتل

Khalid-Ur-Rehman Advocate
Notary Public Dis

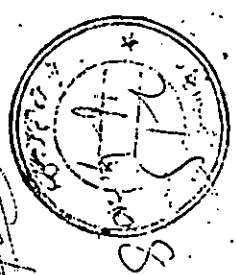
ATTESTED
3-2-2014

ضمانت کا نام: محمد علی محمد شاہ 3 فروری 2014ء
قتل ہو گیا تھا۔ جس کی قتل کی دعوئیہ راولپنڈی خلاف



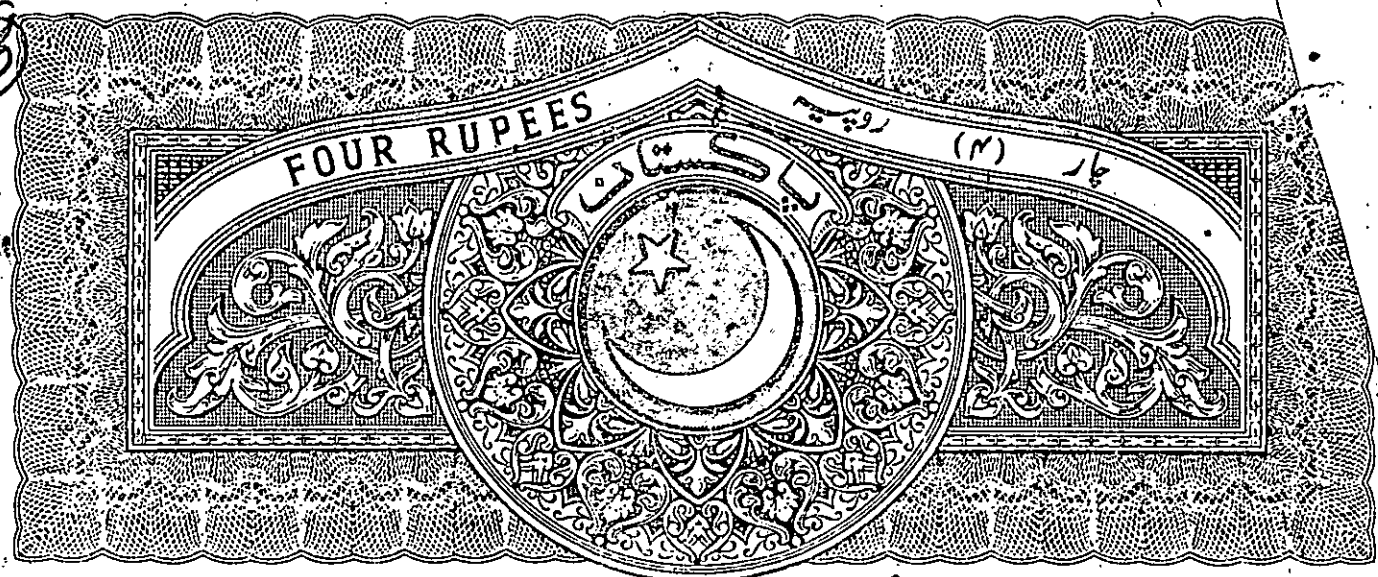
Wm. G. & W.

London



[Handwritten signature]

18



عزیزان بالا پوٹھی کی زبان میں ان علاقہ کے لوگوں کو
 فقور نے عزیزان کے ساتھ قاضی ارفان نامہ کیا ہے۔ اور عزیزان
 کو اس سبب سے بھیٹیں گے۔ انہیں حاصل دیکھ کر فریاد
 و دشمنان فقور مذہب مقدمہ چلانے کے خواہش نہیں اور
 ارفان نامہ فریقین کی مفاد میں ہے۔



16-04-08

ATTESTED
3-2-08

لاہور 16-04-08

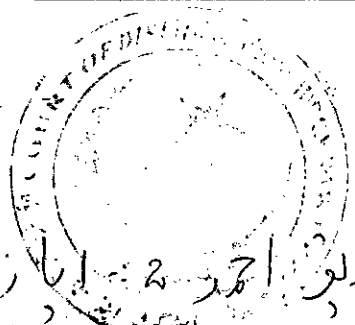
اللہ کے نام سے
 فقیر محمد ابراہیم فقیر
 فقیر عزیزان

اللہ کے نام سے
 فقیر عزیزان
 فقیر عزیزان

107-88-111214
 15701-3683208-5
 15701-9727931-5



میدان مشتاق احمدی
 عزیزان
 15701-9521780-1
 107-88-123948



مشترکہ بیان متصیفات صدیق احمد 2۔ انازار احمد

3۔ فرخاد پیران میاں شہزہ ہمدان برادران مقول عزیز احمد

4۔ متحہ یا سمین بیوہ مقول 5۔ متحہ حسینہ بی بی بیوہ
میاں شہزہ ہمدان (والدہ مقول) 6۔ متحہ بی بی سہارا زوجہ

نظام الدین 7۔ متحہ مترجم بی بی زہرا متحان 8۔ متحہ ماہرہ

دختران میاں شہزہ ہمدان خواہراں مقول عزیز احمد ساتھان
گندنگار

TESTED

2-2-14

بیان کرتے ہیں کہ متصیفات صدیق احمد کے بحوالہ عدالت

نمبر 18 مدرخ 31/07/51 جرم 34-302 FPC تھانہ گندنگار

برخلاف ملزمان محمد سلام 2۔ محمد کرم اور محمد شاہ عزیز احمد

کے قتل کی دعوت دہی پی پی اے۔ اس سیم تھانہ دربار مقول نے حملہ

ملزمان کے ساتھ لو سہاقت مشران عدالتہ راہی نامہ کر کے

ملزمان کو جی سیل اللہ بخش دیا ہے اور ملزمان کے خلاف

مزید قانونی کارروائی کے خواہاں نہ ہیں۔ راہی نامہ مدرخ

کیت 5xPA پیر ہمارے دستخط و نشان لکشتہ درست

مدرخ پیر شہت ہیں۔ اگر عدالت ملزمان کو بری کرے تو ہمیں کوئی

اعتراض نہ ہے۔ شہزہ ہمدان کے علاوہ مقول کا کوئی دیگر شرعی

واریت نہ ہے۔

سنگرد دست نشان کیا

الغیرہ

متحہ مترجم بی بی
عزیز مقول

الغیرہ

متحہ بی بی سہارا
خودبر مقول

الغیرہ

متحہ یا سمین بیوہ
مقول

الغیرہ

متحہ حسینہ بی بی
والدہ مقول
15701-3345270-0

الغیرہ

فرخاد برادر
107-88-111214

الغیرہ

انازار احمد
15701-3683201-5

الغیرہ

صدیق احمد
متصیفات برادر مقول
15701-9727931-5

الغیرہ

متحہ ماہرہ خواہراں
مقول

بہ شناخت محمد سلام میاں ولد
خان ہمدان میاں
پنجزار و دیوڑزار خواہراں

الغیرہ
15701-9921646-9



Handwritten notes on the right margin, including 'کے قتل کی دعوت دہی پی پی اے' and 'ملزمان کے ساتھ لو سہاقت مشران عدالتہ راہی نامہ کر کے'.

Handwritten notes at the bottom left, including 'اور پیر شہزہ ہمدان/افغانی علی قادی' and '16/4/58'.

صفحہ نمبر ۱۹ سال ۱۳۴۷ھ

رجوع ۷/۰۶/۳۱
فیصلہ ۳۱/۰۸

کاربنی محمد اسرار ولد ...
۱۳۸/۵۱۲ م ۱-۳-۰۷

بعدالت عبدالمکین عدلت، فی حوالہ دریا ...
سیف عازم بک شہ

15



سولہ بدیع ظفر خان ۵۶۵ قحان گندپار (مستفیض)

بنام

محمد سلیم ولد محمد نور سکندر گندپار
محمد شمس ۵ " " " " " " " "

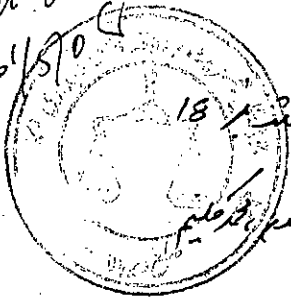
مقدمہ نمبر ۱۹ ص ۱-۳/۰۷ جم ۱۳۴۰ قحان گندپار

ATTESTED
3-2-014

تاریخ فیصلہ
31.5.08

تاریخ ردفال عدالت
7.4.07

Handwritten signature/initials



استغاثہ کی گمانی فقہاً میں ہے۔

فیصلہ
31.5.08

کہ ظفر خان ۵۶۵ قحان گندپار نے مقدمہ ۱-۲-۰۷ کو مقدمہ نمبر ۱۸
مقدمہ نمبر ۳۱/۰۷ جم ۳۵۲/۳۴ میں مانزد عدالت محمد سلیم محمد سلیم

انہ موت و پیران محمد انور کی شہادی اور آٹھ قتل کی برادگی کی امید پر خان گلزار
پر چھاپم زنی کی۔ دوران خان توشیہ ملزم محمد سلیم کے گھر رہا تھی سے ایک گروب
در تیشیل پیچھری اور ایک عدد در تیشیل بیکری جبکہ ملزم محمد شمس و گھر رہا تھی سے
دو عدد چار بھر زکند شریف خان کی اور ایک عدد بند ڈکھڑا برادگر کے قبضہ میں
۵-۔ انہ عدالت کے صف میں برسرہ بعضی جاگیدگی پرچہ وقت کر کے بدلت کیشیل
خاندان نمبر ۱۸ در سال قحان گیا۔ اور موقع پر معروف تیشیل ہوا۔

۱۲) درملہ قحان پیچھری برادگر کے خلاف مقدمہ چڑھا قائم کیا گیا۔ عدالت نے پشہ ہے۔ اور
وکیل صفحہ کا روٹی ۵۶۲ خدانہ کیلئے جانوں عدالت کی گیا۔ دوران کا عدالت
شہریہ سے ۵۶۲ خدانہ ملزم محمد شمس و گھر رہا تھی سے بدلت کیشیل

۳۱/۰۸
۱۰



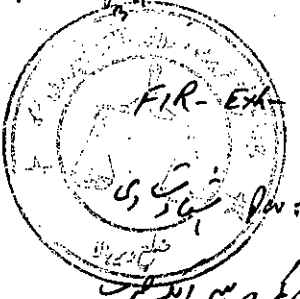
16
2

بعد از آن ملزم محمد سوم این گرفتار ہو کر اس کا تہہ چکان دھن عداوت کیا گیا۔ ملزمان کے
صبر صادق ٹولہ والی۔ ملزم محمد شاہ پر جسے '23/1/07 کو فروری میں پھانسی
کئے ملزم محمد سوم جو بعد میں گرفتار ہوا تھا۔ جسے '3/7/08 کو ان پر فروری میں پھانسی
ملزمان کے عدالت کو تسلیم کرنے سے انکار ہوا ہے اس کے خلاف استغاثہ چل رہی ہے۔

ATTESTED
3-2-014

(1) استغاثہ کی طرف سے خیال سید MHC لہور، Pw-1، مخدوم خان SHO لہور
Pw-2، خالد خان عمر 18 لہور، Pw-3 اور اسی کے Pw-4 لہور، Pw-4 پیش
ہو کر ان کے بیانات قلمبند ہوئے ہیں۔ بتایا گیا کہ ان کے استغاثہ کی شہادت دیکھ کر
تہہ کر کے۔

Muzaffargarh
15704



Pw-1 خیال سید MHC نے اس کے قلمبند ہونے پر
دیے اور ان کے شہادت دے ہے۔ مخدوم خان SHO نے لہور، Pw-2
ہے۔ ان دوران چھاپہ خانہ ملزمان اس نے ملزم محمد سوم کے بارے میں کہہ سے ایک
روٹینل پتھری اور ایک عدویہ روٹینل پتھری اور ملزم محمد شاہ کے کہہ سے دو عدویہ
چاپے اور ایک عدویہ پتھری اور ایک کہہ کر کے قبضہ پولیس میں لے کر اس کے Pw-1
کہہ کے بارے میں عدلیہ بہت قیاس خالد خان قلمبند کیا ہے۔ ملزمان کے عدلیہ کا عدویہ اور پتھری
میں ایک Pw-2 خلاف 512 خلاف Pw-2 عدلیہ عداوت کیا ہے۔ اور بعد از ان ملزم محمد شاہ
گرفتار ہو کر اس کے خلاف تہہ چکان Pw-3 Pw-4 عدلیہ عداوت کیا ہے۔ اور بعد از ان ملزم محمد شاہ
29
اور اس میں گواہ نے بیان کیا ہے۔ کہ ملزمان کے دیگر برادرین ہیں۔ اور ان کے مکان میں
ایک پتھری پتھری ہیں۔ اور اس بار کو ایسی شہادت موجود ہے۔ جس سے ملزمان کے کہہ
حاشی کی ملکیت واضح ہوتی ہے۔ گواہ نے یہ دست تسلیم کیا۔ کہ اس نے نقشہ مرقع اپنی
تہہ کیا ہے۔ پتھری و قلمبند ملزمان اور پتھری تہہ۔ اور موجود ہے۔ فرد قبضہ ہو گیا ہے۔

(جاری)



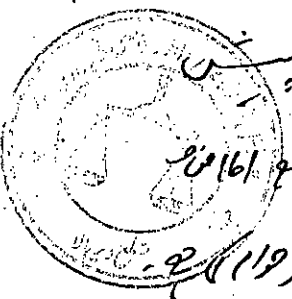
کسی غیر صاحب نصاب شخص کو گواہ نہ بنایا گیا ہے۔ گواہ نے 27 جولائی 2008ء کو جج صاحب نے گواہی لیا۔ کہ وہ دوران تفتیش S.H.O گڈنگار تھا۔ آمد تفتیش کا شعبہ اٹکا ہے جبکہ شعبہ حذرمیت تفتیش کا رتھنپار S.H.O کوٹا محل ہے۔ تحویل خالد خان نمبر 18 فرد قتلہ قتلہ 3/2/08ء کا گواہ حاشیہ ہے۔ گواہ نے شہادت دی ہے کہ

ATTESTED
3-2-014

اسکی موجودگی میں S.H.O نے ملزم محمد سعید کو روک کر اسکی سے ایک بیوقوف پتھری اور ایک عدد درمیشل پکندے اور ملزم محمد شاہ کے ہمراہی کو روک سے قلمبندوں کے موجود خالی چابوہر اور ایک عدد ہینڈوور برآمد کر کے قبضہ پولیس میں لیا ہے،

Mak
31/9/08

گواہ کو پوچھا گیا ہے۔ کہ وہ ہراسہ بردہ کیا ہے یا نہیں کیا تھا۔ اور نہ شہادت دی ہے۔ کہ FIR کا نقل کون درپس لایا تھا۔ P.W-4 مشرقی ASI نے



گواہ نے گواہی میں گواہی کو تفتیش عثمان اللہ نے گرفتار کیا ہے۔ قبضہ کیا ہے۔ اور ملزم محمد سعید چاہے مکمل مرتب کرنا سیکھ گیا ہے۔ ملزم کا بیان زبردستی لیا گیا ہے۔

27 جولائی 2008ء کو جج صاحب نے گواہ کے بیان کیا۔ کہ ملزم کا تفتیشی پر کوئی اسکے ہراسہ کیا گیا ہے۔ اور نہ ملزم نے اصرار جویم کیا ہے۔

(5) شہادت استغاثہ کے ملزمان کے بیانات زبردستی 342 ضابطہ قبضہ کیا گیا۔ ملزمان نے گتہ جرم کو تسلیم کرنا سے انکار کیا۔ اور شہادت استغاثہ کی تردید کی۔ اور خود کو بیگناہ بیان کیا۔ تاہم حلیفہ بیان قبضہ کرانے یا اصرار میں شہادت پیش کرنا مستطاب نہ کیا۔

(6) شہادت استغاثہ اور بیانات ملزمان کے ہمہ جہت دیکھ کر اور دیکھ کر ملزمان کے تفتیشی کے ملزم کا پورا اور پورا کہ جینی سے جہیزہ لیا گیا۔

(7) شہادت استغاثہ سے ملتا ہے کہ قبضہ برآمدگی اسکے ملزمان کے تفتیشی ملزمان کے کردار سے عمل میں لائی گئی ہے۔ برکت برآمدگی ملزمان

(جاری)

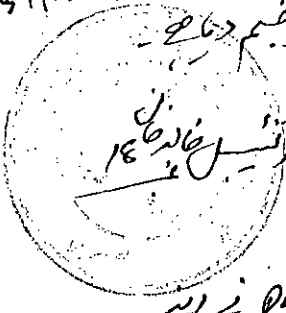


(۱۵) (۱۵)

موجودہ وقت۔ گواہوں کے دیگر برادران بھی انہیں
راہ میں پزیر ہوئے کی گواہی مستندت / ۱۸۵۰ نے خود اپنے بیان میں جہاں
جو اب یہ کہ ہے۔ نیز یہ بھی درست نہیں کہ یہ ہے کہ گواہوں کے گروہ جات کی
ملکیت کو نسبت ہی کوئی شہادت موجود نہیں ہے۔ جب شہادت گواہوں کے گروہوں
کی ملکیت اندر رکھ کر دراصل انہیں گواہوں کی نسبت قیاس ثبوت اور شہادت
منع سے لے کر موجود ہے۔ تو ان گروہ جات سے نہیں برادران اسلم کے ملکیت
اندرون اسٹیشن و گروہوں کی نسبت یقین نہیں کیا جا سکتا۔ مبینہ مقدمہ
خود اسٹیشن کے خلاف لگایا گیا التزام ابتدا سے گواہوں کو ضم دیا ہے۔

ATTESTED
3-2-014

Mu 4
9/1/08



(۱۵) وقوع خود گواہوں کی شہادت مستندت مقدمہ ظفر خان - ۲ - ۲۵۰ لکھنؤ ضابطہ ۱۸

میں۔ ان کی شہادت ایک دوسرے سے متضاد ہیں۔ ظفر خان - ۲ - ۲۵۰ نے اپنے
گواہی بیان میں بعد از اسلم کے اسلم کے ہاتھ لگا کر بدست تیسری خاندان ۱۸
تفصیلاً اسٹیشن کی شہادت دی ہے۔ بلکہ خاندان ۱۸ نے اپنے مرکزی بیان میں اس
گواہی کے بارے میں جواب میں اسلم کے بیان کے تردید کی ہے۔ یہی گروہ گواہ
مذکورہ بعد چاکنگی پرچم FIR کے نقل ۱۰ گواہوں سے لے خود کو بد علم بیان کیا ہے، حالانکہ
FIR میں اسلم کے اندر FIR کے نقل میں لگانے والے تیسری کا نام ظفر خان قرار ہے۔
اسی گروہ گواہ کی شہادت سے FIR کے بیان میں برائی۔ اس FIR سے متضاد ہے۔
(B) پولیس آرڈر ۲۰۰۰ کی دفعہ ۱۸ ذیلی دفعہ ۹ کے تحت ہم خدمات کی گنتی
کا رضیاء صرف نہ صرف شعبہ تفتیش کو حاصل ہے۔ جب تک حکومت کسی دفعہ حکم کے
ذریعے تفتیش کا رضیاء کسی دفعہ شعبہ کو کنوینٹ نہیں کیا۔ اس گروہوں کے
تاخیر میں اسٹیشن خدایا کا جائزہ لیا جائے۔ تو یہ ہو گا کہ ۲ - ۲۵۰ ظفر خان

(۱۵)



96

5

19

کا تعلق محمد پولیس کے "Preventive wing" سے ہے۔ FIR
کرنے کا عدالت اسی کا درجہ دست برد بھائی قانون ہے۔ لیکن گنہگار
صرف قانون اور انصاف سے تجاوز ہے۔

بلا ت با لا در بیان کے خلاف استغاثہ نے بھائی قانون گنہگار
تک دقت سے باہر ترقی پیش کر کے ہم ثابت کرنے میں ناکام رہے۔ لہذا
مدعیان کو برہنہ دیا جاتا ہے۔ مارشلہ حق سے لے کر فیصلہ کرنے کا حکم لیا جاتا ہے۔
میں قید بہتر تیب دیکھیں درصہ جی انظر افان ہے۔

منہ بانی

عبدالحق صاحب
31/9/04

سرٹیفکیٹ
31/9/04



عبدالحق صاحب
31/9/04



ATTESTED
3-2-014

No	96-
Dated of Application	30-1-014
Name of Applicant	— — — — —
Word	500/-
Fee	10/-
Signature of Clerk & Date	— — — — —
Date of Preparation	3-2-014
Date of Delivery	3-2-014

recommendations of the Central Selection Board. The respondent earned this promotion. As regards rule of seniority (Rule 8) it is provided that "seniority would be determined from the date of continuous regular officiation as Deputy Secretary or any post in Grade-19 whichever is earlier". The officiation of the respondent was admittedly in a post in Grade-19 or its equivalent. Therefore, a person can be given the credit of seniority without having officiated for a single day as a Deputy Secretary if he had done so in a post in Grade-19 or its equivalent. These two distinguishing features in the case of the respondent fully made out his right to claim seniority from a date earlier to his formal appointment as Deputy Secretary.

Mr. Israrul Haq respondent No.9 has raised an objection with regard to certain observations made by the Service Tribunal with regard to the propriety and efficacy of the earlier seniority list. We do not consider it necessary to go into that question because these are not determinative of the controversy raised in the case and further Mr. Israrul Haq has not formally appealed or filed cross-objections against any finding given or relief granted or refused.

The judgment of the Tribunal is unexceptionable and the appeal is dismissed with costs.

M.B.A./E-8/S

Appeal dismissed.

1998 P L C (C.S.) 1430

[Supreme Court of Pakistan]

Present: Saiduzzaman Siddiqui, Raja Afrasiab Khan
and Wajihuddin Ahmed, JJ

Dr. MUHAMMAD ISLAM, INSTRUCTOR, ANIMAL
HUSBANDRY IN-SERVICE TRAINING INSTITUTE,
DAUDZAI, PESHAWAR DISTRICT

versus

GOVERNMENT OF N.-W.F.P. through Secretary,
Food, Agriculture, Livestock and Cooperative
Department, Peshawar and 2 others

Civil Appeal No. 568 of 1995, decided on 2nd June, 1998.

(On appeal from the N.-W.F.P. Service Tribunal, Peshawar dated
24-8-1994 passed in Appeal No. 202 of 1993).

(a) Fundamental Rules—★

---R. 54---Civil service---Civil servant was involved in a case under S.302/34, P.P.C. for a murder---No evidence could be brought against the accused civil servant on charge of murder, thus, proving that allegations levelled against him were baseless---Acquittal of civil servant from the criminal case---Accused civil servant in case of acquittal was to be considered to have committed no offence because the competent Criminal Court had freed/cleared him from an accusation or charge of crime---Such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of murder case against him. [p. 1436] F & D

Government of West Pakistan through the Secretary, P.W.D.,
Lahore v. Mian Muhammad Hayat PLD 1976 SC 202 distinguished.

(b) Criminal Procedure Code (V of 1898)---

---S. 497---Bail---Observations of Court in bail granting order are tentative in nature.

The observation of the Criminal Court in the bail granting order is wholly immaterial for the purposes of acquittal or conviction of the accused. The observations in the orders passed in bail applications are always tentative in nature and, as such, cannot be used by the parties for conviction or acquittal of the accused. [p. 1434] A

(c) Criminal trial---

---Benefit of doubt---Doubt itself destroys the very basis of the prosecution case---Where the benefit of doubt has been given to the accused, it cannot be said that charge has been established by the prosecution---Accused has to be treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the commission of crime and, as such, deserves to be convicted to meet the ends of justice---Even where benefit of doubt has been extended to accused, he shall be deemed to have been honourably acquitted. [p. 1435] B

(d) Criminal trial---

---Acquittal---All acquittals are "honourable" and there can be no acquittals which may be said to be "dishonourable".

All acquittals even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are

Admitted

6/19/93
091-9211793

acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals. [p. 1435] C

That term "acquittal" has not been defined anywhere in the Criminal Procedure Code or under some other law. In such a situation, ordinary dictionary meaning of "acquittal" shall be pressed into service. [p. 1436] E

Mian Muhammad Shafa v. Secretary to Government of the Punjab, Population Welfare Programme, Lahore and another 1994 PLC (C.S.) 693 ref.

Government of West Pakistan through the Secretary, P.W.D., Lahore v. Mian Muhammad Hayat PLD 1976 SC 202; Government of N.-W.F.P. v. I.A. Sherwani and another PLD 1994 SC 72 and Dictionary Macmillan, William D. Halsey/Editorial Director, Macmillan Publishing Co., Inc. New York, Collier Macmillan Publishers, London. rel.

(c) Words and phrases---

---Word "acquittal"---Connotation. [p. 1436] E

Abdul Kadir Khattak, Advocate Supreme Court with Muhammad Zahoor Qureshi Azad, Advocate-on-Record for Appellant.

Hafiz Awan, Advocate Supreme Court with Muhammad Zahoor Qureshi Azad, Advocate-on-Record (absent) for Respondents Nos. 1 and 2.

Respondent No. 3: Ex parte

Date of hearing: 2nd June, 1998.

JUDGMENT

RAJA AFRASIAB KHAN, J.--On 21st of August, 1989 at 4-40 p.m. a case under section 302/34, P.P.C. was registered against Dr. Muhammad Islam and Fazal Haqqani on the statement of Muhammad Rahim with Police Station Katlang District Mardan for the murder of Sher Zamin. An Additional Sessions Judge, Mardan, after recording the statement of the complainant, Muhammad Rahim passed the following order on 9-6-1992:--

"Statement of the complainant has already been recorded and placed on file. He does not charge the accused for the commission of the

offence. In view of his statement, the learned S.P.P. also gave statement that he wants to withdraw from the prosecution against the accused.

In view of the above statements, no case stands against the accused, therefore, no charge is framed against them and they are discharged/acquitted from the charge levelled against them in the present case. They are on bail, their bail bonds stand cancelled and sureties discharged. Case property, if any, be disposed of in accordance with law. File be consigned after completion."

It is evident that the accused have been acquitted in the case. At the time of incident, the appellant was posted as Veterinary Officer (Health) (B-17), Incharge Veterinary Dispensary, Katlang District Mardan. He was suspended from service with effect from 22nd of August, 1989 vide order dated 17-1-1990 because of his involvement in the aforesaid murder case. Nevertheless as pointed out above, he was acquitted of the murder charge by the trial Judge on 9th of June, 1992. On the strength of this order, the appellant moved an application on 29-6-1992 for his reinstatement in service. On 7-4-1993, the competent Authority accepted the application of the appellant and in consequence thereof, reinstated him in service with effect from 22nd of August, 1989. The period from 22nd of August, 1989 to the date of his assumption of duty i.e. 18-4-1993 was treated as extraordinary leave without pay. On 2nd of May, 1993, the appellant filed representation against the order dated 7-4-1993 which was rejected by Secretary Food, Agriculture, Livestock and Cooperative Department, Peshawar on 19th of June, 1993. The appellant then filed appeal before the N.-W.F.P. Service Tribunal praying for the payment of salary and allowances to him for the said period. This claim of the appellant was contested by the Government on the ground that the acquittal of the appellant was based on a compromise between the parties. This being the position, acquittal of the appellant cannot be held to be honourable so as to entitle him to full pay and allowances for the said period. The Tribunal vide its decision, dated 24th of August, 1994 dismissed the appeal observing:--

"The expression 'honourably acquitted' has not been defined in rules anywhere else. There is no reference in the Code of Criminal Procedure, to the term 'honourably acquittal'. In the ordinary sense 'honourable acquittal' would imply that the person concerned had been accused of the offence maliciously and falsely and that after his acquittal no blemish whatsoever, attaches to him. In cases where the benefit of doubt is given to him or where he is acquitted because the parties have compromised or because the parties on account of some extraneous influence have resiled from their statements then as held by the learned Division Bench of the erstwhile High Court of West Pakistan Lahore Seat in case reported as Sardar Ali Bhatti v.

Abdullah Khan

(22) Pakistan (PLD 1961 Lah. 664) in spite of the acquittal of the person concerned, cannot be declared to have been 'honourably acquitted.' This decision has been upheld by the Hon'ble, Supreme Court of Pakistan in case reported as Government of West Pakistan through the Secretary, P.W.D. (Irrigation Branch), Lahore v. Mian Muhammad Hayat (PLD 1976 SC 202). The appellant having been acquitted on the basis of compromise with the complainant his acquittal cannot, therefore, be treated as honourable. (Emphasis supplied).

It is for the revising authority or appellate authority to form its opinion on the material placed before it, whether such a person has been honourably acquitted or not; It is left to the absolute subjective discretion of the authority. This Tribunal, therefore, dismiss the appeal. Parties are left to bear their own costs. File be consigned to the record."

Leave to appeal was granted by this Court on 14th of May, 1995.

2. Learned counsel appearing on behalf of the appellant submitted that the appellant was acquitted and as such, was entitled to be given the pay alongwith allowances for the period he remained under suspension. This position was contested by the respondents by saying that as matter of fact, there was a compromise between the appellant and the complainant. It could not be said that the appellant had been honourably acquitted. The learned Law Officer drew our attention to the bail granting order, dated 16th of January, 1992 saying that an affidavit was given by the son of the complainant that the parties had entered into a compromise.

3. After hearing the learned counsel for the parties and perusing the record, we are inclined to hold that this is a case of acquittal pure and simple. The observation of the Criminal Court in the aforesaid bail granting order is wholly immaterial for the purpose of acquittal or conviction of the appellant. It has, time and again, been said that the observations in the orders passed in bail applications are always tentative in nature and as such, cannot be used by the parties for conviction or acquittal of the accused. In fact, these bail orders are always treated to be non-existent for the purposes of trial of the accused. The above order in the bail application has, therefore, to be ignored for all intents and purposes. The argument is thus repelled. The trial Judge in his order referred to above has unequivocally stated that the appellant has been acquitted of the charge. Needless to state that in all criminal matters, it is the bounden duty of the prosecution to establish its cases against the accused on the basis of reliable and credible evidence. In the case in hand, the prosecution failed to produce any evidence against the appellant. The testimony of the star witness namely the complainant did not involve him in the commission of the crime. This was, undoubtedly, a case

n.c

(Raja Afrasiab Khan, J)

of no evidence on the face of it. The Law Officer is unable to show that the parties have entered into a compromise. His simple word of mouth was not enough to hold that the parties had entered into compromise. Even in the cases where benefit of doubt has been given to the accused, it cannot be said that the charge has been established by the prosecution. The accused are to be treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the Commission of the crime and as such, deserve to be convicted to meet the ends of justice. The doubt itself shall destroy the very basis of the prosecution case. In this view of the matter, the accused shall be deemed to have honourably been acquitted even where the benefit of doubt has been extended to them. In case of Mian Muhammad Shafa v. Secretary to Government of the Punjab, Population Welfare Programme, Lahore and another (1994 PLC (C.S.) 693), following observations were made:--

"There is hardly any ambiguity in these provisions and they do not present any difficulty. We are in no doubt that the provisions of clause (a) are attracted by the facts on the ground that the appellant was acquitted of the charge against him. Although, the department claims that this was the result of benefit of doubt, we would hold that the acquittal is honourable within the meaning of this rule. As a matter of fact, all acquittals are honourable and the expression 'honourable acquittals' occurring in clause (a) seems to be superfluous and redundant. It is one of the most valuable principles of criminal jurisprudence that for a judgment of conviction it is the duty of the prosecution to establish its case beyond all reasonable doubt. If it fails to do so, the accused will be entitled to acquittal and such acquittal will be honourable, even if it is the result of a benefit of doubt. The expression 'benefit of doubt' is only suggestive of the fact that the prosecution has failed to exonerate itself of the duty of proving its case beyond all reasonable doubt.

In the present case, therefore, the appellant's acquittal of the charge of misconduct and his consequential reinstatement in service entitled him to full pay and remuneration of the entire period from 6-10-1980 to 12-2-1986 under F.R. 54(a) of the Rules. We hold that the provisions of F.R. 54(b) are not relevant and that they could not have been pressed into service by the Department in deciding the matter."

We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise

n.c

Appellate
PM

between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals.

4. Be that as it may, we hold that the appellant was acquitted because there was not an iota of evidence available on record against him. Learned counsel for the respondents relied upon the rule laid down in Government of West Pakistan through the Secretary, P.W.D., Lahore v. Mian Muhammad Hayat (PLD 1976 SC 202), wherein it was held that the acquittal of the accused had to be honourable which would mean that the allegations were false. In our view, the above rule shall not apply to this case for the reason that the appellant in this case was tried and for lack of evidence, he was acquitted by the trial Court. In the referred case, the accused, Muhammad Hayat was never tried under any offence by any Criminal Court. It may also be noted that the provisions of F.R. 54(a) have been declared un-Islamic by the Shariat Appellate Bench of this Court vide Government of N.-W.F.P. v. I.A. Sherwani and another (PLD 1994 SC 72). In other words, the F.R. 54(a) under which the appellant has been deprived of his pay and other financial benefits, does not exist on the statute book. It is admitted by the learned counsel for the parties that term "acquittal" has not been defined anywhere in the Criminal Procedure Code or under some other law. In such a situation, ordinary dictionary meaning of "acquittal" shall be pressed into service. According to "Dictionary Macmillan, William D. Halsey/Editorial Director, Macmillan Publishing Co., Inc. New York, Collier Macmillan Publishers London" the words "acquit" and "acquittal" mean:--

"acquit"--quitted, -quitting. v.t. 1. to free or clear from an accusation or charge of crime; declare not guilty; exonerate: The jury acquitted him after a short trial. 2. To relieve or release, as from a duty or obligation: to acquit him of responsibility. 3. To conduct (oneself); behave: The team acquitted itself well in its first game. (Old French aquitter to set free, save, going back to Latin ad to + quietare to quiet)"

'acquittal' n.1. a setting free from a criminal charge by a verdict or other legal process. 2. Act of acquitting; being acquitted."

The appellant was acquitted by the trial Judge as already pointed out above. It shall, therefore, be presumed that the allegations levelled against him are baseless. In consequence, he has not been declared guilty. In presence of above meaning of "acquittal" the appellant is held to have committed no offence because the competent Criminal Court has freed/cleared him from an accusation or charge of crime. The appellant is, therefore, entitled to the grant of arrears of his pay and allowances in respect of the period

(Sh. Riaz Ahmad, J)

he remained under suspension on the basis of registration of murder case against him. This appeal succeeds and is allowed with no order as to costs.

M.B.A./M-178/S

Appeal allowed.

1998 P L C (C.S.) 1437

[Supreme Court of Pakistan]

Present: Ajmal Mian, C.J., Sh. Riaz Ahmad
and Ch. Muhammad Arif, JJ

MUHAMMAD JAVAID GHOURI

versus

LECTURER/DEMONSTRATOR, BLOOD TRANSFUSION
SERVICE, PUNJAB, LAHORE and 4 others

Civil Appeal No. 175 of 1995, decided on 5th June, 1998.

(On appeal against the judgment dated 17-8-1993 of the Punjab Service Tribunal, Lahore in Appeal No.158 of 1991).

Punjab Civil Servants (Efficiency and Discipline) Rules, 1975---

---R. 6.3---Constitution of Pakistan (1973), Art. 212---Unauthorised absence from duty---Removal from service---Validity---Proceedings against the civil servant were conducted strictly in accordance with the procedure prescribed under the Rules---Contention of civil servant for holding a regular inquiry in the light of facts and circumstances of the case was totally unwarranted---Plea of mala fides raised by the civil servant was baseless as no cogent evidence was produced by him before the Service Tribunal to substantiate the same---No question of public importance was involved in the case---Supreme Court declined interference. [p. 1439] A

Ch. Irshad Ullah Chatha, Advocate Supreme Court and Mehdi Khan Mehtab, Advocate-on-Record (absent) for Appellant.

Ch. Altaf Elahi, Additional Advocate-General, Punjab and Rana M. Yousaf Khan, Advocate-on-Record (absent) for Respondents.

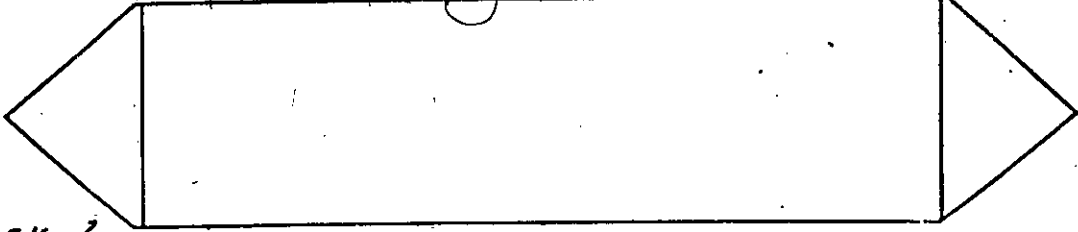
Date of hearing: 3rd June, 1998.

JUDGMENT

SH. RIAZ AHMAD, J.---This appeal through leave of this Court is directed against the judgment and order dated 17-8-1993 whereby an appeal

Sh. Riaz Ahmad

بعدالت



2014ء پنجاب کے سلام

کے سلام بنام گورنمنٹ دہلی

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئنگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام _____ کیلئے رحمان اللہ ہسپتال، نیشنل ہسپتال، نیشنل ہسپتال، نیشنل ہسپتال
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

المقوم _____ ماہ _____ 20

واہ العبد

کے لئے منظور ہے۔

بمقام لیسٹور

Accepted
M. K. S.

کے سلام ولد کے لیسٹور
ہوئے لیسٹور لیسٹور لیسٹور